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The Connecticut Second Chance Pardon Gap

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The Connecticut Second Chance Pardon Gap

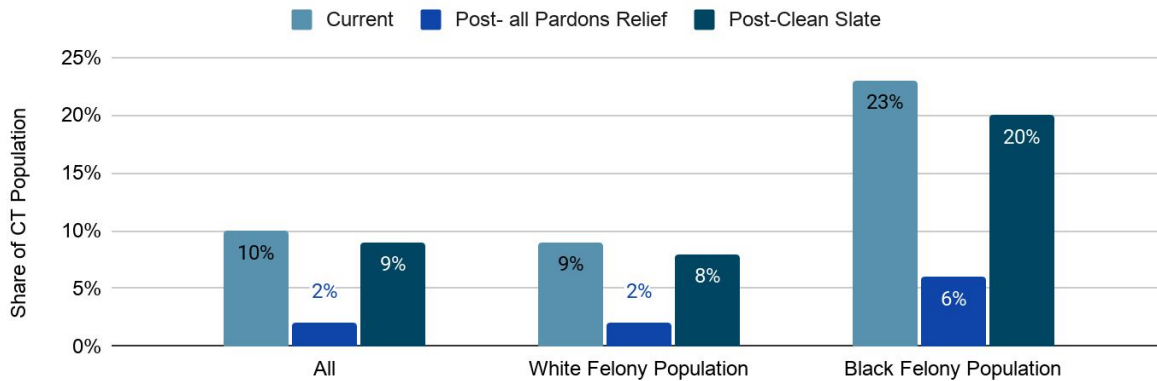
By: Colleen Chien, Hithesh Bathala, Prajakta Pingale, Evan Hastings, Adam Osmond¹

Key Findings

Population with convictions: ~450K people
 Population with felony convictions: ~356K people
 Share of people with convictions eligible to apply for pardons: 88%
 Population with convictions eligible to apply for pardons: ~400K
 Uptake rate of relief : <3%
 Pardons awarded per year: 626 (2016-2019)
 Years to clear the backlog based on current rates: 631 years

Summary Statistics	Eligible to Apply for Pardons	Eligible for Erasure under SB 403 “Clean Slate”
People Eligible (Share of People with convictions)	394K/(88%)	266K/(60%)
People (Share of People with convictions) Eligible to clear <i>all</i> convictions	355K (80%)	134K (30%)
Uptake rate based on eligibility	<3%	<5%
Years it would take to clear the backlog at the current rate	631	425

Approx Share of Connecticut Population with a Felony Conviction - Trends by Race



I. Abstract

¹ Colleen Chien is a Professor at Santa Clara University School of Law and founder of the Paper Prisons Initiative (paperprisons.org); Hithesh Bathala and Prajakta Pingale are graduate students in Information Sciences at the Leavey School of Business; Evan Hastings is a Graduate Fellow at Santa Clara University School of Law; Adam Osmond is a Fellow of the Paper Prisons initiative and an independent researcher and data analyst. This report is based on the concept of the “second chance gap” described in Colleen V. Chien, “America’s Paper Prisons: The Second Chance Gap,” 119 Mich. Law. Rev.519 (2020) Contact: colleenchien@gmail.com

Connecticut Law Chapter 961a Section 54-142a, Chapter 960a Sections 54-760 and 54-130a allows individuals whose criminal records meet certain conditions to apply for pardons of their past criminal convictions. Proposed Bill SB 403,² Connecticut’s “Clean Slate” Act, likewise would provide for automatic erasure of the records of a subset of individuals who can apply for pardons. Ascertaining, then applying existing pardons law and proposed “Clean Slate” law to a sample of 309,827 criminal histories of individuals with Connecticut convictions records, and then extrapolating to the estimated population of 450K individuals in the state with convictions,³ we estimate the share and number of people who are eligible to apply for pardons, under existing pardons and “Clean Slate” eligibility rules but have not received relief and therefore fall into the “second chance gap,” the difference between applications eligibility for and receipt of records relief.⁴ (We did not model legal financial obligations or other out of record criteria).

Based on the methods described above, we find that approximately 88% of individuals with convictions (394K) are eligible to apply for pardons of their convictions, 80% (355K) for relief from all convictions. Under Clean Slate, 60% (266K) of individuals with convictions would be eligible for relief from their convictions, 30% (134K) for relief from all convictions. Based on reported records, the State pardoned 626 cases in the last year of available data (2019). At this rate, it would take 631 years for everyone currently eligible to apply for Pardons to get them, 425 years to clear the backlog of those eligible for relief under Clean Slate. The felony population would decline from 10% to 8% under Clean Slate, to 2% if all eligible to apply for pardons were automatically granted them.

These facts make automated relief an administratively attractive option. However, due to deficiencies in the data and ambiguities in the law uncovered during our analysis, including regarding disposition, chargetype, and sentence completion criteria, to provide relief through “Clean Slate” automated approaches would require significant data normalization and cleaning efforts. We include, in Appendix E, statute drafting alternatives to address problems, based on previous Clean Slate efforts. Included in our report are our Methodology (Appendix A); Disposition Data Report (Appendix B); Appendix C (Common Charges); Detailed Absolute Pardon Statistics (Appendix D); Clearance Criteria Challenges and Legislative Drafting Alternatives (Appendix E). Appendix F contains further analyses by race. Black men are two times more likely to have a felony record and four times more likely to be incarcerated than white men,⁵ and black adult men are incarcerated at a rate that is 14-15 times their prevalence in the general population. (Appendix F) Automation of pardons relief and SB403 would both

² Available at <https://www.cga.ct.gov/2020/TOB/S/PDF/2020SB-00403-R00-SB.PDF>

³ Estimate of 2020 population of people with based on Becki Goggins et al; *Survey of State Criminal History Information Systems, 2020: A Criminal Justice Information Policy Report*, SEARCH (2020) available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf>, Table 1 (listing the total number of records in the CT repository in Dec 2018) and an annual growth rate of 3% derived based on 10-years of actuals, and a multiplier of 80% to account for the share of individuals that are arrested but never charged, as described in Chien (2020).

⁴ As defined id.

⁵ Accord, Jordan Fenster, *Racial Disparities Persist in CT Prisons, even as the Population Dropped* <https://www.ctinsider.com/local/ctpost/article/Racial-disparities-persist-in-CT-prisons-even-as-15651213.php>

decrease racial disparities, but automation of pardons relief would do so to a much more considerable degree.

II. Summary

Every time a person is convicted of a crime, this event is memorialized in the person's criminal record in perpetuity, setting off thousands of potential collateral consequences, including being penalized in searches for employment, housing and volunteer opportunities.

To remove these harmful consequences, Connecticut law allows people whose criminal records meet certain conditions to pardon their records.⁶ However, the "second chance gap" in Connecticut "absolute pardon" - the share of people eligible for relief who haven't expunged records because of hurdles in the petition process - we suspect is large. To estimate it, we used research, official guides to the law, and practice expertise to model the eligibility criteria for expungement set forth in the law and applied it to a 40-year database of conviction records from 1980-2020 sourced from the Connecticut Department of Correction described in Appendix B containing ~450K people. To carry out our analysis, we ascertained charge eligibility based on reading the code and matching it to the data provided. Importantly, we did not account for outstanding fines or out of state charges which could potentially disqualify some individuals for relief, nor did we model criteria from whom eligibility was unascertainable from the available record (e.g. pending charges).

III. Key Findings:

Using the approach described briefly above and in detail in Appendix A we find that:

- An estimated ~450K people have Connecticut felony or misdemeanor conviction records. Connecticut has 3.6M residents (Census, 2019).
- Of the ~450K people with a conviction, an estimated 88%, or about 395K people are eligible to apply for pardon of their convictions under the current law (not taking into account fines and fees, out of state and pending charges). Approximately **80% of individuals with conviction records, or 336K people, we estimate, could apply to clear their records entirely.**
- Of the ~450K people with a conviction, an estimated 60%, or about 265K people would get relief under SB403 (not taking into account fines and fees or out of state and pending charges). Approximately **30% of individuals with conviction records, or 134K people, we estimate, would clear their records entirely.**
- Based on records obtained from the sources disclosed in Appendix D, and methods disclosed in Appendix A, we estimate, conservatively, that the state issued approximately 10K absolute pardons over the last 20 years. Based on these numbers and the calculations above, we estimate that <3% of people eligible to clear their convictions have taken advantage of this remedy, leaving 97% in the absolute pardon uptake gap.

⁶ Described in "Rules" Section of Appendix A.

- At current rates of pardon, it would take 631 years for everyone currently eligible to apply for Pardons to get them, 425 years to clear the backlog of those eligible for relief under Clean Slate.

IV. Conclusion

Based on our analysis, Connecticut’s absolute pardon laws allow for approximately 88% of those who live burdened with convictions to apply for pardons relief, 80% for all convictions. But to date we estimate that 3% of those eligible to apply for relief have actually received the remedy, leaving 97% in the pardon uptake gap. Under SB 403 “Clean Slate,” as many as 60% of people with convictions, or 266K people could get relief, 134K could have their records entirely cleared. Awarding pardons to all who are eligible to apply for them could reduce the felony population from 10% to 2% (and from 23% to 4% among Black residents), while Clean Slate automation could reduce the felony population, from 10% to 8% (and from 23% to 20% among Black residents).

Appendix A: Methodology

To carry out our analysis, we implemented the approach developed in Colleen V. Chien, *The Second Chance Gap* (2020) as follows. First, we ascertained the relevant records relief laws and developed rules logic, using legal research to develop lists of ineligible and eligible charges. Next, we obtained and cleaned a sample of criminal histories from the state and collected information on the state’s criminal population. When possible, we also obtained administrative data on the number of expungements granted historically. Next, we developed flow logic to model the existing laws and also, the proposed Clean Slate law. Next we applied the flow logic to the criminal history sample to estimate eligibility shares in the sample. Finally, we extrapolated from the population in the sample to the total criminal population in the state overall, making adjustments derived from actuals, to calculate number and share of individuals in the “current gap” (people with currently records eligible for relief) as well as the “uptake gap” (share of people eligible for expungement over time that have not received them). The descriptions below disclose several shortcomings in our approach, including our inability to account for outstanding fines, or pending or out of state charges which could potentially disqualify some individuals for relief, failure to model criteria from whom eligibility was unascertainable from the available record, the existence of missing data for which we assumed a lack of eligibility, and our inability to be sure that our sample was representative of all with criminal records in the state. We use the term “expunge” loosely throughout this methodology to refer to the form of records relief available in the state pursuant to the statutes described in the RULES section of this report.

Ascertaining the Law and Developing Rules Logic

Based on the court guidelines, statutes, and guides from non-profits listed in the RULES section, we discerned the law and determined its internal logic, with respect to the charge grade (e.g. misdemeanor or felony), offense type (e.g. non-violent or domestic violence charge), time (e.g. 3-year waiting period), disposition type (e.g. nolo contendere) and person conditions (e.g. a lifetime limit of 2 convictions) that define eligibility. See “RULES” below. To the extent possible, we consulted with local attorneys to check our assumptions, and disclosed the eligibility conditions we weren’t able to model due to data or other limitations.

From these rules, we created lists of eligible and ineligible offenses. To do so, we reviewed the relief rules for disqualified classes of charges and then searched the criminal code for the corresponding statute name or number corresponding with each class of charges. We then used these statutes to identify the characteristics of each potentially eligible offense: their charge type (e.g. felony, misdemeanor), degree, and the maximum possible duration of incarceration/amount to be fine for each offense. Once we had assembled the characteristics of each potentially ineligible offense, we cross referenced each offense and its characteristics against the eligibility statute. If a specific statute section was outside the prescribed characteristics of any category of eligibility (e.g., class of offense, degree, maximum duration of incarceration/amount to be fined, etc.), the offense was deemed ineligible for expungement. The offenses that were within each of the eligibility requirements after this process were deemed eligible for expungement. We did not consider the eligibility of offenses that fulfilled the unmodeled criteria referenced above, making our estimate under-inclusive and over-inclusive.

Obtaining the Sample of Criminal Histories and Collecting Data on the State Population of Individuals with Criminal Records

We obtained a sample of criminal histories from the data source indicated below. Where the criminal histories of individuals were not already available based on a person ID, we used Name+DOB to create unique IDs and create state-specific criminal histories for each person. Descriptive statistics for our sample are provided in Appendix B. Whether supplied or generated, the person ID used has the risk of double counting individuals due to inconsistencies in name records, however, to minimize the bias introduced by this methodology, we relied on the sample primarily for eligibility ratios, rather than supply absolute numbers of people with criminal histories in the state.

To ascertain the state population, we collected information on the number of people with biometric criminal records in the state from SEARCH (2020), a consortium of repositories

(adjusting for growth in the number of people with records and accounting for people with uncharged arrests as described in Chien (2020)). Because they are based on biometric data, repository data should contain fewer if any duplicates. However, because the SEARCH sources do not systematically purge people who have moved out of state or have died, they are somewhat inflated. If total criminal population information was available directly from the state through administrative records, we considered it as well, and relied upon the smaller number of the two sources..

To ascertain data on the number of expungements granted historically, we consulted administrative data sources and related public disclosures, with the results reported in Appendix D.

Applying the Law to the Sample Data to Obtain an Eligibility Share (Current Gap)

To ascertain shares of people with records eligible for but not receiving relief (current gap), we used the methods described in Chien (2020) to first prepare the data by cleaning and labeling dispositions and charges data. We report the share of charges missing dispositions or chargetypes below in Appendix B. We then applied the logic to the sample to obtain a share of people eligible for records relief in the sample. When relevant data was missing, we took the conservative approach under the logic by assuming either that the charge or incident was ineligible for relief or removing it from the analysis. This step could address further errors into our analysis.

To approximate “sentence completion” we used recorded sentences where available, assuming that the sentence had been carried out, and taking an average period where a range of times was provided. Where usable sentence data was not available, we assumed that sentences were completed 2.5 years after the disposition date for misdemeanor charges, and 3.5 years after the disposition date for felony charges where sentence. Importantly, unless otherwise indicated, we did not account for outstanding fines or out of state charges which could potentially disqualify some individuals for relief per the summary of the rules below. If not available from our data source, we also did not account for pending charges which are disqualifying in some jurisdictions, however based on the literature we believe the share of people with records that have a currently pending charge is small, less than 5%.

When the eligibility of frequently occurring charges wasn’t addressed directly by the “top down” methodology described above, of researching eligibility or ineligibility based on the rules, we used a “bottom up” approach of researching these charges and ascertaining their eligibility one by one.

Applying the Eligibility Share to the Criminal Population and State History of Relief to Estimate the Number of People in the Second Chance Gap, Uptake Gap

To develop a state eligibility estimate based on the shares derived in the previous step, we assumed that the sample was representative enough of the criminal population that we could use its eligibility shares as the basis for a state estimate. We then applied these shares to the estimated number of people with criminal records in the state to obtain an estimate for the number of people in the “second chance gap.” If the state sample contained predominantly “convictions” data, we conservatively reduced the criminal population eligible for convictions by a share based on a sample of state actuals as provided in Chien 2020 Appendix B-3.

To calculate the “uptake rate” the share and number of people with records eligible for relief that have received this relief, we combined our estimates of the number of people in the second chance gap and combined it with a conservative estimate of the number of expungements granted over 20 years. To generate this estimate, we used actuals, but when not available over the entire period, we extrapolated back based on the first year of available data.

RULES

A. Connecticut Absolute Pardon Rules

Primary Sources: [Chapter 961a Section 54-142a](#) (2019) | [Chapter 960a Section 54-76o](#) (2019) | [Section 54-130a](#) (2019)

Secondary Sources: [Connecticut CCRC](#) (6/4/2020) | [State Official Guide](#) (2019) | [Board of Pardons Guide](#) (2018). We also consulted with a local attorney.

CONVICTIONS:

1. Misdemeanors:
 - a. Erasure/Destruction of records for any misdemeanor conviction granted absolute pardon, upon 3-year waiting-period from date of last misdemeanor conviction. [Section 54-142a\(d\)\(1\);\(d\)\(2\)](#); [Section 54-130a](#).
 - b. Erasure for any convictions where the conduct was subsequently decriminalized (unauthorized possession of less than ½ ounce of marijuana - C.G.S. 21a-279a), with no waiting-period. [Section 54-142\(d\)](#).
2. Felonies: Erasure/Destruction of records for any felony conviction granted absolute pardon, upon 5 year wait-period from date of last felony conviction. [Section 54-142a\(d\)\(1\);\(d\)\(2\)](#); [Section 54-130a](#).
3. Not Eligible: None expressly stated, but Pardon Board takes into account severity of crime. ([State Official Guide](#) / [Board of Pardons Guide](#))
4. Lifetime or Other Limits: None Found

5. LFO Payment Required for Sentence Completion: None Found
6. Other Unmodeled Criteria or Details:
 - a. Deferments/Diversions
 - b. Youthful Offender ([Section 54-76o](#))
 - c. Charges where proceedings continued for over 13 months. [Section 54-142a\(c\)\(2\)](#)

NON-CONVICTIONS:

1. Erasure of any **charges dismissed or found not guilty** if time to appeal has run out (can assume [20 day](#) limit), or if holding affirmed, then automatically with no wait time ([Sec. 54-142a\(a\)](#)).
2. Erasure of any **charges nolle**d, automatically, after a 13-month waiting-period from the date of disposition. ([Sec. 54-142a\(c\)\(1\)](#)).

B. Connecticut “Clean Slate” Rules

Primary Source: [SB403 \(2020\)](#)

CONVICTIONS:

1. Misdemeanors: Automatic erasure of
 - a. Any misdemeanor conviction (classified or unclassified), upon 7-year waiting-period from date of last conviction. [Section \(e\)\(1\)](#).
2. Felonies: Automatic /provisional erasure of
 - a. Any class C/D/E felony conviction , upon 12 year wait-period from date of last conviction.
 - b. An unclassified felony offense carrying a term of imprisonment of not more than ten years, upon 12 year wait-period from date of last conviction.
3. Lifetime or Other Limits: disqualified sex crimes as defined in [Section 54-250](#) and [Section \(4\)\(B\)](#), pending charges.
4. LFO Payment Required for Sentence Completion: None Found
5. Other Unmodeled Criteria or Details: “family crimes” section 46b-38a not eligible

Appendix B: Database Description

Our sample comprised a database of 40 years of conviction data from March 1980 to March 2020 that was released by the Connecticut State Police in accordance with the decision of the Connecticut Supreme Court in the matter of Hartford Courant Company v. Freedom of Information Commission, 261 Conn. 86 (Conn.2002). 447K people were in the database, 309K on which we performed our analysis (due to a decision to focus on 30-years of convictions).

<u>Data Statistics</u>	
Number of People in the Sample	446,595
Share of People with Convictions	100%
Share of People with Felony Convictions	80%
Share of People with Misdemeanor Convictions in the Sample	71%
Share of People with Felony Charges in the Sample	80%
Share of Charges Missing Dispositions	0%
Share of Charges Missing Chargetypes	1%

Appendix C: Common Charges

A. Top 10 Charges in our Dataset

<u>Charges</u>	<u>Number of Charges</u>	<u>Percentage of Charges</u>
probation viol	272,278	14%
larceny 6	134,176	7%
poss narcotics	125,528	6%
flr to appear 2	118,498	6%
assault 3	90,034	5%
op un influence (DUI)	64,723	3%
intrfere/resist	58,765	3%
poss drug/mrhna	58,733	3%
burglary 3	56,656	3%
brch of peace 2	55,210	3%
Total share and charges associated with top 10 charges	1,034,601	52%

B. Top 10 Expungeable Charges in our Dataset

<u>Expungeable Charges</u>	<u>Number of Charges</u>	<u>Percentage of Expungeable Charges</u>
probation viol	267,240	36.6%
larceny 6	81,217	11.1%

assault 3	59,384	8.1%
und suspension (operating under suspension)	38,936	5.3%
intrfere/resist	38,743	5.3%
brch of peace 2	30,563	4.2%
breach of peace	28,927	4.0%
disorderly cndt	25,587	3.5%
larceny 5	16,956	2.3%
larceny 4	14,100	1.9%
Total share and charges associated with top 10 expungeable charges	601,653	82.4%

Appendix D: Detailed Absolute Pardon Statistics

We obtained expungement statistics from the Board of Pardons and Parole, at <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical>. The Board of Pardons and Parole reports that 1,424 absolute pardons and 1,079 expedited pardons (for a total of 2,503 pardons) were granted from 2016-2019. The average number of pardons across this period was 626. To get to a conservative estimate of the number of pardons issued over the past 20 years we took the actual data available and assumed a run rate for the previous years based on the first year of data available, or 11,911 pardons.

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives⁷

Criteria	Administrability Challenge	Example	Drafting Alternative
Sentence completion	Not tracked in court data and hard to infer as clean sentencing data is often not available; it also is often unclear whether or not outstanding fines and fees must be paid, and whether have been.	Records relating to a first conviction ...voided upon the petitioner's successful completion of the sentence will be sealed by the court. KRS §§ 218A.276(1), (8), (9). Record...can be sealed by the court one year after sentence completion if the petitioner has no subsequent charges or convictions. Colo. Rev. Stat. § 24-72-705(1)(c)(I), (1)(e)(I).	Disposition Date (+ X Years)
First conviction; qualifying	Lack of unique identifier across precludes determination		Bless commercial identification

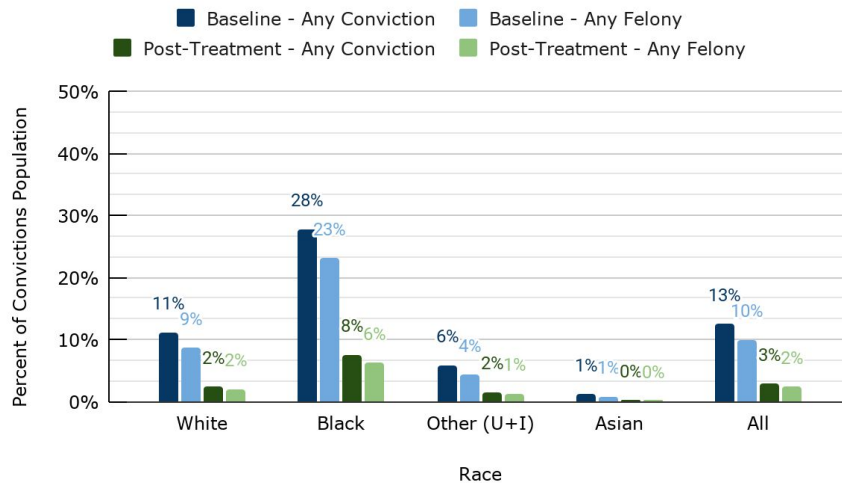
⁷ Adapted from Chien (2020)

conditions			approximation technique
Personal demographic trait such as age, military status, or other condition	Information may not be easily ascertainable / available on the record or charge category condition	Records relating to an offense committed by current and former military personnel „,can be dismissed Cal. Pen. Code § 1170.; A record relating to a matter sealed pursuant to section 781 is destroyed ...when the person reaches 38 years of age. Cal. Welf. & Inst. Code §781(d). Cal. Welf. & Inst. Code § 781(d).	Specify an identification strategy that can be implemented at scale or do not include demographic traits
Class or grade condition	Missing class, grade or category information	Records relating to a charge or conviction for a petty offense, municipal ordinance violation, or a Class 2 misdemeanor as the highest charge can be removed from the public record after 10 years, if all court-ordered conditions are satisfied. S.D. Codified Laws § 23A-3-34.	Explicitly specify the qualifying crimes
Court-ordered conditions	Require individual review /check for any “court-ordered” conditions and compliance re: same		Do not include court-ordered conditions
Laundry list disposition criteria	Vulnerable to changes to definitions, requires detailed clean data	Records of arrest are destroyed within 60 days after detention without arrest, acquittal, dismissal, no true bill, no information, or other exoneration. R.I. Gen. Laws § 12-1-12(a), (b).	Simple description e.g. “All records that do not end in a conviction”

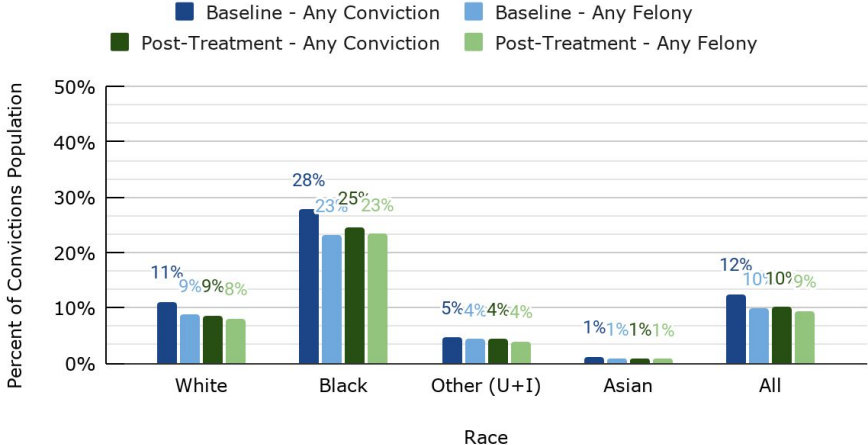
Appendix F: Race Statistics

Racial Distribution of Convictions Pre and Post Pardons and Clean Slate

Racial Distribution of Convictions: Pre/Post Pardons

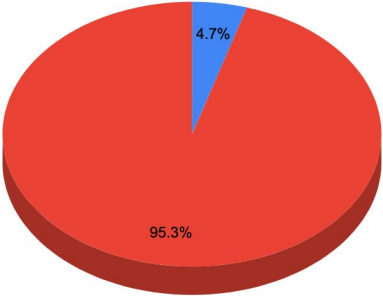


Racial Distribution of Convictions Pre/Post Clean Slate (SB 403)



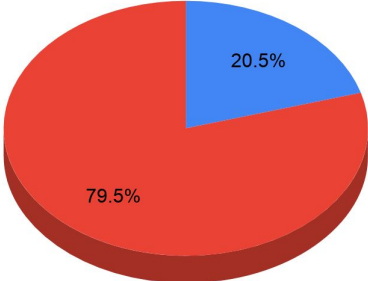
Views of the Population of People with Records

Race/Sex (State Population as of 2019)



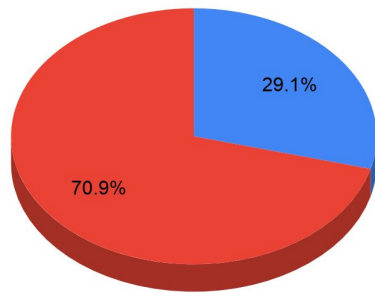
Black Men Over 18 Years Old All Others

Race/Sex (Convictions as of Nov. 2020)



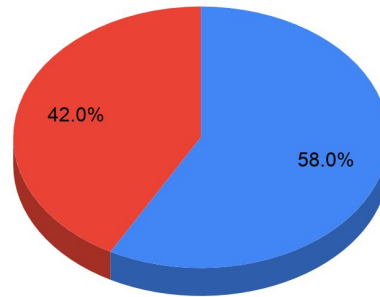
Black Men Over 18 Years Old All Others

Race/Sex (Felonies as of Nov. 2020)



● Black Men Over 18 Years Old ● All Others

Race/Sex (Prison Population as of Dec. 2020)



● Black Men Over 18 Years Old ● All Others

Sources of data: <https://www.census.gov/quickfacts/CT> (Adult black male population share approximated based on the following calculation: Black population = 12.2%, Male = 48.8%, Over 18 years = 79.6%. $12 \times .488 \times .796 = 4.7\%$). Source of incarceration data:

<https://portal.ct.gov/DOC/Report/Monthly-Statistics>