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The Minnesota Second Chance Expungement Gap

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The Minnesota Second Chance Expungement Gap

By: Colleen Chien, Sonya Chalaka, and Chhavi Garg[1]

Key Findings

People with criminal records: ~1.1M
People with convictions: ~780K
Share of people with convictions eligible for expungement : ~60%
People with convictions eligible for expungement : ~470K
Uptake rate of *any* records expungement: ~5%
Records expunged per year: ~2,699 (2019)
Years to clear the backlog based on current rates: ~173
Estimated aggregate annual earnings loss associated with clearable convictions: $2.4 Billion
*Does not include consideration of fines and fees

I.   Abstract

Minnesota Statute Sections 609A, 243.166, and 609.02 define conditions under which individuals with criminal records can expunge their records. Ascertaining, then applying the law to a sample of 581,478 criminal histories of people with convictions records, and then extrapolating to the estimated population of 1.1M individuals in the state with criminal records[2], we estimate the share and number of people who are eligible for relief but have not received it and therefore fall into the "second chance gap," the difference between eligibility for and receipt of records relief.[3] Importantly, we assumed that all who met the threshold criteria for receiving expungement were eligible, and did not take into account the balancing test under 603A.03 Subdivision 5.e did not model legal financial obligations or other out of record criteria). We also estimate the aggregate earnings loss associated with people eligible for relief from convictions that have not yet received it.[4]

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[2] Estimate of 2020 population of people with court records based on Becki Goggins et al; *Survey of State Criminal History Information Systems, 2020: A Criminal Justice Information Policy Report*, SEARCH (2020) https://www.ncjrs.gov/pdffiles1/bjs/grants/255651.pdf, Table 1, a growth rate of 3% derived based on 10-years of actuals.

[3] As defined in Chien, supra note 1 .

[4] We rely on the methodology and estimates provided in Colleen Chien, et al., *Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver's License*, 64 Ariz. Law Rev. 675 (2022) (estimating, based on review of the literature, the national average earnings losses associated with a misdemeanor and felony conviction to be $5,100 and $6,400, respectively. As averages, these numbers reflect the loss experienced by

Racial disparities are significant in the Minnesota population of people with a criminal record, with an estimated 6.6% of white Minnesotans but 17.3% of Black Minnesotans, and over a quarter of American Indians or Alaskan Natives having a criminal record based on state criminal history data and Census data (2020).

Table 1: Estimated Share of Minnesota Population with Criminal Records - Race Analyses[5]

Race	Share in Criminal Data
American Indian or Alaskan Native	25.97%
Asian or Pacific Islander	5.29%
Black or African American	17.33%
White	6.63%

*Table 2: Racial Distribution within Criminal Records and General Minnesota Population - Race Analyses[5]*

Metric	Racial Distribution		General -
Race	General MN population	Criminal Records	Criminal Gap
American Indian or Alaskan Native	1.44%	4.89%	3.4
Asian or Pacific Islander	5.56%	3.85%	0.7
Black or African American	7.61%	17.25%	2.3
White	85.39%	74.01%	0.9

individuals with a range of criminal records, employment history, and employability). (paper available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4065920)

[5] All race analyses shown/done based on State Data Sample described below in Appendix B and the racial distribution of people in the Minnesota population as reported by the Census (2021) (https://www.census.gov/quickfacts/MN). Due to deficiencies in the data, the disparities shown should be regarded as ballpark figures.

Figure 1: Share of Minnesota Population with Criminal Records, Racial Distribution within Criminal Records and General Minnesota Population - Race Analysis[6]

Gaps between the Racial Distribution of People with Criminal Records in MN v. the MN General Population

Legend: Racial distribution in Criminal records in MN | Racial Distribution in MN
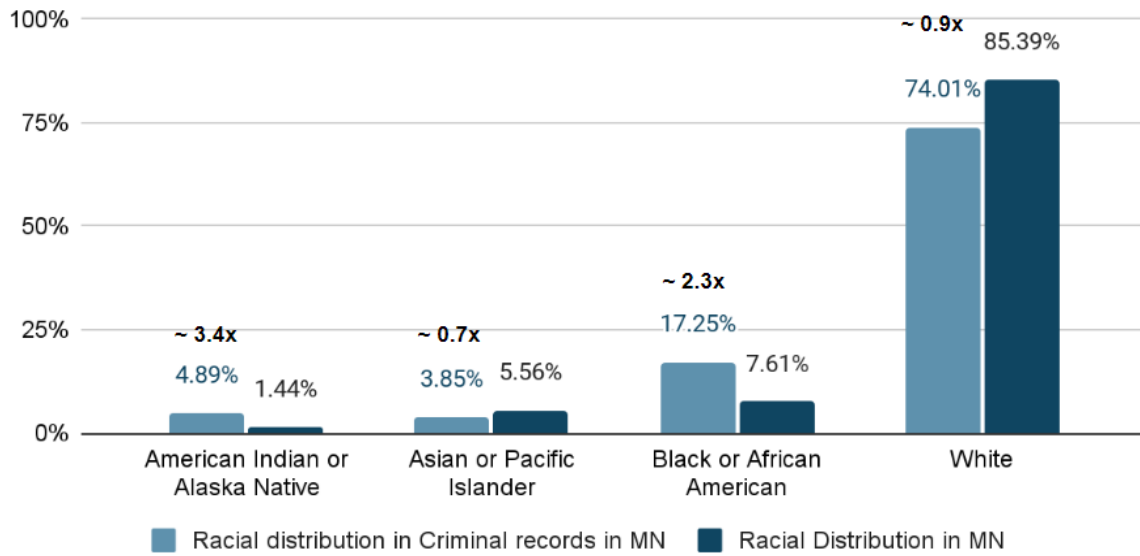
Likelihood of having a Criminal Record in MN by Race

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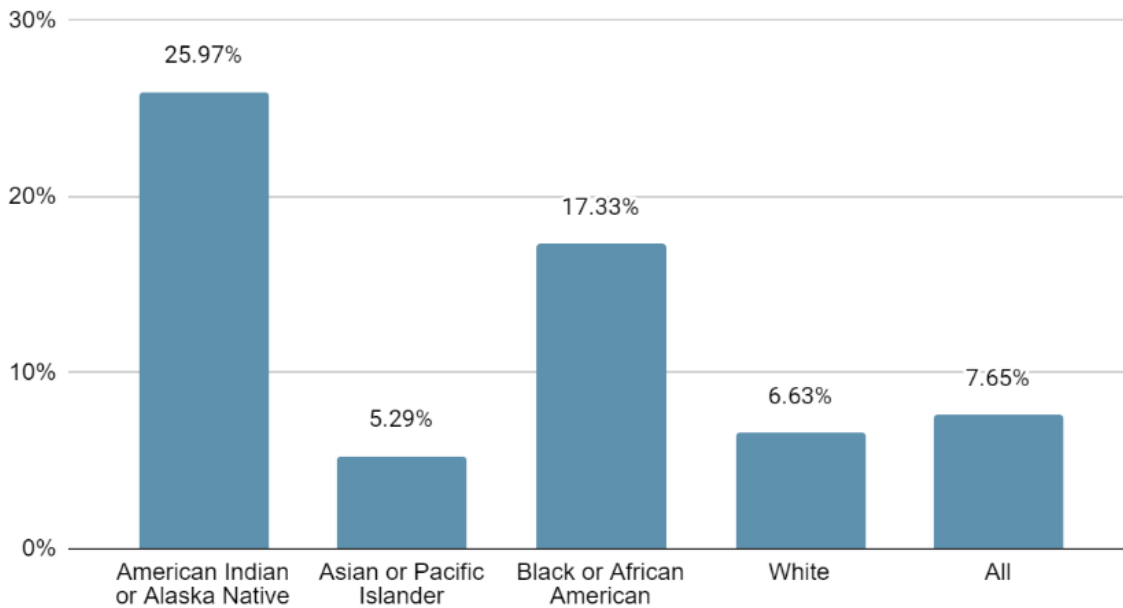
[6] Same as above.

Based on the method described above, we find that approximately 60% of individuals in our sample are eligible to clear their convictions, 47% of all convictions. Extrapolating to the total number of people with records in Minnesota, this yields an estimated 470K people with convictions that are eligible for convictions relief and 683K with records that are eligible for *any* relief that haven't received it.

Combining historical expungement statistics with our eligibility calculations, an estimated 5% of people with records eligible for relief have received it, leaving behind 95% of people with records. To ascertain the approximate annual earnings loss associated with Minnesota's second chance convictions gap, we multiply the number of people in the convictions gap (470K) by $5,100, a conservative estimate for the average loss in earnings yearly due to the second chance gap.[7] We estimate that $2.4 Billion in cumulative earnings are lost every year in Minnesota due to convictions that could be, but have not been cleared.

Racial gap analysis

Impact on people with Criminal Records
Currently, although 6.63% of White people have a criminal record, the figure is more than double for Black people, 17.33%. And, it is almost four times for American Indian or Alaskan Natives at 25.97%.

The racial distribution in the Minnesota population constitutes 85.39% White, 7.61% Black and 1.44% American Indian or Alaskan Native. However, the racial distribution in the Criminal Records in Minnesota is slightly skewed with 74% White, 17.25% Black and 4.89% American Indians or Alaskan Natives. The gap between the general population and the criminal records population is 0.9 times for white people. However, it is 2.3 times for Black people and 3.4 times for American Indian or Alaskan Native people, which is respectively 2.5 and 3.7 times more than the gap for white people.

Based on reported records, the State expunged 2,699 cases in the last year of available data (2019). At this rate, it would take approximately 173 years to clear the existing second chance expungement gap to clear all convictions in the backlog alone. 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 avoid some of these problems. Included in our report are our Methodology (Appendix A); Disposition Data Report (Appendix B); Appendix C (Common Charges); Detailed Expungement Statistics (Appendix D); Clearance Criteria Challenges and Legislative Drafting Alternatives (Appendix E).

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[7] $5,100 is a national average that is associated with misdemeanors (see Id.), but the second chance gap in Minnesota includes individuals with both misdemeanor and felony convictions which makes the number a conservative estimate for application in Minnesota.

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, Minnesota law allows people whose criminal records meet certain conditions to expunge their records.[8] However, the "second chance gap" in Minnesota "expungement" - 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 sample of records covering a random sample of records from 2009 to 2019 sourced from the Minnesota Judicial Branch To carry out our analysis, we ascertained charge eligibility based on reading the code, inferred whether a person had a charge pending, and made assumptions about the estimated date of completion of the sentence based on the passage of time derived from practice. 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.

III. Key Findings:

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

- In the state of Minnesota, an estimated 1.1M out of approximately 5.6M state residents have criminal records.
- Of those, an estimated 60%, or about 470K people are eligible for expungement of their convictions (not taking into account fines and fees and out of state charges). Approximately **47% of individuals or 365K with convictions could clear all convictions.**
- Based on the assumption that our sample is representative of people with criminal records in Minnesota, we estimate that the current felony population in Minnesota is approximately 109K people. (In 2010 it was estimated by Shannon, Uggen 2016 to be approximately 350K). The share of people with felonies eligible for conviction relief is 10% or 11K people.
- 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 30K expungements over the last 20-years. Based on these numbers and the calculations above, we estimate that 5% of people eligible to clear any record have done so, leaving 95% of people in the expungement uptake gap.

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[8] Described in "Rules" Section of Appendix A.

- At current rates of expungement, it would take around 173 years to clear the existing backlog of criminal histories eligible for relief.
- We estimate the aggregate earnings loss of the approximately 470K people with convictions in the Minnesota second chance gap is about $2.4 Billion.

IV.   Conclusion

Based on our analysis, Minnesota's expungement laws allow for approximately 60% of those who live burdened with records to get records relief, 60% to get relief from convictions. 47% of individuals with convictions could clear all convictions. But to date we estimate that only 5% of people eligible for relief have gotten it, leaving 95% of people in the expungement uptake gap. The conviction second chance gap translates into a cumulative annual earnings loss to the state of about $2.4 Billion.

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. 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. (See Chien 2020 for additional details). 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 a Data Sample of Criminal Histories and Ascertaining 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 introduce 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,[9] and 3.5 years after the disposition date for felony charges were sentenced. 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

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[9] In Minnesota, most misdemeanors are limited to one year of probation.

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 was "convictions only" data, we conservatively reduced the criminal population eligible for relief 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

Minnesota Expungement Rules
Primary Sources: Minnesota Statutes 609A.02 (2019) | Minnesota Statutes 609A.03 (2019) | Minnesota Statute Section 243.166 (2019) | Minnesota Statutes 609.02 (2019)
Secondary Sources: MN Expungement of Criminal Records (January 2016); MN's sweeping new expungement law (1/12015); MN Attorney General Guide (2019), MN CCRC Guide (7/9/2020)

CONVICTIONS:
1. Misdemeanors:
   a. Sealing if **petty misdemeanor** or **misdemeanor,** upon petition, if clean (no convictions) after 2 year waiting-period starting from sentence completion. (§ 609A.02 subd. 3(a)(2))
   b. Sealing if **gross misdemeanor,** upon petition, if clean (no convictions) after 4 year waiting-period starting from sentence completion (§ 609A.02 subd. 3(a)(4))
2. Felony: Sealing if **listed felony**, upon petition, if clean after 5 year waiting-period starting from sentence completion **(**§ 609A.02 subd. 3(a)(5); (b))
3. Not Eligible: Sex registration offenses. § 609A.02 subd. 4; Sec 243.166
4. Lifetime and Other Limits: n/a (Guides, CCRC, and statues silent)
5. Treatment of multiple convictions from the same Incident: n/a (Guides, CCRC, and statues silent)
6. LFO Payment Required for Sentence Completion: n/a. (Guides, CCRC, and statues silent)
7. Successive crimes: Waiting period is counted from between the time of the completion of the last sentence and filing of the petition. State v. CWN (A17-0728 Minn. App 2018).
8. Other Unmodeled Criteria or Details:
   a. All expungements are currently subject to balancing test under (**defined** at § 609A.03, subd. 5(a)). As Legal Rights Attorney Josh Esmay notes: "Expungement

is an 'extraordinary remedy' and success requires the petition to carry the burden of showing that the benefits they receive will outweigh the costs to the public and public safety of losing access to the record. Meeting the threshold criteria of the 1) the type of charge, and 2) the "clean time" waiting period, does not guarantee an expungement."

    b. Common law expungement (**defined**) is possible for even non-eligible offenses if "constitutional rights" would require it

    c. Juveniles prosecuted as adults may have their records sealed under this authority upon discharge. (**defined** at subd. 2).

    d. Individuals who have completed a deferred adjudication or other diversion program may have the related arrest, indictment, trial, or other records sealed after remaining crime-free for a one-year waiting-period. § 609A.02, subd. 3(a)(2).

    e. Sealing if the defendant received a stay of prosecution or completed a diversion program if clean for 1 year upon completion or stay.

    f. Minn Stat 299C.11, which provides for an administrative return of records when there are uncharged arrests.

NON-CONVICTIONS:

1. Sealing if charges resolved **in defendant's favor (defined),** upon petition, at disposition with no waiting-period. § 609A.02, subd. 3(a)(1).

Definition:

- Not guilty by reason of mental illness is NOT resolved in Defendant's favor. § 609A.02, subd. 3(a)(1).
- A felony-to-misdemeanor reduction following deferred sentencing does not reduce the offense for purposes of expungement eligibility.

Appendix B: Data Sample Description

Our data comprised a sample of criminal histories covering a random sample of records from 2009 to 2019 sourced from the Minnesota Judicial Branch (MJB) . This data did not have race information at the individual level within it but the MJB provided aggregate statistics which serve as the basis of the racial gap analysis reported above.

Data Statistics	
Number of People in the Sample	581,478
Share of People with Convictions	100%

Share of People with Felony Convictions	14%
Share of People with Misdemeanor Convictions in the Sample	96%
Share of People with Felony Charges in the Sample	14%
Share of Charges Missing Dispositions	0%
Share of Charges Missing Chargetypes	0%

Appendix C: Common Charges

A. Top 10 Charges in our Dataset

Charges	**Number of Charges**	**Percentage of Charges**
traffic - dwi - operate motor vehicle - alcohol concentration 0.08 within 2 hours	103,333	8%
theft-take/use/transfer movable prop-no consent	82,905	6%
traffic - dwi - operate motor vehicle under influence of alcohol	43,979	3%
drugs - 5th degree - possess schedule 1,2,3,4 - not small amount marijuana	34,783	3%
traffic - careless driving	34,410	3%
disorderly conduct-offensive/abusive/noisy/obscene	34,407	3%
disorderly conduct	25,563	2%
traffic-dl-driving after cancellation-inimical to public safety	15,564	1%
disorderly conduct-brawling or fighting	13,533	1%
traffic-drivers license-driving after revocation	13,195	1%
Total share and charges associated with top 10 charges	**401,672**	**29%**

B. Top 10 Expungeable Charges in our Dataset

Expungeable Charges	**Number of Charges**	**Percentage of Expungeable Charges**
traffic - dwi - operate motor vehicle - alcohol concentration 0.08 within 2 hours	53,882	11%
theft-take/use/transfer movable prop-no consent	28,434	6%

traffic - dwi - operate motor vehicle under influence of alcohol	23,243	5%
traffic - careless driving	19,289	4%
disorderly conduct-offensive/abusive/noisy/obscene	16,952	3%
disorderly conduct	15,434	3%
disorderly conduct-brawling or fighting	7,666	2%
liquor-consumption by persons under 21	7,342	1%
traffic-drivers license-driving after revocation	6,412	1%
traffic-dl-driving after cancellation-inimical to public safety	5,326	1%
Total share and charges associated with top 10 expungeable charges	**183,980**	**37%**

Appendix D: Detailed Expungement Statistics

We obtained expungement statistics from the Minnesota Judicial Branch, which reports that 18,634 cases were expunged from 2010-2019.

Appendix E: Clearance Criteria Challenges and Legislative Drafting Alternatives[10]

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 they 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 conditions	Lack of unique identifier across precludes determination		Bless commercial identification 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"

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[10] Adapted from Chien (2020)