EXAMINING RACIAL DISPARITIES IN CALIFORNIA CRIMINAL RECORD CLEARANCE

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OUR ANALYSIS FOUND THAT APPROXIMATELY ONE IN FIVE PEOPLE WITH CONVICTIONS IN CALIFORNIA MET CRITERIA FOR MANDATORY FULL RELIEF UNDER THE CURRENT CLEARANCE LAWS IN CALIFORNIA. THIS NUMBER WOULD INCREASE TO APPROXIMATELY HALF OF PEOPLE WITH CONVICTIONS IF DISCRETIONARY CONVICTIONS WERE CLEARED AS WELL, AND WOULD INCREASE EVEN FURTHER UNDER THE ADOPTION OF A 7-YEAR SUNSET RULE. THE 7-YEAR SUNSET RULE, IN PARTICULAR, WOULD MAKE THE GREATEST PROGRESS TOWARD REDUCING RACIAL DISPARITIES IN ELIGIBILITY FOR CRIMINAL RECORD CLEARANCE.

The challenge

Recognizing the far-reaching negative consequences of a criminal record, a majority of states have passed laws designed to allow individuals to clear some types of criminal records following a period of incarceration. Yet under most state policies, records are effectively cleared only for the small minority of people who successfully petition courts for relief. To address this barrier, states have begun to explore policies that would automatically clear eligible criminal records, especially for marijuana convictions and other low-level offenses. However, much remains unknown about the scope of eligibility. Expungement laws have been proposed as a primary way to reduce the consequences of a criminal record, and to reduce the racial disparities that result. It is not yet clear how these benefits are distributed across racial/ethnic groups, and if they reduce or merely reproduce existing racial disparities in criminal records.

What we did

In this study, we assessed equity in criminal record clearance eligibility in California, one of the first states to pass automatic record clearance legislation. Our analysis included three components. First, using criminal history data from the California Department of Justice (CA DOJ), we assessed the share of people with criminal records who are *eligible* for clearance under current laws, and how this eligibility varied across racial/ethnic groups.

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Second, we evaluated two hypothetical reforms in how eligibility for clearance is determined that might alter clearance rates across racial/ethnic groups: (a) *clearing discretionary cases*,[1]and (b) a *sunset rule* that would allow clearance automatically for convictions more than 7 years old. Finally, we estimated how each of these hypothetical reforms would alter the overall share of California's population (by race/ethnicity) that currently has a criminal record.
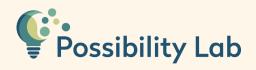
To estimate the racial impacts of record clearance policies, we used de-identified data from CA DOJ's Automated Criminal History System (ACHS), which includes a range of information on individual-level arrests, charges, case dispositions, offense and status (infraction, misdemeanor, felony), and sentencing information. It also includes date and county of arrests and dispositions, as well as the person's age, sex, and race/ethnicity. Our analysis included all adults who were arrested between 2000 and 2016 (N=2,246,101) and their criminal histories. Each case was reviewed to determine whether it met the criteria for relief under any current expungement laws in California, and whether any characteristics of the case, subsequent court actions, or criminal history would deem a case either discretionary or ineligible for relief.

Our Findings

Through our analysis of the 2,246,101 individuals arrested between 2000 and 2016, we found that one in five people with convictions (20.4%) were currently eligible for full relief and met criteria for mandatory relief, and an additional 32.9% met criteria for discretionary relief, for a total of 53.3% of all Californians who were arrested during the study period. Eligibility was lowest among Black people (14.9% and 29.1% eligible for mandatory and discretionary full relief, respectively) for two reasons. First, this group had the highest proportion of people with a felony conviction on their record, as opposed to only misdemeanors. And second, Black people with a felony record were less likely to meet the criteria for full conviction relief compared to other racial/ethnic groups with felony convictions. This racial disparity in eligibility for relief among people with felony convictions was primarily driven by "never-eligible" cases (40.3% of Black men and women, vs 32.1% overall), meaning cases in which a characteristic of the offense type or sentence rendered the case ineligible for relief, even if the sentence was completed.[2]

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1. California's petition-based laws categorized convictions as eligible for mandatory or discretionary relief based on the characteristics of the case, and discretionary convictions are currently excluded from automatically the state under AB 1076.Specifically, dismissal is discretionary in the following instances: 1) convictions sentenced to probation and conditions of probation were violated (PC 1203.4); 2) a new conviction occurred during the one-year waiting period for misdemeanors and infractions that did not receive probation (PC 1203.4a); and 3)all felony convictions eligible for1170(h) sentencing (PC 1203.41/1203.42).
2. Racial/ethnic differences in the proportion of people with other disqualifiers were much narrower – though consistently highest among Black Californians. These included people who were still serving sentences, post-conviction waiting periods, or had pending charges (35.5% among Black men and women, vs. 33.9% overall); or had missing case information (25.4% among Black men and women, vs. 22.9% overall).

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In the second stage of our analysis, we estimated the proportion of people with arrest records who would be eligible for full relief under two hypothetical reforms to current record clearance rules, as well as how each reform would affect racial disparities in eligibility. When comparing the effect of incorporating discretionary convictions vs. instituting a 7-year sunset, we found that the latter would provide the greatest relief for people with convictions overall (60.8% eligible for full relief, vs. 53.2% for discretionary convictions). A 7-year sunset would also substantially reduce disparities for Black Californians, as this group was most likely to have never-eligible cases. Specifically, if discretionary convictions were cleared, 44.0% of Black Californians vs. 55.9% of their white counterparts would be eligible for full relief – a nearly 12 percentage point difference. By contrast, under a 7-year sunset, these proportions were 57.7% and 62.5%, respectively.

If both policy reforms were enacted, more than two-thirds of people with convictions would be eligible for full relief (68.0%), as compared to just 20.3% under current policy. Again, though, Black Californians would have the lowest proportion eligible for full relief (63.9%) and white Californians the highest (70.1%).

Lastly, we estimated how the share of California's population (by race/ethnicity) with a criminal record would be altered by these hypothetical policy reforms. We found that, if all convictions that are eligible for mandatory clearance under current law were cleared, the change in racial disparities would be minimal; the proportion of each racial/ethnic group with convictions would decline from 13.9% to 12.0% among Black adults, 5.8% to 4.6% among Latino adults, 4.8% to 3.8% among white adults, and 0.8% to 0.6% among API.

However, incorporating discretionary convictions would more substantially reduce the proportion of people with conviction records across the board, as well as disparities across groups. Specifically, the share of Black adults remaining with convictions would decline to 8.2%, compared to 12.0% if only mandatory convictions were cleared. This would narrow the Black-white difference from 8.2 to 5.9 percentage points. Latino adults remaining with convictions would decline to 2.8% (compared to 4.6% if only mandatory convictions were cleared).

Assessing the impact of instituting a 7-year sunset rule, we found that such a reform would yield the largest reductions in the proportion of Black men with convictions, as well as the Black-white disparity.

Finally, if both reforms were adopted, the proportion of the population with convictions would drop to 5.6% of Black adults, 1.6% of white adults, 2.1% of Latinx adults, and 0.3% of API adults. Black-white and Latinx-white disparities would be cut approximately in half, but would persist at 4.0 and 0.5 percentage points, respectively, among all adults.

Next Steps

Moving forward, analyses like the one we have presented here could be utilized to assess the likely impact of similar laws being debated in a range of other states, each with different rules governing eligibility for clearance. More broadly, this type of study, which models the equity implications of policy proposals before they are enacted, could play a vital role in helping states reduce the prevalence of racial inequities at every stage of the criminal justice system.

Additional Resources

Racial Disparities in Criminal Record Clearance- Working Paper

The Downside of Downsizing: The Persistence of Racial Disparities Following State Prison Reform

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