RACIAL DISPARITIES IN CRIMINAL RECORD RELIEF ELIGIBILITY IN CALIFORNIA

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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 STATE'S CURRENT CRIMINAL RECORD RELIEF LAWS. 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 TOWARDS INCREASING RACIAL EQUITY IN ELIGIBILITY FOR CRIMINAL RECORD CLEARANCE.

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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 after their sentence is served. 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 relieve eligible criminal records, especially for low-level offenses. However, much remains unknown about the scope of eligibility. Criminal record relief laws have been proposed to reduce the life-long consequences of a criminal record, and the racial disparities that result. It is not yet clear how these benefits are distributed across racial and 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 relief eligibility in California, one of the first states to pass automatic record relief 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 automatic relief under current laws, and how this eligibility varied across racial and ethnic groups. Second, we evaluated two hypothetical reforms in how eligibility is determined that might alter equity across racial and ethnic groups: (a) relief for discretionary cases, and (b) a sunset rule that would automatically grant relief for convictions more than 7 years old. Finally, we estimated how each of these hypothetical reforms would alter population-level disparities in conviction records statewide.

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Data from CA DOJ's Automated Criminal History System (ACHS) includes individual-level arrests, charges, dispositions, sentences, and demographics. Our analysis included all adults[1] 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 relief 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 automatic relief.

We evaluate arrests with any recorded conviction, and assume that arrests with no disposition did not result in conviction. Key requirements for criminal record relief mandate that the person has completed all sentences and has no pending charges. We deemed a sentence complete based on the disposition data and full length of sentence, and a case pending if there was no final disposition and less than one year had elapsed since the date of arrest.

Our Findings

We estimated that one in five people with convictions were currently eligible for full relief (meaning all convictions on their record were eligible) and met criteria for mandatory relief. An additional 33% met criteria for discretionary relief, for a total of 53% of all Californians arrested between 2000 and 2016. Eligibility was lowest among Black people (15% and 29% eligible for full relief under mandatory and discretionary criteria, respectively) This racial disparity in eligibility for relief was primarily driven by "never-eligible" cases (40% of Black men and women, vs 32% 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]

In the second stage of our analysis, we estimated the proportion of people with conviction records who would be eligible for full relief under two hypothetical reforms to current record relief rules, as well as how each reform would affect racial equity 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 (61% eligible for full relief, vs. 53% for discretionary convictions).

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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.

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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% of Black Californians vs. 56% 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 58% and 63%, respectively.

If both policy reforms were enacted, more than two-thirds of people with convictions would be eligible for full relief (68%), as compared to just 20% under current policy. Again, though, Black Californians would have the lowest proportion eligible for full relief (64%) and white Californians the highest (70%).

Lastly, we estimated how the share of California's population (by race and ethnicity) with a conviction record would be altered by these hypothetical policy reforms. We found that, if both reforms were adopted, the proportion of people with convictions would drop from 14% to 6% of Black, 6% to 2% of Latino, 5% to 2% of White, and 1% to 0.3% of API adults. Black-White and Latino-White disparities in conviction records would be cut approximately in half.

Next Steps

The inequitable eligibility we find in California is likely to be replicated in other states that restrict eligibility for felony convictions. Amendments like those were assess here could substantially alter the racial impacts of criminal record relief policies.

Moving forward, analyses of criminal history data can be utilized to assess the likely impact of similar laws being debated in other states, each with different rules governing eligibility for relief. More broadly, assessing the equity implications of policy proposals before they are enacted could play a vital role in states aiming to reduce the prevalence of racial inequities at every stage of the criminal legal system.

However, criminal history data quality is likely to be a challenge to implementing automatic relief reforms, and for predicting their effects. For this study, determining eligibility required complete information about every case in the state database, which depends on county agencies to report. Overall, one-third of arrests were missing a case disposition and about one in five convictions could not be classified because of missing data.

If cases with missing dispositions are excluded from relief, fewer people will receive a clean slate. It is possible, albeit time consuming, for the California Department of Justice and local departments to contact courts to fill in gaps in criminal records. However, it is not yet clear whether or how this will happen in practice. Since data quality varies by county, whether you benefit from state reforms may depend on where you were arrested, overlaying racial and geographic inequities.

Legislative Update

Since the initial publication of this report, a new senate bill has proposed to expand eligibility for automatic criminal record relief in California. SB 731 incorporates provisions similar to the hypothetical amendments analyzed. Broadly, non-serious, non-violent felonies that do not require sex offender registration would be eligible for relief after a four-year sunset period, regardless of sentence. This includes felonies that were discretionary if sentenced to jail or probation was revoked, and felonies that were ineligible if sentenced to prison. Based on our findings, expanding relief for felony convictions is likely to increase racial equity in eligibility for clean slate. In fall 2022, the California Policy Lab at the University of California, Berkeley will be producing revised eligibility estimates for SB 731.

Additional Resources

Racial equity in eligibility for a clean slate under automatic criminal record relief laws. August 2022. Law & Society Review.
The Downside of Downsizing: The Persistence of Racial Disparities Following State Prison. Reform. April 2021. Punishment & Society.

About us

At the Possibility Lab, we collaborate with governments and other stakeholders to evaluate strategies that can strengthen the public-sector workforce, improve public service delivery, and foster engaged communities. Our team brings together public management scholars, behavioral economists, political scientists and public policy experts who are committed to evidence-based policy making, and who use rigorous quantitative, qualitative, and experimental methods to better understand what works. All our projects are co-designed with partners to ensure feasibility and scalability.

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