

# CRIMINAL JUSTICE RECORD CLEARING: AN ANALYSIS FROM TWO STATES

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## ABSTRACT

Millions in the United States have criminal records. Many of these records are eligible for some sort of concealment from public view, commonly known as expungement or sealing. In this Article, we analyze criminal records in four counties in Pennsylvania and several counties in Kansas to determine the number of records eligible for such remedies. In Pennsylvania, the analysis included both expungement, defined here as petition-based suppression of information, and sealing, defined here as suppression that the government (usually the judicial system) undertakes without petitions. Kansas law only allows for petition-based expungement. Our analysis found approximately 100,000 charges eligible for expungement in Kansas and 180,000 charges eligible for expungement in Pennsylvania, supporting prior research that identified a so-called “second chance gap.” Our primary contribution is an analysis of which statutory reforms would render the largest number of cases or charges eligible for a record-clearing remedy. We found that elimination of criteria related to legally imposed financial obligations (“LIFOs”) would render a surprising number of files eligible for information suppression. In addition, our analysis identified approximately 200,000 charges that were eligible for sealing in Pennsylvania but were still available to the public online at the time of the data retrieval. This finding suggests that even when the government undertakes information suppression from its own databases, it finds the task challenging. Finally, we examine why certain records were not eligible for expungement or sealing in each state. This insight will inform legislatures and activists where their efforts can be most effective.

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I. INTRODUCTION

Almost seven million people living in the United States are in prison or under correctional supervision.<sup>1</sup> Seventy-four million have a criminal record, mostly for arrests that did not lead to a conviction or for misdemeanor convictions.<sup>2</sup> African Americans are overrepresented in both groups.<sup>3</sup> Jeffrey Selbin et al. note, “[e]vidence suggests that by the age of twenty-three, almost one-half of all [Black] and Latino men, more than one-third of white men, and almost one in eight women have been arrested.”<sup>4</sup> These numbers tell only part of the story.

Governments impose formal collateral consequences on persons convicted of felonies and misdemeanors.<sup>5</sup> Less formally, private actors, particularly employers and housing providers, may impose other consequences, which may be as or more severe than the official ones.<sup>6</sup> Some of these consequences affect individuals who are arrested but not charged, or charged but not convicted. Unlike some countries, United States jurisdictions generally allow public access to criminal justice information, meaning that both public and private actors can make decisions based on the existence or nature of such information.

These facts raise the possibility that automatic and petition-based record clearing may lessen formal and informal consequences of past criminal justice involvement.<sup>7</sup> In the United States, petition-based record clearing frequently takes the form of so-called “expungement” orders from courts;

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1. Jeffrey Selbin et al., *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. CRIM. L. & CRIMINOLOGY 1, 3 (2018).

2. *Id.* at 3-4.

3. *Id.* at 3.

4. *Id.* at 4.

5. *Id.*

6. Access to public housing could be classified as a formal collateral consequence imposed by a government agency. See CORINNE CAREY, HUM. RTS. WATCH, NO SECOND CHANCE 15-16 (Jamie Fellner et al. eds., 2004).

7. We use phrases such as “criminal justice involvement” in this Article to encompass any interaction with the criminal justice system that results in the creation of a record that someone, either a government actor or a member of the public, might access. By using these phrases, we do not imply that an individual with such involvement has committed a crime. As noted above, many people are arrested but not charged or charged but not convicted.

sometimes (as in Pennsylvania), the term “clean slate” or “sealing” refers to automatic record clearing, meaning record clearing without the need for the individual with the record to initiate the clearing process.<sup>8</sup> Rather, official actors may *sua sponte* implement measures to prevent public access to information on criminal justice involvement.

With respect to the petition-based record clearing, most United States jurisdictions make it challenging to obtain such an order. One study that compared certain United States systems to those of other common law jurisdictions, particularly Commonwealth nations, found that U.S. systems feature narrower and less centralized access to this remedy.<sup>9</sup> This study linked racial marginalization in the U.S. and a disinterest for the dignity of individuals with criminal records to greater collateral consequences.<sup>10</sup> Authors note examples of collateral consequences as “felon disenfranchisement” and “restrictions on housing and welfare benefits.”<sup>11</sup> Other researchers have documented access to justice challenges with obtaining court-based record clearing.<sup>12</sup>

Record clearing might lead to better outcomes for those who face adverse public and private actor decisions as a result of their past involvement with the criminal justice system. Proponents argue that record clearing is important for racial justice, economic justice, public safety, and individual dignity.<sup>13</sup> Proponents further argue that information about a person’s criminal justice involvement is not relevant to their identity and, after a certain number of years, those with criminal records are no more likely to commit crimes than the general population.<sup>14</sup> Finally, proponents contend that individuals also experience adverse effects from arrests in housing, immigration, and employment.<sup>15</sup> One study found that arrests for disorderly conduct occurring

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8. See Selbin et al., *supra* note 1, at 6, 22.

9. See Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457 (2010).

10. *Id.* at 470.

11. *Id.*

12. See, e.g., J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2501-06 (2020).

13. See Jenny Roberts, *Expunging America’s Rap Sheet in the Information Age*, 2015 WIS. L. REV. 321, 331 (2015).

14. See Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, NAT’L INST. JUST. J., June 2009, at 10, 12.

15. See, e.g., Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 828 (2015) (describing ICE’s use of arrests to target noncitizens for removal); *id.* at 834 (citing *Stevens v. Hous. Auth. of S. Bend*, No. 3:08-CV-51, 2008 WL 2857470 (N.D. Ind. July 22, 2008)) (recounting public housing authorities’ use of arrest reports to identify lease violations ultimately leading to eviction).

over three years previous, arrests that did not result in conviction, led to a four percent drop in job callback rates.<sup>16</sup>

Not all admire record clearing. Skeptics point out that broad, public, automatic record clearing bears a disturbing resemblance to “ban-the-box” legislation. Ban-the-box legislation either prohibits potential employers or landlords from inquiring about applicant criminal records or limits when in an employment or housing application process such inquiries can occur. Credible evaluations of ban-the-box laws demonstrate a decrease in employment opportunities for certain demographic groups, particularly black (especially young black) men.<sup>17</sup> We note that one might also question the wisdom, in terms of accountability of official (especially police) action, of record clearing about a government function as fundamental as law enforcement and criminal justice.

At a future date, we will contribute to the debate regarding the wisdom of record clearing in the criminal records context.<sup>18</sup> Here, we focus on the record-based challenges states face, and the people these challenges affect. To this end, we analyze criminal records in Pennsylvania and Kansas by obtaining data from four Pennsylvania counties and 29 localities in Kansas.<sup>19</sup> We explore the possible effects of amendments to the record clearing laws in each state. In Pennsylvania, we find some surprising results.

**Financial barriers:** Nominal fees, fines, and restitution amounts remained barriers to record clearing. There are few ability-to-pay exemptions from these barriers, however, raising echoes of poverty-based punishment.

**Waiting periods of potentially unnecessary length:** Despite some evidence suggesting propensity to reoffend degrades to rates close to those with no prior criminal history after surprisingly short amounts of time free of criminal justice involvement, eligibility criteria imposed lengthy waiting periods. The result is that individuals with criminal records who avoid involvement with the justice system during lengthy waiting periods, and thus people who may be statistically indistinguishable from those who never had criminal

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16. Christopher Uggen et al., *The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment*, 52 CRIMINOLOGY 627, 649 (2014).

17. See Jennifer Doleac & Sarah Lageson, *The Problem with ‘Clean Slate’ Policies: Could Broader Sealing of Criminal Records Hurt More People Than It Helps?*, NISKANEN CTR. (Aug. 31, 2020), <https://www.niskanencenter.org/the-problem-with-clean-slate-policies-could-broader-sealing-of-criminal-records-hurt-more-people-than-it-helps/> [<https://perma.cc/BUK4-L5TG>]; Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 Q.J. ECON. 191 (2018); Jennifer L. Doleac & Benjamin Hansen, *The Unintended Consequences of “Ban the Box”: Statistical Discrimination and Employment Outcomes When Criminal Histories Are Hidden*, 38 J. LAB. ECON. 321, 360 (2020).

18. We will do so in the context of a randomized control trial investigation into the effects of court-ordered information suppression. See Sandy North, *The Final Stage Reentry Project*, A2J LAB (Sept. 23, 2019), <https://a2jlab.org/criminalrecords/> [<https://perma.cc/Y25G-C5E6>].

19. A locality can be either a county or a city.

records, waited years to receive record clearing remedies. The speed with which the risk of offense for a person who has a criminal record degrades back the risk of offending for individuals who never had such records is an open empirical question, thus we proceed with caution on this point.

**Difficulty implementing automatic record-clearing of seemingly eligible records remained visible:** At the time of data collection, the Pennsylvania court system had been sealing records for more than two years. A startling number of records resisted clearing, likely because the determinative eligibility information did not exist in electronic form. The information missing here sometimes included the disposition of a criminal case.

**Difficulty in implementation of automatic record-clearing likely forced petition-based individual efforts:** Labyrinthian logic models required to accommodate nuanced legislation likely induced errors in implementing clearing remedies and certainly made auditing difficult. Such was particularly true in the implementation of automatic remedies, compelling a number of otherwise eligible individuals to resort to the petition-based process that the automatic processes were designed to supersede. Our analysis in Kansas suggests two results. The first is consistent with prior research (and is true of Pennsylvania, to lesser extent).

**Second-chance gap:** There are a large number of seemingly eligible convictions for which those affected have not yet requested petition-based record clearing. Such a high number of eligible but uncleared convictions likely stems from a distressingly familiar access to justice problem.

**Accurate analysis impossible:** Holes and irregularities in the available data make a complete analysis of hypothetical automatic clearing legislation impossible. For Kansas and Pennsylvania, we demonstrate how changes to eligibility for record clearing remedies might affect the justice-involved populations of each state. We separate our analysis by state. In the Pennsylvania section, we define terms needed to understand the types of record clearing available. Next, we examine (1) observed data barriers that may prevent automatic record clearing in its present form from reaching its full potential; (2) the fines, fees, and restitution provisions that might deserve a second look; (3) recidivism eligibility preclusions; and (4) the eligibility distinctions that may frustrate the goals of automatic record clearing.

In the Kansas section, we define terms organized around two themes. First, we observe data barriers that may prevent an accurate analysis and implementation of a hypothetical automatic record-clearing statute. Second, we assess legislative changes affecting individuals with different justice-involvement profiles.

## II. DEFINITIONS

In this Part, we provide a brief overview of criminal justice record clearing remedies and define terms that we will employ in the remainder of this Article.

### A. SEALING VERSUS EXPUNGEMENT

As used in this Article, criminal justice information clearing remedies include suppression and elimination. Suppression refers to steps taken to limit access to criminal justice records.<sup>20</sup> Elimination refers to destroying records, such that afterwards, the records cease to exist.<sup>21</sup> In practice, remedies that appear to offer elimination in fact result only in suppression. For example, the Pennsylvania expungement statute requires that at least the prosecuting attorney and the court maintain a list of names and related criminal justice information for those individuals achieving petition-based record clearing for purposes of determining eligibility for diversion programs, for grading of subsequent offenses, and for investigative purposes.<sup>22</sup> In Maryland, the governing expungement statute allows a court to clear a record by destroying the file or removing the file to a secured area.<sup>23</sup> The Kansas expungement statute lists seventeen reasons for revealing expunged records, including subsequent offenses, employment history, licensing, and firearms possession.<sup>24</sup> This provision makes clear that suppression, not elimination, is available. Note that suppression and elimination remedies ordinarily avoid disclosure of information to job or housing applications.<sup>25</sup> Other remedies to address criminal records include executive pardons, vacatur, set-aside, and annulment. All of these involve not suppression or destruction of information but rather addition of information, namely, some kind of official statement of forgiveness or irrelevancy. In these scenarios, disclosure of criminal justice involvement may or may not be required on job, housing unit, or other applications.

### B. AUTOMATIC VERSUS PETITION-BASED REMEDIES

Should record-clearing remedies be applied automatically or should those with criminal records susceptible to a remedy have to apply to a

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20. Although states vary substantially in who can access these records.

21. See Selbin et al., *supra* note 1, at 22.

22. See 18 PA. STAT. AND CONS. STAT. § 9122(c) (West 2020).

23. MD. CODE ANN., CRIM. PROC. § 10-101 (West 2023).

24. KAN. STAT. ANN. § 21-6614(l) (West 2023).

25. Applicants may be required to disclose expunged records on federal job applications or in immigration proceedings. *Duty of Disclosure*, U.S. CITIZENSHIP & IMMIGR. SERVS. (June 23, 2021), <https://www.uscis.gov/adoption/suitability-and-home-study-information/duty-of-disclosure> [<https://perma.cc/2X45-CU5J>].

government entity to clear their records? Some states, including Pennsylvania, make some of their record-clearing remedies automatic in that an individual need not take action to benefit.<sup>26</sup> Other states, such as Kansas, require eligible candidates file court petitions to clear their records; often an individual must file a separate petition for each eligible offense.<sup>27</sup>

### C. TERMINOLOGY

As previous subparts demonstrate, there are at least four types of record-clearing remedies: automatic information suppression, automatic information elimination, petition-based information suppression, and petition-based information elimination. Our experience suggests that many who discuss record clearing appreciate neither these distinctions nor their implications for criminal justice policy and goals. In practice, the terms “sealing” and “expungement” are used loosely to refer to inconsistent and overlapping subsets of these four different remedies. Neither Pennsylvania nor Kansas offers any form of information elimination. For this reason, we define the term “sealing” to mean automatic record clearing, and the term “expungement” to mean a petition-based remedy. Thus, we will use “sealing” and “automatic record clearing” interchangeably, and likewise for “expungement” and “petition-based record clearing.” We do not recommend such usage become ubiquitous; rather, we attempt to follow the usage we have encountered in our two states to the extent possible.

### D. THE RECORD-CLEARING GAP

Petition-based remedies remain out of reach for a substantial portion of those eligible. Colleen Chien termed this phenomenon the “second chance gap” and found that fewer than 20% of those eligible in the 14 states she analyzed took advantage of petition based record clearing.<sup>28</sup> Prescott and Starr’s study of record clearing in Michigan found that 6.5% of individuals obtained relief within five years of becoming eligible.<sup>29</sup> Chien also found that 30-40% of those with criminal records, or 20-30 million people, would be

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26. See 18 PA. STAT. AND CONS. STAT. § 9122.2 (West 2024).

27. Of note, the Pennsylvania Clean Slate Act evolved from an earlier petition-based sealing option that remains today, but likely has low take-up, and likely has always had low take-up, necessitating the automatic nature of the present Clean Slate Act. See PA. STAT. AND CONS. STAT. § 9122.1 (West 2024). Barriers to accessing record-cleaning remedies will be the subject of a forthcoming paper from the Access to Justice Lab which could serve to hypothesize about the low take-up of petition-based sealing.

28. Colleen Chien, *America’s Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 524, 540, 556–58 (2020).

29. Prescott & Starr, *supra* note 12, at 2466.



eligible for full or partial clearance using application-based procedures for removing non-convictions.<sup>30</sup>

States pursuing record clearing may wish to explore automatic remedies, which might obviate some underutilization. Currently, however, eligibility criteria for automatic remedies are narrow. Brian Murray has argued that these limits stem from the fact that automatic record clearing was initially conceived through a rehabilitative framework; thus the procedural hurdles of petition-based measures were designed to channel relief to the “most rehhabbed individuals.”<sup>31</sup> One difficulty with this theory is that many jurisdictions do not automatically clear records of those who are exonerated.<sup>32</sup> A study focusing on New York, Florida, Illinois, and Texas,<sup>33</sup> determined that only in New York was this process automatic.<sup>34</sup> Because the number of exonerees was relatively small, consisting of 117 individuals in these four states, the study authors were able to obtain criminal histories for all of them, with many of those records available to the public.<sup>35</sup> A subsequent study by some of the authors found many of these exonerees without cleared records were subsequently convicted of crimes; the authors speculated some of these convictions resulted from collateral consequences, such as difficulty in obtaining jobs and secure housing, that records imposed on the exonerees.<sup>36</sup>

#### E. SCOPE OF RECORD CLEARING AVAILABLE

States vary in the scope of their record-clearing schemes. According to one review of state laws, thirteen state schemes provide for broad felony and misdemeanor relief; twenty-two states provide for limited felony and misdemeanor relief; four states provide relief for pardoned convictions and for misdemeanors; four states and the District of Columbia provide misdemeanor relief only; and seven states and the federal system do not provide any general record-clearing relief.<sup>37</sup> The scope of relief has expanded in recent years, with

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30. Chien, *supra* note 28, at 523-24.

31. Brian M. Murray, *Retributive Expungement*, 169 U. PA. L. REV. 665, 670 (2021).

32. In this context, exoneration refers to those who were wrongfully convicted of a crime and later officially declared not guilty as a result of this error. Amy Sholsberg et al., *The Expungement Myth*, 75 ALB. L. REV. 1229, 1229 n.1 (2011).

33. California treats criminal history information as confidential, unlike most other states, although it permits disclosure for a wide variety of official uses. See CAL. PENAL CODE § 11105 (West 2023).

34. Sholsberg et al., *supra* note 32, at 1232.

35. *Id.*

36. See Amy Sholsberg et al., *Expungement and Post Exoneration Offending*, 104 J. CRIM. L & CRIMINOLOGY 353 (2014).

37. MARGARET LOVE & DAVID SCHLUSSEL, COLLATERAL CONSEQUENCES RES. CTR., THE MANY ROADS TO REINTEGRATION 40 (2020).

six states increasing availability to include felonies in 2018 and 2019.<sup>38</sup> Some states with comprehensive record-clearing schemes for misdemeanors provide little remedy for felony records. For example, Pennsylvania’s Clean Slate Act put automatic record clearing on the map.<sup>39</sup> However, Pennsylvania falls into one of the least encompassing categories of record-clearing remedy schemes, providing only for clearing of misdemeanors and pardoned offenses.<sup>40</sup> Among states that extend record clearing to felonies, substantial variations remain in waiting periods and eligible offenses. For instance, Illinois makes all but a few serious felonies eligible after a uniform three-year waiting period.<sup>41</sup> However, Maryland authorizes clearing of only four felonies (assault, theft, burglary, and drug possession with intent to distribute) with a waiting period of fifteen years from the conclusion of the sentence.<sup>42</sup>

### III. PENNSYLVANIA

In this Part, we provide the results of our analysis of data from four counties in Pennsylvania.

#### A. OVERVIEW OF THE PENNSYLVANIA RECORD CLEARING LAW

As suggested above, Pennsylvania offers sealing for a variety of offenses, primarily through the state’s “Clean Slate” legislation, which was signed into law in 2018 and took effect mid-2019.<sup>43</sup> Title 18, Sections 9122.2 and 9122.3 of Pennsylvania’s Criminal Code, also known as “Act 56,” expanded automatic record clearing for non-violent offenders, resulting in over thirty million sealed records in the year following its passage.<sup>44</sup> The Clean

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38. *Id.* at 40-41. Such expansions took the form of expanding existing schemes and enacting initial general record-clearing schemes that include felonies.

39. 18 PA. STAT. AND CONS. STAT. § 9122.2 (West 2023).

40. LOVE & SCHLUSSEL, *supra* note 37, at 41.

41. *Id.* at 42; 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2024).

42. *See* MD. CODE ANN., CRIM. PROC. § 10-110 (West 2021) (Prior Version).

43. *See* Margaret Love, *50-State Comparison: Expungement, Sealing & Other Record Relief*, RESTORATION RTS. PROJECT (October 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/> [https://perma.cc/TL4H-ZZJJ].

44. *See* Laurie Mason Schroeder, *In One Year, Pa.’s Clean Slate Law Has Erased 35 Million Crimes. What’s Next?*, MORNING CALL (June 30, 2020, 5:59 PM), <https://www.mcall.com/2020/06/30/in-one-year-pas-clean-slate-law-has-erased-35-million-crimes-whats-next/> [https://perma.cc/F7ZY-H3G2]; Aaron Moselle, *Pa. Residents with Court Debt Could Have Their Records Automatically Sealed Under New Bill*, WHY PBS (Oct. 22, 2020), <https://why.org/articles/pa-residents-with-court-debt-could-have-their-records-automatically-sealed-under-new-bill/> [https://perma.cc/NMX8-SJ53].

Slate Act also expanded petition-based remedies for certain conviction records.<sup>45</sup> We do not focus on such expungement remedies here.

Determining a record's eligibility for sealing is a complicated task. For misdemeanor convictions, the individual must wait ten years and pay all restitution; during this decade, the individual must avoid convictions for crimes resulting in one or more years of incarceration.<sup>46</sup> This last requirement essentially means a conviction for a second-degree misdemeanor or greater within ten years after the original conviction precludes sealing and resets the ten-year clock.<sup>47</sup> Likewise, if one is convicted of resisting arrest in Pennsylvania, a second-degree misdemeanor, one is eligible for sealing after the expiration of ten years, and upon payment of restitution.<sup>48</sup> If this person is convicted of resisting arrest short of ten years after becoming eligible for record sealing, they must wait another ten years to have either conviction expunged (and stay crime free). However, if this person pays restitution and is charged with resisting arrest, and has a hearing after the ten years expires, they become eligible to have the first conviction automatically sealed.

Pennsylvania also offers petition-based record removal under Title 18, Section 9122 in limited circumstances, including non-conviction records, minor offenses such as disorderly conduct and loitering (i.e., summary convictions), crimes for which the convicted completes a special program (e.g., Small Amount of Marijuana program), and for elderly individuals.<sup>49</sup> While we attempted to create an algorithm matching the expungement and sealing statutes, there are areas where the data was opaque.<sup>50</sup> We explain in the relevant sections when we had to make certain assumptions based on unavailable or unclear data.

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45. *The Pennsylvania Clean Slate Law*, CERTIPHI SCREENING (July 5, 2019), <https://www.certiphi.com/resource-center/background-screening/the-pennsylvania-clean-slate-law/> [<https://perma.cc/ZH7Z-WM96>].

46. *See* 18 PA. STAT. AND CONS. STAT. § 9122.2(a)(1) (West 2012). The statute also indicates a fee is required to be paid for the privilege of sealing; however, to our knowledge, no one has ever collected this fee, and any additional fee appears to be inconsistent with the automatic nature of sealing.

47. *See* 30 PA. STAT. AND CONS. STAT. § 923(a)(6) (West 2012) (indicating that a second-degree misdemeanor shall have a penalty fine imposed between \$500 and \$5,000, or imprisonment up to two years, or both).

48. *See* 18 PA. STAT. AND CONS. STAT. § 5104 (West 1973).

49. *See* Nick Vadala, *How to Get Your Criminal Record Sealed or Expunged in Pennsylvania*, PHILA. INQUIRER (Dec. 22, 2020, 10:19 AM), <https://www.inquirer.com/philly-tips/criminal-record-expunged-sealed-pardon-petition-pennsylvania-20201222.html> [<https://perma.cc/DZE6-52V3>].

50. The analysis code is available at <https://github.com/access-to-justice-lab/Pennsylvania-Expungement-Sealing-Analysis> [<https://perma.cc/683P-DN48>].

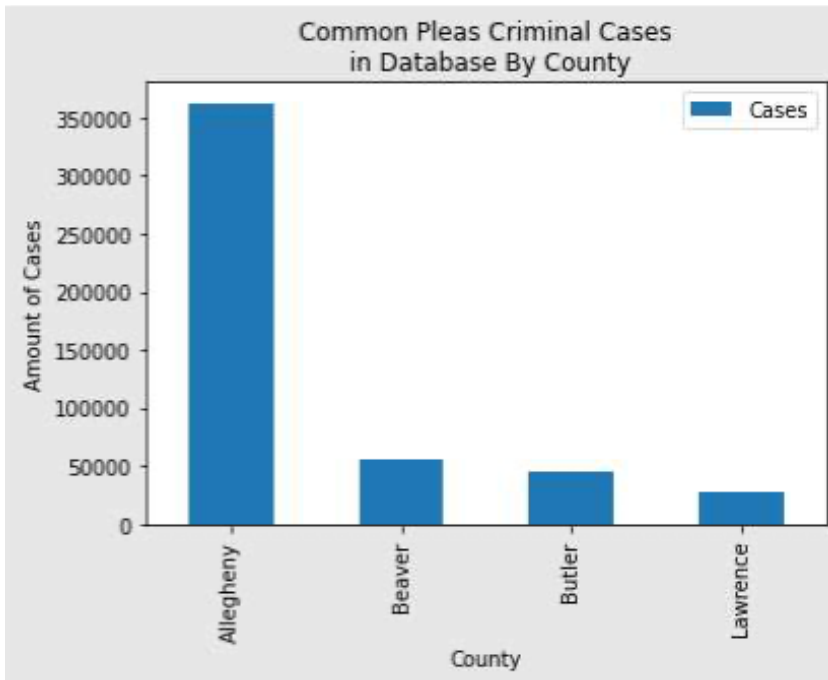
## B. DATA FROM FOUR PENNSYLVANIA COUNTIES

In this section, we provide an overview of the data we obtained to implement our study, including definitions of key terms. As noted above, one purpose of our analysis is to describe the impact of changes to eligibility requirements, particularly changes to sealing. Data challenges render difficult both our analysis and, almost certainly, Pennsylvania’s own implementation of its Clean Slate Act. Here, the data come from four western Pennsylvania counties: Allegheny, Beaver, Butler, and Lawrence. Allegheny County, containing Pittsburgh, is urban, while the remaining counties are rural. The data come from the criminal records from the judicial website for the Court of Common Pleas, a trial court, for cases adjudicated from 1990 to early 2021. Early data from this period show reduced case numbers, likely a result of an incomplete transfer from paper to electronic records.<sup>51</sup> Our data collection took place in early 2022, more than two years after the Administrative Office of Pennsylvania Courts (“AOPC”), implemented the Clean Slate Act.<sup>52</sup> The data should have contained information only on cases the court deemed not eligible for sealing. To the extent we found information on cases eligible for sealing, this evidences the difficulty of implementing the Clean Slate Act due to the inadequacy in the records themselves. The figure below illustrates the criminal cases used in our analysis.

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51. There is a dip in cases collected in Beaver County for the year 2000 and in Butler County for the year 1991. This was likely a result of an error in data collection methods. There is no reason to believe that the missing cases would significantly impact the results of the analysis.

52. See *Processed Clean Slate Counts by County (June 28, 2019 - June 30, 2021)*, PA. CTS., <https://www.pacourts.us/Storage/media/pdfs/20210709/164750-processedcleanslatenumbers-county.pdf> [<https://perma.cc/8WKF-NB45>] (last visited June 29, 2024).



*Figure 1: The number of criminal cases scraped from the Pennsylvania Court of Common Pleas website by county.*

The figure below shows the number of criminal cases in the Court of Common Pleas from Lawrence County by filing date. We look here for any significant gaps in the data that might indicate a bad data pull or errors in the Court's data systems. The chart shows relatively consistent case filings going back to the 1990s. In the 1990s, case counts are smaller, likely a result of problems with converting old records to centralized databases and lower volumes of criminal cases.

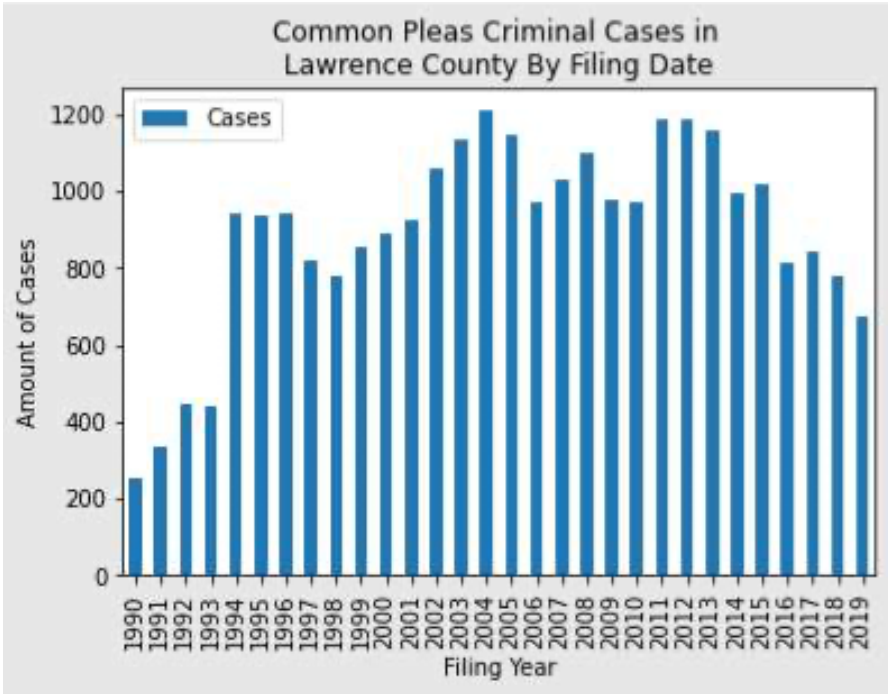
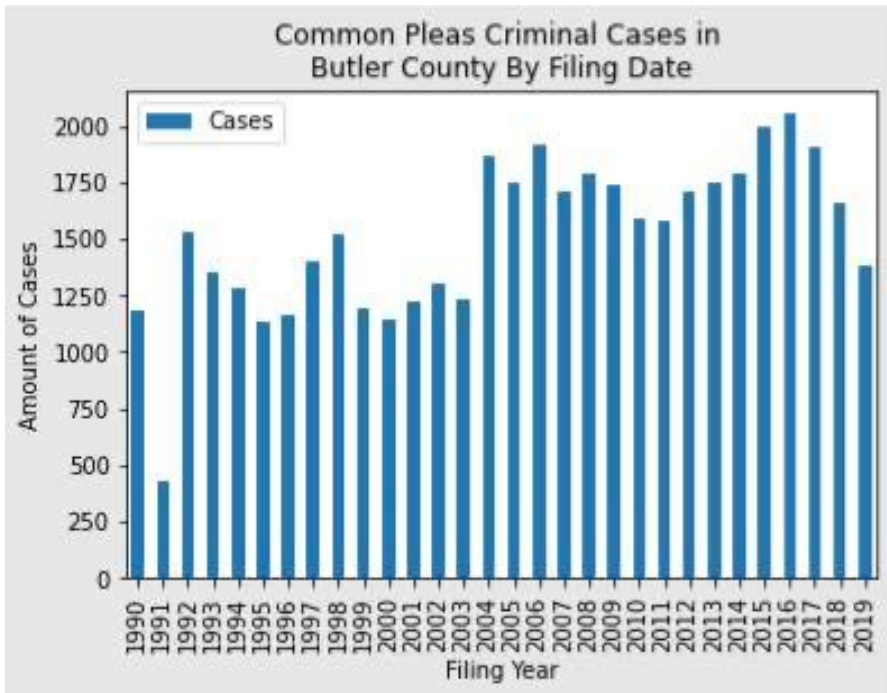


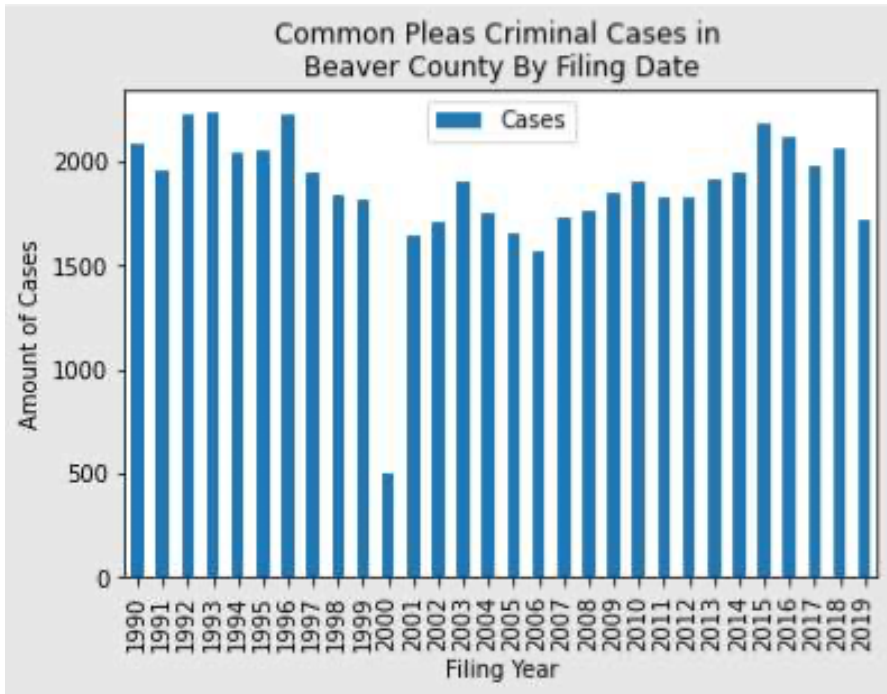
Figure 2: The number of criminal cases from the Court of Common Pleas in Lawrence County by filing date. This graph demonstrates generally even scraping per year with exceptions in the early 1990s, likely a result of migration issues from older paper cases to an electronic filing system as well as, perhaps, lower case volume. There are an insignificant number of cases prior to 1990.

The figure below shows the number of criminal cases in the Court of Common Pleas from Butler County by year of filing date. Similar to Lawrence County, the chart demonstrates consistent case filings since the 1990s. As was true in Lawrence County, the lower numbers here in earlier years probably result from difficulty in information migration and nominal case filings.



*Figure 3: The number of criminal cases from the Court of Common Pleas in Butler County by filing date. This graph demonstrates relative consistency with a sudden jump in 2004. This jump may result from data migration problems or policy changes.*

The figure below illustrates the number of criminal cases in the Court of Common Pleas from Beaver County by year of filing. Unlike in Lawrence and Butler Counties, the case levels have remained consistent over the last thirty years. Beaver County may have had an easier time converting older cases to the new database. There is a dramatic drop in 2000 for which we have no explanation. Because of the volume of information available to us, this one-year blip is unlikely to affect our conclusions.



*Figure 4: The number of criminal cases from the Court of Common Pleas in Beaver County by filing date. This graph demonstrates consistent numbers with the exception of the year 2000. It is unlikely the missing cases from the year 2000 significantly affected the analysis. There are an insignificant number of cases prior to 1990.*

The figure below shows the number of criminal cases in the Court of Common Pleas from Allegheny County by year of filing date. As was the case with Beaver County, there is a relatively consistent number of cases across all years.



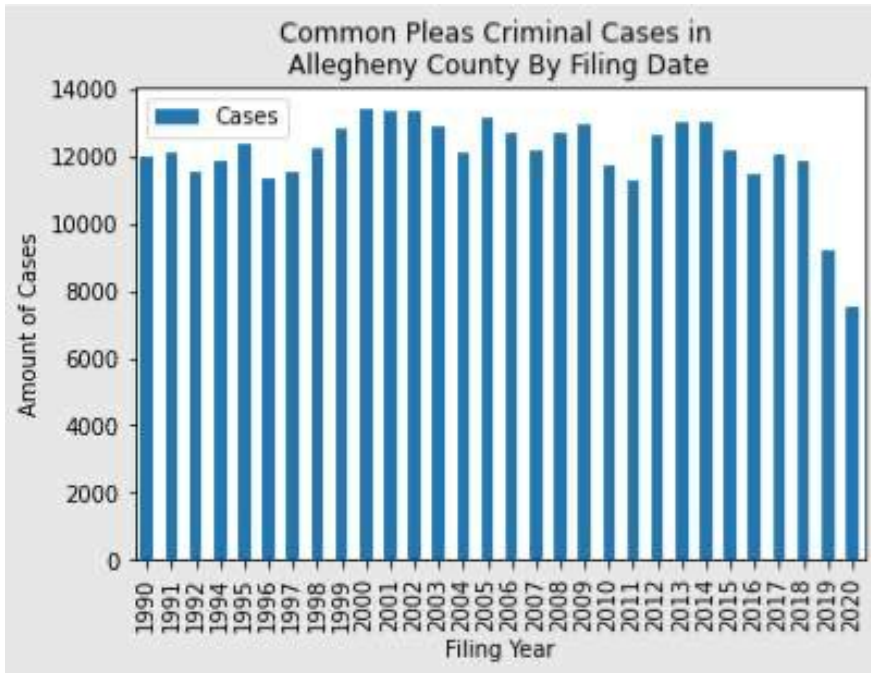


Figure 5: The number of criminal cases from the Court of Common Pleas in Allegheny County by filing date. This graph demonstrates a consistent number of cases. There are an insignificant number of cases prior to 1990.

### 1. Definitions and Missing Information

The range of disposition values in the dataset rendered difficult the task of determining whether a record was, or should have been, eligible for sealing. We consider a disposition to be a non-conviction under Pennsylvania Consolidated Statutes Chapter 18, Section 9122.2(a)(2) if it is a *nolle pros*, a dismissal, a withdrawal, or a not guilty.<sup>53</sup> A conviction is defined as a “Guilty” or a “Guilty Plea.” If a disposition does not fall within the definition of a non-conviction or a conviction, we consider it unknown for purposes of the algorithm. Examples include “Held for Court” and “Proceed to Court.” A disturbingly large fraction of dispositions fell into this latter category, and several charges with either no disposition or an unknown disposition may be eligible for expungement or sealing. We encounter similar difficulties with

53. There are many variations of how these dispositions can be represented in the data. The exact dispositions are Nolle Prossed/Withdrawn, Nolle Prossed, Withdrawn (Lower Court), Dismissed (Lower Court), Nolle Prossed (Case Dismissed), Nolle Prossed (Post-Disposition), Judgment of Acquittal (Prior to Disposition), Dismissed - Rule 600 (Speedy Trial), Judgment of Acquittal, Dismissed - Other, Nolle Prossed (Case Continues), Quashed, Dismissed, Demurrer Sustained, and Not Guilty.

missing charge information. Because an unknown charge might prevent a determination that a whole case is entirely eligible for sealing, the effects of this missing information could be substantial for the individuals involved. *Inter alia*, it is likely that the number of cases eligible for sealing may be higher than the data suggest. We consider a case closed if the status is marked “Closed,” “Adjudicated,” or “Adjudicated/Closed.”

## 2. *Other Data Barriers to Sealing*

Data inaccuracies hampered our ability to determine the scope of eligibility for expanded sealing. If, as we suspect, such inaccuracies also troubled those tasked with implementing Pennsylvania’s currently extant sealing legislation, then they would likely do so with respect to any new law expanding the scope of sealing and would correspondingly limit such legislation’s impact. Inaccuracies include cases appearing as if they should be automatically sealed but were not, nonsensical case dispositions, and problems likely stemming from migration across case management systems. These problems affected millions of records in these four Pennsylvania counties. Figures 6, 7, 8, and 9 depict the fifteen most common dispositions in each county. There was some variation across counties, but there were ferocious challenges in all. In Lawrence, Beaver, and Butler counties, a lack of a disposition, designated as “None,” was the first or second most common “disposition.”<sup>54</sup> Figures 10 and 11 show non-guilty dispositions aggregated across the four counties.

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54. See discussion *supra* Section III.B.

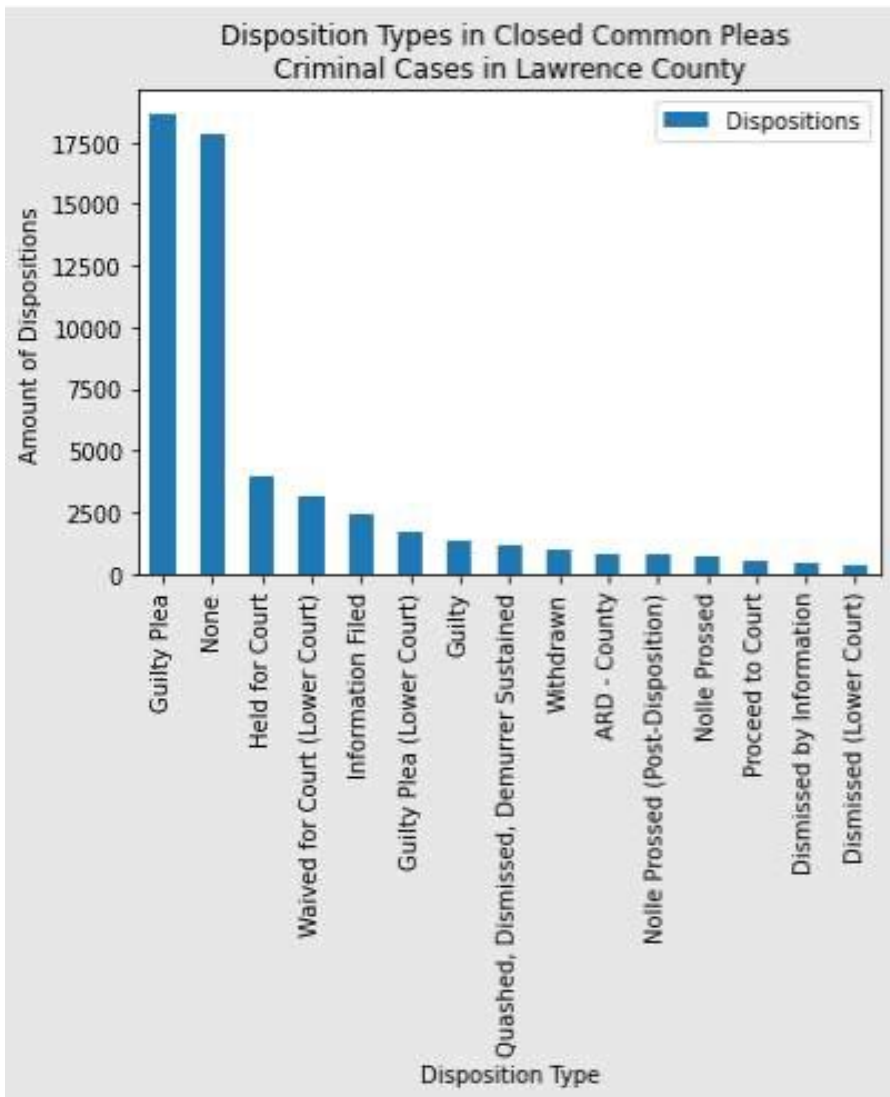


Figure 6: Count of disposition types for closed criminal cases in the Court of Common Pleas in Lawrence County. The top 15 dispositions are listed. The “None” disposition represents there is no disposition for that particular charge.

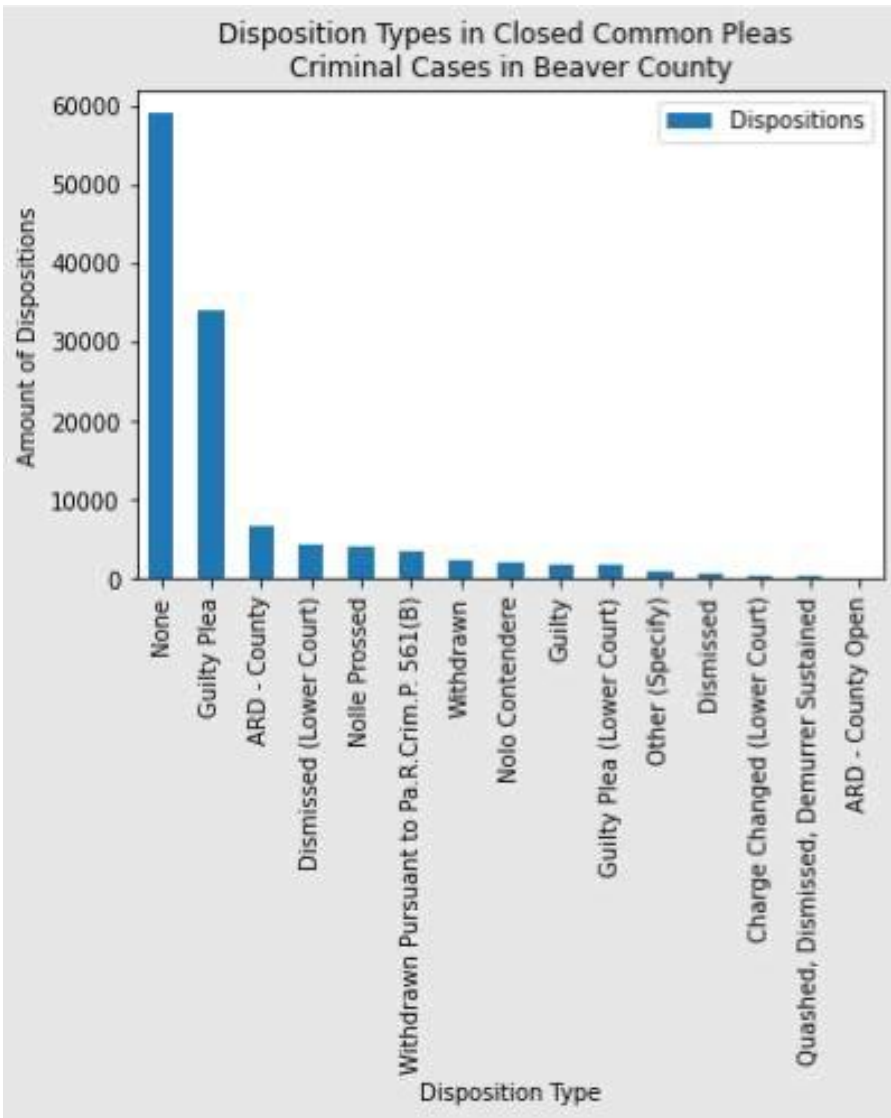


Figure 7: Count of disposition types for closed criminal cases in the Court of Common Pleas in Beaver County. The top 15 dispositions are listed. The “None” disposition represents there is no disposition for that particular charge.

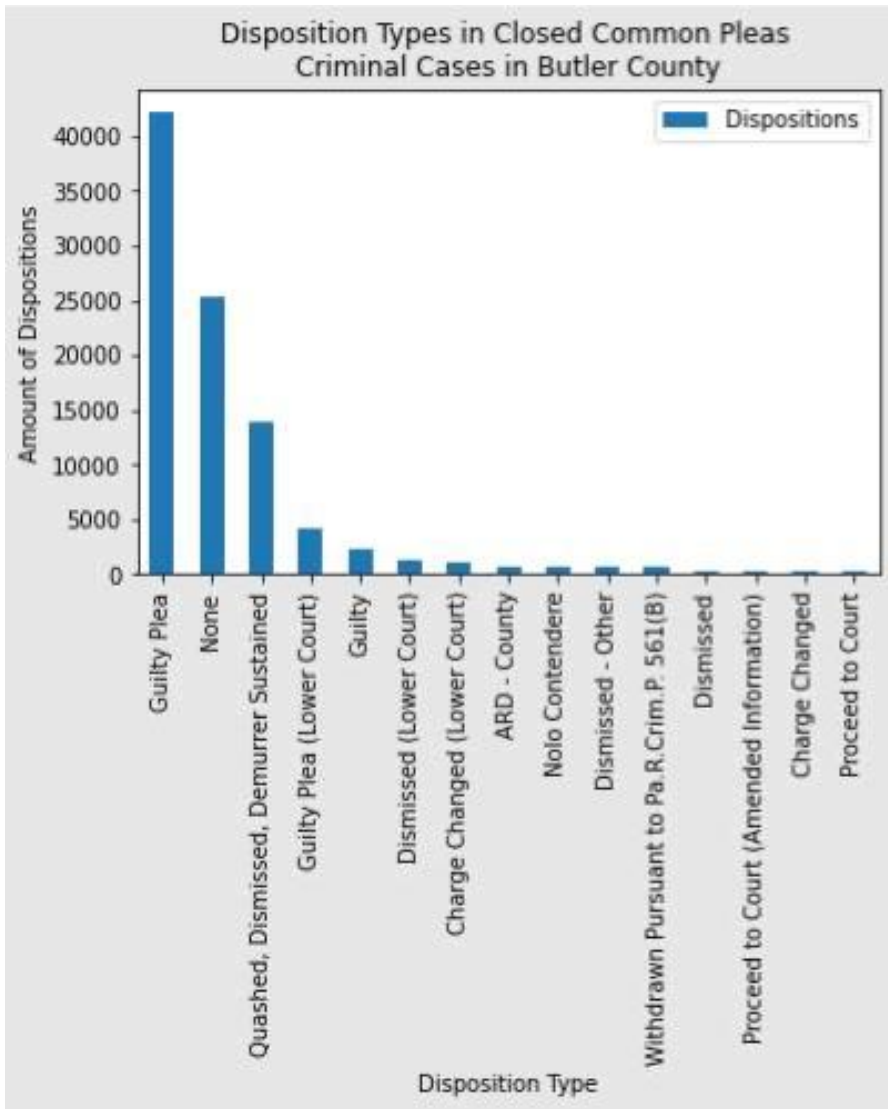


Figure 8: Count of disposition types for closed criminal cases in the Court of Common Pleas in Butler County. The top 15 dispositions are listed. The “None” disposition represents there is no disposition for that particular charge.

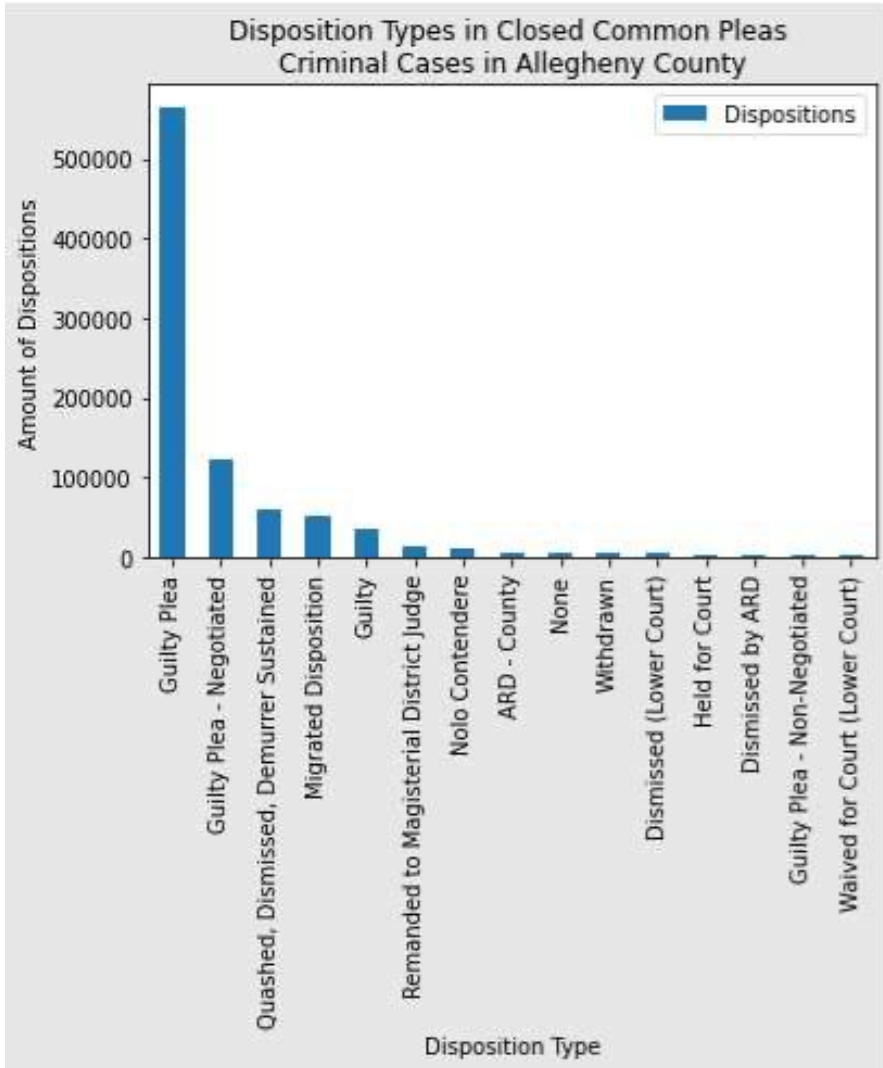


Figure 9: Count of disposition types for closed criminal cases in the Court of Common Pleas in Allegheny County. The top 15 dispositions are listed. “None” does not appear in the top 15 in Allegheny County, but the similarly nonsensical “Migrated Disposition” does.

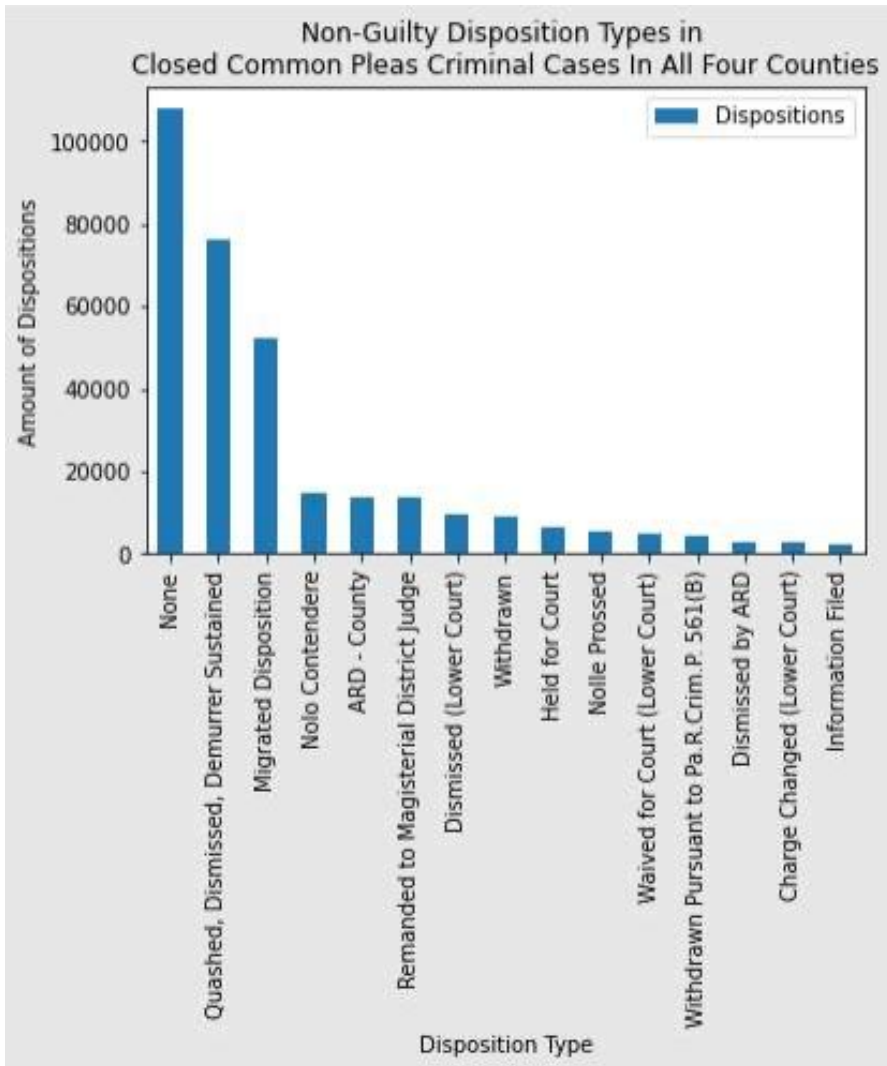


Figure 10: The total number of non-guilty disposition types in all four counties, meaning dispositions that were not guilty. This figure includes dispositions, such as “Remanded to Magisterial District Judge,” for which we could not determine eligibility. Under the sealing statute, all final dispositions other than a conviction should have been automatically sealed by the time we obtained the cases. This figure represents dispositions that should have been sealed under the assumption that all indeterminate dispositions are eligible for sealing.

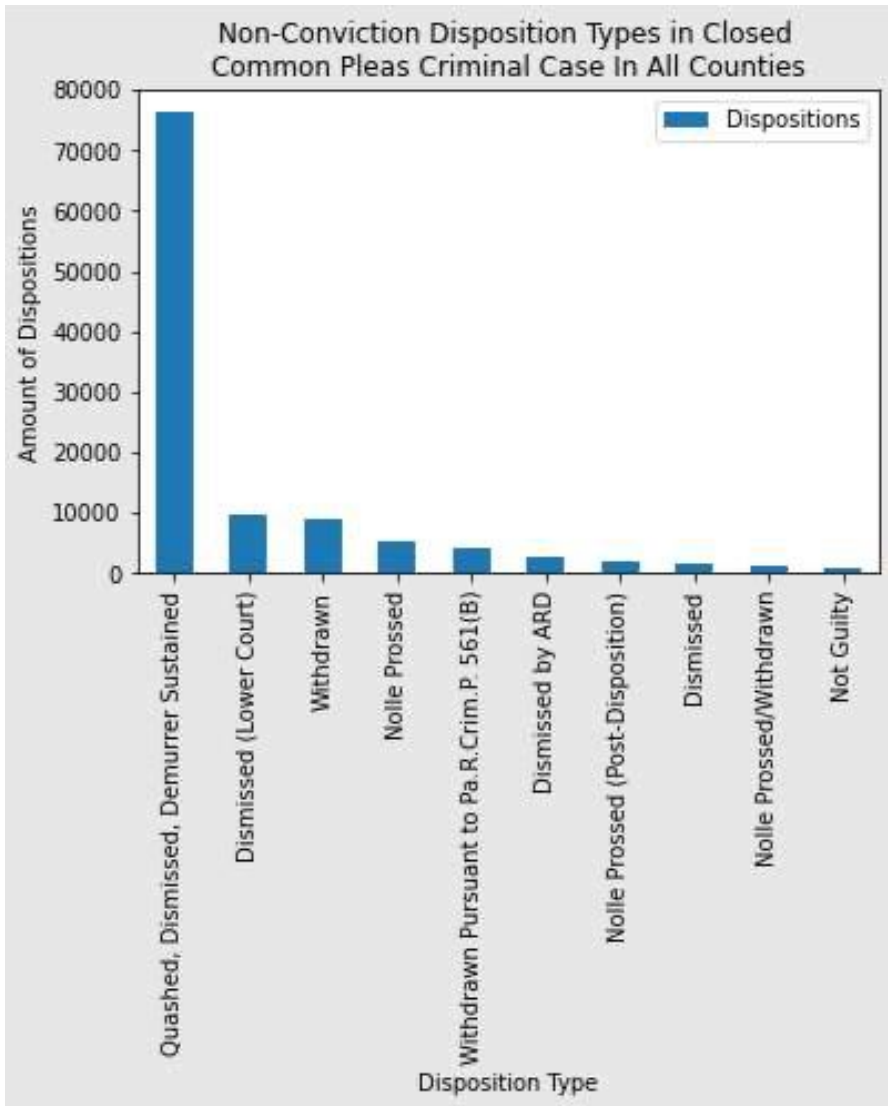
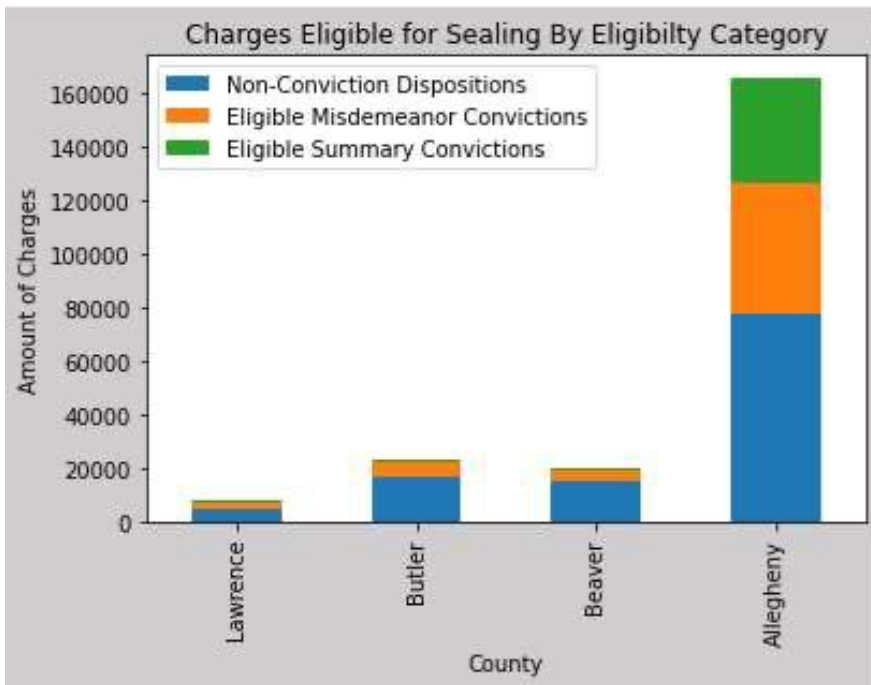


Figure 11: The number of dispositions typically considered favorable and should be considered an eligible non-conviction for sealing purposes. It is unclear why “Quashed, Dismissed, Demurrer Sustained” is so prevalent.

Eligibility for sealing fell into three main categories: an eligible non-conviction, a conviction on a summary offense, or an eligible misdemeanor conviction. The chart below shows the number of charges our algorithm determines eligible for sealing by category but were still publicly available as of early 2022.





*Figure 12: The chart above represents the number of charges that appear to be eligible for sealing, but were not suppressed at the time of scraping, in each county. Unlike Figure 10, this figure does not include indeterminate dispositions. Even under this more conservative estimate, the high number of dispositions eligible for sealing raises concerns about the implementation of the sealing statute.*

The sealing statute focused on individual charge eligibility, however, there may have been greater significance if the entire case, or if a person's whole record, was eligible to be sealed. The graph below shows the number of charges, cases, and records identified as eligible for sealing.

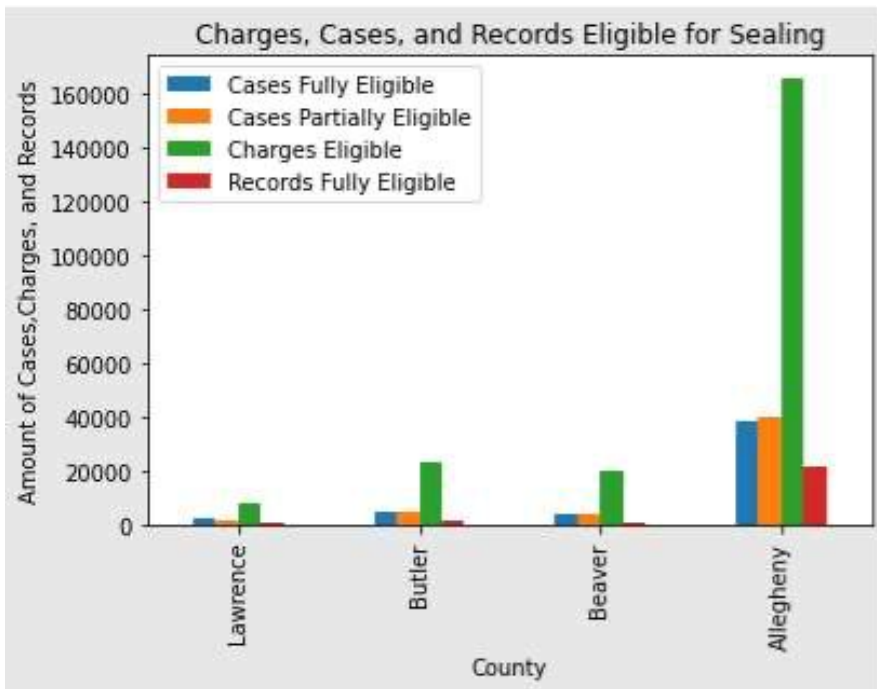


Figure 13: The number of cases, charges, and records identified as currently eligible for sealing in closed Common Pleas criminal cases in each county.

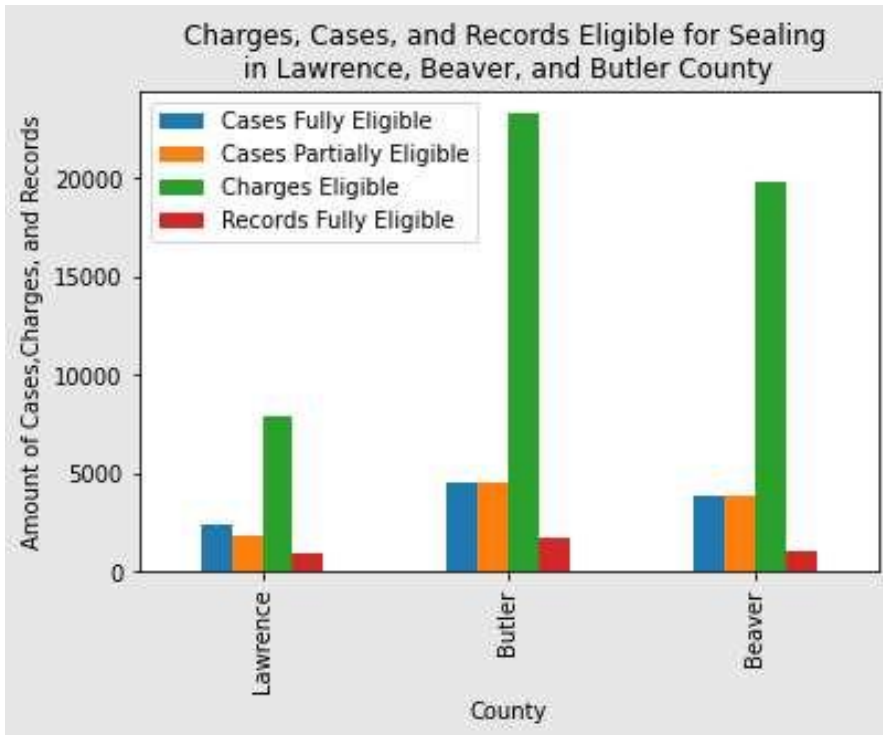


Figure 14: The number of cases, charges, and records identified as currently eligible for sealing in closed Common Pleas criminal cases in Lawrence, Beaver, and Butler counties (Allegheny County is excluded from this chart to better visualize the three smaller counties).

Finally, the figure below shows the number of non-conviction dispositions eligible for sealing by year of filing. A non-conviction disposition is defined as *Nolle Prosequi*, Judgment of Acquittal, Dismissal, Withdrawn, and Not Guilty.<sup>55</sup> Even when the disposition was a well-recognized non-conviction disposition from a recent case, the charge was still visible.<sup>56</sup> This graph, in particular, demonstrates the difficulty in implementing the Clean Slate Act and raises questions about the completeness of the implementation.

55. Pennsylvania law does not provide for a specific definition of non-conviction dispositions. The A2J Lab developed the list here after analyzing the dispositions in the dataset.

56. We have no theory for why there were spikes in certain years. Future investigation might clarify this point.

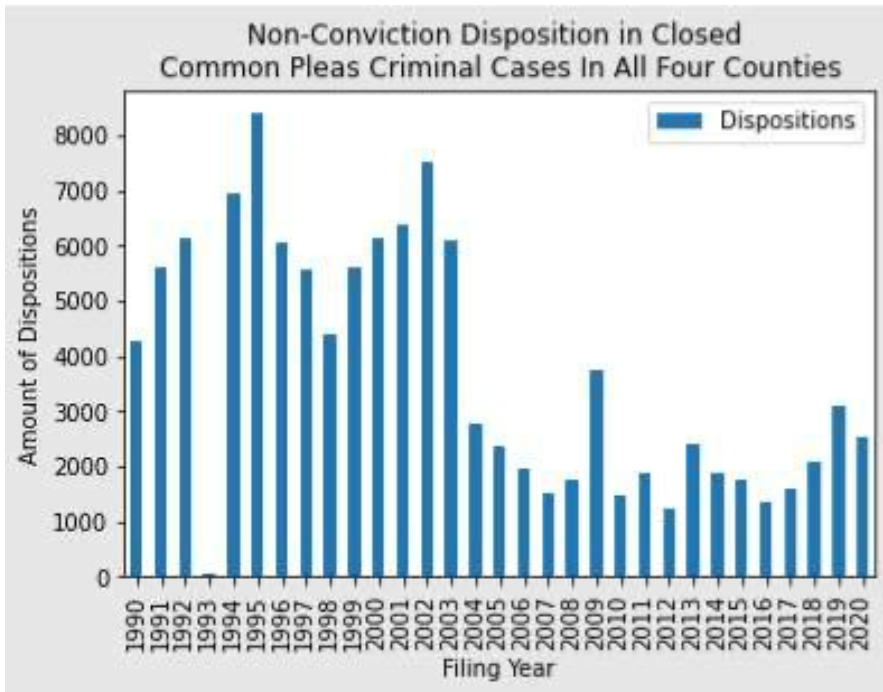


Figure 15: This chart shows the filing date for charges with a non-conviction disposition. Most non-conviction dispositions are eligible for sealing and should have been sealed by the time of our collection. A non-conviction disposition is defined as *Nolle Prosequi*, *Judgment of Acquittal*, *Dismissal*, *Withdrawn*, and *Not Guilty*.

We turn now to our second and third points, missing dispositions and those likely reflecting database migration issues. Functionally, these two concerns pose the same challenge: if the record’s disposition is unclear, then no one can easily determine whether it is eligible for any form of record clearing, sealing, or expungement. Regarding data migration, courts in Pennsylvania moved to a single court case management system called the Common Pleas Case Management System (“CPCMS”) in the early 2000s.<sup>57</sup> The migration from county court information systems to the statewide CPCMS occurred county by county and was completed by 2007. It appears that not all dispositions were accurately transferred during the migration process. Perhaps because these dispositions did not fall into categories identified by the sealing statute, the Pennsylvania judiciary appears to have decided it did not have the

57. See ADMIN. OFF. PA. CT., INFORMATION TECHNOLOGY DEPARTMENT: A RETROSPECTIVE 8, <https://www.pacourts.us/Storage/media/pdfs/20210211/011644-aopcitdepartmentaretrospective-011046.pdf> [<https://perma.cc/MS6F-SYVM>] (last visited July 29, 2024).

authority to seal them. At least, such was apparently the case at the time we scraped.

The data illustrate the problems. As Figures 6, 7, and 8 demonstrate, “None” was the second- or third-most common disposition in Butler, Beaver, and Lawrence Counties. With respect to issues likely stemming from difficulties in migrating across databases, or from paper records to an electronic system, “Migrated Disposition” was the fourth most common “disposition” in Allegheny County, affecting tens of thousands of records. For example, as Figure 16, demonstrates, the several thousand charges from Allegheny County that had a disposition of “Migrated Disposition” all had a filing date prior to 2005.

The largest seemingly eligible non-conviction was “Quashed, Dismissed, Demurrer Sustained.” This disposition also appears exclusively before 2006, indicating this was an issue with migration.

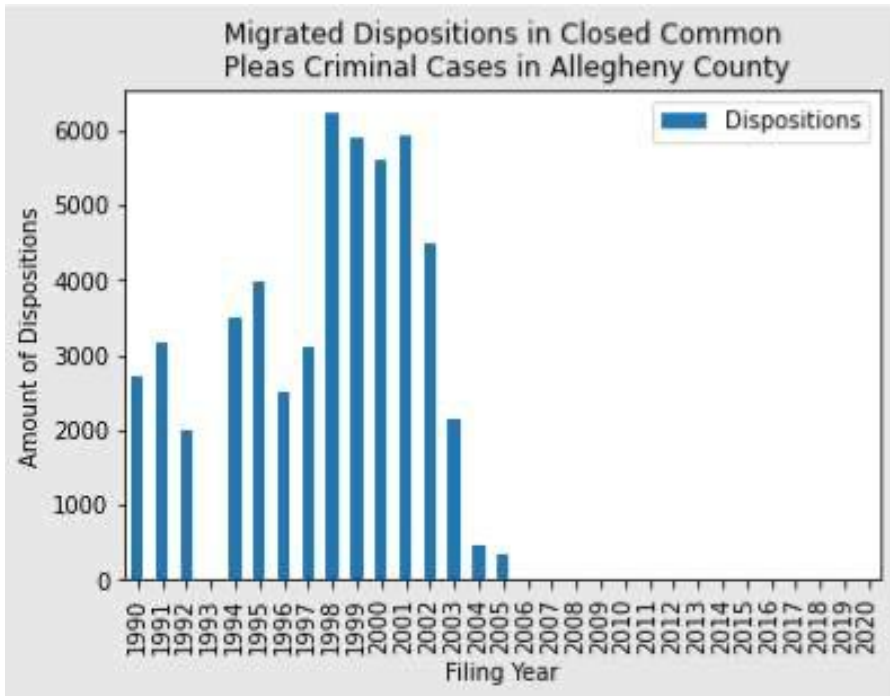
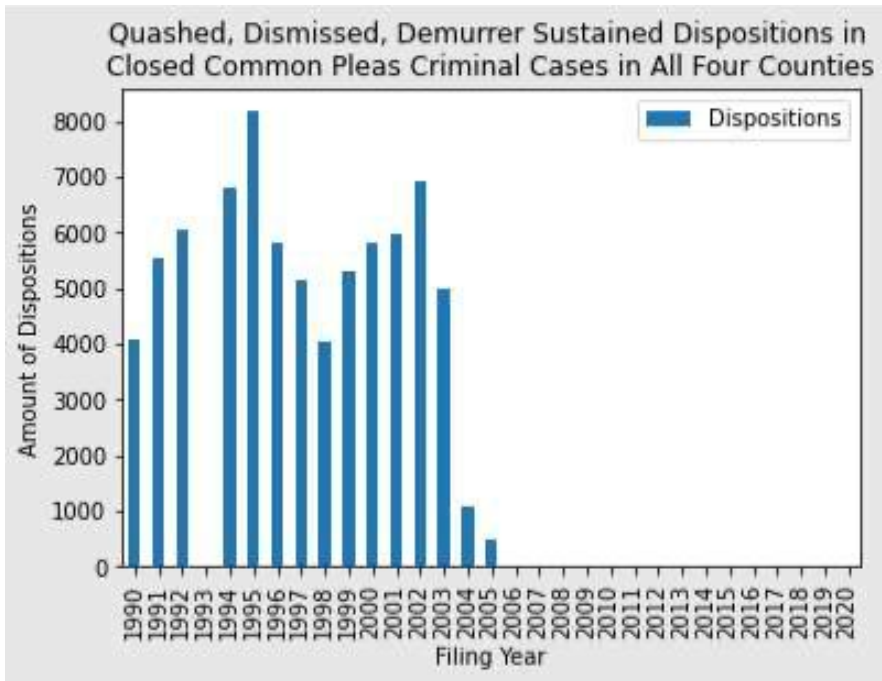
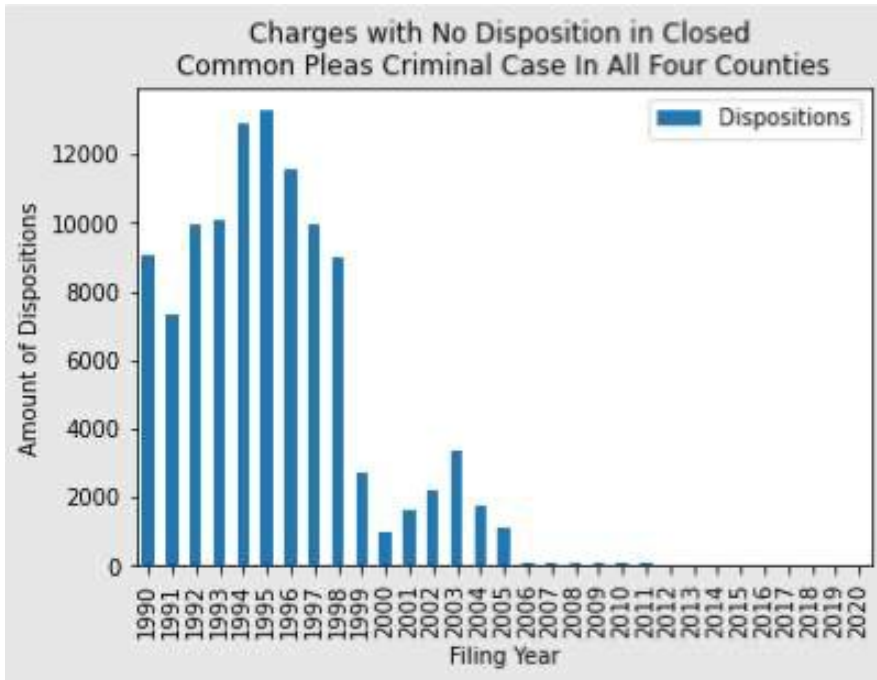


Figure 16: Every disposition of “Migrated Disposition” appears in cases with a filing date of 2005 and earlier. This indicates an issue with migration of cases onto CPCMS.



*Figure 17: Dispositions with “Quashed, Dismissed, Demurrer Sustained” in closed Common Pleas cases in all counties. This disposition does not exist after 2005.*

Additionally, more than 100,000 charges were missing a disposition, despite the case being marked closed. Almost all of these charges had filing dates prior to 2007.



*Figure 18: Closed criminal cases with no disposition appear almost exclusively before 2006. This indicates some sort of data migration issue when moving onto CPCMS.*

But challenges with data migration into CPCMS cannot explain all the unusual final dispositions. As noted above, there were several odd disposition categories, representing over 70,000 charges. All of these cases were designated as closed. Nearly all of these unusual final dispositions started in 2004, around when CPCMS was implemented, and continued through 2020. One might have speculated that migration to CPCMS would have caused problems with non-conviction dispositions for which records still appear. However, the opposite was true. Almost all of the confusing dispositions started in 2004 and continued to 2020. Figure 19 shows the number of closed cases with unusual final dispositions by year of filing date.

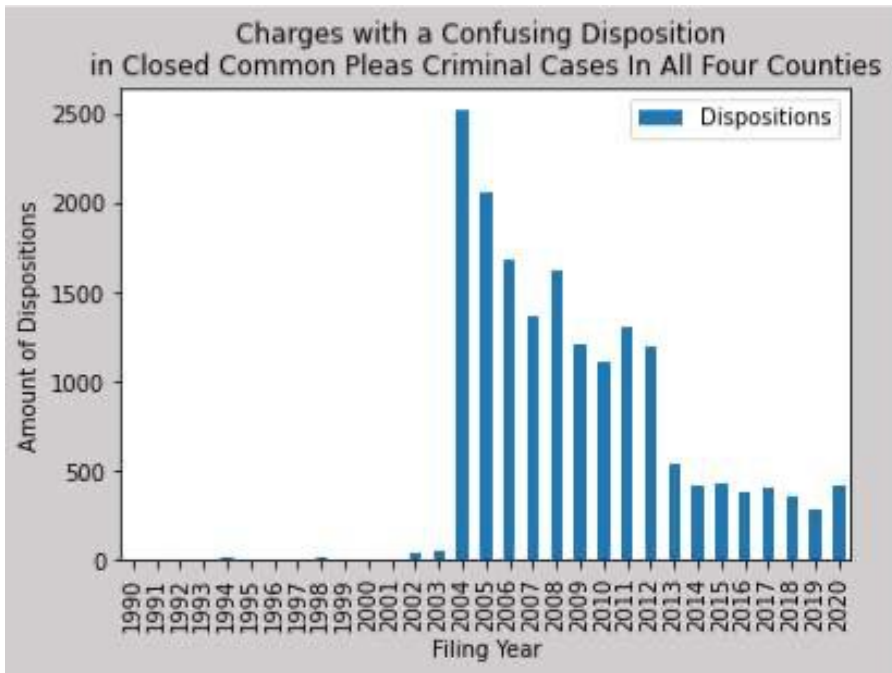


Figure 19: This chart indicates the number of charges with confusing dispositions which appear when the state migrated to CPCMS. The dispositions are “Disposed at Lower Court,” “Charge Changed,” “Proceed to Court,” “Information Filed,” “Waived for Court (Lower Court),” “Held for Court (Lower Court),” and “Held for Court.”

For present or future Clean Slate legislation to reach its full potential, the three problems we identify require resolution. We see three possible solutions: (1) the court could mandate regular auditing that cleans up the data and educates data administrators regarding mistakes so as to avoid their future occurrence; (2) the court could assume records these challenges (nonsensical dispositions, missing dispositions, and database migration issues) affect are eligible non-convictions by altering its algorithms to seal them as a matter of course; or (3) the court could deploy a burden-shifting technique,<sup>58</sup> shifting the burden from the individual (who must file a petition for each charge) to the local District Attorney’s office or to local law enforcement to object to the sealing of particular apparent non-conviction dispositions.

58. See Pamela Herd et al., *Shifting Administrative Burden to the State: The Case of Medicaid Take-Up*, PUB. ADMIN. REV., Sept.–Oct. 2013, at 69 (advocating shifting burdens from citizens to the state in the administrative context).



### C. FINES, FEES, AND RESTITUTION FORGIVENESS PROVISIONS

In this subsection, we investigate the number and type of records that would be subject to sealing were the Pennsylvania legislature to amend the Clean Slate Act in various ways. Specifically, we investigate the elimination of the requirement that defendants have fully paid their LIFOs, such as restitution, fees, and fines.

#### 1. Restitution

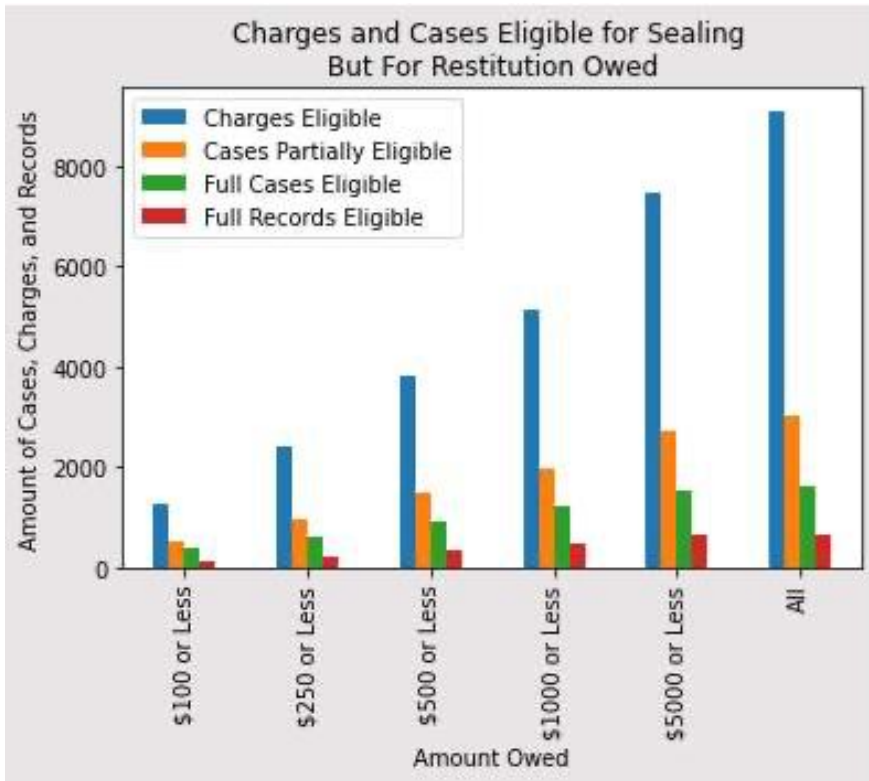
Originally, the Clean Slate Act required all fines and fees to be paid before a case could be automatically sealed. The statute was amended in 2020.<sup>59</sup> The version of the statute extant at data collection allowed for a case otherwise eligible for sealing with a fine and fee to be sealed unless restitution was owed.<sup>60</sup> The court began implementing the new provision in late 2021.<sup>61</sup> Section 9122.2(a)(1) of the Clean Slate Act required all restitution to be paid before any otherwise eligible Misdemeanor 2 (“M2”), Misdemeanor 3 (“M3”), or ungraded Misdemeanor (“M”) could be automatically sealed. The chart below shows how many cases would be fully eligible for sealing but for unpaid restitution. It also demonstrates the number of cases that would become eligible if a certain amount of restitution was forgiven.

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59. See Moselle, *supra* note 44.

60. See 18 PA. STAT. AND CONS. STAT. § 9122.2(a)(1), (3), (b)(2)(i) (West 2024) (But note, in Section 9122.2(a)(1), “[u]pon payment of all court-ordered restitution, the person whose criminal history record information is subject to limited access under this paragraph shall also pay the fee previously authorized to carry out the limited access and clean slate limited access provisions.”).

61. Nick Vadala, *How to Get a Criminal Record Expunged, Sealed, or Pardoned in Pennsylvania*, PHILA. INQUIRER (Dec. 22, 2020, 10:19 AM), <https://www.inquirer.com/philly-tips/criminal-record-expunged-sealed-pardon-petition-pennsylvania-20201222.html> [https://perma.cc/GNE4-MBHZ].



*Figure 20: The chart above shows how many cases would be made eligible for sealing if different amounts of restitution were forgiven. Note that this and subsequent figures of this type are “cumulative” in that eligible charges and cases with a restitution owed of \$50 will be counted in the \$100 or Less category as well as each subsequent category.*

Recognizing that the purpose of restitution is to make victims whole, reducing or eliminating payment of restitution as an eligibility criterion for sealing could pose political challenges. Perhaps it might be more palatable to consider removing the barrier for restitution owed to institutions or businesses, as opposed to individuals. In addition, this barrier affected a smaller number of records than others. Nevertheless, if non-payment of small amounts precludes record clearing, policymakers may wish to consider whether the issue is inability to pay as opposed to willful nonpayment. If the former, one might consider whether it is worthwhile to continue disabling effects from LIFOs that may well never be discharged.

## 2. Fines and Fees

Section 9122 requires a defendant to pay all fines and fees in full before any of that defendant's case records may be expunged. The chart below illustrates the volume of charges, cases, and full records that would be eligible for expungement but for unpaid court fines and fees.

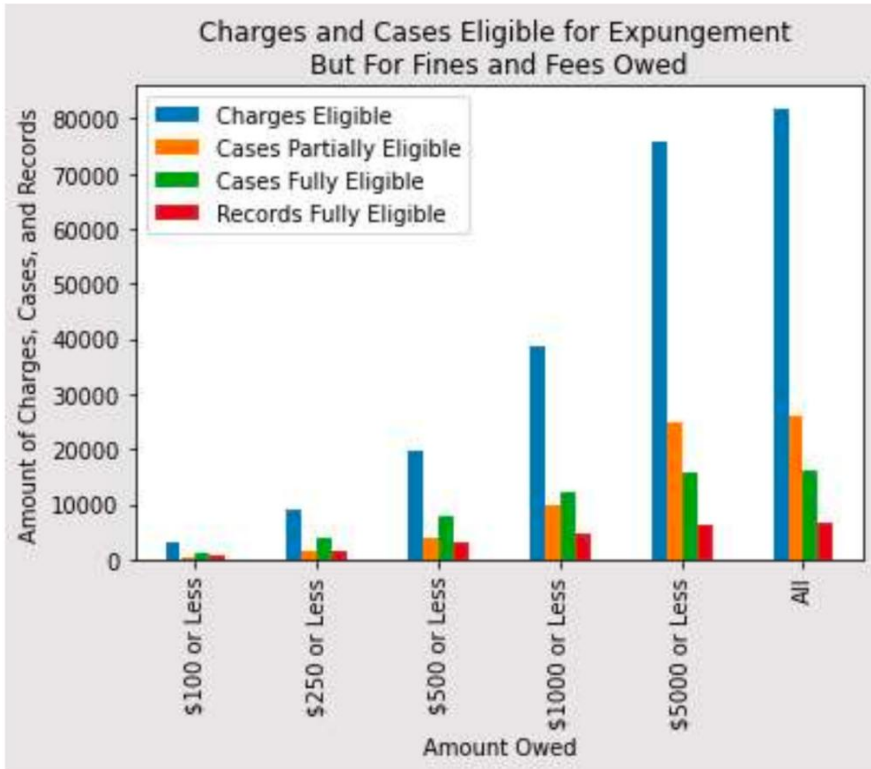


Figure 21: The chart above shows the number of cases, charges, and full records eligible for expungement but for a court fine or fee owed in the case.

As was true with restitution, for fees and fines, removing the ineligibility associated with fines of \$100 or less would make an impact. In addition, Figure 20 demonstrates that not all LIFOs are created equal: fines and fees disqualify many more records than does restitution. With this in mind, it may be worth considering whether non-payment of fines and fees is willful or the result of inability to pay, as well as the purpose of fines and fees. On the latter point, we understand that fines punish and perhaps deter. Fees, however, are basically taxes, perhaps taxes designed specifically to recoup costs associated

with operating the legal system.<sup>62</sup> If so, it is possible that reduction or removal of some LIFO ineligibility would have little effect on individual victims or community members. If it is true that sealing helps justice-involved individuals obtain better employment (we take no position on that subject here), then removing the sealing barrier associated with fines and fees might increase at least some individuals' ability to pay.<sup>63</sup> As a final point on this issue, we found the eligibility bar cuts across age groups. For example, if the fines and fees were removed as an eligibility criterion merely for 70-year-olds or older, it would help 4,761 people clear 17,944 charges.

#### D. NARROWING RECIDIVISM ELIGIBILITY PRECLUSIONS

Pennsylvania's Clean Slate Act imposed waiting periods during which one had to remain crime free. It also rendered an otherwise eligible case ineligible because of an "arising out of" provision, applicable when a subsequent charge was thought to have "arisen out of" the otherwise eligible charge. Likely, these provisions reflect an eye toward community safety, but if sealing is otherwise a salutary policy, they may be unnecessarily restrictive.

##### 1. *Cases Eligible in the Next Ten and Five Years Because of Summary Convictions*

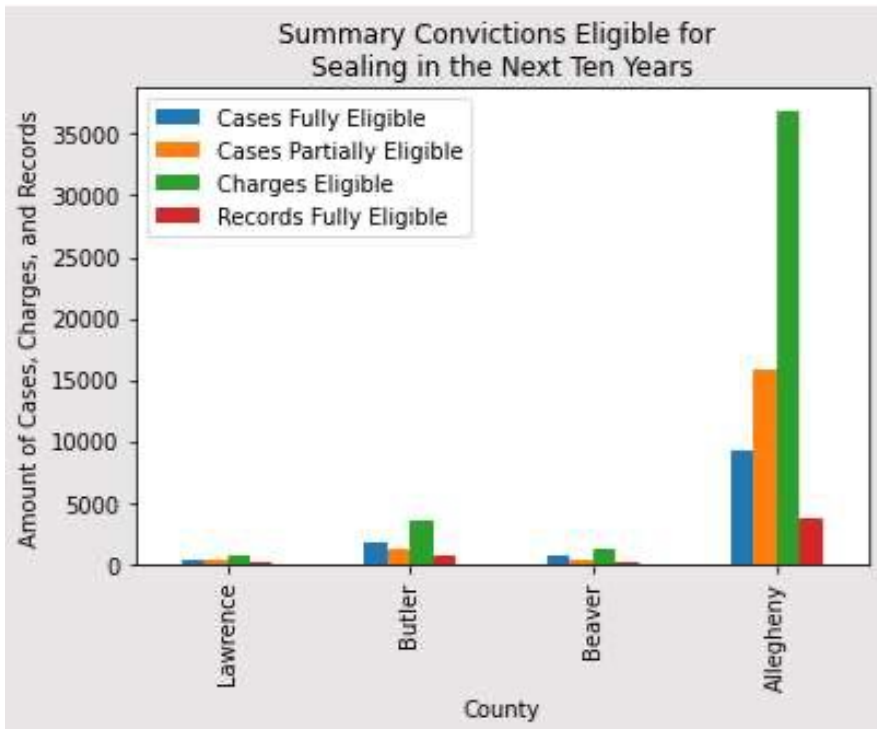
Summary convictions were eligible for sealing but required a ten-year waiting period.<sup>64</sup> The graph below shows how many cases will be completely eligible for sealing in the ten years after late 2020.

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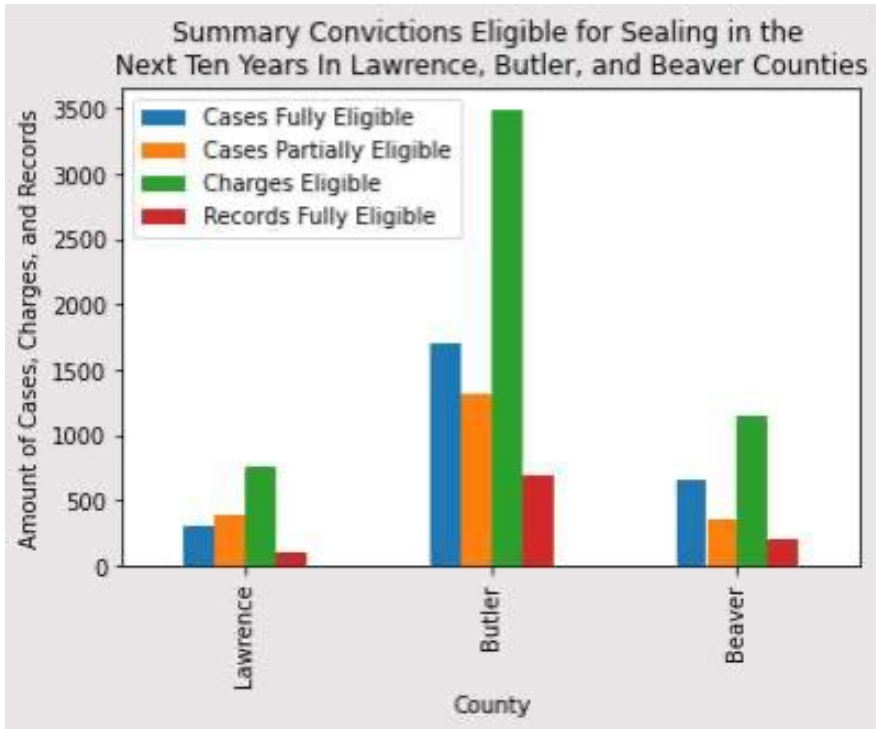
62. Chien, *supra* note 28, at 577 n.292 (giving perhaps a more egregious example of a court in Michigan adding fees to cases, sometimes unconnected to the violation, and funneling a portion of fees to support the cost of running the courthouse gym).

63. There is a movement to eliminate funding the justice system by fines and fees assessed largely on individuals who are unable to pay. See generally FINE & FEES JUST. CTR., <https://finesandfeesjusticecenter.org/> [https://perma.cc/GKX9-YYMC] (last visited June 29, 2024).

64. The language of the statute is confusing. We interpret the language to mean any ten-year period free of a misdemeanor or felony conviction after the disposition date of the charge in question. See *Commonwealth v. Giulian*, 141 A.3d 1262 (Pa. 2016).



*Figure 22: This chart shows the number of charges, cases, and records that would become eligible over the ten years following our data collection.*



*Figure 23: This chart shows the number of charges, cases, and records that would become eligible over the ten years following our data collection in Lawrence, Butler, and Beaver counties. This graph shows the same data as did the previous, but eliminating Allegheny County makes it possible to see the other three.*

The next graph depicts how many additional cases would be eligible if the rule were changed to only a five-year waiting period for summary convictions. The timelines were calculated on June 16, 2021.

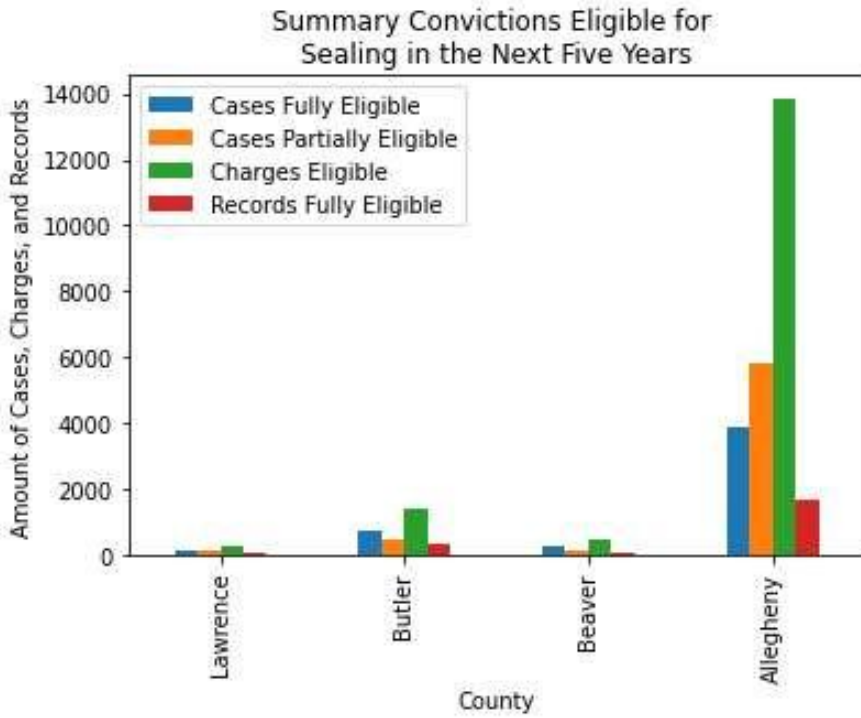
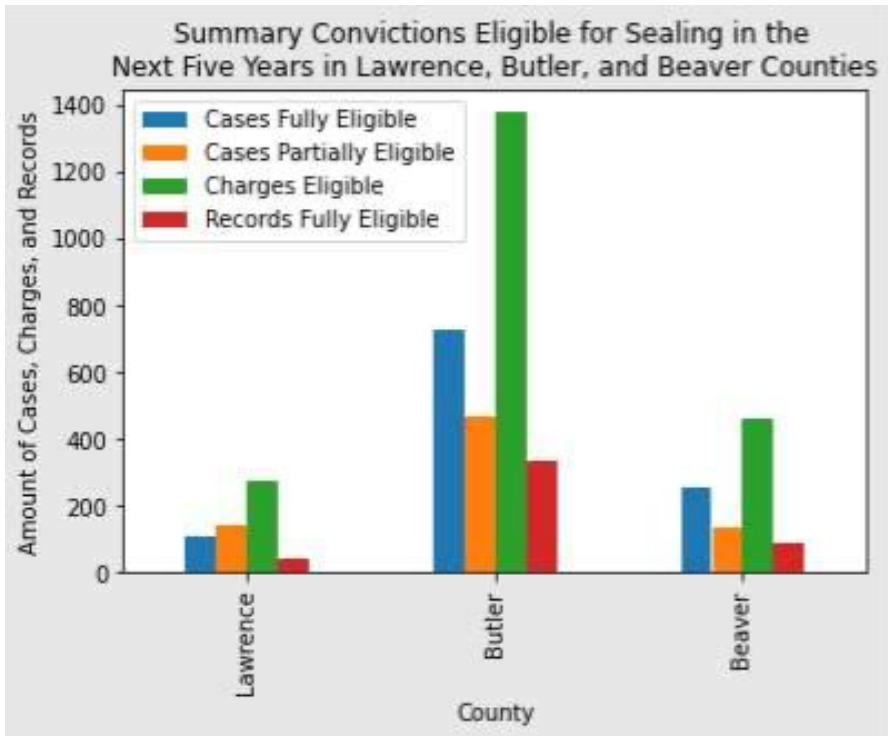


Figure 24: This graph shows the cases that would become eligible if the Clean Slate Act’s summary conviction provision had a five-year instead of a ten-year waiting period.



*Figure 25: This graph shows the cases that would become eligible if the Clean Slate Act's summary conviction provision had a five-year instead of a ten-year waiting period in Lawrence, Butler, and Beaver counties. The data here is the same as those for the previous figure.*

There is marginal evidence to support the idea that after three years crime-free, the likelihood of recidivism drops; the evidence is uncertain because most analysis focuses on individuals released from prison, and there are few comparisons to “baseline” levels (i.e., arrest, charge, or conviction rates for those without prior criminal records).<sup>65</sup> Assuming that likelihood of recidivism falls quickly over time (an open empirical question), and assuming that suppression of criminal justice information is a good idea, long waiting periods may be unnecessarily restrictive.

65. See MATTHEW R. DUROSE & LEONARDO ANTENANGELI, BUREAU JUST. STAT., RECIDIVISM OF PRISONERS RELEASED IN 34 STATES IN 2021: A 5-YEAR FOLLOW-UP PERIOD (2012 - 2017) (2021), <https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-34-states-2012-5-year-follow-period-2012-2017> [<https://perma.cc/828D-GC2H>]. This report shows the return to prison rate in the first year following release as 19.9% and 39% after three years. It reflects a decline from the previous report, published three years prior, which showed a return to prison rate in the first year following release at 30.4% and 50% after three years. Further, the likelihood of returning to prison drops as one approaches forty years old.



## 2. Crime Types

Section 9122.3(a)(1) of the Clean Slate Act prohibited the sealing of convictions for certain types of crimes including sex crimes, family crimes, and firearms offenses. The prohibited convictions under Section 9122.3(a)(1) were numerous and difficult to capture with certainty. Our results in this subsection may suffer from small errors. The chart below shows the number of charges that would have been eligible for immediate sealing if Section 9122.3(a)(1) were removed.

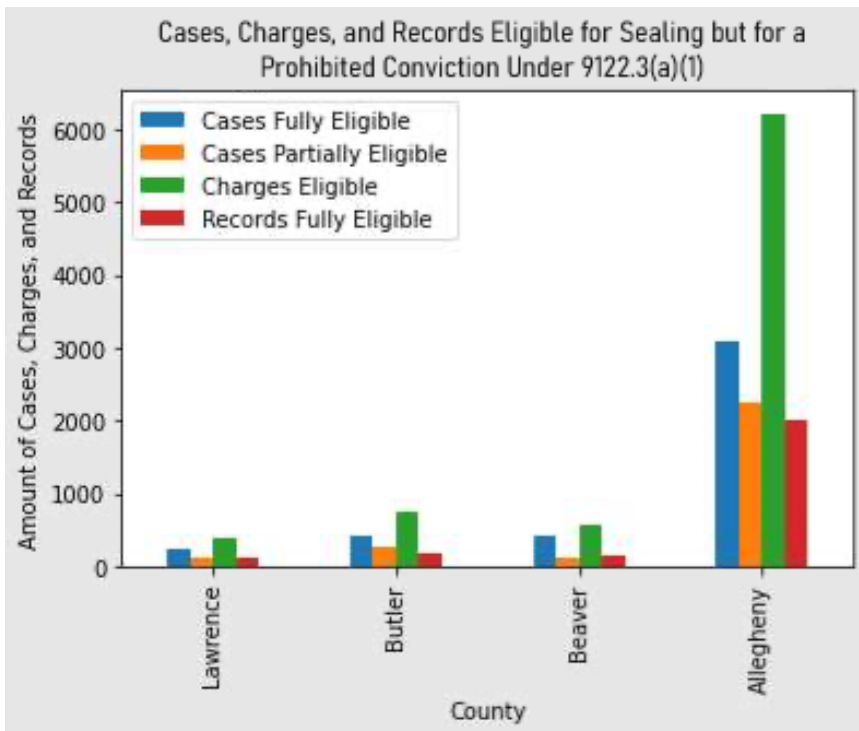


Figure 26: The chart above shows the number of cases and charges that would have been eligible for sealing but for Section 9122.3(a)(1), which prohibits the sealing of convictions for certain crimes considered more serious.

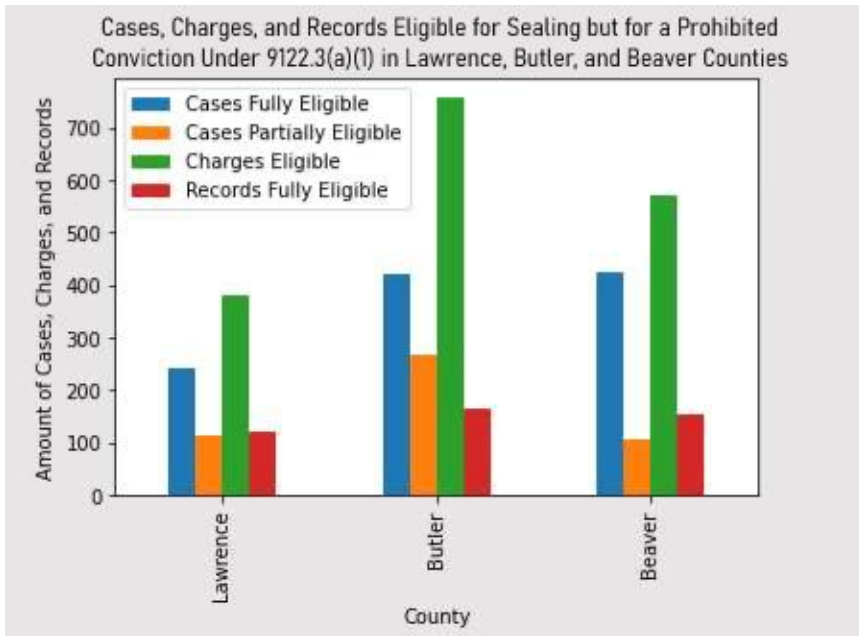


Figure 27: The chart above shows the number of cases, charges, and records in Lawrence, Beaver, and Butler counties that would have been eligible for sealing but for Section 9122.3(a)(1), which prohibits the sealing of convictions for certain charges considered more serious.

If policymakers believe that a person who remains free of criminal justice system involvement for some period of time is not distinguishable, *vis-à-vis* the risk of committing a crime, from someone with no record at all, then the chart above shows the impact of that evidence if applied to every offense. Policymakers may not so believe, and the political challenges involved with clearing of information on more serious offenses are likely formidable. Perhaps these challenges might change in response to research providing a sound evidence base showing that risk of offense for individuals with some previous justice system involvement decays after a certain period of time to something approximating risk for individuals with no previous justice system involvement. In any event, the data above suggest that the number of individuals affected is not as large as the corresponding figures for other eligibility criteria.

### 3. Debarment Periods for Misdemeanor Convictions

The Pennsylvania Clean Slate Act Section 9122.2(a)(1) permits sealing of a conviction for an M2, M3 or ungraded M charge if the defendant

remained free of convictions for any misdemeanor or felony charge for ten years.<sup>66</sup> The chart below demonstrates the charges that would have been eligible if the debarment period were removed. The chart shows both the number of charges that would have been suppression-eligible and the number of whole cases that would have been suppression-eligible.

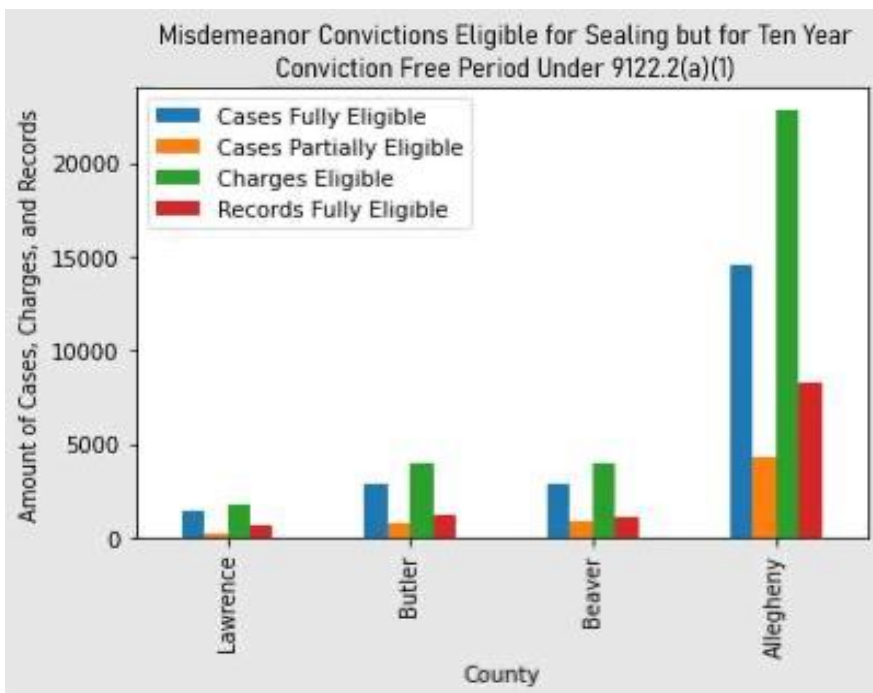
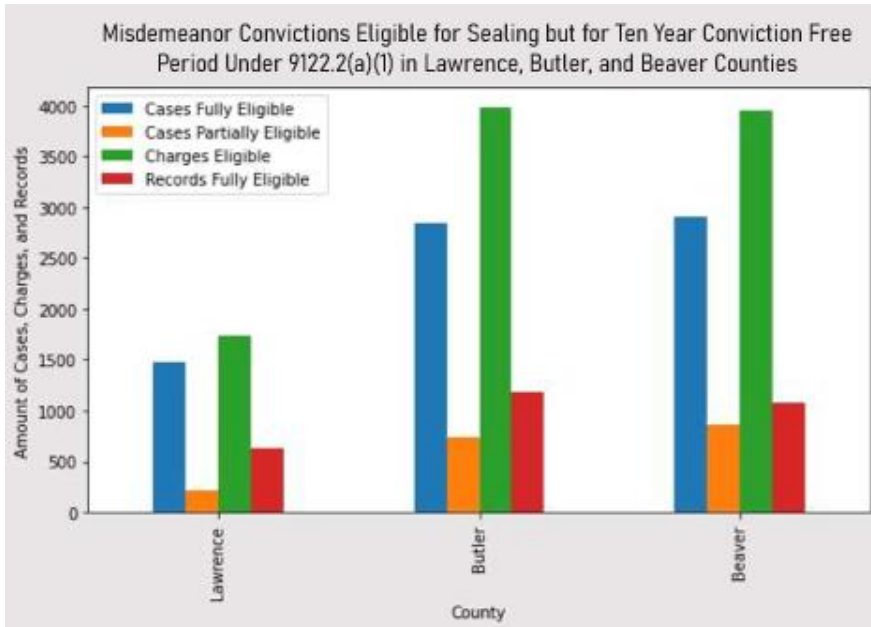


Figure 28: The chart above shows the number of cases and charges that would have been sealable but for Section 9122.2(a)(1), which prohibited sealing of a charge if there was a conviction for a misdemeanor or felony in the last ten years.

66. In this context, “M” stands for “misdemeanor” as defined in the relevant statute. See 18 PA. STAT. AND CONS. STAT. § 9122.2(a)(1) (West 2024) (referencing defined misdemeanor charges eligible for “limited access”).



*Figure 29: The chart above shows the number of cases and charges that would have been sealable in Lawrence, Butler, and Beaver counties but for Section 9122.2(a)(1) which prohibited the sealing of a charge if there was a conviction for a misdemeanor or felony in the last ten years.*

As the figure above demonstrates, this change would have affected a large number of records, more than 20,000 charges and a similar number of cases in these four counties. If removing the waiting period altogether from the legislation proved a bridge too far, reducing the ten-year debarment period to five years might be more palatable. The chart below shows how many charges would have been eligible with a reduction to five years.

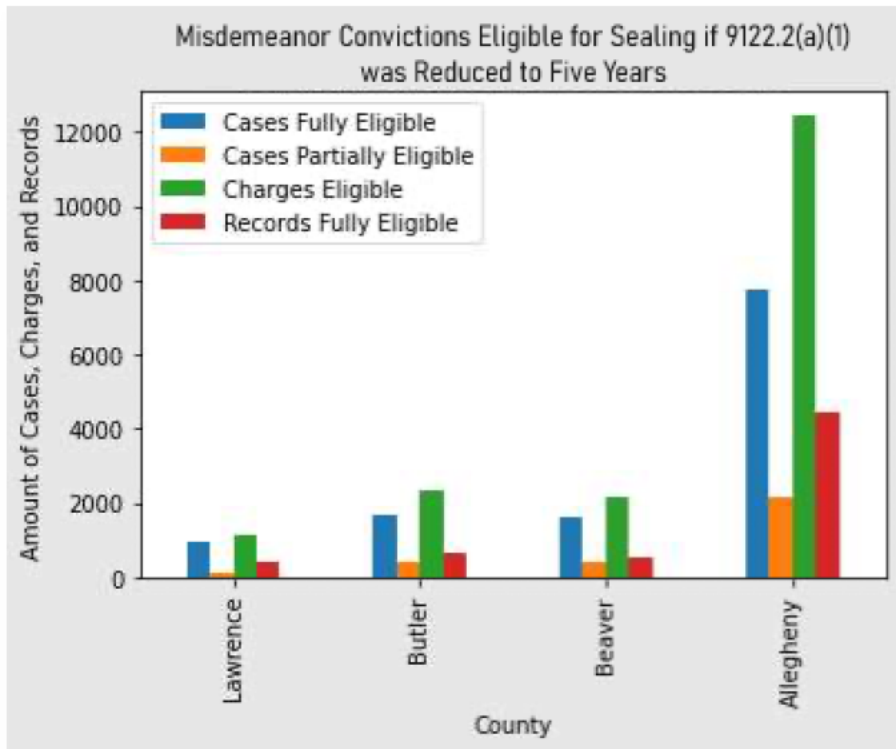
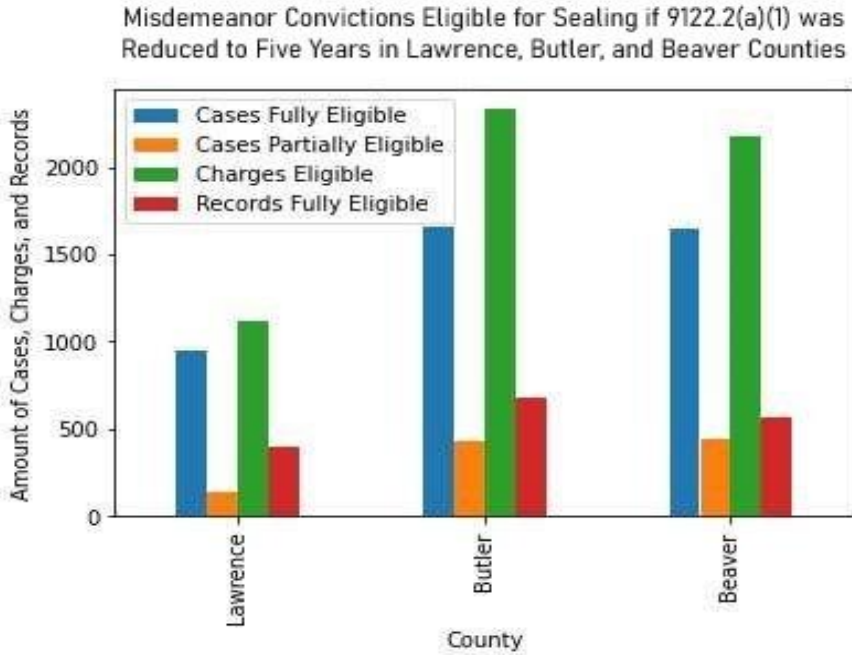


Figure 30: The chart above shows the number of misdemeanor charges and cases that would have been eligible for sealing if the debarment period is reduced from ten years to five years. The “Records Fully Eligible” column indicates the number of people who would have had a clean record upon the sealing of cases currently blocked under Section 9122.2(a)(1).



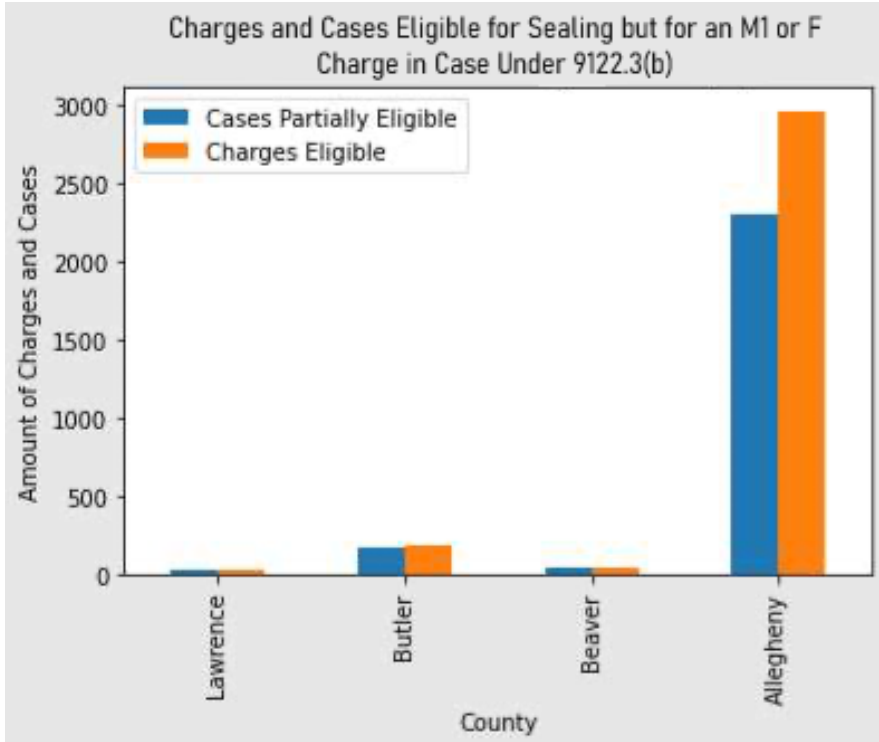
*Figure 31: The chart above shows the number of misdemeanor charges and cases that would have been eligible for sealing if the debarment period is reduced from ten years to five years in Lawrence, Beaver and Butler counties. The “Records Fully Eligible” column indicates the number of people who would have had a clean record upon the sealing of cases currently blocked under Section 9122.2(a)(1).*

#### *4. Misdemeanor Convictions Ineligible Due to Adjacent Convictions*

Section 9122.3(b) of the Pennsylvania Clean Slate Act prohibited the sealing of otherwise eligible M2, M3, and ungraded M convictions if the defendant had a conviction for a grade M1 charge or any felony in the case or offense.<sup>67</sup> This logic, called a “same offense violation,” does not prohibit sealing of otherwise eligible summary grade convictions or non-

67. 18 PA. STAT. AND CONS. STAT. § 9122.3(b) (West 2024). The text of this provision specifically defines otherwise eligible cases removed from eligibility as those that are “punishable by imprisonment for five or more years” or an offense enumerated in the previous section that arose out of the same case. Practically speaking, if this happened, it would result in an M1 or Felony charge, allowing the dataset to be analyzed using those parameters.

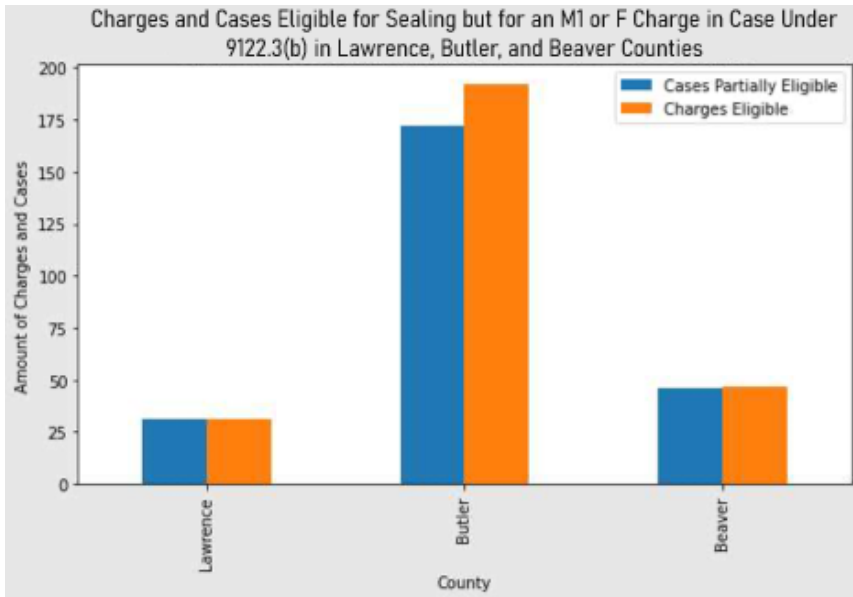
convictions.<sup>68</sup> Note that a same offense violation by definition means the case as a whole could not be sealed because it would include either an M1 or a felony conviction which were not eligible for sealing. The chart below depicts the impact of removing this provision, i.e., allowing the sealing of the otherwise eligible charge while allowing the more severely graded charges, the M1 or felony, to remain publicly viewable.<sup>69</sup>



*Figure 32: The chart above shows the number of charges eligible for sealing if the presence of more serious crimes in the same case did not prevent their suppression.*

68. Our analysis only considers charges under the same docket number rather than the offense tracking number (“OTN”) that consists of additional docket numbers. The OTN was available and could be included in a further analysis of the data.

69. In this chart an “F” charge is defined as a felony as described in 18 PA. STAT. AND CONS. STAT. § 9122.3(b) (West 2024).



*Figure 33: The chart above shows the number of charges eligible for sealing if the presence of more serious crimes in the same case did not prevent their suppression in Lawrence, Butler, and Beaver counties. The information here is the same as in the previous graph for these three counties; only the y-axis is different.*

We previously speculated that the impetus for this provision is likely protection of public and community safety, with the theory running that the public and community is safer if it is aware of individuals who have been convicted of dangerous acts. However, policymakers may wish to consider whether preventing sealing of lesser grade charges, which likely involve less serious threats to public safety, is consistent with this theory.

#### E. POSSIBLE OVER-RELIANCE ON NUANCE

Extremely detailed or nuanced eligibility provisions in a sealing statute may frustrate efforts to implement it. Sometimes, the nuance raises questions that defy easy answers. Many states, including Pennsylvania, have a mixture of automatic and petition-based record clearing. Depending upon the state of the records, court petitions can raise complex issues. For example, if an underlying offense included a sentence to probation, which was later revoked, does this combination of the underlying offense and the probation revocation count as a single offense that can be included in one petition, or are two petitions necessary? Should it matter if the violation of probation was charged



as a separate offense, and if so, whether the conduct that constituted the violation would be legal were the offender not on probation?

Even when answers appear to exist, extreme logic mapping and “if/then” statements can create confusion about eligibility and require a high level of sophistication to audit accuracy. We detected hints of this phenomenon in the Pennsylvania experience.

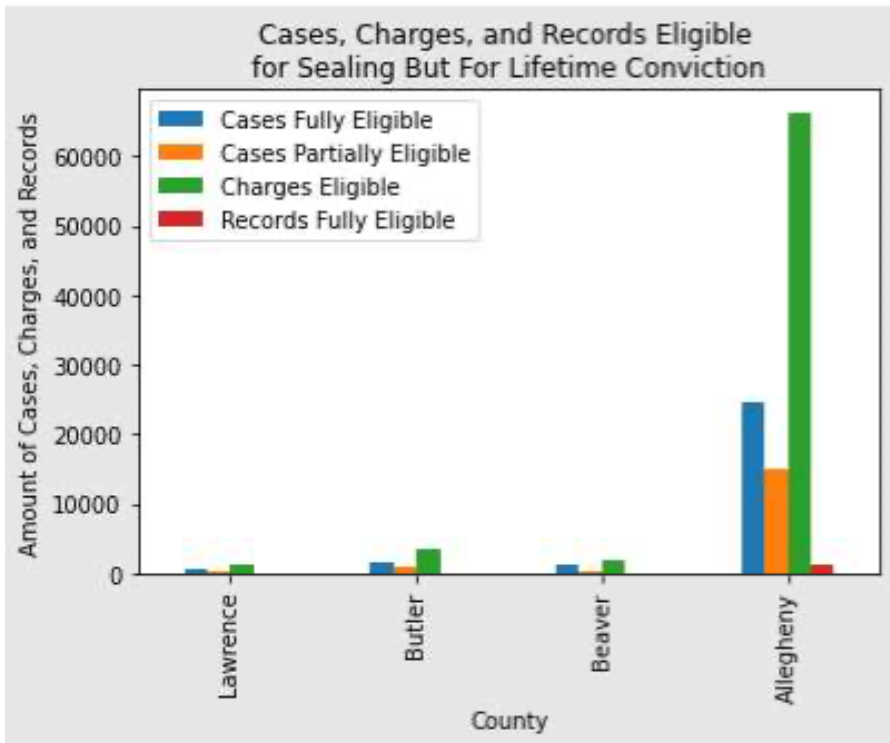
### *1. Nuance in Sealing: Lifetime Conviction*

Pennsylvania Clean Slate Act Section 9122.3(a)(2) prohibited the sealing of any convictions for M2, M3, or ungraded M charges for an individual if they had ever been convicted of one of a peculiarly short list of charges.<sup>70</sup> In addition, the statute prohibited sealing if the individual had ever been convicted of: a felony; two or more offenses punishable by imprisonment of more than two years; or four or more offenses punishable by imprisonment of one or more years. Additionally, if the individual had ever been convicted of one of six specific crimes, their otherwise eligible misdemeanor convictions are ineligible for sealing.<sup>71</sup> The graph below shows how many cases would be fully eligible if the “lifetime conviction” provision was removed.

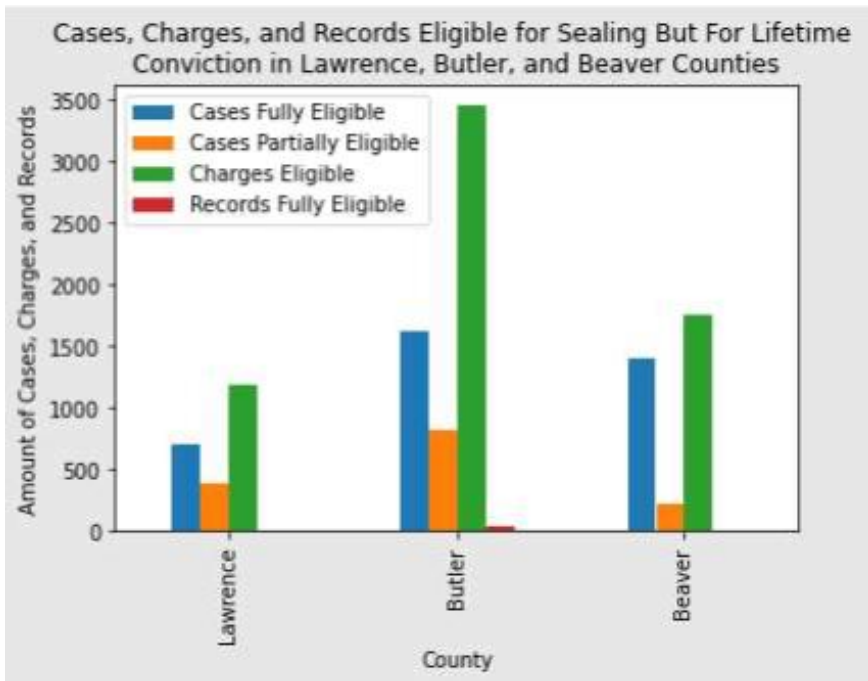
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70. M1 convictions are never eligible for automatic record clearing.

71. See 18 PA. STAT. AND CONS. STAT. § 9122.3(a)(2)(iv) (West 2024) for a complete list of specific crimes.

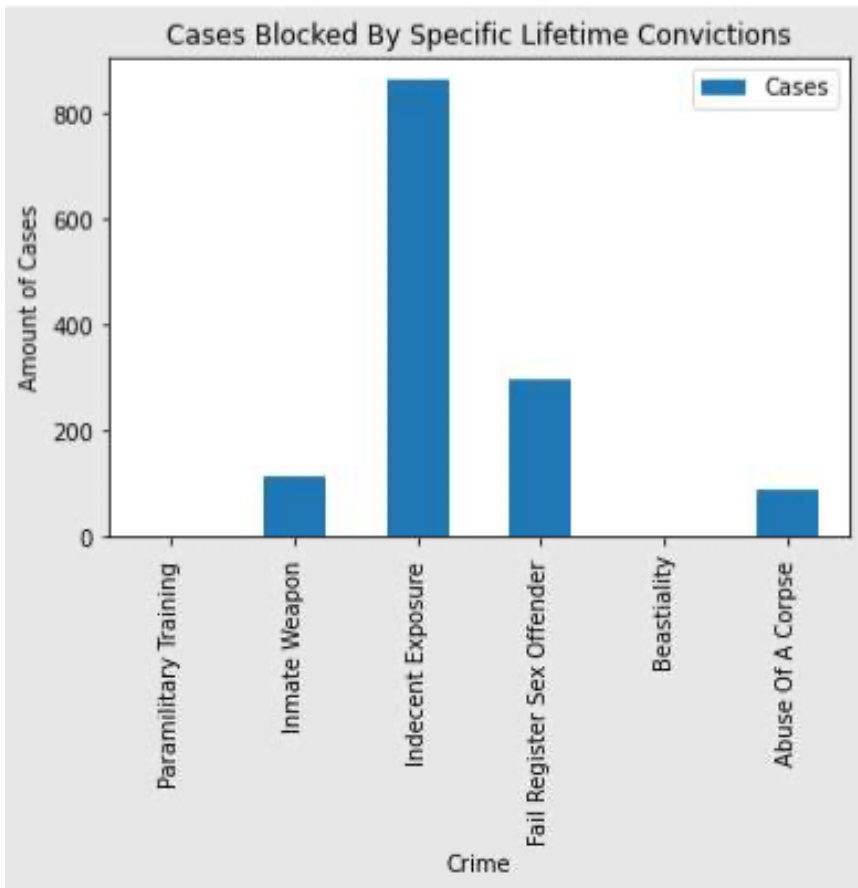


*Figure 34: The chart above shows the number of cases eligible for sealing but for a “lifetime conviction” circumstance in an individual’s criminal history.*



*Figure 35: The chart above shows the number of cases eligible for sealing but for a “lifetime conviction” circumstance in an individual’s criminal history in Lawrence, Butler, and Beaver counties. The graph duplicates the information in the previous graph for these three counties with a different y-axis.*

The next graph depicts the number of convictions for specific crimes listed in Section 9122.3(a)(2) that trigger a lifetime ban on sealing.



*Figure 36: This chart shows the number of convictions listed in Section 9122.3(a)(2) across the four counties triggering the “lifetime conviction” ineligibility for sealing.*

The latter graph shows that Section 9122.3(a)(2) affects hardly anyone. Policymakers may ask whether complicating their logic models, with the associated implementation costs and delays, with such provisions is a worthwhile endeavor. There may be political appetite to reassess the rules regarding the number of felony convictions or misdemeanor convictions that prohibit sealing, or the appropriateness of a lifetime ban. A compromise might be increasing the number of convictions punishable by prison sentences needed to render a case ineligible or increasing the minimum sentence length needed to render a case ineligible, or both. Recall, the Pennsylvania Clean Slate Act prohibits sealing if the individual is convicted of two or more offenses punishable by imprisonment of more than two years, or four or more

offenses punishable by imprisonment of one or more years. Perhaps lawmakers may consider an increase in the mandatory minimum such that it requires conviction of two or more offenses punishable by imprisonment of more than four years to be rendered ineligible. Additionally, lawmakers might consider increasing the number of convictions punishable by prison sentences such that it requires four or more offenses punishable by imprisonment of more than two years. The former idea increases the length of incarceration required; the latter increases the number of convictions required. Moreover, lawmakers should consider doing both, which would likely be the most impactful.

We close by returning to the theme introduced earlier: is this level of nuance worthwhile? Programming this portion of our analysis proved challenging for us. We can only imagine that it was the same for the AOPC. It is not difficult to imagine that both implementations, the AOPC's and ours, included some errors, despite everyone's best efforts. Auditing is difficult, particularly because one cannot implement the lifetime conviction portion of the Clean Slate Act with knowledge of only the crime for which an individual was convicted. Rather, one must also know the minimum sentence for each crime, and an individual's full criminal history. In practice, we question whether implementing agencies have the resources to commit high-level staff with the wherewithal to audit sealing.

## 2. *Nuance in the Petition Based Record Clearing Statute*

The previous subsection discussed how a high level of nuance in Pennsylvania's Clean Slate Act, which provided a sealing remedy, challenges the goals of the statute in terms of both theory and implementation. In this subsection, we suggest that the same is true of Pennsylvania's expungement statute, which provides a petition-based record clearing remedy.<sup>72</sup>

Generally, charges that result in non-conviction are eligible for petition-based record clearing. However, a conviction for a summary charge is also eligible after a five-year period. A conviction for anything other than a summary offense is only eligible if the individual completes a diversion program or is 70 years or older and is arrest-free for ten years.<sup>73</sup> In addition, an individual can obtain petition-based record clearing of a conviction only if all LIFOs are paid.

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72. 18 PA. STAT. AND CONS. STAT. § 9122 (West 2024).

73. Compassionate eligibility suggests a recognition that what is at stake for the defendant may be identity rather than solely economic or housing activity. It is less likely that at age 70 one is attempting to find a new job or home, but it is not unreasonable to think that an elderly person may want no longer to think of themselves as a criminal or may want to be released from the reputational bonds of a stale criminal record.

The chart below shows cases eligible for petition-based record clearing in their entirety and cases with at least one charge eligible for petition-based record clearing. As was true in previous sections, we could not analyze charges with non-sensical dispositions such as “held for court,” which almost certainly resulted in an undercount of eligible charges and cases.

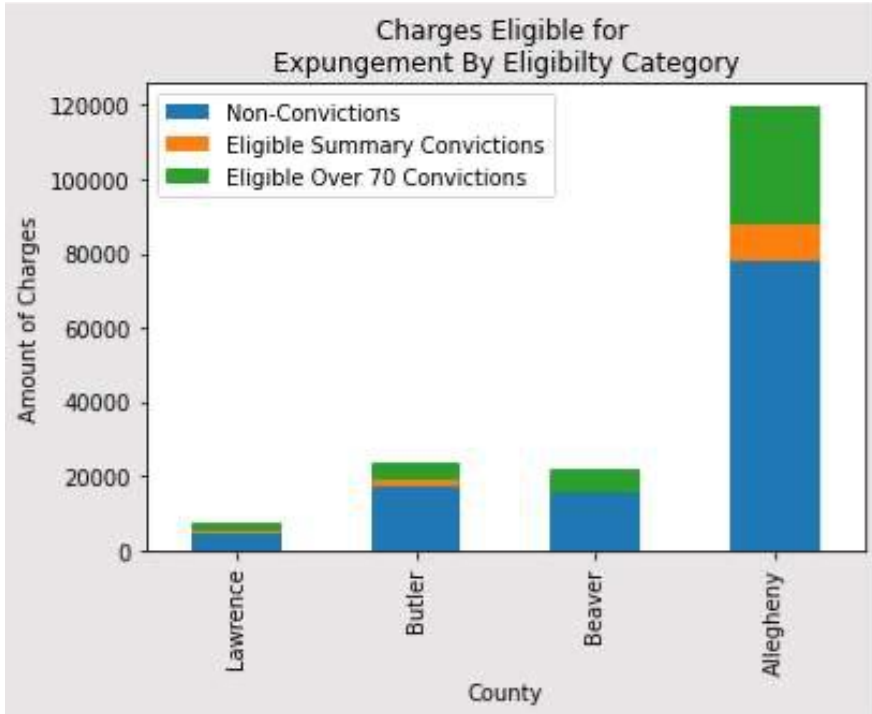


Figure 37: The current number of charges eligible for expungement by eligibility category.

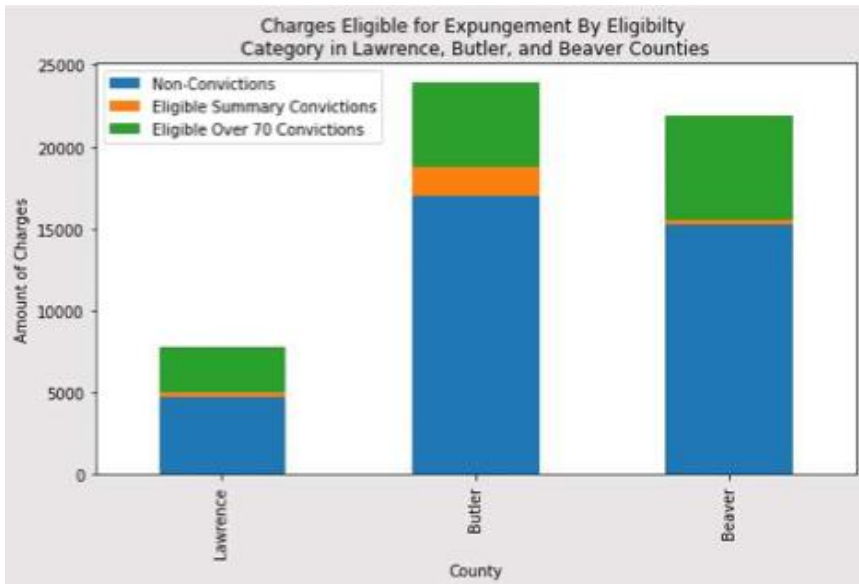


Figure 38: The current number of charges eligible for expungement by eligibility category in Lawrence, Butler, and Beaver Counties.

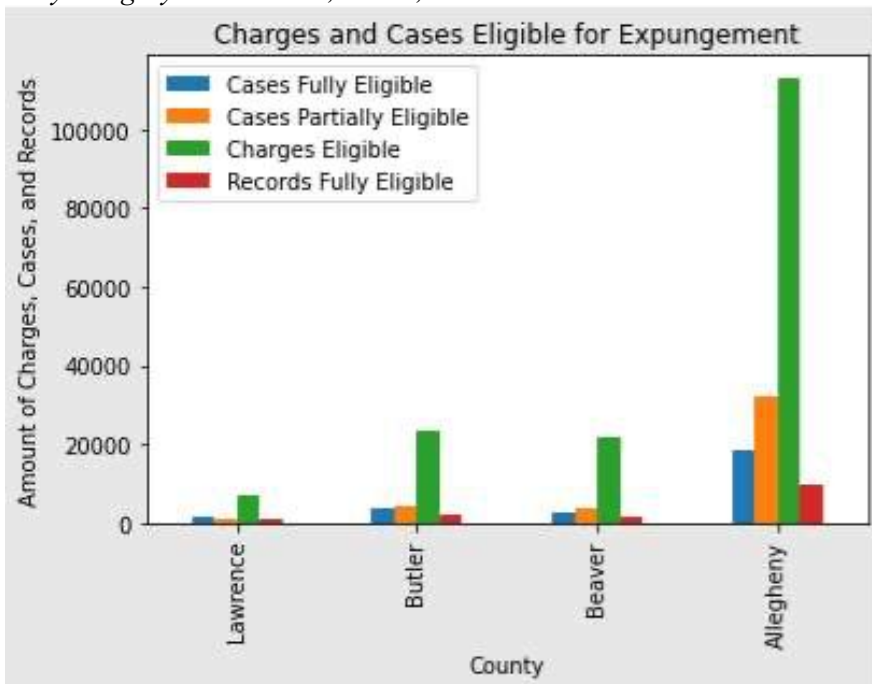
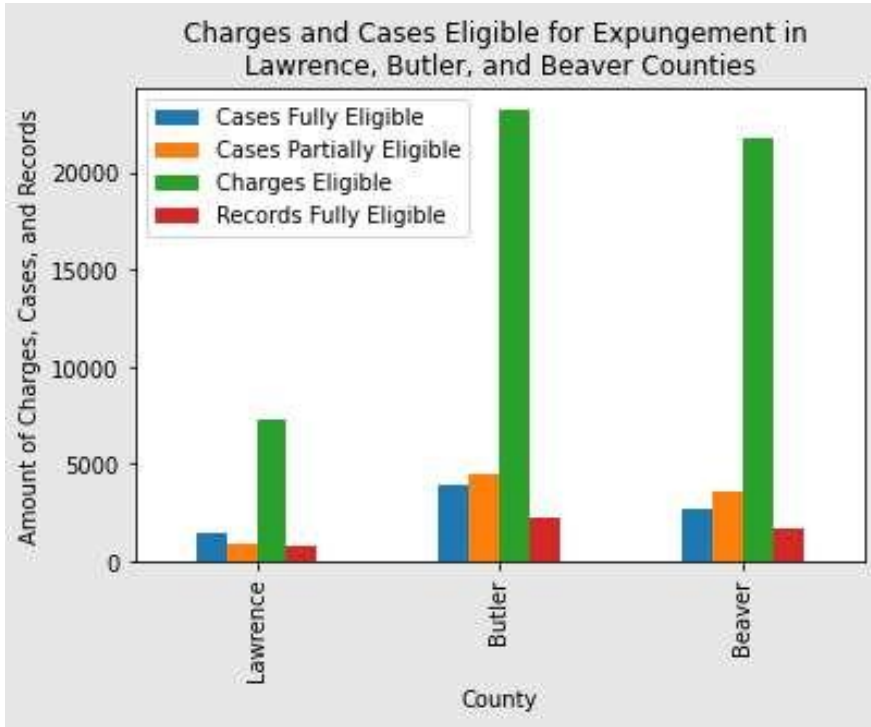


Figure 39: The chart shows the number of charges and cases eligible for expungement as well as people whose whole records are currently eligible.



*Figure 40: The chart shows the number of charges and cases eligible for expungement as well as people whose whole record is currently eligible in Lawrence, Butler, and Beaver Counties.*

In short, we find further evidence of a petition-based record clearing gap, a large number of individuals eligible despite Pennsylvania’s quite narrow petition-based record clearing statute, and an analysis challenged both by nonsense in the data and nuance in the law.

#### IV. KANSAS

Kansas has no sealing statute. Like many states, Kansas provides only for petition-based record clearing, which it labeled “expungement.” We begin with a brief overview of the Kansas expungement law before discussing our findings.

##### A. EXPUNGEMENT IN KANSAS

In terms of eligibility, Kansas expungement laws are expansive. With the exception of a few serious felony convictions, most criminal justice events (arrests, charges, and convictions) are eligible for expungement after various waiting periods. We summarize the eligibility for convictions.



The Kansas expungement statute determines expungement eligibility of a conviction via a five-step process.<sup>74</sup> First, the charge must be an eligible charge.<sup>75</sup> As noted above, the Kansas statute is distinctive in the breadth of expungement-eligible offenses.<sup>76</sup> Only a few charges, serious felonies such as murder, were ineligible. Second, there is a waiting period from the completion of any sentence.<sup>77</sup> Most waiting periods are three or five years.<sup>78</sup> Third, the defendant cannot have a pending felony charge, nor a felony conviction, within the last two years.<sup>79</sup> Fourth, the defendant must not currently be on an offender registry.<sup>80</sup> Fifth, the judge must determine expungement is appropriate given the circumstances.<sup>81</sup> Our analysis focuses only on steps one through four. Because judicial discretion is involved in the fifth step, we are unable to categorize via computer code the criminal events a judge may deem appropriate for expungement.<sup>82</sup> Kansas also allows for the expungement of non-convictions under Section 22-2410 of its Rules of Criminal Procedure in several circumstances: mistaken identity, no probable cause for the arrest, a not-guilty finding, the interests of justice, or an event that charges are not filed or were dismissed.<sup>83</sup>

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74. There are other provisions technical in nature. *See* KAN. STAT. ANN. § 21-6614(g)(2) (West 2023) (governing the payment of court fees).

75. *See id.* § 21-6614(a)(1).

76. *See id.* § 21-6614.

77. *See id.*

78. Few crimes are subject to the ten-year waiting period.

79. *See* KAN. STAT. ANN. § 21-6614(h)(1) (West 2023).

80. *See id.* § 21-6614(f).

81. We combine KAN. STAT. ANN. § 21-6614(h)(2), (3), (4) as “appropriate.” The provisions are as follows: “(2) the circumstances and behavior of the petitioner warrant the expungement; (3) the expungement is consistent with the public welfare; and (4) with respect to petitions seeking expungement of a felony conviction, possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public.” *Id.*

82. Anecdotally, “consistent with public welfare” manifests as no objection from the District Attorney’s office in the case of our on-going evaluation. For example, in one instance we observed, a District Attorney (“DA”) objected to an expungement because of alleged fines amounting to \$100, despite no record of these fines. Another DA objected to an expungement for the same study participant because of an existing case requiring a lifetime registry. In another example, a DA objected, causing the expungement request to go to a hearing, at which time the parent-in-law of the study participant testified to the study participant’s continued sobriety and parenting skills, causing the objection to be withdrawn. *See* Memorandum from Renee Danser, Assoc. Dir. Rsch. & Strategic P’ships, Access to Just. Lab, Harv. L. Sch. (Sept. 22, 2021) (on file with author) (memorializing conversation of the final stage reentry project research team meeting on September 22, 2021).

83. KAN. STAT. ANN. § 22-2410 (West 2019). Additionally, KAN. STAT. ANN. § 38-2312 (West 2019) provides for expungement of juvenile records.

## B. DATA ACQUISITION AND DESCRIPTION

We collected criminal case records with filing dates beginning in 1990 onwards from the Kansas statewide court look-up portal<sup>84</sup> and from the Johnson County case search website.<sup>85</sup> During our scraping process, Kansas was in the process of moving all counties onto the statewide court look-up portal, a task projected to be completed in 2022.<sup>86</sup> Many of Kansas's most populous counties, including Johnson, were not incorporated into the statewide database at the time of our data collection.<sup>87</sup> Other counties allow case retrieval through a separate site for a fee per record.<sup>88</sup> This included Sedgwick County, the second most populous county in the state.<sup>89</sup> Needless to say, costs render prohibitive our efforts to obtain Sedgwick County data. The result was a database with more cases from Johnson County than any other county in Kansas. Specifically, our effort produced records on 254,622 cases in Kansas with Johnson County contributing 94,074.<sup>90</sup> The data available on the two websites differed. The Johnson County website included sentencing information but lacked offense dates; the reverse was true for the Kansas state court website. As explained below, both data fields have some relevance in determining eligibility for expungement.<sup>91</sup> Due to the difference in available data, we analyze the information from each source separately. Figure 41 shows the number of cases collected from Kansas counties.

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84. *Kansas District Court Public Access Portal*, KAN. CTS., <https://prodportal.kscourts.org/prodportal> [<https://perma.cc/G4S7-UT3J>] (last visited June 30, 2024).

85. *Johnson County Kansas District Court Public Records*, JOHNSON CNTY. CTS., <https://public.jococourts.org/> [<https://perma.cc/5BXX-TAWW>] (last visited June 30, 2024).

86. *Centralized Case Management System Project*, OFF. JUD. ADMIN. (Feb. 27, 2023), <https://www.kscourts.org/KSCourts/media/KsCourts/eCourt/eCourt-Statewide-Rollout-Plan.pdf> [<https://perma.cc/K7AP-9HRU>].

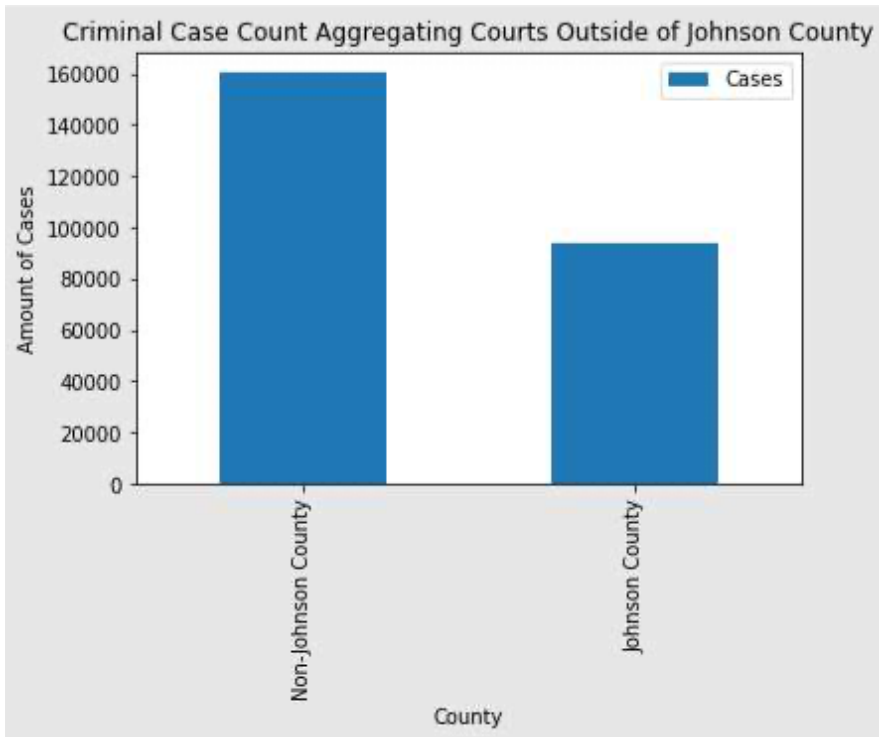
87. As of September 7, 2021, the counties that have court records available for search online are Allen, Anderson, Bourbon, Chautauqua, Cherokee, Clay, Coffey, Dickinson, Franklin, Geary, Linn, Marion, Miami, Morris, Osage, Riley, Wilson, and Woodson counties and the Cowley-Arkansas City, Cowley-Winfield, Crawford-Girard, Crawford-Pittsburg, Labette-Oswego, Labette-Parsons, Montgomery-Coffeyville, Montgomery-Independence, Neosho-Chanute, and Neosho-Erie courts. See *Kansas District Court Public Access Portal*, *supra* note 76.

88. Sedgwick County allows case searches for a fee. See *Search District Court Records*, KAN. JUD. BRANCH, <https://kscourts.gov/eCourt/District-Court-Records> (last visited Aug. 31, 2024).

89. Kristen Carney, *Kansas Counties by Population*, KAN. DEMOGRAPHICS (June 20, 2024), [https://www.kansas-demographics.com/counties\\_by\\_population](https://www.kansas-demographics.com/counties_by_population) [<https://perma.cc/ZR9M-HEHA>].

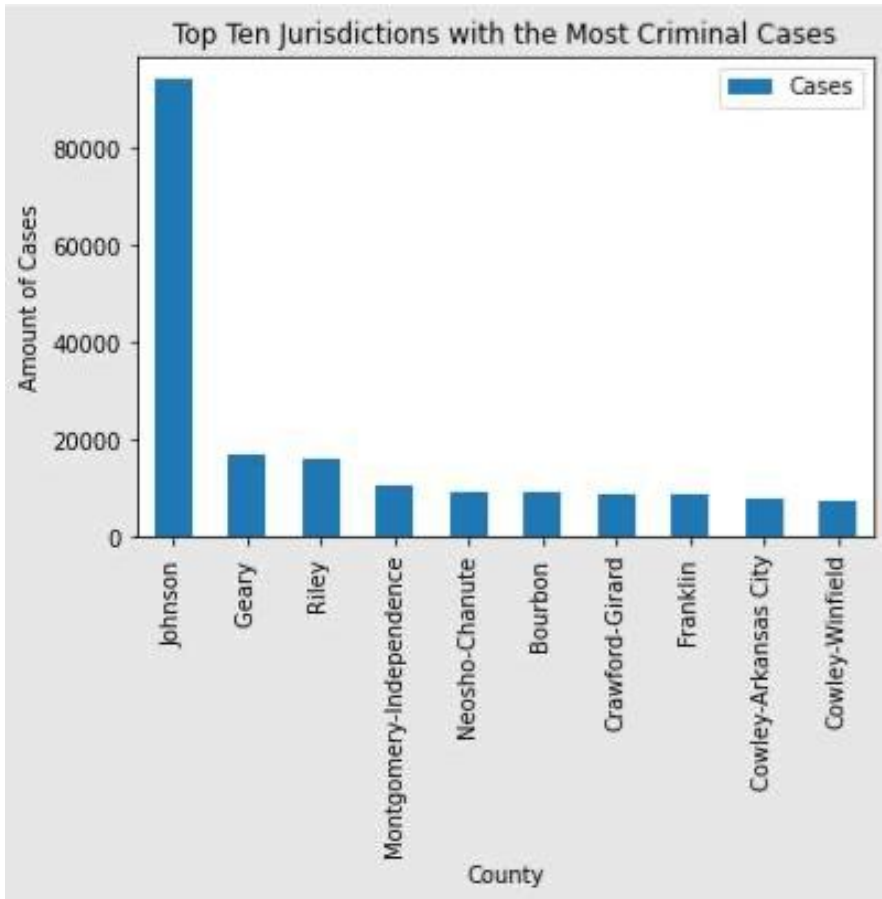
90. There are a small number of cases in the statewide site we are unable to parse to our SQL database.

91. An offense date is needed for determining whether a drug felony level four conviction falls into the three-year waiting period or the five-year waiting period. Sentencing information is necessary to determine the proper amount of time after a case is disposed to become eligible.



*Figure 41: The figure displays the number of unique district court criminal cases from two websites. “Non-Johnson County” is a collection of counties and courts available on the Kansas District Court Public Access Portal that include Allen, Anderson, Bourbon, Chautauqua, Cherokee, Clay, Coffey, Dickinson, Franklin, Geary, Linn, Marion, Miami, Morris, Osage, Riley, Wilson, and Woodson counties and the Cowley-Arkansas City, Cowley-Winfield, Crawford-Girard, Crawford-Pittsburg, Labette-Oswego, Labette-Parsons, Montgomery-Coffeyville, Montgomery-Independence, Neosho-Chanute, and Neosho-Erie courts.*

The next figure demonstrates that Johnson County has by far a larger number of records than any other county in Kansas. Other relatively populous counties in Kansas were not on the statewide case look-up portal.



*Figure 42: Johnson County represented the county with the largest number of criminal cases in the database. While Johnson County was the most populous county in the state, some of the other populous counties, such as Sedgwick County, had not yet been moved onto the Kansas-statewide website and had no free case look up websites of their own. This graph shows the top ten counties in terms of case count in our study, but there were 29 distinct counties or court systems in the database.*

The next two figures show a consistent level of cases by the year of case filing. There are no year-specific gaps that might have indicated a bug in the scraper or missing cases on the courts' websites. Because our data collection occurred in 2020, we have a smaller number of cases for that year. The low number of cases in the early 1990s is likely the result of challenges in digitizing older cases.

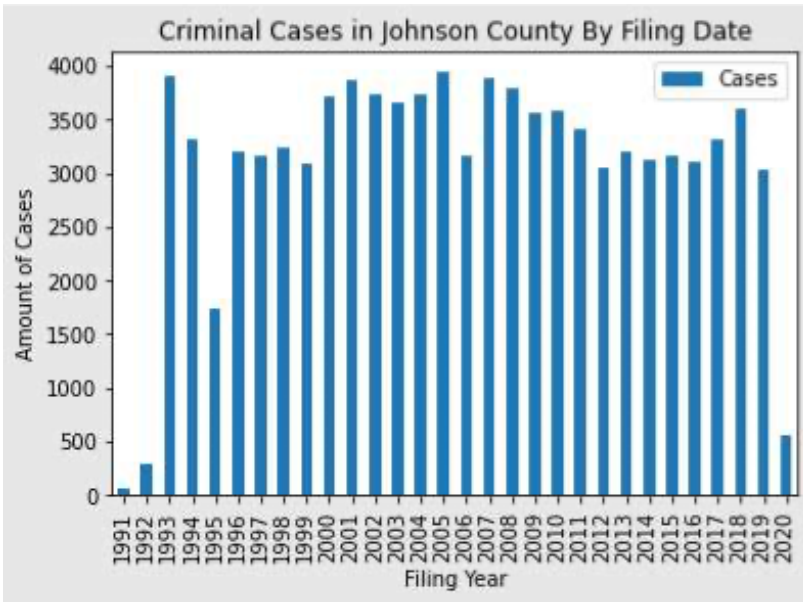


Figure 43: This graph shows the consistent number of cases each year in Johnson County over the 30-year timeframe of data.

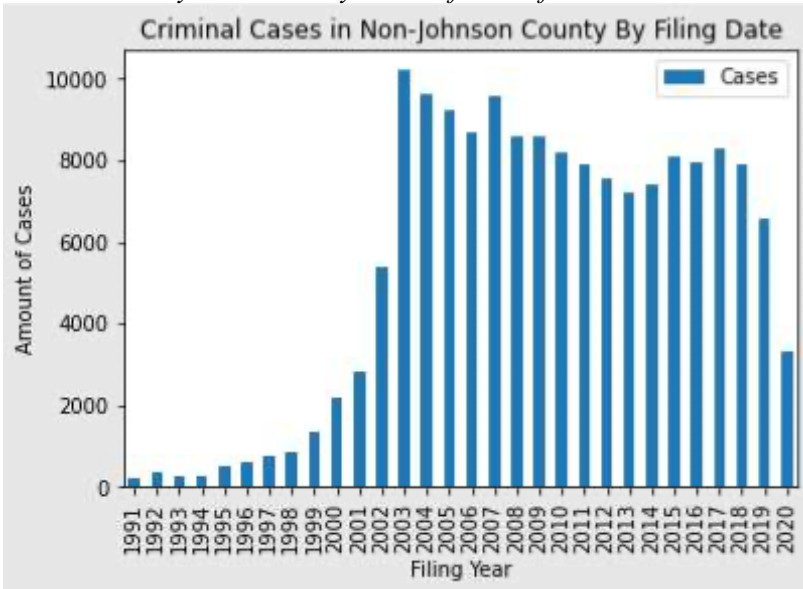
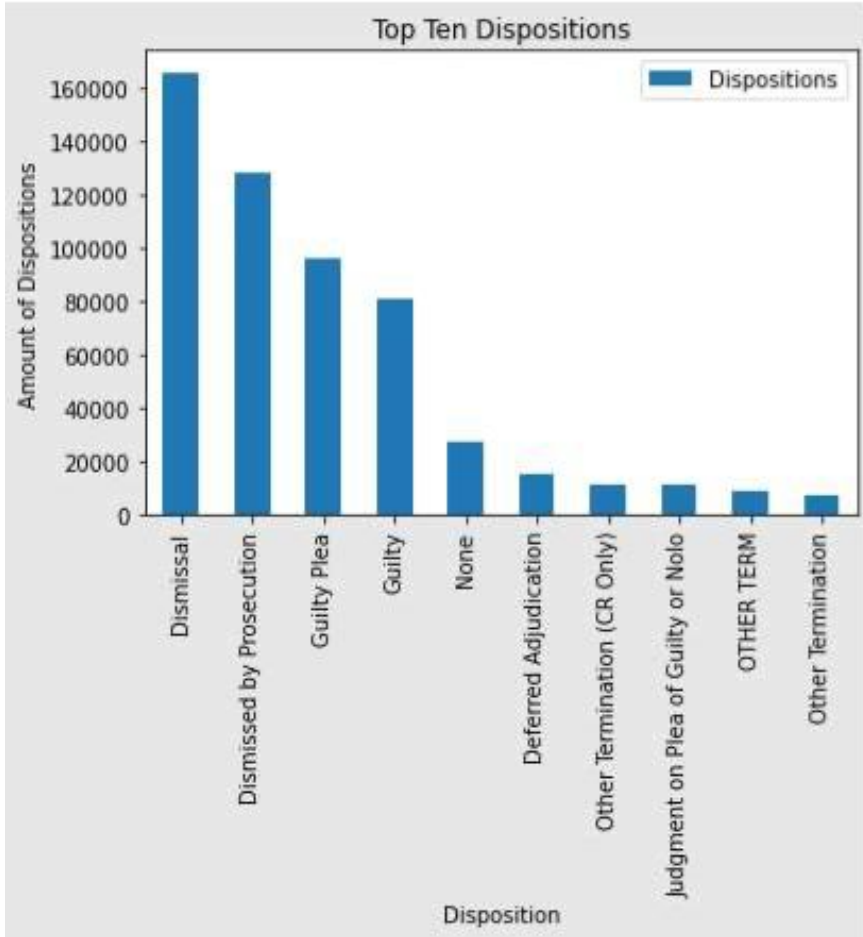


Figure 44: This chart represents the number of criminal cases filed each year in the non-Johnson County sites. There are fewer cases in the 1990s, likely a result of the Court not importing older cases into the new statewide portal. The fewer cases in 2020 was due to the collection of cases in early 2020.

The next figure shows the frequency of different dispositions in our dataset. While this Part focuses on eligible convictions, Kansas does allow individuals to petition to expunge most non-convictions, including dismissals, which comprised 265,103 dispositions.



*Figure 45: The two highest disposition types are different forms of dismissal. The focus of this Article is convictions, which are the third and fourth highest disposition counts.*

### C. ANALYSIS

Recall Kansas law allows for the expungement of most convictions. Differences in the information available compel us in some instances to separate Johnson County from the others. In what follows, if a graph does not state that it depicts only Johnson County or only the rest of the state, it depicts all

counties for which we obtained data, aggregated together. Finally, we deem a case eligible for expungement if it meets all objective statutory requirements.<sup>92</sup> However, all convictions were subject to judicial examination to allow a judge to assess whether the circumstances and behavior of the petitioner warranted the expungement; whether the expungement was consistent with the public welfare; and whether possession of a firearm was not likely to pose a threat to public safety.<sup>93</sup> We did not attempt to apply these subjective criteria in our analysis.

### *1. Eligibility*

In this section, we explore the number of cases and individuals eligible for an expungement remedy in Kansas (if there were full or complete “take up” of the expungement remedy). Given the staggering magnitude of the expungement gap in most states, there is no chance of full take-up so long as Kansas provides only petition-based remedies for criminal justice information. Thus, this section approximates what may happen if Kansas (i) repeals the subjective criteria in its expungement statute, and (ii) transforms the petition-based remedy into an automatic one.

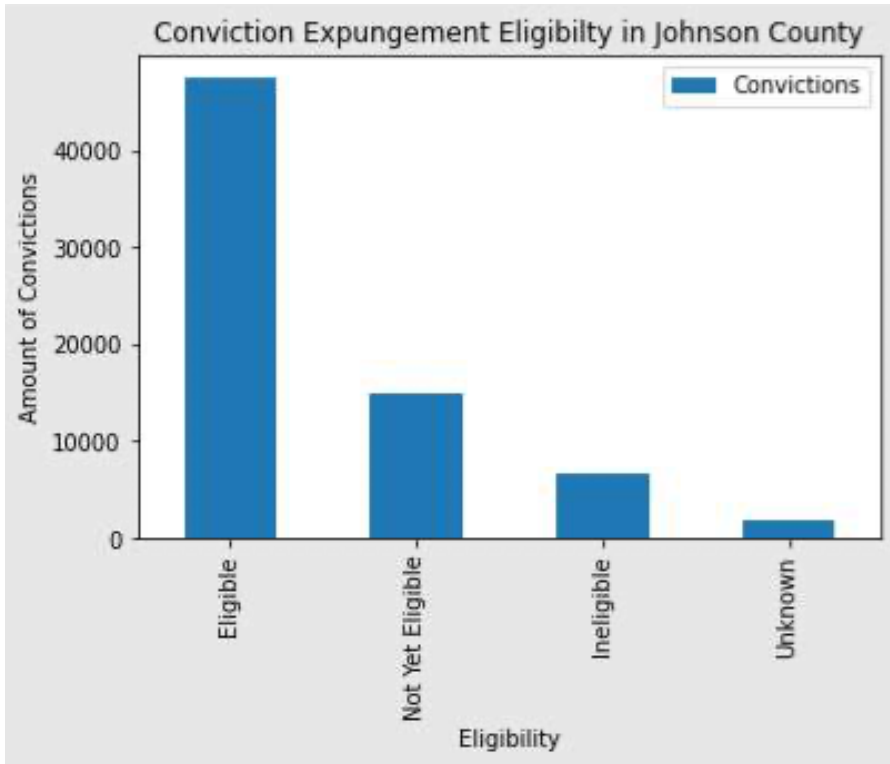
Our analysis shows Johnson County has over 50,000 convictions eligible for expungement; the corresponding number in the non-Johnson counties is just over 90,000.<sup>94</sup> The next figure shows the number of convictions currently eligible and those ineligible. The figure also shows a separate category for cases in Johnson County that we cannot determine eligibility. As this figure confirms, most convictions in Johnson County are expungement eligible.

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92. As with most datasets derived from public court data, there were nuances, instances of missing data, and typos. Additionally, there were occasions where the data needed to determine was unclear or unavailable. The algorithm used proxy information when possible and when the data were critically unavailable or were too ambiguous, the algorithm marked the case as unknown. For a full understanding of how the algorithm works please *see* the algorithm code. *Kansas-Expungement-Analysis*, ACCESS TO JUST. LAB, <https://github.com/access-to-justice-lab/Kansas-Expungement-Analysis> [<https://perma.cc/FDN4-9MY>] (last visited June 30, 2024).

93. KAN. STAT. ANN. § 22-6614(h)(1)-(4) (West 2023).

94. The numbers represent convictions, not cases. A case may have several convictions, all of which could be eligible.

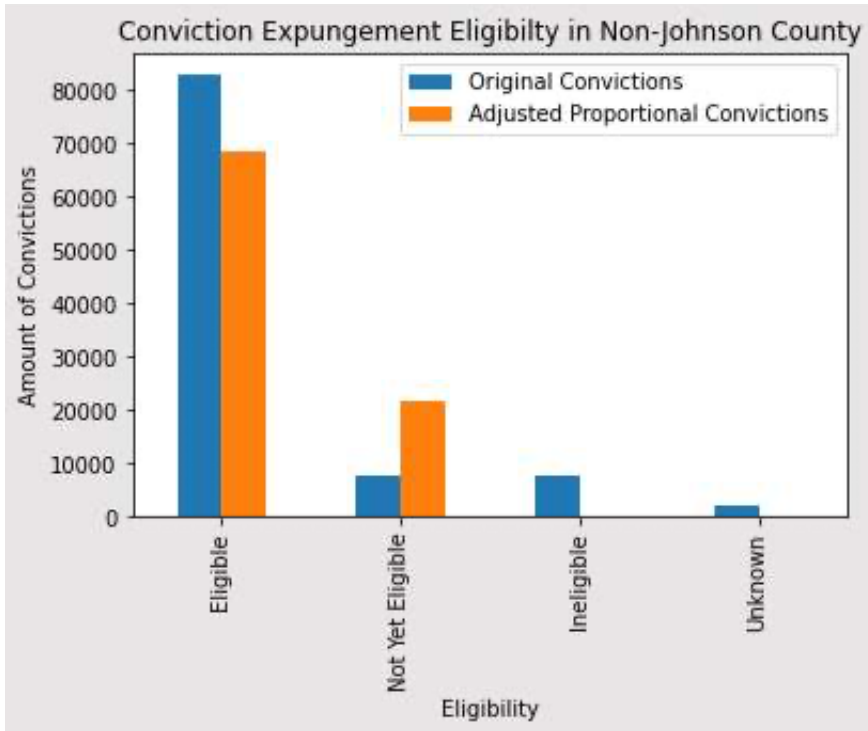


*Figure 46: This figure shows the number of convictions in Johnson County determined to be eligible, not yet eligible, or ineligible for expungement. Included is an unknown column, used if the algorithm could not determine eligibility. This graph represents the number of convictions, not the number of cases. A single case may have multiple charges and thus multiple convictions.*

The next figure depicts expungement eligibility in the non-Johnson County sites. As noted above, under Kansas law, the waiting period begins to run after a sentence is complete. However, because sentencing data is not available in the non-Johnson County convictions, we calculate the waiting period based on disposition date. This assumption is equivalent to assuming there is no sentence imposed for the conviction and thus overstates the number of eligible non-Johnson County convictions marked as “Eligible,” as many of these should be considered “Not Yet Eligible.” The figure also shows a rough estimate of the number in each category calculated by applying the proportion of eligible to not-yet eligible cases from Johnson County



to the data. The “Adjusted Proportional Convictions” figures are likely closer to the actual number of eligible and not-yet-eligible cases.<sup>95</sup>

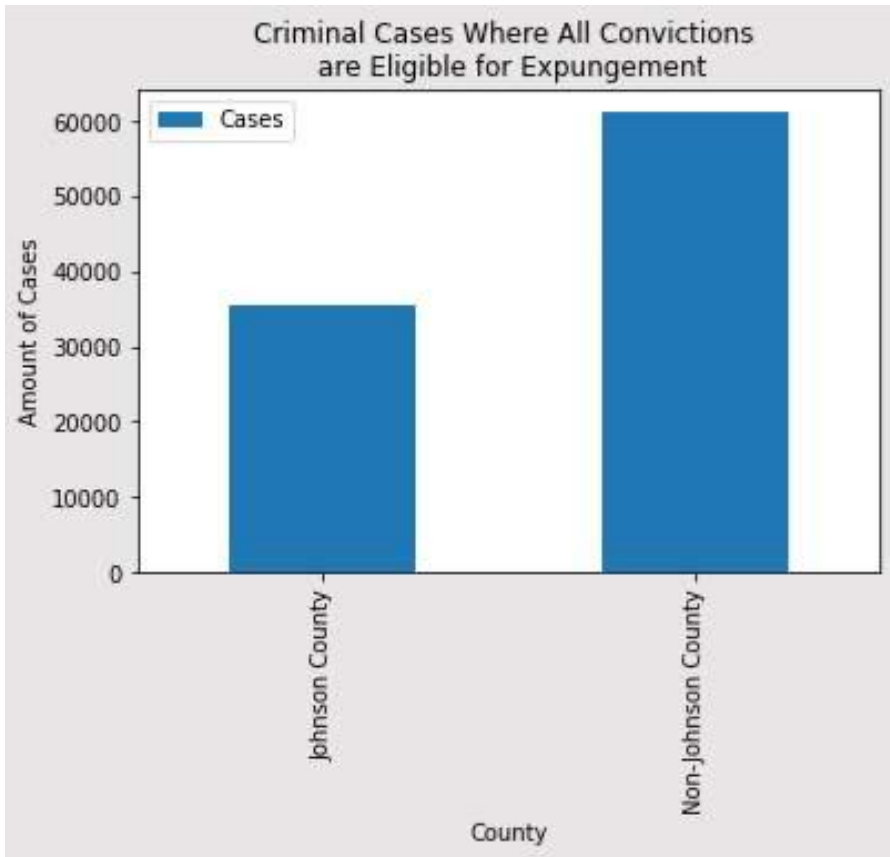


*Figure 47: This figure shows expungement eligibility in the non-Johnson County cases. The figure demonstrates the vast majority of convictions are eligible for expungement. It further shows a significant number of convictions are eligible in the future. The lack of sentencing data in non-Johnson counties is likely the reason for the proportional difference between Johnson County and non-Johnson County relative to convictions not yet eligible. Therefore, we include the eligibility numbers if one assumes the same proportion between eligible and not yet eligible as in Johnson County.*

We also examine the number of cases in which every conviction in the case was eligible for expungement, considering a case may have a single or multiple eligible convictions. Expungement of an entire case likely has a greater impact on an individual than a reduction in the number of convictions from that involvement. The next graph provides the results.

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<sup>95</sup>. This adjustment assumes sentences between Johnson County and non-Johnson County sites are of similar length.



*Figure 48: This figure shows the number of cases where every conviction in the case is eligible for expungement. The data is separated into Johnson County and Non-Johnson County because of the differences in the data available for the two groups.*

We additionally examined the number of people whose entire record was eligible for expungement.<sup>96</sup> The next figure shows that almost 70,000 unique individuals are eligible for their complete record to be cleared through expungement.<sup>97</sup>

96. A unique person was based on the name and date of birth. In the non-Johnson County sites, only the year of birth was available. This potentially means our figures may be under-inclusive as people with common names and the same year of birth would be considered the same person. It could also be over-inclusive if a court misspelled a defendant's name or included a middle initial in one case but not another.

97. As noted above, our analysis did not examine charges that received a non-conviction disposition. A person therefore may still have charges on their record even after they expunged all the convictions. As noted above, however, almost all non-convictions were eligible for expungement

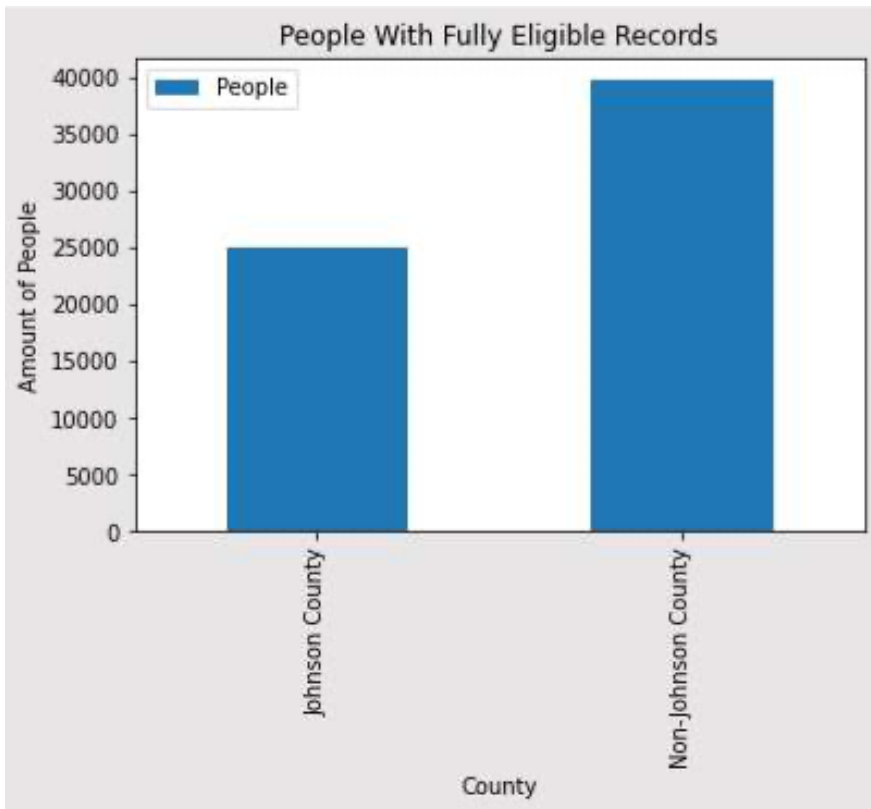


Figure 49: This figure shows the unique number of people whose whole conviction record consists of convictions eligible for expungement.

## 2. Charge Categories and Waiting Periods

In this section, we discuss the effect of reducing or eliminating expungement waiting periods. Unsurprisingly, the Kansas expungement statute groups charges into categories.<sup>98</sup> Examples include all traffic offenses, or all drug offenses between levels six and ten. The statute uses these categories in assigning waiting periods. The next figure provides a breakdown of the charge categories corresponding to the most convictions. The goal is to allow legislators and activists to identify the categories to target to have the greatest impact. Additionally, amending an already identified charge category might be legislatively expedient compared to finding consensus on a new category

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under Kansas law, and thus the existence of non-convictions was unlikely to render individuals' criminal histories inimical to total record clearing.

98. See generally KAN. STAT. ANN. § 21-6614 (West 2023).

of charges. Our analysis shows the categories of misdemeanor offenses and drug offenses between levels six and ten represent the vast majority of convictions. Outside of these two categories, any legislation would produce diminished returns.

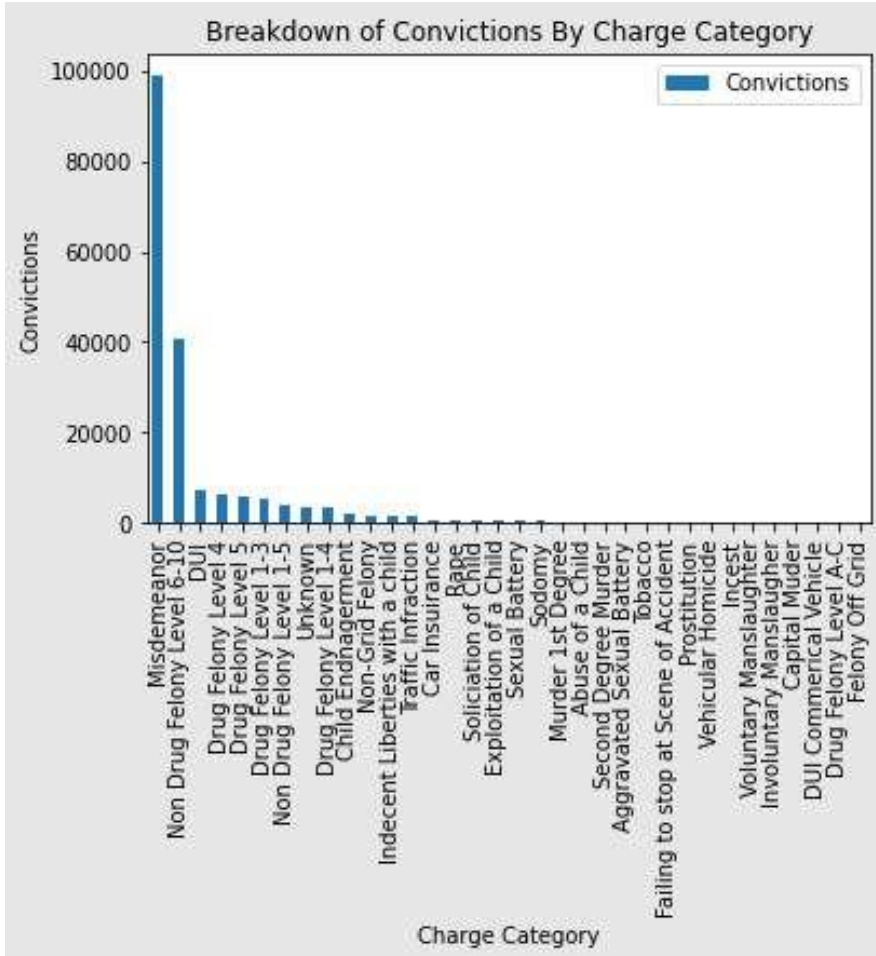
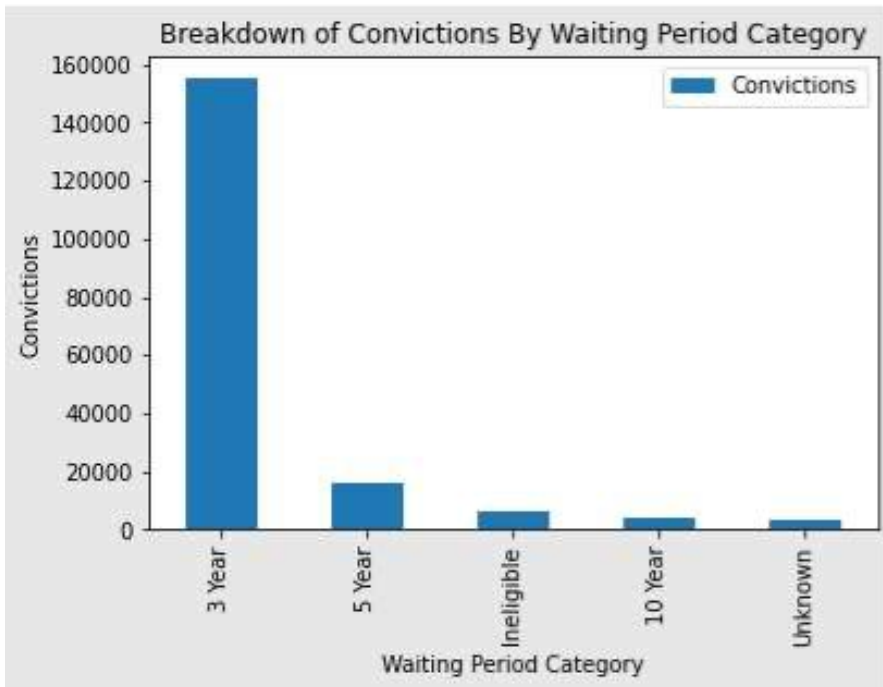


Figure 50: The vast majority of convictions fall in the expungement statute's misdemeanor category. Any change to the law that affects misdemeanors and non-drug felonies levels six through ten would have the largest impact.

### 3. Waiting Period Categories

In this section, we demonstrate the impact of liberalization of expungement eligibility by waiting period category. The Kansas expungement statute groups charge categories together into waiting period categories that include

three, five, and ten years.<sup>99</sup> Waiting periods begin to run from the completion of any sentence. Most misdemeanors, traffic infractions, and low-level felonies are grouped together and require a three-year waiting period. Medium to high level felonies are grouped together and require a five-year waiting period. A second or subsequent driving-under-the-influence charge requires a ten-year waiting period. A final group of the highest-grade felonies, such as murder, are ineligible for expungement. When we are unable to determine the category of a charge, we identify the charge as “Unknown.” The next figure illustrates the vast majority of convictions are eligible after a three-year waiting period. While changes to the other categories would be important, any changes made to the three-year waiting period category would have an outsized impact.



*Figure 51: This figure shows counts by waiting period category. Misdemeanors and low-level drug offenses made up the majority of convictions in the database; they carry a three-year waiting period.*

Our algorithm allows us to calculate the number of convictions eligible in the future based on the waiting periods. In Johnson County we can

<sup>99</sup>. There is also a one-year waiting period for prostitution and a seven-year waiting period for specific DUI cases. Both waiting periods constitute fewer than 400 cases, hence the omission.

calculate the waiting period from the date the sentence is complete, as the statute contemplates. In the rest of the state, we were forced to assume there was no sentence because of a lack of data, and thus calculate the waiting period from the date of disposition.<sup>100</sup> These predictions assume each defendant does not get arrested for a felony charge, as this would extend the waiting period. The next two figures provide our results.

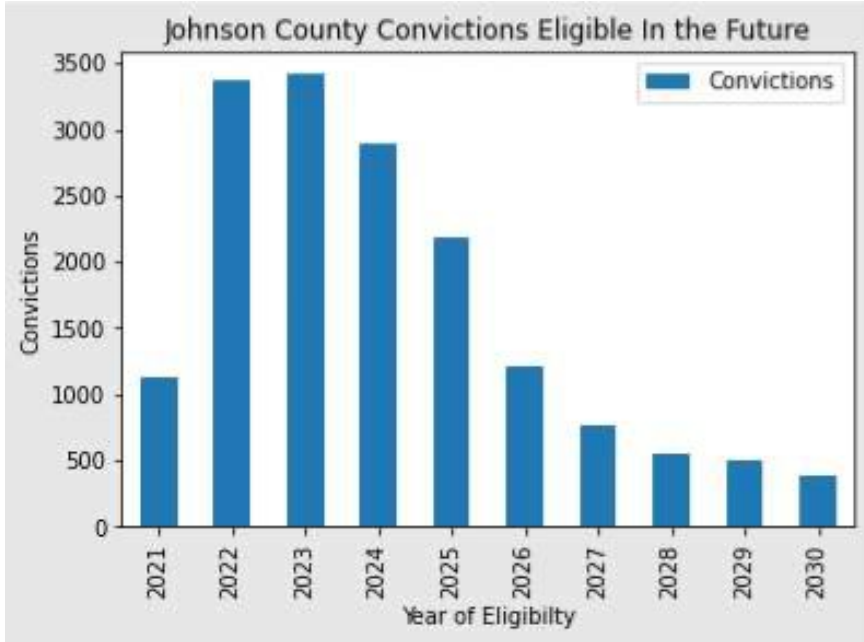
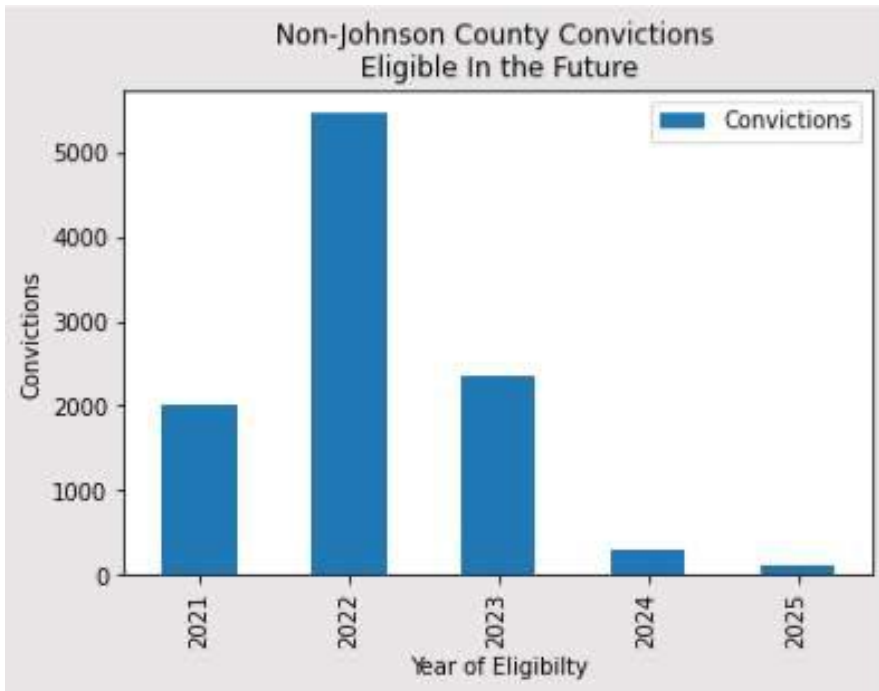


Figure 52: The number of criminal convictions that would become eligible in the future in Johnson County.

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100. See *supra* Section IV.C.3.



*Figure 53: The number of criminal convictions in the non-Johnson counties that would become eligible in the future. Because of a lack of sentencing data, the calculation assumes no sentence. If we were to apply proportions from Johnson County to these numbers, there would be approximately 16,553 additional convictions added to this chart that are currently identified as eligible.*

If we apply the same proportion of cases with sentences from Johnson County to non-Johnson counties, we estimate there would be approximately 16,553 additional convictions added to the chart above that are currently identified as currently eligible convictions in Figure 41. Policymakers may wish to consider the appropriateness of waiting periods, particularly if researchers can produce credible information about how long it takes recidivism levels to subside.

#### 4. Felony Restrictions

In this section, we discuss the effect of removing the restriction under Kansas law relating to unrelated felony arrests or convictions. We do not necessarily advocate for such a reform, which may in any event be politically challenging.

The Kansas expungement statute prevents a defendant from expunging an otherwise eligible conviction if the defendant has a felony conviction in the last two years or has a felony charge pending.<sup>101</sup> The conviction-within-the-last-two-year analysis necessitates a specific date. Convictions blocked by this provision were those of people who had a prior conviction within two years of August 25, 2021. We use name and date of birth to link persons to cases. In Johnson County, a full date of birth was available. In the non-Johnson County sites, only the year of birth was available. This may have led our algorithm to mistakenly match people with common names and common years of birth.<sup>102</sup> Additionally, in non-Johnson County sites, the data structure made it difficult to pick out first and last names, so we matched on the full name provided. If courts include a middle name in some cases but not others, we will erroneously fail to match to the non-Johnson County sites. The difficulties in the data structures suggest that implementation of a hypothetical sealing statute could be a challenge.

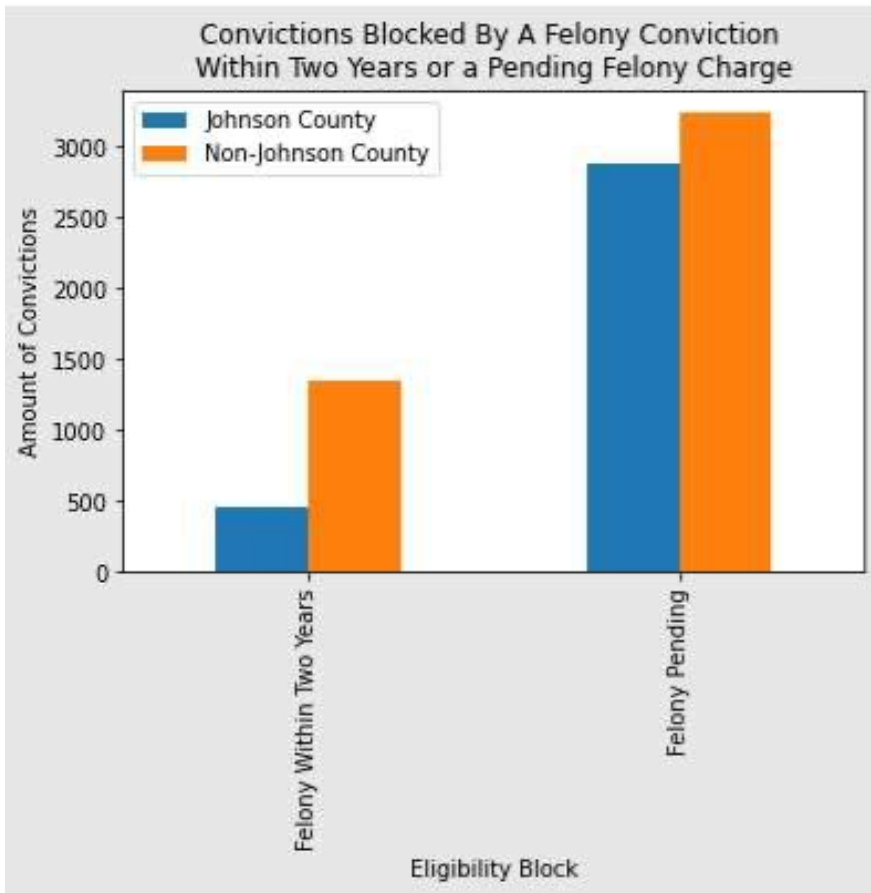
The figure below shows the number of otherwise eligible convictions blocked by an active felony charge or a felony conviction within the last two years. This number is small relative to the number blocked by the three-year waiting period discussed in the previous section, suggesting that if legislators are looking for the biggest bang for the buck, liberalization efforts might focus on the waiting period.

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101. KAN. STAT. ANN. § 21-6614(h)(1) (West 2023).

102. For instance, a John Smith born on January 1, 1970, and a John Smith born on August 5, 1970 would be considered the same person. If the first John Smith had an active felony, the algorithm would incorrectly block eligible convictions by the second John Smith.





*Figure 54: This figure shows the numbers of otherwise eligible convictions blocked from an expungement by either a felony conviction within the last two years or a pending felony charge.*

## V. CONCLUSION

In this Article, we have explored a number of themes attendant to automatic and petition-based record clearing. In particular, we have analyzed ways in which legislatures interested in implementing or expanding these remedies might proceed. Particular areas of focus on this score include removing eligibility criteria based on outstanding LIFOs and reducing the length of waiting or lookback periods. We have also demonstrated severe problems with criminal justice data, problems that do and will affect any effort to implement or expand record-clearing remedies. Our findings also reinforce results that other researchers have reported: the second-chance gap is staggering, dwarfed in magnitude only by the scale of the problems in the

data available to implement many circulating ideas for criminal justice access. If record clearing is wise policy, there is much work to be done.

For practitioners, without these legislative and data accuracy changes, the promise of automatic sealing is not yet realized. That means due diligence requires ensuring a client's eligible records are in fact removed from view and challenging the holder of the record when those records are not. Given well-known access to justice problems in achieving petition-based remedies, most individuals with records will be unable to achieve record-clearing without a fully automatic remedy or a lawyer assisting, and obtaining counsel for this kind of work is borderline impossible for low- and very-low-income people.