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1 in 8 Californians with a Criminal Record is Potentially Eligible for Full Record Clearance

Assembly Bill 1076 proposes to extend automatic record clearance in California to certain eligible arrests and convictions. If passed, the California Department of Justice (CA DOJ) would, beginning in 2021, identify persons eligible for relief and grant relief without requiring the person to file a petition.¹ The California Policy Lab (CPL) created a computer program to identify eligible arrests and convictions using CA DOJ's Automated Criminal History System (ACHS). We found that **1 in 8 Californians with a criminal record are potentially eligible to have their full record cleared.**² Further, approximately 81% of persons with a criminal record are potentially eligible for relief of at least one arrest or conviction (approximately 1.8 million persons in the study cohort).

TAKEAWAYS

- Among Californians with any criminal record, **1 in 8 are potentially eligible for full record clearance.**
- Among that same group, an estimated **81% would be eligible to have at least one prior arrest or conviction** automatically cleared from their record.
- **Racial disparities persist:** a lower share of those eligible for full record clearance are Black, compared to the share of persons with a criminal record who are Black.
- **It is possible to automate a substantial portion of the process** of identifying eligible individuals for clearance.
- When a person's record is automatically cleared, they might still be unaware. Research on effective notification is needed.

SCOPE OF RELIEF: **Partial or Full Record Clearance**

	NUMBER OF PEOPLE POTENTIALLY ELIGIBLE	% OF PEOPLE WITH A RECORD WHO ARE POTENTIALLY ELIGIBLE
Partial or full clearance, among persons with:		
Any record	1.8 million	81%
Detentions	0.7 million	69%
Arrests / no conviction	1.2 million	55%
Convictions	1.0 million	59%
Full clearance, among persons with:		
Any record	0.3 million	12%
Detentions	0.4 million	45%
Arrests / no conviction	0.2 million	11%
Convictions	0.5 million	30%

Note: Record type categories (detentions, arrests, convictions) are not mutually exclusive.

RACIAL DISPARITIES PERSIST FOLLOWING RECORDED CLEARANCE

The racial/ethnic distribution of potential eligibility for any record clearance is similar to that of the total cohort of persons with criminal records in California. However, just 8% of persons potentially eligible for *full* clearance are Black, though they comprise 15% of the total cohort.

Racial/Ethnic Composition of Persons Eligible for Partial or Full Record Clearance

	PERSONS WITH CRIMINAL RECORDS IN CALIFORNIA	POTENTIALLY ELIGIBLE FOR ANY RELIEF	POTENTIALLY ELIGIBLE FOR FULL RELIEF
White	39%	40%	43%
Black	15%	16%	8%
Latinx	41%	39%	37%
Other	6%	6%	12%

AUTOMATING THE PROCESS

CPL created a computer program that identified 6 million cases³ potentially eligible for relief in a statewide criminal justice database. This program could potentially be used to automatically identify cases going forward. These estimates are based on a conservative interpretation of the AB 1076 criteria and ACHS data – changes to these interpretations will affect the results.

Limitations of CPL's Analysis⁴

- **Incomplete estimates of active records for local, state, or federal supervision.**
DOJ can precisely determine supervision using the Supervised Release File. CPL is likely over-estimating cases eligible for conviction relief without this information.
- **Exclusionary charges are limited to prior serious, violent, and/or sex offender registerable convictions in California only.**
DOJ has access to nationwide criminal records through the FBI database. CPL is likely over-estimating cases eligible for conviction relief.
- **Eligible arrests or convictions that occurred prior to 2000.**
Our analysis excludes anyone with arrests or convictions that only occurred prior to 2000 or after May 2018, likely understating eligible persons. CA DOJ has data for all arrests.

Limitations of Automation Generally⁵

- **Agencies do not always report case dispositions to CA DOJ.**
The program deemed cases with missing dispositions ineligible. This aligns with the bill text that "...the department shall grant relief, including dismissal of a conviction...if the relevant information is present in the department's records".
- **The data contain sentence lengths, not whether a person is currently serving — a condition which precludes eligibility for relief.**
The program assumed full sentence is served, though it was not always clear how revocations, sentence modifications, and suspended sentences affected sentence length.
- **Inconsistencies in agency reporting creates challenges for automated identification rules data.**

Legislative history note: This Data Point was originally published on August 19th, 2019. At the time of writing, the language in Assembly Bill 1076 would have retroactively granted relief for eligible arrests and convictions occurring on or after January 1, 1973. However, AB 1076 was subsequently amended (before it became law) to only grant relief for new arrests and convictions occurring *on or after* January 1, 2021. Because of this change, CPL posted an updated version of this Data Point with an editor's note on the first page, noting: "This change in the legislation means that the existing arrests and convictions reported in this brief will not receive automatic relief from this law." However, AB 1308, which was signed by Governor Newsom on June 28, 2021, extended eligibility to all arrests or convictions occurring on or after January 1, 1973.

The California Policy Lab builds better lives through data-driven policy. We are a project of the University of California, with sites at the Berkeley and Los Angeles campuses.

This research publication reflects the views of the author and not necessarily the views of our funders, our staff, our advisory board, the Regents of the University of California, or the San Francisco Public Defender's Office.

Endnotes

- 1 The bill provides the prosecuting attorney or probation department 90-days to petition to prohibit DOJ from granting automatic clearance (Section 8: 1203.425 (h)).
- 2 Estimates are generated from an extract of the ACHS that includes all persons arrested in CA from 2000-2016, their criminal histories, and subsequent justice system contact through May 2018. Active record in Supervised Release File precludes eligibility – these data were unavailable, so this condition was excluded.
- 3 CPL estimates that the 1.8 million persons potentially eligible for relief collectively have 6 million eligible cases.
- 4 CPL believes DOJ has access to the necessary data to precisely determine eligibility.
- 5 These are universal limitations that will require DOJ to develop internal decision-rules to interpret.