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Document Title: Impact of Criminal Record Sealing on State and National Estimates of Offenders and Their Offending Careers

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Abstract:

This report examines the extent to which statistical estimates of offender populations, criminal careers, and recidivism rates are impacted by the sealing of criminal records. The paper focuses on New York state, which has some of the nation's most extensive record-sealing policies. The report highlights the need to understand state-specific criminal history recording and reporting practices when calculating national estimates of offending patterns and performing cross-jurisdictional comparisons. Data are from BJS's Adult Criminal Trajectories of Juvenile Offenders Project, which tracked the criminal history patterns of persons arrested at age 16 or 17 in New York in 2001 for a 10-year period.

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Introduction

Official criminal history records (rap sheets) are used in criminal justice and criminological research, such as to determine estimates of offender populations, offending careers, and recidivism rates. Estimates are used for projecting future prison populations, evaluating the effectiveness of rehabilitation and treatment programs, and determining the allocation of system resources. The accuracy of these estimates is intrinsically tied to the completeness and reliability of official criminal history data.

Estimates and their policy implications are limited by state differences in criminal history data collection and reporting practices. Researchers have long recognized that these differences complicate efforts to generate national estimates of recidivism and arrest rates and to compare these estimates across states. However, little attention has been given to how these estimates may be impacted by state-specific laws and policies controlling criminal history record sealing and expungement. Many states have policies that allow for criminal records to be sealed from public view or expunged under certain circumstances. To varying degrees, these policies make certain arrests and convictions invisible to researchers and law enforcement agencies.

This research paper describes sealing processes in the state of New York and analyzes how criminal record sealing may affect statistical estimates of offender populations and patterns of offending and recidivism. New York, the fourth most populous state in the United States, was selected for this analysis because it maintains one of the most extensive criminal history sealing policies in the nation. Thus, New York may demonstrate the maximum extent to which sealing policies may influence research and statistics on recidivism and criminal careers.

1. Criminal history record sealing in the United States

Government and nongovernment entities have a vested interest in ensuring the quality, completeness, and timeliness of criminal history record information. These institutions also strive to understand how the content of criminal history records may vary across states due to recording and maintenance procedures at all levels of government. States vary in the quality and completeness of their criminal history records due to differences such as—

- laws requiring the submission of arrests and dispositions to a repository
- the lack of standardization in the content of rap sheets
- the technological infrastructure for the electronic submission of arrest and disposition records from local jurisdictions to state criminal history repositories.[1]

These issues may undermine the accuracy of records that inform critical public safety functions, such as firearm checks and background investigations for national security purposes.

[1]Bureau of Justice Statistics. (2015). Survey of State Criminal History Information Systems, 2014. *Office of Justice Programs, U.S. Dept. of Justice*. Retrieved from https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf

Sealing and expungement policies also produce variations in the content of criminal history records across states. Sealing refers to restricting access to arrest events such that only arrests that meet a specific set of criteria are visible in official criminal history record searches. In certain circumstances, sealing an arrest record may involve purging of arrest fingerprints. Expungement, which is most often initiated by court order, refers to the complete deletion of an arrest record, fingerprints, and all other associated information.

According to a survey by SEARCH (The National Consortium for Justice Information and Statistics), 33 states maintained some mechanism by which an individual could have had a criminal record sealed or expunged under specific circumstances in 2009.[2] States varied considerably in the types of criminal history records that may be sealed or expunged and the process for doing so. While almost every state allowed juvenile records to be sealed or expunged, 16 states allowed for the seal of a criminal record for adult offenders in some instances. Twenty-seven states allowed for the full expungement of criminal records, and 18 states reported policies that allow for expunging (compared to sealing) arrests that do not lead to conviction. New York was unique in that the state automatically seals most arrests that do not lead to a criminal conviction. No application or formal court decision is required. Other states reported expunging arrests that do not lead to conviction after the accused submits an application to have the arrest expunged. The number of arrest events that were sealed also varied considerably across states. The number of arrest records sealed in 2009 ranged from 4 or 5 arrests in New Mexico to approximately 16,000 in Ohio. The survey found that in 2009 New York sealed approximately 273,268 arrests.

Sealed and expunged arrests and conviction records are not visible in national criminal history searches that rely on rap sheets provided by the Federal Bureau of Investigation and state criminal history repositories. Differences in varying state reporting practices affect the ability to compare official criminal records across states and use state-based criminal history records to develop a national statistical assessment of offender populations, criminal histories, and recidivism patterns. While many states have sealing and expungement policies, New York provides a valuable case study due to its extensive sealing policies that allow for the highest number of sealed criminal history records per year in the United States.

[2]SEARCH. (2010). *Survey of state criminal record sealing and expungement practices, 2010*. Retrieved from http://www.search.org/files/pdf/Criminal_record_sealing_expungement_survey_March_2010.pdf

2. New York criminal history sealing policies

Following an arrest in New York, the individual is fingerprinted and assigned a New York State Identification Number (NYSID). The majority of record sealing is applied automatically on dismissal of charges or convictions of certain minor offenses. Thus, individuals are not required to hire an attorney, complete paperwork, or pay to have the criminal record sealed. New York is one of two states that processes persons ages 16 and 17 in adult courts. New York maintains a Youthful Offender (YO) law that allows judges at the time of conviction to order records of any person ages 16 to 18 to be sealed—also without any further effort required on part of the individual. For example, if an individual is arrested for breaking and entering and burglary, and the court response does not result in a conviction, the entire arrest event is sealed and may not be released for criminal justice purposes or for conducting background checks for firearm purchases and employment. Furthermore, if the individual had no prior convictions, the fingerprints are destroyed, effectively expunging the individual's criminal record. As a result, the individual appears to have no arrest record. This process ensures any new arrest will receive a new NYSID unless the individual has other fingerprints, such as from a conviction or open arrest.

In addition, New York sealing statutes provide that if a person has all charges pled down from a felony or misdemeanor classification to that of a "violation" or "infraction," the arrest event is automatically sealed. If an individual had a burglary charge dismissed and then pled the breaking and entering charge down to a disorderly conduct charge, the arrest event would be sealed. Further, if the person has no prior convictions or open arrests, the fingerprints associated with the sealed arrest would be destroyed.

New York provides one additional opportunity for sealing if the offender was younger than age 19 at the time of the offense and the conviction was not for a Class A Felony. In such circumstances, the judge, on conviction, may designate the individual a "youthful offender," which seals the criminal record and mitigates possible punishment. However, with a YO seal, the individual's fingerprints associated with the arrest are not destroyed and are maintained in the New York criminal history file along with all charge, conviction, and case disposition information. Thus, the New York State Division of Criminal Justice Services (NYSDCJS) can track the official criminal history of an individual with a YO seal that does not result in the destruction of fingerprints, even though the arrest event is suppressed from public and law enforcement view. NYSDCJS may track this because the person keeps the NYSID associated with their fingerprints. This has two important implications; it means that any future sealed or nonsealed arrest events involving the individual may be linked to earlier arrest events that received a YO seal, and certain agencies continue to have access to the sealed arrest event for criminal justice purposes. *The Summary of New York sealing statutes* text box further summarizes New York's sealing policies.

Summary of New York sealing statutes

Seal orders general

With certain exceptions, the sealing of a record is generally a two-part process: the return or destruction of the fingerprints and sealing of the case record. The New York State Division of Criminal Justice Services and most law enforcement agencies destroy rather than retain fingerprint cards.

Seal order C.P.L. 160.50

C.P.L. 160.50 became effective September 1, 1976, and applies to outcomes favorable to the defendant such as dismissals and acquittals. When the case outcome is favorable to the defendant, the accusatory instrument is sealed by the court. This applies to both fingerprintable and nonfingerprintable arrests. Sealed case records are not expunged in New York State, but are retained on file and suppressed from release or public view. Fingerprints and identifiers are destroyed if there is not already a permanent criminal record for the individual.

Exceptions:

Fingerprints and identifiers are not destroyed if the case is a related to C.P.L. 170.56 or C.P.L. 210.46, which is possession of marijuana adjournments in contemplation of dismissal.

Convictions under P.L. 221.05 - Unlawful Possession of Marijuana (or P.L. 240.36 prior to P.L. 221.05 becoming effective) are sealed pursuant to C.P.L. 160.50. However, the case is not sealed until at least 3 years after the crime date, and the fingerprints are not destroyed until the case is sealed.

Seal order C.P.L. 160.55

C.P.L. 160.55 became effective September 1, 1980, and requires the sealing of noncriminal convictions (i.e., violations and infractions). Although sealed by all outside agencies, these records are not sealed by the court and remain open to the public. However, fingerprints and identifiers are destroyed.

Exceptions:

Convictions under V.T.L. 1192.01 - DWAI (after June 14, 1981), P.L. 240.37(02) - Loitering for Deviant Sex, and P.L. 240.35(05) - Loitering in or about School Grounds are not sealed pursuant to C.P.L. 160.55.

Convictions under P.L. 240.26 - Harassment 2 that have been designated as family offenses pursuant to C.P.L. 170.10(4)(e) & 170.10(8-a) are sealed. However, the fingerprints are not destroyed.

Continued on next page

Summary of New York sealing statutes (continued)

Seal order C.P.L. 160.58

C.P.L. 160.58 became effective June 6, 2009, authorizing the court to conditionally seal convictions for P.L. 220 and P.L. 221 drug offenses. At the court's discretion, C.P.L. 160.58 conditional sealing may be applied if the defendant has: (1) been convicted of a P.L. 220 or P.L. 221 drug offense; (2) successfully completed a Judicial Diversion or another judicially sanctioned drug rehabilitation program; and (3) completed the sentence imposed by the court. C.P.L. 160.58 also allows conditional sealing of up to three prior misdemeanor convictions provided that the sentences on these cases have also been completed. Unlike C.P.L. 160.50 and C.P.L. 160.55, the fingerprints and personal identifiers are not destroyed and the information may still be used for criminal justice purposes.

Adjournments in contemplation of dismissal

An adjournment in contemplation of dismissal is not considered favorable to the defendant until the adjournment period has expired and the case has actually been dismissed. At the time of dismissal, the case is sealed by the court under C.P.L. 160.50.

Eligible youthful offender status (EYO) - C.P.L. 720.15

When an individual ages 16 to 18 is charged with an offense other than a felony, the case must be filed as a sealed instrument. The case retains the EYO status until the final outcome of the case unless the judge determines that the defendant is not EYO. Defendants charged with a felony are not eligible for EYO status.

Youthful offender adjudication – C.P.L. 720.20

Youthful Offender adjudications are reported as final dispositions in the CDR-540 criminal disposition reporting form. Youthful Offender adjudications are sealed as confidential records which means that certain agencies will continue to have access to the records for criminal justice purposes and fingerprints and identifiers are not destroyed.

Source: Quick Reference – Criminal Case Sealing Process. (2011). *New York State Division of Criminal Justice Services*.

NYSDCJS maintains all sealed records in its statewide criminal history file, which provides a unique opportunity to study how offender estimates differ when comparing all arrests and convictions to those that would be released to law enforcement officers, researchers, and other entities relying on a criminal history search to assess an individual's "criminality."

3. Research questions

This paper addresses five research questions regarding the influence of New York's sealing of criminal history information on estimates of offender populations, recidivism, and offending careers. How does sealing criminal records—

1. alter the size and composition of the offender population observable to criminal justice practitioners and researchers?
2. alter estimates of the prevalence and timing of recidivism?
3. affect estimates of the criminal career of individuals, including the age of onset of criminal activity, duration of the offending career, and frequency of offending during the criminal career?
4. affect assessments of offense specialization, defined as the tendency to commit a certain type of crime?
5. affect assessments of the overall seriousness of an individual's criminal activity?

4. Data collection

Data from the Bureau of Justice Statistics (BJS) Adult Criminal Trajectories of Juvenile Offenders Project were used to address these research questions. BJS partnered with the NYSDCJS, the International Justice and Public Safety Network (Nlets), and the Criminal Justice Information Services Division administered by the Federal Bureau of Investigation to obtain the criminal history data used for this project. The FBI operates an Interstate Identification Index (III) that allows authorized agencies to determine whether any state repository has criminal history records on an individual. Nlets is a computer-based network responsible for the interstate transmission of federal and state criminal history records. It allows authorized users to query the III system, which sends requests for rap sheets to the states that hold criminal history records on an individual. Each state criminal history repository responds automatically to these requests by submitting the record to the requesting agency via the Nlets network.

5. New York Youthful Offender cohort

At the time of this study, New York's criminal justice system had original responsibility for law-violating behaviors of persons age 16 and older. Consequently, persons arrested at ages 16 and 17 who would have been considered juveniles in most other states are processed as adults in New York. These youthful offenders are routinely fingerprinted at the time of their arrest, and their criminal justice information was included in New York's criminal history records. This unique situation affords researchers an opportunity to use official criminal history records to examine the adult criminal careers of juvenile offenders.

BJS received approval from the Institutional Review Board, operated by the FBI, to access criminal history records via the III system for this study. The NYSDCJS compiled a list of the fingerprint-based NYSIDs for all persons arrested in 2001 who were age 16 or 17 at the time of arrest. If an individual was

arrested at age 16 or 17 in New York more than once in 2001, the first arrest was selected for the study. This list, which contained 33,503 individuals, was securely transmitted to Nlets from NYSDCJS. To obtain a 10-year follow-up period for this study, Nlets used these NYSIDs to query the III on behalf of BJS in 2012 to retrieve national (i.e., multistate) criminal history information for New York offenders. Criminal history records obtained for persons arrested in New York in 2001 included arrest and prosecution information from all 50 states, the District of Columbia, and the federal justice system for events prior to and following their arrest in New York in 2001. The NYSDCJS removed all identifying information, including NYSIDs from the database generated by Nlets, and securely transferred a de-identified version of the database to BJS.

To support the data analysis, the NYSDCJS also provided BJS with a database containing de-identified information on all of the sealed arrests for each of the study subjects. By comparing New York's internal arrest records for the 2001 Youthful Offender (YO) cohort to the arrests appearing in criminal history data obtained from the III, due to New York's sealing practices, a large portion of arrest and prosecution records were not accessible via III and thus invisible to persons doing background checks and criminal justice officials outside of New York. According to New York's internal records, arrests were most commonly sealed because persons were not convicted of an arrest charge or were convicted of a nonfingerprintable offense. For any instance in which this occurred, no criminal history information on that arrest event was revealed through the III request process.

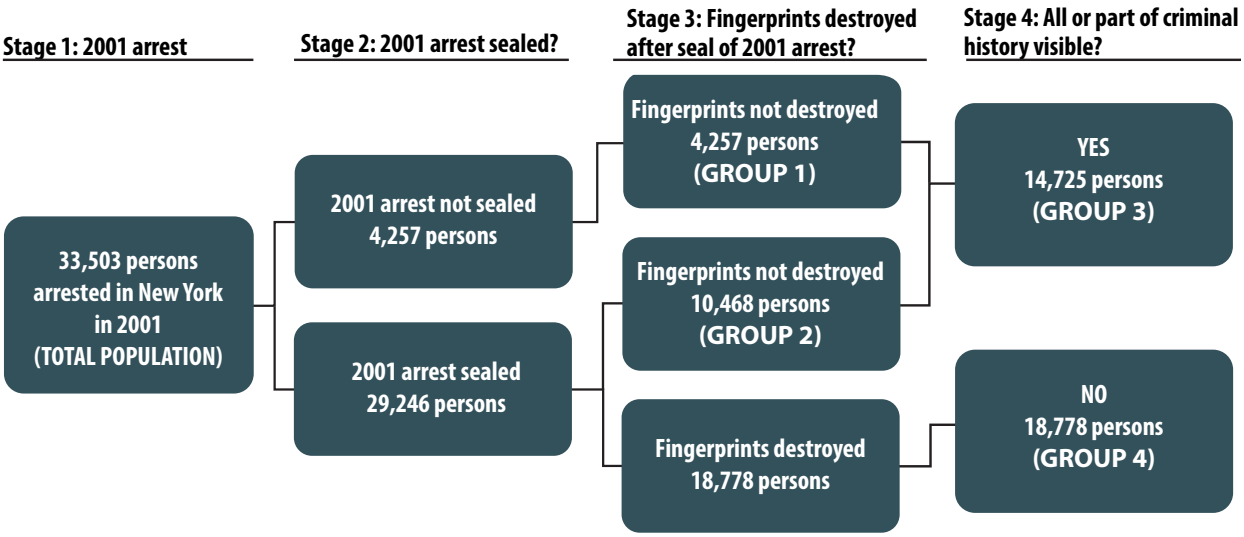
The absence of these arrest events proved the catalyst for the current study, which seeks to understand the impact of this discrepancy on estimates of arrests and recidivism patterns. Because data obtained for this study contained both sealed and nonsealed arrest records, the impact of sealing on the size and characteristics of the offender population and the length and nature of persons' official criminal histories may be directly assessed.

For purposes of this study, the 33,503 persons arrested at age 16 or 17 in New York in 2001 were divided into three distinct subgroups (**figure 1**). The total population consists of arrestees included in the internal NYSDCJS files regardless of whether their first arrest in 2001 was sealed. Arrest sealing was determined using coding provided by the NYSDCJS and is based on the sealing of entire arrest event (e.g., if an arrest event had three charges, all three would need to be sealed to qualify). This code was verified by the absence of these records in the criminal history data obtained through the III system. Using this procedure, it was determined that 4,257 of the youth arrested in 2001 did not have their original arrest sealed (Group 1). Thus, the criminal histories of those in Group 1, which represents about 13% of the 33,503 persons arrested in New York at age 16 or 17 in 2001, could be identified on their first arrest and tracked during the full 10-year follow-up period. An additional 10,468 persons (or 31% of the total population) had their first arrest sealed but did not have their fingerprints destroyed. Therefore, they were identifiable at some point in the criminal history data obtained through the III system. Adding the original 4,257 (Group 1) to this group of 10,468 individuals, we comprise Group 3, which consists of individuals whom we can identify at some point in the criminal history data during the 10-year follow-up period. The final 56% (18,778) of the total population had their first 2001 arrest sealed from public view and, as

a result, had their fingerprints destroyed (i.e., expunged from the criminal history system). These 18,778 persons comprise Group 4.

The 18,778 persons in Group 4 were able to have the fingerprints associated with their NYSID destroyed on top of having their 2001 arrest sealed because they had no formal prior arrest history in New York. Without the ability to link the NYSID associated with these individuals' 2001 arrest with any future sealed or nonsealed arrest events, Group 4 initially was used for one specific portion of the analyses. On BJS's request, the NYSDCJS performed a demographic match using elastic name search on the sample of 33,503 individuals to determine if they were arrested again during the 10-year follow-up period and were assigned a new NYSID. The NYSDCJS uses this application of the elastic search algorithm for research purposes and uses a combination of personal characteristics such as name, birth date, social security number, sex, race, and Hispanic origin to determine if the same individual has re-entered the system under a different NYSID. Tests of validity and reliability of this procedure have yielded a 97% accuracy rate of correctly identifying individuals. Due to this search, the 18,778 persons that were arrested in 2001 and had their arrest sealed were included in the analyses of subsequent arrests within the 10-year study period.

Figure 1. Persons arrested at age 16 or 17 in New York in 2001, by arrest sealing status



6. Methodology

Two approaches were used to assess the effect of sealing on criminal history records' ability to accurately describe offenders of interest. This report examines the 4,257 persons in Group 1 who did not have their 2001 arrest sealed and whose 2001 arrest was visible in criminal history searches. It compares these offenders and their offending careers to the total 33,503 persons ages 16 and 17 arrested in 2001. The report also examines the 14,725 individuals in Group 3 (which includes Group 1) who had at least one nonsealed arrest during the 10-year follow-up period and compares this group to the total population.

For answers to research questions 1 and 2, both of the approaches are utilized when comparing the total arrestees to Groups 1 and 3. For the second research question, which assesses estimates of recidivism with and without sealed arrest records, the analysis includes the 18,778 individuals in Group 4 who had the fingerprints associated with their NYSID destroyed but whose criminal histories were traceable through the elastic name search process.

For the remaining three research questions, the report focuses on comparing the total 33,503 arrestees to Group 3. These individuals all have a continuous NYSID, which allows different elements of the offending career to be assessed during the 10-year follow-up period. Most of the comparisons presented in this paper consist of frequencies and measures of central tendency and dispersion. Measures used to examine offending specialization and seriousness require further elaboration.

Specialization

Diversity in offending refers to a pattern whereby individuals commit offenses that span a combination of violent, property, drug, and public order offenses. At the opposite end of the spectrum, offending specialization measures the extent to which a person commits the same or similar types of offenses during his or her criminal career. Sealing may either mask or exacerbate the appearance of specialization. For example, sealing arrests may promote the appearance that someone has committed a single type of offense simply because other types of arrest offenses have been sealed. This could occur when less serious property or drug crimes are sealed, while more serious violent offenses are less likely to be sealed. In such instances, a generalist appears to be a violent specialist purely as an artifact of sealing. Statistical bias may also operate in the opposite direction. Sealing may give the appearance that someone has committed a certain type of offense once, when the individual has previously committed the same offense numerous times but those prior arrests were sealed. In such instances, an individual's history of offense specialization has been masked due to sealing practices.

Specialization has been measured in a variety of ways in the research on criminal careers. In this analysis, offending specialization was measured using the Diversity index, which captures offending across the following 11 offense categories: (1) homicide; (2) rape and sexual assault; (3) robbery; (4) assault or other violent crimes; (5) burglary; (6) larceny and motor vehicle theft; (7) fraud, forgery, and other property offenses; (8) drug trafficking; (9) drug possession and other drug offenses; (10) weapons offenses; and (11) DUI and other public order or unspecified offenses.

The formula for the Diversity index is—

$$D = 1 - \sum_{m=1}^{M} p^2 m$$

where *p* is the proportion of offenses in category *m* (i.e., each of the 11 offense categories listed above).[3] The values of the Diversity index range from 0 (indicating complete specialization) to 1.0 (indicating complete diversity). If an offender has a Diversity index score of 0, the offender had arrests for offenses that fell within one of the 11 offense categories, which would indicate offense specialization. An offender with 11 arrests, in which each of the offenses fell into all of the 11 offense categories, would receive the maximum Diversity index score of 1.0, indicating the highest level of offending generalization, or diversity. Because offending diversity may be assessed if an offender has been arrested for multiple offenses, this portion of the analysis was limited to the offenders with two or more arrest charges. We then repeated the analyses using persons with three or more arrests to assess the sensitivity of the results to the number of arrests in the criminal career.

Seriousness

Numerous methods for measuring the seriousness of a criminal career include looking at the most serious offense to examine overall patterns of escalation and de-escalation of seriousness. For purposes of this analysis, three measures of seriousness are utilized that may be particularly vulnerable to bias due to the sealing of records: the least serious offense visible, the most serious offense visible, and whether an individual appears to have ever been arrested or convicted of a felony. For example, if the courts are more likely to seal records for minor offenses, sealing may upwardly bias the bottom estimate of an individual's least serious offense. On the other hand, because New York seals most arrests that do not lead to convictions and convictions usually involve charge and plea bargaining, it is possible that sealing could downwardly bias the estimate of a person's most serious offense. Finally, because many criminal justice policies, such as "three strikes" laws and laws targeting repeat felons, require mandatory or aggravated sentences, sealing may affect estimates of the proportion of the offending population having at least one felony on record.

To measure offense seriousness, New York State classification rules are used that divide offenses into a seriousness hierarchy containing nine categories: Felony A, Felony B, Felony C, Felony D, Felony E, Misdemeanor A, Misdemeanor B, Unclassified Misdemeanors, and Violations/Infractions. Because these classifications are not available for other states in a manner that matches New York classifications, this portion of the analysis excludes out-of-state arrests. This analysis assesses the mean seriousness of visible offenses using the least and most serious offenses on record for an individual. Finally, it dichotomizes this measure into felonies or lesser offenses and estimates the proportion of individuals having one or more felony on record. While most of the previous analysis focused on arrest offense, for each of these measures, both arrest and conviction offense classifications are utilized.

[3] Sullivan, C. J., McGloin, J. M., Pratt, T. C., & Piquero, A. R. (2006). Rethinking the "norm" of offender generality: Investigating specialization in the short term. *Criminology*, 44:1, 199-233.

7. Results

7.1 The impact of sealing on offender population and offense estimates

What do the offenders look like when arrest records of 4,247 persons are examined in Group 1 with a 2001 New York arrest that was not sealed? How does the assessment of the offender population based on this relatively small group compare to what would be observed if information was accessed on the total 33,503 persons ages 16 and 17 arrested in 2001? Table 1 provides a summary of the offender demographic characteristics for this population divided out by the Groups defined in Figure 1. The results show that the majority of initial arrests in 2001 are not visible due to record sealing. Group 1, which consists of the 4,257 persons who did not have their initial 2001 arrest sealed and were visible in the criminal record search, made up 13% of the total persons ages 16 and 17 arrested in 2001 **(table 1)**. In other words, 87% (29,246) of the persons ages 16 and 17 arrested in 2001 appeared to have no arrest history dating back to 2001.

The results also show that sealing this large number of initial arrests affects the observed demographic profile of the offender population. The 4,257 individuals in Group 1, which did not have their 2001 arrest sealed or the fingerprints associated with their NYSID destroyed, do not have similar demographic characteristics to the 33,503 individuals in the total population. If we only observe the demographic characteristics of the 4,257 persons who did not have their arrest sealed, we would conclude that the population of 16- and 17-year-olds arrested in 2001 were more likely to be white (51%) and male (83%) than the total population of 16- and 17-year-olds arrested that year (40% and 78%). The observed differences in the demographic profiles of the 4,257 persons in Group 1 and the total population of persons arrested in 2001 can be attributed to the fact that a nonrandom subset of the population arrested in 2001 had their arrest sealed and fingerprints destroyed (i.e., Group 4). Females are a third (29.8%) of the persons in Group 4 who had their 2001 arrest sealed and their fingerprints destroyed, while they make up 16% of the persons in Group 1 who did not have their 2001 arrest sealed. In a similar pattern, whites are just over half of the persons in Group 1 who did not have their arrest sealed in 2001, while they make up a smaller percentage (42%) of those in Group 4 who had their arrest sealed and their fingerprints destroyed.

Table 1. Demographic characteristics of persons ages 16 and 17 arrested in New York in 2001, by arrest sealing status

	Group 1[a]		Group 2[b]		Group 3[c]		Group 4[d]		Total population[e]	
Characteristic	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
Sex	4,257	100%	10,468	100%	14,725	100%	18,778	100%	33,503	100%
Male	3,552	83.4	9,418	90.0	12,970	88.1	13,185	70.2	26,155	78.1
Female	705	16.6	1,050	10.0	1,755	11.9	5,593	29.8	7,348	21.9
Race/Hispanic origin[f]	4,246	100%	10,230	100%	14,476	100%	18,746	100%	33,222	100%
White	2,170	51.1	3,235	31.6	5,405	37.3	7,962	42.5	13,367	40.2
Black/African American	1,538	36.2	4,948	48.4	6,486	44.8	6,781	36.2	13,267	39.9
Hispanic/Latino	456	10.7	1,904	18.6	2,360	16.3	3,483	18.6	5,843	17.6
Other[g]	82	1.9	143	1.4	225	1.6	520	2.8	745	2.2

[a]Initial arrests in New York in 2001 were not sealed.
[b]Initial arrests in New York in 2001 received a seal that did not result in the destruction of the fingerprints associated with their New York State Identification Number (NYSID).
[c]Initial arrests in New York in 2001 were not sealed (4,257) or received a seal that did not result in the destruction of the fingerprints associated with their NYSID (10,468). If the initial arrest in 2001 was sealed, demographic characteristics are based on data obtained for the subsequent nonsealed arrests.
[d]Initial arrests in New York in 2001 received a seal that resulted in the destruction of the fingerprints associated with their NYSID.
[e]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.
[f]White, Black/African American, and Other race categories exclude persons of Hispanic/Latino origin, unless otherwise specified. Total population was reduced from 33,503 persons to 33,222 due to 281 persons missing information on race.
[g]Includes Asians, Native Hawaiians, and Other Pacific Islanders; and American Indians and Alaska Natives.
Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

The second way to assess the impact of sealing on the offender population is to combine Group 1 with the 10,468 individuals in Group 2 who, even though they had their initial arrest in 2001 sealed, did not have the fingerprints associated with their NYSID destroyed and thus could be tracked through the 10-year follow-up period. The race and Hispanic origin of the 14,725 individuals in Group 3 appears more like the race and Hispanic origin of the 18,778 individuals in Group 4 who could not be tracked through the 10-year follow-up period because they had their 2001 arrest sealed and the fingerprints associated with the arrest were destroyed. Similar to the pattern observed for Group 1, males were a higher percentage (88%) of persons in Group 3 than in Group 4 (70%).

Table 2 examines these same groups with a focus on the most serious charge at arrest in 2001. Group 1 (41%) (those not having the initial arrest sealed) are more likely to have been charged with a felony offense than the total population (31%). Compared to all others arrested in 2001, those in Group 4 (24%), who had their 2001 arrest sealed and fingerprints destroyed, were the least likely to have been arrested on a felony charge. Table 2 also provides a comparison of the most serious offense at arrest between Group 3 and Group 4 who received a seal that resulted in the destruction of the fingerprints associated with their NYSID. Again, assessing those offenders visible to law enforcement and the public via their criminal history records, Group 3 (47%) appears more likely to have been charged with a felony offense than Group 4 (25%) or the total population (31%).

Table 2. Severity of most serious charge among persons ages 16 and 17 arrested in New York in 2001, by arrest sealing status

	Group 1[a]		Group 2[b]		Group 3[c]		Group 4[d]		Total population[e]	
Most serious arrest charge	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	4,257	100%	9,564	100%	13,821	100%	18,778	100%	33,503	100%
Total felony	1,747	41.0%	4,745	49.6%	6,492	47.0%	4,617	24.6%	10,466	31.3%
Felony A	40	0.9	135	1.4	175	1.3	32	0.2	91	0.3
Felony B	552	13.0	1,723	18.0	2,275	16.5	830	4.4	2,491	7.4
Felony C	304	7.1	793	8.3	1,097	7.9	843	4.5	2,001	6.0
Felony D	497	11.7	1,326	13.9	1,823	13.2	1,807	9.6	3,625	10.8
Felony E	354	8.3	768	8.0	1,122	8.1	1,105	5.9	2,258	6.7
Total misdemeanor	2,509	58.9%	4,819	50.4%	7,328	53.0%	14,161	75.3%	23,036	68.7%
Misdemeanor A	1,910	44.9	3,131	32.7	5,041	36.5	11,125	59.2	17,093	51.0
Misdemeanor U (unclassified)	243	5.7	737	7.7	980	7.1	79	0.4	382	1.1
Misdemeanor B	356	8.4	951	9.9	1,307	9.5	2,957	15.7	5,561	16.6
Violation or infraction	1	--	0	0.0%	1	--	0	0.0%	1	--

--Less than 0.05%.

[a]Initial arrests in New York in 2001 were not sealed.

[b]Initial arrests in New York in 2001 received a seal that did not result in the destruction of the fingerprints associated with their New York State Identification Number (NYSID).

[c]Initial arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID. Starting sample size for Group 3 was reduced from 14,725 persons to 13,821 due to 904 persons missing offense classifications for their first nonsealed arrest.

[d]Initial arrests in New York in 2001 received a seal that resulted in the destruction of the fingerprints associated with their NYSID.

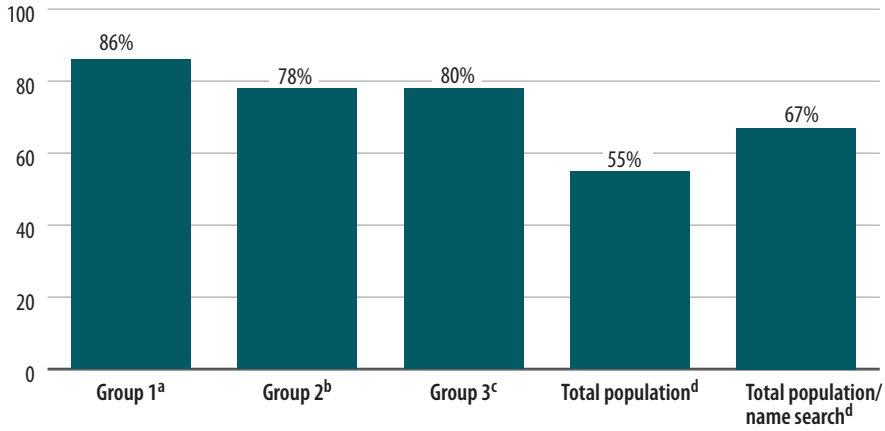
[e]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

7.2 The impact of record sealing on estimates of recidivism

The second research question addresses estimates of the proportion of the population arrested for a new crime in the future according to official criminal history records. The first new arrest after the initial 2001 arrest is defined as recidivism regardless of whether the first subsequent arrest is later sealed. Figure 2 provides estimates of the proportion of the offender population that was arrested for a new crime in the 10-year follow-up period.

Figure 2. Persons ages 16 and 17 arrested in New York in 2001 who were arrested for a new crime within 10 years, by arrest sealing status and name search matching, 2001–2011



[a]Initial arrest in New York in 2001 was not sealed.

[b]Initial arrests in New York in 2001 received a seal that did not result in the destruction of the fingerprints associated with their New York State Identification Number (NYSID).

[c]Initial arrests in New York in 2001 were not sealed (4,257) or received a seal that did not result in the destruction of the fingerprints associated with their NYSID (10,468).

[d]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether persons' qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed. Includes the 4,257 persons from Group 1 whose initial qualifying arrest in 2001 was not sealed, plus 29,246 persons with a qualifying arrest in 2001 that was sealed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

The recidivism estimates for Groups 1 and 3 are based on nonsealed records (i.e., arrest information found on criminal history records); these recidivism rates are considerably higher than the recidivism rate for the total population. Among all 33,503 persons arrested at age 16 or 17 in New York in 2001, an estimated 55% were arrested again at least once during the 10-year follow-up period. When the group was limited to those who did not have their 2001 arrest sealed, the recidivism rate increased to 86% **(figure 2)**. At first these results seem counterintuitive. Why would the percentage of persons that recidivate be lower when all arrest events are considered? Overall, one may expect that sealing would mask recidivism and that sealing would give the appearance that offenders committed fewer crimes than would be the case if all arrests were visible. However, these findings reveal the opposite.

There are at least two possible reasons for this finding. First, by eliminating many first-time and minor offenders from the population in the study, sealing may reduce the ability to measure system "successes." Individuals in the original population who took advantage of having an earlier arrest record sealed and did not offend again cannot be tracked moving forward like those persons in Groups 1 and 3. Thus, these successes simply disappear from view in the official criminal history records. Second, not all persons in the total population who appear to be successes have actually desisted from crime. Rather, some portion of this population most likely goes on to be arrested for a new crime. Because the sealing process destroyed the fingerprints associated with their NYSIDs attached to most of the qualifying 2001 arrest events, if these persons were arrested again, they were assigned a new NYSID that is not linked to any previous NYSID.

To assess this possibility, a data request was placed with the NYDCJS to conduct an elastic name search to track an individual's name to identify any new NYSIDs assigned to that individual in the event that they had previous arrests sealed and the fingerprints associated with their NYSID were destroyed. Figure 2 also provides the new estimate of recidivism for the total population that includes the results of the name search. This analysis found that 67% of the 33,503 individuals in the total population were arrested for a new crime during the follow-up period. These results show that once we gained the ability to track previous NYSIDs, we discovered that the destruction of the fingerprints associated with their NYSID, rather than the sealing of an arrest by itself, contributes to downwardly biased estimates of recidivism.

Lower recidivism rates may also be expected when examining both sealed and nonsealed arrests for the total arrestees because the population consists of young offenders for whom the court uses the sealing policy to grant second chances. It may not be until the individual has had at least one previous arrest sealed and exhausted the courts' mercy that he or she appears in the data with a nonsealed arrest. Thus, offenders with nonsealed events (Groups 1 and 3) may be composed of more serious and chronic offenders.

7.3 The impact of sealing on measures of the criminal career

To examine how sealing affects assessments of criminal careers, the analysis proceeded with comparisons of the total population and Group 3, which includes those individuals who have at least one nonsealed event, in Group 1, and who either did not have their initial 2001 arrest sealed or had a sealed arrest but retained their NYSID. As expected, the sealing of criminal records, especially the policy of sealing arrests for certain youthful offenders, considerably alters the estimated age of onset of the criminal career as many of the first several offenses for these youth are sealed and thus suppressed from criminal history background checks. Among the 33,503 individuals arrested at age 16 or 17 in New York in 2001 with sealed and nonsealed records, 46% had their first arrest at age 16 and 54% had their first arrest at age 17 **(table 3)**. However, when viewing nonsealed records, 16% had their first arrest at age 16 and 31% had their first arrest at age 17.

Table 3. Age at first nonsealed arrest compared to age at first sealed or nonsealed arrest among persons ages 16 and 17 arrested in New York in 2001, 2001–2011

	Group 3[a]		Total population[b]	
Age	Number	Percent	Number	Percent
Total	14,500	100%	33,503	100%
16	2,372	16.4	15,551	46.4
17	4,501	31.0	17,952	53.6
18	2,035	14.0		
19	1,637	11.3		
20	1,035	7.1		
21	760	5.2		
22	552	3.8		
23	451	3.1		
24	317	2.2		
25	257	1.8		
26	233	1.6		
27	206	1.4		
28	132	0.9		
29	12	0.1		

Note: Cases were tracked for 10 years following initial arrest in 2001.

[a]Initial arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID. Starting sample size for Group 3 was reduced from 14,725 persons to 14,500 due to 225 persons missing offense descriptions for all of their nonsealed arrests.

[b]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

Sealing also alters estimates of how long persons continue to offend. As the data collection followed individuals for 10 years, findings reported in table 4 may not be indicative of the true duration of criminal careers, as some individuals may have offended after the follow-up period. The age distribution of the nonsealed individual records indicates that not many youth appeared to desist in the first few years after their initial arrest in 2001. However, when looking at the total population, more than half (51.6%) of youths desist before reaching age 18. This again emphasizes the important impact that sealing arrest records has on estimates of the duration of a criminal career. If only the nonsealed sample was studied, the majority of success stories consisting of young adults that desisted after their initial arrest in 2001 would be missed. However, as noted previously, some of these youth appear later in the system under a new NYSID with a later age of onset of offending.

With the age of onset and desistance possibly altered, the next question becomes what is the impact on the average duration of a criminal career, as this could be affected by bias in previous estimates. Table 5 provides estimates of the length of the criminal career, noting that the maximum duration is 10 years based on the follow-up period. The majority (58%) of persons had an arrest history of less than one year when examining the total population. By comparison, if we had access only to criminal history

Table 4. Age at last sealed and nonsealed arrest among persons ages 16 and 17 arrested in New York in 2001, by arrest sealing status, 2001–2011

	Group 3[a]		Total population[b]	
Age	Number	Percent	Number	Percent
Total	14,500	100%	33,503	100%
16	530	3.7	8,011	23.9
17	1,027	7.1	9,262	27.7
18	523	3.6	1,139	3.4
19	636	4.4	881	2.6
20	695	4.8	801	2.4
21	803	5.5	884	2.6
22	928	6.4	1,057	3.2
23	1,030	7.1	1,225	3.7
24	1,270	8.8	1,443	4.3
25	1,551	10.7	1,933	5.8
26	1,939	13.4	2,499	7.5
27	2,076	14.3	2,630	7.9
28	1,338	9.2	1,573	4.7
29	154	1.1	165	0.5

Note: Cases were tracked for 10 years following initial arrest in 2001.

[a]Initial arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID. Starting sample size for Group 3 was reduced from 14,725 persons to 14,500 due to 225 persons missing offense descriptions for all of their nonsealed arrests.

[b]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

information for persons in Group 3 who retained their NYSID after their 2001 arrest, we would conclude that about 31% of the 2001 cohorts had an arrest history of one year or less **(table 5)**.

Measures of central tendency (the mean) and dispersion (the standard deviation) provide another way to examine criminal careers. When examining the data this way, estimates of the average minimum and maximum age of the last arrest do not differ drastically across Group 3 and the total population. As shown in table 6, the mean minimum age at last arrest is 16.5 years for the total population, compared to 18.7 years for Group 3. The estimates for maximum age at last arrest differ for the total population and Group 3 by approximately 3 years. The maximum age at last arrest is 20 for the total population, compared to age 23 for Group 3. In sum, sealing practices appear to truncate estimates of both the onset and length of criminal career by upwardly biasing the estimated age of onset (i.e., first adult arrest) and downwardly biasing estimates of the age of last recorded arrest.

Table 5. Length of arrest history among persons ages 16 and 17 arrested in New York in 2001–2011

Length of arrest history (in years)	Group 3[a]		Total population[b]	
	Number	Percent	Number	Percent
Total	14,500	100%	33,503	100%
0	4,512	31.1	19,549	58.4
1	735	5.1	1,358	4.1
2	730	5.0	891	2.7
3	816	5.6	836	2.5
4	808	5.6	796	2.4
5	995	6.9	1,010	3.0
6	1,053	7.3	1,106	3.3
7	1,144	7.9	1,309	3.9
8	1,253	8.6	1,626	4.9
9	1,264	8.7	2,209	6.6
10	1,190	8.2	2,813	8.4

Note: Cases were tracked for 10 years following initial arrest in 2001.

[a]Arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID. Starting sample size for Group 3 was reduced from 14,725 persons to 14,500 due to 225 persons missing offense descriptions for all of their nonsealed arrests.

[b]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

Table 6. Patterns of offending desistance among persons ages 16 and 17 arrested in New York in 2001, by arrest sealing status, 2001–2011

Criminal history characteristics	Group 3[a]		Total population[b]	
	Mean	Standard deviation	Mean	Standard deviation
Minimum age at last known arrest	18.7	2.8	16.5	0.5
Maximum age at last known arrest	23.4	3.6	20.2	4.4
Length of arrest history (in years)	6.8	3.2	7.5	3.8

Note: Cases were tracked for 10 years following initial arrest in 2001.

[a]Arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID.

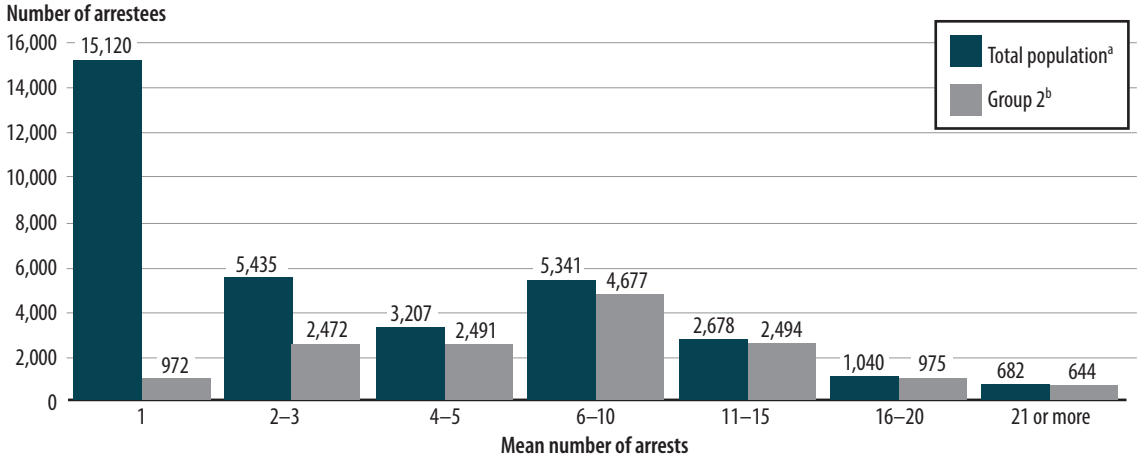
[b]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

The next question addressed was how sealing may affect the overall frequency of arrests during a criminal career. When examining nonsealed arrests, Group 3 has a mean of approximately five arrests with a standard deviation of 4.5 (not shown). However, this increases to a mean of 11 arrests with a standard deviation of 8.5 when considering the total criminal record containing both sealed and nonsealed arrests. Figure 1 illustrates the proportion of offenders that would appear to have arrests if viewing all arrests compared to those that were not sealed and concealed from public view.

Figure 3 illustrates that a large proportion of individuals appear to have one arrest when viewing the total population compared to the nonsealed sample. Of the total population, 45.1% had no subsequent arrests within 10 years. However, when viewing Group 3, 6.6% of the persons ages 16 and 17 had no subsequent arrest during this time period. The volume of persons with one arrest in their criminal history would be concealed from publicly viewable criminal history records under New York's policies. Thus, from a statistical standpoint, New York's criminal history records give a misleading impression that the modal criminal career outcome is that persons arrested at age 16 or 17 later go on to accumulate six or more arrests during the next 10 years. Of the total population, 29.1% had six or more subsequent arrests, while 59.7% of offenders in Group 3 had six or more subsequent arrests.

Figure 3. Mean number of arrests among persons ages 16 and 17 arrested in New York in 2001 during the 10-year follow-up period, by arrest sealing status, 2001–2011



Note: Cases were tracked for 10 years following initial arrest in 2001.

[a]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed (33,503).

[b]Arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID (14,725).

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

Specialization

The next question addressed was how sealing may affect an assessment of offending specialization and diversity during the 10-year follow-up period. Table 7 displays the mean value of the Diversity index obtained for the population when using all arrests compared to nonsealed arrests. Because assessments of offending specialization may be sensitive to the number of arrests in a person's

history, table 7 displays results for offenders with two or more arrest offenses compared to persons with three or more arrest offenses. Arguably, the diversity score is more reliable when calculated for persons with three or more arrests because individuals with two arrests have a much greater likelihood of appearing as specialists due to their more limited number of arrests and criminal activity.

Overall, the results in table 7 do not suggest dramatic differences in offending diversity scores when using the total population compared to the persons in Group 3. The offending Diversity index ranges from 0 (complete specialization) to 1.0 (complete diversity). For persons with three or more arrests, the mean specialization score when calculated using nonsealed arrests is 0.63 **(table 7)**. This is consistent with prior literature, which shows that most offenders, especially violent offenders, tend to be generalists that commit a diverse array of offense types.[4] However, when calculating Diversity index scores for the full cohort using both sealed and nonsealed arrests, the mean diversity score increased to 0.66. Estimates of offense specialization using all arrests in a person's criminal history (0.66) yields slightly greater offense generalization than when using criminal history data consisting of nonsealed arrest records (0.63). In sum, arrest sealing appears to result in estimates of offense specialization that are slightly higher than what we would conclude when provided information on all arrest offenses.

Seriousness

The last research question addresses estimates that indicate how serious an individual's offending career appears. While there are many ways to view the seriousness of an individual's criminal career, this analysis uses three specific measures. The first is the estimate of the least serious charge someone faced. Offense seriousness was scaled using the New York Classification scale with a law violation or infraction being the least serious (1) and a Class A Felony being the most serious (9). Because this classification of offense severity is not standardized across each state in national criminal history records, this portion of

Table 7. Level of offending diversity among persons ages 16 and 17 arrested in New York in 2001, by arrest sealing status, 2001–2011

	Group 3[a]				Total population[b]			
Offender type	Number	Minimum	Maximum	Mean	Number	Minimum	Maximum	Mean
Total	14,500				33,503			
Two or more offenses	11,461	0	0.96	0.59	18,383	0	0.96	0.61
Three or more offenses	9,144	0	0.96	0.63	15,021	0	0.96	0.66

Note: Cases were tracked for 10 years following initial arrest in 2001. Diversity ranges from 0–1, with 0 indicating total specialization and 1 indicating complete diversity where an offender has committed at least one of every type of offense. Includes offenders with a history of multiple arrests. Column figures may not sum to total due to the possibility that an offender with two or more arrests may also have three or more arrests.

[a]Arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID. Starting sample size for Group 3 sample reduced from 14,725 persons to 14,500 due to 225 persons missing offense descriptions for all of their nonsealed arrests.

[b]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

[4]Sullivan, C. J., McGloin, J. M., Pratt, T. C., & Piquero, A. R. (2006). Rethinking the "norm" of offender generality: Investigating specialization in the short term. *Criminology*, 44:1, 199-233.

the analysis is limited to arrests within New York. During the 10-year follow-up period, 7.9% of 33,503 individuals in the total population had at least one arrest in the state or states outside of New York, compared to 18.0% of the 14,725 individuals in Group 3 (not shown).

Using this scale, the mean for the least serious arrest offense in the study population ranges from 2.3 in Group 3 to 2.4 in the total population **(table 8)**. Thus, sealing downwardly biases the estimate of the severity of a person's least serious offense in their criminal history but not by a large amount. Again, this finding initially seems counterintuitive. If fewer serious cases were more likely to be sealed, then sealing would create the appearance of more, not fewer, serious offenses. However, as most New York arrests that do not lead to a conviction are automatically sealed, regardless of the seriousness of the charges, this finding may be due to the fact that offenders are often not convicted on the most serious charges. For example, plea bargain agreements often involve sentence and charge bargaining to reduce the severity of the recorded offense.

The second analysis examines how sealing may effect assessments of the most serious offense in an individual's criminal career. Sealing appears to increase the estimate of the most serious arrest offense

Table 8. Offense charge severity among persons ages 16 and 17 arrested in New York in 2001, by arrest sealing status, 2001–2011

	Group 3[a]				Total population[b]			
Charge severity	Mean	Standard deviation	Number	Percent	Mean	Standard deviation	Number	Percent
Arrest								
Severity of least serious charge	2.34	0.66	:	:	2.43	0.78	:	:
Severity of most serious charge	6.23	1.35	:	:	5.88	1.65	:	:
Had at least one felony	:	:	12,502	84.9%	:	:	17,122	51.1%
Disposition charge								
Severity of least serious charge	1.37	0.76	:	:	1.42	0.87	:	:
Severity of most serious charge	5.32	1.64	:	:	4.94	1.88	:	:
Had at least one felony	:	:	12,362	84.0%	:	:	15,578	46.5%

Note: Means indicate average severity of the least and most serious charges for which persons were arrested and convicted.

:Not calculated.

[a]Arrests in New York in 2001 were not sealed or received a seal that did not result in the destruction of the fingerprints associated with their NYSID.

[b]All persons ages 16 and 17 arrested in New York in 2001, regardless of whether their qualifying arrest in 2001 was sealed or the fingerprints associated with their NYSID were destroyed.

Source: Bureau of Justice Statistics, Adult Criminal Trajectories of Juvenile Offenders Project, 2013.

from a mean score of 5.9 (total population) to 6.2 (Group 3). Again, the difference is quite small. The third approach, looking at whether the individual was ever arrested or convicted of a felony, reveals a larger bias in the estimate of the seriousness of a criminal career. At arrest, 51% of the total population has a felony ever reported, but 85% of Group 3 has a felony arrest recorded. This difference remains almost exact when considering the final conviction charge where 47% of the total population has a conviction for a felony disposition, but 84% of Group 3 has a felony conviction.

[5]*Recidivism of Prisoners Released in 1983*, NCJ 116261, BJS web, April 1989; *Recidivism of Prisoners Released in 1994*, NCJ 193427, BJS web, June 2002; and *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, NCJ 244205, BJS web, April 2014.

8. Implications for prisoner recidivism estimates

This section addresses how sealing may influence prisoner recidivism rates, the recidivism statistics most familiar to the public and criminal justice practitioners. However, the population analyzed thus far does not necessarily mirror the cohort used for such analysis, making a direct comparison somewhat difficult. This paper examined sealed and nonsealed criminal histories of persons ages 16 and 17 arrested during a single year, while prisoner recidivism studies typically track the nonsealed arrest and incarceration patterns of individuals released from prison in a given year.[5]

We examined future arrest rates of arrestees in Group 3, the offender group with at least one nonsealed record, and included in the analysis arrests that may later be sealed. Seventy-eight percent of offenders were arrested for a new crime within 10 years of the initial arrest in 2001. If the analysis was limited to future arrests that would be retrieved in a national criminal history search via the III (i.e., nonsealed future arrests), the recidivism estimate declined from 78% to 73%.

However, because the entire cohort of arrestees in Group 3 does not fully represent a typical prison release cohort used to calculate recidivism estimates, an additional analysis was conducted among the 4,660 individuals within the original sample of 33,503 arrested in 2001 at age 16 or 17 who were sentenced to prison at least once during the 10-year follow-up period. This sample is still different from a typical prison release cohort because it included individuals sentenced to prison in different years (and not those released from prison in a particular year). Looking at this sample provides insight into how much record sealing may affect recidivism estimates for individuals with more serious criminal records. Among the 4,660 persons who were sentenced to prison at least once during the 10-year follow-up period, 71% were arrested at least once following the date of their first prison sentence when sealed and nonsealed records are included. When nonsealed records are included and sealed records are excluded from the recidivism analysis, 65% of the 4,660 individuals were arrested at least once following the date of their first prison sentence.

9. General conclusions based on comparisons of sealed and nonsealed records

This paper explores the extent to which sealing policies may bias estimates of offender populations and careers and how such bias could affect the validity of criminal history records for statistical purposes. By focusing on New York, which maintains some of the most extensive sealing policies in the United States, this study represents a first step in quantifying what is likely an upper bound to how much a state's sealing policies may influence these estimates. The analysis also provides insight into the direction and nature of any bias that sealing introduces into statistical estimates of offender populations and patterns.

Fewer than 15% of the total population arrested at age 16 or 17 in 2001 was visible in official criminal history searches as a result of record sealing. Because sealing is done automatically and the 2009 SEARCH survey indicated that New York seals more records than any other state, these estimates provided an upper bound of the extent to which sealing policies may affect national estimates. However, researchers using national arrest estimates must take this into account when New York is being included in the estimate and assess the practices of other states included in the analysis.

The analysis also shows that sealing did somewhat alter estimates of "who" is offending as it relates to the sex, race, and Hispanic origin of the population. This bias was larger when considering those individuals who did not have their 2001 arrest sealed, compared to individuals who, although an event may have been sealed, maintained their NYSID to allow future tracking of their criminal career.

The impact of sealing on estimates of recidivism plays an important role in national and cross-state research. While one may assume at first that sealing would reduce estimates of recidivism by masking records, sealing upwardly biases estimates of recidivism. In particular, sealing removed from view many of those arrestees who had one encounter with the New York criminal justice system and as first-time offenders were able to have this encounter sealed. Thus, sealing masked from view these "successes" of the system.

However, when assessing recidivism in a similar way to typical studies of released prisoners, the opposite effect is observed. New York's policy of sealing all arrests that do not lead to conviction reduced the overall estimate of recidivism as measured by arrest. Starting with a subsample of offenders who spent time in prison, sealing of future arrests reduced the overall estimate of recidivism from 71% to 65%.

This paper also examines whether sealing affects the validity of measures of criminal careers, including age of onset, age of desistance, duration of criminal career, and frequency of offending during the career. Overall, this analysis shows that sealing upwardly biased the age of onset and desistance and shortened estimates of criminal career duration. Because most first arrests are sealed, individuals appeared to be older at their first visible arrest than they were at their first actual arrest. Also, because many of these first arrests were sealed and many of these first-time offenders do not reoffend, this practice inflates the statistically derived average age of desistance from publicly available criminal history records. Individuals who offend once are lost from view. Specifically, an assessment using nonsealed arrest records suggests that

about a third of persons had no further arrests within one year of their initial arrest in 2001. Among all available arrests, both sealed and not sealed, nearly 6 in 10 (58%) persons 16 or 17 arrested in 2001 did not have another arrest after 2002.

This latter finding relates naturally to the observation regarding the frequency of offending. Specifically, frequency measures of offending show that the total population has a greater proportion of individuals with one arrest than nonsealed cases. As noted in the discussion of recidivism, this effect may again be related to sealing practices masking system successes. Sealing practices in New York extend beyond the first offense and continues during the criminal career, including sealing new arrests that does not lead to a conviction or results in a conviction of a less serious violation or infraction. Examining nonsealed records, persons in Group 3 commit a mean of 11.1 offenses during the 10 years studied, compared to 4.8 offenses committed by persons in the total population. Again, this mean is highly skewed by eliminating individuals with one sealed offense.

The measure of specialization reveals only a modest effect of sealing on estimates of specialization or generalization in a criminal career when comparing the nonsealed population (0.63) to the total population (0.66). Sealing had a greater impact on assessments of seriousness, particularly with regard to estimating the proportion of the population who had at least one felony conviction on record: 46% of the total population, compared to 88% of the nonsealed population (Group 3).

Overall, given the extent of sealing in New York, the present analysis suggests that sealing had less of an impact on offense estimates than may be anticipated. Given the young age of this sample, a large impact was observed on the age of onset with many of these individuals receiving leniency early on in their criminal career. The second most notable effect was the unexpected inflation of the recidivism rate because many of these youth had actually committed many offenses before they ever appeared in a "visible" sample. Thus, the first-time offenders in the nonsealed sample may be experienced and even chronic.

The sealing of criminal history records provides second chances to criminal offenders and removes from view unsubstantiated arrests. Given wide variations, researchers undertaking cross-state or national criminal history comparisons should carefully assess each jurisdiction's sealing and expunging policies to ensure that findings reflect the possible impact of these policies on data.