



**REMOVING
STRUCTURAL
BARRIERS TO
EMPLOYMENT:**
A PLAYBOOK
FOR EVERY STATE

The negative effects of a conviction rarely end when a person has completed their criminal sentence. A complex web of local, state, and federal statutes and regulations—known as collateral consequences of conviction—can make it all but impossible for some people with criminal records to truly begin rebuilding their lives. These consequences can affect everything from housing to public benefit eligibility, but no area is more impacted than the ability to find and retain meaningful employment.

While some of these collateral consequences can be responsive to clearly identified public safety concerns, many pose unnecessary barriers to employment opportunities that are critical in reducing recidivism and supporting the long-term success of people with criminal histories. Although addressing these collateral consequences can require some complex approaches, there are a number of workable strategies, both small and large, that states can leverage to help mitigate the unintended negative impacts of collateral consequences at both the legislative and administrative level.

This playbook identifies best practice goals and strategies that states can implement to reduce the negative impacts of employment-related collateral consequences. Although every goal and strategy may not be appropriate for each state, this playbook provides an overview of the progress each state has made towards achieving these goals.

GOAL 1

Limit mandatory and indefinite collateral consequences

Restrictions to employment based on a person's criminal record may be automatic or subject to the discretion of employers and other decision-makers. Nearly half of all employment-related collateral consequences in the country are mandatory and decision-makers are required to impose them automatically without regard to the specifics of the offense, how it relates to the job at hand, and whether the person has been sufficiently rehabilitated.

In addition, studies suggest that time since conviction and/or completion of sentence is among the most significant factors in determining whether a person convicted of a crime will recidivate or pose a risk to public safety or welfare. In spite of this, only 17 percent of employment-related consequences are explicitly time-limited in duration of their effect, suggesting that few of employment-related consequences are enacted with an appreciation of the important role that time plays in assessing the public safety risks posed by workers with convictions.

STRATEGIES

A. Reduce mandatory consequences.

Identify mandatory collateral consequences and remove or convert them into discretionary consequences that allow decision-makers to grant licenses or employment to workers with potentially disqualifying convictions. States have addressed this strategy by enacting statutes that prohibit mandatory consequences across a wide range of licensing fields and/or public employment.

B. Limit the duration that consequences remain in effect.

Place reasonable time limits on the duration that consequences remain in effect, particularly consequences that are mandatory. A number of states have taken a broader approach by prohibiting decision-makers from considering certain classes of offenses after a set number of years have passed since the conviction (i.e. 7 years, 10 years).

GOAL 2

Align offenses that trigger collateral consequences with direct public safety concerns

Employment-related collateral consequences are often justified as regulations necessary to ensure public safety as it relates to a specific job. However, half of all collateral consequences may be triggered by any felony and nearly a quarter may be triggered by any crime. This suggests that states have room to create a more linear connection between the duties and responsibilities of a particular job and the current public safety risk that could be triggered by a person's past conviction.

STRATEGIES

A. Eliminate the use of vague or ambiguous terms to describe triggering offenses and offense categories.

Identify and reevaluate consequences triggered by vaguely defined offense categories like “crimes of moral turpitude,” “crimes of violence,” and “offenses indicating a lack of moral character.” Many states now prohibit licensing bodies from using such terms, and some require licensing entities to list each of the specific offenses that fall within these categorical definitions.

B. Prohibit consideration of less serious offenses.

Place limitations on the consideration of certain offenses or classes of offenses that pose a low public safety concern for the job, based on industry standards. A number of states have approached this strategy by prohibiting the consideration of all or most misdemeanors in the licensing and/or public employment context, while others prohibit consideration of non-violent offenses.

C. Remove triggering offenses that do not suggest an increased risk to public safety

Review the offenses that trigger each collateral consequence to determine whether they have clear public safety implications in the context of the job at issue and eliminate those triggering offenses that do not.

GOAL 3

Promote fair, consistent, and transparent application of discretionary consequences

Many discretionary consequences are based on statutory authorizations rather than clear mandates to disqualify workers with certain convictions. While discretionary consequences are inherently more flexible than their mandatory counterparts, they often remain subject to broad interpretation and inconsistent implementation that may lead to the disqualification of many qualified workers. In practice, this can often lead to decisionmakers using their discretion to implement blanket bans that disqualify workers solely on the basis of one or more types of convictions which makes them functionally identical to mandatory consequences.

STRATEGIES

A. Require decision-makers to apply a “direct relationship” test

Decision-makers should identify the significant public safety implications that could arise if a convicted person participates in the specific tasks, duties, and obligations of the job or licensed activity at issue. Many states that grant employers and licensing entities discretionary authority to disqualify applicants with a wide range of convictions place significant limits on that authority via general laws that prohibit disqualification based on conviction for crimes that are not determined to be directly related to the job/license.

B. Require individualized consideration of applicants with convictions governed by specific guidance.

Decisionmakers should be required to give each applicant individualized consideration that allows applicants to be considered in the full context of their conviction and life experience. To help ensure the fair and consistent individualized consideration of applicants, states should provide decisionmakers with specific guidance about how workers and their convictions should be considered. This guidance generally takes the form of statutory requirements to consider a number of factors including time that has elapsed since conviction; age of the person at the time the crime

was committed; the nature and severity of the offense; and evidence of rehabilitation. Applicants should be given an opportunity to provide decisionmakers with information and/or evidence that speaks to each of these factors before a final determination is made.

C. Provide rejected applicants with a written explanation of the reasons for denial.

To ensure transparency, decision-makers should be required to provide applicants rejected due to criminal conviction with a written explanation that articulates why the characteristics of the applicant and the crime warrant a denial authorized by law. This document should specifically address any factors that were considered as required by law, which promotes fairness in the decision-making process.

D. Create or expand accessible pathways to appeal.

Applicants for licensure or public employment who are denied due to their criminal history should be given an opportunity to inquire about the basis of a denial. This process should create an appeal pathway that is affordable, convenient, and allows for a full hearing of all relevant issues. To ensure that qualified applicants are not unduly burdened by the costs and delays of complex appeals processes, states should ensure that rejected applicants are given an opportunity for a direct second-look review by the initial decisionmaker or overseeing agency. In this review, applicants should be given the opportunity to present additional information or evidence that may be relevant to the decision-making process, in person or through correspondence.

GOAL 4

Limit the deterrent effects of collateral consequences

Legal limits on discretion are useful even when employers and licensing entities take a favorable view toward applicants with convictions because they clarify the role that convictions will play in the decision-making process. Absent such clarification, discretionary consequences have the potential to deter potential applicants reluctant to invest time and money without understanding how their conviction will factor into the application process and whether it will ultimately result in rejection.

STRATEGIES

A. Ensure that application materials and other resources clearly explain how convictions are factored into decision-making

Resources should outline steps applicants can take to proactively address issues that may arise due to their criminal history. In addition to explaining the factors that go into the decision-making process, applicants should be informed that convictions are not necessarily disqualifying, if applicable.

B. Provide prospective applicants with a list of the specific offenses that may be disqualifying.

List in application materials and other applicant resources the specific offenses or classes of offenses that result in mandatory disqualifications and those that may result in discretionary qualification. This practice is particularly important in instances where decision-makers are authorized to disqualify applicants based on loosely defined categories of crimes like “any felony,” “crimes of violence,” “crimes involving moral turpitude,” and “crimes related to the practice of the occupation/profession.”

C. Allow for a pre-application determination of eligibility.

Provide prospective licensees the ability to seek a pre-application determination on whether their specific criminal history will disqualify them. Where appropriate, provide preliminarily disqualified applicants with specific instructions on how they may remedy the disqualification. These processes allow prospective licensees to work toward licensure and plan their career trajectories with greater certainty about the ultimate outcome of their efforts.

GOAL 5

Expand the availability and effect of relief mechanisms.

Record clearance mechanisms, like expungement, sealing, and certificates of relief can significantly mitigate the negative impacts of employment-related collateral consequences, either by removing them altogether in appropriate cases, or by converting mandatory consequences into discretionary consequences. However, access to these relief mechanisms can be hampered by long waiting periods, costly court proceedings, and stringent eligibility requirements. In addition, the law is not always clear about the impact that these mechanisms, particularly those that result in record clearance, have upon collateral consequences imposed by law.

STRATEGIES

A. Create or expand long-term relief mechanisms.

States without policies, like sealing and expungement, that provide long-term relief from the effects of collateral consequences should consider implementing these policies to allow workers to pursue employment opportunities unburdened by collateral consequences. For states that already offer such relief, there may be opportunities to expand eligibility for these mechanisms by reducing waiting periods, expanding the list of eligible offenses, and revising limitations based on multiple convictions.

B. Create or expand effective near-term relief mechanisms.

Long-term relief in the form of expungement or sealing is often only available after a period of years with waiting periods of up to 10 years and beyond in many states. Near-term relief is often necessary and appropriate for individuals who pose a low risk to public safety but have not yet met the eligibility requirements for long-term relief. Near-term relief can take the form of certificates of relief, judicial orders that convert specified mandatory into discretionary consequences for individuals who have been granted them. Certificates and other similar forms of relief are often available as early as the time of sentencing and may often be revoked upon a subsequent conviction. Certificates and similar relief generally do not result in record clearance.

C. Limit barriers to access relief.

Both long-term and near-term relief are of little value if they are rendered unavailable to workers who would qualify them. Filing fees; complex petition processes, extensive documentation and hearing requirements, and a lack of knowledge about the availability and effect of relief all contribute to the significant gap between those who are eligible for relief and those who receive it. To ensure access, states should reevaluate the necessity of filing fees and whether petition and hearing processes can be streamlined or eliminated. Defendants should be informed of the availability of relief at the time of conviction, discharge of sentence, and upon satisfying any applicable waiting periods. To alleviate or eliminate many of these burdens, states have recently implemented policies that allow automated sealing of records after a period of years. Automated sealing generally requires no fees or action on the part of the individual with the criminal record.

D. Ensure that effects of relief mechanisms on collateral consequences are clear.

Though many states have enacted some form of relief mechanism to address the effects of a criminal record, the extent that record clearance authorities limit or mitigate the impact of collateral consequences is often unclear. Statutes authorizing these forms of relief should explicitly state that neither mandatory nor discretionary consequences may be imposed based on an offense for which relief has been granted. It should also be made explicit that decision-makers may not inquire about cleared convictions and that individuals who are granted clearance can freely deny the existence of those convictions if asked about them. States that offer near-term relief like certificates of relief should ensure that employers and licensing boards are educated about the effect of those certificates on collateral consequences and give them proper consideration.