

VERMONT

The following report shows the progress your state has made toward meeting the five key goals related to collateral consequences that prevent people with criminal records from getting jobs or occupational licenses.

Goal 1

Allow decision-makers greater flexibility in deciding whether to hire workers with convictions and allow workers to be free from collateral consequences after a reasonable period of time.

1A. Reduce mandatory consequences.

- Vermont law places no general limitations on the mandatory imposition of structural barriers to employment or licensure.
- Of the nearly 200 employment-related consequences imposed by Vermont law, 45 percent are mandatory and must be imposed regardless of the specifics of the offense or evidence of a worker's rehabilitation.*

1B. Limit the duration of consequences.

- Vermont law places no general limits on the age of convictions that may be considered by employers or licensing bodies.
- Only 21 percent of the nearly 200 employment-related consequences imposed by Vermont law are limited in their duration. The remainder persist indefinitely.*

Goal 2

Align offenses that trigger collateral consequences with valid public safety concerns.

2A. Eliminate the use of vague terms to describe triggering offenses and offense categories.

- Vermont law places no general limits on the use of vague terms to describe triggering offenses and offense categories.

2B. Broadly prohibit consideration of lower-level offenses.

- Vermont law places no general limits on the categories of offenses that may be used to disqualify workers from employment or licensure.

2C. Remove triggering offenses that do not suggest an increased risk to public safety.

- Over 90 of the employment-related collateral consequences imposed by Vermont law may be triggered by any felony, and nearly 75 may be triggered by any crime at all, indicating that more can be done to eliminate triggering offenses that do not suggest an increased risk.*
- In addition, Vermont law gives most occupational and professional licensing bodies the authority to base denial upon any felony, regardless of its relationship to the occupation or profession.

Goal 3

Promote fair, consistent application of discretionary consequences.

3A. Require decision-makers to apply a “direct relationship” test.

- Vermont law places no general limits on the denial of employment for convictions that are not directly related to the tasks and duties of the job.
- Vermont law grants most occupational and professional licensing bodies broad authority to deny licensure based on convictions that are deemed by the body to be “related to the practice of the profession.” However, there is no similar “related to the practice” standard that applies to convictions that may be considered pursuant to more specific authority.

3B. Require individualized consideration of applicants with convictions.

- ➕ Vermont law generally requires public employers and licensing bodies to give applicants “an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual.”
- ➖ However, state law provides little specific guidance with respect to how that individualized assessment should be carried out and what factors should be considered.
- ➕ According to the Office of Professional Regulation, which oversees a variety of occupational and professional licenses, it evaluates applicants with convictions on a “case by case basis” and considers “the nature of past criminal convictions, time since last conviction, evidence of rehabilitation, and the connection to the profession itself.”
- ➖ Vermont law does not generally require individualized consideration of applicants and their convictions in private employment determinations.

3C. Provide rejected applicants with a written explanation of the reasons for denial.

- ➖ Vermont law does not generally require employers or licensing bodies to provide applicants with a written explanation of conviction-based reasons for denial.

3D. Create or expand accessible pathways to appeal.

- ➖ Vermont law does not generally provide accessible pathways to appeal or review of final decisions that are specific to conviction-based licensing or public employment denials. Administrative and/or judicial review may be available under the state’s general administrative laws, but such review can be complex, costly, and prolonged.

Goal 4

Promote transparency about how workers' convictions are likely to impact employment and licensing opportunities.

4A. Ensure that application materials and other resources clearly explain how convictions are factored into decision-making.

- ⊖ Vermont law does not generally require employers or licensing bodies to provide any specific information about criminal history consideration or other similar materials.
- ⊕ However, the Office of Professional Regulation, which oversees a variety of occupational and professional licenses, provides basic online information about the criminal history consideration process.

4B. Provide prospective applicants with a list of the specific offenses that may be disqualifying.

- ⊖ Vermont law does not generally require employers or licensing bodies to identify the specific convictions that may result in a discretionary denial.
- ⊖ Publicly accessible information listing the types of convictions that will trigger a mandatory denial is scant and not routinely included on application materials.

4C. Allow for a pre-application determination of eligibility.

- ⊕ Pursuant to legislation enacted in 2020, Vermont allows individuals to petition most occupational and professional licensing bodies for a determination about whether the individual's specific criminal history will be disqualifying. The determination may be sought at any time, even before the individual has taken steps to meet the general requirements for licensure. The opinion is binding upon the licensing body unless the petitioner violates parole or probation or is convicted of another crime after receiving the determination.

- ➖ Vermont law does not generally require or authorize a process for pre-application eligibility determinations in employment or business licensure.

Goal 5

Expand the availability and effect of relief mechanisms.

5A. Create or expand long-term relief mechanisms.

- ➕ In Vermont, long-term relief is most commonly available in the form of expungement or sealing, which are two distinct forms of relief with similar eligibility requirements and effects. Expungement/sealing is generally available for nonviolent misdemeanors and a small number of felonies after a waiting period of 5 to 15 years, depending upon the offense. Eligibility may be restricted for certain serious offenses or multiple convictions.
- ➖ Expungement and sealing are not generally available for most felonies or many misdemeanors.
- ➖ Expungement and sealing are discretionary in all instances, and the law provides little in the way of standards to guide the courts' consideration.
- ➕ State law also creates a court-ordered Certificate of Restoration of Rights that provides relief from most mandatory licensing and employment barriers by essentially converting them into discretionary barriers, allowing workers to be considered for jobs and licenses they would otherwise be barred from. Most offenses are eligible after a five-year conviction-free waiting period.
- ➖ Courts have discretion as to whether to issue a Certificate of Restoration of Rights in all instances, although the law provides substantive standards for determining whether the Order is warranted.

5B. Create or expand targeted near-term relief mechanisms.

- ➕ In Vermont, near-term relief is available in the form of a court-issued Order of Limited Relief that generally converts mandatory barriers into discretionary ones, allowing workers to be considered for jobs and licenses they would otherwise be barred from. (Unlike a Certificate of Restoration of Rights, which generally provides relief from all mandatory barriers except those specifically excepted by the court, an Order of Limited Relief provides relief only from specific barriers identified in the Order.)
- ➕ Defendants may petition for an Order of Limited Relief prior to sentencing or at any time thereafter.

5C. Limit barriers to accessing relief.

- ➕ Courts and the Department of Corrections are required to notify individuals that their conviction may be eligible for expungement in pretrial proceedings and at the time of sentencing or release from custody.
- ➕ Expungement- and sealing-related fees are fairly low at \$30.
- ➖ Neither expungement, sealing, nor certificates of relief are automatic; they are available only upon petition to the court.
- ➖ Expungement and sealing are generally unavailable if a person has not satisfied a restitution order associated with the conviction, which can be prohibitive to many who are otherwise eligible for relief.
- ➖ The process for obtaining relief can be burdensome for petitioners who are filing without an attorney due to complex eligibility determinations and filing and documentation requirements.

5D. Ensure that the effects of relief mechanisms on collateral consequences are clear.

- ⊕ Per Vermont law, upon the expungement or sealing of records a person “shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.”
- ⊕ Expunged and sealed records are generally unavailable to the public, employers, or licensing bodies.
- ⊕ Employers and licensing bodies are generally prohibited from requiring applicants to answer questions about expunged or sealed records.
- ⊖ State law does not explicitly prohibit employers or licensing bodies from considering convictions that have been expunged.
- ⊖ State law does not directly address whether an individual with a conviction that has been expunged has the right to deny the existence of the conviction if asked about it.

**Despite the terms of the laws that impose individual barriers, the operation of a specific barrier upon a specific individual—i.e., whether it is mandatory, time limited, or triggered by certain types of convictions—may change depending on superseding law (like fair chance licensing provisions) or whether an individual has been granted some form of relief (like expungement or sealing). Significant superseding laws and relief mechanisms are discussed herein to the extent they are applicable.*