



Justice Center

THE COUNCIL OF STATE GOVERNMENTS

Criminal History & Structural Barriers to Work in Vermont

Josh Gaines, Senior Policy Analyst
February 17, 2021

The Council of State Governments Justice Center



Justice Center

THE COUNCIL OF STATE GOVERNMENTS

We are a national nonprofit, nonpartisan organization that combines the power of a membership association, representing state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities. The CSG Justice Center provides assistance in:

- **Justice Reinvestment**
- **Behavioral Health**
- **Law Enforcement**
- **Corrections**
- **Reentry**
- **Juvenile Justice**

How We Work:

- We bring people together
- We drive the criminal justice field forward with original research
- We build momentum for policy change
- We provide expert assistance


Our Goals

- Break the cycle of incarceration
- Advance health, opportunity and equity
- Use data to improve safety and justice

Research, best practices & strategies for states: Recent publications

CSG Justice Center THE COUNCIL OF STATE GOVERNMENTS

the NATIONAL REENTRY RESOURCE CENTER



January 2021

AFTER THE SENTENCE, MORE CONSEQUENCES: A NATIONAL REPORT OF BARRIERS TO WORK

Chidi Umez and Joshua Gaines

CSG Justice Center THE COUNCIL OF STATE GOVERNMENTS

the NATIONAL REENTRY RESOURCE CENTER

VERMONT


SNAPSHOT OF EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES

JANUARY 2021

The National Inventory of Collateral Consequences of Conviction (NICCC) is an online database that catalogs the state and federal statutes and regulations that limit or prohibit people convicted of crimes from accessing various rights, benefits, and opportunities.

As of 2020, the NICCC identifies 296 provisions of Vermont law that impose these "collateral consequences," a large majority of which act as barriers to employment for people with criminal convictions (see FIG. A). This fact sheet provides an overview of employment-related collateral consequences in Vermont.

FIGURE A
PERCENTAGE OF TOTAL CONSEQUENCES RELATED TO EMPLOYMENT



■ EMPLOYMENT-RELATED	66%
■ OTHER	34%

FIGURE B
NUMBER OF EMPLOYMENT-RELATED CONSEQUENCES BY TYPE

110 OCCUPATIONAL LICENSING
98 BUSINESS LICENSING
84 EMPLOYMENT (DIRECT)

FIGURE C
FIELDS MOST IMPACTED

51 HEALTH CARE
23 BANKING, LENDING, SECURITIES & FINANCE
18 TRANSPORTATION & COMMERCIAL MOTOR VEHICLES
18 INSURANCE SALES & SERVICE
16 ADULT CARE, NURSING HOMES & RES. CARE FACILITIES
14 AGRICULTURE, LIVESTOCK & FOOD
13 EDUCATION & SCHOOLS
10 CHILDCARE PROVIDERS & YOUTH PROGRAMS
9 REAL ESTATE & PROPERTY
9 HAZARDOUS MATERIALS, PESTICIDES, CHEMICALS & WASTE

TYPES OF EMPLOYMENT-RELATED CONSEQUENCES

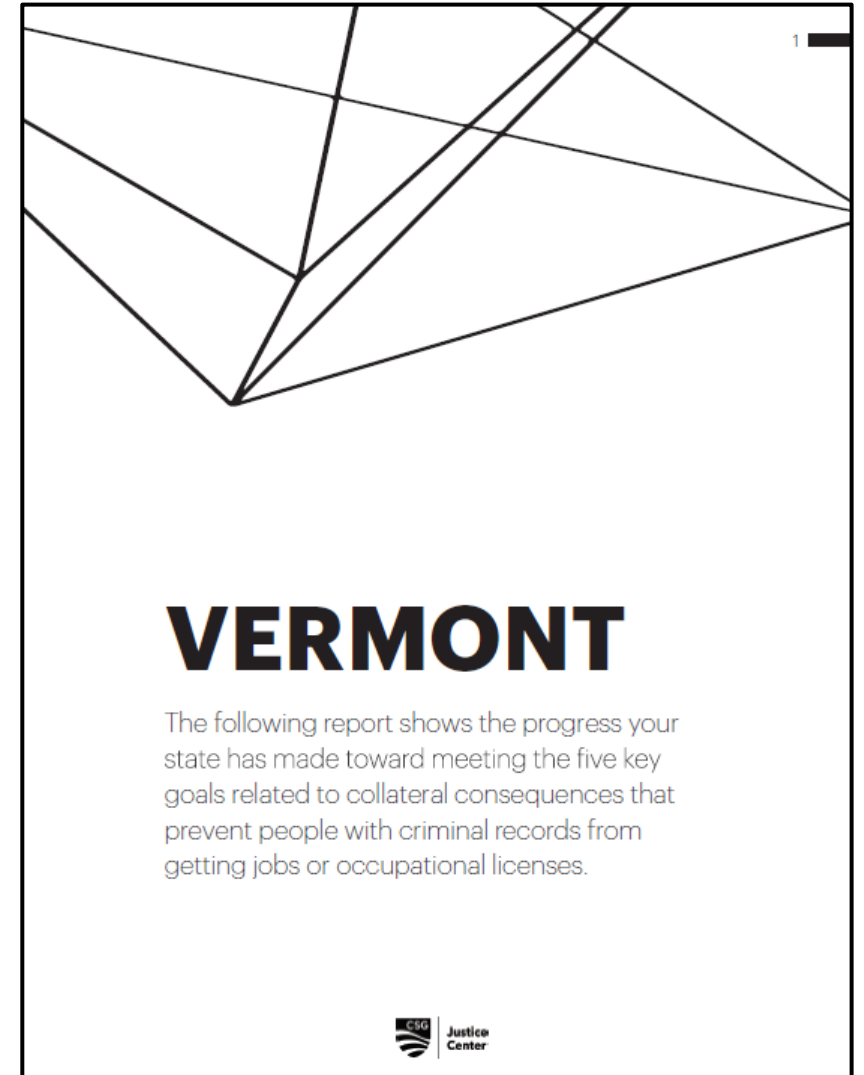
Collateral consequences impact employment opportunities either by restricting access to occupational licenses needed to work in certain fields, restricting access to business licenses needed to pursue self-employment, or directly limiting the ability of employers to hire or retain workers with certain conviction histories. FIG. B shows the number of Vermont consequences that impact each of these three employment-related opportunities.

DISCRETION IN APPLICATION

State law determines whether a consequence must be imposed or may be imposed. Mandatory consequences generally prohibit, without exception, the employment, retention, or licensing of a person with a conviction for a specified offense. Discretionary consequences authorize employers, licensing entities, and other

For more, visit niccc.nationalreentryresourcecenter.org

Research, best practices & strategies for states: Recent publications



Structural barriers to work in Vermont

NUMBER OF EMPLOYMENT-RELATED CONSEQUENCES BY TYPE

110 OCCUPATIONAL LICENSING

98 BUSINESS LICENSING

64 EMPLOYMENT (DIRECT)

Source: National Inventory of Collateral Consequences of Conviction

Most impacted fields & sectors

Top 10 fields, sectors & industries impacted by barriers to employment imposed by Vermont law

- 51** HEALTH CARE
- 23** BANKING, LENDING, SECURITIES & FINANCE
- 18** TRANSPORTATION & COMMERCIAL MOTOR VEHICLES
- 18** INSURANCE SALES & SERVICE
- 16** ADULT CARE, NURSING HOMES & RES. CARE FACILITIES
- 14** AGRICULTURE, LIVESTOCK & FOOD
- 13** EDUCATION & SCHOOLS
- 10** CHILDCARE PROVIDERS & YOUTH PROGRAMS
- 9** REAL ESTATE & PROPERTY
- 9** HAZARDOUS MATERIALS, PESTICIDES, CHEMICALS & WASTE

Source: National Inventory of Collateral Consequences of Conviction

Numbers vs. impact

Not all barriers are equal

3 V.S.A. § 129 – “Unprofessional Conduct”

(a) *In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items or any combination of items, whether the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:*

....

(10) *Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.*

Operation of structural barriers

Mandatory vs. discretionary

Mandatory: must be imposed upon a person with a disqualifying conviction

Discretionary: may be imposed upon a person with a potentially disqualifying conviction

Percentage of employment barriers imposed by VT law



Time-limited vs. indefinite

Time-limited: person is only subject to the barrier for a limited period of time (usually measured in years since conviction)

Indefinite: person is subject to the barrier for life unless relief is provided via expungement, waiver, or other legal mechanisms.

Percentage of employment barriers imposed by VT law



Source: National Inventory of Collateral Consequences of Conviction

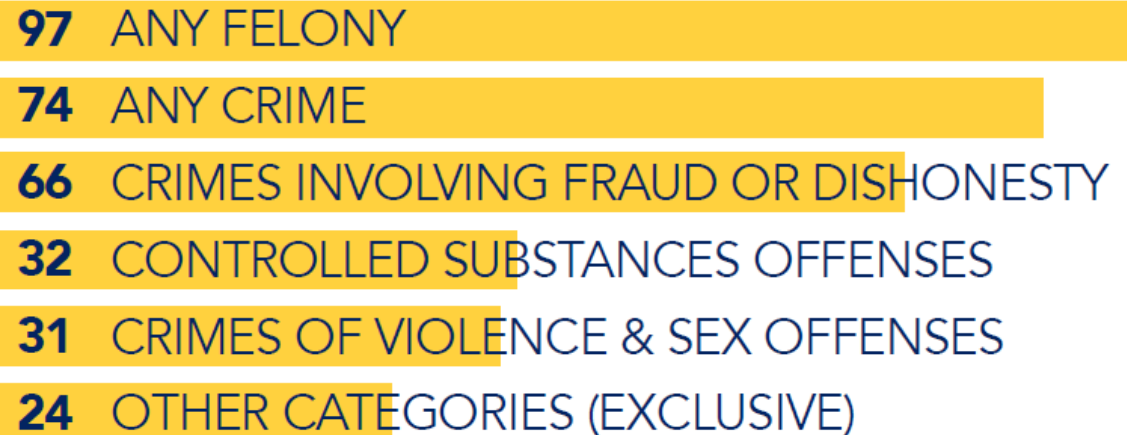
Triggering offenses

Triggering offense:

Offenses for which a conviction may result in the imposition of a particular barrier to employment.

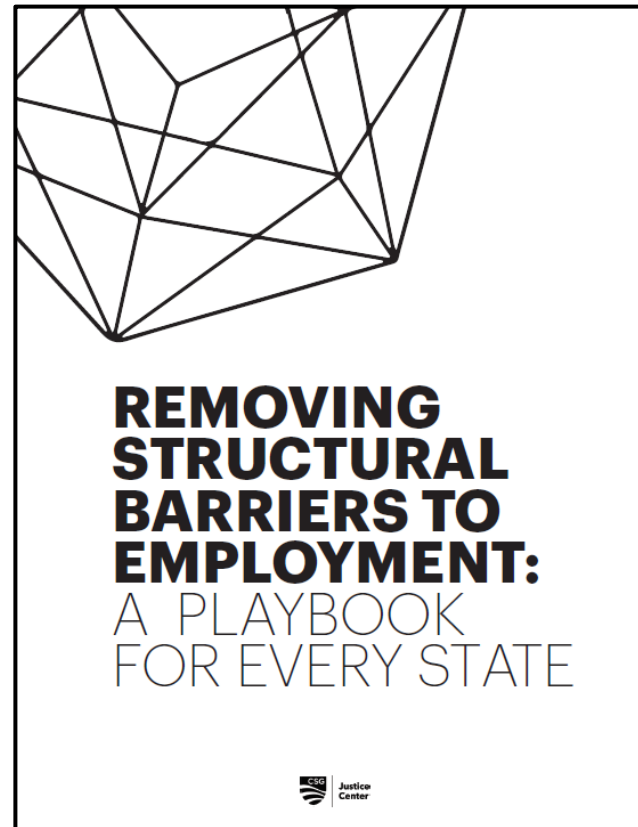
Triggering offenses may be defined broadly (e.g., “crimes of violence” or “any felony”) or with specificity (e.g., “2nd degree assault” or “violation of § 123”), depending upon the barrier.

Number of employment barriers imposed by VT law by offense category



Source: National Inventory of Collateral Consequences of Conviction

Best practices from across the country & state-specific strategies



Goal 1: Limit mandatory and indefinite collateral consequences

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.

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.

Goal 2: Align offenses that trigger collateral consequences with direct 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.

Goal 2: Align offenses that trigger collateral consequences with direct public safety concerns

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.

Goal 3: Promote fair, consistent application of discretionary consequences

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.

Goal 3: Promote fair, consistent application of discretionary consequences

3B. Require individualized consideration of applicants with convictions.

- ➕ 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.

Goal 3: Promote fair, consistent application of discretionary consequences

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.

Goal 4: Promote transparency about how workers' convictions are likely to impact employment and licensing opportunities

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.

Goal 4: Promote transparency about how workers' convictions are likely to impact employment and licensing opportunities

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.

S.7 would significantly expand felony eligibility

Goal 5: Expand the availability and effect of relief mechanisms

⊖ 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.

S.7 does not address

Goal 5: Expand the availability and effect of relief mechanisms

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.

Goal 5: Expand the availability and effect of relief mechanisms

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.

Goal 5: Expand the availability and effect of relief mechanisms

– 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.

S.7 does not address

Goal 5: Expand the availability and effect of relief mechanisms

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.

Goal 5: Expand the availability and effect of relief mechanisms

– 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. *

S.7 does not address

*Applies to sealing as well

Thank you



**Justice
Center**

Joshua Gaines, jgaines@csg.org

Join our distribution list to receive
monthly updates about Justice Reinvestment states across the country as well as
other CSG Justice Center programs.

www.csgjusticecenter.org/subscribe

This material was prepared for the state of Kansas. The presentation was developed by members of The Council of State Governments Justice Center staff. Because presentations are not subject to the same rigorous review process as other printed materials, the statements made reflect the views of the authors, and should not be considered the official position of The Council of State Governments Justice Center, the members of The Council of State Governments, or the funding agency supporting the work.