This report is a publication of the Collateral Consequences Resource Center. The Collateral Consequences Resource Center is a non-profit organization established in 2014 to promote public discussion of the collateral consequences of conviction, the legal restrictions and social stigma that burden people with a criminal record long after their court-imposed sentence has been served. We provide news and commentary about this dynamic area of the law, practice and advocacy resources, and information about how to obtain relief from collateral consequences in different jurisdictions. The Center website is aimed at lawyers and other criminal justice practitioners, courts, scholars and researchers, policymakers and legislators, as well as those most directly affected by the consequences of conviction. We welcome tips about relevant current developments, including judicial decisions and new legislation, as well as proposals for blog posts on topics related to collateral consequences and criminal records. In addition, Center board members and staff are available to advise in connection with efforts to reform policies and practices relating to collateral consequences and criminal records.

For more information, visit the CCRC at http://ccresourcecenter.org.
Since 2013, almost every state has taken at least some steps to chip away at the negative effects of a criminal record on an individual’s ability to earn a living, access housing, education and public benefits, and otherwise fully participate in civil society. It has not been an easy task, in part because of the volume and complexity of state and federal laws imposing collateral consequences. To encourage employers and other decision-makers to give convicted individuals a fair chance, some states have enacted or modified judicial restoration mechanisms like expungement, sealing, and certificates of relief. Others have extended nondiscrimination laws, limited criminal record inquiries, and facilitated front-end opportunities to avoid conviction.

In partnership with the NACDL Restoration of Rights Project, the CCRC maintains a comprehensive and current state-by-state guide to mechanisms for restoration of rights and status after conviction.* As a part of keeping that resource up to date, we have inventoried measures enacted and policies adopted by states in the past four years to mitigate or avoid the disabling effects of a criminal record, and present it here as a snapshot of an encouraging national trend.

* The complete resource, which includes state-by-state descriptions of the availability and administration of relief in each of the fifty states, as well as 50-state charts for each of six different types of relief, is available at http://ccresourcecenter.org/resources-2/restoration-of-rights.
Between 2013 and 2016, forty-two states and the District of Columbia enacted significant reforms of various types. The most common of these reforms are ban-the-box laws and policies that prohibit employers from inquiring into an applicant’s criminal history during the initial stages of the application process. Twenty-one states banned the box in public employment, and eight (CT, DC, IL, MN, NJ, OR, RI, and VT) expanded their ban-the-box prohibitions to cover private employers as well.

Expungement and sealing authorities were also expanded in a significant number of states. Arkansas, Indiana, and Minnesota enacted comprehensive new expungement/sealing schemes that grant many individuals an opportunity to have their records sealed from public view and/or rights restored. Additionally, California, Illinois, Kentucky, Louisiana, and Missouri all expanded existing expungement/sealing laws to make certain felonies eligible for the first time. Maryland, Pennsylvania, and South Dakota enacted entirely new authorities limiting public access to misdemeanor records. Another sixteen states expanded existing record-closing opportunities, either to increase the number and type of eligible offenses and dispositions, or to broaden the protections afforded to, or rights restored by, an expunged or sealed record. Unfortunately, stiff filing fees in states like Louisiana and Kentucky will inevitably discourage people of limited means from taking advantage of these new authorities.

Judicial and/or administrative “certificates of relief” were also made available in eight states for the first time. These certificates adhere to a “forgiving,” as opposed to “forgetting,” model of criminal record mitigation. The new certificates with the broadest application and effect are those in Ohio and Vermont, both of which are modeled after provisions in the Uniform Collateral Consequences of Conviction Act that authorize courts to completely remove specified mandatory collateral consequences imposed by law, allowing individual to be considered for employment or licensing opportunities on the merits. Colorado’s new “order of collateral relief” provides relief from mandatory consequences specified in the order, with exceptions, but is only available for non-prison sentences. The new certificate authorities in most other
states either protect employers and/or other private entities from negligent hiring or retention claims based solely upon their agent’s conviction, or prohibit employers or licensing bodies from denying applicants “based solely upon” their conviction. The effect or availability of pre-existing certificate authorities were expanded in another three states.

Another notable trend was the expansion of the effect and availability of deferred adjudication and diversion mechanisms, which allow individuals to avoid conviction altogether following successful completion of probation or other conditions. Five states (AL, CA, DE, GA, NJ) enacted legislation explicitly authorizing expungement or sealing of deferred adjudication records for the first time, while Colorado and Illinois enacted entirely new deferred adjudication authority. These programs provide a great benefit to those who can take advantage of them, but, in many states, prosecutorial control of these programs can result in disparate treatment and elusive relief.12


7. See Joshua Gaines, New Maryland law allows “shielding” of some misdemeanor convictions, CCRC http://ccresourcecenter.org/2015/05/28/new-maryland-lawallows-shielding-of-some-misdemeanors-convictions, (May 28, 2015). The following year, Maryland also enacted separate new “expungement” authority.


**STATE - BY - STATE OVERVIEW OF REFORMS**

**ALABAMA**

**Expungement of diversion program records**

In 2014, Alabama amended its judicial code to authorize courts to expunge records of non-violent felony and misdemeanor charges not resulting in conviction, including charges dismissed without prejudice after completion of drug court, mental health court, veteran’s court, and diversion programs. See Ala. Code §§ 15-27-1 & 15-27-2. For cases dismissed without prejudice, there is a waiting period of five conviction-free years. Expungement is discretionary if prosecutor or victim object, and the court has discretion to deny subsequent expungements after an initial grant. There is a $300 filing fee.

**ALASKA**

**Restrictions on publication of deferred adjudication records**

In 2016, legislation was enacted to prohibit the state from publishing online the records of cases dismissed following a suspended entry of judgement (deferred adjudication). Alaska Stat. § 22.35.030

**ARKANSAS**

**Expansion and consolidation of sealing authority**

The Comprehensive Criminal Record Sealing Act of 2013 revised and consolidated the state’s sealing laws under a new code chapter, expanded sealing eligibility to include minor felonies, and did away with the waiting period for misdemeanors. See Ark. Code § 16-90-1405, et seq. Sealed convictions are deemed “never to have occurred,” and sealing restores all rights and privileges except for felony firearm restrictions. Sealing is discretionary for convictions, though a presumption in favor of sealing exists in the case of misdemeanors. The Act also created specific sealing authority for victims of human trafficking, and permits sealing of non-violent youthful felonies.
California

Set-aside ("expungement") for minor felony sentenced to county jail

In 2013, California amended its penal code to grant courts authority to set-aside convictions (a mechanism often referred to as "expungement" in the state) of those sentenced to county jail for a felony under the "realignment" legislation enacted in 2011. See Cal. Penal Code § 1203.41. A waiting period of two years from completion of sentence applies. Following set-aside, the individual is “released from all penalties and disabilities resulting from the offense,” with exceptions for certain driving restrictions.

Sealing following pre-trial diversion

In 2013, the state enacted a new law authorizing sealing of records of arrest two years after successful completion of a prosecutor-administered prefilning diversion program. See Cal. Penal Code § 851.87. Sealing permits an individual to deny the occurrence of the arrest, which may not be used to deny any employment, benefit, or certificate.

Felony to misdemeanor reduction and set-aside ("expungement")

In 2014, Proposition 47 substantially expanded the number of offenses that are eligible for set-aside by authorizing post-conviction reduction of many felonies to misdemeanors. See Cal. Penal Code § 1170.18. Reduction to a misdemeanor renders the conviction eligible for set-aside under Cal. Penal Code § 1203.4a.

Ban-the-box in state employment & construction contracting

In 2014, new legislation went into effect that prohibits state or local agencies from inquiring into a job applicant’s conviction history until the agency determines that the applicant meets the minimum employment qualifications stated in any notice issued for the position. See Cal. Labor Code § 432.9. Positions for which a background check is required by law are exempt, as are criminal justice agency positions.

Also in 2014, a new section was added to the Public Contract Code, prohibiting state contractors providing construction-related services from inquiring about the criminal history of applicants for construction jobs on an initial application. See Cal. Pub. Cont. Code § 10186.
Limitation on employer consideration of criminal records

Amendments to the Labor Code that took effect in 2014 prohibit private employers from inquiring into or considering arrests that did not result in conviction, including those from pre- or post-trial diversion programs, or convictions that have been sealed or set-aside. See Cal. Labor Code § 432.7.

Consideration of set-aside convictions in licensing

In 2014, a new provision was added to the Business and Professional Code that prohibits state licensing boards from denying a license solely on the basis of a conviction that was set-aside and dismissed. See Cal. Bus. & Prof. Code § 480(c).

Right to rap sheet following denial of license

A 2015 amendment to the Penal Code requires all entities conducting a background check under the mandate of a state or local occupational or licensing law to automatically provide the subject with a copy of his or her federal rap sheets whenever the agency makes a negative determination based on the results of the check. See Cal. Penal Code § 1105(t).

Early grant of Certificate of Rehabilitation (COR)

A 2014 amendments to the COR law permit a trial courts to grant a COR application before the waiting period has expired if it believes the interest of justice would be served. See Cal. Penal Code § 4852.22.

Certificate of Rehabilitation (COR) for county jail sentences

Pursuant to legislation enacted in 2015, individuals serving a felony sentence in county jail are now allowed to apply for a COR. Previously, COR’s for formerly incarcerated individuals were only available to those that served a term in state prison. See Cal Penal Code § 4852.01(a).

Expansion of voting rights to those in county jail

In 2016, the Election Code was amended to clarify that voting rights are retained by those serving felony sentences in county jails. See Cal. Elec. Code § 2101(c)(1).
COLORADO

Post-conviction felony-to-misdemeanor drug offense reduction

New provisions enacted in 2013 permit those convicted of a less-serious felony drug offenses to have their convictions vacated and reduced to misdemeanors upon successful completion of a probation or community corrections sentence. See Colo. Rev. Stat. § 18-1.3-103.5. Eligibility is restricted for certain recidivists. Many reduced convictions will be eligible for sealing under pre-existing authority.

Pre-trial diversion authority

Effective 2013, district attorneys are authorized to establish pretrial diversion programs to “ensure defendant accountability while allowing defendants to avoid the collateral consequences associated with criminal charges and convictions.” See Colo. Rev. Stat. § 18-1.3-101. Completion of pre-trial diversion results in dismissal of charges and restores the defendant to his or her pre-arrest status.

Evaluation of administrative licensing restrictions

In 2013, Colorado's general licensing law were amended to require the General Assembly, before the repeal, continuation, or reestablishment of an agency or administrative function, to determine through hearings “whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests.” See Colo. Rev. Stat. § 24-34-104.

Order of collateral relief

Effective 2013, multiple sections were added to Colorado's Criminal Code that permit courts imposing a non-prison sentence to enter an “order of collateral relief” that provides relief from any collateral consequences specified in the order. Some serious offenses, including crimes of violence and sex offenses, are ineligible, and the order is not effective to relieve education licensing restrictions or judicial, corrections, or law enforcement employment restrictions. The court retains authority to expand, limit, or revoke the order at any time. See Colo. Rev. Stat. §§ 18-1.3-107 (sentencing alternatives), 18-1.3-213 (probation), and 18-1.3-303 (community corrections).
Expanded effect of gubernatorial pardon

New legislation enacted in 2013 provides that “a pardon issued by the governor shall waive all collateral consequences associated with each conviction,” unless the pardon itself specifically limits the scope of affected consequences. See Colo. Rev. Stat. § 16-17-103

**CONNECTICUT**

Expanded effect of provisional pardon/certificate of rehabilitation

In 2014, Connecticut’s interchangeable provisional pardon and certificate of rehabilitation authority was amended to create a presumption of rehabilitation in employment and licensing determinations for individuals granted a provisional pardon or certificate. See Conn. Gen. Stat. § 46a-80.

Ban-the-box in public/private employment

As of January 2017, public and private employers are prohibited from inquiring into an applicant's criminal history on an initial application. See Conn. Gen. Stat. § 31-51i. The prohibitions do not apply if a criminal history inquiry is required by law or if a security or fidelity bond is required for the position sought.

**DELAWARE**

Expungement of probation before judgement records

In 2014, the state’s expungement law was amended to permit expungement of cases that were discharged following completion of probation before judgement (deferred adjudication) under the same procedures as cases “terminated in favor of the accused,” such as acquittals and other dismissals. See Del. Code Ann. tit. 10, § 1025 and tit. 11, § 4372.

Ban-the-box & non-discrimination in public employment/contracting

In 2014, new legislation was enacted that prohibits public employers from inquiring about or considering an applicant’s criminal history, both “during the initial application process, up to and including the first interview,” and
before a conditional offer of employment is made. See Del. Code Ann. tit. 19, § 711. The amendment also prohibits public employers from disqualifying an applicant based on criminal history unless the exclusion is “job-related and consistent with business necessity,” and requires the employer to consider several factors when evaluating criminal history. Sensitive government positions and those where federal or state law requires or expressly permits consideration of criminal history are exempt. Another provision of law enacted at the same time extends the ban-the-box and non-discrimination requirements to cover state contractors as well. See Del. Code Ann. tit. 29, § 6909B.

Restoration of voting rights

In 2013, Article V, § 2 of the Delaware Constitution was amended to permit most individuals disenfranchised because of conviction to regain their voting rights immediately upon completion of sentence. Previously, a five-year waiting period was required. 2016 legislation further expedited restoration of voting rights by repealing a provision of Del. Code. Ann. tit. 16, § 6102 that conditioned restoration upon payment of outstanding fines and restitution.

**District of Columbia**

**Ban-the-box and non-discrimination in public and private hiring**

The Fair Criminal Record Screening Act of 2014 significantly expanded the non-discrimination laws applicable to both private and public employers by prohibiting inquiries into non-conviction history at any time, and prohibiting inquiries into, or consideration of, conviction history until after a conditional offer of employment is made. See D.C. Code §§ 32-1341, et seq. A conditional offer of employment may be rescinded based on criminal history only if there is a “legitimate business reason,” and if it is “reasonable” in light of several factors, including time since commission, severity of the crime, and the relationship between the offense and the duties required. Private employers with ten or fewer employers are exempt. Applicants may directly enforce violations of the new law through the D.C. Office of Human Rights.
**Georgia**

**Deferred adjudication/youthful misdemeanor record restriction**

Under a new law that took effect in 2013, courts are authorized to “restrict” most non-conviction records, including those from deferred adjudication cases, and most youthful misdemeanor conviction records. See Ga. Code Ann. § 35-3-37. Restricted records are unavailable to the public or to licensing boards, but may be accessed by judicial and law enforcement officials for employment purposes.

A 2016 amendment extends record restriction authority to Accountability Courts that preside over diversion programs for drug users, veterans, those with mental illness, and others with special treatment needs. See Ga. Code Ann. § 15-1-20(b).

**Ban-the-box & non-discrimination in state employment**

In 2015, Governor Nathan Deal signed an executive order eliminating questions about criminal history on applications for state employment and prohibiting the use of a criminal record as an automatic bar to employment. “[S]ensitive governmental positions in which a criminal history would be an immediate disqualification,” are exempt.

**Licensing direct relationship test**

A 2016 law prohibits professional licensing boards from refusing or revoking a license for a felony that does not directly relate to the occupation at issue. See Ga. Code Ann. § 43-1-19. Whether a felony is directly related depends on a multi-factor analysis that includes the length of time since commission, evidence of rehabilitation, and seriousness of the offense.

**Program & Treatment Completion Certificate**

Legislation enacted in 2014 directs the Board of Corrections to create and issue these certificates "to offenders under the rules and regulations of the board." See Ga. Code Ann. § 42-2-5.2. The certificates are meant to "symbolize an offender’s achievements toward successful reentry into society," and promote hiring and the expansion of opportunities by creating a presumption of due care in lawsuits over negligent hiring, retention, admission, etc. Those convicted of serious violent felonies are ineligible. It appears that the Board has not yet published rules for issuance.
IDAHO

Expansion of post-conviction offense reduction

Legislation enacted in 2013 authorizes post-conviction felony-to-misdemeanor reductions after five years for those who have successfully completed probation (or at any time before if prosecutors stipulate to reduction). See Idaho Code Ann. § 19-2604. Certain serious violent offenses may only be reduced with the prosecutor's stipulation. Sex offenders and those convicted of subsequent felonies are ineligible, and reduction is dependent upon a "good cause" determination by the court.

INDIANA

Comprehensive new expungement scheme

In 2013, the state enacted a comprehensive new expungement scheme that applies to all but the most serious violent and sexual offenses. See Ind. Code § 35-38-9-1, et seq. Expungement of non-conviction records, misdemeanors, and less-serious felonies is mandatory if basic eligibility requirements are met, and discretionary for more serious felonies. Non-conviction records and records of misdemeanors and minor felonies are "sealed" upon expungement, limiting public access without a court order. Records of more serious felonies "remain public" after expungement, but are marked as expunged. Expungement provides numerous legal benefits, including restoration of most civil rights and protection from hiring and licensing discrimination. Waiting periods for all offenses range from 1 to 10 years, based on the severity of the offense.

In 2014, the law was amended to change how waiting periods are calculated for many felonies, effectively shortening the waiting period in many cases. The waiting period is now the later of eight or ten years from the date of conviction or three or five years from the date of completion of sentence. The amendment also lowered the burden of proof for discretionary expungement from "clear and convincing evidence" to a "preponderance of the evidence."
ILLINOIS

Record sealing expansion

Illinois’ sealing law was amended in 2015 to expand eligibility to non-violent Class 3 and 4 felonies after a three-year waiting period if there are no subsequent finding of guilt. See 20 Ill. Comp. Stat. 2630/5.2. Sealed records may not be considered by public or private entities in most employment or licensing matters; however, sealed felonies may be made available if federal or state law requires a criminal record inquiry – including to hospitals, schools, and other agencies dealing with vulnerable populations. Previously, only certain misdemeanors and deferred adjudication dispositions could be sealed.

Expedited sealing for completion of education programs during sentence

Legislation enacted in 2015 allows otherwise eligible individuals who have earned a high school diploma, GED, associate’s degree, or career or vocational certificate while serving their sentences to apply for sealing immediately upon termination of sentence. See 20 Ill. Comp. Stat. 2630/5.2(c)(3)(e). Expedited sealing is discretionary and, if denied, the usual waiting periods apply.

Second chance probation (deferred adjudication)

Amendments enacted in 2014 permit persons charged with minor non-violent drug, fraud or theft felony offenses, who have not previously been convicted of a felony or of a violent offense, to be placed on probation for a period of two years. See 730 Ill. Comp. Stat. 5/5-6-3.4. Upon successful completion of probation, charges are dismissed and are not considered to be a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Dismissed charges are eligible for expungement under pre-existing authority after relevant waiting periods.

Ban-the-box in public/private employment

In 2013, Governor Pat Quinn issued an administrative order removing inquiries into applicants’ criminal history on state employment applications, and directing each state agency to establish a “documented review process” to ensure that any exclusion related to a criminal record is “job-related and consistent with business necessity.”
Effective 2015, private employers with more than fifteen employees are prohibited from inquiring about criminal history until the first interview or, if there is no interview, after a conditional offer is made. See 820 Ill. Comp. Stat. 75/15. Exempt positions include those where exclusion is required by state or federal law, those requiring security or fidelity bonds, and those filled by individuals licensed under the Emergency Medical Systems Act.

**Expanded eligibility for relief certificates**

A 2015 amendment significantly increased the number of persons eligible for Certificates of Relief from Disabilities (CRD) and Certificates of Good Conduct (CGC). See 730 Ill. Comp. Stat. 5/5-5.5-5. The amendment removed the requirement that made those convicted of forcible and Class X felonies ineligible. Ineligible offenses have been reduced to a handful of specific offenses, including arson, registerable sex offenses, aggravated DUI, and aggravated domestic battery.

**Iowa**

**Confidentiality of juvenile delinquency records**

2015 legislation made adjudication records in delinquency proceedings arising on or after July 1, 2016 presumptively confidential if they do not involve a forcible felony offense. See Iowa Code Ann. §§ 232.147(3), 232.149B(1).

**Kentucky**

**Expungement of low-level felonies and pardoned offenses**

In 2016, HB40 added multiple sections to KRS Chapter 431 that authorize courts to vacate certain class D felony convictions and pardoned convictions, dismiss the charges, and expunge the record. A waiting period of 5 crime-free years applies, and expungement may only be sought once in a person’s lifetime. Expungement restores voting rights lost due to felony conviction. Expunged records are removed from official databases and their existence may be denied. A $500 filing fee is required. Previously, expungement was only available for misdemeanors.
LOUISIANA

**Felony expungement**

In 2014, Louisiana enacted new Chapter 34 of the Code of Criminal Procedure, consolidating existing expungement laws and authorizing expungement of felony convictions for the first time. Expungement is mandatory if basic eligibility requirements are met, though an extensive waiting period of 10 years from completion of sentence applies. Expunged records are generally not publicly available, though they may be made available to law enforcement and certain state licensing boards. Violent offenses, sex offenses, crimes against minors, and drug trafficking offenses are ineligible.

**Ban-the-box in state employment**

In 2016, new legislation was enacted that prohibits state employers from inquiring into the criminal history of applicants for unclassified state service positions until after the applicant has been interviewed for the position, or, if no interview is conducted, until the applicant is extended a conditional offer of employment. See La. Rev. Stat. § 42:1701. Positions in law enforcement, corrections, and any position for which a background check is required by law are exempt.

**Negligent hiring protection**

A new 2014 enactment protects employers from negligent hiring and supervision liability in many claims based solely on an employee’s past criminal convictions. See La. Rev. Stat. § 23:291(E). Exceptions apply if the employee’s actions are substantially related to the nature of past crimes, or if the employee was convicted of a specified crime of violence or sex offense.

**Eligibility to run for office**

In January 2016, in *Shepherd v. Schedler*, the Louisiana Supreme Court overturned a 1997 amendment to the state constitution, La. Const. art. I § 10 (B), that barred those with felony convictions from holding elective office until 15 years after completion of sentence. The court held that the amendment had not been constitutionally adopted since the version approved by the legislature differed from the version voted on by the public.
MAINE

Sealing of youthful Class E convictions

Legislation enacted in 2015 authorizes courts to seal the record of conviction for most Class E offenses that were committed while a person was 18 years old or older but younger than 21 so long as the person has not been convicted of any other offenses and has no charges pending. See Me. Rev. Stat. tit. 15, §§ 2251, 2255. Sealing is mandatory if the court finds that the person meets basic eligibility criteria, including a four-year waiting period from completion of sentence. Sealed records may not be disseminated to anyone other than criminal justice agencies, and a person whose record is sealed “may respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.”

MARYLAND

New expungement & shielding authority

The Second Chance Act of 2015 grants courts authority to “shield” (the functional equivalent of “sealing” in most jurisdictions) twelve specific minor misdemeanor convictions, including possession of a controlled substance, three years after completion of sentence. See Md. Code Crim. Proc. § 10-301, et seq. Shielding is discretionary, subject to a “good cause” determination by the court. Shielded records are generally not available to the public, but remain available to any employer or licensing agency that is required or authorized by law to inquire into a person’s criminal record, and to a number of health occupations boards, child care providers, other entities.

The Justice Reinvestment Act of 2016 granted courts additional authority to “expunge” the records of over 100 enumerated misdemeanor offenses after a 10 to 15 year waiting period. See Md. Code Crim. Proc. § 10-110. Expungement is discretionary, subject to a determination that a person is not a risk to public safety and that expungement would be in the best interest of justice. Expungement has a broader effect than shielding: expunged records may only be opened by court order and are destroyed after three years.
Ban-the-box in state employment

In 2013, a new provision was added to the Personnel and Pensions Code that prohibits state employers from inquiring about an applicant’s criminal history until he or she has had an opportunity for an interview. See Md. Code State Pers. & Pens. § 2-203. Certain positions are exempt, including law enforcement-related positions and positions where a criminal records check is mandated by statute.

Certificate of rehabilitation

A new law enacted as part of the 2016 Justice Reinvestment Act directs the Department of Corrections to issue a “Certificate of Rehabilitation” to individuals convicted of non-violent and non-sexual felonies and misdemeanors who were supervised under conditions of parole, probation, or mandatory release supervision, and who have completed all such conditions. See Md. Code Corr. Servs. § 7-104. The certificate prohibits licensing boards from denying applicants solely on the bases of conviction unless there is a direct relationship between the offense and the licensed conduct, or the issuance would pose a risk to public safety or property.

Restoration of voting rights

In 2015, over the veto of Governor Larry Hogan, the legislature enacted a bill limiting felony disenfranchisement to those serving a term in prison. See Md. Code Elec. § 3-102. Previously, those with felonies did not regain the right to vote until after completing any period of probation or parole.

Massachusetts

No automatic driver’s license suspension for most drug convictions

In 2016, the state repealed most of a provision that required the RMV to automatically suspend an individual’s driver’s license upon conviction for a drug offense. See Mass. Gen. Laws ch. 90, § 22. Automatic suspension remains in place for a small number of drug offenses. Individuals whose licenses were suspended under the provision may have them reinstated immediately without having to pay the previous $500 reinstatement fee.
**Michigan**

**First-offender set-aside expansion**

A 2015 amendment expanded first-offender set-aside eligibility to persons convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses. See Mich. Comp. Laws § 780.621. Such individuals may now seek to have either or both misdemeanors set-aside five years after completion of sentence. Records of set-aside convictions are not available to the public.

**Certificate of Employability**

Under legislation enacted in 2014, Michigan prisoners who complete certain programs and have reasonably clear conduct records may qualify for a "Certificate of Employability." See Mich. Comp. Laws § 791.234d. An employer or other person may introduce the certificate as evidence of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with a certificate-holder. Certificates are only valid for 4 years after issuance.

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**Minnesota**

**Comprehensive new statutory expungement authority**

Legislation effective in 2015 specifically authorizes courts (who previously possessed only common law expungement authority) to expunge judicial and executive branch records of juvenile delinquency adjudications, cases resolved in an individual’s favor, cases resulting in diversion or a stay of adjudication after a one-year waiting period, and misdemeanor and minor non-violent felony convictions after waiting periods ranging from two to five years from completion of sentence. See Minn. Stat. § 609A.02. Expungement is discretionary for conviction records, and a person must establish that the need for expungement outweighs any risk to public safety. Expunged records are not available to the public and most government agencies, and may not be considered in public employment and licensing decisions. The law also protects employers from negligent hiring liability and requires background screening companies to delete expunged records.
Ban-the-box expansion to private employment

In 2014, the state’s existing ban-the-box law was expanded to prohibit private employers from inquiring into criminal history until an applicant has been selected for an interview or given a conditional offer. See Minn. Stat. § 364.021. Previously, the prohibitions applied only to state government employers. The new law also limits negligent hiring liability for employers that have complied with the expanded ban-the-box provision.

MISSISSIPPI

Youthful felony expungement

Effective 2013, expungement eligibility was expanded to cover a single more serious felony conviction committed before the age of 18. See Miss. Code Ann. § 99-19-71(2)(b). Certain serious felonies including rape, murder, armed robbery, and child pornography are ineligible, and the court may deny an underage felony expungement for “any felony that, in the determination of the circuit court, is a violent crime or a felony that is related to the distribution of a controlled substance and in the court’s discretion it should not be expunged.” Prior to the expansion, only first misdemeanor convictions and minor felonies could be expunged.

MISSOURI

Expungement expansion

Effective January 1, 2018, the availability of expungement will be greatly expanded under legislation enacted in 2016. See Mo. Rev. Stat. § 610.140. The expansion authorizes expungement of all non-Class A felonies and all misdemeanors, subject to a lengthy list of exceptions for violent offenses, sex offenses, and other more serious crimes. Waiting periods will be reduced to three years after completion of sentence for misdemeanors, and to seven for felonies, but a person will only be able to expunge one felony and two misdemeanors in their lifetime. Expungement will remain discretionary, although petitioners that meet the basic eligibility requirements will be given a presumption in favor of
granting. Expunged records will be “closed” and generally unavailable to the public, but will remain available to many agencies for employment and license screening in sensitive areas like child care and law enforcement.

**Ban-the-box in public employment**

In 2016, Governor Jay Nixon signed an executive order directing all state agencies under the governor’s authority to remove from all initial employment applications “questions relating to an individual’s criminal history unless a criminal history would render an applicant ineligible for the position.”

**MONTANA**

**Re-alignment of pardon authority**

A 2015 law transformed the state’s Board of Pardons and Parole into an advisory Board, permitting the governor to grant clemency petitions over the Board’s recommendation for denial. See Mont. Code Ann. §§ 46-23-104. Previously, the governor could only grant a petition after receiving a favorable recommendation from the Board.

**NEBRASKA**

**Ban-the-box in public employment**

Legislation enacted in 2014 prohibits public employers from inquiring into an individual’s criminal history until the employer “has determined that the applicant meets the minimum employment qualification.” See Neb. Rev. Stat. § 48-202. The prohibition does not apply to law enforcement employment, positions requiring a background check, or positions for which a criminal record is disqualifying.
NEW HAMPSHIRE

Confidentiality of annulled records

A 2013 amendment provides that annulled records are only available to the person receiving the annulment and to law enforcement. See N.H. Rev. Stat. § 651:5(XI)(c). Prior to 2013, annulled records remained available to the public, but were marked as having been annulled.

Non-discrimination in licensing

As of 2015, no board or commission may deny, suspend, or revoke an occupational or business license “because of a prior conviction of a crime in and of itself.” See N.H. Rev. Stat. § 332-G:10. However, a license may be denied or impaired “after considering the nature of the crime and whether there is a substantial and direct relationship to the occupation, trade, vocation, or profession for which the person has applied, and may consider information about the rehabilitation of the convicted person, and the amount of time that has passed since the conviction or release.”

NEW JERSEY

Expungement expansion

In 2016, expungement availability was expanded to permit a person to append to a petition for expungement of an indictable offense up to two petitions for expungement of disorderly persons/petty disorderly persons offenses. N.J. Stat. § 2C:52-2(a). Previously, there was no way for a person to expunge both indictable and disorderly persons offenses in their lifetime.

The new legislation also authorizes Superior Courts to expunge most drug offenses upon successful completion of “drug court” (special probation and discharge) if the person completes a substance abuse treatment program and is not convicted of an offense during the term of special probation. See N.J. Stat. § 2C:35-14. Expungement is mandatory unless the court finds that “the need for the availability of the record outweighs the desirability of having the person freed from any disabilities associated with their availability.” Those who completed drug court prior to the new authority’s enactment may petition for expungement subject to similar criteria.
Ban-the-box in public and private employment

The 2015 Opportunity to Compete Law requires most state agencies, and most private employers with more than fifteen employees, to delay inquiry into an applicant’s criminal history until after an initial interview. See N.J. Stat. § 34:6B-11, et seq. There are several exceptions, including jobs in law enforcement and the judiciary, jobs for which criminal checks are required by law, and jobs for which lack of prior record is required for licensing or similar purposes. The law also prohibits most employers from publishing job notices that state that applicants that have been arrested or convicted of crimes will not be considered.

NEW MEXICO

Restoration of civil rights following deferred imposition of sentence

In 2014, in United States v. Reese, the New Mexico Supreme Court held that all civil rights are automatically restored upon dismissal following completion of a deferred sentence under N.M. Ann. § 31-20-3. The court reasoned that the deferred sentencing and dismissal process was “effectively a legislatively created judicial pardon.”

NEW YORK

Conditional pardon for youthful offenses

At the end of 2015, Governor Andrew Cuomo announced a special pardon program that would apply to individuals convicted of misdemeanors or non-violent felonies at age 16 or 17. Pardons under this new program are not based on specific need or the availability of other administrative relief, and will be recommended so long as the applicant meets certain screening requirements, including being crime-free for at least 10 years. According to the state’s clemency website, “If you receive this pardon, the New York State Office of Court Administration has stated that it will restrict public access to your criminal history, meaning that it will not be available to private employers, landlords or other companies that seek this information.” Governor Cuomo issued the first grants under this program at the end of 2016, pardoning 101 applicants.
Ban-the-box in public employment

In September 2015, Governor Cuomo announced plans to implement recommendations from the Council on Community Re-entry whereby applicants for competitive positions in state agencies will not be required to discuss or disclose prior convictions until an agency has interviewed the candidate and made an initial hiring decision.

North Carolina

General licensing non-discrimination law

In 2013, the state enacted legislation that prohibits most occupational licensing boards from automatically disqualifying an individual based on a criminal unless the board is authorized to do so by their governing laws. See N.C. Gen. Stat. § 93B-8.1(b). Boards that are authorized to disqualify because of a criminal conviction must consider whether disqualification is warranted in light of a number of factors, including “the nexus between the criminal conduct and the prospective duties of the applicant as a licensee.”

Ohio

Ban-the-box in public employment

Pursuant to legislation enacted in 2015, “no public employer shall include on any form for application for employment with the public employer any question concerning the criminal background of the applicant.” See Ohio Rev. Code Ann. § 9.73. “Public employers” include all state agencies and political subdivisions of the state.
Certificate of Qualification for Employment (CQE)\textsuperscript{10}

As of 2013, courts of common pleas are authorized to issue an individual convicted under Ohio law a CQE that removes specified mandatory occupational and licensing consequences, allowing the individual to be considered on the merits. See Ohio Rev. Code Ann. § 2953.25. CQE’s are discretionary, subject to the individual’s need and the risk that granting it would pose to the public. A CQE may also be entered as evidence of due care in negligence proceedings. A waiting period of one year from completion of sentence applies for felonies, and six months for misdemeanors. Several consequences are not affected by a CQE, including law enforcement employment restrictions, driver’s license restrictions, and certain health care license restrictions.

\textbf{OKLAHOMA}

Sealing expansion

Amendments that took effect in 2014 reduce the waiting period for expungement from two years to one in cases of deferred adjudication of misdemeanor charges. See 22 Okla. Stat. § 18. The new law also provides that prior misdemeanor convictions will no longer be disqualifying in any expungement cases.

In 2016, the sealing law was further amended to authorize a person convicted of a misdemeanor that was sentenced to a fine $500 or less and no suspended sentence or term of imprisonment to petition for expungement immediately upon satisfaction of the fine so long as no charges are pending and the person has never been convicted of a felony. See 22 Okla. Stat. § 18. The 2016 amendment also reduced the waiting period for misdemeanor convictions from 10 years to five and authorized expungement for individuals with no more than two pardoned felonies after 20 years.
Ban-the-box in public hiring

In February 2016, Governor Mary Fallin signed Executive Order 2016-03, requiring all state agencies to remove from their employment applications all questions about criminal history “unless a felony conviction would automatically render an applicant not qualified.” Agencies may still inquire about criminal history during the interview process. The Order does not apply to “sensitive governmental positions in which a criminal history would be an immediate disqualification.”

Licensing non-discrimination

A number of licensing laws were amended in 2015 to limit the authority of most specialized licensing boards to deny, suspend, or revoke a license based on a felony conviction to instances where the conviction “substantially relates to the practice” or “poses a reasonable threat to public safety.” See, e.g., 59 Okl. Stat. §§ 199.11 (Board of Cosmetology and Barbering), 46.14 (Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers).

Limited effect of juvenile adjudication

A 2014 enactment provides that juvenile adjudications “shall not be considered an arrest, detention or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes, unless otherwise provided by law.” See 10A Okla. Stat. § 2-2-402(F).

OREGON

Expanded set-aside availability for marijuana offenses

Following the decriminalization of recreational marijuana use in 2015, Oregon greatly expanded the availability of set-asides for those convicted of marijuana offenses. See Stats 2015 ch. 614, § 129 (uncodified). For set-aside purposes, marijuana offenses committed before June 30, 2015, are classified as if the conduct occurred after June 30, 2015, and all decriminalized marijuana offenses are treated as class C misdemeanors.
Ban-the-box in public and private employment

Legislation enacted in 2015 prohibits any employer, public or private, from requiring an applicant to disclose criminal convictions on an application, before an initial interview, or, if no initial interview is conducted, before making a conditional offer of employment. See Or. Rev. Stat. § 659A.360. The law does not apply to law enforcement, volunteer positions, and employers required by federal, state, or local laws or regulations to consider criminal history.

Pennsylvania

Sealing of low-grade offenses

Under new laws effective in 2016, eligible persons may petition to seal records of 2nd and 3rd degree misdemeanors and ungraded offenses under an “order for limited access.” See 18 Pa. Cons. Stat. § 9122.1. Sealing is unavailable to individuals convicted at any time of an offense punishable by more than two years in prison or of certain enumerated offenses. Those convicted of four or more offenses punishable by a year or more in prison are also ineligible. A 10-year arrest and prosecution-free waiting period applies. Sealed records are not available to the public, but remain available to state professional and occupational licensing agencies, agencies such as the Department of Human Services for child protective services uses, and to criminal justice agencies.

A pair of more comprehensive automatic sealing bills are currently pending in the state House and Senate. See SB 1197 and HB 1984 (2016).
RHODE ISLAND

Ban-the-box in public and private employment

Legislation enacted in 2014 prohibits both public and private employers from inquiring into an applicant’s criminal record before an initial interview. See R.I. Gen. Laws § 28-5-7. Exceptions apply for law enforcement positions, positions for which federal or state law or regulation creates “a mandatory or presumptive disqualification from employment” based upon conviction, and positions for which the requirement of a standard fidelity bond would require disqualification based upon conviction. Prior to the amendment, employers were only barred from inquiring into non-conviction records.

Certificate of recovery & reentry

As of 2014, a person with no more than one non-violent felony conviction may apply to the Parole Board for a “certificate of recovery & re-entry” that may relieve some collateral consequences by serving “as one determining factor as to whether the petitioner has been successful in his or her rehabilitation.” See R.I. Gen. Laws § 13-8.2-1. Violent crimes are ineligible, and the waiting period varies from one to three years from completion of sentence, depending on the most serious offense.

SOUTH DAKOTA

Automatic sealing of low-level conviction & arrest records

Pursuant to legislation enacted in 2016, records of arrest and conviction for petty offenses, municipal ordinance violations, and Class 2 misdemeanors are required to be automatically removed from a person’s criminal record after ten years. See S.D. Codified Laws § 23A-3-34. Prior to the law’s enactment, executive pardon was the only mechanism available to shield conviction records from public view.
Expedited pardons for certain misdemeanors

In 2014, the Board of Pardons and Paroles implemented a policy that expedites the pardon process for certain misdemeanors. Class 2 misdemeanors and petty offenses are eligible for expedited processing after five years, and non-violent Class 1 misdemeanors are eligible after ten years. Expedited processing is not available for persons convicted of another offense (other than a traffic offense) during the waiting period, nor is it available for pardons sought to regain firearms rights.

TENNESSEE

Expungement of pardoned convictions

Legislation enacted in 2013 authorizes expungement of pardoned convictions for the first time. See Tenn. Code Ann. § 40-29-105(h). Expunged convictions are treated as if they never occurred, and publicly available records of the offense are destroyed. Expungement also restores firearm rights and relieves “any adverse effects or direct disabilities by virtue of the criminal offense that was expunged.”

Expungement of multiple contemporaneous offenses

A 2014 amendment to the expungement law permits multiple contemporaneous offenses that “represent[] a single criminal episode with a single criminal intent” to be expunged together. See Tenn. Code Ann. § 40-32-101(g)(1)(D). Previously, individuals could only expunge a single offense, since conviction of any offense other than the one for which expungement was sought was a bar to eligibility.

Ban-the-box in state hiring

Legislation enacted in 2016 prohibits state employers from inquiring into criminal history on an initial application for employment. See Tenn. Code Ann. § 8-50-112. Positions for which a criminal background is required under federal law, or for which a conviction is disqualifying under federal or state law, are exempt. If a subsequent record check reveals a conviction, the employer must consider several factors in determining the applicant’s fitness, including the seriousness of the offense, time since commission, and the specific duties of the position.
Certificate of Employability

A new 2014 law permits anyone that has had or is seeking a judicial restoration of rights to petition the same court for a “certificate of employability” that prohibits most licensing agencies from denying a license based solely on the person’s criminal record, and protects employers and others from liability for the actions of a certificate-holder. See Tenn. Code Ann. § 40-29-107.

Relaxation of licensing standards

A 2016 enactment authorizes seven state regulatory agencies whose laws prohibit licensing of individuals with a felony conviction to consider whether a conviction bears directly on fitness to practice competently when making licensing determinations. The professions include alcoholic beverage servers (Tenn. Code Ann. §§ 57-3-703, -704), barbers (§ 62-3-121), land surveyors (§ 62-18-116), soil scientists (§ 62-18-217), athletic trainers (§ 63-24-107), reflexologists (§§ 63-30-103, -111), fireworks exhibitors (§ 68-104-204), and well drillers (§ 69-10-105).

TEXAS

Order of Nondisclosure (OND) expansion

Legislation enacted in 2015 expanded OND eligibility (previously available only for certain deferred adjudication dispositions) to include most first-offender misdemeanor convictions. See Tex. Gov’t. Code §§ 411.073, 411.0735. A two-year waiting period applies for more serious misdemeanors; otherwise an OND may be granted immediately upon completion of sentence. OND’s are granted by the court upon a determination that issuance is “in the best interest of justice.” Records subject to an OND are generally unavailable to the public, though they may be made available to certain licensing and employment entities, including banks, schools, hospitals, and various licensing boards.
Negligent hiring

In 2013, a new chapter 142 was added to the Texas Civil Practice and Remedies Code to prohibit a cause of action from being brought against an employer, general contractor, premises owner, or other third party solely for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has been convicted of an offense. Exceptions apply for violent crimes and sex offenses, and for offenses committed while performing acts similar to current job duties.

Deferred adjudication guilty pleas & licensing

Legislation enacted in 2013 greatly expanded the number of offenses for which a deferred adjudication (DA) guilty plea may not be treated as a conviction for licensing purposes. See Tex. Occ. Code § 53.021. Previously, DA pleas were not treated as a conviction unless the licensing authority considered the person to be “a threat to public safety,” or if “employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.” Under the new legislation, only registerable sex offenses, offenses where less than 5 years have passed since completion of probation, and those that would trigger a mandatory licensing bar may be treated as convictions, and only if they do not pass the “fitness/risk” assessment.

Credit reporting regulation

Comprehensive legislation that regulates the actions of criminal history providers was enacted in 2013. See Tex. Bus. & Com. Code § 109.001 et seq. The new law prohibits publication of incomplete or inaccurate records and allows individuals to challenge the accuracy of their own records. It also provides civil remedies that allow individuals to directly enforce these prohibitions and requirements.
**Vermont**

**Uniform Collateral Consequences of Conviction Act (UCCCA)**

Vermont’s version of the UCCCA took effect in 2016, authorizing courts to issue orders that directly relieve collateral consequences imposed by state law. See 13 V.S.A. § 8000, et seq. The new “Order of Limited Relief” allows a court to dispense with one or more mandatory consequences if it finds that dispensation will “materially assist” a person overcome relevant consequences, that the person has substantial need for the relief in order to live a law-abiding life, and that the relief would not pose a risk to the public or to individuals. See 13 V.S.A. § 8010.

Courts are also authorized to issue a “Certificate of Restoration of Rights” that relieves all but specified consequences five years after sentencing and release from incarceration. See 13 V.S.A. § 8011. Sex offender registration, driver’s license disabilities, and law enforcement employment are not affected, and many serious crimes are ineligible.

Both an Order of Limited Relief and a Certificate of Restoration of Rights may be introduced as evidence of due care in negligence proceedings.

The UCCCA also gives pardons and other relief afforded convictions in other jurisdictions the same effect in Vermont as in the jurisdiction in which the relief was granted. See 13 V.S.A. § 8009.

**Ban-the-box in public and private employment**

Pursuant to legislation enacted in 2016 and effective July 2017, no public or private employer may inquire about an applicant’s criminal history on an initial employment application. See 21 V.S.A. § 495j. Inquiries into criminal history may only be made during an interview or after the employee has been deemed otherwise qualified for the position, and the scope of the inquiry may only cover those convictions that would trigger the disqualification. Each violation of the provision is punishable by a $100 civil penalty. In 2015, Governor Peter Shumlin issued an executive order banning-the-box in public employment, which has since been superseded by the 2016 legislation.
Expungement of youthful/decriminalized offenses

Legislation enacted in 2015 reduces the waiting period for expungement to five years after completion of sentence for those convicted under the age of 25, and to one year for those convicted of conduct that is no longer a crime. See 13 V.S.A. § 7602. To take advantage of this authority, those with youthful convictions must show that they successfully completed a term of regular employment or public service, independent of any service ordered as a part of the sentence for the conviction.

Virginia

Ban-the-box in public employment

In 2015, Governor Terry McAuliffe issued Executive Order 41, directing that all state agencies remove the question relating to criminal record from employment applications, and “encourag[ing] similar hiring practices among private employers operating within the Commonwealth and state government contractors.” The order also prohibits background checks until after a candidate has signed a waiver and is being considered for a specific position. It additionally prohibits executive agencies from basing decisions on criminal history unless the history is “demonstrably job-related and consistent with business necessity, or state or federal law prohibits hiring an individual with certain convictions for a particular position.” Certain sensitive positions are excepted.

Restoration of voting rights

In 2013, Governor Robert McDonnell adopted a policy of restoring the right to vote automatically on a case-by-case basis to all eligible individuals with non-violent felonies upon completion of sentence. Beginning in 2014, Governor McAuliffe further expanded the availability of restoration of rights by reducing waiting periods for all offenses, reducing the number of offenses defined as “violent,” and allowing individuals whose rights have been restored to have that fact noted on their official criminal record.
Beginning in April 2016, Governor McAuliffe issued a series of executive orders purporting to restore the vote automatically to all individuals that had completed their sentence and satisfied attendant financial obligations. However, the Virginia Supreme Court struck down the orders in July of the same year, saying that the governor’s restoration authority must be exercised on a case-by-case basis. Governor McAuliffe responded to the decision by promising to restore the vote on an individual basis to the more than 200,000 individuals affected by his orders.

WASHINGTON

Certificate of restoration of opportunity

New legislation effective 2016 authorizes courts to grant a Certificate of Restoration of Opportunity (CROP) that prohibits many licensing entities from disqualifying an applicant solely based on criminal history, and protects employers and housing providers from negligent hiring/renting liability. See Wash. Rev. Code §§ 9.97.010 & .020. Serious felonies are ineligible, and waiting periods ranging from 1 to 5 years apply.

Automatic sealing of juvenile records

Under a 2014 law, juvenile courts are required to schedule, at the time of disposition, a hearing to administratively seal the record of adjudication, to be held after the individual reaches age 18 (or after the individual has been discharged from supervision or confinement, if it extends beyond age 18). See Wash. Rev. Code § 13.50.260. If all of the terms and conditions of disposition are satisfied then sealing is mandatory unless the state objects or the court finds “a compelling reason not to seal” — in which case a contested hearing is held. Serious offenses, sex offenses, and most felony drug offenses are ineligible.

WEST VIRGINIA

Firearm rights restoration

**Wisconsin**

**Ban-the-box in public employment**

Legislation enacted in 2016 prohibits inquiries into the criminal history of civil service applicants until after the applicant has been “certified” for the position. See Wis. Stat. § 230.16(ap). This prohibition does not apply to positions where a particular conviction record is disqualifying.

**Wyoming**

**First offender voting rights restoration**

Pursuant to legislation effective January 1, 2016, the Department Corrections is required to issue a certificate of restoration of voting rights to first-time non-violent felony offenders whose sentence was completed after that date. See Wyo. Stat. Ann. § 7-13-105. The legislation also repeals the 5-year eligibility period that was previously in place, permitting all other non-violent first offenders to petition for a certificate of restoration immediately.
NOTES


