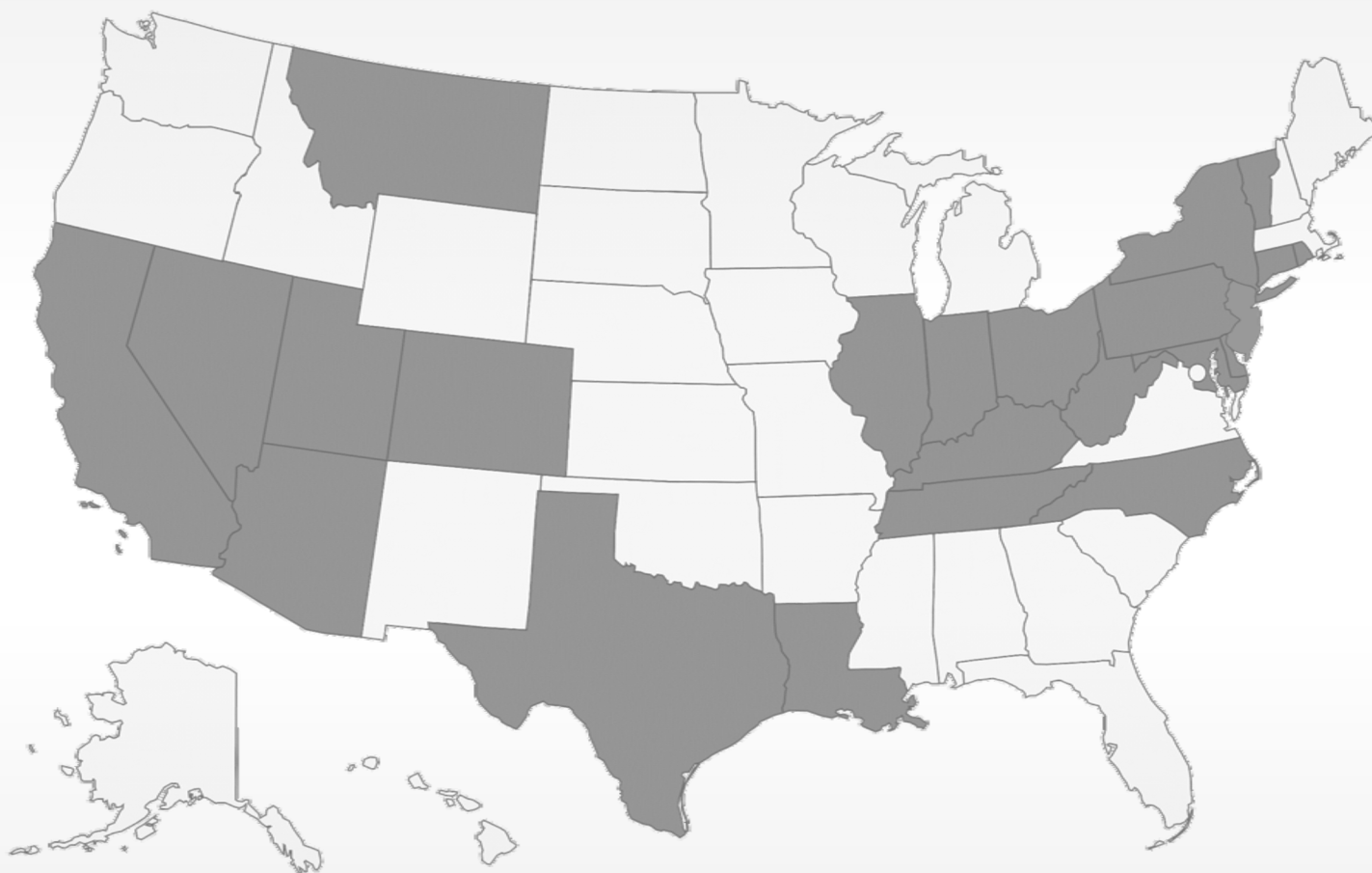


Second Chance Reforms in 2017

Roundup of new expungement and restoration laws

December 2017



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. The resources available on the Center website are aimed primarily at lawyers and other criminal justice practitioners, scholars and researchers, but they should also be useful to policymakers and those most directly affected by the consequences of conviction. We welcome information 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 on law reform and practice issues.

For more information, visit the CCRC at <http://ccresourcecenter.org>.



EXECUTIVE SUMMARY

- In 2017, 23 states enacted laws aimed at reducing barriers faced by people with criminal records in the workplace and elsewhere. Some of these laws significantly expanded the availability of relief, while others involved relatively minor changes to existing laws.
- Most of the new laws involved either restrictions on public access to records or limits on employer inquiries into criminal history. A few states enacted administratively enforceable standards for consideration of criminal history in employment and licensing.
- Important new record-sealing schemes were enacted in Illinois, Montana and New York, and nine other states either relaxed eligibility requirements or otherwise supplemented their existing sealing or expungement authorities to make relief more broadly available at an earlier date. Of these nine, the most ambitious reforms were enacted by Nevada, which was one of several states that created a presumption in favor of relief for eligible persons.
- Seven states enacted substantial revisions to their juvenile expungement and sealing laws in 2017, some of which require courts to order relief automatically after a brief waiting period.
- Ten states enacted state-wide “ban-the-box” laws limiting inquiries into criminal records by public employers at preliminary stages of the hiring process. California, Connecticut and Vermont extended these limits to private employers as well.
- In California and Nevada, restrictions on application-stage inquiries are part of a broader nondiscrimination scheme that prohibits consideration of certain kinds of criminal records, and establishes standards for individualized determinations in all other cases. Both states provide additional procedural protections.
- While reforms are moving at a fast pace, there is no consensus about the most effective way to avoid or mitigate the adverse effects of a criminal record, and very little relevant empirical research.

OVERVIEW

The national trend toward expanding opportunities for restoration of rights and status after conviction, first documented in [Four Years of Second Chance Reforms, 2013 – 2016](#), has accelerated in 2017. In the past year, 23 states broadened existing second chance laws or enacted entirely new ones, enhancing the prospects for successful reentry and reintegration for many thousands of Americans. Some of these laws significantly expanded the availability of relief, while others involved relatively minor changes to existing law.

The most frequent type of reform involved limiting public access to criminal records: new sealing or expungement laws were enacted in several states that previously had none, eligibility requirements were relaxed for many existing record-sealing authorities, and new limits were imposed on access to non-conviction and juvenile records – all making it easier for more individuals to get relief at an earlier date. However, there is remarkably little consistency among state record-closing schemes, and most states extend relief only to less serious offenses after lengthy eligibility waiting periods. Moreover, eligibility criteria are frequently so complex as to defeat the sharpest legal minds. Other recurring reforms limit employer inquiries into criminal history at the application stage. A few states enacted administratively enforceable standards for consideration of criminal history in employment and licensing. To date there has been very little empirical research into the relative effectiveness of different forms of relief, so it is perhaps not surprising that experimentation seems to be the order of the day.

This report documents changes in state restoration laws in 2017, many of which are quite significant. It is based on research from the [Restoration of Rights Project \(RRP\)](#), an online resource maintained by the CCRC that catalogs and analyzes the restoration laws of all fifty states, the District of Columbia, and the federal system. Following an overview of 2017 reforms, specific changes to the law in each state are briefly described along with relevant citations. More detailed information about each state's laws is available in the RRP state profiles.

SEALING, EXPUNGEMENT AND DISMISSAL OF ADULT CONVICTIONS

Expungement of adult conviction records became available in 2017 for the first time in Montana, and 11 additional states expanded existing sealing or expungement authorities, some quite substantially. Illinois and New York saw the most dramatic expansion of their record-closing laws, but Colorado, Maryland, Nevada, New Jersey, North Carolina, Rhode Island, Tennessee, Utah, and Vermont either lowered the bar to eligibility or supplemented existing record-closing authority. California also saw several substantial extensions of its laws authorizing dismissal and set-aside, in addition to broad new sealing authority for non-conviction records and decriminalized marijuana possession.

By far the most significant new record-closing authorities in terms of the number of persons affected are those enacted in Illinois, the country's fifth most populous state. Convictions of nearly all felonies and misdemeanors were made eligible for sealing after a relatively brief three-year waiting period. Charges resulting in dismissal or acquittal were made immediately eligible for sealing at the dispositional hearing. In addition, effective January 1, 2018, most juvenile adjudication records must be automatically expunged after a waiting period ranging from 60 days to two years, and juvenile criminal history may not be used to disqualify from public office, employment, or licensing. The significance of these reforms is enhanced by existing limits on consideration of sealed and expunged convictions in employment and licensing.

New York's new sealing authority, while relatively modest when compared to Illinois', represents a significant change in existing law, with relief now available for most misdemeanors and all but the most serious felony offenses. Previously, sealing was available in New York only for non-conviction records, and for diversion and drug treatment dispositions. Those with up to two convictions, including one felony, are eligible for sealing after a ten-year waiting period.

Montana's new expungement authority is less broad, applying only to misdemeanor offenses, but it is available after just five years and for an indefinite number of offenses. Expungement is "presumed" in Montana for all but certain specified serious offenses (involving violence or driving while impaired), unless the court finds that "the interests of public safety demand otherwise." Nevada's 2017 amendments to its sealing laws created a similar presumption in favor of sealing for almost all eligible individuals.

Maryland also now for the first time offers expungement for misdemeanor convictions, though only for listed offenses after a ten-year waiting period. In 2017 Maryland also enacted new authority to expunge marijuana possession convictions other than those decriminalized, after a four-year waiting period. Expungement relief in Maryland is mandatory upon a determination of eligibility unless the prosecutor or victim objects, when the court must apply statutory standards that include a "best interest of justice" finding. (A few other states - notably Missouri and Arkansas - have earlier-enacted burden-shifting limits on a court's discretion to deny relief for eligible adult convictions, many more have standards to guide judicial discretion, and a few states make expungement mandatory for eligible convictions. But here again there is no discernible trend toward consistency.)

In many states, changes in record-closing eligibility requirements enacted in 2017 will make it easier for individuals to obtain relief at an earlier date. For example, Nevada significantly reduced waiting periods for the sealing authorized for most convictions, and authorized relief for the first time for individuals who did not "honorably" complete probation. Vermont halved its expungement waiting period from ten to five years, while North Carolina reduced its 15-year expungement waiting period to ten years for felonies and five for misdemeanors. The

New Jersey legislature approved a bill reducing eligibility waiting periods that was awaiting the governor's signature at the time this report was published.

Rhode Island and Tennessee both amended their first-offender expungement authorities to make relief available to individuals with more extensive records. In Rhode Island, individuals with up to six misdemeanor convictions may now seek expungement, so long as they have never been convicted of a felony. Tennessee will now permit expungement of up to two non-violent convictions, although only one may be a felony. (As noted, New York's new sealing law has a similar limitation, as do sealing laws enacted in recent years in Missouri, Michigan, and Ohio.)

California and Colorado authorized sealing or expungement of convictions for possession of marijuana that is no longer criminal, joining Oregon and Vermont in offering this offense-specific relief. (The other states that have decriminalized some marijuana offenses – Maryland, Missouri, Nevada, New Hampshire, and Washington – all provide for either sealing or expungement through their more general relief provisions.) As noted above, Maryland enacted new expungement authority in 2017 for all marijuana possession offenses after a four-year waiting period.

California significantly broadened the availability of relief for minor offenses, making retroactive courts' authority to dismiss or set aside convictions of individuals sentenced to county jail under the 2011 Realignment legislation. Now anyone sentenced prior to 2011 who would have been eligible for such a sentence may seek dismissal or set-aside. Though commonly called "expungement," this relief does not seal the record, but carries with it substantial benefits in the employment context, particularly under the broad new fair employment provisions also enacted in 2017 (discussed below). Proposition 64, which took effect in 2017, reduced the level of many marijuana offenses, and decriminalized some entirely, making these too retroactively eligible for dismissal through a redesignation process. Unlike other convictions dismissed or set aside, decriminalized marijuana offenses are uniquely eligible for immediate sealing of the record, supplementing, for at least some cases, existing authority for destruction of marijuana records after two years. Like Illinois, California enacted a broad new authority for immediate sealing of non-conviction records at the time of disposition.

West Virginia enacted a set-aside authority that allows courts to reduce some felonies to misdemeanors, although the resulting misdemeanors – styled "reduced misdemeanors" – are specifically not eligible for the same expungement relief as ordinary misdemeanors.

The legal effect of sealing and expungement varies widely from state to state, including sealing and expungement laws enacted or expanded in 2017. "Expungement" may or may not involve destruction of the record: In Montana and Maryland, as in North Carolina and Tennessee, "expunged" records are destroyed, whereas in Rhode Island and Vermont they are not. Sealed records typically remain available only to law enforcement, at least without a court order, though in Illinois sealed felony records may be disseminated where "specifically required or

authorized by a federal or State law, rule, or regulation that requires inquiry into and release of criminal records.”

JUVENILE RECORDS

Seven states (Colorado, Delaware, Illinois, Kentucky, New Jersey, Tennessee, and Texas), enacted significant revisions to juvenile expungement and sealing laws in 2017, three of which require courts to order relief automatically after a brief waiting period. Texas enacted an entirely new subchapter that covers sealing of juvenile adjudication records and provides for automatic sealing of misdemeanor-level adjudications at age 19, and discretionary sealing for most other adjudications at either age 18 or two years after discharge. Colorado also now provides automatic relief for less serious juvenile offenses, and permits discretionary expungement of others, including some felony-level offenses, through a procedure that is automatically initiated after a brief waiting period. As previously noted, Illinois went considerably further, enacting legislation that requires automatic expungement of all but the most serious adjudication records after a waiting period ranging from 60 days to two years.

In Delaware, expungement waiting periods were reduced for all juvenile offenses, and burglary and robbery were removed from the list of crimes that render a person ineligible. In Kentucky, expungement is now available for all but the most serious adjudications, where before only misdemeanor-level adjudications were eligible. Tennessee amended its existing authority to provide for mandatory expungement of most misdemeanor-level juvenile offenses upon petition.

FAIR EMPLOYMENT AND LICENSING LAWS

Laws and policies limiting consideration of criminal history by employers and licensing boards were also significantly expanded in 2017, with ten states tackling the problem either through legislation or executive action. Arizona, California, Connecticut, Indiana, Kentucky, Louisiana, Nevada, Pennsylvania, Utah, and Vermont all prohibited public employers from inquiring about criminal history during the initial stages of the hiring process. In California, Connecticut and Vermont, those prohibitions extend to cover private employers as well. In some of the new provisions, inquiries are barred only on application forms (Arizona, Connecticut, Indiana, Pennsylvania), but others prohibit inquiries until the interview stage (Kentucky, Louisiana, Utah, Vermont), and a few prohibit them until after a conditional offer of employment has been made (California, Nevada). Only California and Nevada provide specific guidance under their new laws for assessing the relevance of an applicant’s criminal history, although state agencies in Connecticut are bound to consider specific criteria in an earlier-enacted ban-the-box law.

In California and Nevada, limitations on application-stage inquiries are part of a newly enacted anti-discrimination scheme that prohibits consideration of non-conviction records and records of convictions that have been sealed, expunged, or dismissed, and that requires employers to consider convictions on an individualized basis applying specific standards.

While Nevada’s law applies only to public employment, it is broader than California’s law in prohibiting any consideration of infractions and misdemeanors that did not include a jail sentence. California now makes it an “unlawful employment practice” for any employer with more than five employees to consider non-conviction records (including records of convictions that have been dismissed or set aside). As to convictions, California employers must determine whether the applicant’s “conviction history” has “a direct and adverse relationship with the specific duties of the job,” with specific standards for making such determinations spelled out in the law. Both states provide for additional procedural protections, and for administrative enforcement.

Limitations on licensing decisions enacted in Kentucky and Louisiana make it significantly easier for individuals with criminal histories to obtain occupational, professional, and business licenses by requiring that convictions be related to the license at issue and, in the case of Louisiana, requiring boards to issue provisional licenses to individuals with criminal convictions that may be revoked upon subsequent conviction. In Louisiana a significant number of licensing boards are exempt, and specified serious offenses are presumed to be related. In Kentucky only the most serious offenses are presumed to be directly related to a license or employment.

CONCLUSION

The trend in state legislation toward increasing opportunities for people with a criminal record that became evident around 2013, continued and accelerated in 2017. Almost two dozen states passed laws significantly expanding their record-sealing laws or otherwise addressed the barriers to reintegration faced by convicted individuals. California, Illinois and Nevada took particularly important steps toward limiting unwarranted discrimination against people with a criminal record, and there is every reason to believe that more states will follow them in 2018. The fast pace of reform in the states reflects a dawning realization that the problem of mass conviction is at least as significant in economic and social terms as the problem of mass incarceration. At the same time, the dizzying variety and complexity of the new provisions indicates that there is still no consensus about the most effective way to avoid or mitigate the adverse effects of a criminal record. Because there has been very little empirical research into the relative effectiveness of different forms of relief, it is not surprising that experimentation seems to be the order of the day.

SUMMARIES OF 2017 REFORMS

ARIZONA

Ban-the-box in executive branch employment: In November 2017, Governor Doug Ducey issued Executive Order 2017-17, directing the Department of Administration to establish hiring procedures that prohibit executive branch agencies from asking about criminal records during the initial stages of the hiring process, and from disqualifying an applicant from an interview because of a criminal record. Exceptions apply to certain agencies (including state universities, the department of public safety, and public corporations) and to positions where a state or federal law prohibits a person from holding a job due to prior criminal conduct.

CALIFORNIA

Set-aside authority extended for some pre-2011 convictions: Effective January 1, 2018, Cal. Penal § 1203.41 will make retroactive the authority in the 2011 Realignment Legislation to dismiss or set aside felony convictions that result in a sentence served in county jail. Thus, individuals sentenced to state prison prior to 2011 who would have been eligible for a county jail sentence under the 2011 law will be newly eligible for relief. Convictions that have been dismissed or set aside may not be considered by employers, a substantial benefit made more so by the amendments to California's Fair Employment and Housing Act described below.

Marijuana conviction dismissal/set-aside and sealing: In January of 2017, the Adult Use of Marijuana Act (Proposition 64) took effect, legalizing recreational marijuana and making a number of low-level now-decriminalized marijuana offenses immediately eligible for dismissal and set-aside, either directly or by reclassifying felony offenses as misdemeanors. Convictions for decriminalized conduct are immediately eligible for dismissal and sealing. Cal. Health & Safe Code §§ 11361.5 to 11361.8. The effect of sealing is set forth in Cal. Penal § 851.91 (see paragraph below). (Under a 2015 law, minor marijuana possession offenses became eligible for "destruction" after a two-year waiting period.)

Sealing of non-conviction records: Effective January 1, 2018, individuals may petition to have records of arrest not resulting in conviction sealed in most cases at disposition. Cal. Penal § 851.91. Sealing is mandatory except in certain cases involving domestic violence, child abuse, or elder abuse, where it remains discretionary subject to a showing that sealing "would serve the interests of justice." Once the record is sealed, "the arrest is deemed not to have occurred, the petitioner may answer any

question relating to the sealed arrest accordingly, and the petitioner is released from all penalties and disabilities resulting from the arrest.” Sealed records still have a predicate effect, and sealing does not relieve bars to holding public office and certain public employment, nor does it relieve any applicable bar to possessing firearms. Previously, non-conviction record sealing was available only after a three-year waiting period, and then only with the consent of the prosecuting attorney except where sealing sought for misdemeanor arrests that occurred under age 21.

Extension of Fair Employment and Housing Act to criminal record: Cal. Gov’t Code § 12952, enacted in 2017 and effective January 1, 2018, incorporates into the state’s Fair Employment and Housing Act provisions limiting discrimination in applications for most public and private employment. The new law prohibits inquiries into criminal history by both public and private employers until after a conditional offer of employment has been extended. Once an inquiry is made, the law prohibits consideration, at any time, of arrests not resulting in conviction and convictions that have been “sealed, dismissed, expunged, or statutorily eradicated pursuant to law.” Where consideration of a conviction is permissible, the law requires employers to conduct an individualized assessment to determine whether the conviction has “a direct and adverse relationship with the specific duties of the job,” applying specific standards.

If an employer intends to deny an application based on a conviction, it must give the applicant notice, permit the applicant to challenge the accuracy of any background check relied upon, and inform the applicant of the right to file a complaint with the Department of Fair Employment & Housing, which is charged with enforcing the new law. The employer may but is not required to share the reasoning behind its adverse decision. The law does not apply to employers with fewer than five employees, nor to positions subject to mandatory background checks or that exclude applicants with criminal histories. While the text of the law is unclear whether an employer whose positions are barred only to certain offenses (e.g., sexual abuse or violence) can claim complete exemption from the law’s requirements where other types of offenses are concerned, we believe the exception should be given a limited interpretation.

COLORADO

Expanded sealing for petty offenses: As of August 2017, petty offenses and municipal violations may be sealed notwithstanding a single intervening misdemeanor conviction. Colo. Rev. Stat. § 24-72-708(a)(II). Previously, a single intervening misdemeanor conviction barred eligibility. Exceptions apply for offenses involving domestic violence, child abuse, or sex abuse, and the individual must not have been convicted of another crime in the ten years prior to the final disposition in the intervening case.

Sealing of decriminalized misdemeanor marijuana offenses: Pursuant to 2017 legislation that took effect in August, courts must, upon petition, seal the records of misdemeanor marijuana possession or use offenses that would not have been crimes if committed after December 10, 2012. Colo. Rev. Stat. § 24-72-710. Previously, eligible marijuana convictions could only be sealed under the general controlled substances sealing law after a waiting period ranging from one to five years.

Automatic juvenile expungement: A major revision of the juvenile expungement law, Colo. Rev. Stat. § 19-1-306, took effect in November 2017. Expungement is now automatic for acquittals, dismissals, and adjudications for petty offenses and low-level “misdemeanors.” Exceptions apply for sex offenses, domestic violence offenses, and crimes requiring victim notification. Other less serious adjudications, including some for low-level “felonies,” may be expunged through a process that is automatically initiated 91 days after disposition; in such cases, expungement is mandatory absent objection from the prosecutor or victim. “Repeat offenders” and “mandatory sentence offenders” may petition for expungement after 36 months.

CONNECTICUT

Ban-the-box in public and private employment: Effective January 1, 2017, Conn. Gen. Stat. § 31-51i was amended to prohibit both public and private employers from asking about criminal history on initial employment applications unless required to do so by federal or state law. Positions that require a security or fidelity bond are also exempt. State agencies are subject to an earlier-enacted prohibition on conviction-related inquiries until the applicant has been “*deemed otherwise qualified for the position.*”

DELAWARE

Juvenile expungement expansion: Senate Bill 54 significantly expanded eligibility for both mandatory and discretionary expungement under Del. Code tit. 10, §§ 1014 et seq., by eliminating robbery and burglary convictions as bars to expungement, shortening waiting periods for discretionary expungement, and creating a catch-all provision that allows discretionary expungement of all eligible offenses after seven years, regardless of the number of adjudications. Previously, expungement was unavailable after exceeding a cap on the number of adjudications, which varied depending on the types of offenses.

ILLINOIS

Sealing expansion: Legislation that took effect in August 2017 dramatically expanded sealing eligibility, giving Illinois the broadest sealing law in the nation. Under the new law, nearly all felonies and misdemeanors are now eligible for sealing after a three-year waiting period. 20 Ill. Comp. Stat. 2630/5.2. Ineligible offenses include DUI, sex crimes, animal crimes, and domestic battery. Individuals subject to arsonist, violent offender, or sex offender registration are ineligible until removed from the registry. Previously, only misdemeanors and a small handful of listed felony convictions were eligible for sealing. However, sealed felony records may be disseminated “as otherwise specifically required or authorized by a federal or State law, rule, or regulation that requires inquiry into and release of criminal records.” 2630/13(a). This includes hospitals, schools, and other agencies dealing with vulnerable populations.

Immediate sealing of non-conviction records: Effective January 1, 2018, sealing of records of arrests and charges resulting in acquittal or dismissal may be sought by petition at the dispositional hearing. 20 Ill. Comp. Stat. 2630/5.2. Sealing appears to be mandatory for eligible records, and the petition must be ruled on immediately. Previously, non-conviction records could only be “expunged” by petition, and subject to the discretion of the court. Expungement (destruction of records) remains available for non-conviction records, but involves a petition and more involved procedures, and a waiting period for cases dismissed after a deferred disposition.

Non-conviction & deferred adjudication expungement eligibility: Effective January 1, 2017, a criminal conviction will no longer be a bar to expunging a non-conviction or deferred adjudication record, as it was under prior law. 20 Ill. Comp. Stat. 2630/5.2(b)(1).

Automatic juvenile expungement: Legislation that takes effect January 1, 2018, requires automatic expungement of juvenile adjudication records for all but the most serious offenses after a waiting period ranging from 60 days to two years, depending on the offense. 705 Ill. Comp. Stat. 405/5-915. Previously, records of adjudications could only be expunged by petition. The law also provides that juvenile criminal history may not be used to disqualify a person from public or private employment, public office, or licensure.

INDIANA

Ban-the-box in executive employment: In June of 2017, Governor Holcombe issued Executive Order 17-15, requiring removal of questions about criminal history from applications for executive branch employment unless “a particular crime precludes the person from employment in the particular job to which she or he applied.” The Order additionally states that criminal history background checks “typically will be conducted at a later point in the application and hiring process.” Two months earlier, the Governor

signed legislation that prevents localities from instituting their own limits on conducting employment background checks.

Negligent hiring: As of June 2017, evidence of an employee’s criminal history may not be introduced in a negligence claim against the employer based on the actions of the employee if it relates to information not resulting in conviction, to a pardoned, vacated, expunged or sealed conviction, or “does not bear a direct relationship to the facts underlying the civil action.” Ind. Code § 22-2-17.

KENTUCKY

Expanded availability of juvenile expungement: Legislation that took effect in June 2017 significantly revised Ky. Rev. Stat. Ann. § 610.330, the state’s juvenile expungement authority. Expungement is now available after two years for all juvenile adjudications excluding sex crimes and those that would result in “violent offender” classification. A person may only expunge a single felony-level offense (or serious of offenses arising from the same incident), but there is no such limitation on misdemeanor-level offenses. Previously, adjudications for felony-level offenses were ineligible; however, expungement was mandatory, not discretionary as the amendment made it for all offenses. The law also provides for automatic expungement in cases resulting in dismissal or a not-delinquent disposition.

Nondiscrimination in licensing & public employment: Legislation enacted in 2017 significantly expanded the state’s general law prohibiting discrimination in public employment and licensing to cover discrimination based on criminal record. Ky. Rev. Stat. Ann. §§ 335B.020 & 335B.030. Kentucky law has long prohibited disqualification based on a crime that does not “directly relate” to the position or license sought, but provided an exception for felonies, high misdemeanors, and misdemeanors for which a jail sentence may be imposed. The 2017 amendment removed those exceptions and provided that, for licensing purposes, only Class A & B felonies and registrable felony sex offenses create a presumption that a “connection” exists between the conviction and the license sought. The amendment also requires public employers and licensing boards to provide preliminarily disqualified individuals with written notice that the entity “has determined that the prior conviction may disqualify the person, demonstrates the connection between the prior conviction and the license being sought, and affords the individual an opportunity to be personally heard before the board prior to the board making a decision on whether to disqualify the individual.”

Ban-the-box in public hiring: In February 2017, Governor Bevin issued Executive Order 2017-064, removing questions about criminal history and convictions from state job applications. The Order prohibits agencies from inquiring “into an applicant’s criminal history until the applicant has been contacted to interview for a position, unless required by law to do so.”

LOUISIANA

Licensing non-discrimination: The Licensing of Ex-Offenders Act of 2017 amended a 2014 law that applied only to provisional licenses issued to individuals with criminal histories to make it applicable to all licenses issued by covered boards. The law now generally requires such boards to issue a license to any qualified applicant, irrespective of criminal history, while giving boards the authority to revoke the license upon conviction for “a new felony.” La. Rev. Stat. §§ 37:31 through 36. Licenses may be denied for crimes of violence, sex offenses, certain fraud offenses, and crimes that “directly relate” to the licensed field. A number of regulatory and employing agencies are exempted, including law enforcement, medical and nursing licensing boards, the state bar association, financial regulation, education, state racing and athletic commissions, pharmacists, architects, embalmers and funeral directors, and the state board of elementary and secondary education. Previously, the ability of licensing boards to discriminate was limited only by the requirement -- which remains in effect -- that a person may not be disqualified “solely because of” a prior criminal record unless it involves a conviction that “directly relates” to the position or field for which a license is sought.

Public employment ban-the-box: The state Civil Service Rules were amended in 2017 to limit application-stage inquiries about criminal history for “classified” state service positions. Previously, only unclassified positions were covered. No inquiry may be made into an applicant’s criminal history until after the first interview or, if no interview is conducted, until a conditional offer of employment has been made.

MARYLAND

Misdemeanor expungement: On Oct. 1, 2017, certain provisions of the Justice Reinvestment Act of 2016 took effect giving courts authority to expunge convictions for over 100 enumerated misdemeanors. Md. Code Ann., Crim. Proc. § 10-110. Expunged records may be opened only by court order, and are destroyed after three years. A person may not be required to disclose an expunged conviction for most purposes, providing greater protection than the “shielding” authority that applies to only a handful of minor misdemeanors. However, individuals are eligible for expungement only after a waiting period of ten to 15 years, much longer than the three-year waiting period that applies to shielding.

Marijuana possession expungement: Legislation amending Md. Code Ann., Crim. Proc. § 10-105(a) took effect October 1, 2017, granting courts the authority to expunge the record of conviction for marijuana possession after four years. Possession of small quantities of marijuana was decriminalized (and, as such, was expungeable) in 2014, but the new expungement authority applies to all possession convictions, regardless of quantity. Expunged records are destroyed after three years.

Administrative Certificate of Rehabilitation: As of October 1, 2017, the Department of Corrections is required to issue a Certificate of Rehabilitation to individuals convicted of nonviolent, non-sexual offenses who successfully complete conditions of parole, probation, or mandatory release supervision. Md. Code Ann., Corr. Servs. § 7-104. A CoR prevents licensing boards from discriminating against an applicant based on a conviction unless there is a “direct relationship” between the crime and the license at issue, or issuance would pose an “unreasonable risk” to persons or property. Existing law similarly restricts licensing boards in a number of specified state departments without regard to whether the applicant has been issued a CoR; however, the restrictions triggered by a CoR apply to *all* licensing boards. The law requires the Department of Corrections to create rules that permit prosecutors and victims to object to issuance of a CoR, but those rules have not yet been issued.

MONTANA

Misdemeanor expungement: In April of 2017 the state enacted Mont. Code Ann. § 46-18-1101, its first general conviction expungement authority. Effective October 1, 2017, courts are authorized to expunge any misdemeanor conviction after a five-year waiting period, running from completion of sentence. Expungement is discretionary, but is “presumed” for all but certain specified serious offenses (those involving violence or driving while impaired), unless “the interests of public safety demand otherwise.” Although expungement may be granted only once in a person’s lifetime, an indefinite number of misdemeanors from different counties may be expunged in a single order. Expunged records are destroyed, and only a person’s fingerprints remain in official files.

NEVADA

Civil rights restoration: AB 181, enacted in June 2017 and effective January 1, 2019, amends Nev. Rev. Stat. §§ 176A.850 and 213.155 to extend automatic civil rights restoration to individuals who were not “honorably discharged” from probation or parole, including for unexcused failure to pay restitution. Under current law, probationers and parolees are eligible for automatic restoration only if they have been “honorably discharged.” The 2017 law will also for the first time require individuals convicted of violent category B felonies not resulting in substantial bodily harm to wait two years after completion of sentence before regaining the vote, thereby somewhat anomalously increasing the waiting period for a particular category of offense. Nev. Rev. Stat. §§ 213.157(1) (completion of sentence), 213.155(1) (discharge from parole), 176A.850(3) (discharge from probation). Those convicted of more than one Nevada felony, or of a Category A felony or of a Category B felony resulting in substantial bodily harm, will still be required (as under existing law) to seek restoration of the vote in court or before the Board of Pardons.

Sealing eligibility expanded and process streamlined: SB 125 and AB 327, enacted in May and June 2017, respectively, and effective on October 1, 2017, both significantly reduced the waiting periods for sealing of convictions under Nev. Rev. Stat. § 179.245 to two-to-ten years for felonies and one-to-two years for misdemeanors. The waiting periods for misdemeanor Medicaid fraud and domestic violence offenses were unaffected, and remain seven years. Previously, the waiting periods for felonies were seven-to 15 years and the waiting periods for misdemeanors were two to five years. AB 327 for the first time permits sealing for probationers who were not honorably discharged, although the presumption in favor of relief does not apply to them.

AB 327 also streamlined the sealing process by permitting grants without a hearing (with the prosecutor's stipulation) and reducing the number of records that must be submitted with a petition. The legislation also creates a presumption in favor of sealing if all statutory eligibility criteria are satisfied. Sealed records specifically remain accessible for purposes of gaming and insurance licenses, indicating at least arguably that they are not for other licenses, even those mandating a background check.

Sealing for human trafficking victims: AB 243 authorizes vacatur and sealing for human trafficking victims convicted of prostitution and related offenses. Previously, vacatur was available for such convictions, but sealing was not explicitly authorized.

Public employment ban-the-box & nondiscrimination: When AB 384 takes effect on January 1, 2018, public employers (including the state, counties, and municipalities) will be prohibited from disqualifying an applicant based on conviction unless the employer considers certain enumerated factors, including the nature and age of the offense. The law also prohibits entirely consideration of non-conviction records more than six months old, expunged & sealed records, and convictions for infractions and misdemeanors where no term of imprisonment in a county jail was imposed. It additionally prohibits public employers from inquiring about criminal history until after the final interview or conditional offer of employment, whichever is earliest. The law does not apply where a person would be disqualified by state or federal law for employment in a specific position because of criminal history, and does not apply to certain public safety employment. Before an applicant is rejected, the employer must provide written notice that criminal history is the basis for the rejection and must give the applicant an opportunity to discuss the basis for the rejection. The law makes a violation an "unlawful employment practice" enforceable by the Nevada Equal Rights Commission.

NEW JERSEY

Adult expungement expansion: On December 7, 2017, the legislature passed S-3307, which will, if signed into law as expected, make New Jersey's already complex expungement authority even more so, building incrementally on the incremental reforms enacted in 2016. It would amend N.J. Stat. § 2C:52-2 to reduce the waiting period for expungement of a felony ("indictable offense") from ten years to six, and increase the number of misdemeanors ("disorderly persons offenses") that are expungeable, either with a felony or standing alone. § 2C:52-3. As under pre-existing law, only one expungement petition may be granted in a person's lifetime. The bill would also eliminate the absolute bar to conviction expungement for individuals who were at any time granted a dismissal following completion of a diversion program. § 2C:52-14.

Juvenile expungement waiting period reduction: S-3308, also passed on December 7, 2017, and also expected to be signed into law, would amend N.J. Stat. § 2C:52-4.1 to reduce the waiting period for expungement of a person's entire juvenile adjudication record from five years after final discharge to three years.

NEW YORK

Adult conviction sealing: Legislation enacted in April 2017 and effective December 1, 2017, created the state's first general adult conviction sealing authority, covering most misdemeanors and all but the most serious felonies. Pursuant to new N.Y. Crim. Proc. Law § 160.59, sealing is available for up to two convictions, only one of which may be a felony, after a ten-year waiting period that runs from the date of conviction or release from prison, whichever is later. Violent felonies, class A felonies, and most sex offenses are ineligible. Sealing is discretionary, and depends on the court making findings related to the seriousness of the offense and the applicant's rehabilitation (standards mirror those applicable under the state's human rights law). Sealed records are unavailable to the public, but remain available to enumerated "qualified agencies," including courts, corrections agencies, and the office of professional medical conduct; to federal and state law enforcement for law enforcement purposes; to state entities responsible for issuing firearm licenses; to employers for screening applicants for police officer/peace officer employment; and to the FBI for firearm background checks. The legislation also amended the state's Human Rights Law, N.Y. Exec. Law § 296, to prohibit public and private employers and occupational licensing agencies from asking about, or taking adverse action because of, a sealed conviction. Previously sealing was available only for non-conviction records and diversion and drug treatment dispositions.

NORTH CAROLINA

Reduced expungement waiting periods & predicate effect: Effective December 1, 2017, the waiting period for expungement of eligible non-violent first-offender misdemeanor and felony convictions was significantly reduced—from 15 years for both to five years for misdemeanors and ten years for felonies. N.C. Gen. Stat. § 15A-145.5. The amendment also added a provision explicitly stating that expunged convictions count as predicates when calculating prior record level in subsequent prosecution and sentencing. N.C. Gen. Stat. § 15A-145.5.

Partial expungement of dismissed charges: The 2017 expungement law amendment also authorized partial expungement of any dismissed charges in cases where not all charges were dismissed. N.C. Gen. Stat. § 15A-146. Previously, expungement of dismissal records was only available in cases where *all* charges were dismissed.

OHIO

Certificate of Qualification for Employment revisions: Legislation enacted in 2017 amended the state’s CQE law, Ohio Rev. Code § 2953.25, to provide that a CQE creates a rebuttable presumption that a person’s criminal conviction is insufficient evidence that the person is unfit for a license, employment opportunity, or certification. Previously, the sole effect of a CQE was to convert mandatory collateral consequences into discretionary consequences; but a CQE was not given any explicit effect when it came to consideration of discretionary consequences. The amendment also eliminated the requirement that CQE applicants identify a particular collateral consequence from which relief was sought. At the same time, the amendment made individuals convicted of sex offenses ineligible for a CQE.

PENNSYLVANIA

Ban-the-box in executive branch employment: A new administrative hiring policy issued by Governor Tom Wolf in July 2017 prohibits consideration by state executive branch employers of non-conviction records, convictions that have been expunged, annulled, or pardoned, and convictions that do not relate to “suitability for Commonwealth employment.” It also generally prohibits inquiries about criminal histories on applications, and requires employers to “consider the public interest of ensuring access to employment for individuals with criminal records.”

RHODE ISLAND

Expungement eligibility expansion: In September of 2017, expungement eligibility was expanded to include individuals with between two and six misdemeanor convictions, who may petition to expunge those convictions after ten arrest-free years. R.I. Gen. Laws §§ 12-1.3-2 & 12-1.3-3. The new provision applies retroactively to convictions that predate its enactment. Previously, expungement was available only to people who had no more than a single conviction, whether a felony or misdemeanor. Misdemeanor first offenders may still seek expungement under existing law after a shorter waiting period of five arrest-free years, while a ten-year eligibility period continues to apply to felonies.

TENNESSEE

Expungement eligibility expanded: Legislation amending Tenn. Code Ann. § 40-32-101 took effect in July 2017, authorizing expungement for individuals with no more than two eligible (nonviolent) convictions, only one of which may be a felony. Previously, only first offenders were eligible.

Expungement fee reduction: Amendments to Tenn. Code Ann. § 40-32-101 that took effect in May 2017 reduced the total filing fees required for expungement, from \$450 to \$280, \$100 of which is a general filing fee. The law additionally permits the expungement filing fee to be paid in installments, though there appears to be no provision for waiver in the event of indigency.

Expungement of juvenile “misdemeanors” made mandatory upon petition: Tenn. Code Ann. § 37-1-153 was amended effective July 2017, requiring courts, upon application, to expunge the records in “any case in which a child’s juvenile record contains convictions solely for unruly adjudications or delinquency adjudications for offenses that would be misdemeanors if committed by an adult.” A one-year waiting period applies. Previously, all juvenile expungement authority was discretionary. The amendment also changed the age of eligibility for discretionary expungement (which remains available in cases where mandatory expungement does not apply), from 18 to 17.

TEXAS

Expanded OND eligibility for DUI offenses: Legislation enacted in 2017 created Tex. Gov’t Code §§ 411.0731 & 411.0736, authorizing courts to issue an Order of Nondisclosure for certain first-offender driving while intoxicated offenses that do not result in a motor vehicle accident involving another person. Waiting periods of two to five years apply.

Automatic juvenile record sealing: Treatment of records of juvenile adjudications was significantly altered in 2017. A new subchapter was added to the Texas Family Code (§§ 58.251 to 58.265) providing for automatic sealing of juvenile non-conviction records and misdemeanor-level adjudication records at age 19. Individuals not eligible for automatic sealing may petition for discretionary sealing at age 18 or two years after discharge, subject to exceptions for more serious offenses. After sealing, adjudications are vacated and dismissed, and treated as though they never occurred. The fact of an adjudication that has been sealed may be denied for all purposes. Previously, all sealing of juvenile records was discretionary, required a petition, and required a two-year waiting period.

UTAH

Expungement eligibility expanded: Utah Code Ann. § 77-40-105 was amended in 2017 to limit the types of prior offenses that can defeat eligibility for expungement. Under the amended law, infractions, traffic offenses, and “minor regulatory offenses” (any local ordinance offense or Class B or C misdemeanor offense not contained within the Criminal Code, with exceptions including drug possession and DUI offenses) will no longer count against expungement eligibility. The same legislation amended § 77-27-5.1 to provide that pardoned convictions do not count against expungement availability.

Ban-the-box in public employment: Utah Code Ann. § 34-52-201, enacted in May 2017, provides that public employers may not require an applicant to disclose convictions on an employment application or before an initial interview (or after a conditional offer of employment is made if no interview takes place). Exceptions apply for some positions, including those where federal or state law requires consideration of conviction history.

VERMONT

Expungement waiting periods reduced: Legislation that took effect in July 2017 amended Vt. Stat. Ann. tit. 13, § 7602 to reduce the waiting period for adult conviction expungement or sealing from ten years to five years. At the same time, the now-redundant provision authorizing relief for those under age 25 was repealed. The legislation also significantly reduced the waiting period extension triggered by a subsequent conviction -- from a 20-year minimum to a ten-year minimum -- and reduced the time a person must wait before re-filing after denial from five years to two years, and added a provision for judicial waiver of the waiting period.

Expungement of convictions for decriminalized conduct: Effective July 2017, there is a presumption in favor of expungement of convictions for conduct that is no longer a crime. Vt. Stat. Ann. tit. 13, § 7602(d). The one-year waiting period that previously applied to such expungement was also eliminated. (Marijuana possession was decriminalized in 2013, and expungement of convictions for decriminalized conduct was authorized in 2015.)

Ban-the-box in public & private employment: Effective July 1, 2017, no public or private employer may inquire about an applicant’s criminal history on an initial employment application. Vt. Stat. Ann. tit. 21, § 495j. Inquiries into criminal history may only be made during an interview or after the employee has been deemed otherwise qualified for the position. Some positions are excepted, including those where state or federal law creates a mandatory or presumptive employment disqualification based on one or more types of convictions

WEST VIRGINIA

Felony reduced to misdemeanor: Effective July 1, 2017, W. Va. Code §§ 61-11B-1 to 61-11B-5, gives courts discretionary authority to reduce many non-violent felony offenses to “reduced misdemeanors” after a ten-year waiting period. A person granted a reduction need not disclose on any application that he or she was convicted of a felony, and reduced misdemeanors may not generally be used in negligent hiring actions. However, “reduced misdemeanors” are specifically not eligible for first offender misdemeanor expungement.



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