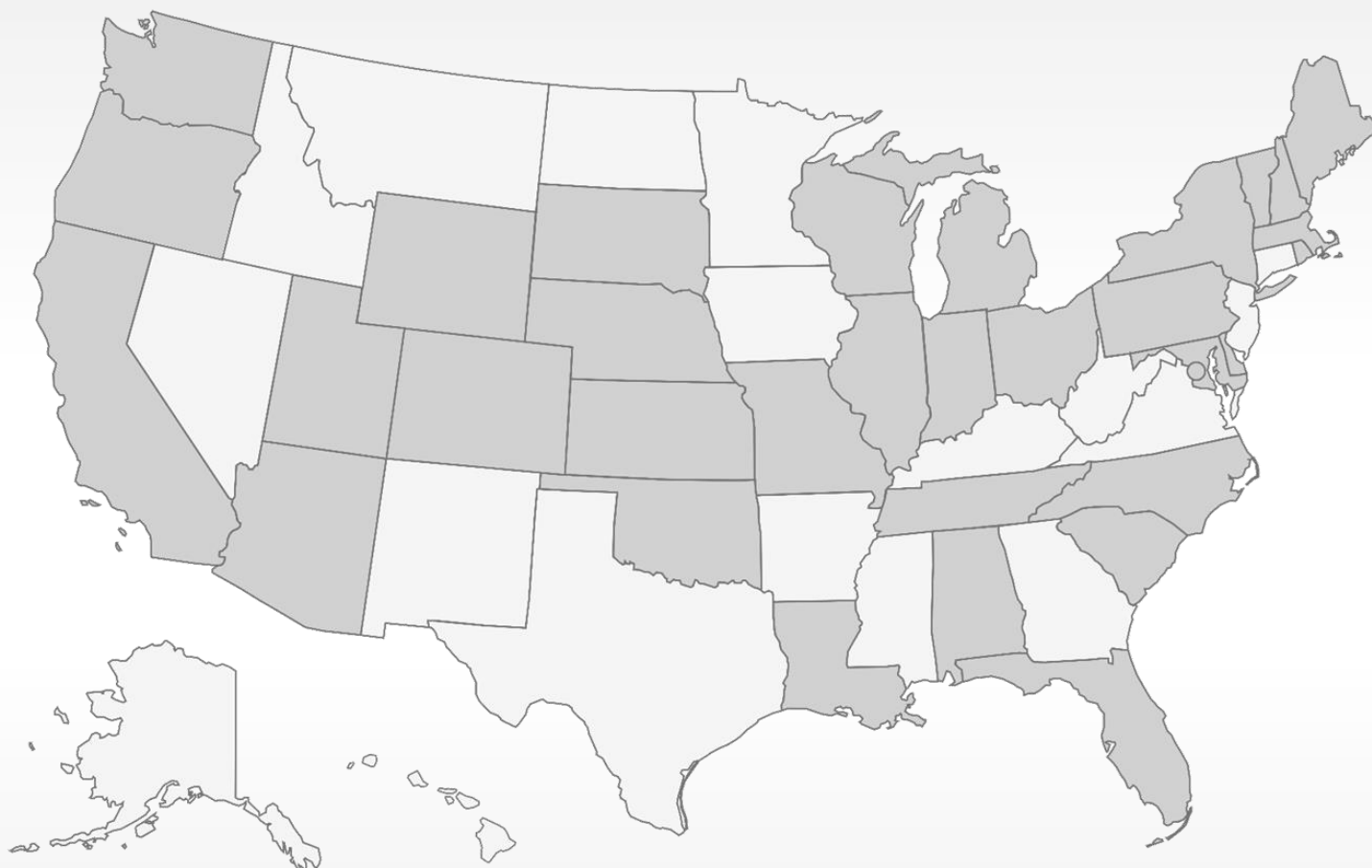


Reducing Barriers to Reintegration

Fair chance and expungement reforms in 2018

2019



COLLATERAL CONSEQUENCES RESOURCE CENTER

The Collateral Consequences Resource Center is a non-profit organization established in 2014 to promote public engagement on the myriad issues raised by the collateral consequences of arrest or conviction. Collateral consequences are the legal restrictions and discrimination that burden people with a criminal record long after their criminal case is closed. The Center develops a variety of resources and projects aimed at practitioners, courts, researchers, policymakers, and those most directly affected by criminal justice involvement. Recently, we have focused particular attention on the rapidly-expanding inventory of state laws aimed at mitigating the adverse impact of a criminal record.

On our website, we provide news and commentary about this dynamic area of the law, practice and advocacy resources, and our [Restoration of Rights Project \(RRP\)](#), which provides information about how to obtain relief from collateral consequences in different jurisdictions. The RRP includes state-by-state profiles analyzing the law and practice in each U.S. jurisdiction relating to restoration of rights and status, as well as 50-state comparison charts that make it possible to see national patterns in restoration laws and policies. (RRP profiles and CCRC comments have been cited in [multiple](#) federal court decisions and [dozens](#) of scholarly works.) In addition, we draft annual [reports](#) on new legislative developments, participate in [court cases](#) challenging specific collateral consequences, provide recommendations and [research](#) in connection with policy reform efforts, and engage with [social media](#) and journalists on these issues.

We welcome tips about relevant current developments—including judicial decisions and new legislation—as well as proposals for projects on topics related to collateral consequences and criminal records, and analytical pieces for posting on the CCRC website. Contact us [here](#).

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



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Executive Summary

- In 2018, 32 states, the District of Columbia, and the U.S. Virgin Islands produced 61 separate laws aimed at reducing barriers faced by people with criminal records in the workplace, at the ballot box, and elsewhere. Many of these new laws enacted more than one type of reform. This prolific legislative “fair chance” track record, the high point of a six-year trend, reflects the lively on-going national conversation about how best to promote rehabilitation and reintegration of people with a criminal record.
- As in past years, approaches to restoring rights varied widely from state to state, both with respect to the type of relief, as well as the specifics of who is eligible, how relief is delivered, and the effect of relief. Despite a growing consensus about the need for policy change to alleviate collateral consequences, little empirical research has been done to establish best practices, or what works best to promote reintegration.
- The most promising legislative development recognizes the key role occupational licensing plays in the process of reintegration, and this area showed the greatest uniformity of approach. Of the 14 states that enacted laws regulating licensing in 2018, nine (added to 4 in 2017) adopted a similar comprehensive framework to improve access to occupational licenses for people with a criminal record, limiting the kinds of records that may be considered, establishing clear criteria for administrative decisions, and making agency procedures more transparent and accountable.
- The most consequential single new law was a Florida ballot initiative to restore the franchise to 1.5 million people with a felony conviction, which captured headlines across the country when it passed with nearly 65% of voters in favor. Voting rights were also restored for parolees, by statute in Louisiana and by executive order in New York.
- The largest number of new laws—29 statutes in 20 states—expanded access to sealing or expungement, by extending eligibility to additional categories of offenses and persons, by reducing waiting periods, or by simplifying procedures. A significant number of states addressed record-clearing for non-conviction records (including diversions), for marijuana or other decriminalized offenses, for juveniles, and for human trafficking victims.
- For the first time, the disadvantages of a separate petition-based relief system were incorporated into legislative discussions. Four states established automated or systemic record-sealing mechanisms aimed at eliminating a “second chance gap” which occurs when a separate civil action must be filed. Pennsylvania’s “clean slate” law is the most ambitious experiment in automation to date. Other states sought to incorporate relief directly into the criminal case, avoiding the Pennsylvania law’s technological challenges.

- Three additional states acted to prohibit public employers from inquiring about criminal history during the initial stages of the hiring process, Washington by statute, and Michigan and Kansas by executive order. Washington extended the prohibition to private employers as well. A total of 33 states and the District of Columbia now have so-called “ban-the-box” laws, and 11 states extend the ban to private employers.
- Six states expanded eligibility for judicial certificates of relief. Colorado’s “order of collateral relief” is now the most extensive certificate law in the nation, available for almost all crimes as early as sentencing, and effective to bar consideration of conviction in public employment and licensing. Arizona, California, Massachusetts, North Carolina, and Oregon, made more modest changes to facilitate access to this judicial “forgiving” relief.
- The District of Columbia established a clemency board to recommend to the President applications for pardon and commutation by people with D.C. Code offenses. Governors in California and New York used their pardon power to spare dozens of non-citizens from deportation, and California also streamlined its pardon process and made it more transparent. Moving in the other direction, Nebraska authorized sealing of pardoned convictions, and Maine made both pardon applications and pardon grants confidential.
- The legal landscape at the end of 2018 suggests that states are experimenting with a more nuanced blending of philosophical approaches to dealing with the collateral consequences of arrest and conviction. These approaches include forgiving people’s past crimes (through pardon or judicial dispensation), forgetting them (through record-sealing or expungement), or forgoing creating a record in the first place (through diversionary dispositions). While sealing and expungement remain the most popular forms of remedy, there seems to be both popular and institutional resistance to limiting what the public may see respecting the record of serious offenses, and a growing preference for more transparent restoration mechanisms that limit what the public may do with such a record, along with standards to guide administrative decision-making.

Overview

In terms of sheer volume of new laws, 2018 marks the high point of recent state efforts to restore rights and status to people with a criminal record. Over all, 32 states, the District of Columbia, and the U.S. Virgin Islands produced 57 separate statutes (some addressing multiple restoration mechanisms), 3 executive orders, and one ballot initiative aimed at enhancing the prospects for successful reentry and reintegration. (By comparison, in 2017, 23 states enacted 42 new restoration laws.) In terms of significance, the year’s harvest of new laws included measures that broke new ground. While some of these new laws represent a relatively modest expansion of existing relief schemes, others offered entirely new ways of avoiding or mitigating collateral consequences that might otherwise last a lifetime.

In terms of sheer volume of new laws, 2018 marks the high point of recent state efforts to restore rights and status to people with a criminal record

CCRC has been documenting this trend over a six-year period in which 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. See [Four Years of Second Chance Reforms, 2013-2016](#) and [Second Chance Reforms in 2017](#). In the period 2012-2018, every state legislature has in some way addressed the problem of reintegration.¹

In stark contrast to this prolific state law-making, Congress has not attempted to deal with the problem of reintegration for more than a decade—either by reducing federal collateral consequences or by restoring rights to people with federal convictions.

In 2018, the most far-reaching and comprehensive type of “fair chance” reform involved regulating consideration of criminal record by occupational licensing agencies, to help people with a record get back into the workforce. Studies have found that more than a quarter of all jobs require a government-issued license, including many lower-income occupations that typically require comparatively little by way of formal training or experience, but which can lift people beyond economic insecurity. While a majority of states began 2018 with at least some law on the books limiting conviction as a bar to licensure, the pace of change dramatically increased throughout the year, thanks in large part to effective promotion of a model law developed by the Institute for Justice, and a similar model law by the National Employment Law Project.

The most significant type of “fair chance” reform in 2018 involved regulating consideration of criminal record by occupational licensing agencies

Another significant enactment in 2018 is the dramatic expansion of Colorado’s “order of collateral relief,” which will now be available to almost every defendant both at and after sentencing. The effect of such orders, whose avowed purpose is to encourage reintegration, was enlarged to preclude any adverse action based on conviction against a recipient in occupational licensing and public employment.

The reform measure most frequently enacted in 2018 (as in 2017) involved limiting public access to criminal records: 20 states passed 29 bills extending eligibility for sealing or expungement to new classes of people. In general, waiting periods were reduced and eligibility was expanded for misdemeanors and some low-level felonies, and expedited procedures were authorized for non-conviction and juvenile records, marijuana and decriminalized offenses, and for human trafficking victims, making it easier for more individuals to get relief more quickly. On the other hand, in contrast to 2017 when several states enacted broadly applicable new sealing schemes, most of the record-closing laws enacted in 2018 made only incremental improvements to existing schemes.

20 states passed 29 bills extending eligibility for sealing or expungement to new classes of people

Of greater long-term significance was the conversation that began around the problem of the so-called “second chance gap,”² which occurs when only a small percentage of a law’s intended beneficiaries actually receive relief. The gap is particularly stark and troublesome when record-closing involves application to a court in a separate civil action, with attendant filing fees and procedural hurdles such as electronic filing, which generally requires the assistance of a lawyer to interpret eligibility criteria and navigate the process. Of the four states that took steps in 2018 to eliminate the need for individual filings and streamline delivery of relief, Pennsylvania’s “clean slate” law represents by far the most ambitious purely from a technological point of view, requiring two years of preparation before its automated system will become operational on a retroactive basis. Even at that, for now sealing remains available in Pennsylvania only for non-conviction records and some misdemeanors after 10 crime-free years. Other states are moving to incorporate relief directly into the criminal case.

This year also saw national attention to the problem of felony disenfranchisement, which played out in headlines leading up to and after Florida’s long-awaited decision to restore voting rights to people with felony convictions. Florida had been one of a handful of states that still required individualized executive action to restore the franchise, with the result that up to 1.5 million Floridians were permanently disenfranchised based on convictions that were frequently dated and minor. At the polls, 64.55% of Florida voters supported the ballot initiative to allow this population to regain the franchise upon completion of sentence. New York and Louisiana also took steps to expand the franchise, allowing parolees to vote.

Other reforms continued efforts to limit employer inquiries into criminal history at the application stage, to authorize deferred adjudication and diversionary dispositions, and to expand eligibility for and effect of judicial certificates of relief.

The wide variety of approaches to restoration of rights seems to reflect the challenge of striking the appropriate balance between the public's interest in having access to criminal records, the state's public safety concerns, and the need to support individuals in their efforts to reintegrate into society. It may also reflect a degree of uncertainty about the efficacy of limiting public access to records as opposed to other more transparent forms of relief that involve limiting their use, in the workplace and elsewhere.

The wide variety of approaches to restoration of rights seems to reflect the challenge of striking the appropriate balance between the public's interest in having access to criminal records, the state's public safety concerns, and the need to support individuals in their efforts to reintegrate into society

Despite a growing consensus about the need for policy change to alleviate collateral consequences, little empirical research has been done to establish best practices, or what works best to promote reintegration. As a result, policymakers continue to experiment with a variety of approaches without considering the need to systematically test whether they are actually helping the targeted population, and to collect data for this purpose. While testimonials from affected individuals are always helpful, they only go so far to persuade skeptical legislators. For example, while the Colorado court system keeps track of civil actions to seal non-conviction records, it has no way to test the effectiveness of the expedited procedure for sealing at disposition of the criminal case enacted in 2016 because courts are not specifically coding this information on criminal docket sheets. Nor, apparently, are Colorado's courts tracking applications for collateral relief, whose expansion represents one of the most significant legislative accomplishments of 2018.

Despite a growing consensus about the need for policy change to alleviate collateral consequences, little empirical research has been done to establish best practices

On the other hand, a number of the recent occupational licensing reform laws impose detailed reporting requirements on licensing agencies, which should provide detailed data in future years to assess their effectiveness.

This report documents these and other changes in restoration laws across the country in 2018. It is based on legislative research and the Restoration of Rights Project (RRP), an online resource maintained by the CCRC in partnership with the National Association of Criminal Defense Lawyers, the National Legal Aid & Defender Association, and the National HIRE Network, which catalogs and analyzes the restoration laws of all fifty states, the District of Columbia, and the federal system.

The report begins with a thematic overview of 2018 reforms, followed by a state-by-state look at specific laws enacted, along with relevant citations. More detailed information about each state's laws is available in the [RRP state profiles](#).

FAIR EMPLOYMENT & LICENSING LAWS

Seventeen states (compared to 10 in 2017) and the U.S. Virgin Islands enacted laws limiting when and how employers and licensing boards may take adverse action against individuals based in whole or in part on their criminal history. Fourteen states enacted new “fair chance” laws that regulate the occupational licensing process, in many cases quite extensively. In addition, three states and the Virgin Islands limited consideration of records in employment via legislation or executive action.

Studies have shown that more than 25% of all jobs in the United States require a government-issued license.³ Over and above general burdens imposed by the licensing process,⁴ regulatory agencies that control access to licenses can be inhospitable to people with a criminal record. Sometimes this is because of exclusionary laws,⁵ but more often it is because of vague “good moral character” standards arbitrarily enforced.⁶

In 2017, a new era of occupational licensing reform took shape, transforming the policy landscape. In the past two years more than a dozen states have enacted comprehensive reforms that will make it significantly easier for individuals with a criminal record to obtain occupational and professional licenses, and the foothold in the middle class that this promises.

This era of reform builds on policies developed in the 1970s. Occupational licensing reforms for those with criminal records began around the 1970s, with at least nine states in that time enacting laws limiting denial of licenses due to criminal convictions.⁷ But the spirit of reform that animated 1970’s-era occupational licensing laws languished for the most part in the 30 years after 1980, with only sporadic lawmaking in those decades. Then, starting in 2013, a renewed appreciation of the need to deal with the downstream effects of the War on Crime⁸ prompted policy-makers across the country to put in place criminal record reforms aimed not just at reducing recidivism but also at encouraging reintegration.⁹ The federal government began to voice support for greater reform in occupational licensing through rhetoric, executive action, and financial and technical assistance to the states.¹⁰

Then in 2016, two national organizations of differing regulatory philosophies each proposed model occupational reform legislation: The Institute of Justice (IJ), a libertarian public interest law firm,¹¹ and the National Employment Law Project (NELP), a workers’ rights research and advocacy group.¹² Both model laws have influenced the recent wave of state enactments, and both address the following five key issues:

- **Limits on which records may be considered:** under both proposals, only recent serious convictions may be the basis of denial or other adverse action;

Regulatory agencies that control access to licenses can be inhospitable to people with a criminal record often because of vague “good moral character” standards arbitrarily enforced

- **Specific criteria for denials:** under IJ’s proposal, denials must be based on evidence of public safety risk; under NELP’s proposal, denials must be based on a record’s direct relationship to the occupation, coupled with a lack of rehabilitation; both proposals would eliminate mandatory bars and vague standards like “good moral character”;
- **Timing for determining if criminal records are disqualifying:** under IJ’s proposal a person may petition for a decision at any time, including before training or education; under NELP’s proposal, a decision should be made only after determining the person is otherwise qualified;
- **Well-defined procedures for decisions:** under both proposals, agencies must issue written decisions with reasons, and allow for appeals; and
- **Annual reports that will allow monitoring of compliance:** required under both proposals.

[Chart A](#) in the Appendix describes and compares the key provisions of IJ and NELP’s model laws.

With bipartisan momentum building for “fair chance licensing” reforms,¹³ a total of 17 state legislatures enacted laws in 2017 and 2018 to reduce barriers in licensing for people with a criminal record. Most significantly, 13 of those states enacted comprehensive new schemes that aim to provide increased clarity of standards and transparency in process, to facilitate access for applicants who have a criminal record, in line with key features of the IJ and NELP model laws.

Comprehensive reforms were put in place in 4 states in 2017 (Arizona, Illinois, Kentucky, and Louisiana) and 9 states in 2018 (California, Colorado, Indiana, Kansas, Nebraska, New Hampshire, Tennessee, Wisconsin, and Wyoming).¹⁴ [Chart B](#) in the Appendix compares the comprehensive new licensing laws enacted during this period, and shows which states have adopted provisions

requiring licensing boards to: (1) allow a person to seek a preliminary decision on whether their criminal record will be disqualifying; (2) limit the types of criminal records that can be considered, and for how long; (3) provide written reasons for denial based on published criteria,¹⁵ with an opportunity for appeal of adverse decisions; and (4) issue periodic reports to the legislature on actions affecting people with a criminal record.

A number of states have adopted provisions requiring licensing boards to:

- 1. allow a person to seek a preliminary decision on whether their criminal record will be disqualifying;**
- 2. limit the types of criminal records that can be considered, and for how long;**
- 3. provide written reasons for denial based on published criteria, with an opportunity for appeal; and**
- 4. issue periodic reports to the legislature on actions affecting people with a criminal record**

Most of the new occupational licensing reforms do not apply to certain fields deemed particularly sensitive, so it is important to check each state’s profile from the RRP or the text of the law itself. It is worth noting, however, that Indiana’s new licensing reforms are uniquely applicable to county and municipal licenses, and Tennessee’s Fresh Start Act also applies to business licenses. In addition, more narrow laws related to specific issues in licensing or specific occupations were enacted, in one state in 2017 (Connecticut) and in six states in 2018 (Arizona, California, Delaware, Illinois, Massachusetts, and Maryland).

The end result is that states with “fair chance licensing” laws now form a solid majority across the country.¹⁶ More legislation addressing occupational licensing is expected in 2019: a licensing reform bill was moving through the Ohio legislature as of December 2018 ([SB 255](#)); and, an Alabama state senator plans to pre-file a bill in January 2019 that would expedite the licensing process and eliminate barriers for people with felonies.¹⁷

In the area of employment, 2018 saw a continuation of the “ban the box” trend that peaked in 2017, with three additional states limiting inquiries by public employers into an applicant’s criminal record in the early stages of hiring, bringing the total number of states with similar laws to 33.¹⁸ Kansas and Michigan “banned the box” by executive order, and Washington’s new statutory ban applies to private and public employers. California and Colorado enhanced the effect of their judicial certificates in employment and licensing, prohibiting consideration of a recipient’s criminal record in the workplace. The Virgin Islands restricted employers from asking about arrests not leading to conviction, diversion, and dismissed or sealed convictions.

JUDICIAL RECORD-CLOSING

In 2018, 20 states enacted 29 statutes that will make it easier for people to limit public access to their criminal records through expungement and sealing. The states pursued a dizzying variety of approaches, reducing waiting periods and expanding eligibility, including for misdemeanors and some low-level felonies, and expediting relief for non-conviction and juvenile records, marijuana and other decriminalized offenses, and human trafficking victims. However, in contrast to some prior years that saw passage of extensive new sealing and expungement schemes,¹⁹ most of the 2018 laws represent incremental expansions of existing law, reflecting refinements based on experience and local political dynamics, and perhaps also a new interest in experimenting with more transparent forms of restoration measures.

The states pursued a dizzying variety of approaches, reducing waiting periods and expanding eligibility for relief

Ten states put in place reforms to expand authority for sealing conviction records, either by making more offenses eligible or shortening waiting periods. Oklahoma and Maryland, for the first time, made some people with felony offenses eligible for “expungement” without requiring that they first be pardoned. South Carolina substantially expanded the types of offenses eligible for sealing, notably authorizing retroactive relief in first offense cases prosecuted prior to passage of its 2010 Youthful Offender Act (YOA) to individuals who would have

been eligible for sentencing under that law. In Illinois, eligibility for sealing will no longer depend upon payment of all outstanding fees and fines (though restitution must still be paid). Massachusetts, Missouri, Nebraska, Ohio, and Vermont all authorized more modest extensions of their sealing laws applicable to convictions.²⁰

Eight states legislated to facilitate sealing of non-conviction records. Vermont expanded authorization for sealing or expunging non-conviction records in all types of cases (previously only non-violent misdemeanors and a handful of minor felonies were eligible), and shortened waiting periods. South Dakota provided for automatic sealing after completion of diversion. Florida, Louisiana and Maryland all eliminated lengthy waiting periods before certain non-conviction records will be eligible for sealing (or, in the case of Maryland, expungement). Utah also expanded its non-conviction sealing authority, and Nebraska clarified that a 2016 law authorizing sealing of non-conviction records is retroactive, overriding contrary court rulings. California now requires detention facilities to post notices that anyone who has been arrested but not convicted can petition to have their records sealed.

Four states enacted laws regulating public access to juvenile records (California, Delaware, Illinois and Massachusetts). Massachusetts created a new authority for expungement (permanent erasure) of juvenile records, and Delaware extended mandatory expungement to felony-level juvenile offenses for the first time.

Four states facilitated record-closing for certain marijuana offenses and other decriminalized offenses (California, Delaware, Massachusetts, and Rhode Island).

Five states authorized for the first time or expanded existing laws permitting sealing or expungement of convictions (or juvenile adjudications) directly related to a person being a victim of human trafficking (Alabama, Missouri, Nebraska, Ohio, and Tennessee); two more states authorized human trafficking victims to have convictions vacated (Massachusetts and Oregon).

This past year saw a new interest in eliminating costly and time-consuming petition-based judicial sealing procedures that discourage applications and lead to what has been called a “second chance gap,” where only a few of those intended to benefit from a law receive relief. Pennsylvania’s Clean Slate Act of 2018 is the most ambitious effort to date to deal with this problem. While Pennsylvania expanded eligibility to cover most misdemeanors, the law’s most innovative and significant feature is the creation of an automated process for identifying eligible cases, including those disposed of in prior years, and granting relief without requiring individuals to interpret complex eligibility requirements, file a petition with the court, and pay a filing fee. The automated feature of the law will not go into effect until mid-2020, to give the courts and the state records system time to

Automation has great potential to clear many people’s records that are now subject to expensive and procedurally burdensome individualized sealing procedures

identify eligible cases from past years. We discussed the complex provisions of this law in a [piece](#) posted on the CCRC site last summer, and a detailed analysis is incorporated into the [Pennsylvania profile](#) in the RRP.

Automation has great potential to clear many records that are now subject to expensive and procedurally burdensome individualized civil sealing procedures, which can require legal sophistication, and/or substantial time and effort to navigate. However, it is likely to prove time-consuming and costly to automate nuanced assessments of statutory eligibility criteria on court data systems that may have substantial technological limitations. In fact, after a 2018 Vermont law directed a study group to report on “the viability of automating the process of expunging and sealing criminal history records,” the group concluded that automation needs further study due to technical and resource challenges related to the state’s case management system.²¹ Presumably automation of sealing would be considerably less burdensome to the state when it is targeted to specific prior offenses with no additional eligibility criteria (like California’s marijuana sealing law, discussed below), or when it takes place as part of the criminal case rather than as a separate civil matter (like South Dakota’s diversion expungement program, also discussed below).

Like automation, systematic schemes for the delivery of sealing relief—enacted in California, Vermont, and South Dakota in 2018—place the onus on the court system, rather than individuals, to initiate and execute record-clearing relief. In 2018, California put in place a relief mechanism for people who have marijuana convictions for conduct that is no longer illegal, or would be a lesser offense, in the wake of legalization. By certain dates, the Department of Justice must identify all cases eligible for resentencing, dismissal and sealing, or re-designation. Local prosecutors must then state whether they are opposed to relief in each case. If there is no opposition from the prosecutor, the court automatically provides relief; otherwise, the public defender makes “a reasonable effort” to notify the person of the objection.

Vermont in 2018 enacted systemic sealing of non-conviction cases. Previously, relief was available only for certain offenses by petition. Now sealing is available in all non-conviction cases through an automatic process. Where the defendant is acquitted, or where the charge is dismissed before trial with prejudice, the court must expunge the record within 45 days. No petition is required and relief is automatic, unless the government objects. In cases where the court does not make a probable cause determination, the court dismisses the charges at arraignment, or the charge is dismissed before trial without prejudice, the court must seal the record after a 12-month waiting period, and no petition is required. Relief is automatic, unless the government objects, in which case the court must hold a hearing to determine whether sealing or expunging is in the interests of justice. In non-conviction cases, the court shall expunge the record (if it was not already) after the statute of limitations has expired.

2018 seems to mark the first time that the disadvantages of a petition-based system were fully realized and incorporated into legislative discussions

South Dakota in 2018 created a mandate for “expungement” (sealing) for persons who successfully complete all the terms of a diversion program and then are crime-free for 13 months. At that point, the state’s attorney must file a dismissal of all charges and a notice of completion of diversion, after which the court must grant expungement without any further action. While other deferred disposition schemes may also

deliver sealing relief within the confines of the criminal case without requiring the defendant to file a separate civil action,²² 2018 seems to mark the first time that the disadvantages of a petition-based system were fully realized and incorporated into legislative discussions.

The legal effect of sealing and expungement varies from state to state, including sealing and expungement laws enacted or expanded in 2018. For example, relief styled “expungement” may or may not involve destruction of the record: In Florida, Pennsylvania and Maryland “expunged” records are eventually destroyed, whereas in Colorado, Louisiana, Oklahoma, South Carolina, South Dakota and Vermont there is little or no functional distinction between expungement and sealing. Sealed records typically are not available to the public, at least without a court order, though in some states sealed records may be available for a variety of employment-related purposes deemed particularly sensitive. In Louisiana, for example, records that have been “expunged” are available to medical and other licensing boards, and their effect in eliminating collateral consequences is limited. In Florida, sealed records remain available to certain entities for licensing and employment purposes, including entities serving vulnerable populations such as children and the disabled.

The wide variety of record-closing reforms in 2018 suggests lively experimentation and sustained interest in this policy issue. Nonetheless, state sealing and expungement schemes still lack any semblance of uniformity regarding eligibility, waiting periods, delivery systems, and effects of relief. In the absence of research into what works best to encourage rehabilitation and reintegration, legislatures must rely to some extent on anecdote and guesswork.

There have been few empirical studies of record-clearing relief—in part because of the difficulty of obtaining data.²³ But research may prove the key to expanding and rationalizing record-clearing regimes.²⁴ Notably, in 2018, two University of Michigan law professors published [preliminary results](#) of a study showing that set-asides that included sealing of conviction records is associated with “a significant increase in employment and average wages,” and with a low recidivism rate. Also in 2018, researchers at Berkeley [looked at](#) the experience of participants in a law school clinic whose convictions were set aside (but not sealed) under California law, finding that: (1) relief boosted employment rates and average real earnings; and (2) people sought relief after a period of suppressed earnings.²⁵ These two

studies are expected to provide important guidance for the policy debates surrounding record-closing, judicial relief, and the direction of future reforms.

Many of the comprehensive new licensing schemes enacted in 2018 include data collection and reporting requirements that should prove useful in determining how these laws are operating, and hopefully legislators enacting sealing and other court-ordered relief will require judicial administrators to collect data so that the accessibility and effectiveness of these laws can be measured.

DIVERSIONARY DISPOSITIONS

Diversionary dispositions expanded in two states. Massachusetts authorized judges and district attorneys to divert young people with juvenile complaints prior to arraignment. Ohio reduced barriers for pre-plea diversion, deleting requirements that: the charge must be a misdemeanor or low-level felony; prosecutors recommend eligibility only for people with non-violent felony priors; and a prohibition on multiple pre-plea diversions. And, as noted earlier, South Dakota authorized automatic expungement after successful completion of a diversion program.

VOTING RIGHTS

A Florida ballot initiative raised the public profile of rights restoration when Florida voters, with 64.55% in favor, decided to restore voting rights to people with a felony conviction upon completion of sentence (except for murder and felony sexual offenses), potentially enfranchising up to 1.5 million people. This development, perhaps the single most consequential measure in the year, touched off extensive media coverage and discussions about how other jurisdictions could follow Florida's lead by limiting disenfranchisement and reducing other barriers to reintegration.²⁶

Earlier in 2018, New York's governor used his pardon power to extend voting restoration to people on parole and Louisiana restored voting rights for people with felony convictions not incarcerated in the past five years.

EXECUTIVE PARDON

Three new laws in 2018 addressed executive pardon. The D.C. City Council established a clemency board to review the applications of people with D.C. Code offenses and determine which applicants to recommend to the President for pardons and commutations.

California made a number of improvements in its pardon process that will ensure timely consideration of applications and recommendations to the governor, and increase accountability in the pardon process. Applications for pardon (in the form of judicial certificates of rehabilitation) must now be posted on the governor's website, and

recommendations must be made by the parole board within a year of receiving an application. Courts must also publish applications for certificates, as another step toward making the pardon process more efficient and transparent. Governors in California and New York made news in granting dozens of pardons to enable noncitizens to avoid deportation.

Moving toward less accountability in the pardon process rather than more, Maine passed a law that made confidential information about pardon applications as well as pardon grants, creating considerable controversy as Maine's outgoing governor issued some questionable grants. Nebraska also authorized sealing of pardoned convictions, though the pardon process in that state remains public.

JUDICIAL CERTIFICATES OF RELIEF

In one of the more significant developments of 2018, Colorado enacted a major expansion of its courts' authority to issue "orders of collateral relief," and made them effective to remove all workplace-related collateral consequences. As originally enacted in 2013, such orders were available only at the time a court imposed a non-prison sentence. Under the newly expanded authority, both criminal and juvenile courts may issue collateral relief for all types of sentences (with only a few exceptions), at any time at or after conviction or adjudication. In addition, Colorado's licensing and public employment laws were amended to preclude agency reliance on any conviction that is the subject of such an order, giving court orders the effect of a judicial pardon. These amendments make Colorado's orders of collateral relief the most extensive and effective judicial certificate law in the Nation, surpassing even New York's venerable program.

This type of judicial relief, which has been endorsed by the major national law reform organizations,²⁷ could supplant executive pardon as an efficient and reliable way to encourage reintegration of people who have moved on from their criminal cases and have had sufficient time to establish a track record demonstrating rehabilitation, and whose criminal records are such that they may not qualify for sealing or expungement.

California enhanced the effect of its judicial certificates of rehabilitation so that the criminal record of a recipient may no longer be considered in employment decisions. California also modified procedures for issuing these certificates, as part of a package to make its pardon program more transparent and accountable. However, California requires seven to 10 years of state residence before a person becomes eligible to apply. North Carolina made more modest changes to eligibility requirements for its judicial certificates.²⁸ Arizona made it easier for people to have their convictions set aside, including by prohibiting filing fees, providing criteria to guide a court's determination, and requiring courts to provide reasons in writing when they decide not to set a conviction aside. Set-asides in Arizona, like those under California law, do not seal the record but limit how the conviction may be used. Massachusetts, and Oregon enacted authorities to allow people to vacate certain convictions that resulted from being a victim of human trafficking.

CONCLUSION

Around 2013, state legislatures began passing laws to increase opportunities for people with a criminal record, rather than continuing to restrict and exclude them. These legislative efforts accelerated in 2017 and surged in 2018, with more than half the states this past year enacting at least one law to restore rights and status, and many states enacting several. Widespread reform in the states reflects a growing consensus that the social and economic problems created by mass prosecution and mass conviction call for significant policy responses.

But the variety and inconsistency of laws enacted in response to this policy imperative reflects the challenge of striking the appropriate balance between the public's interest in having access to criminal records, the state's public safety concerns, and the need to support individuals in their efforts to reintegrate into society. It may also reflect a degree of uncertainty about the efficacy of limiting public access to the record as opposed to other more transparent forms of relief that involve limiting its use. In the absence of empirical research into "what works" to encourage reintegration, legislatures must rely to some degree on anecdotal evidence and common sense.

Policy-makers have long debated whether it is more effective to forgive people's past crimes (through executive pardon or judicial dispensation), to forget them (through record-sealing or expungement), or to forgo creating a criminal record in the first place (through various diversionary dispositions).²⁹ In 2018, as in the immediate past, the largest number of new laws involved forgetting through record-sealing or expungement. A handful of states also shored up their forgoing policies by strengthening diversionary dispositions.

The most significant new laws in 2018 fall into the category of forgiving rather than forgetting

But the most significant new laws in 2018 fall into the category of forgiving rather than forgetting: by restoring the vote to more than a million Floridians; by authorizing Colorado courts to limit discrimination through orders of collateral relief; by streamlining the pardon process in California and the District of Columbia; and most strikingly by curbing the ability of occupational licensing boards in more than a dozen states to deny qualified individuals access to licensed occupations and professions. In effect, these states directed their licensing authorities to forgive people by finding them rehabilitated and thus deserving of an opportunity to gain and use skills and experience that promise a more dependable livelihood.

The legal landscape at the end of 2018 seems to invite a more nuanced blending of the three philosophical approaches to dealing with collateral consequences. Forgetting through sealing and expungement remains the most popular form of remedy among those most immediately affected by discrimination based on criminal record, and it seems particularly appropriate in the context of records not resulting in conviction, including diversionary dispositions. But trends emerging in 2018 suggest that lawmakers and the general public may have a new

appetite for forgiving through limiting use of criminal records as opposed to forgetting through limiting access to them, at least where felony convictions are concerned. The fact that most of the new sealing and expungement laws enacted in 2018 are fairly modest in comparison to the bold record-closing schemes enacted between 2013 and 2017 suggests that there are limits on how far states will go in extending the scope of this type of forgetting relief, and it may in many jurisdictions remain confined to non-conviction records and misdemeanor-level offenses. In other words, there seems to be both popular and institutional resistance to limiting what the public may see respecting the record of more serious offenses, and a growing preference for more transparent restoration mechanisms that limit what the public may do with such a record, along with standards to guide administrative decision-making.

The legal landscape at the end of 2018 seems to invite a more nuanced blending of the three philosophical approaches to dealing with collateral consequences

The dramatic success of Florida's ballot initiative to restore voting rights for people who complete felony sentences suggests a new public willingness to forgive past crimes on a broad basis, on the theory that people who have paid their debt to society should be restored to full

The challenging next phase of the reform enterprise must involve systematic study of what works best to promote reintegration, and a plan to shape public policy accordingly

rights of citizenship. If that is the case, we may finally be emerging from the long decades when relentless punishment was the only publicly acceptable response to crime. The challenging next phase of the reform enterprise must involve systematic study of what works best to promote reintegration, and a plan to shape public policy accordingly.

¹ In addition to our reports, which cover new laws passed by 48 states in this period, Hawaii in 2012 enacted legislation authorizing courts to vacate convictions resulting from a person being a human trafficking victim, and North Dakota in 2015 authorized vacatur and expungement for human trafficking victims. See Haw. Rev. Stat. § 712-1209.6; N.D. Cent. Code § 12.1-41-14.

² See Chien, Colleen V., *The Second Chance Gap*, MICH. L. REV., forthcoming (rev: March 23, 2019), available at <https://ssrn.com/abstract=3265335>.

³ Karen A. Goldman, Federal Trade Commission, *Options to Enhance Occupational License Portability*, iv (September 2018), available at https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf.

⁴ See generally Dick M. Carpenter II et al., Institute for Justice, *License to Work: A National Study of Burdens from Occupational Licensing* (2d ed. Nov. 2017), available at <https://ij.org/report/license-work-2/>.

⁵ The National Inventory of Collateral Consequences of Conviction (NICCC) lists over 15,000 provisions in statutes and regulatory codes that limit occupational licensing opportunities for people

with a criminal record, a maze of barriers. See Chidi Umez & Rebecca Pirius, National Conference of State Legislatures, *Barriers to Work: Improving Employment in Licensed Occupations for Individuals with Criminal Records*, 1 (April 2018), available at http://www.ncsl.org/Portals/1/Documents/Labor/Licensing/criminalRecords_v06_web.pdf (citing Council of State Governments Justice Center, “National Inventory of Collateral Consequences of Conviction” (n.d.), available at <https://niccc.csgjusticecenter.org/>). Note that this number is overstated by as much as 25%, since many of the entries in the NICCC represent slightly different applications of the same licensing law.

⁶ See Stephen Slivinski, Center for the Study of Economic Liberty at Arizona State University, *Turning Shackles into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform* (Nov. 7, 2016), available at <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>; Californians for Safety and Justice, *Repairing the Road to Redemption*, at 2 (May 2018), available at https://safeandjust.org/wp-content/uploads/CSJ_SecondChances-ONLINE-May14.pdf (September 2017 survey of more than 2000 Californians in revealed that 35% of people with a criminal conviction have difficulty obtaining occupational licenses).

⁷ In the 1970s, with public policy favoring encouraging employment opportunities for people with a criminal record, states began to enact laws that limit denial of licenses (and public employment) due to criminal convictions. Notable enactments included those in New Jersey (1968), Colorado (1973), Washington (1973), Hawaii (1974), Minnesota (1974), New York (1976), North Dakota (1977), Pennsylvania (1979), and Wisconsin (1981). MARGARET COLGATE LOVE, JENNY ROBERTS, & WAYNE A. LOGAN, *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION: LAW, POLICY, AND PRACTICE*, 2018-2019 ED., § 6:16 (2018). Colorado’s law, for example, provides that a conviction for a felony or moral turpitude offense does not “in and of itself” prevent public employment or licensure (with exceptions for certain sensitive positions), but may be considered in determining a person’s “good moral character.” Colo. Rev. Stat. § 24-5-101(2). North Dakota’s provisions prohibit denial of licensure unless there is a determination, considering a number of factors that a person is not sufficiently rehabilitated (with presumption of rehabilitation five years after completion of sentence) or the offense has a direct bearing on ability to serve. N.D. Cent. Code § 12.1-33-02.1.

⁸ *E.g.*, JEREMY TRAVIS, *BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY* (Urban Institute 2005).

⁹ While licensing was not the most well-publicized type of reform during the period of 2013-2016, new laws addressed licensing in four different ways: (1) seven states excluded certain records from consideration in licensing; (2) four states expanded the benefits of certificates of relief in licensing; (3) five states imposed new standards for license denials based on criminal record; and (4) one state provided greater oversight of licensing boards. More specifically, seven states prohibited consideration by licensing boards of certain records: California (set-aside convictions); Georgia (most non-conviction records); Indiana (expunged records); Illinois (sealed records in some cases); Minnesota (expunged records); Oklahoma (juvenile records); Texas (certain records under order of nondisclosure and records of deferred adjudications). Four states expanded the application of certificates of relief to licensing: Connecticut (provisional pardon and certificate of rehabilitation creates a presumption of rehabilitation); Maryland (certificate of rehabilitation prohibits boards from denying licenses solely on the basis of conviction unless direct relationship to occupation and public safety risk); and Tennessee and Washington (certificates prohibit many boards from denying license based solely on a criminal record, and limits tort liability). Five states imposed general standards on denials based on criminal records: Georgia (license may not be denied or revoked based on felony not directly related to the occupation, based on a multi-factor analysis); New Hampshire (license can only

be denied or impaired considering nature of the crime and whether there is a “substantial and direct relationship” to the occupation, and rehabilitation evidence as well as passage of time may be considered); North Carolina (must consider whether denial is warranted in light of a number of factors, including “nexus between the criminal conduct and the prospective duties”); Oklahoma (many boards can only deny, revoke, or suspend license if felony conviction “substantially relates to the practice” or “poses a reasonable threat to public safety”); and Tennessee (certain licenses boards with laws prohibiting licensing persons with a felony conviction may consider whether a conviction bears directly on fitness to practice). Colorado imposed greater oversight on licensing boards (the General Assembly, before making certain policy changes, must 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 Collateral Consequences Resource Center, *Four Years of Second Chance Reforms, 2013-2016* (2017), available at <http://ccresourcecenter.org/wp-content/uploads/2017/02/4-YEARS-OF-SECOND-CHANCE-REFORMS-CCRC.pdf>.

¹⁰ The White House issued a report in July 2015 on occupational licensing, which noted that while 25 states have standards requiring some kind of relationship between a license and an applicant’s criminal history, 25 states and the District of Columbia “have no standards in place.” See White House, *Occupational Licensing: A Framework For Policymakers*, 35–36 (July 2015), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf. As a result, “a licensing board may deny a license to an applicant who has a criminal conviction, regardless of whether the conviction is relevant to the license sought, how recent it was, or whether there were any extenuating circumstances.” *Id.* The report also noted that in many states, licensing boards can consider arrests that never led to a conviction. *Id.* The White House suggested that policymakers should only deny licenses to those individuals whose convictions are “recent and relevant, and pose a legitimate threat to public safety.” *Id.* at 48. In April 2016, President Obama directed federal departments and agencies to ensure that federally-issued occupational licenses are not presumptively denied on the basis of a criminal record, and the Department of Justice announced support for technical assistance to states pursuing similar initiatives, as part of \$5 million grant solicitation focused on reentry. White House Press Secretary, *Fact Sheet: New Steps to Reduce Unnecessary Occupation Licenses that are Limiting Worker Mobility and Reducing Wages* (June 17, 2016), available at <https://obamawhitehouse.archives.gov/the-press-office/2016/06/17/fact-sheet-new-steps-reduce-unnecessary-occupation-licenses-are-limiting>. In 2017, the Department of Labor contracted with the National Conference of State Legislatures (NCSL) to conduct a three-year project assisting states in improving their policies and practices related to occupational licensing, including those affecting persons with a criminal record. See Chidi Umez & Rebecca Pirus, National Conference of State Legislatures, *Barriers to Work: Improving Employment in Licensed Occupations for Individuals with Criminal Records* (2018), available at http://www.ncsl.org/Portals/1/Documents/Labor/Licensing/criminalRecords_v06_web.pdf. In September 2017, 11 states were selected to participate in the Occupational Licensing Learning Consortium: Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Nevada, Utah and Wisconsin. (Seven of these recently enacted new laws that make it easier for people with a criminal record to get licensed.) The project will culminate in a final report in late 2019.

¹¹ IJ released its model law as part of its [Occupational Licensing Review Act](#) (OLRA). See Institute for Justice, *Model Occupational Licensing Review Law* (2016-2018, last accessed Dec. 19, 2018), available at <https://ij.org/activism/legislation/model-legislation/model-economic-liberty-law-1/>. This model law followed the Institute’s comprehensive study of licensing barriers. Dick M. Carpenter, II, et al., *License to Work: A National Study of Burdens from Occupational Licensing*, (1st ed. 2012; 2d ed. 2017), available at <http://ij.org/report/license-work-2/>. IJ later revised it and incorporated the provisions relating to criminal records into its [Collateral Consequences in Occupational Licensing Act](#) (COLLA).

Institute for Justice, *Model Collateral Consequences in Occupational Licensing Act* (last accessed Dec. 19, 2018), available at <https://ij.org/activism/legislation/model-legislation/model-collateral-consequences-reduction-act/>.

¹² NELP released its [Model State Law](#) as part of a report on barriers to licensing for people with a record. Michelle Natividad Rodriguez and Beth Avery, National Employment Law Project, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, 31–34 (April 2016), available at <https://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

¹³ Maurice Emsellem, Beth Avery, & Phil Hernandez, National Employment Law Project, *Fair Chance Licensing Reform Takes Hold In The States* (May 15, 2018), available at <https://www.nelp.org/publication/fair-chance-licensing-reform-takes-hold-states/>.

¹⁴ It is important to note that many reforms have broad application to state licensing bodies but may exclude specific occupations and professions, often those involving law enforcement or contact with vulnerable populations, and they may not cover local licensing and certification entities.

¹⁵ IJ proposes that boards consider public safety and NELP proposes that boards consider relatedness to the occupation and rehabilitation. See Institute for Justice, *supra* note 9; Rodriguez, *et. al*, *supra* note 10, at 31–34.

¹⁶ Margaret Love, Joshua Gaines & Jenny Osborne, Collateral Consequences Resource Center, *Forgiving & Forgetting in American Justice: A 50-State Guide to Expungement and Restoration of Rights*, at 18-22 (August 2018), available at <https://ccresourcecenter.org/tag/forgiving-and-forgetting/>.

¹⁷ John Sharp, *Alabama lawmaker wants to remove 783 job barriers for felons*, AL.com (Dec. 28, 2018), available at <https://www.al.com/news/2018/12/from-interior-design-to-physical-therapy-alabama-lawmaker-wants-to-remove-783-job-barriers-for-felons.html>.

¹⁸ California also passed [SB-1412](#), granting employers increased authority to ask applicants about certain criminal convictions, described in greater detail in the California profile. Because it does not reduce barriers to reintegration, we did not include this law in the total count of new laws in 2018. In addition, California’s newly enacted [AB 2952 / SB 1281](#)—which expands access to sealed juvenile records—does not reduce barriers to reintegration, and thus is not included in the total count.

¹⁹ For example, in 2017, Illinois, New York, Montana, and Maryland all enacted significant new record-closing authorities. See Collateral Consequences Resource Center, *Second Chance Reforms in 2017: Roundup of new expungement and restoration laws*, at 2 (Dec. 2017), available at <http://ccresourcecenter.org/wp-content/uploads/2017/12/Second-Chance-Reforms-in-2017-CCRC-Dec-2017.pdf>. Between 2013 and 2016, Arkansas, Indiana, Louisiana, Minnesota, and Missouri enacted comprehensive new record-closing schemes. See Collateral Consequences Resource Center, *Four Years of Second Chance Reforms, 2013-2016: Restoration of Rights & Relief from Collateral Consequences* at 2, 14, 18 (Feb. 2017), available at <http://ccresourcecenter.org/wp-content/uploads/2017/02/4-YEARS-OF-SECOND-CHANCE-REFORMS-CCRC.pdf>. Not a single state enacted similarly broad record-closing authority in 2018.

²⁰ Pennsylvania also passed a bill, the Clean Slate Act of 2018, which made some changes to eligibility criteria and provides for automated record-sealing. This law is described in greater detail in the Pennsylvania profile below.

²¹See Department of State's Attorneys and Sheriffs, Expungement Report Pursuant to Act 178 at 10-11 (November 1, 2018), available at <http://ccresourcecenter.org/wp-content/uploads/2019/01/ACT-178-Report.pdf>. The report notes that

While the Department could support such [an automated] process, we would need additional time to assess the potential costs and resources associated with such an expansion. Currently, our case management system does not track data points relative to expungement and sealing, such as, qualifying crimes, statutes of limitation, waiting periods, intervening convictions, and outstanding obligations to the Court or the Restitution Unit. Automating a State's Attorney-initiated process would require significant upgrades to the Department's case management system, including the ability query outside databases which often cannot easily communicate with one another.

In addition to these technical obstacles, there are resource challenges to creating a [sic] such a system, both for the Department and for the Court Administrator's Office. . . .

²² See Chart #4, Restoration of Rights Project, <http://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/>.

²³ See Alfred Blumstein, Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, *Criminology* 47(2): 327-359 (2009), available at http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf.

²⁴ Jeff Selbin, Justin McCrary, & Joshua Epstein, *Unmarked?: Criminal Record Clearing and Employment Outcomes*, 108 *J. Crim. L. & Criminology* 1, 51 (2018), available at <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3934&context=facpubs>.

²⁵ *Id.*

²⁶ The only states that now permanently disenfranchise all persons with a felony conviction, absent case-by-case executive restoration, are Kentucky and Iowa (Virginia's governor has systematically restored the vote in that state through various executive actions over the last four years). See [Chart #1](#), Restoration of Rights Project.

²⁷ See Model Penal Code: Sentencing §§ 7.04 through 7.06 (2017) ("Order of Collateral Relief" and "Certificate of Restoration of Rights"); Uniform Collateral Consequences of Conviction Act §§ 10 and 11 (2010) ("Order of Limited Relief" and "Certificate of Restoration of Rights"); ABA Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons, Standard 19-2.5 (3d ed. 2003) ("Waiver, Modification, Relief"). These model laws are discussed in §§ 9:4 through 9:6 in LOVE, *et al*, *supra* note 5.

²⁸ North Carolina both expanded and contracted eligibility for its certificates of relief, which are effective to convert mandatory to discretionary collateral consequences. Previously, certificates were available only to individuals convicted of "no more than two Class G, H, or I felonies or misdemeanors in one session of court," and who have no other convictions for a felony or misdemeanor other than a traffic violation. The new law expands eligibility to include any misdemeanors, but contracts to remove Class G felonies from eligibility.

²⁹ See Margaret Colgate Love, *Forgiving, Forgetting, and Forgoing: Legislative Experiments in Restoring Rights and Status*, 30 *FED. SENT'G REP.* 231 (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3199549; Love *et al.*, *supra* note 14.

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ALABAMA

Expungement for victims of human trafficking - [HB 305](#) creates provisions for the expungement of criminal records—including convictions—related to a person being a victim of human trafficking. These new provisions are the only Alabama statutory authorities that provide for the expungement or sealing of adult criminal records. Under newly enacted Ala. Code §§ 15-27-1(5), 15-27-2(a)(6), 15-27-2(b), when a person can prove by a preponderance of the evidence that the person is a victim of human trafficking, committed an offense during the period of being trafficked, and would not have committed the offense but for being trafficked, that person may seek to expunge records related to charges for: (1) a traffic or municipal ordinance violation; (2) a misdemeanor; (3) a non-violent felony; (4) promoting prostitution in the first degree; (5) domestic violence in the third degree; and (5) production of obscene matter involving a person under the age of 17. § 15-27-1 (misdemeanors and traffic or municipal ordinance violations); § 15-27-2 (felonies).

ARIZONA

Regulation of occupational licensing - In April 2018, a comprehensive new occupational licensing scheme was enacted for most Arizona licensing boards, repealing the previously applicable standards for licensure in Ariz. Rev. Stat. § 13-904(E). Under Ariz. Rev. Stat. § 13-1093.04, enacted by [SB 1436](#), applicants may at any time petition licensing agencies for a preliminary determination whether a prior conviction will disqualify the person from licensure. Agencies are required to issue a

written determination on the petition within 90 days of receipt that must include “findings of fact and conclusions of law.” Agencies may advise an applicant on how to remedy a likely disqualification, including their right to appeal and/or submit a new petition within two years. See [SB 1436](#).

An agency may disqualify a person based on criminal record only if: (1) the conviction is for a felony, a violent crime, certain fraudulent crimes, or any offense the agency is specifically required to consider by law, if the conviction has not been set aside or expunged; and (2) the agency concludes that the offense is substantially related to the state’s interest in protecting public safety and the person is “more likely to reoffend by virtue of having the license.” Certain licenses relating to law enforcement and education are exempt. Beginning in 2019, agencies are required to submit annual reports to the Governor and the Legislature on the number of petitions for preliminary determination, those granted and denied, and the types of offenses involved in each category.

In 2017, licensing agencies were authorized to issue provisional licenses to otherwise qualified applicants with a criminal record. Ariz. Rev. Stat. § 41-1093. Certain convictions bar issuance of a provisional license, and they may not be issued when: (1) an occupation involves supervising vulnerable adults or children, (2) the applicant was convicted of committing the offense in the course of performing the duties of the occupation or a substantially similar occupation, or (3) the applicant is a repetitive offender.

Enhancement of procedures for set-aside - [HB 2312](#) enacts a series of provisions that enhance the procedures for applications to set aside a conviction. First, the new law provides that fees may not be charged for an application to set aside. Ariz. Rev. Stat. § 13-907(B). Second, a person may now apply to the court in general, instead of only to the sentencing court. § 13-907(A). Third, a person must be informed at sentencing of the right to seek a set aside. *Id.* Fourth, courts are to consider several factors in making a decision: (1) the nature and circumstances of the offense; (2) the applicant’s compliance with conditions of probation; (3) the sentence imposed and any correctional rules or regulations; (4) any prior or subsequent convictions; (4) the victim’s input and the status of victim restitution, if any; (5) the time elapsed since the completion of the sentence; (6) the applicant’s age at time of the conviction; and (7) any other relevant factor. § 13-907(B). Fifth, a victim has a right to be present and heard at any proceeding regarding the application for set aside. § 13-907(I). Sixth, a court that denies an application must state its reasons in writing and on the record. § 13-907(H). Seventh, if a conviction is set aside, the court clerk must notify the Department of Public Safety, which must update the person’s criminal history with an annotation that the conviction has been set aside. § 13-907(F). Eighth, the new law specifies that the set-aside conviction may be used for certain purposes, including being admissible as a conviction, alleged as an element of an offense, or used by the Department of

Transportation to enforce certain statutes. § 13-907(E). Violent or sexual offenses may not be set aside, and set-aside does not close the record.

CALIFORNIA

Regulation of occupational licensing - Cal. Bus & Prof. § 480(a)(3)(B) provides that conviction of a crime, or commission of an act involving dishonesty or fraud, is grounds for denial of a license, but only “if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.” [AB 2138](#), when it goes into effect in July 2020, will prohibit licensing boards from denying licenses based on non-conviction records, or based on certain less serious convictions more than seven years after conviction or release from prison (whichever is later). The legislation also will prohibit denial based on a conviction if a person was granted clemency or a pardon, made a showing of rehabilitation for a felony conviction (misdemeanors are already covered under existing law), or had the conviction dismissed or set aside under Penal Code §1203.42. Each board will be required to develop more specific criteria—and publish a summary online—for how it determines whether a crime is substantially related to the occupation in deciding whether to deny, revoke, or suspend a license, and such criteria must include: (1) the nature and gravity of the offense; (2) the number of years elapsed since the offense occurred; (3) the nature and duties of the profession; and (4) any evidence of rehabilitation submitted by an applicant. If a board denies a license based on a conviction history, it must notify the applicant in writing of the applicant’s right to appeal, any procedure by which the decision can be challenged, and how to request a conviction history. Each board will be required to make an annual report publicly available that details the number of applications received for each license, the number of applicants requiring inquiries into criminal history, as well as the final disposition and voluntarily submitted demographic information of any applicant with a criminal record who: (1) received a denial or disqualification; (2) provided evidence of mitigation or rehabilitation; or (3) appealed a denial or disqualification. AB 2138’s provisions will apply to almost all of the licensing boards within California’s Department of Consumer Affairs.

Certification of emergency medical responders - [AB 1812](#) authorizes the California Department of Forestry and Fire Protection (CAL-FIRE) to certify or provisionally certify as “emergency medical responders” former prison firefighters who meet certain training requirements, regardless of a prior conviction, which qualifies them for some state firefighter jobs. Cal. Health & Safety Code § 1797.165.

[AB 2293](#) requires local emergency medical services agencies to annually and publicly report data on the approval or denial of Emergency Medical Technician certifications, to include the number and demographic data of applicants with a prior criminal conviction who were denied, approved, or approved with restrictions; the reasons stated for denials or approvals with restrictions; the restrictions imposed; and the

extent to which prior criminal history may be an obstacle to certification. Cal. Health & Safety Code § 1797.229.

Review of cannabis convictions for Prop. 64 relief - In 2016, Proposition 64 legalized certain marijuana-related activities and authorized individuals with a conviction for conduct that is no longer illegal, or is a lesser offense, to petition the trial court to resentencing, dismiss and seal, or redesignate the conviction. [AB 1793](#), enacted in September 2018, establishes an authority for systematic relief pursuant to a new Cal. Health & Safety Code § 11361.9. It provides that by July 1, 2019, the Department of Justice must identify eligible cases for possible resentencing, dismissal and sealing, or redesignation, and notify the prosecution of all eligible cases in its jurisdiction. By July 1, 2020, the prosecution must determine and notify the court and public defender whether it will challenge each case based on eligibility or that the person presents “an unreasonable risk to public safety.” If the prosecution does not challenge a case, the court automatically provides the applicable relief. Otherwise, the public defender must make “a reasonable effort” to notify the person whose potential relief is being challenged.

Regulation of record sealing - [AB 2599](#) requires detention facilities to post notices that anyone who has been arrested but not convicted can petition the court to have their arrest and related records sealed, and that a petition form is available on the Internet or upon request. Cal. Penal Code § 851.91(b)(3)(B).

[AB 2952](#), in conjunction with [SB 1281](#), amends Cal. Welf. & Inst. Code § 786, a provision for juvenile petition dismissal and sealing, in two ways. First, these bills provide that if a juvenile record contains a sustained petition rendering a person ineligible to own or possess a firearm until 30 years of age pursuant to Penal Code § 29820, then the sealed records shall not be destroyed until the person turns 33 years old. Second, these bills provide that sealed juvenile records can be accessed: (1) by the Department of Justice to determine if a person is suitable to purchase, own, or possess a firearm, consistent with Penal Code § 29820 or by the prosecuting attorney for the evaluation of charges and prosecution under § 29820; or (2) by the prosecuting attorney to meet an obligation to disclose favorable evidence to a defendant in a criminal case, after notice and opportunity to respond for the person whose record is at issue, and after review and approval by the juvenile court.

Improving procedures and enhancing effect of pardons and certificates of rehabilitation - [AB 2845](#) puts in place several changes regarding petitions for pardons and certificates of rehabilitation and their effects. First, the bill provides that the governor shall make applications for pardons and commutations available on the internet. Cal. Penal Code § 4802.5. Second, the governor shall promptly forward all pardon applications to the Board of Parole Hearings for an investigation and recommendation, except for applications supported by a certificate of rehabilitation, which may be granted without investigation and recommendation. *Id.* Third, if a

clemency petitioner indicates urgent need, including a pending deportation order or deportation proceeding, the Board is to consider expedited review of the application. § 4812(c). Fourth, the Board must notify an applicant after the board receives the application, and when the Board issues a recommendation on the application. § 4812(d). Fifth, a person can apply for a certificate of rehabilitation not only in the Superior Court of their county of residence, but also now in the court of conviction. § 4852.06. Sixth, a certificate of rehabilitation issued by a court (which must be forwarded to the governor as a pardon recommendation) is to be reviewed by the Board of Parole Hearings within a year of receipt of the certificate, for a recommendation as to whether the Governor should pardon that person. § 4852.16(b). Seventh, employers may not consider in hiring decisions any convictions for which an applicant has received a pardon or certificate of rehabilitation. Cal. Gov't Code § 12952(a)(3)(C).

Prison to employment programs - [SB 866](#) establishes a Prison-to-Employment program, to include development of regional partnerships and plans to provide the services that formerly incarcerated and other justice-involved individuals need to secure and retain employment and reduce recidivism, and to provide earn and learn opportunities, which combine applied learning in a workplace setting with compensation. Cal. Unemp. Ins. Code § 14040. [SB 866](#) also establishes a Pre-Release Construction Trades Certificate Program, to include pre-apprenticeship training programs, a certification that validates that an inmate completed instruction, skills, and competencies recognized by participating building and construction trades, pre-release on-the-job training opportunities, and facilitation of post-release admission into apprenticeship programs. Cal. Pen. Code. § 2716.5.

Employer questions about convictions - Under existing law, employers may not ask an applicant to disclose, seek from another source, or consider in determining employment, information concerning participation in a diversion program or a conviction that has been judicially dismissed or ordered sealed. Nonetheless, an employer may ask about, seek, and consider information concerning a criminal conviction or entry into a pretrial diversion or similar program if, pursuant to state or federal law, (1) the employer is required to obtain information regarding a conviction of an applicant, (2) the applicant would be required to possess or use a firearm in the course of employment, (3) an individual who has been convicted of a crime is prohibited by law from holding the position sought, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, or (4) the employer is prohibited by law from hiring an applicant who has been convicted of a crime. [SB 1412](#) clarifies that an employer may ask about, seek, and consider information about a conviction “regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation,” if the employer is required by state or federal law to seek information about particular convictions, or if the employer

is prohibited by law from hiring an applicant who has been convicted of a particular crime. Cal. Labor Code § 432.7(m).

COLORADO

Expansion of collateral relief authority - [HB 1344](#) expands the authority of Colorado courts to issue orders of collateral relief, which can relieve a person of most collateral consequences of conviction. Previously, only a criminal court could issue such relief, and only at the time of imposing a non-prison sentence. Colo. Rev. Stat. §§ 18-1.3-107, 18-1.3-213, 18-1.3-303. Under [HB 1344](#), criminal and juvenile courts may issue collateral relief for all types of sentences, either at the time of conviction (or juvenile adjudication) or “at any time thereafter.” Certain crimes of violence and sexual offenses make a person ineligible for collateral relief. The 2018 legislation also requires that presentence reports include a notification to defendants that they may apply for collateral relief. Colo. Rev. Stat. § 16-11-102(1)(a)(II.5). This law resembles the authority proposed by the American Law Institute in the collateral consequences provisions of its new Model Penal Code: Sentencing.

Expanded access to occupational licenses - In May 2018, Colorado modified its occupational licensing scheme for most licensing boards. Previously, licensing agencies charged with determining whether an applicant possesses the requisite “good moral character” for licensing were specifically permitted to consider an individual’s criminal record. Colo. Rev. Stat. § 24-5-101(2)(a). [HB 1418](#) adds language to the statute that links consideration of an individual’s criminal record to whether that individual is “qualified.” The new legislation prohibits a licensing agency from using the following criminal records as a basis for denial or adverse action: arrests and charges not resulting in conviction (although the underlying conduct may be considered); convictions that have been pardoned, sealed or expunged; or convictions as to which a court has issued an order of collateral relief (see above). The legislation also authorizes agencies to issue “conditional licenses” to people with a criminal record. See § 24-34-107(5). After one year or the time of renewal (whichever is later), the individual can petition for removal of the condition, and after removal, any reference to the condition remains confidential.

Under a law enacted in 2013, and expanded by [HB 1418](#), the General Assembly must periodically review regulatory agencies and determine, among other things, “Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests.” Colo. Rev. Stat. § 24-34-104(6)(b)(IX). To assist in considering this factor, the department of regulatory agencies prepares an analysis including data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification. *Id.* [HB 1418](#), made

more explicit the information that each agency must provide, including the number of conditional licenses issued by each agency pursuant to the new authority in § 24-34-107, described above, and the specific criminal offenses that led to disqualification or sanction.

DELAWARE

Expansion of expungement for juvenile non-conviction records - [SB 146](#) authorizes mandatory expungement in the event that a felony case was terminated in favor of the juvenile. Previously, this option was available only for misdemeanors and violations. Del. Code Ann. tit. 10, § 1017. In 2017 substantial amendments were made to the provisions on juvenile expungement by eliminating certain offenses 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.

Expungement of decriminalized marijuana possession convictions - [SB 197](#) amended Del. Code Ann. tit. 16, § 4764 to make convictions for possession, use, or consumption of marijuana prior to Delaware's decriminalization of these offenses in 2015 were made eligible for mandatory expungement upon request, under the provisions of Del. Code Ann. tit. 11 § 4373. Eligibility for mandatory relief depends on the conviction being the applicant's only offense. See [SB 197](#).

Regulation of cosmetology and barbering licenses - [HB97](#) amends Del. Code Ann. tit. 24, § 5107 to prohibit consideration of convictions after ten years, if no intervening conviction; and to give the Board authority to grant a waiver for felony convictions, after 2 years for most convictions, and 3 years for person offenses. Authorizes Department of Correction to establish prison barbering training programs. See [HB97](#).

DISTRICT OF COLUMBIA

Clemency Board for D.C. Code offenses - As part of [B22-0901](#), the Budget Support Emergency Act of 2018, the D.C. City Council enacted the Clemency Board Establishment Emergency Act of 2018, to review the applications of people with D.C. Code offenses for pardon or commutation of sentence and determine which applicants to recommend to the President. The Act creates a 9-member agency within the Executive Office of the Mayor of D.C. to recommend clemency cases to the president for favorable action. Five members of the Board are to be appointed by the Mayor, and four members will serve ex officio (including the Attorney General of the District, the chair of the Council committee with jurisdiction over criminal matters and, by invitation, the U.S. Attorney and the Director of the Public Defender Service). The board is directed, inter alia, to establish criteria and an application for pardon and commutation, to conduct in-person hearings "whenever feasible," and to determine within six months of receiving an application whether to recommend it to the President

for relief. The board is directed to consider both cases of actual innocence, and cases of those “who are remorseful and can show that they have been rehabilitated.” The board sends its favorable recommendations both to the President and to the Pardon Attorney in the Justice Department. It is not clear from the legislation how cases will be disposed of in the event they are not recommended favorably by the board. Presumably, people with D.C. Code offenses may also file applications through the generally applicable federal pardon process.

FLORIDA

Elimination of waiting period for expunging acquittals - For persons who receive a judgment of acquittal or a not guilty verdict, [HB 1065](#) eliminates a ten-year waiting period before such persons are eligible to have their criminal records expunged (destroyed by law enforcement agencies). Fla. Stat. §§ 943.0585.

Ballot initiative restoring voting rights - In the November 2018 election, Florida voters approved [Amendment 4](#), the Voting Rights Restoration for Felons Initiative, with 64.55% of voters in favor (a 60% supermajority was required for approval). This amendment of the state constitution provides that “any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation,” except for a person convicted of murder or a felony sexual offense, who remains disqualified from voting until his or her civil rights have been restored.

ILLINOIS

Regulation of occupational licensing - [SB 2853](#) requires the Department of Financial and Professional Regulation to make available on its website general information explaining how it utilizes criminal history information in making licensure application decisions, including a list of enumerated offenses that serve as a bar to licensure. The legislation also provides that people may no longer seek an advisory opinion as to whether a conviction would be disqualifying.

This follows on the heels of [SB 1688](#), a major expansion of licensing regulation enacted in 2017, which provided substantial guidance for the Division of Professional Regulation of the Department of Financial and Professional Regulation in considering prior convictions in the issuance of licenses, certificates, or granting of registration. See 20 Ill. Comp. Stat. Ann. 2105/131, 2105/135. (These standards do not apply to enumerated offenses listed in licensing restrictions for health care workers or to other offenses that specifically bar licensure for a particular occupation.) Under [SB 1688](#), upon finding that an applicant has a prior felony or misdemeanor conviction that may be grounds for refusal, the Division “shall consider mitigating factors and any evidence of rehabilitation contained in the applicant’s record to determine if the prior conviction will impair the applicant’s ability to engage in the practice sought.” *Id.* Factors and

evidence that must be considered include: (1) the lack of direct relation of the offense of conviction to the duties, functions, and responsibilities of the position; (2) unless otherwise specified, whether 5 years since a felony conviction or 3 years since release from confinement for the conviction, whichever is later, have passed without a subsequent conviction; (3) the lack of related prior misconduct, if the applicant was previously licensed or employed; (4) age at the time of the offense; (4.5) if federal rules or regulations would prohibit the applicant from working in the position due to the criminal conviction history; (5) successful completion of sentence and, for applicants on parole or probation, a progress report provided by the probation or parole officer; (6) present fitness and professional character; (7) rehabilitation or rehabilitative effort during or after incarceration or term of supervision, including a certificate of good conduct or certificate of relief from disabilities under Illinois law; and (8) any other mitigating factors that contribute to potential and current ability to perform the job duties. *Id.*

If the Division refuses to issue a license or certificate or grant registration based upon a conviction history, the Division shall notify the applicant of the denial in writing, including a statement about the decision, which convictions were determined to be disqualifying, and a summary of the appeal process or the earliest time that the applicant may reapply. See *id.*, 2105/131(b). The Division is explicitly prohibited from denying a license or certificate by reason of lack of good moral character based solely on a prior conviction. See *id.*, 2105/135(b). Applicants are not required to report, and the Division may not consider juvenile adjudications; records of arrest not followed by a charge or conviction; or “records of arrest where charges were dismissed, unless related to the profession sought”; overturned convictions; and sealed or expunged convictions or arrests (although licensing boards may still be able to access sealed felony convictions pursuant to a background check authorized by law). See *id.*, 2105/135(c).

[SB 1688](#) also makes this scheme applicable to a number of specific licensing acts, including those for residential insurance providers (215 Ill. Comp. Stat. Ann. 500/30, 500/76), operators of a dance hall or road house (55 Ill. Comp. Stat. Ann. 5/5-10004), pyrotechnics distributors (225 Ill. Comp. Stat. Ann. 227/35), swine feed distributors (225 Ill. Comp. Stat. Ann. 620/9.3), slaughterhouse operators (225 Ill. Comp. Stat. Ann. 635/3.2), charitable gaming managers (230 Ill. Comp. Stat. Ann. 30/7) and liquor retailers (235 Ill. Comp. Stat. Ann. 5/7-1, 5/6-2.5).

Regulation of expungement and sealing - [HB 5341](#) provides that a court shall not deny a sealing or expungement petition because the petitioner has not satisfied an outstanding financial obligation established, imposed, or originated by a court, law enforcement agency, or State or local government, including fines and fees, but not including restitution to a victim unless it has been converted to a civil judgment. [SB 2915](#) provides that juvenile adjudications for offenses that would be a Class B or C

misdemeanor or petty or business offenses are only automatically expunged if they are terminated successfully (previously any such adjudications would be expunged). It also directs the court clerk to deliver certified copies of juvenile expungement orders to the Department of State Police and the arresting agency. 705 Ill. Comp. Stat. 405/5-915.

INDIANA

Regulation of occupational licensing - [HB 1245](#) requires licensing boards and commissions to explicitly list all disqualifying convictions in their licensing requirements, which must “specifically and directly” relate to the duties and responsibilities of the occupation or profession. Ind. Code § 25-1-1.1-6(d), (e). Licensing authorities may not “use nonspecific terms, such as moral turpitude or good character, as a licensing or certification requirement” and may not “consider an arrest that does not result in a conviction.” § 25-1-1.1-6(d). If an applicant has a listed disqualifying criminal history, the agency shall consider several factors in determining whether to deny a license to the applicant, based on “a clear and convincing showing,” including the nature of the crime, passage of time, relationship to the occupation, and rehabilitation. § 25-1-1.1-6(f). The disqualification period for the listed convictions is limited to five years, as long as the applicant has kept a clean record during the disqualification period and the conviction was not a violent crime or criminal sexual act. § 25-1-1.1-6(g). It is not clear how drug convictions should be treated under this new law, but a reasonable harmonization of the new and old law would apply to drug crimes the criteria for deciding to disqualify in (f) and the 5-year period of disqualification in (g).

Under the new authority, persons with a felony or misdemeanor conviction may seek an advisory opinion from the licensing agency as to whether their convictions would be disqualifying, and the agency may charge a fee for this review that does not exceed \$25. § 25-1-1.1-6(h), (j). If a person is denied a license in whole or in part based on their conviction, the agency must make “written findings” for each of the mitigating factors set forth in § 25-1-1.1-6(f), “by clear and convincing evidence sufficient for review by a court.” § 25-1-1.1-6(i). Further, “[i]n an administrative hearing or civil action reviewing the denial of a license, a board, commission, or committee has the burden of proof on the question of whether the individual’s criminal history directly relates to the occupation for which the license is sought.” *Id.*

In an unusual extension of state law, the same requirements are extended to licensing by units of county and municipal governments. § 36-1-26. Each state licensing agency is required to consult with the small business ombudsman, the office of management and budget, and representatives of units of local government that issue licenses to develop and submit to the legislature by November 1, 2018, a report concerning “proposed policies and parameters” for the licensing of occupations and professions by

local units in order to reduce or eliminate redundant licensing by the state and multiple local units. § 25-1-16-16.

KANSAS

Regulation of occupational licensing - Preexisting Kansas law provided that a licensing board may consider any felony conviction of an applicant, but such a conviction shall not operate as a bar to licensure. Kan. Stat. Ann. § 74-120. [HB 2386](#) amended this general licensing statute, adding several provisions. Licensing boards now must “list the specific civil and criminal records that could disqualify an applicant from receiving a license, certification or registration.” Kan. Stat. Ann. § 74-120(b)(1). Importantly, boards “may only list any disqualifying criminal records or civil court records that are directly related to protecting the general welfare and the duties and responsibilities for such entities.” Moreover, “in no case shall non-specific terms, such as moral turpitude or good character, or any arrests that do not result in a conviction be used to disqualify an individual’s application . . .” *Id.* Licensing boards are prohibited from considering an otherwise disqualifying criminal record or civil court record if five years have passed since the individual satisfied the sentence imposed and the individual has had no other convictions during that time. Kan. Stat. Ann. § 74-120(b)(2). However, boards may consider felony convictions, Class A misdemeanor convictions, and any conviction for which licensure could conflict with federal law, regardless of the time passed since the conviction. *Id.*

The amendments also provide individuals the opportunity to petition a licensing board at any time for a preliminary “informal, written advisory opinion concerning whether the individual’s civil or criminal records will disqualify the individual.” Kan. Stat. Ann. § 74-120(b)(3). The board must respond to the petition within 120 days of receipt, and may not charge more than \$50 for the response. *Id.*

There are 13 enumerated exceptions that constitute a broad carve-out from the legislation, including: law enforcement and highway patrol officers, accountants, behavioral scientists, doctors and pharmacists, emergency medical personnel and nurses, realtors, the office of the attorney general, municipalities, and “any profession that has an educational requirement for licensure that requires a degree beyond a bachelor’s degree.” Kan. Stat. Ann. § 74-120(c).

[HB 2386](#) also amended several laws relating to specific forms of licensure, employment and background checks involving adult care homes, home health agencies, and other centers, hospitals, and facilities offering behavioral and disability services. In general, people with certain specified convictions may not be employed by the entities in question for a period of five years after completion of sentence, although this period of disqualification may be waived by the secretary for aging or disability services. Kan. Stat. Ann. §§ 39-970, 39-2009, 65-5117.

“Ban the box” in state employment - On May 2, 2018, Governor Jeff Colyer signed E.O. 18-12, directing that all Executive Branch departments, agencies, boards, and commissions take action to ensure that “during the initial stage of a state employment application, job applicants shall not be asked whether they have a criminal record, and a criminal record shall not automatically disqualify an applicant from receiving an interview,” except in circumstances when a criminal history would render an applicant ineligible for a position by law or regulation.

LOUISIANA

Expanded voter registration for persons with felony convictions - Existing law prohibits a person who is under an order of imprisonment for conviction of a felony from registering to vote, even if the sentence is suspended or the person is on probation or has been paroled. [HB 265](#) provides a new exception that allows persons to register and vote if they have not been incarcerated during the previous five years pursuant to an order of imprisonment for a felony conviction. LA. Rev. Stat. Ann. §§ 18:102, 104, 177. Excluded from this exception are persons who have been convicted of a felony offense of election fraud or another election offense and are under an order of imprisonment. *Id.*

Expanded access to expungement - [HB 377](#) extends the amount of time—from 30 days to 60 days—that a background check can be used in seeking an expungement (expunged records are available to law enforcement and some licensing boards). Under Louisiana law, a person can only expunge a record of arrest and conviction of a felony offense once during a 15-year period. LA. Code Crim. Proc. Ann. art. 978(D). [HB 196](#) provides that deferred adjudication cases that were set aside and dismissed are exempt from this 15-year waiting period. *Id.*

MAINE

Sealing of pardon applications and pardon grants - [HB 765](#) amended the Criminal History Record Information Act to include as confidential information not only “that a person has been granted a full and free pardon,” (language in place since 2013) but “that a person has petitioned for and been granted a full and free pardon.” Me. Rev. Stat. Ann. Tit. 16, § 703(2)(L). Accordingly, it is now hard to know who has applied for and who has been granted a pardon.

MARYLAND

Occupational licensing reporting - [HB 1597](#) requires six state agencies to report to the governor by October 1, 2018, how many applications for an occupational license were received during the preceding five years; how many applicants had a certain criminal record; how much time had passed since the criminal conviction; how many

applications were denied on the basis of a conviction; and the statutory grounds on which the licenses were denied.

Expanded access to expungement - [SB 101](#) expands the list of convictions that may be expunged to include for the first time certain specified felony convictions involving theft, drug trafficking and burglary, which are subject to a 15-year waiting period running from completion of sentence. MD. Code Ann. Crim. Proc. § 10-110. [HB 382](#) eliminates the three-year waiting period for expunging non-conviction dispositions, excluding probation before judgment (PBJ) cases. § 10-105. [HB 382](#) also clarifies that a person who has been charged with any civil offense or infraction, except a juvenile offense, may file a petition for expungement of records under circumstances specified by existing law. § 10-105(a).

MASSACHUSETTS

Criminal justice reform - In April 2018, Massachusetts passed [S.2371](#), a major bill that make changes across the state's criminal justice system. With respect to fair chance issues, the bill makes changes to sealing and expungement, juvenile diversion, vacatur of convictions for human trafficking victims, and occupational licensing.

Expansion of sealing and expungement – The law expands access to sealing and expungement in several ways. Under pre-existing law, persons are entitled to have their records sealed upon application to the department of probation (with exceptions for convictions of certain offenses) if they demonstrate a period of law-abiding conduct: five years for a misdemeanor and ten years for a felony. Mass. Gen. Law ch. 276, § 100A. Under [S.2371](#), these waiting periods are reduced to three years for a misdemeanor and seven years for a felony. *Id.* Resisting arrest convictions are removed from the list of ineligible offenses. *Id.*

Further, [S.2371](#) provides for the first time an authority for courts to expunge (permanently erase) certain records, including juvenile records on file with the commissioner of probation, in accordance with newly enacted §§ 100E through 100U of ch. 276 of the General Laws. See § 195 of 2018 Mass. Acts ch. 69. Under these new provisions, a petition for expungement may be filed three years from the date of a juvenile misdemeanor offense, and seven years from the date of a juvenile felony offense, so long as specified eligibility requirements are met. Mass. Gen. Laws ch. 276, § 100(I). Twenty criminal records are enumerated that are exempt from eligibility, including violent crimes, sexual offenses, and violations of various restraining orders. § 100(J). Courts are also authorized to order expungement of criminal or juvenile court records based on false identification or identity fraud, or official error. § 100(K). Expungement is also authorized where the conduct is no longer criminal. *Id.*

Expansion of pre-trial diversion and expungement for juveniles - This bill expands pretrial diversion to authorize in juvenile cases pre-arraignment diversion followed by

expungement. Preexisting law authorizes pretrial diversion for people with first offenses between the ages of 17 and 21, and records in such cases may be sealed in accordance with standards applicable to non-conviction dispositions. Mass. Gen. Laws ch. 276A, § 2 et seq. [S.2371](#) gives jurisdiction to juvenile courts to divert—prior to arraignment—children who have delinquency complaints. Mass. Gen. Laws ch. 119, § 54A. Ineligible are children indicted as youth offenders, charged with enumerated offenses, or charged with offenses with minimum terms of incarceration, potential incarceration of more than five years, or which may not be continued without a finding or placed on file. § 54A(g). Upon the successful completion of diversion, the court may dismiss the complaint, and if the complaint is dismissed, the court must enter an order expunging the records (unless the child objects). §§ 54A(f)(2)–(4). The district attorney is also authorized to divert any child, without the eligibility restrictions described above. § 54A(d).

Enhanced effect of sealing and expungement - This bill enacts new restrictions on the use of sealed and expunged records in employment, housing, and licensing. For sealed records, under preexisting law, an application used by an employer that seeks information concerning prior arrests or convictions must include a statement explaining that in response to an inquiry about criminal history, an applicant may answer “no record” if they have a sealed record (or a juvenile delinquency or child in need of services record not transferred to adult criminal court). Mass. Gen. Law ch. 276, § 100A. The attorney general may enforce these requirements by civil suit. *Id.* [S.2371](#) extends these provisions applications for housing and occupational or professional licensure. *Id.* For expunged records, [S.2371](#) requires that a job application by any employer which seeks information concerning prior arrests or convictions must include a statement explaining that in response to an inquiry about criminal (or juvenile) history, an applicant may answer “no record” if their record was expunged under the new expungement provisions. § 100(N)(a). Further, no state or local agency may require disclosure of a criminal record expunged pursuant to these sections, and job applicants to such agencies with expunged records may answer “no record” in response to an inquiry concerning a criminal or juvenile record. *Id.* Finally, records expunged pursuant to the new provisions may not be inspected “in any form and by any person.” Mass. Gen. Laws ch. 176, 100(Q).

Vacatur for human trafficking victims - [S.2371](#) also provides that certain convictions or delinquency adjudications (for “immoral solicitation,” “street walkers” who “accost or annoy another person,” “lewd, wanton and lascivious persons in speech or behavior,” “keepers of noisy and disorderly houses,” indecent exposure, prostitution, or simple drug possession) may be vacated, and guilty pleas withdrawn, “upon a finding by the court of a reasonable probability that the defendant’s participation in the offense was a result of having been a human trafficking victim . . .” Mass. Gen. Laws ch. 265, § 59. Where a child under the age of 18 was adjudicated delinquent for an offense of prostitution, “there shall be a rebuttable presumption that the child’s participation

in the offense was a result of having been a victim of human trafficking or trafficking in persons.” § 59(a)(2). For adults, official documentation from any government agency of the defendant’s status as a victim of human trafficking “shall create a rebuttable presumption that the defendant’s participation in the offense was a result of having been a victim of human trafficking.” § 59(a)(3).

Occupational licensing reporting - In the area of occupational licensing, [S.2371](#) requires, consistent with a national trend towards more transparency and clarity, that licensing authorities of state and political subdivisions provide “a list of the specific criminal convictions that are directly related to the duties and responsibilities for the licensed occupation that may disqualify an applicant from eligibility for a license.” Mass. Gen. Laws ch. 6 § 172N.

MICHIGAN

Ban-the-box in state employment - Under [E.D. No. 2018-4](#), the governor directed that state departments and agencies shall not include questions about criminal history or convictions in job postings or applications, but these inquiries and background checks may be conducted later in the hiring process. Excluded are positions for which state or federal law prohibits hiring candidates with criminal histories.

MISSOURI

Expungement of concealed carry offense - [SB 954](#) permits individuals convicted of unlawful use of a weapon by the carrying of a concealed weapon prior to January 1, 2017, to apply for expungement. MO. Rev. Stat. § 610.140

Expungement of prostitution by a minor acting under coercion – [SB 793](#) provides that if a person has pleaded guilty to or been convicted of prostitution, and the person was under 18 years old at the time of the offense, the person may apply for expungement (sealing)—which the court must grant after a hearing, upon determining that the person was “acting under the coercion . . . of an agent when committing the offense . . .” Mo. Ann. Stat. § 610.131.

NEBRASKA

Regulation of occupational licensing - Effective July 1, 2019, the Occupational Board Reform Act establishes the policy of the state “to protect the fundamental right of an individual to pursue a lawful occupation” which includes “the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual’s personal qualifications. See [LB299](#). It provides that individuals may make a preliminary application for a determination whether a conviction record will be disqualifying, for a fee limited to \$100. Board must make a written determination within 90 days of receipt and may advise applicant of ways to

remedy any adverse determination, and of their right to appeal and/or submit a new petition within two years. The Act provides for general legislative review of licensing agencies at least every five years on the number of licenses issued and denied and the reasons for these actions, and a comparison of how other states regulate the occupation. (Note that, unlike Arizona’s new law, this legislative review of licensing agencies is not limited to preliminary determinations.)

Set-aside and sealing for victims of sex trafficking - [LB 1132](#) provides that victims of sex trafficking may move to set aside convictions or adjudications directly related to that status. Set-aside has the effect of nullifying the conviction and removing “all civil disabilities and disqualifications imposed as a result of the conviction.” While set-aside does not ordinarily result in sealing, in this case it does. See Neb. Rev. Stat. § 29-3523(4).

Sealing for recipients of pardon; sealing of pre-2017 non-conviction records - [LB 1132](#) also authorizes sealing for recipients of a pardon, § 29-3523(5), and makes clear that a 2016 law that authorized sealing for non-conviction records applies to charges filed prior to that law’s effective date, overriding contrary court rulings.

NEW HAMPSHIRE

Regulation of occupational licensing - On July 2, 2018, New Hampshire approved [SB 589](#), a new law that regulates occupational licensing in several ways. The bill authorizes individuals to petition at any time (including prior to required training and education) any state agency issuing occupational and professional licenses, for a preliminary determination as to whether their criminal record will disqualify them from licensure. N.H. Rev. Stat. Ann. § 332-G. Section 332-G:13 (“Petition for Review of a Criminal Record”) is premised on the idea that “the right of an individual to pursue an occupation is a fundamental right.”

The bill provides that an individual may be disqualified from licensure based on criminal record only if convicted of a felony or violent misdemeanor, and only if the licensing board concludes that “the state has an important interest in protecting public safety that is superior to the individual’s right” to be licensed. The board may reach this conclusion only if it determines, by clear and convincing evidence at the time of the petition, that the conviction is substantially related to the state’s interest, the individual is more likely to re-offend by virtue of having the license, and a re-offense will cause greater harm than it would if the individual did not have the license.

Within 90 days of receiving a petition, the board or commission shall issue a determination in writing and include the criminal record, findings of fact, and conclusions of law. If the board determines that the state’s interest is superior to the individual’s right, the board may advise the individual of actions the individual may take to remedy the disqualification. The individual may submit a revised petition

reflecting the completion of the remedies at any time after 90 days following the board's judgment. In the event of a negative determination, the individual may appeal through the administrative procedure act. The individual may submit a new petition to the board or commission at any time after two years following a final judgment on the initial petition. The board may rescind its determination at any time if the individual is convicted of an additional offense that the board determines meets the criteria for initial disqualification. The board may charge a fee not to exceed \$100 for each petition.

NEW YORK

Restoration of voting rights for persons on parole (by pardon) - On April 18, 2018, Governor Cuomo issued [E.O. No. 181](#), directing that all those being released from prison onto parole and currently on parole "will be given consideration for a conditional pardon that will restore voting rights without undue delay." The order directed the Department of Corrections and Community Supervision to submit a list of all persons then on parole, and a similar list each month thereafter, for review to determine whether each individual "will be granted a pardon that will restore voting rights."

NORTH CAROLINA

Regulation of certificates of relief - Under preexisting law, individuals with misdemeanor and minor felony convictions were authorized to "petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences[.]" 4 N.C. Gen. Stat. § 15A-173.2(a). Certificates were available only to individuals convicted of "no more than two Class G, H, or I felonies or misdemeanors in one session of court," and who have no other convictions for a felony or misdemeanor other than a traffic violation. [H 774](#) expands eligibility to include any misdemeanors, but contracts to remove Class G felonies from eligibility. It also requires automatic certificate revocation for a subsequent conviction of a felony or misdemeanor other than a traffic violation.

OHIO

Expanded eligibility for sealing and expungement - Under existing law, sealing of conviction records was available to persons with one or two misdemeanor convictions, one felony conviction, or one felony and one misdemeanor conviction (convictions from Ohio or any other jurisdiction, including federal). Ohio Rev. Code Ann. § 2953.31. Ineligible crimes for sealing include those carrying a mandatory prison term; first and second degree felonies; crimes of violence; sex offenses; offenses against minors; and certain traffic offenses. § 2953.36. Persons convicted of a felony can apply three years after final discharge; persons convicted of misdemeanors can apply one year after final discharge. § 2953.32(A)(1)(a), (c). [SB 66](#) expands sealing eligibility to include persons who have up to five less serious convictions (misdemeanors or 4th and 5th degree

nonviolent felonies), if they have never been convicted of an offense of violence or felony sex offense. § 2953.31(A)(1)(a). In other words, a person with a number of minor theft and drug offenses in their past, but nothing more serious, may be able to get a fresh start. Persons convicted of two felonies must wait four years after final discharge to apply; persons convicted of three, four, or five felonies may apply five years after final discharge. § 2953.32(A)(1)(b).

Expungement for victims of human trafficking - Ohio law also provides a mechanism for victims of human trafficking to clear their conviction record of three offenses—loitering, solicitation, prostitution, §§ 2907.24, 2907.241, 2907.25—where “the applicant’s participation in the offense was a result of having been a victim of human trafficking.” § 2953.38. For persons convicted of one or more of the enumerated offenses, [SB 4](#) authorizes courts to expunge (destroy) the record of conviction for any other offense—except aggravated murder, murder, or rape—which resulted from a person having been a victim of human trafficking (presumably recognizing that a victim of human trafficking can be coerced to commit a variety of crimes on behalf of others). *Id.* The new law provides that a court’s authority to expunge first and second degree felony conviction is subject to a balancing test, where the court considers the degree of duress, seriousness of the offense, and other aggravating and mitigating factors. *Id.* The new law also authorizes expungement of non-conviction records in any case where the applicant shows that he or she was the victim of human trafficking. § 2953.521.

Removing barriers to pre-plea diversion - [SB 66](#), discussed above, also expands access to pre-plea diversion by deleting certain prerequisites for eligibility, including requirements that: (1) the prosecutor recommends eligibility for persons who have previously been convicted of a felony that is not an offense of violence (violent felonies are ineligible) (2) persons have not previously been through a pre-plea diversion; and (3) the charge is a felony for which the court would impose a community control sanction upon conviction; or is a misdemeanor. See § 2951.041(B)(1).

OKLAHOMA

Expungement of nonviolent felonies - For the first time in Oklahoma, under [SB 650](#), some people with felony offenses are eligible for “expungement” (meaning sealing) without the requirement that they first be pardoned. As a result, a person may apply to the court to expunge a single nonviolent felony conviction, five years after completing the sentence, if the person has not been convicted of any other felony or separate misdemeanor in the past seven years, and if no felony or misdemeanor charges are pending. 22 Okla. Stat. Ann. § 18(A)(12). Previously, the law required that a person seeking to expunge a nonviolent felony must first be pardoned, wait ten years after their sentence, and have no prior felonies, or any separate misdemeanor, in the previous 15 years.

OREGON

Expanded vacatur for human trafficking victims – Existing law enacted in 2017 authorizes courts to vacate state convictions for prostitution if the court finds after a hearing that the person has proven by clear and convincing evidence that “at or around the time of the conduct giving rise to the prostitution conviction, the person was the victim of sex trafficking.” Or. Rev. Stat. Ann. § 137.221. [SB 1543](#) expands eligibility for this vacatur authority to include convictions for violating municipal prostitution ordinances. *Id.*

PENNSYLVANIA

Expanded eligibility for sealing, and automated “clean slate” sealing - The Clean Slate Act of 2018 made a number of significant changes to Pennsylvania’s law on court-ordered sealing. As originally enacted in 2016, sealing was permitted only for second- and third-degree misdemeanors and summary offenses. The 2018 law extends sealing to some first-degree misdemeanors and repeals the provision allowing dissemination of sealed conviction records to licensing agencies, effective June 28, 2019. See 18 Pa. Cons. Stat. § 9122.1, as amended by [2018 Act 56](#) (Pa. HR 1419). Perhaps most unusual, the 2018 law provides for automated sealing (“clean slate” sealing) without the need for filing a court petition or paying a filing fee, for a range of eligible offenses that is similar (though not identical) to those eligible for court-ordered sealing by petition. See § 9122.2. The 2018 law also authorizes automated sealing of non-conviction records, and it makes minor modifications in the law relating to dissemination of non-conviction records by police departments. The automated provisions of the new law are retroactive, and the law specifies a complex process whereby eligible cases will be identified and regularly submitted to the commonwealth courts on a regular monthly basis for a sealing order.

The [Pennsylvania profile](#) from the Restoration of Rights Project describes in detail the complex eligibility requirements under the two different sealing tracks authorized under the 2018 law. Eligibility for all sealing, whether by petition or by automation, is subject to a 10-year waiting period during which the individual must be free of conviction for an offense carrying a prison term of one year or more (as opposed to free of arrest or prosecution for ten years running from completion of sentence, as under the 2016 law). However, the 2018 law adds, as a new condition of eligibility, that all court-ordered financial obligations of the sentence must have been satisfied. See § 9122.1(a). The court may not order sealing for certain offenses involving violence, firearms, or sexual misconduct that are punishable by more than two years in prison. See § 9122.1(b)(1), as amended by Act 56. These amendments make at least some first-degree misdemeanors eligible for sealing for the first time. The 2018 Act also narrows the types of prior convictions rendering a person ineligible for court-ordered sealing by petition to first degree felonies or repeat offenses. See § 9122.1(b)(2).

Eligibility criteria for automated sealing under the new § 9122.2 are similar to but not identical with eligibility criteria for court-ordered sealing. In addition to second- and third-degree misdemeanors, any misdemeanor punishable by imprisonment of no more than two years is eligible. The same 10-year conviction-free waiting period applies as applies to court-ordered sealing, and the same crimes ineligible for sealing by petition are also ineligible for automated sealing. See § 9122.3(a). However, the categories of prior offenses that make an individual ineligible for automated sealing are broader, including conviction of a felony at any time, multiple convictions of less serious crimes, and certain additional specified offenses. Non-conviction records may be automatically sealed with no waiting period. See § 9122.2(a)(1) through (3). (Non-convictions records may presumably also be expunged—destroyed—upon petition to a court under § 9122(a)).

Sealed records may not be disseminated to the general public, private employers, or landlords, but remain available to criminal justice agencies, to agencies such as the Department of Human Services for child protective services uses, and to state professional and occupational licensing agencies. Under the 2018 Act, effective June 28, 2019, state licensing agencies will no longer have access to sealed records, and access will be permitted only under a court order in cases involving child custody or civil liability for negligent hiring.

The 2018 Act also provides in a new § 9122.5 that individuals whose records have been expunged or are subject to limited access may not be required or requested to disclose related information, and “may respond as if the offense did not occur.” That section does not apply if federal law, including rules of a federal regulatory agency, requires disclosure. However, an expunged record or record subject to limited access may not be considered a conviction prohibiting employment under any state or federal laws that prohibit employment based on state convictions “to the extent permitted by Federal law.” It grants an employer immunity from liability for any misconduct of an employee “if the misconduct relates to the portion of the criminal history that has been expunged or provided limited access.” § 9122.6.

The amendments enlarging eligibility for sealing by petition under § 9122.1 are effective December 26, 2018, while many other provisions of the Act are not effective until mid-2019 or later. The courts and state police are directed by law to identify all cases eligible for automated sealing between June 28, 2019 and June 27, 2020. Indications are that implementation will be done in phases during that period.

Restrictions on driver’s license suspension due to criminal conviction - The Pennsylvania legislature enacted [HB 163](#), which provides that effective April 22, 2019, driver's licenses may no longer be suspended for various non-driving offenses related to alcohol, tobacco, controlled substances, and false identification. 4 Pa. Cons. Stat. § 1518; 18 Pa. Cons. Stat. §§ 6305, 6307, 6308, 6310.3, 6310.4; 75 Pa. Cons. Stat. § 1532.

RHODE ISLAND

Expungement of decriminalized offenses - Preexisting Rhode Island law provides for three distinct types of expungement: 1) those with a single felony or misdemeanor conviction; 2) those with between two and six misdemeanor convictions; and 3) those who successfully completed deferred sentences; the law also provides authority for expunging other deferred dispositions, and for sealing non-conviction records. R.I. Gen. Laws § 12-1.3-2. (note: sealing and expungement have been held to be functionally identical.) [S 2447](#) and [H 8355](#) create a new authority that allows a person to file a motion for the expungement of records “related to an offense that has been decriminalized subsequent to the date of their conviction.” § 12-1.3-2(g). The court in which the conviction took place must hold a hearing and may require the person to demonstrate that the prior criminal conviction is decriminalized under current law. § 12-1.3-3(e). If the court finds that all conditions of the sentence have been completed, and any related fines, fees, and costs have been paid, the court shall order the expungement without cost to the petitioner. *Id.*

SOUTH CAROLINA

Expanded eligibility for expungement - In 2018, the South Carolina legislature overrode a governor’s veto to extend eligibility for expungement in several modest but significant ways. The new law makes first-offense drug possession offenses eligible for expungement for the first time (after a 3-year waiting period); eliminates first offense limits on eligibility of summary offenses; and authorizes retroactive relief in first offense cases prosecuted prior to passage of the 2010 Youthful Offender Act (YOA) to individuals who would have been eligible for sentencing under that law. See [H3209](#). The YOA provides that individuals between the ages of 17 and 25 who are convicted of certain non-violent misdemeanors and low-level felonies may be sentenced to probation and/or treatment. S.C. Code Ann. § 24-19-50; § 24-19-10(d) (specifying eligible offenses based on age and offense). Expungement is available following completion of sentence after five conviction-free years. § 22-5-920. In certain circumstances, the new law also provides that any number of offenses for which the individual received sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident, may be considered as one offense and treated as one conviction for expungement purposes. South Carolina also enacted a second expungement bill, [H 3789](#), which allows graduates of the South Carolina Youth Challenge Academy and the South Carolina Jobs Challenge Program (administered for at-risk youth by the South Carolina Army National Guard), to expunge eligible records immediately upon graduation from both programs, without being subject to the longer waiting periods that would otherwise apply. Under SC law, expungement is functionally equivalent to sealing. See [SC Code § 22-5-910](#).

SOUTH DAKOTA

Automatic expungement following diversion - [SB 185](#) creates a mandate for automatic “expungement” (sealing) for persons who successfully complete all the terms of a diversion program, and have not been charged with any new crimes, except for petty offenses or minor traffic citations, within one year and thirty days of successful completion. S.D. Codified Laws §§ 23A-3-35, 23A-3-36, 23A-3-37. Once those conditions are met, the state’s attorney is required to file a dismissal of all charges related to that arrest and a notice of completion of the diversion program, after which the court must grant the expungement without the filing of a motion or any further action. *Id.*

TENNESSEE

Regulation of occupational and business licensing - In 2018, the Fresh Start Act was enacted, prohibiting licensing authorities from denying an application for a license or refusing to renew a license “solely or in part due to a prior criminal conviction that does not directly relate to the applicable occupation, profession, trade, or business.” Sec. 2(b)(1) of [SB 2465](#). The Act applies to licensing boards governing most occupations, professions, businesses, and trades, as well as most health and healing arts professions in the state, with certain exceptions noted below. In determining whether to deny or refuse to renew a license based on a criminal conviction, the licensing board must consider:

- (i) The nature and seriousness of the crime for which the individual was convicted;
- (ii) The length of time since the commission of the crime;
- (iii) The relationship between the nature of the crime and the purposes of regulating the occupation, profession, business, or trade for which the license, certificate, or registration is sought;
- (iv) The relationship between the crime and the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation, profession, business, or trade;
- (v) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against the relationship of crime to the occupation, profession, business, or trade; and
- (vi) Any applicable federal laws regarding an individual’s participation in the occupation, profession, business, or trade.

Sec. 2(b)(4)(A). A rebuttable presumption that the prior conviction relates to the fitness of the applicant or licensee exists only if the conviction was for a Class A, Class B, or certain Class C felonies, or if the felony conviction required registration as a sex offender or animal abuser. Sec. (b)(4)(B).

The Act allows individuals to request a preliminary determination concerning whether their criminal history will be disqualifying, *see* Sec. 2(b)(3), and the board is required to provide written notice with a justification for its determination, in accordance with the criteria in (b)(4)(A). Prior to denying an application or refusing to renew a license, the board is required to send written notice to the applicant or licensee of the board's intention, including its justification in accordance with the criteria in (b)(4)(A). It must also inform the applicant or licensee of the opportunity to appear or hold an informal interview with the board. Sec. (b)(2). If the board denies or refuses to renew a license after the notice required in (b)(2), the board must send the written determination to the applicant or licensee, including the reasons for the denial and the board's findings under (b)(4)(A) and the earliest date the individual can reapply for the license. Sec. (b)(5).

The Act permits the individual to appeal the board's determination to Davidson County chancery court, where the board must "demonstrate by a preponderance of the evidence that the individual's... conviction is related to the applicable occupation, profession, business, or trade." Sec. (c).

Notably, the following licenses are exempt from the 2018 Fresh Start Act: law licenses; licenses relating to the provision of mental health, substance abuse, developmental disabilities, and personal support; law enforcement and corrections; corporations and associations, education, insurance, financial institutions, and welfare. Sec. (f).

Expungement for human trafficking victims - Under [SB 2505/HB 2032](#), a person who was adjudicated delinquent for a juvenile offenses that would constitute prostitution or aggravated prostitution may have their records expunged if the underlying conduct was a result of the person "being a victim of human trafficking," as defined by Tenn. Code Ann. § 39-13-314. See §, 37-1-153(f).

UTAH

Expanded eligibility for expungement of non-conviction records - Utah Code Ann. 77-40-104 provides that a person arrested or formally charged with an offense may, as early as 30 days after arrest, apply to the Utah Bureau of Criminal Identification (UBCI) for a certificate of eligibility, and petition the court for expungement under certain circumstances, including if no charges have been filed, if the charges have been dismissed, if the statute of limitations has expired on all charges, or if the person has been acquitted (no waiting period in this instance). Prior to March 2018, a certificate would be issued only if the charges had been dismissed with prejudice. In March 2018,

eligibility criteria were expanded to permit expungement where the entire case is dismissed *without* prejudice or without condition AND (1) the prosecutor consents in writing to the issuance of a certificate of eligibility, OR (2) at least 180 days have passed since the date of dismissal. § 77-40-104(c)(iii). See [SB 62](#). Under the amended law, the court is required to issue an order of expungement if the court finds by clear and convincing evidence that the prosecutor provided written consent and has not filed and does not intend to refile related charges. The person seeking expungement may reapply for a certificate of eligibility if the court denies the original petition based on the prosecutor's intent to refile charges and charges are not refiled within 180 days of the date the court denies the original petition. § 77-40-107(8)(c). Requires the prosecutor opposing expungement to have a good faith basis for the intention to refile the case. § 77-40-107(9). SB 62 clarifies that the UBCI is prohibited from counting *pending or previous* infractions, traffic offenses, or minor regulatory offenses when determining whether to grant a certificate of eligibility for expungement; or fines or fees arising from pending or previous infractions, traffic offenses, or minor regulatory offenses. In addition, only fines and interest ordered by the court related to the conviction for which expungement is sought must be paid in full before expungement may be ordered. §§ 77-40-105(3)(a), (4).

Restrictions on driver's license suspension due to criminal conviction - The Utah legislature enacted [HB 144](#), providing that a person's driver's license may no longer be suspended for a variety of drug offenses (described in §§ 53-3-220(1)(c)(i)-(ii)), unless the person was operating a motor vehicle at the time of the offense. § 53-3-218(2)(c). Under preexisting law, a person convicted of such offenses, who was not operating a motor vehicle at the time of the offense, could have their driver's license suspended if they did not participate in and comply with the terms of probation and a substance abuse treatment program. See *id.*

VERMONT

Automatic expungement of non-conviction records - The provisions authorizing expungement or sealing of non-conviction records were extensively revised and expanded in 2018 by Section 3 of [S. 173](#). Previously, relief was available only for offenses defined as "qualifying crimes," those non-violent misdemeanors and a handful of minor felonies that are also eligible for sealing or expungement where conviction results. Now sealing is available in all non-conviction cases. For cases in which the court does not make a probable cause determination or dismisses the charges at arraignment; or the charge is dismissed before trial without prejudice, the court must seal the record after a 12-month waiting period (which can be waived by the government), and no petition is required. Relief is automatic unless the government objects. [Vt. Stat. Ann. tit. 13, § 7603\(a\)](#). In that case, the court shall hold a hearing to determine whether sealing or expunging the record "serves the interest of justice." [§ 7603\(b\)](#). Whether or not an objection is lodged, the court shall expunge the record

after the statute of limitations has expired. [§ 7603\(f\)](#). Where the defendant is acquitted, or where charges are dismissed before trial with prejudice, the court must expunge the record after not more than 45 days, absent agreement by the parties for earlier expungement. [§ 7603\(e\)](#). A person may file a petition for sealing or expungement at any time. [§ 7603\(g\)](#).

Study of possible expansion of sealing and expungement to drug crimes, and of automating the record-closing process - [S. 173](#) also directed a broad consortium of state officials and legal aid lawyers to report on whether the list of convictions qualifying for sealing or expungement should be expanded to include nonviolent drug offenses, and to study “the viability of automating the process of expunging and sealing criminal history records.” (The group did not reach consensus on the issue of expansion in its report to the legislature on November 1, 2018.) The consortium was also directed to report on “the viability of automating the process of expunging and sealing criminal history records,” concluding that automation needs further study due to technical and resource challenges related to the state’s case management system. (See footnote 19 of the report.)

Mandatory expungement of certain youthful offenses (18-21) - [S. 234](#) added a new section to Title 13 mandating expungement, upon petition by the defendant 30 days after completion of sentence, of convictions for qualifying crimes (non-violent misdemeanors and a handful of minor felonies) as defined in § 7601) committed between the ages of 18 and 21, “absent a finding of good cause by the court.” 13 V.S.A. § 7609(a). “[T]he court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interest of justice.” § 7609(c). Otherwise, under a 2011 law, sealing of offenses committed before age 21 is available upon application to the court (or upon the court’s own motion) two years after final discharge. § 5119(g).

VIRGIN ISLANDS

Limits on employer questions about criminal records - [Bill 32-0230](#) restricts public and private employers from asking applicants, seeking information about, or using as a factor in determining a condition of employment any of the following: (1) arrests not resulting in a finding of guilt or a conviction; (2) diversion programs; and (3) dismissed or sealed convictions or findings of guilt. V.I. Code Ann. tit. 24, §§ 465-469. Nonetheless, an employer may ask an applicant about an arrest for which the person is out on bail or on his or her own recognizance. § 465. These provisions do not apply to a government agencies seek information about peace officers or applicants for peace officer or criminal justice employment. §§ 465-66. They also do not prohibit employers at health facilities from asking applicants for positions with regular access to patients or access to drugs about certain arrests. § 466. Finally, these provisions do not apply if: (1) “state or federal law requires an applicant to be rejected based on criminal

history”; (2) “the employment requires a satisfactory criminal background as an established bona fide occupational position or a group of employees”; (3) “a standard fidelity or equivalent bond is required and a conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond”; or (4) “the employment is within a facility that provides programs, services, or direct care to minors or vulnerable adults including the educational system or child care.” § 466.

WASHINGTON

Ban-the-box in public and private employment - [HR 1298](#) added a new section to Title 49 (Labor Code) prohibiting public and private employers from inquiring about an applicant’s criminal record until “after the employer initially determines that the applicant is otherwise qualified for the position.” “An employer may not implement any policy or practice that automatically or categorically excludes individuals with a criminal record from consideration prior to an initial determination that the applicant is otherwise qualified for the position,” leaving the impression that automatic or categorical exclusion may be permissible after this point. The law does not apply to employers who are “expressly permitted or required under any federal or state law to inquire into, consider, or rely on information” about an applicant or employee’s criminal record, including financial institutions, to employers dealing with vulnerable populations, including children, or to non-employee volunteers.

WISCONSIN

Occupational licensing reform - Amendments to the Wisconsin Fair Employment Act in 2018 strengthened the provisions of the law relating to occupational licensing by enacting a new [§ 111.335\(4\)](#). [Act 278](#) prohibits licensing boards from denying or revoking a license based on pending charges, with exceptions for serious violence and crimes against children. It requires a licensing agency, before denying or terminating a license based on a prior conviction, to state its reasons in writing, including “a statement of how the circumstances of the offense relate to the particular licensed activity.” Agencies must also provide individuals with an opportunity to show evidence of rehabilitation and fitness to engage in the licensed activity. “If the individual shows competent evidence of sufficient rehabilitation and fitness to perform the licensed activity under par. (d), the licensing agency may not refuse to license the individual or bar or terminate the individual from licensing based on that conviction.” Agencies are also directed to take into consideration other specific evidence of rehabilitation, including evidence of the nature and seriousness of the offense, and mitigating circumstances or social conditions surrounding the commission of the offense; the age of the individual at the time the offense was committed; the length of time that has elapsed since the offense was committed; letters of reference by persons who have been in contact with the individual since the applicant’s release from any local, state, or federal correctional institution.

Licensing agencies must make it possible for individuals to obtain a preliminary determination as to whether they would be disqualified from obtaining a license due to a prior conviction, a determination that is binding on the agency in connection with a formal application. A fee may be charged to cover the cost of processing. Negligent hiring protections for any firm that hired a licensee approved by the agency are included in Wis. Stat. § 452.139. Finally, each licensing agency must also publish on its Internet site a document indicating the offenses or kinds of offenses that may result in denial or termination of a license.

WYOMING

Occupational licensing reform - In March 2018, Wyoming enacted [SF0042](#), amending its general state licensing code to establish standards for consideration of conviction by all licensing agencies not otherwise subject to a specific contrary statutory standard. See Wyo. Stat. § 33-1-304. See [Enrolled Act 63](#). The new law states that it is public policy “to reduce recidivism by addressing barriers to employment and encouraging appropriate employment and licensure of persons with arrest and conviction records.” § 33-1-304(a). The law prohibits consideration of prior convictions that are more than 20 years old, except where the person is still under sentence or the sentence was completed fewer than 10 years before, unless the elements of the offense are “directly related to the specific duties and responsibilities of that profession or occupation.” § 33-1-304(c). Agencies are also directed to ensure that applicants have an adequate opportunity to appeal a denial.

A board that licenses any healing profession “may always determine that a crime of violence or sexual misconduct is relevant to the ability to practice the profession or occupation, but in making a licensing, certification or registration decision may consider the circumstances of the offense.” § 33-1-304(b). Any board shall be immune from civil liability “for acting in accordance with this section.” § 33-1-304(d).

The new law amends more than a dozen specific professional and occupational licensing statutes to rescind vague qualifications like “good moral character,” and to substitute functional criteria specifically tying the nature of a specific crime to the licensed activity pursuant to a direct relationship standard. Licensing schemes affected include those regulating teachers, guides and outfitters, engineers, veterinarians, and nursing home administrators. Licensing standards for chiropractors, nurses, optometrists, dental hygienists, social workers, and marriage and family counselors and substance abuse counselors were also amended. Securities dealers and investment advisers, insurance agents, and athlete agents are also covered by the reforms.

Appendix

CHART A: MODEL OCCUPATIONAL LICENSING LEGISLATION

	IJ model law ³⁰	NELP model law ³¹
Records that may not be considered	Non-conviction records, records that have been sealed, dismissed, expunged, or pardoned, juvenile adjudications, non-violent misdemeanors, or convictions that occurred more than three years before the petition except for felonies for violence or sexual acts	Non-conviction records, records that have been sealed, dismissed, expunged, or pardoned, juvenile adjudications, low-level misdemeanors, misdemeanors older than three years (excluding custody time), and felonies older than five years (excluding custody time)
Criteria	Denial only if, by clear and convincing evidence, considering individual circumstances: (1) non-excluded conviction is “directly, substantially and adversely related to the state's interest in protecting public safety”; and (2) license will make re-offense and harm more likely than not	Denial only if: (1) non-excluded conviction is “directly related” to the occupation (based on publicly-available enumerated list of convictions); and (2) the individual has not shown sufficient mitigation or rehabilitation and present fitness to perform the duties
When to consider criminal records	Individuals may petition at any time, including before obtaining education or training, for a fee of no more than \$100, for a decision of whether their criminal record will be disqualifying.	Boards may not inquire into or consider criminal history until after an applicant is found to be otherwise qualified.
Procedure	Boards will hold a hearing, if requested, and will issue a written decision with findings of fact and conclusions of law within 90 days, which may be appealed.	Boards will notify in writing of potential disqualification, the conviction at issue, and rehabilitation evidence that may be provided; with 30 days for a response before a final decision, to include the rationale for a conviction’s relatedness to the occupation, appeal process, and earliest date to re-apply.
Reporting	Annual public reports of the (a) number of applicants petitioning each board; (b) the numbers of each board’s approvals and denials; and (c) the type of offenses considered	Annual public reports of the number of applicants who received a potential disqualification, provided rehabilitation evidence, and appealed a final decision; and dispositions and demographic information

CHART B: COMPREHENSIVE LICENSING REFORMS ENACTED 2017-2018

State	Preliminary Decision	Time Limits	Written Reasons for Denial	Reporting Required	Records Considered and Criteria for Denial*
AZ	✓	✗	✓	✓	Conviction (not set aside or expunged) for felony or violent crime, certain fraud crimes, organized crime, or crimes specified by law; the offense is “substantially related” to the state’s interest in public safety; and the person is “more likely to reoffend by virtue of having the license,” in light of the nature of offense and person’s current circumstances (provisional licenses available)
CA	✗	✓	✗	✓	Conviction (not dismissed, set aside, pardoned, given clemency, or a less serious crimes more than seven years old) that is “substantially related” to qualifications, unless licensing agency or a court deems the person rehabilitated
CO	✗	✗	✗	✗	Conviction (not pardoned, sealed, expunged, or subject to order of collateral relief), considering: nature of conviction; whether “directly related” to license; rehabilitation; & time elapsed (conditional licenses available)
IL	✗	✗	✓	✗	Conviction (not overturned, sealed, expunged, or dismissed and unrelated to the profession) that will “impair ability” to engage in occupation, considering nine mitigating factors and evidence of rehabilitation
IN	✓	✓	✓	✗	Listed conviction (in past five years, with some exceptions) “specifically and directly” related to duties, considering the crime; passage of time; relationship to occupation; and rehabilitation
KS	✓	✓	✗	✗	Listed conviction (within five years of completion of sentence, with some exceptions) “directly related” to protecting general welfare and duties
KY	✗	✗	✓	✗	Conviction that “directly relates” to occupation, considering nature of crime, passage of time, and relationship to occupation and duties
LA	✗	✗	✗	✓	Conviction for violent, sex, and certain fraud offenses, and crimes “directly relate[d]” to field
NE	✓	✗	✓	✓	Use “least restrictive regulation” needed to protect public health, safety, and welfare,”; consider evidence of rehabilitation

State	Preliminary Decision	Time Limits	Written Reasons for Denial	Reporting Required	Records Considered and Criteria for Denial*
NH	✓	✗	✓	✓	Conviction for felony or violent misdemeanor, the offense substantially related to public safety; the individual, based on offense and current circumstances (including evidence of rehabilitation) is more likely to re-offend with a license; and re-offense will cause greater harm than no license
TN	✓	✗	✓	✗	Conviction “directly relate[d]” to occupation, considering: crime; time elapsed; relationship to occupation; rehabilitation; and federal law
WI	✓	✗	✓	✗	Pending charge, juvenile adjudication, or conviction for specified crimes against children, life, or bodily security; convictions for other offenses, absent evidence of sufficient rehabilitation to perform licensed activity
WY	✗	✓	✗	✗	Conviction within past 20 years, unless related to duties of occupation, or the sentence was completed within past 10 years or incomplete, that affects practice of the occupation (specific licenses have more narrow grounds for denial)

*Many states exempt specific licensing boards. For a more details, see the [RRP state profiles](#).

³⁰ Institute for Justice, *Model Occupational Licensing Review Law* (2016–18, accessed Dec. 19, 2018), available at <https://ij.org/activism/legislation/model-legislation/model-economic-liberty-law-1/>.

³¹ Michelle Natividad Rodriguez & Beth Avery, National Employment Law Project, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, 31–34 (April 2016), available at <https://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.