Pathways to Reintegration:

Criminal Record Reforms in 2019

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COLLATERAL CONSEQUENCES RESOURCE CENTER

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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 societal stigma that burden people with a criminal record long after their criminal case is closed. The Center provides news and commentary about this dynamic area of the law, and a variety of research and practice materials aimed at legal and policy advocates, courts, scholars, lawmakers, and those most directly affected by criminal justice involvement.

Through our Restoration of Rights Project (RRP) we describe and analyze the various laws and practices relating to restoration of rights and criminal record relief in each U.S. jurisdiction. In addition to these state-by-state profiles, a series of 50-state comparison charts and periodic reports on new enactments make it possible to see national patterns and emerging trends in formal efforts to mitigate the adverse impact of a criminal record. We have recently begun consulting in support of state law reform efforts, and in 2019 organized a successful effort to develop a model law on access to and use of non-conviction records. In addition, we participate in court cases challenging specific collateral consequences, and engage with social media and journalists on these issues. For more information, visit the CCRC website at http://ccresourcecenter.org.

Pathways to Reintegration:

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By Margaret Love & David Schlussel

INTRODUCTION

In 2019, 43 states, the District of Columbia, and the federal government enacted an extraordinary 152 laws aimed at reducing barriers faced by people with criminal records in the workplace, at the ballot box, and in many other areas of daily life. This prolific legislative track record, augmented by one important executive order, reflects a lively national conversation about how best to limit unwarranted record-based discrimination and to promote reintegration.

Last year, we reported what was then an unprecedented number of new record reform laws: 32 states enacted 57 new laws in 2018. In terms of the number of new laws enacted and their importance, 2019 breaks every record set in 2018. Lawmakers across the country took major actions to restore voting and other civil rights; authorize expungement and other forms of record relief; expand diversion programs to avoid conviction; limit the use of criminal records in occupational licensing, employment, and housing; alleviate immigration consequences; and curb driver's license penalties unrelated to driving offenses. Approaches to relief varied widely from state to state, with respect to the type of relief, the specifics of who is eligible for it, the mechanics of delivery, and its effect.

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This report on 2019 criminal record reforms continues CCRC's efforts to document an extraordinarily fruitful period of law reform in the United States, one that began around 2013 and has continued to gather steam into 2020.[1] The overall purpose of this law reform movement has been to advance a public policy of promoting reintegration for people with a criminal record. In the seven-year period in which CCRC has been following the trend, every state legislature and the federal government 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 society.[2]

This introduction highlights key developments from this past year. A Report Card, new this year, grades the progess of the most (and least) productive state legislatures in 2019. The body of the report provides topical discussions of reform measures, and is followed by an appendix that organizes the laws enacted by jurisdiction. A link to the text of each law is included, as well as a statutory citation where available. More

detailed information about each state's laws is available in the CCRC Restoration of Rights Project.

Voting and other civil rights

Eleven states took steps to restore the right to vote and to expand awareness of voting eligibility. Most notable were the laws passed by **Colorado**, **Nevada**, and **New Jersey** making convicted individuals eligible to vote except when in prison. In addition, **Kentucky's** new governor issued an executive order restoring the vote to an estimated 140,000 individuals, making Iowa the only state that does not restore the vote automatically to most of those who lose the vote due to conviction. States also restored eligibility for jury service (**California** and **Maryland**), public office (**New Hampshire**) and firearms possession (**Arizona**).

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Criminal record relief and diversionary dispositions

As in past years, the reform measures most frequently enacted were limits on access to records, such as sealing, expungement, or set-aside. This past year, 31 states and D.C. enacted no fewer than 67 laws creating, expanding, or streamlining record-clearing laws, or vacating convictions. This total does not include 25 other new laws authorizing diversionary dispositions that will be eligible for record relief under existing law.

Efforts to automate criminal record relief gained widespread attention in 2019 as a response to the "uptake gap" scholars have identified in petition-based schemes.[3] The "gap" refers to the large percentage of a sealing law's intended beneficiaries who never even apply for relief, deterred by multiple barriers to access like unclear eligibility criteria, burdensome and intimidating court procedures, and lack of knowledge. Automated schemes close the gap by requiring the government to grant relief to all individuals deemed eligible by the legislature, without requiring those individuals to ask for it.[4]

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The trend in favor of broad-based automatic relief for a range of non-conviction and non-conviction records began with Pennsylvania's Clean Slate Act of 2018.[5] That law automated relief for a variety of non-conviction records and misdemeanor convictions, and will result in the sealing of more than 30 million criminal records when its retroactive application is completed by June 27, 2020. In 2019, **Utah**, **California**, and **New Jersey** authorized automated relief for a range of conviction and non-conviction records. Six additional states made relief automatic for specific offenses or dispositions, including non-conviction records, marijuana convictions and juvenile adjudications.

Several states enacted ambitious new petition-based sealing and expungement schemes. Many other states expanded eligibility for record relief under laws enacted in earlier years, some authorizing relief for specified felony convictions for the first time. States also increased opportunities to avoid a conviction record through diversion and deferral and other non-conviction dispositions. A model law on non-conviction records, developed by a group of practitioners under CCRC's leadership, urged jurisdictions to make this relief automatic and thorough, and to address the problem of records with no disposition, including uncharged arrests.[6]

Occupational licensing and employment

In 2019, legislatures also continued to explore the key role occupational licensing plays in improving opportunities for people with a criminal record. Twenty states enacted laws regulating licensing to establish clear and objective criteria for applicants, and to hold licensing agencies accountable for their decision-making. As in 2018, many of these laws reflect the influence of model laws developed by two organizations with divergent regulatory philosophies.[7] **Alabama**, **Mississippi**, **Nevada**, and **West Virginia** took steps for the first time to limit licensing agencies' ability to reject qualified individuals based solely on their criminal record, and seven other states made significant modifications to existing licensing schemes. **Arizona** enacted significant reforms for a third consecutive year, while **Texas** produced no fewer than five laws affecting licensing.

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New fair employment laws were also enacted. **Illinois** expanded its Human Rights Law to give added protection to those with criminal records in housing as well as

employment; and, it extended its "certificate of good conduct" to relieve mandatory licensing and housing barriers in addition to employment. Several other states enacted or expanded existing "ban-the-box" laws prohibiting employers from making application-stage inquiries about criminal record. A total of 35 states and D.C. now prohibit such inquiries by public employers, while 13 states cover private employers as well.[8] Most significantly, **Congress** enacted restrictions on pre-employment inquiries by federal agencies and contractors that postpone background checks until after a conditional offer has been made.

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Other relief measures

Several states enacted laws intended to help defendants avoid deportation for minor crimes, and several others repealed laws making driver's license suspension mandatory for crimes unrelated to driving and for failure to pay court debt and child support.

Looking ahead to 2020

The legal landscape at the end of 2019 shows states continuing to experiment with different types of relief to advance the goal of reintegration. In 2020, we predict a continuing expansion of record-clearing opportunities, both for conviction and non-conviction dispositions. We also expect more efforts to automate record relief, with the accompanying simplification of eligibility criteria, improved records management by courts and records repositories, and better coordination of state and federal records systems.

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Elimination of bars to occupational licensing will also continue to be a top priority, given the bipartisan popularity of these regulatory reforms. Other issues that should be addressed are the extension of state fair employment and housing laws, and elimination of abusive background checking practices. Finally, we hope for continued progress toward restored voting rights for—at the very least—all citizens

living in the community, without regard to whether they have completed the terms of their sentence or paid off court-ordered financial obligations.

REPORT CARD

For the first time this year we have prepared a "Report Card" on how state legislatures performed in 2019 in advancing the goals of reintegration. We have not covered all states, only those we thought most and least productive. We hope this new feature of our annual reports will provide an incentive to legislatures across the nation, and a tool for legislative advocates.

In this inaugural year, **New Jersey** gets the top mark as Reintegration Champion of 2019 for the most consequential legislative record of any state last year. New Jersey's "Clean Slate" law authorized an automated record-clearing process for many thousands of misdemeanor and felony convictions going back decades, and extended eligibility and improved procedures for petition-based discretionary expungement relief. New Jersey enacted two other important laws promoting reintegration. One limited felony disenfranchisement to people in prison, immediately restoring the vote to about 80,000 people still completing their sentences in the community. Unlike the executive orders that have this effect in New York and Kentucky, New Jersey's law will not be easily retracted when the statehouse changes hands. Another new law repealed provisions mandating suspension of driver's licenses for conviction of drug and other non-driving crimes, for failure to pay court debt, and for failure to pay child support.

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In commending New Jersey's legislative accomplishments, we would be remiss not to recognize the key role played by Governor Phil Murphy in making criminal record reform the cornerstone of his legislative agenda, and by key legislative leaders, who together persuaded the legislature to enact in a single year a bolder set of reintegration laws than any other in the country to the present time.[9]

As runner-up, Colorado enacted 10 laws on criminal records, voting rights, ban-the-box, and immigration.

Colorado is runner up for our new Reintegration Champion award, based on a prolific legislative record that is a close second to New Jersey's. In 2019 Colorado enacted ten record reform laws, among them an ambitious rewriting of its code chapter on criminal records, a law restoring voting rights to parolees and one extending ban-the-box to private employers, and two new measures to avoid deportation as a consequence of conviction. Colorado's productive 2019 followed an almost equally productive 2018, when its legislature regulated occupational licensing agencies and gave its courts authority to remove mandatory collateral penalties.

Honorable mention for a productive legislative season goes to six states: **Illinois** and **Nevada** (with nine and eight laws, respectively, some significant); **New Mexico** and **North Dakota** (for their comprehensive first-ever record-sealing schemes, and ban-the-box bills); **Mississippi** (for its extensive regulation of occupational licensing, management of diversion courts, and repeal of mandatory driver's license penalties for drug and other non-driving crimes); and **West Virginia** (for two significant laws, on record relief and occupational licensing, as well as a diversion bill). Five additional states deserve recognition for notable enactments: **Arkansas** for a major revision of its occupational licensing law; **California** and **Utah** for their automated record relief laws (though Utah's scheme is not as far-reaching as New Jersey's, and California's is prospective only); **New York** for two measures to limit access to undisposed (pending) cases; and **Delaware** for its first comprehensive expungement scheme.

Honorable mention goes to 6 states (IL, NV, NM, ND, WV, MS) for productive legislative seasons.

Low marks go to three of the seven states that enacted no record reform laws at all in 2019: the legislatures of **Alaska, Georgia,** and **Michigan** have been the least productive in the land in recent years where restoration of rights and status is concerned. **Kansas**, **Massachusetts**, **Wisconsin**, and **Pennsylvania** also produced no new laws in 2019, but all four states enacted major record reforms in 2018 so we give them a pass.

We conclude by noting that many of the states not mentioned in this inaugural Report Card made progress last year in limiting access to and use of criminal records, and we

were hard-pressed not to single a few more of them out for credit. It is clear to us that almost every state sees criminal record reform as an important and challenging legislative agenda. We anticipate that in 2020 states that have been comparatively cautious in their recent law-making will be inspired to take larger steps as they see what more ambitious jurisdictions have already been able to accomplish.

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The following sections describe the 2019 reforms in more detail, by topic: (1) voting and other civil rights; (2) criminal record relief; (3) diversionary dispositions; (4) occupational licensing and employment; (5) immigration consequences; and (6) other relief measures. A link to the text of each law is included, as well as a statutory citation where available. The appendix organizes each of these laws by the enacting jurisdiction.

VOTING AND OTHER CIVIL RIGHTS

1. Voting rights

In 2019, eleven states took steps to restore the right to vote and to expand awareness of voting eligibility. Greater awareness is very important, since many people convicted of a felony believe they are disqualified from voting when they are not. In fact, almost every state restores voting rights automatically to most convicted persons at some point, and in almost half the states people are not disenfranchised in the first place unless they are serving a prison term.[10]

The most significant new re-enfranchisement laws were enacted in **Colorado**, **Nevada** and **New Jersey**, where convicted individuals are now eligible to vote except when in prison:

- **Colorado** restored the vote to persons on parole supervision (HB 1266). *See* Col. Rev. Stat. §§ 1-1-104(49.3), 17-2-102(14), 1-2-101(3). This law also directed corrections officials to inform people leaving custody of their eligibility to register.
- **Nevada** revised its complex system for restoring civil rights so that all people with felony convictions may now vote except while in prison (AB 431). *See* Nev. Rev. Stat. §§ 176A.850, 213.155, 213.157.
- **New Jersey**'s governor, in one of the final legislative acts of 2019, signed a law limiting disenfranchisement to a period of actual incarceration, even in cases where a court has ordered loss of the vote for election law violations, immediately restoring the vote to about 80,000 people (A5823). *See* N.J. Stat. Ann. §§ 19:4, et. seq.

These three states joined the two states that in 2018 took steps to limit disenfranchisement to a period of incarceration.[11] Now, only three of the 19 states that disenfranchise only those sentenced to prison still extend ineligibility through completion of parole: California, Connecticut, and Idaho. In 2019 both California and Connecticut considered bills that would allow people to vote once they leave prison, though in California this will require a constitutional amendment.

Kentucky saw perhaps the most dramatic extension of the franchise in 2019, when its incoming governor Andy Beshear issued an executive order restoring the vote and eligibility for office to an estimated 140,000 individuals convicted of non-violent felonies who had completed their sentences. Before the order, individuals were required to petition the governor individually to obtain restoration of their civil rights. (Governor Beshear's father had issued a similar order in 2015 at the end of his own term as governor, but it was revoked by his successor.) Iowa is now the only state that does not restore the vote automatically to most convicted individuals at some point.

Other states took less dramatic but significant steps to expand the franchise:

- **Arizona** repealed its law making automatic restoration of the vote to those with only one felony conviction depend on payment of fines and fees (those who owe restitution must still apply to the court, like recidivists, to regain voting rights) (HB 2080). *See* Ariz. Rev. Stat. § 13-907. (See below for this bill's firearms restoration provisions.)
- **Arkansas** corrected an unintended gap in its election law that made it hard for juveniles prosecuted as adults to regain the right to vote (SB 573). *See* Ark. Code Ann. § 16-93-622.
- **Oklahoma** revised its laws to clarify that voting rights are lost upon conviction of a felony and are restored upon completion of sentence (HB 2253). *See* 26 Okla. Stat. Ann. § 4-101.

Four states enacted laws directing corrections officials to inform people leaving custody of their eligibility to register, addressing the pervasive public misunderstanding that the right to vote is permanently lost by conviction: **Colorado** (HB 1266), **Illinois** (HB 2541; SB 2090), **New Hampshire** (HB 486), and **Washington** (SB 5207). Illinois' two new laws on this subject also facilitate voting by mail for eligible persons detained in county jails and provide for peer-led programs to teach civics to prisoners who are soon to be released.

Florida is the only state that took steps during the year to restrict rather than enlarge the franchise, in the wake of that state's restoration of the franchise in 2018, by ballot

initiative, to more than a million state residents who had completed their court-imposed sentences. That ballot initiative restored the right to vote to people convicted of felonies, other than murder or sexual offenses, upon "completion of all terms of sentence including parole or probation." In 2019, the Florida legislature passed a law interpreting "completion of sentence" to include payment of fines, fees, and court costs (SB 7066). *See* Fla. Stat. § 98.0751. The Florida Supreme Court recently agreed in an advisory opinion that the ballot initiative's reference to "completion of all terms of sentence" includes all financial obligations imposed in conjunction with a sentence. Plaintiffs in ongoing federal litigation seek to strike down these financial barriers and/or provide relief for those unable to identify or satisfy court debt.[12] One of the knotty problems associated with efforts to re-enfranchise Florida residents is the uneven state of court records in the state, such that inconsistent and missing records can make it difficult for many individuals (especially those with dated convictions) to show that they have in fact fully satisfied financial penalties associated with their criminal cases.

In the broader national picture, at the conclusion of 2019 almost half the states allow people with a felony conviction to vote if they are living in the free community: 18 states and the District of Columbia now allow people to vote unless in prison, Louisiana allows voting five years after release, and Maine and Vermont do not disenfranchise anyone based on conviction. Of the remaining 29 states, a majority restore the vote automatically upon completion of sentence, which may or may not also require payment of court debt. However, a significant minority of states require at least some individuals (recidivists, persons convicted of specific offenses, or those who owe court debt) to file individual petitions with the governor or a court to regain the right to vote. And of course, Iowa now stands alone in requiring everyone to petition its governor in order to vote, including people with federal convictions.

The coming year should see additional developments in Florida regarding re-enfranchisement of those with unpaid fines, fees, or restitution. This is turn could have ramifications for the half dozen additional states that impose similar financial barriers to the ballot box. At the very least, full restoration of the vote to all citizens living in the free community must be a key part of the reintegration agenda going forward, and we commend the efforts of advocacy organizations like the Brennan Center and the ACLU to this end. Widespread disenfranchisement, a remnant of ancient civil death and more modern Jim Crow, should have no place in the American polity.

2. Jury service, public office, and firearms

States also enacted measures to restore rights to jury service (**California** and **Maryland**), public office (**New Hampshire**), and firearms (**Arizona and Arkansas**):

- **California** passed a statute restoring eligibility for trial jury service upon completion of sentence (previously a pardon was necessary) (SB 310). See Cal. Civ. Proc. § 203(a).
- **Maryland** also lowered its conviction-related bar to jury eligibility (SB236). *See* Md. Code Ann., Cts. & Jud. Pro. Code § 8-103(b)(4). Previously, people were ineligible to serve on a jury if they had received a sentence of more than six months of imprisonment, and were not pardoned, or had a pending charge for an offense punishable by more than six months imprisonment; under the new law, these six-month periods are extended to one year.
- **New Hampshire** revised its law disqualifying people with a conviction from holding public office, making the restriction applicable only during actual incarceration, so that it is now coincident with the period of felony disenfranchisement (HB486) (this limit on disenfranchisement to only during actual incarceration has been in place in the Granite State since 1965). *See* N.H. Rev. Stat. Ann. § 607-A:2(I).
- **Arizona** revised its law on firearms restoration to authorize the sentencing court to restore rights to most people with felony convictions two years after completion of sentence (HB 2080). *See* Ariz. Rev. Stat. §§ 13-906, -907. Note that automatic restoration of civil rights for first offenses does not include restoration of firearms rights. People convicted of "serious" offenses must wait 10 years to regain firearms rights, and those convicted of "dangerous" offenses are permanently ineligible for restoration unless pardoned. *See* Ariz. Rev. Stat. § 13-910.
- **Arkansas** made minor revisions to conviction-related criteria for license to carry a concealed handgun (HB 1678). *See* Ark. Code. Ann. § 5-73-309.

CRIMINAL RECORD RELIEF

As in past years, the reform measure most frequently enacted in 2019 was record relief—expungement, sealing, or other mechanisms—to limit access to criminal records or set aside convictions. (As we have noted in earlier reports, the statutory terms most commonly used to describe record relief mechanisms do not have the same functional meaning from state to state.[13]) This past year, 31 states and D.C. enacted no fewer than 67 bills creating, expanding, or streamlining record relief. On top of this, almost two dozen other new laws discussed in the following section authorize diversion programs that produce non-conviction dispositions newly eligible for record-clearing under existing law. A trend we observed in our 2018 report toward "a growing preference for more transparent restoration mechanisms"

limiting use of a criminal record, as opposed to limiting access, does not appear so obvious to us this year. If anything, jurisdictions appear to be seeking greater efficiency in record-clearing.

As detailed below, 27 states and D.C. made certain classes of convictions newly eligible for expungement, sealing, or vacatur relief. Five of those states enacted their first general authority for expunging or sealing convictions (**North Dakota, New Mexico, West Virginia, Delaware, Iowa**), making record relief available for the first time to thousands of people. Nonetheless, if the experience of other states is any guide, most potential beneficiaries of these new or expanded relief schemes will not obtain relief: eligibility criteria are frequently complex and unclear, and court procedures are usually intimidating, burdensome and expensive. In many cases people are simply unaware of what the law provides. These and other barriers to access have been shown to frustrate a recording-clearing law's purpose.[14]

To obviate the inefficiencies of an individualized petition-based system, in 2019 three states followed the example set the year before by Pennsylvania's "Clean Slate Act," by automating relief for a range of conviction and non-conviction records (**Utah, California, New Jersey**). Six additional states focused automatic relief provisions on specific offenses or dispositions (**Florida**, **Illinois, New York, Virginia, Nebraska, Texas**).

Also notable were bills providing relief for victims of human trafficking and for marijuana offenses. Seven states and D.C. authorized relief for victims of human trafficking, allowing them to vacate, expunge, and seal a range of criminal records resulting from their status as a victim. Seven other states—all of which have legalized or decriminalized marijuana—authorized record relief for certain marijuana offenses, including two automated relief measures (**New York** and **Illinois**).

In addition to these marijuana and human trafficking measures, which often extend to arrests and other non-conviction records, eleven states extended relief specifically to certain non-conviction records for the first time. Most far-reaching and innovative, new provisions in New York's annual budget bill limited access to cases in which there has been no docket entry for five years and precluded the inclusion of such undisposed cases in background check reports. New York also authorized automatic sealing of pre-1992 non-conviction records, belatedly giving retroactive effect to the mandatory sealing law enacted that year.

Finally, thirteen states enacted 18 laws to streamline and/or make more effective the procedures for obtaining relief under existing mechanisms. Three states made particularly noteworthy and broad-based procedural reforms to their criminal records laws (**Colorado, Washington,** and **New York**).

To describe in detail the year's haul of record relief laws, we have organized them into three categories: (1) new automatic relief schemes; (2) new petition-based relief; and (3) improved procedures and effect of existing record relief mechanisms. (Note that some states style their limits on access as "expungement" and others as "sealing," but in many cases the two terms appear to be functionally indistinguishable.[15] Further detail about the effect of record relief in a particular jurisdiction can be found in the CCRC Restoration of Rights Project.)

1. New automated relief

Initially inspired by the need for large-scale relief in the wake of marijuana legalization, automation entered the law reform mainstream in 2018 when Pennsylvania passed its Clean Slate Act, providing a term that is now generally understood to refer to automated schemes (though is not in practice always so limited). Pennsylvania's automated sealing law did not extend relief beyond the misdemeanor level, the law was unusually ambitious in its retroactive application to millions of state records accumulated over decades. While a few states have for years provided for mandatory sealing of non-conviction and juvenile records, until Pennsylvania's law none had attempted to make mandatory sealing self-executing, and retroactive.[16] In 2019, three states joined Pennsylvania in enacting "clean slate" automatic sealing laws of their own, although implementation in all three jurisdictions remains in the developmental stage:

- **Utah's** clean slate law will provide for automatic expungement of a variety of non-conviction, infraction, and misdemeanor criminal records (and deletion of certain traffic records) when the law takes effect on May 1, 2020, and will apply retroactively to cases adjudicated prior to its effective date (HB 431). (Utah provides sealing relief to almost all convictions, excluding only serious felonies, so its automation feature applies only to cases on the lowest tier.) *See* Utah Code Ann §§ 77-40-102, *et seq.*
- **California's** 2019 clean slate law provides for automatic "record relief" (effectively sealing) for certain convictions and arrests occurring after the bill's effective date of January 1, 2021. The new law supplements but does not supplant the existing system of petition-based sealing, dismissal, and set-aside relief (eligibility criteria are slightly different). While its automatic record relief feature is prospective only, courts and the state repository will for the first time be prohibited from disclosing information about

conviction records that have been dismissed or set aside under existing petition-based systems, as well as those granted relief under the new automatic process. (AB 1076). *See* Cal. Penal Code §§ 851.93; 1203.425.

- **New Jersey's** clean slate law, the final record relief measure signed into law in 2019, directs the State to develop and implement a process by which all but certain convictions will be automatically made "inaccessible to the public" ten years after completion of the sentence imposed for the most recent conviction. Expungement will be immediate for non-conviction records at the time of disposition, including records of deferred adjudications. Finally, the same bill reduces indictable marijuana and hashish convictions either to disorderly offenses or makes them non-criminal, depending upon the amount of the drug involved, for purposes of immediate expungement. A task force was established to implement the automated feature of the new law. As an interim measure pending development of the automated process, the law provides that individuals eligible for relief under the "clean slate" provision may petition the court for relief beginning in June 2020, when the new law takes effect. If the person is determined by the court to be eligible, expungement is mandatory, and a prior expungement is not disqualifying as under the regular expungement law. The 2019 law also extends eligibility and improves procedures for petition-based discretionary relief from courts, including reducing the waiting period to five years the repeal of filing fees, which (as under Pennsylvania's law and the other schemes enacted) is available to a broader range of cases than those eligible for automated relief (S4154). *See* N.J. Stat. Ann. §§ 2C:52, *et seq.*

In addition to these large-scale automation projects, six states enacted automatic relief measures focused more narrowly on marijuana offenses, pardoned offenses, non-conviction records, and juvenile records:

- **Florida** directed its state records repository to develop a system for automatic sealing of the non-conviction records that are eligible for petition-based relief from the courts under existing law (HB 7125). *See* Fla. Stat. § 943.0595. (Existing Florida law also provides for expungement of certain records, including those that have been sealed for 10 years.) Unlike the other more general automated systems discussed above, Florida's new law appears to contemplate expanding the class of records eligible for sealing, since it omits restrictions related to prior convictions or record relief.
- **Illinois's** marijuana legalization bill authorized the automatic expungement of arrests and convictions for "minor cannabis offenses" (not more than 30 grams, no enhancements, and no violence); and petition-based expungement for more serious marijuana convictions (HB1438; SB 1557). *See* Ill. Comp. Stat. Ann. 2630/5.2.
- **New York** extended its automatic sealing of non-conviction records to cases decided prior to the enactment of mandatory sealing relief in 1992. It also restricted access to undisposed cases after five years of inactivity and to court records terminated without

a conviction. (S1505). *See* N.Y. Crim. Proc. Law §§ 160.50; 160.55; 845C; 845D. It also authorized automatic vacatur and expungement of convictions for possession of two ounces or less of marijuana, with a presumption that a plea to such an offense was not knowing, voluntary, and intelligent for purposes of avoiding immigration consequences (S6579; S6614). *See* N.Y. Penal Law § 221.05. Finally, it outlawed release of booking information and "mugshots" by police departments without a law enforcement purpose (S1505).

- **Nebraska** enhanced its existing procedures for automatic sealing of juvenile records (LB 354). *See* Neb. Rev. Stat. §§ 43-2,108.01 through 43-2,108.05.
- **Texas** directed juvenile courts, upon entering a finding that charges are unfounded, to seal all records immediately and without a hearing (HB 1760). *See* Tex. Fam. Code § 58.005.
- **Virginia** provided for automatic expungement for persons granted an "absolute pardon" (exoneration) (HB 2278). *See* § 19.2-392.2.

The Clean Slate Initiative reports that several states are considering automated "record-clearing" laws in the 2020 legislative session. Among the issues that must be worked out are how to simplify eligibility criteria for algorithmic treatment, how to coordinate and manage diffuse records systems, how to notify those whose records have been cleared, and how to decide what it means as a functional matter for a recorded to be "cleared."[17]

2. New petition-based relief

The second category of record relief laws expanded the availability of petition-based relief to new classes of people. Twenty-four states and D.C. enacted no fewer than 41 laws that authorize people to apply to a court for relief for convictions or dispositions that were previously ineligible.

New Mexico, North Dakota, Delaware, West Virginia, and **Colorado** made particularly dramatic changes to their petition-based systems to extend eligibility for relief to a range of non-conviction and conviction records. None of the first four states had previously authorized relief for felony-level offenses, and Colorado had authorized sealing only for drug convictions.

The comprehensive schemes enacted by North Dakota and New Mexico are noteworthy as the first laws in those states to authorize sealing of adult criminal records. Both states extend relief to most felonies, but they also require the applicant to pay a filing fee and make the case for relief at a court hearing. (North Dakota courts may dispense with the hearing if the prosecutor agrees.) Delaware's law makes

sealing mandatory for non-conviction records and some misdemeanors offenses without a hearing or filing fee. Colorado completely rewrote its chapter on criminal records (discussed in #3 of this section), and expanded eligibility for sealing from drug crimes to other misdemeanors and minor felonies, as well as uncharged arrests and other non-conviction records.

- **New Mexico** enacted that state's first general authority for limiting access to adult criminal records, authorizing expungement for all but the most serious violent and sexual crimes. Courts are authorized to expunge the record of most misdemeanor and felony convictions after conviction-free waiting periods ranging from two to ten years after completion of sentence. At a hearing, the court must apply a multi-factor test to determine that "justice will be served by an order to expunge." Courts are also authorized for the first time to expunge all but a limited category of non-conviction records after a one-year waiting period, so long as no charges are pending against the individual (HB 370). *See* N.M. Stat. Ann. § 29-3A-5.
- **North Dakota** enacted that state's first general authority for sealing conviction records: it authorizes people with misdemeanor and most felony convictions to apply after a charge-free waiting period of three and five years, respectively, with certain exceptions. People with violent offenses must wait ten years (coextensive with the period for firearms restoration), while DUIs may be sealed after seven years. (HB1256; HB1334). *See* N.D. Cent. Code §§ 12-60.1, *et seq.* The court may grant the petition if it finds that the petitioner has completed the sentence, including payment of restitution, and has shown that "the benefit to the petitioner outweighs the presumption of openness of the criminal record," applying a multi-factor test. The court may dispense with the hearing if the prosecutor agrees. (North Dakota courts have inherent authority to seal non-conviction records.)
- **Delaware**, which previously only authorized expungement for misdemeanors if terminated without conviction or pardoned by the governor, enacted a dramatic expansion of this record relief, making it mandatory for all cases "terminated in favor of the accused" and certain less serious misdemeanors, and discretionary for more serious misdemeanors and eligible felonies. Mandatory relief is administered by the state records repository, while discretionary relief is administered by the courts, with variable waiting periods and limits on number of offenses (SB 37). *See* Del. Code Ann. tit. 11, §§ 4372*, et seq.* Delaware's new law stops short of making relief automatic in "mandatory" cases, since people must apply to the repository before their cases will be considered.
- **West Virginia** significantly expanded the availability of expungement beyond a limited class of youthful misdemeanants, to cover certain non-violent felonies and misdemeanors. Less serious felonies are eligible for expungement relief for the first time. (A 2017 law is repealed that had authorized reduction of these felonies to misdemeanors, but withheld expungement.) Violent and sexual crimes are

ineligible. Persons convicted of eligible misdemeanors may petition for expungement one year after conviction, or completion of incarceration or supervision if later. The waiting period is two years for persons convicted of more than one eligible misdemeanor, and five years for eligible felonies. Persons who have completed substance abuse treatment or graduated from a state-approved job training program have an abbreviated waiting period. (SB 152). This law also repealed a set-aside authority enacted the previous year, which would have overlapped with some parts of the new record-sealing law. *See* W. Va. Code §§ 61-11-26, -26a.

- **Colorado** previously made sealing available only for drug convictions, but in 2019 completely rewrote its chapter on criminal records to authorize sealing to a range of convictions from petty offenses to less serious felonies, including but not limited to drug crimes. Eligibility waiting periods range from one year for petty offenses, to three years for misdemeanors and lower-level felonies, to five years for other eligible felonies (HB 1275). Eligibility may be extended if the DA consents, or if the court finds the petitioner's need for sealing is significant and there is minimal public safety risk. The law also extends sealing relief to non-conviction records immediately upon disposition, and to uncharged arrests in the state repository after a brief waiting period. *See* Colo. Rev. Stat. §§ 24-72-701, *et seq.* Colorado's amended procedures are discussed in #3.

Fifteen states took incremental steps to expand eligibility for sealing or expungement under existing law, covering minor felonies, misdemeanors, first or youthful offenses, decriminalized conduct, and pardoned offenses, as well as wrongful arrests:

- **Iowa** enacted its first authority to expunge adult conviction records, covering certain misdemeanors, with an eight-year waiting period as well as other eligibility requirements (SF 589). *See* Iowa Code § 901C.3. A person may be granted only one expungement, unless multiple charges arose from one incident.
- **Oklahoma** - Beginning in 2014, and continuing each year since, Oklahoma has made it progressively easier for individuals to have their criminal records expunged. In 2019 it extended eligibility to two felonies instead of one, reduced waiting periods, authorized expungement for felonies reclassified as misdemeanors, and allowed anyone that was pardoned. (HB 1269; SB 815). *See* 22 Okla. Stat. Ann. § 18.
- **Kentucky** extended the number of class D felonies eligible for expungement after a five-year conviction-free period, and also authorized relief for charges dismissed without prejudice after five years (SB 57). *See* Ky. Rev. Stat. Ann. §§ 431.073, .076, .079. A hearing is not required unless the prosecutor objects, but the court must in any case find that the petitioner is rehabilitated. The new law reduced the filing fee from $500 to $50, but it added an "expungement fee" of $250 payable upon granting relief. If an expungement order is issued, the court and other agencies must "delete or remove" the record from their computer systems "so that the matter shall not appear on official state-performed background checks."

- **Mississippi** extended sealing to more felonies through its intervention court system, and also provided for sealing of convictions for larceny of motor fuel. *See* Miss. Code Ann. § 99-19-71. It also repealed the law mandating loss of a driver's licenses upon conviction of a drug offense (HB 1352; HB 940).
- **Missouri** expanded eligibility for expungement under its 2018 expungement law, striking several minor property crimes from the list of ineligible offenses (SB 1). *See* Mo. Rev. Stat. § 610.140.
- **Montana** will now allow district courts to expunge multiple misdemeanor convictions from different counties at a single proceeding. However, a person remains eligible for only one expungement order during their lifetime (HB 543). *See* Mont. Code Ann. § 46-18-1101.
- **Maryland** authorized expungement of misdemeanor boating offenses (HB259).
- **Nevada** provided for sealing of decriminalized offenses, expungement of wrongful arrests, and set aside of conviction after completion of certain specialty court programs (AB 192; AB 222; AB 315).
- **Vermont** brought a variety of drug possession offenses and forgery within the definition of a "qualifying crime" for purposes of sealing or expungement (both remedies are potentially available and are functionally similar). It made some DUI offenses eligible after 10 years (sealing only), and youthful burglary after 15 years. Heightened procedural protections were made applicable to eligible DUI and burglary offenses. See H460. *See* 13 V.S.A. § 7601. Vermont also authorized expungement of records of juvenile diversion cases after two years without a subsequent conviction and payment of restitution (S 105). *See* 13 V.S.A. § 7601.
- **Louisiana** made entitlement to a first offender pardon the basis for filing a motion for expungement, except for violent or sexual crimes (SB 98). *See* La. Code Crim. Proc. Ann. Ch. 34. Art. 978. Under the state constitution, pardon is automatic for persons convicted of non-violent crimes, or a handful of crimes involving minor violence.
- **North Carolina** authorized expungement of criminal court records when a case is remanded for juvenile adjudication (S413).
- **Texas** authorized nondisclosure of certain deferred adjudications for intoxication offenses and for veterans, as well as expunction of the records after completion of a mental health court program (HB 3582; HB 714; SB 562). *See* Tex. Code Crim. Proc. art. 17.144(a), 42.09.
- **Arizona** eased restrictions on setting-aside convictions: previously, a conviction was ineligible if there was a victim under age 15; a new law specifies that non-felony offenses with such victims are eligible (HB 2480). *See* Ariz. Rev. Stat. § 13-907.
- **Oregon** authorized sealing of pardoned offenses (SB 388). *See* Or. Rev Stat. § 144.650.
- **Washington** extended eligibility for vacatur and sealing to certain assault and robbery felonies, as long as they did not involve a firearm or "sexual motivation" (HB 1041). Wash. Rev. Code §§ 9.94A.640. See the next section for its procedural reforms.

Seven states and D.C. passed laws authorizing vacatur, sealing, and/or expungement relief for victims of human trafficking. It appears that almost every state now authorizes relief for those whose crimes are linked to their circumstances as victims of human trafficking, and many states have recently extended their relief laws from prostitution-related offenses to any non-violent crime where a connection can be shown.

- **District of Columbia** authorized vacatur of convictions for victims of human trafficking for all offenses except a list of ineligible serious offenses; expungement of non-conviction records for any offense (B22-0329). *See* D.C. Code §§ 18-1845 through 18-1847.
- **Delaware** enabled pardon or vacatur and expungement of non-violent convictions for victims of human trafficking (HB 102). *See* Del. Code. Ann. tit. 11, § 787.
- **North Carolina** authorized expunction of most nonviolent misdemeanor or low-level felony convictions for victims of human trafficking (H198). *See* N.C. Gen. Stat. § 15A-145.9.
- **Tennessee** provided for expungement of a prostitution conviction along with other non-violent offenses for victims of human trafficking (SB 577). *See* Tenn. Code Ann. § 40-32-105.
- **Texas** provided for non-disclosure of conviction or deferred adjudication for certain prostitution, theft, and marijuana offenses for victims of human trafficking (SB 1801). *See* Tex. Gov't Code § 411.0728.
- **Utah** authorized vacatur for juvenile prostitution and related offenses for victims of human trafficking (HB 108). *See* Utah Code § 78A-6-1114.
- **Vermont** enabled vacatur and expungement of offenses committed by victims of human trafficking other than serious violent offenses. (H 460). 13 V.S.A. § 2658. (This bill also revises the broader expungement and sealing scheme, reducing some waiting periods and expanding the number of eligible conviction offenses)
- **Nevada** expanded the list of eligible offenses for vacatur and sealing relief for victims of human trafficking (SB 173). *See* Nev. Rev. Stat. § 179.247.

In addition, **Hawaii** authorized vacatur of prostitution offenses after three crime-free years, without requiring the defendant to establish victim status. (SB1039). *See* Haw. Rev. Stat. § 712-1209.6. And **Texas** expanded eligibility for deferred adjudication to victims of human trafficking (HB 2758). *See* Tex. Code Crim. Proc. art. 42A.054.

Five states provided for petition-based relief for marijuana offenses, in addition to the two automatic marijuana sealing measures enacted by Illinois and New York**,** discussed above:

- **New Hampshire** provided for annulment of arrests or convictions for marijuana possession of ¾ of an ounce or less (HB 399). *See* N.H. Rev. Stat. Ann. § 651:5-b.

- **Hawaii** decriminalized and provided for expungement of marijuana possession of three grams or less (HB1383). *See* Haw. Rev. Stat. § 706-622.5.
- **Delaware** decriminalized youthful marijuana possession and made clear than prior convictions for such offenses can be expunged (SB 45). *See* Del. Code. Ann. tit. 16, § 4764.
- **Oregon** authorized expedited set asides and reductions of offense classifications for qualifying marijuana convictions (SB 420; SB 975). *See* Or. Rev. Stat. § 475B.010 to 475B.545.
- **Washington** authorized expedited vacatur of misdemeanor marijuana convictions for conduct committed at age 21 and older, with no waiting period or other eligibility criteria (HB 5605). Wash. Rev. Code § 9.96.060(5).

3. Procedural reforms to existing relief schemes

Thirteen states enacted 20 laws to streamline and make more accessible and effective existing relief mechanisms. **Colorado, Washington**, and **New York** enacted particularly extensive and important procedural reforms. (Colorado and Washington also expanded eligibility for sealing relief to new classes of felony offenses, as noted in #2.)

- **Colorado** repealed, reorganized, and reenacted its entire chapter on criminal records: major changes include shortened waiting periods and reduced filing fees for sealing less serious drug convictions; a significantly simplified process for sealing uncharged arrests and non-conviction records; expanded eligibility for conviction relief; expanded mandatory juvenile expungement; authority for judges to discontinue juvenile registration; and direction to a commission to take recommendations on automatic sealing and alternatives to incarceration for drug offenses. (HB 1275; HB 1335; SB 8). *See* Colo. Rev. Stat. §§ 24-72-701, *et seq.*
- **Washington** substantially amended eligibility for sealing, including consolidating waiting periods and easing requirements to satisfy financial obligations. Now the necessary conviction-free period will be coextensive with the otherwise applicable waiting period, and a person need not have paid all court debt in order to qualify for relief if five years have elapsed since release from custody and all non-financial requirements are met. As noted in #2, the bill also makes eligible for the first time certain assault and robbery felonies, as long as they did not involve a firearm or "sexual motivation" (HB 1041). Wash. Rev. Code §§ 9.94A.640, 9.94A.030, 9.94A.637 and 9.96.060.
- **New York,** in addition to providing for automatic sealing of marijuana convictions (see #1), extended relief to cases in which there has been no docket entry for five years; precluded the inclusion of such undisposed cases in background check reports; and clarified that eligibility for sealing of petty offenses does not depend on the initial offense charged (S1505; A7584). *See* N.Y. Crim. Proc. Law §§ 160.50; 160.55, 845-C, 845-D. New

York also outlawed release of booking information and "mugshots" by police departments without a law enforcement purpose (S1505).

Other states reduced or eliminated waiting periods and filing fees, streamlined procedures, and expanded the effect of relief:

- **Arkansas** eliminated the 5-year waiting period for certain felonies and the 60-day waiting period for misdemeanors and infractions to become eligible for record sealing, eliminated the $50 filing fee for petitions to seal, and declared this to be "the first step in a multi-step process to attempt to make the sealing of certain records of a person's criminal history that involve nonviolent and nonsexual offenses an automatic operation" (HB1831). *See* Ark. Code. Ann. §§ 16-90-1406, 16-90-1419.
- **New Hampshire** created a "confidential" category of criminal history information, including non-convictions and annulled convictions, to be subject to restrictions on public access (HB 637). *See* N.H. Rev. Stat. Ann. § 106:B-1.
- **Wyoming** provided for improved procedural and substantive rules for expungement of juvenile records and the records of minors in need of supervision, including authorizing the prosecutor to seek expungement, eliminating filing fees, and authorizing expungement for minors admitted to a diversion program or granted a deferral or whose case results in a non-conviction or non-adjudication. (HB 44). *See* Wyo. Stat. §§ 7-13-1401, 14-6-241, 14-6-440.
- **Tennessee** authorized the "disposal" of juvenile records 10 years after the young person reaches age 18; repealed a $180 fee for petitioning for an expunction of certain criminal offenses and a $350 fee for applying for expunction following diversion; and required sentencing judges to notify those convicted of misdemeanors about eligibility for expungement (SB 214; SB 797; SB 778). *See* Tenn. Code Ann. §§ 18-1-202, 40-2-102.
- **California** prohibited the charging of a fee for sealing juvenile records (AB 1394). *See* Cal. Welf. & Inst. Code § 781.1.
- **Illinois** extended a pilot program in Cook County for waiving filing fees for sealing or expungement of non-convictions (SB482).
- **Louisiana** provided that only one filing fee is required in an application to expunge multiple offenses resulting from the same arrest (HB 9). *See* La. Code Crim. Proc. Ann. Ch. 34. Art. 983.
- **Indiana** and **Utah** specified that records of a collateral actions (i.e. forfeiture) related to an expunged criminal record is also subject to expungement (IN SB 235; UT HB 212).
- **Florida** rolled-back a scheduled repeal of the confidentiality of treatment court records (HB 7025), reorganized and clarified procedures for sealing and expunging non-conviction records (including directing development of a process for automatic sealing of non-conviction records, discussed in #1); and created a streamlined expungement process in cases of lawful self-defense (HB 7125). *See* Fla. Stat. §§ 943.0578, 943.0595.

DIVERSIONARY DISPOSITIONS

In 2019, 18 states enacted 26 laws creating, expanding, reorganizing, or otherwise supporting diversionary and deferred dispositions, to enable individuals charged with crimes to avoid a conviction record. These new authorities reflect the clear trend across the country toward increasing opportunities to steer certain categories of individuals out of the system, through informal diversions, specialized treatment or intervention courts, or completing probation conditions while judgment is deferred or sentence suspended. Laws enacted in 2019 extended this favorable treatment to juveniles, military service personnel and veterans, persons with mental illness, drug and alcohol users, human trafficking victims, caregivers of children, and even certain persons charged with sex offenses.

Of particular note, **Colorado** enacted a major revision of its juvenile records scheme, the second in three years, making almost all juvenile offenses eligible for diversion, and expungement automatic upon successful completion of diversion "without the need for a court order," as long as the prosecutor or victim do not object. Colorado also authorized funding for mental health diversion courts. **Tennessee** and **Vermont** also significantly expanded their programs of juvenile diversion, while **Mississippi** reorganized its system of specialized courts as "intervention courts." **Oregon** modified diversion to avoid deportation consequences of a guilty plea. **California** enacted perhaps the most novel (and promising) diversion program we've seen in several years, authorizing the creation of pretrial diversion for primary caregivers of children, who are charged with a misdemeanor or nonserious felony offenses, except for offenses against the cared-after child. These and other diversion laws are described briefly below:

- **Colorado** extended mandatory expungement of certain juvenile proceedings for diversion and deferred dispositions, which had been excluded from the 2017 law that authorized record relief for a variety of less serious juvenile offenses (HB 1335). No hearing is held unless the prosecutor or victim object, in which case the court must determine if "the rehabilitation of the juvenile has been attained to the satisfaction of the court," and that "the expungement is in the best interest of the juvenile and the community." The law also authorizes the court, in a case where the juvenile's offense requires registration but is eligible for expungement, to direct that registration be discontinued at the same time the court directs expungement. In two other laws, Colorado created and then extended the mental health criminal justice diversion pilot program and mental health criminal justice grant program (HB 1263; SB 211). *See* Colo. Rev. Stat. § 18-1.3-101.5.

- **Tennessee** addressed diversion both in the context of juveniles (HB 1319) and those charged with sex offenses (HB 624). The latter law revises provisions governing the circumstances under which a person's name must be removed from the sex offender registry, to add successful completion of judicial diversion for certain offenses. *See* Tenn. Code Ann. § 40-39-207. Juveniles will now be eligible for diversion not only after a plea, but also after an adjudication. See Tenn. Code Ann. § 37-1-107(d). In its third new law affecting diversion, Tennessee rescinded the $350 filing fee for a defendant applying for expunction of an offense following the completion of a diversion program (HB 941).
- **Vermont** authorized its courts to expunge records of juvenile diversion cases after two years without a subsequent conviction, if restitution has been paid. See S105. *See* 13 V.S.A. § 7601. This provision was amended by S105 to delete the age limits on the court's authority under this section, so that it no longer applies only where the defendant is under 28 years of age. While referral for juvenile diversion remains in the control of the district attorney, courts are authorized to impose a deferred sentence for a less serious crime even if the prosecutor objects.
- **Mississippi** reorganized its system of specialized problem-solving courts (including drug courts, mental health courts, and veterans' courts) as "intervention courts," and made an Intervention Courts Advisory Committee responsible for coordinating the policies and operation of these courts through the State (HB 1352). *See* Miss. Code Ann. §§ 9-23-1, 9-23-9. These courts are primarily aimed at reducing the incidence of drug abuse as a driver of criminal behavior, but they are aimed at different populations and have differing eligibility requirements. These courts all offer the possibility that successful participants in their programs may avoid conviction and become eligible for expungement of the record upon successful completion.
- **Oregon** once again legislated to address collateral immigration consequences. Last year the state limited sentences for minor crimes to 364 days to avoid deportation (much as Colorado, New York and Utah did this year). This year a new law prohibited requiring a guilty plea in connection with conditional discharge for controlled substance offenses. However, the person charged must waive various rights, and will in future be required to pay restitution and attorney fee charges (HB 3201). This law is also covered in the section on immigration relief.

More incremental extensions of diversion:

- **California** authorized the creation of pretrial diversion for primary caregivers of children, who are charged with a misdemeanor or non-serious felony offenses, except for offenses against the cared-after child. (SB 394). *See* Cal. Penal Code § 1001.83.
- **Missouri** (HB 547) and **Oregon** (HB 2462) enacted laws aimed at giving service members and veterans the benefit of diversion.
- **Idaho** (H78) and **South Carolina** (H3601) authorized diversion in DUI or public disorderly conduct cases. *See* Idaho Code Ann. §19-3509; S.C. Code Ann. § 16-17-530.

- **Texas** expanded eligibility for deferred adjudication to victims of human trafficking (HB 2758), See Tex. Code Crim. Proc. art. 42A.054; created a family violence pretrial diversion pilot program in Bexar County (HB 3529); and authorized deferred adjudication for certain intoxication offenses (HB 3582). *See* Tex. Code Crim. Proc. art. 17.144(a).
- **Washington** established a substance abuse diversion program (SB 5380), and authorized a law enforcement grant program to expand alternatives to arrest and jail processes (HB 1767). Wash. Rev. Code §§ 71.24.580, 36.28A.
- **Nebraska** authorized restorative justice as a form or condition of diversion (LB595).
- **Nevada** expanded eligibility for veterans and military service members specialty court programs (AB222).
- **Wyoming** addressed diversion in its expansion of juvenile expungement in HB 44, discussed in the section on expungement.
- **Florida** put in place a system of reporting for its various problem-solving courts (HB 7125).
- **Minnesota** authorized cities and counties to create driver's license reinstatement diversion programs (SF 8).
- **Rhode Island** authorized superior court diversion programs (SB 962). *See* R.I. Gen. Laws § 8-2-39.3.
- **West Virginia** established a specialized court program for military service members. (SB 40) *See* W. Va. Code §§ 62-16-1, *et seq.*

OCCUPATIONAL LICENSING AND EMPLOYMENT

In 2019, 26 states and the federal government enacted 41 laws limiting consideration of criminal record in either employment or occupational licensing, or both. For the first time, Congress joined the lively national conversation about the need to reduce record-related barriers in the workplace that are inefficient and unfair.

1. Occupational licensing

Regulation of licensing accounted for 30 of these new laws, continuing a trend begun in 2017 that has transformed the licensing policy landscape and opened opportunities in regulated professions for many thousands of people. As explained in our report on 2018 laws, these licensing reforms are particularly important in supporting reintegration, since studies have shown that more than 25% of all jobs in the United States require a government-issued license.

The new wave of licensing reforms resurrects a progressive approach to occupational opportunity that dates from the 1970s, and it has been strongly influenced by model

legislation developed by the Institute of Justice (IJ), a libertarian public interest law firm, and the National Employment Law Project (NELP), a workers' rights research and advocacy group. Despite their origin in differing regulatory philosophies, the IJ and NELP model laws reflect a similar approach: they limit the kinds of records that may result in disqualification, rejecting vague "good moral character" and other criteria irrelevant to competence, insisting that individual denials be grounded in findings of rehabilitation and public safety with rigorous due process guarantees, and making agency procedures more transparent and accountable. In the IJ model, applicants can seek binding preliminary determinations of qualification, and agency compliance is monitored by disclosure and reporting requirements. In December 2019, NELP issued a report summarizing recent legislative developments, and proposing a comprehensive model law with recommendations to guide advocates.

In 2019, four states (**Alabama**, **Mississippi**, **Nevada**, and **West Virginia**) that previously had no general law regulating consideration of criminal records in occupational licensing took steps to limit licensing agencies' ability to reject individuals based on their record. Seven states (**Arizona**, **Arkansas**, **Maryland**, **North Carolina**, **Ohio**, **Oklahoma**, and **Texas**) made significant modifications to existing licensing schemes, with **Arizona** enacting significant licensing reforms for a third consecutive year. **Texas** takes the prize for most related laws in one session, enacting no fewer than five licensing measures in 2019 alone—two of them of general application and quite significant, and the other three opening opportunities in health care occupations to people who may have been denied them earlier in life.

Delaware, **Illinois**, and **Indiana** made minor modifications to extensive schemes enacted in the recent past. **New York** lifted mandatory disqualifications from several licensed professions, allowing applicants for the first time to be considered under the state's general non-discrimination law. Several states took steps to facilitate licensure in barbering and various construction trades, extended favored treatment to occupations learned in prison. **Florida**, for example, enacted a five-year limit on consideration of conviction in licensing those trades, as well as any other trade taught in its prisons. **Iowa** also dipped its toe into the waters of licensing reform, regulating barbering and several construction trades.

The new licensing laws borrow features of the comprehensive schemes enacted in 2018 in states like Indiana and New Hampshire, though in 2019 most states took a more cautious approach to reining in licensing agencies. Some of the more familiar provisions of these new laws are drawn from the IJ or NELP models:

- *Preliminary determination*: Providing for a preliminary determination of qualification, for a small fee with quick turnaround and written reasons;
- *Relevant standards*: Deleting vague standards like "good moral character" in favor of standards likely to evidence low risk and rehabilitation;
- *Prohibited considerations*: Barring consideration of certain types of records and other types after a specified time;
- *Transparency*: Requiring agencies to publish a list of disqualifying convictions and to provide written reasons for rejection in individual cases; and
- *Accountability*: Including reporting requirements intended to monitor agency compliance.

Significant new licensing laws:

- **Alabama**, until 2019, had no general law regulating consideration of conviction in occupational licensure. SB163 created a process modeled on the Uniform Collateral Consequences of Conviction Act, whereby a person who would otherwise be disqualified by law from obtaining a particular occupational license may obtain from the circuit court an "Order of Limited Relief" to dispense with that mandatory penalty and allow their consideration by the licensing board on the merits (not yet codified). People with federal offenses are eligible, as are people with out-of-state convictions who have received a similar certificate in the jurisdiction of conviction. A person may not be serving a prison sentence with more than six months left to serve, nor can they have pending charges. There is a filing fee of $100 that may not be waived, and a rather onerous process of document production – but no standards are specified, and the court's order is appealable.
- **Arizona** made significant modifications to its licensing laws for the third year in a row (HB 2660), further modifying the standards set forth in Ariz. Rev. Stat § 41-1093.04(D) to require an agency to conclude before denying a license both that (1) there is an important state interest in "protecting public safety that is superior to the person's right" to licensure; and (2) the person was convicted within the past seven years of a felony that has not been set-aside, including any offense the agency is specifically required to consider by law, but excluding certain serious and dangerous crimes. Arizona's set-aside law is described here. Under the 2018 law, agencies are required beginning in 2019 to submit annual reports to the governor and the legislature that contain the following information for the previous year: the number of petitions received from persons with a criminal record for a preliminary determination; the number of petitions granted and denied, and the types of offenses involved in each category. § 41-1093.04(I).
- **Arkansas** enacted the first revision of the state's licensing laws in 10 years, prohibiting consideration of most felony convictions after 5 crime-free years, as well as sealed convictions, pardoned convictions, and non-conviction records (SB 451). *See* Ark. Code.

Ann. § 17-2-102. The new law amends the Criminal Offender Rehabilitation Act of 2010 by establishing standards for waiving disqualification (though certain serious violent crimes remain grounds for permanent disqualification), and by eliminating "good character" and "moral turpitude" as licensing criteria. Licensing agencies must "state explicitly in writing the reasons for a decision which prohibits the applicant from practicing the trade, occupation, or profession if the decision is based in whole or in part on conviction of a felony." Among the legislature's findings were that "Arkansas is taking a leading role in the nationwide pursuit of reforms to the system of occupational licensing," and that the state was one of 11 states "chosen to participate in the Occupational Licensing Policy Learning Consortium, an initiative funded by a grant from the United States Department of Labor and supported in partnership with the National Conference of State Legislatures, the Council of State Governments, and the National Governors Association."

- **Florida** added a new provision to its general licensing law to prohibit consideration of a conviction more than five years old in licensing of barbers and cosmetologists, plumbers, electricians, mechanical engineers, roofers, a number of other building trades, and "any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program" (HB 7125). *See* Fla. Stat. § 455.213 ("A conviction, or any other adjudication, for a crime more than 5 years before the date the application is received by the applicable board may not be grounds for denial of a [specified] license."). Boards are permitted to consider violent and sexual offenses but only if they "relate to the practice of the profession." Persons are permitted to apply for a license prior to their release from confinement or supervision. Starting on October 1, 2019, and updated quarterly thereafter, each relevant licensing board must compile a list indicating each crime used as a basis for a license denial. For each crime listed, the board must identify the crime reported and for each license application the date of conviction or sentencing date, whichever is later; and the date adjudication was entered.
- **Maryland** prohibited occupational licensing boards from denying an application based solely on a non-violent conviction if 7 years or more has passed since completion of sentence without other charges, even if the agency determines that the conviction is directly related to the occupation and even if "issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public," unless the person is required to register as a sex offender (HB22). Md. Crim. Proc. Code §1-209(f)(1) and (2). Drug convictions are specifically subject to a similar statutory policy and standards, although there is no exception for crimes involving violence. *See* Md. State Gov't Code § 10-1405(b). In 2018, licensing agencies were required to report each year to the governor and the general assembly on applications for licenses that would be eligible for relief under § 1-209, including the number granted and the number denied.

- **Mississippi**, until 2019, had no general law regulating consideration of conviction in connection with occupational licensing. Under the Fresh Start Act of 2019, effective July 1, 2019, no one may be disqualified from engaging in any licensed occupation "solely or in part because of a prior conviction of a crime, unless the crime for which an applicant was convicted directly relates to the duties and responsibilities for the licensed occupation" (SB 2781) (not yet codified). Only law licensure is excepted. Under Section 4, licensing authorities shall not include in their rulemaking "vague or generic terms including, but not limited to, 'moral turpitude,' 'any felony,' and 'good character.'" In determining whether a conviction is "directly related," the licensing authority shall make its determination by a clear and convincing standard of proof based on such factors as the seriousness of the crime, the passage of time, and evidence of rehabilitation. The law provides for a preliminary determination of whether the individual's criminal record will disqualify them from obtaining a license, for which no more than $25 may be charged. If a license is denied in whole or in part because of conviction, the licensing authority shall notify the individual in writing of the reasons and their right to a hearing. If an applicant's criminal history does not require a denial of a license under applicable state law, "any written determination by the licensing authority that an applicant's criminal conviction is directly related to the duties and responsibilities for the licensed occupation must be documented in written findings for each of the [applicable factors] "by clear and convincing evidence sufficient for a reviewing court." In any administrative hearing or civil litigation, "the licensing authority shall carry the burden of proof on the question of whether the applicant's criminal conviction directly relates to the occupation for which the license is sought."
- **Nevada**, until 2019, had no generally applicable law regulating consideration of conviction in occupational licensure. New sections of Chapter 622 of the Nevada Revised Statutes will require licensing agencies to develop and implement a process by which a person with a criminal history may petition for a preliminary determination whether that history will disqualify them from obtaining a license from the regulatory body (HB 319). The agency must respond within 90 days and may not charge more than $50. If the agency proposes disqualification, it "may" advise the person what can be done to qualify. The agency also "may" post on its website a list of crimes that would result in a disqualification determination. HB 319 also amended Nev. Rev. Stat. § 622.001 to require each licensing agency to submit quarterly reports to the legislature the number of petitions received from people with a criminal record, the number of determinations of disqualification, and the reasons for each. Under a new section of Chapter 232B, the "Sunset Subcommittee" of the Legislative Commission is charged with reviewing the reports of each agency "to determine whether the restrictions on the criminal history of an applicant for an occupational or professional license are appropriate." Similar requirements are specifically imposed on various certifying entities of state government and the courts through additions to various chapters of the

Nevada statutes, for certifications as varied as court interpreter, firefighter, boiler inspector, driller, milk tester, and medical marijuana provider.

- **North Carolina**'s general licensing non-discrimination law, enacted in 2013, prohibited occupational licensing boards from automatically disqualifying an individual based on a criminal record unless the board is otherwise authorized by law to do so. This law was substantially amended in 2019 to enhance both substantive and procedural protections for people with a record, and to extend its provisions to "state agency licensing boards" as well as "occupational licensing boards" (HB770). HB770 amends N.C. Gen. Stat. § 93B-8.1 to impose a "direct relationship standard" for all licenses; to require a board to consider certain factors that before were discretionary, giving effect for the first time to a drug treatment program and Certificate of Relief; and to exempt only licenses governed by federal law. It provides for robust procedural protections for applicants, including written reasons in the event of a denial and an appeal procedure. It also specifies that individuals may at any time apply for a "predetermination" as to whether their record is "likely" to be disqualifying, a determination that is "binding" on the board in the event of a subsequent application. Finally, it requires each board to report annually to the legislature and to the State Attorney General on how many applications it has received from people with a record, and how many were granted and denied.
- **Ohio**'s legislature, on December 27, 2018, enrolled SB 255, which became law 10 days later without action by the governor. Ohio licensing boards have been required since 2009 to promulgate regulations on crimes that would be disqualifying under a general "substantial relationship" standard, and the new law requires these crimes to be listed on the agency's website. Ohio Rev. Code Ann. § 9.78(C)(2019). In addition, anyone with a conviction may request at any time that a licensing authority make a preliminary determination whether their conviction will be disqualifying. § 9.78(B). A fee of no more than $25 may be charged. Within thirty days of receiving a request, the licensing authority must inform the person of its decision. The decision is not binding if the licensing authority determines that the person's convictions differ from what was included in the request. *Id.* Finally, SB 255 enacts an elaborate legislative sunset review procedure that will presumably include consideration of how licensing agencies treat individuals with a criminal record under the applicable "least restrictive alternative" standard.
- **Oklahoma** enacted a comprehensive revision of its occupational licensing laws, with certain generally applicable provisions contained in a new Section 4000.1 of Title 59, and conforming provisions added into specific licensing schemes (HB1373). Section 4000.1(b) provides that a person with a criminal history record may request an initial determination from the licensing agency of whether his or her criminal history record would potentially disqualify him or her from obtaining the desired license, including before obtaining any required education or training for such occupation. Section 4000.1(C) requires each state entity with oversight authority over a particular licensed occupation or profession must "list with specificity any criminal

offense that is a disqualifying offense for such occupation." Any disqualifying offense must "substantially relate" to the duties and responsibilities of the occupation and "pose a reasonable threat to public safety." "Substantially relate" is defined to mean the nature of the criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation." "Pose a reasonable threat" means "the nature of the criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation." Each entity must respond within 60 days and may charge no more than $95. In addition, the specific regulatory schemes of dozens of professions and occupations were amended by HB1373 to strike references to "good moral character" and "moral turpitude," and to include the two requirements of disqualification ("substantial relationship" and "reasonable threat") in the conjunctive.

- **Texas** enacted five separate laws affecting the occupational licensing process for people with a criminal record. The most comprehensive of the new laws deleted a provision in existing law that allowed disqualification based on a conviction unrelated to the occupation within five years of application, and otherwise made major modifications to the standards and procedures for obtaining a license in most occupations (other than the medical field) (HB 1342). *See* Tex. Occ. Code § 53.022, *et seq.* The law creates a new "restricted license" aimed at facilitating licensure in air-conditioning and electrical work for people returning to the community from prison. *See* §§ 51.357, 51.358. HB 1342 also tightens procedures and standards applied by licensing agencies and requires an agency to explain its reasons for denial in writing. Certain violent and sexual crimes, and drug felonies are excepted from the requirements of the law. A second law, prohibits licensing agencies affected by HB 1342 from considering arrests not resulting in conviction or placement on deferred adjudication community supervision (SB 1217). A third law modifies standards that apply to certain specific licenses, primarily by deleting overbroad categories of disqualification or antiquated references to moral integrity (podiatrist, midwife, electrician, animal breeder, auctioneer) (HB1531). Two narrower laws loosened restrictions on licenses for health care providers and massage therapists (HB 1865; HB 1899).
- **Utah** authorized preliminary determinations as to whether a criminal record would disqualify individuals from obtaining a license in an occupation or profession regulated by Title 58 of the Utah code (HB 90). Utah Code Ann. § 58-1-310. A fee may be charged (although, unlike most similar laws enacted in other states since 2018, no cap is established). Within 30 days of receipt of a completed application, the Division of Occupational and Professional Licensing must make a written determination, and the decision may include additional steps the individual could take to qualify for a license. *Id.* This new law also amends the definition of "unprofessional conduct" in § 58-1-501(2), based on which a license may be denied or restricted. Existing law defines "unprofessional conduct" to include, among other things, a plea or conviction for a crime

of moral turpitude or a crime that bears a "reasonable relationship" to safe or competent performance of the occupation. § 58-1-501(2). The new law replaces "reasonable relationship" with "substantial relationship."

- **West Virginia**, until 2019, had no general law regulating consideration of conviction in licensure, except a rule that that licensing authorities could not consider expunged convictions. W. Va. Code § 5-1-16a(b). Under a new law, licensing agencies, with a few exceptions (law, medicine, law enforcement, security guards), are subject to an elaborate scheme of regulations for consideration of criminal records (HB118). A new W. Va. Code § 30-1-24 addresses "Use of criminal records as disqualification of authorization to practice," and provides that boards may not disqualify based on conviction "unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure." §30-1-24(a). In addition, it discourages the use of the term "moral turpitude," unless the underlying crime satisfies the "rational nexus" standard. § 30-1-24 (b). Standards to determine "rational nexus" include seriousness of crime, passage of time and evidence of rehabilitation. It does not require the board to give reasons for denial, though it does permit a candidate who has been denied, to reapply after 5 years (with violent and sexual crimes subject to a longer period of disqualification). It also provides for a preliminary determination within 60 days (but no cap on application fee as with other similar laws). Finally, it reenacts specific licensing schemes that prohibit convictions within the last five years, deleting provisions requiring applicants to have "good moral character."

Other more incremental new licensing laws:

- **Delaware** generally applies a "substantial relationship" standard to occupational licensing ship, and also requires licensing boards to promulgate regulations specifically identifying the crimes that are "substantially related" to the profession or occupation. In 2019, additional amendments were made to further limit how criminal record may be considered in three licensing schemes: massage therapy (HB 7), plumbing/HVAC/refrigeration (HB 124) and electricians (SB 43). These licensing boards may not consider pending charges, or convictions more than 10 years old as "substantially related" if there have been no intervening convictions, excluding sexual offenses. The bills also reduce the mandated waiting period for consideration of waiver to three years for violent felonies, to two years for other felonies, and they reduce the level of disqualifying parole supervision.
- **Illinois** amended the Department of Professional Regulation Law, to define mitigating factors for the purposes of provisions concerning the licensure, certification, or registration of applicants with criminal convictions, and provide that mitigating factors are not a bar to licensure, but instead provides guidance for the Department when considering licensure, registration, or certification for an applicant with criminal history (HB2670). *See* 20 Ill. Comp. Stat. Ann. 2105/2105-131. The law is an evident effort to regulate the discretion of the DPR, which may have been treating mitigating factors as

mandatory and their absence as a basis for denial. A second law provides that a certificate of good conduct may be granted to relieve an eligible person of any employment, occupational licensing, or housing bar (rather than just an employment bar) (HB3580). *See* 730 Ill. Comp. Stat. Ann. 5/5-5.5-25. However, a certificate of good conduct does not limit any employer, landlord, judicial proceeding, administrative, licensing, or other body, board, or authority from accessing criminal background information; nor does it hide, alter, or expunge the record. The existence of a certificate of good conduct does not preclude a landlord or an administrative, licensing, or other body, board, or authority from retaining full discretion to grant or deny the application for housing or licensure.

- **Indiana** made minor changes to the sweeping 2018 overhaul of Indiana's occupational licensing scheme as it affects individuals with criminal records, including some minor changes for dietitians, dentists, dental hygienists, audiologists, and management appraisal companies (HB1569).
- **Iowa** narrowed barriers to licensing based on conviction for electricians, plumbers, mechanical trades and contractors, and barbers (SF 567). *See* Iowa Code Ann. §§ 103.6 *et seq.*, 105.10 *et seq.* The new law permits waiver of disqualification based on conviction that is deemed "related to" the occupation. It limits disqualification to specified sexual and violent offenses, and strikes provisions allowing reprimand, revocation, suspension based on any felony conviction. For barber licenses, provides that a person who completes a barbering apprenticeship training program while in state custody shall be allowed to take the licensing examination.
- **Montana** passed a joint resolution calling for an interim study of occupational licensing barriers based on criminal conviction (SJ 18).
- **New Hampshire** created two categories of criminal history information to be maintained by the state police records repository, one "confidential" and the other "public" (HB 637). *See* N.H. Rev. Stat. Ann. § 106:B-1. "Confidential criminal history information" (defined to include non-conviction records and records of convictions that have been annulled) will no longer be included in background checks for employment and licensing purposes.
- **New York** modified a variety of specific licensing schemes that imposed mandatory bars to licensure based on conviction, to make licensing decisions discretionary and specifically subject to the nondiscrimination provisions of Article 23-A (S1505 (2020 Budget), Part II, subpart A). Among the specific licenses affected are operation of games of chance, banking, education councils, real estate agent, notary public, work activity employer, and driving school.
- **Oregon** loosened standards for employment in care-giving positions, providing that in conducting fitness determinations pursuant to criminal records checks for certain employees in agencies providing direct care to vulnerable populations, state licensing agencies "may not consider" convictions more than 10 years old, non-conviction records (including diversions), marijuana convictions, DUI more than five years old (SB

725). *See* Or. Rev. Stat. § 181A.195. The new standards do not apply to certain specified serious offenses, or to positions in residential care centers, home health aides, childcare centers or workers, or EMTs.

- **Vermont** authorized a study of licensure to consider unnecessary barriers to licensure. H104

2. Employment

Compared to the profusion of occupational licensing legislation, 2019 was not a banner year for new fair employment laws, with no laws comparing to the comprehensive nondiscrimination schemes enacted by California and Nevada in 2017. Still, nine states and the federal government enacted a total of 13 new measures to promote employment opportunities for people with a criminal record.

Most of the new 2019 laws (like those in 2018) continue the expansion of so-called "ban-the-box" laws in public and private employment. The most significant of these laws in terms of scope and likely impact was the extension of limits on application-stage inquiries into criminal record to **federal** agency employers and federal contractors as part of the massive year-end Defense Authorization Act of 2020. When this law takes effect in December 2021 (two years after its enactment), covered employers will be prohibited from inquiring into an applicant's criminal record until a conditional offer of employment has been made, and the law will also preclude making inquiry of individuals seeking federal contracts and grants.

Two states for the first time enacted state-wide ban-the-box laws applicable to public employment (**Maine** and **North Dakota**), while two other states that already covered public employment extended their laws to private employers **(Colorado** and **New Mexico**). This brings the total of states with any ban-the-box law to 35 plus D.C., and the number of states with ban-the-box laws applicable to private employers to 13.

The National Employment Law Project keeps a running tab of new "ban-the-box" laws, and reported in July 2019 that 35 states and more than 150 municipal and county ordinances now limited criminal background checks at the application stage. In addition, NELP's fact sheet on the Fair Chance to Compete Act of 2019 is an excellent summary of the provisions and likely impact of the new federal law.

The only 2019 enactment that directly prohibits consideration of criminal record in employment is **Illinois'** extension of its Human Rights Act to bar employers and housing providers from considering arrests not resulting in conviction and juvenile adjudications. (This law already applied to juvenile and sealed/expunged records.

Its provisions were also extended for the first time to housing discrimination, as described in Section VI.) Since 2019 was also a year that saw doubt cast on the legality of the EEOC's extension of Title VII of the Civil Rights Act of 1964 to cover employment discrimination based on criminal record, more states may step up in coming years. As of the end of 2019, only four states (California, Hawaii, New York, and Wisconsin) include criminal record discrimination in their general fair employment schemes, and all but California's law date from the 1970s. Colorado, Connecticut, and Nevada have, like Illinois, more recently prohibited some employers from considering certain criminal records, but those prohibitions are not integrated into a broader nondiscrimination law.

Significant employment laws:

- **Federal** agencies and contractors were for the first time directly regulated by a fair employment law through the Fair Chance to Compete for Jobs Act of 2019, enacted as part of the National Defense Authorization Act of 2020 (S.1790). This law, long sought-after by the advocacy community, amends Titles 2, 5 and 28 of the U.S. Code to prohibit employers in all three branches of the federal government, and private-sector federal contractors, from asking about job applicants' arrest and conviction record until a conditional offer of employment has been extended. The Act's "ban the box" prohibition on pre-offer inquiries extends to records that have been "sealed or expunged pursuant to law," and sealed records of juvenile adjudications. 5 U.S.C. §§ 9201(4)(B) and (C), 9206. Certain types of employment would be excepted, including employment that otherwise requires inquiry into criminal history, and employment in the military, in law enforcement, and in national security. The Director of OPM is permitted to designate additional exemptions, including positions that involve "interaction with minors, access to sensitive information, or managing financial transactions." § 9202(B) and (C). The law contains provisions for enforcement and sanctions. In additional to extending ban-the-box requirements to employment on federal contracts, including defense contracts, it would also prohibit agency procurement officials from asking persons seeking federal contracts and grants about their criminal history, until an "apparent award" has been made. Post-offer, it would appear that non-conviction records could continue to be the subject of inquiry by federal hiring and contracting authorities, as well as any records that have been sealed or expunged – but only if they are otherwise available to criminal justice agencies for background checks. The Act will become effective two years after enactment, or December 28, 2021.
- **Colorado** extended a ban-the-box requirement to private employers, making Colorado the 13th state to do so (HB 1025). *See* Colo. Rev. Stat. § 8-2-130. This law prohibits inquiry into criminal history on an "initial" application form, but a broad exception allows employers to review an applicant's publicly available criminal history report at any time. Compare Colorado's law regulating consideration of criminal records in public

employment, which requires that an applicant be a "finalist" or that an applicant receive a "conditional offer of employment" before public employers may perform a background check, Colo. Rev. Stat. § 24-5-101(3)(b). HB 1025 also lacks language analogous to Colorado's public employment law that requires employers to exclude non-convictions, arrests, pardons, expunged and sealed records, and orders for collateral relief from consideration when making hiring decisions. As a result, the law leaves room for private employers to deny employment merely for an arrest or a charge that does not result in a conviction, or for records where a person has obtained judicial or executive relief. The new law includes enforcement provisions that authorize the Department of Labor and Employment to investigate complaints and impose civil penalties for violations. The law does not apply to certain positions that federal, state, or local law or regulations forbid employing individuals with a specific criminal history, or where an employer is required by law to conduct a criminal history background check for the position, or if the position is designated to participate in a government program to encourage employment of people with criminal histories. HB 1025 has an effective date of August 2, 2019, and the law includes a two-year phase-in period for its provisions: (1) beginning on September 1, 2019, the prohibitions on consideration of criminal records will apply to private employers with 11 or more employees; and (2) beginning on September 1, 2021, the provisions will apply to all private employers.

- **Illinois** amended its Human Rights Act to broaden the category of criminal records that may not be used to deny employment. As amended, the Act prohibits inquiries into or use of an "arrest record," defined as "an arrest not leading to a conviction, a juvenile record, or criminal history record information ordered expunged, sealed, or impounded" (SB1780). *See* 775 Ill. Comp. Stat. Ann. 5/1-103 through 5/3-103. Previously the law covered only discrimination based on "the fact of an arrest" and expunged or sealed records. At the same time, this law does not prohibit use of criminal records obtained under federal or state laws requiring a background check, or under authority of the Illinois Criminal Records Act "in evaluating the qualifications and character of a prospective employee." SB 1780 for the first time extended its non-discrimination provisions to "real estate transactions" as well, as is discussed in the final section of this report.
- **Maine** enacted a prohibition on inquiries about an individual's criminal history on applications for employment for a position in state government, "except when, due to the nature and requirements of the position, a person who has a criminal history may be disqualified from eligibility for the position" (HP 133). The provision covers positions in the legislative, executive or judicial branch of State Government or a position with a quasi-independent state entity or public instrumentality of the State, but not "a school administrative unit, municipality, county or other political subdivision of the State." *See* Me. Rev. Stat. Ann. tit. 5, §792.
- **New Mexico** added a "ban-the-box" provision applicable to private employment, making New Mexico the 12th state to do so (SB 96). *See* N.M. Stat. Ann. § 28-2-3.1. Under this

law, an employer may not make a criminal history inquiry on the application, "but may take into consideration an applicant's conviction after review of the applicant's application and upon discussion of employment with the applicant." In addition, it expressly permits the employer to notify the public or an applicant that the law or the employer's policy would disqualify an applicant who has a certain criminal history from employment in specific positions with the employer. This law is substantially weaker than the provision that applies to public employment, which allows a background check only after an applicant has been selected as a finalist and prohibits consideration of records of arrest not resulting in conviction, and misdemeanor convictions (unless they involve "moral turpitude").

- **North Dakota** banned inquiries into or consideration of criminal history by public employers "until the applicant has been selected for an interview by the employer" (HB 1282). N.D. Cent. Code § 12.1-33 -05.1, *et seq.* (school districts are excluded). This does not apply to the department of corrections or to "a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process."

Other employment laws:

- **Arkansas** relaxed employment requirements for licensed school personnel with a conviction, if the conviction has been sealed, expunged, or pardoned, deleting a requirement that the conviction be more than ten years old (HB 1544). *See* Ark. Code § 6-17-410.
- **Colorado** created a second chance scholarship for youth previously committed to the division of youth services (SB 231). *See* Colo. Rev. Stat. § 8-2-130.
- **Illinois** authorized "workforce intermediaries" and lawyers providing pro bono services to individuals with disqualifying convictions applying for health care worker positions to initiate background checks and request a waiver (SB 1965). *See* 225 Ill. Comp. Stat. Ann. 46/15.
- **New Hampshire** limited inclusion of non-conviction and annulled records in background checks in the employment context. *See* entry in licensing section on HB 637, above.
- **New York** prohibited employment discrimination against persons whose criminal charges have been adjourned in contemplation of dismissal (S1505). *See* N.Y. Exec. Law § 296.
- **South Carolina** enacted a law generally tightening restrictions on employment of persons required to register as sex offenders, but also authorizing circuit courts to approve such a person's employment at any location where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors (S 595). S.C. Code § 63-13-1110.
- **Texas** required the corrections department to provide persons released from prison with documents to help with employment (HB 918). A second law makes a defendant

who is a veteran placed on community supervision for a misdemeanor offense eligible to participate in a veterans reemployment program, and to obtain an order of nondisclosure upon successful completion of the program (HB 714). Tex. Gov. Code § 501.0155; Tex. Code Crim. Proc. 43A.321.

IMMIGRATION CONSEQUENCES

In 2019, four states took steps enabling non-citizens charged with crimes to avoid deportation based on sentence or guilty plea. **Colorado, New York,** and **Utah** capped prison sentences for misdemeanors at 364 days, to avoid mandatory deportation based on a one-year prison sentence, with the first two states giving the law retroactive effect. New York also restricted the dissemination of certain criminal record information to federal immigration authorities. **Oregon** revised its law on deferred judgments to prohibit guilty pleas that would trigger deportability. Oregon also, along with **Nevada**, regulated the questioning of criminal defendants or detained individuals about their immigration status.

- **Colorado** passed three laws aimed at mitigating the immigration consequences of conviction. The first two were intended to avoid mandatory deportation for any crime sentenced to one year or more in prison. *See* 8 U.S.C. § 1227(a)(2). To avoid this consequence, Colorado reduced the maximum jail sentence for various offenses from one year to 364 days. (HB 1148; HB 1263). Colorado also authorized individuals to withdraw guilty pleas where they had pled guilty pursuant to a deferred adjudication or drug offense dismissal scheme, and thereby unknowingly exposed themselves to immigration consequences (federal immigration law treats such pleas as convictions, even though state law may not, *see* 8 U.S.C. §§ 1101(a)(48)(A), 1227(a)(2)) (SB 30). *See* Colo. Rev. Stat. § 18-1-410.5.
- **New York** not only capped misdemeanor penalties at 364 days, but it gave the provision retroactive effect by authorizing resentencing in cases where the penalty originally imposed would result in "severe collateral consequences." (S 1505). *See* N.Y. Penal Law § 70.15(1-a). In addition, New York barred access by federal immigration authorities to some motor vehicle records, which may include criminal record information (A3675).
- **Utah** reduced the maximum prison term for misdemeanors to "one year with a credit for one day," but made no provision for retroactive application (HB 244). *See* Utah Code. Ann § 76-3-204.
- **Oregon** removed a guilty plea requirement from the controlled substances diversion statute, making this benefit available to non-citizens without exposing them to deportation (HB 3201). The law specifically provides that "[e]ntering into a probation agreement does not constitute an admission of guilt" and is "not sufficient to warrant a finding or adjudication of guilt by a court." *See* Or. Rev. Stat. § 475.245. As noted in the diversion section, however, the bill added a provision requiring defendants to agree to

pay restitution to victims and court-appointed counsel fees as a condition of participation, with no provision for waiver. Another new Oregon law prohibits a criminal court from inquiring about a defendant's immigration status, and requires the court to allow a defendant additional time to consider a plea after being informed of immigration consequences (HB 2932). *See* Or. Rev. Stat. § 135.385. In 2017, Oregon limited sentences for misdemeanors to 364 days to avoid deportation (much as Colorado, New York and Utah did this year).

- **Nevada** passed a law prohibiting anyone from questioning a person in a jail or other detention facility about their immigration status, unless they first informed the detainee of the purpose of the questioning (AB 376).

In addition**, Indiana** reduced selected misdemeanors to non-criminal civil infractions, taking them out a criminal category, and avoiding immigration consequences (SB 336).

OTHER RELIEF MEASURES

1. Driver's License Suspension

Six states repealed laws mandating suspension or loss of a driver's license for non-driving offenses or for failure to pay court costs:

- **Mississippi** (HB 1352) and **New York** (S 1505) repealed provisions making loss of a driver's license a mandatory penalty for a drug crime.
- **Montana** (HB 217) and **Virginia** (HB 1700) repealed laws mandating loss of a driver's license for failure to pay court costs.
- **New Jersey** addressed both of these issues, repealing provisions mandating suspension of driver's licenses for conviction of drug and other non-driving crimes, for failure to pay court debt, and for failure to pay child support (S1080).
- **Florida** modified or deleted provisions for driver's license suspension or revocation for underage tobacco and alcohol sales or consumption, misdemeanor theft, and drug crimes (HB 7125). Fla. Stat. §§ 569.11, 877.112, 562.11, 562.111, 812.0155, 322.055, 322.056.

In addition, **Minnesota** authorized cities and counties to create a driver's license reinstatement diversion program (SF 8).

2. Housing discrimination

Illinois extended two laws, including its Human Rights Law, to bar private parties' reliance on certain criminal records to deny housing. Previously both laws applied only to employment.

- **Illinois** barred housing discrimination through an amendment to its Human Rights Law to prohibit discrimination based on "arrest record" in any "real estate transaction," including both rental and sale of real property. The term "arrest record" was defined to include non-conviction records, juvenile adjudications, and sealed or expunged convictions. (SB1780). *See* 775 Ill. Comp. Stat. Ann. 5/1-103 through 5/3-103. (This same enactment also extended the law's employment discrimination provisions to non-conviction records, since the other categories of records were already covered.)
- **Illinois** also extended the effect of its certificate of good conduct to lift mandatory licensing and housing bars, in additional to employment bars. (SB 3580). However, a certificate of good conduct does not limit any employer, landlord, judicial proceeding, administrative, licensing, or other body, board, or authority from accessing criminal background information; nor does it hide, alter, or expunge the record. Nor does the existence of a certificate of good conduct does not preclude a landlord or an administrative, licensing, or other body, board, or authority from retaining full discretion to grant or deny the application for housing or licensure.

3. Pardon procedure

Nevada and **South Dakota** took steps to further streamline their already productive pardon systems:

- The **Nevada** legislature proposes to repeal a requirement in the state constitution that the governor must approve all clemency grants by the Board of Pardons Commissioners, on which the governor sits as a member (SJR 1A). This proposal, which also requires the Board to meet at least quarterly, must be approved by popular vote in 2020.
- The **South Dakota** legislature authorized a hearing panel of the Board of Pardons to make clemency recommendations to the governor, rather than the entire Board as under preexisting law. (HB 1005). *See* S.D. Codified Laws §§ 24-13-4.6, 24-15A-10, 24-15A-11.

4. Miscellaneous relief provisions

Among the more notable miscellaneous collateral consequences provisions enacted in 2019 is **Utah's** new law giving courts authority to terminate sex offender registration obligations, and loosening restrictions on driver's licenses for people on the registry, along with Tennessee's law authorizing relief from registration for successful completion of judicial diversion for certain offenses. Another interesting new law is **Connecticut's** establishment of a high-level study group to make recommendations on reducing various forms of discrimination based on criminal history.

- **Utah** loosened restrictions on persons required to register as sex offenders, including rescinding a requirement that they renew driver's licenses annually, expanding the number of offenses that qualify for removal from the registry after 5 years, and enacting a new provision authorizing the court to terminate registration after 10 years (HB298).
- **Tennessee** revised provisions governing the circumstances under which a person's name must be removed from the sex offender registry, to add successful completion of judicial diversion for certain offenses (HB 624). *See* Tenn. Code Ann. § 40-39-207.
- **Connecticut** established a "Council on the Collateral Consequences of a Criminal Record," composed of high-ranking members of the legislature and the executive branch and representatives of advocacy groups and unions, and charged it with making recommendations by February 1, 2020, for legislation to reduce or eliminate discrimination based on criminal history (HB 6921).
- **Louisiana** relaxed restrictions on fostering and adoption for people with convictions (HB 112).

CONCLUSION

The legislative landscape at the end of 2019, as described in this report, shows states continuing to experiment with different ways of avoiding or mitigating the collateral consequences of arrest and conviction. Limiting access to records through sealing and expungement remains the most prevalent and popular form of remedy, with a new focus on when and how record-clearing relief is delivered. Looking ahead to the 2020 legislative season, we expect more attention to removing access barriers like filing fees, satisfaction of court debt, adversary hearings, and lack of professional assistance. Most states do not provide for automatic expungement of non-conviction records, which would seem the easiest target of reform both in theory and practice. Automated record relief appears to be the wave of the future, but it will require simplification of eligibility criteria and improved records management systems by courts and repositories to facilitate development of algorithms, as well as better coordination of state and federal records systems.

In addition, many states still do not authorize courts to defer conviction dispositions, at least if the prosecutor does not agree. Many prosecutors seem out of step with the philosophy animating record reform in legislatures (although there is a growing "progressive prosecutors" movement that recognizes how important reintegration is to public safety).

In the coming year, elimination of bars to occupational licensing will surely continue to be a top legislative priority, given its bipartisan popularity. Other related issues that should be addressed are the extension of state fair employment and housing laws to protect people with a criminal record, and elimination of abusive background checking practices.

Finally, the push for restoration of voting rights is likely to continue, at a minimum, to extend the franchise to all persons living in the community, without regard to whether they have completed the terms of their sentence or paid off all court-ordered financial obligations.

In sum, the reform trajectory established in 2019 makes us optimistic that 2020 will be an even more productive year in the progress toward reintegration of people with a criminal record.

[1] *See* CCRC annual reports on new legislation describing new restoration and record relief laws from 2013 through 2018, accessible at http://ccresourcecenter.org/resources-2/resources-reports-and-studies/: *Reducing Barriers to Reintegration: Fair chance and expungement reforms in 2018* (2019)*; Second Chance Reforms in 2017: Roundup of new expungement and restoration Laws* (2018)*; Four Years of Second Chance Reforms, 2013 – 2016: Restoration of Rights & Relief from Collateral Consequences* (2017).

[2] *See supra*, note 1.

[3] *See, e.g.,* J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, __ HARV. L. REV. __, forthcoming (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353620; Colleen Chien, *The Second Chance Gap,* MICH. L. REV., forthcoming (rev: March 23, 2019), https://ssrn.com/abstract=326533.

[4] In this report we use the terms "automated" and "automatic" interchangeably to describe record relief provisions that do not require individual petitions or even an individual request. While many states have enacted relief that is mandatory upon a request and determination of eligibility, we do not consider this process "automatic" in the same way as a process designed to obviate access barriers entirely.

[5] It bears noting that a number of states already provide for sealing of non-conviction and juvenile records without requiring the subject to apply for relief. *See* 50-state comparison chart on Judicial Expungement, Sealing and Set-aside," CCRC Restoration of Rights Project, http://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/.

[6] *See* Model Law on Non-Conviction Records (Collateral Consequences Res. Ctr. 2019), http://ccresourcecenter.org/model-law-on-non-conviction-records/.

[7] *See* Beth Avery, Maurice Ensellem, & Han Lu, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions*, National Employment Law Project (Dec. 2019), https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v4-2019.pdf;

[8] *See* Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, National Employment Law Project (last accessed: Feb. 16, 2019, 12:06pm), https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/; Model Collateral Consequences in Occupational Licensing Act (Institute for Justice, Oct. 31 2019), https://ij.org/activism/legislation/model-legislation/model-collateral-consequences-reduction-act/.

[9] *See, e.g.,* Governor Murphy's statement accompanying his "conditional veto" in August 2019 of an early version of the bill that would become the Clean Slate law that he signed on December 19, 2019. In that statement, after applauding the legislature's extension of eligibility for petition-based expungement, he noted the example set by Pennsylvania's own Clean Slate law the year before:

> "Only those individuals who actually apply for an expungement, meaning those who are aware of this potential remedy and have the wherewithal to navigate the legal process or afford an attorney to assist them, would be able to seek the relief afforded by the expungement process. This method is not the most efficient means for clean slate expungement, nor will it deliver relief to all eligible individuals who need it. To avoid this shortcoming, we should follow the lead of Pennsylvania and undertake the necessary steps to establish an automated, computerized expungement system that would allow people with multiple convictions for less serious, non-violent crimes who maintain a clean record for ten years to clear their criminal histories without having to hire a lawyer or wade through a paperwork-intensive process. Our system is not set up to do this now, and undertaking this task will require buy-in and

> commitment from all three branches of government. On behalf of the executive branch, that is a commitment I am more than willing to make."

See https://www.state.nj.us/governor/news/news/562019/docs/S3205CV.pdf. Senator Sandra Cunningham, Senate President Sweeney and Speaker Coughlin were particularly effective partners in the negotiations that resulted in the bill that was approved by the legislature in December.

[10] *See* 50-state comparison chart on Loss and Restoration of Civil Rights & Firearms Privileges, CCRC Restoration of Rights Project, http://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/.

[11] In 2018, New York's governor issued the first in a series of executive orders under his pardon power restoring the vote to individuals on parole, and Louisiana passed a law allowing people to register if they have been out of prison for at least five years. *See* the New York and Louisiana profiles from the CCRC Restoration of Rights Project.

[12] A coalition of individuals and organizations supporting Amendment 4 has brought several federal court challenges to the legislation as violating the U.S. constitution, arguing that by disqualifying persons with outstanding LFOs, even if a person has no ability to pay and even if the court has converted an LFO to a civil lien, the law violates the Equal Protection and Due Process guarantees of the Fourteenth Amendment. They also argue that the law burdens the fundamental right to vote, is an unconstitutional poll tax, infringes on free speech and association, and was enacted with a racially discriminatory purpose. In October, a federal judge issued a preliminary injunction, holding that Florida cannot deny the plaintiffs their "right to vote *so long as* the state's only reason for denying the vote is failure to pay an amount the plaintiff is genuinely unable to pay." However, that ruling only applies to 17 plaintiffs in the case, and the judge deferred addressing several other issues until after trial later this year, giving the legislature an opportunity to address inability to pay. Florida appealed that ruling to the Eleventh Circuit, which has heard oral argument and is expected to render a decision later this year. The coalition behind Amendment 4 is also raising money to help people pay off their debts.

[13] There is no single accepted definition of the various terms used to describe record relief. While the term "expungement" is commonly understood to mean destruction or deletion of the record, such that many assume that "sealing" is a functionally distinct less thorough form of relief, the two terms are used interchangeably in many states' laws. More recently, the term "record-clearance" has been used to describe the effect of record relief, but that term also does not come with a neat functional definition. The need to find common ground on terminology is tremendously important if we are to establish a firm foundation for record reform. The Model Law on Non-Conviction Records, developed by a group of practitioners and scholars under CCRC's leadership, adopts a definition of the term "expungement" that balances strict limits on access to promote reintegration with the legitimate needs of law enforcement, researchers, and individual subjects of records. Under § 1(c)(3) of the Model Law, the term "expunge" is defined to mean "sequestration," which makes the record unavailable unless disclosure is authorized by law or court order, but does not destroy it:

> In rejecting destruction, the model law recognizes society's significant interests in preserving the records of arrests and criminal proceedings—including those records to which access is restricted—for a variety of purposes, including scholarly research, government accountability, oversight, and compliance. In addition, the subject of a record often has an interest in maintaining access to their own record. For example, non-citizens in removal proceedings may be irreparably harmed if they cannot obtain a certified copy of their record in order to demonstrate that an arrest or charge did not result in conviction. Accordingly, the model law does not provide that a record should be completely deleted from a records system or otherwise destroyed. (Even in state relief schemes that define expungement relief to include destruction, commonly at least one copy of the record is still preserved.)

Model Law on Non-Conviction Records (Collateral Consequences Res. Ctr. 2019), http://ccresourcecenter.org/model-law-on-non-conviction-records/ (footnote omitted).

[14] *See* Prescott & Starr, *supra* note 3.

[15] *See supra* note 13.

[16] According to Sharon Dietrich, one of the architects of the Pennsylvania Law, when the statutory implementation schedule is complete in mid-2020, access to more than 32 million non-conviction and misdemeanor records held by the Pennsylvania courts and state police will have been closed off to the public. Extensive cooperation between the Commonwealth's records custodians was necessary to make this law operational, and to implement a system of notifying those whose records had been sealed. Pennsylvania's automated process, which will be completed for older cases in mid-June 2020, is described in detail in the Pennsylvania profile from the Restoration of Rights Project.

[17] *See supra*, note 13. 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. *See* 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/ACT178-Report_.pdf.

APPENDIX: NEW LAWS BY STATE

Jump to:

State	Issue	Bill	Summary
AL	Occupational Licensing	SB163	Alabama, until 2019, had no general law regulating consideration of conviction in occupational licensure. SB163 created a process modeled on the Uniform Collateral Consequences of Conviction Act, whereby a person who would otherwise be disqualified by law from obtaining a particular occupational license may obtain from the circuit court an "Order of Limited Relief" to dispense with that mandatory penalty and allow their consideration by the licensing board on the merits (not yet codified). People with federal offenses are eligible, as are people with out-of-state convictions who have received a similar certificate in the jurisdiction of conviction. A person may not be serving a prison sentence with more than six months left to serve, nor can they have pending charges. There is a filing fee of $100 that may not be waived, and an onerous process of document production – but no standards are specified, and the court's order is appealable.
AR	Employment	HB1544	HB1544 relaxed employment requirements for licensed school personnel with a conviction, if the conviction has been sealed, expunged, or pardoned, deleting a requirement that the conviction be more than ten years old. *See* Ark. Code § 6-17-410.
AR	Firearms	HB1678	HB1678 makes minor revisions to conviction-related criteria for license to carry a concealed handgun. *See* Ark. Code. Ann. § 5-73-309.
AR	Occupational Licensing	SB451	SB451, Arkansas' first major amendment to its occupational licensing law in ten years, established standards for consideration of felonies in licensing, building on a 2010 law. For a long list of specific felony offenses, convictions may not be considered that have been sealed or pardoned, or if five crime-free years have passed, and disqualification may be waived upon consideration of specified factors. *See* Ark. Code. Ann. § 17-2-102. Specified serious violent and sexual offenses are excepted. Licensing boards may not use "vague" or "generic" terms, including "moral turpitude" and "good character" or consider arrests that lack a subsequent conviction. The bill also amends specific licensing schemes.
AR	Record Relief	HB1831	HB 1831 eliminates the 5-year waiting period for certain felonies to become eligible for record sealing and eliminates the 60-day waiting period for misdemeanors and infractions. *See* Ark. Code. Ann. § 16-90-1406. It also eliminates the $50 filing fee for petitions to seal. § 16-90-1419. This bill declares itself as "the first step in a multi-step process to attempt to make the sealing of certain records of a person's criminal history that involve nonviolent and nonsexual offenses an automatic operation."
AR	Voting Rights	SB573	SB573 restores voting rights for juveniles prosecuted as adults by making them eligible for discharge from parole after five years without incident, upon which their voting rights are restored. *See* Ark. Code Ann. § 16-93-622.
AZ	Occupational Licensing	HB2660	The third occupational licensing bill in past three years, HB2660 further amends standards for consideration of criminal record to highlight the public safety standard, prohibit consideration of most felonies after 7 years even if they have not been set-aside, and requiring dangerous felonies to have been set aside. *See* Ariz. Rev. Stat § 41-1093.04.

State	Issue	Bill	Summary
AZ	Record Relief	HB2480	HB2480 expands eligibility for setting-aside convictions. Previously, a conviction was ineligible if there was a victim under age 15. This bill specifies that non-felonies with such victims are eligible. Ariz. Rev. Stat. § 13-907.
AZ	Voting Rights; Firearms	HB2080	HB 2080 substantially revises the laws relating to restoration of civil rights. For a first felony offense (state or federal), civil rights, other than those pertaining to firearms, are automatically restored upon completion of probation, or upon an unconditional discharge from imprisonment, and upon payment of any restitution. *See* Ariz. Rev. Stat. §§ 13-906, -907. A further requirement to pay fines as a condition of restoration was repealed by HB 2080, and those unpaid restitution is eligible for a judicial restoration procedure. This bill also revises the law on firearms restoration to authorize the sentencing court to restore rights to most people with felony convictions two years after completion of sentence. *Id.* Note that automatic restoration of civil rights for first offenses does not include restoration of firearms rights. People convicted of "serious" offenses must wait 10 years to regain firearms rights, and those convicted of "dangerous" offenses are permanently ineligible unless pardoned. *See* § 13-910.
CA	Diversion	SB 394	SB 394 authorizes the creation of pretrial diversion for primary caregivers of children, charged with a misdemeanor or nonserious felony offense, and not an offense against the cared-after child. *See* Cal. Penal Code § 1001.83.
CA	Jury Service	SB 310	SB 310 restores the right to jury service upon completion of sentence, including community supervision, but excluding persons required to register as a sex offender for a felony. *See* § Cal Code. Civ. Pro 203.
CA	Record Relief	AB 1076	AB 1076 creates a new process of automatic record relief for some convictions and non-conviction records. Eligibility for relief under the new automatic process is similar but not identical to eligibility under the existing petition-based process. The bill also limits disclosure of records that have been dismissed or sealed. The new law is effective on January 1, 2021, and its automatic relief has prospective effect only. *See* Cal. Penal Code §§ 851.93; 1203.425.
CA	Record Relief	AB 1394	AB 1394 prohibits the charging of a fee for sealing a juvenile record. *See* Cal. Welf. & Inst. Code § 781.1.
CO	Diversion	SB 211	SB 211 extends the mental health criminal justice diversion pilot program and mental health criminal justice grant program. *See* Colo. Rev. Stat. § 18-1.3-101.5.
CO	Employment	HB 1025	HB 1025 makes ban-the-box (prohibiting employers from inquiring about applicants' criminal histories until later in the hiring process) applicable to private employment, becoming the 13th state to do so. *See* Colo. Rev. Stat. § 8-2-130.
CO	Employment	SB 231	SB 231 creates a second chance scholarship for youth previously committed to the division of youth services. *See* Colo. Rev. Stat. § 8-2-130.
CO	Immigration	HB 1148	HB 1148 reduces the maximum sentence from one-year to 364 days for certain misdemeanors, to avoid immigration consequences.

State	Issue	Bill	Summary
CO	Immigration	SB 30	SB 30 provides procedures for courts to vacate guilty pleas, in order to avoid immigration consequences. This provision applies to pleas that have already been withdrawn pursuant to a deferred judgment or dismissal of charges, but may nonetheless carry immigration consequences. *See* Colo. Rev. Stat. § 18-1-410.5.
CO	Diversion, Immigration	HB 1263	HB reduces the maximum jail sentence for certain offenses from one year to 364 days for immigration purposes and creates the mental health criminal justice grant program. *See* Colo. Rev. Stat. § 18-1.3-101.5.
CO	Record Relief	HB 1275	HB 1275—along with HB 1335 and SB 8—repealed, reorganized, and reenacted Colorado's entire chapter on criminal records: major changes include shortened waiting periods and reduced filing fees for sealing less serious drug convictions; a significantly simplified process for sealing uncharged arrests and non-conviction records; expanded eligibility for conviction relief; expanded mandatory juvenile expungement; authority for judges to discontinue juvenile registration; and direction to a commission to take recommendations on automatic sealing and alternatives to incarceration for drug offenses. *See* Colo. Rev. Stat. §§ 24-72-701, *et seq.*
CO	Record Relief, Diversion	HB 1335	*See* HB 1275 summary, above.
CO	Record Relief	SB 8	*See* HB 1275 summary, above.
CO	Voting Rights	HB 1266	HB 1266 restored the vote to persons on parole supervision. *See* Col. Rev. Stat. §§ 1-1-104(49.3), 17-2-102(14), 1-2-101(3).
CT	Other	HB 6921	HB 6921 established a "Council on the Collateral Consequences of a Criminal Record," composed of high-ranking members of the legislature and the executive branch and representatives of advocacy groups and unions, and charged it with making recommendations by February 1, 2020, for legislation to reduce or eliminate discrimination based on criminal history.
DC	Record Relief	B22-0329	B22-0329 authorizes expungement for victims of human trafficking, including expungement and vacatur for convictions for all offenses except a list of ineligible serious offenses; expungement of non-conviction records for any offense. *See* D.C. Code §§ 18-1845 through 18-1847.
DE	Occupational Licensing	HB 7	Three bills limit how criminal record may be considered in three licensing schemes: massage therapy (HB 7), plumbing/HVAC/refrigeration (HB 124) and electricians (SB 43). These licensing boards may not consider pending charges, or convictions more than 10 years old as "substantially related" if there have been no intervening convictions, excluding sexual offenses. The bills also reduce the mandated waiting period for consideration of waiver to three years for violent felonies, to two years for other felonies, and they reduce the level of disqualifying parole supervision.
DE	Occupational Licensing	HB 124	*See* HB 7 summary, above.

State	Issue	Bill	Summary
DE	Occupational Licensing	SB 43	*See* HB 7 summary, above.
DE	Record Relief	HB 102	HB 102 authorizes pardon or vacatur and expungement of non-violent convictions for victims of human trafficking. *See* Del. Code. Ann. tit. 11, § 787.
DE	Record Relief	SB 37	Delaware, which previously only authorized convictions expungement for pardoned misdemeanors, enacted a dramatic expansion of record relief, making it mandatory for cases "terminated in favor of the accused" and certain less serious misdemeanors, and discretionary for more serious misdemeanors and eligible felonies. Mandatory relief is administered by the state records repository, while discretionary relief is administered by the courts, with variable waiting periods and limits on number of offenses. *See* Del. Code Ann. tit. 11, §§ 4372, *et seq.* Delaware's new law stops short of automating relief in "mandatory" cases, since people must apply to the repository before their cases will be considered.
DE	Record Relief	SB 45	SB 45 decriminalized youthful marijuana possession and made clear than prior convictions for such offenses can be expunged. *See* Del. Code. Ann. tit. 16, § 4764.
FL	Occupational Licensing, Record Relief, Diversion, Driver's Licenses	HB 7125	HB 7125 rewrites provisions on expungement and sealing of non-conviction records, provides for automation, *see* Fla. Stat. § 943.0595; enacts new provision authorizing expungement for lawful self-defense; requires licensing boards to post disqualifying offenses, § 943.0578; limits licensing boards' ability to deny based on criminal record, including a 5-year look-back provision for various occupations, including those for which individuals are trained in state prisons, § 455.213; puts in place a system of reporting for problem-solving courts; and modifies or deletes provisions for driver's license suspension or revocation for underage tobacco and alcohol sales or consumption, misdemeanor theft, and drug crimes, §§ 569.11, 877.112, 562.11, 562.111, 812.0155, 322.055, 322.056.
FL	Record Relief	HB 7025	HB 7025 rolled-back a scheduled repeal of the confidentiality of treatment court records.
FL	Voting Rights	SB 7066	In the wake of a 2018 ballot initiative to restore the right to vote to people convicted of felonies, other than murder or sexual offenses, upon "completion of all terms of sentence including parole or probation," SB 7066 (among other things) interprets "completion of sentence" to include payment of fines, fees, and court costs (SB 7066). *See* Fla. Stat. § 98.0751
HI	Record Relief	HB1383	HB1383 decriminalizes and provides for expungement of marijuana possession of three grams or less. *See* Haw. Rev. Stat. § 706-622.5.
HI	Record Relief	SB1039	SB1039 authorizes vacatur of prostitution offenses after three crime-free years, without requiring the defendant to establish victim status. See Haw. Rev. Stat. § 712-1209.6.

State	Issue	Bill	Summary
IA	Occupational Licensing	SF 567	SF 567 narrows barriers to licensing based on conviction for electricians, plumbers, mechanical trades and contractors, and barbers. *See* Iowa Code Ann. §§ 103.6 *et seq.*, 105.10 *et seq.* The new law permits waiver of disqualification based on conviction that is deemed "related to" the occupation. It limits disqualification to specified sexual and violent offenses, and strikes provisions allowing reprimand, revocation, suspension based on any felony conviction. For barber licenses, provides that a person who completes a barbering apprenticeship training program while in state custody shall be allowed to take the licensing examination.
IA	Record Relief	SF 589	Iowa enacted its first authority to expunge conviction records, covering certain misdemeanors, with an eight-year waiting period as well as other eligibility requirements. *See* Iowa Code § 901C.3. A person may be granted only one expungement, unless multiple charges arose from one incident.
ID	Diversion	H78	H78 authorizes diversion in DUI cases. *See* Idaho Code Ann. §19-3509.
IL	Employment, Occupational Licensing	SB1965	SB 1965 authorizes "workforce intermediaries" and lawyers providing pro bono services to individuals with disqualifying convictions applying for health care worker positions to initiate background checks and request a waiver. *See* 225 Ill. Comp. Stat. Ann. 46/15.
IL	Employment, Housing	SB1780	SB 1780 amends the Human Rights Act to broaden the category of criminal records that may not be used to deny employment. As amended, the Act prohibits inquiries into or use of an "arrest record," defined as "an arrest not leading to a conviction, a juvenile record, or criminal history record information ordered expunged, sealed, or impounded." *See* 775 Ill. Comp. Stat. Ann. 5/1-103 through 5/3-103. Previously the law covered only discrimination based on "the fact of an arrest" and expunged or sealed records. At the same time, this law does not prohibit use of criminal records obtained under federal or state laws requiring a background check, or under authority of the Illinois Criminal Records Act "in evaluating the qualifications and character of a prospective employee." SB 1780 also bars housing discrimination based on "arrest record" in any "real estate transaction," including both rental and sale of real property. The term "arrest record" is defined to include non-conviction records, juvenile adjudications, and sealed or expunged convictions. (This same enactment also extended the law's employment discrimination provisions to non-conviction records, since the other categories of records were already covered.)
IL	Occupational Licensing	HB2670	HB2670 amends the Department of Professional Regulation Law, to define mitigating factors for the purposes of provisions concerning the licensure, certification, or registration of applicants with criminal convictions, and provide that mitigating factors are not a bar to licensure, but instead provides guidance for the Department when considering licensure, registration, or certification for an applicant with criminal history. *See* 20 Ill. Comp. Stat. Ann. 2105/2105-131. The law is an evident effort to regulate the discretion of the DPR, which may have been treating mitigating factors as mandatory and their absence as a basis for denial.

State	Issue	Bill	Summary
IL	Occupational Licensing, Housing	HB3580	HB3580 provides that a certificate of good conduct may be granted to relieve an eligible person of any employment, occupational licensing, or housing bar (rather than just an employment bar). See 730 Ill. Comp. Stat. Ann. 5/5-5.5-25. However, a certificate of good conduct does not limit any employer, landlord, judicial proceeding, administrative, licensing, or other body, board, or authority from accessing criminal background information; nor does it hide, alter, or expunge the record. The existence of a certificate of good conduct does not preclude a landlord or an administrative, licensing, or other body, board, or authority from retaining full discretion to grant or deny the application.
IL	Record Relief	HB1438	HB1438 and SB 1557 authorize the automatic expungement of arrests and convictions for "minor cannabis offenses" (not more than 30 grams, no enhancements, and no violence); and petition-based expungement for more serious marijuana convictions. See Ill. Comp. Stat. Ann. 2630/5.2.
IL	Record Relief	SB1557	*See* HB1438 summary, above.
IL	Record Relief	SB482	SB482 extends a pilot program in Cook County for waiving filing fees for sealing or expungement of non-convictions
IL	Voting Rights	HB2541	The Re-Entering Citizens Civics Education Act provides for peer-led programs to teach civics to prisoners who are soon to be released.
IL	Voting Rights	SB2090	SB2090 facilitates voting by mail for eligible persons detained in county jails and provides information about voting upon release from jail and prisons.
IN	Immigration	SB 336	SB 336 reduces selected misdemeanors to non-criminal civil infractions, taking them out of a person's criminal history entirely.
IN	Occupational Licensing	HB 1569	HB1569 makes minor changes to the sweeping 2018 overhaul of Indiana's occupational licensing scheme as it affects individuals with criminal records, including some minor changes for dieticians, dentists, dental hygienists, audiologists, and management appraisal companies.
IN	Record Relief	SB 235	SB 235 specifies that records of a collateral actions (i.e. forfeiture) related to an expunged criminal record is also subject to expungement.
KY	Record Relief	SB 57	SB 57 allows discretionary expungement of Class D felonies with a ten-year waiting period, allows a person against whom charges have been dismissed with or without prejudice to petition for expungement, sets time limits for filing petitions, with a five-year eligibility waiting period in cases dismissed without prejudice, and amends the requirement for a certificate of eligibility to apply only if a petition or application seeks expungement of a conviction. *See* Ky. Rev. Stat. Ann. §§ 431.073, .076, .079. The new law reduced the filing fee from $500 to $50, but it added an "expungement fee" of $250 payable upon granting relief.
KY	Voting Rights	Exec. Order	The new governor, Gov. Andy Beshear, issued an executive order restoring the vote and eligibility for office to an estimated 140,000 individuals convicted of non-violent felonies who have completed their sentences.
LA	Employment	HB 112	HB 112 relaxes restrictions on fostering and adoption for people with convictions.

State	Issue	Bill	Summary
LA	Record Relief	HB 9	HB 9 provides that only one filing fee is required in an application to expunge multiple offenses resulting from the same arrest. *See* La. Code Crim. Proc. Ann. Ch. 34. Art. 983.
LA	Record Relief	SB 98	SB 98 makes entitlement to a first offender pardon the basis for filing a motion for expungement, except for violent or sexual crimes. *See* La. Code Crim. Proc. Ann. Ch. 34. Art. 978. Under the state constitution, pardon is automatic for persons convicted of non-violent crimes, or a handful of crimes involving minor violence.
MD	Jury Service	SB236	SB236 lowers the conviction-related bar to jury eligibility. *See* Md. Code Ann., Cts. & Jud. Pro. Code § 8-103(b)(4). Previously, people were ineligible to serve on a jury if they had received a sentence of more than six months of imprisonment, and were not pardoned, or had a pending charge for an offense punishable by more than six months imprisonment; under the new law, these six-month periods are extended to one year.
MD	Occupational Licensing	HB22	HB22 prohibits occupational licensing boards from denying an application based solely on a non-violent conviction if 7 years or more has passed since completion of sentence without other charges, even if the agency determines that the conviction is directly related to the occupation and even if "issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public," unless the person is required to register as a sex offender. *See* Md. Crim. Proc. Code § 1-209(f). Drug convictions are specifically subject to a similar statutory policy and standards, although there is no exception for crimes involving violence. *See* Md. State Gov't Code § 10-1405(b).
MD	Record Relief	HB259 (SB394)	HB259 authorizes expungement of misdemeanor boating offenses.
ME	Employment	HP 133 / LD 170	HP 133 prohibits inquiries about an individual's criminal history on applications for employment for a position in state government, "except when, due to the nature and requirements of the position, a person who has a criminal history may be disqualified from eligibility for the position." The provision covers positions in the legislative, executive or judicial branch of State Government or a position with a quasi-independent state entity or public instrumentality of the State, but not "a school administrative unit, municipality, county or other political subdivision of the State." *See* Me. Rev. Stat. Ann. tit. 5, §792.
MN	Diversion, Driver's Licenses	SF 8	SF 8 authorizes cities and counties to create driver's license reinstatement diversion programs.
MO	Diversion	HB 547	HB 547 creates a veteran treatment court.
MO	Record Relief	SB 1	SB 1 expands eligibility for expungement under the 2018 expungement law, striking several minor property crimes from the list of ineligible offenses. *See* Mo. Rev. Stat. § 610.140.

State	Issue	Bill	Summary
MS	Driver's Licenses, Record Relief, Diversion	HB 1352	HB 1352 extends sealing to more felonies; repeals the law mandating loss of a driver's licenses upon conviction of a drug offense; reorganizes the system of specialized problem-solving courts (including drug courts, mental health courts, and veterans' courts) as "intervention courts"; and creates an Intervention Courts Advisory Committee responsible for coordinating the policies and operation of these courts through the State. *See* Miss. Code Ann. §§ 99-19-71, 9-23-1, 9-23-9.
MS	Occupational Licensing	SB 2781	Mississippi previous had no general law regulating consideration of conviction in occupational licensing. Under the Fresh Start Act of 2019, no one may be disqualified from engaging in any licensed occupation "solely or in part because of a prior conviction of a crime, unless the crime for which an applicant was convicted directly relates to the duties and responsibilities for the licensed occupation" (not yet codified). Only law licensure is excepted. Under Section 4, licensing authorities shall not include in their rulemaking "vague or generic terms including, but not limited to, 'moral turpitude,' 'any felony,' and 'good character.'" In determining whether a conviction is "directly related," the licensing authority shall make its determination by a clear and convincing standard of proof based on such factors as the seriousness of the crime, the passage of time, and evidence of rehabilitation. The law provides for a preliminary determination of whether the individual's criminal record will disqualify them from obtaining a license, for which no more than $25 may be charged. If a license is denied in whole or in part because of conviction, the licensing authority shall notify the individual in writing of the reasons and their right to a hearing. If an applicant's criminal history does not require a denial of a license under applicable state law, "any written determination by the licensing authority that an applicant's criminal conviction is directly related to the duties and responsibilities for the licensed occupation must be documented in written findings for each of the [applicable factors] "by clear and convincing evidence sufficient for a reviewing court." In any administrative hearing or civil litigation, "the licensing authority shall carry the burden of proof on the question of whether the applicant's criminal conviction directly relates to the occupation for which the license is sought."
MS	Record Relief	HB 940	HB 940 authorizes expungement of convictions for larceny of motor fuel.
MT	Driver's Licenses	HB 217	HB 217 repeals a law mandating loss of a driver's license for failure to pay court costs.
MT	Occupational Licensing	SJ 18	SJ 18 calls for an interim study of occupational licensing barriers for criminal conviction.
MT	Record Relief	HB 543	HB 543 allows district courts to expunge multiple misdemeanor convictions from different counties at a single proceeding. However, a person remains eligible for only one expungement order during their lifetime. *See* Mont. Code Ann. § 46-18-1101.

State	Issue	Bill	Summary
NC	Occupational Licensing	H770	North Carolina's general licensing non-discrimination law, enacted in 2013, prohibited occupational licensing boards from automatically disqualifying an individual based on a criminal record unless the board is otherwise authorized by law to do so. This law was substantially amended in 2019 to enhance both substantive and procedural protections for people with a record, and to extend its provisions to "state agency licensing boards" as well as "occupational licensing boards." HB770 amends N.C. Gen. Stat. § 93B-8.1 to impose a "direct relationship standard" for all licenses; to require a board to consider certain factors that before were discretionary, giving effect for the first time to a drug treatment program and Certificate of Relief; and to exempt only licenses governed by federal law. It provides for robust procedural protections for applicants, including written reasons in the event of a denial and an appeal procedure. It also specifies that individuals may at any time apply for a "predetermination" as to whether their record is "likely" to be disqualifying, a determination that is "binding" on the board in the event of a subsequent application. Finally, it requires each board to report annually on how many applications it received from people with a record, and how many were granted and denied.
NC	Record Relief	H198	H198 authorizes victims of human trafficking to obtain expunction for most nonviolent misdemeanor and low-level felony convictions that result from having been a victim, without waiting periods or other eligibility requirements. *See* N.C. Gen. Stat. § 15A-145.9.
NC	Record Relief	S413	S413 authorizes expungement of criminal court records when a case is remanded for juvenile adjudication.
ND	Employment	HB 1282	HB 1282 bans inquiries into or consideration of criminal history by public employers "until the applicant has been selected for an interview by the employer." *See* N.D. Cent. Code § 12.1-33 -05.1, *et seq.* (school districts are excluded). This does not apply to the department of corrections or to "a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process."
ND	Record Relief	HB 1256	HB 1256 is North Dakota's first general authority for sealing conviction records: it authorizes people with misdemeanor and most felony convictions to apply after a charge-free waiting period of three and five years, respectively, with certain exceptions. *See* N.D. Cent. Code §§ 12-60.1, *et seq.* People with violent offenses must wait ten years (coextensive with the period for firearms restoration). The court may grant the petition if it finds that the petitioner has completed the sentence, including payment of restitution, and has shown that "the benefit to the petitioner outweighs the presumption of openness of the criminal record," applying a multi-factor test. The court may dispense with the hearing if the prosecutor agrees.
ND	Record Relief	HB 1334	HB 1334 specifies that DUI convictions may be sealed after seven years.
NE	Diversion	LB595	LB595 authorizes restorative justice as a form or condition of diversion.

State	Issue	Bill	Summary
NE	Record Relief	LB 354	LB 354 enhances procedures for automatic sealing of juvenile records. *See* Neb. Rev. Stat. §§ 43-2,108.01 through 43-2,108.05.
NH	Record Relief	HB 399	HB 399 provides for annulment of arrests or convictions for marijuana possession of ¾ of an ounce or less (HB 399). *See* N.H. Rev. Stat. Ann. § 651:5-b.
NH	Record Relief, Occupational Licensing	HB 637	HB 637 created two categories of criminal history information to be maintained by the state police records repository, one "confidential" and the other "public." *See* N.H. Rev. Stat. Ann. § 106:B-1. "Confidential criminal history information" (defined to include non-conviction records and records of convictions that have been annulled) will no longer be included in background checks for employment and licensing purposes.
NH	Voting Rights	HB 486	HB486 revised the law disqualifying people with a conviction from holding public office, making the restriction applicable only during actual incarceration, so that it is now coincident with the period of felony disenfranchisement. *See* N.H. Rev. Stat. Ann. § 607-A:2(I). The bill also directs corrections officials to inform people leaving custody of their eligibility to register to vote.
NJ	Driver's Licenses	S1080	S1080 repeals provisions mandating suspension of driver's licenses for conviction of drug and other non-driving crimes, for failure to pay court debt, and for failure to pay child support.
NJ	Record Relief	A4154	A4154, New Jersey's clean slate law, directs the State to develop and implement a process by which all but certain convictions will be automatically made "inaccessible to the public" ten years after completion of the sentence imposed for the most recent conviction. Expungement will be immediate for non-conviction records at the time of disposition, including records of deferred adjudications. Finally, the same bill reduces indictable marijuana and hashish convictions either to disorderly offenses or makes them non-criminal, depending upon the amount of the drug involved, for purposes of immediate expungement. A task force was established to implement the automated feature of the new law. Pending that implementation, and as an interim measure, pending development of the automated process, the law provides that individuals eligible for relief under the "clean slate" provision may petition the court for relief beginning in June 2020, when the new law takes effect. If the person is determined by the court to be eligible, expungement is mandatory, and a prior expungement is not disqualifying as under the regular expungement law. The 2019 law also extends eligibility and improves procedures for petition-based discretionary relief from courts, including reducing the waiting period to five years the repeal of filing fees, which is available to a broader range of cases than those eligible for automated relief. *See* N.J. Stat. Ann. §§ 2C:52, *et seq.*
NJ	Voting Rights	A5823	A5823 limits disenfranchisement to a period of actual incarceration, even in cases where a court has ordered loss of the vote for election law violations. *See* N.J. Stat. Ann. §§ 19:4, *et. seq.*

State	Issue	Bill	Summary
NM	Employment	SB 96	SB 96 adds a "ban-the-box" provision applicable to private employment, making New Mexico the 12th state to do so. *See* N.M. Stat. Ann. § 28-2-3.1. Under this law, an employer may not make a criminal history inquiry on the application, "but may take into consideration an applicant's conviction after review of the applicant's application and upon discussion of employment with the applicant." In addition, it expressly permits the employer to notify the public or an applicant that the law or the employer's policy would disqualify an applicant who has a certain criminal history from employment in specific positions with the employer.
NM	Record Relief	HB 370	HB 370 authorizes "expungement" (defined as sealing) upon petition of most non-conviction records, and of conviction records for all but the most serious violent and sexual crimes. *See* N.M. Stat. Ann. § 29-3A-5. Courts are authorized to limit public access to all but a limited category of non-conviction records after a one-year waiting period, so long as no charges are pending against the individual. Courts are also authorized to seal the record of most convictions after conviction-free waiting periods ranging from two to ten years after completion of sentence. At a hearing, the court must apply a multifactor test to determine that "justice will be served by an order to expunge."
NV	Executive Clemency	SJR 1A	SJR 1A is a resolution proposing to repeal a requirement in the state constitution that the governor must approve all clemency grants by the Board of Pardons Commissioners, on which the governor sits as a member. This proposal, which also requires the Board to meet at least quarterly, must be approved by popular vote in 2020.
NV	Immigration	AB 376	AB 376 passed a law prohibiting anyone from questioning a person in a jail or other detention facility about their immigration status, unless they first informed the detainee of the purpose of the questioning (adding a new section to Chapter 211 of Nevada Revised Statutes).
NV	Occupational Licensing	AB 319	HB 319 adds sections to Chapter 622 of the Nevada Revised Statutes that require licensing agencies to develop and implement a process by which a person may petition for a preliminary determination whether criminal history will disqualify them from a license. The agency must respond within 90 days and may not charge more than $50. If the agency proposes disqualification, it "may" advise the person what can be done to qualify. The agency "may" post on its website a list of crimes that would result in a disqualification. HB 319 also amends Nev. Rev. Stat. § 622.001 to require each licensing agency to submit quarterly reports to the legislature on the number of petitions received from people with a criminal record, the number of disqualifications, and the reasons for each. Under a new section of Chapter 232B, the "Sunset Subcommittee" of the Legislative Commission is charged with reviewing the reports of each agency "to determine whether the restrictions on the criminal history of an applicant for an occupational or professional license are appropriate." Similar requirements are specifically imposed on various certifying entities of state government and the courts through additions to various chapters of the Nevada statutes, for certifications as varied as court interpreter, firefighter, boiler inspector, driller, milk tester, and medical marijuana provider.

State	Issue	Bill	Summary
NV	Record Relief	AB 192	The Nevada Second Chance Act establishes procedures for sealing conviction records for offenses "no longer punishable as a crime" under Nevada law. *See* Nev. Rev. Stat. § 179.275. If a court orders sealing of a record pursuant to this provision, a person's civil rights will immediately be restored. A person seeking to have his record sealed must "submit a written request" to the court in which the person was convicted. The court will notify the prosecutor who obtained the conviction. If the prosecutor does not object within 10 days of receiving notification, "the court shall grant the request." If the prosecutor files an objection, the court will hold a hearing, and the court "shall" grant the request unless the prosecutor "establishes, by clear and convincing evidence, that there is good cause not to grant the request." Courts or related agencies cannot charge fees for requests for sealed records under this section. When announcing signing the bill, Governor Sisolak remarked that AB 192 will remove "barriers that many Nevadans with a previous marijuana conviction face to obtaining credit, getting an apartment, or securing reliable employment."
NV	Record Relief	AB 222	AB 222 expands eligibility for veterans and military service members specialty court programs and authorizes certain specialty courts to set-aside convictions.
NV	Record Relief	AB 315	AB 315 provides that if a court, law enforcement agency, or prosecutor "determines that a person was wrongfully arrested, the person may submit to the court a single page application to expunge all records relating to the arrest" (adding a new section to Chapter 179 of Nevada Revised Statutes).
NV	Record Relief	SB 173	SB 173 expands the list of eligible offenses for vacatur and sealing relief for victims of human trafficking. *See* Nev. Rev. Stat. § 179.247.
NV	Voting Rights	AB 431	AB 431 revises Nevada's complex system for restoring civil rights so that all people with felony convictions may now vote except while in prison. *See* Nev. Rev. Stat. §§ 176A.850, 213.155, 213.157.
NY	Occupational Licensing Record Relief, Employment, Immigration Driver's Licenses	S1505 (2020 Budget)	S1505, the 2020 budget, makes a variety of changes to existing law. Among other things, it eliminates statutory bans on occupational licenses; removes mandatory six-month suspension of driver licenses for drug offenses; prevents the release of booking information and mugshots without a law enforcement purpose; requires removal of inaccurate information from criminal history; and prevents use of arrest information for civil purposes, such as employment, housing, and licensing. It excludes "undisposed cases" from criminal history record searches after five years. It provides for automatic sealing of cases terminated in favor of the accused and prior to the enactment of that relief in 1992. It prevents employment discrimination against persons whose criminal charges have been adjourned in contemplation of dismissal. And it Limits sentences for misdemeanors to 364 days, and makes it retroactive, and authorizes resentencing in misdemeanor cases that would otherwise result in severe collateral consequences. For statutory citations, *see* bill or the New York profile of the CCRC Restoration of Rights project.
NY	Record Relief	A7584	A7584 clarifies that eligibility for sealing of petty offenses does not depend on the initial offense charged. *See* N.Y. Crim. Proc. Law § 160.55.

State	Issue	Bill	Summary
NY	Record Relief	S6579	S6579 authorizes automatic vacatur and expungement of convictions for possession of two ounces or less of marijuana. *See* N.Y. Penal Law § 221.05.
NY	Record Relief, Immigration	S6614	Revises procedures for vacatur and sealing of marijuana convictions for possession of two ounces or less per S6579, and provides a presumption that a plea to such an offense was not knowing, voluntary, and intelligent for purposes of avoiding immigration consequences, and that such a verdict would be cruel and unusual punishment based on those consequences. *See* N.Y. Penal Law § 221.05.
NY	Record relief, Immigration	A3675	A3675 prohibits the sharing of DMV information with immigration authorities.
OH	Occupational Licensing	SB 255	SB 255 requires that licensing agency websites list crimes that would be disqualifying under a general "substantial relationship" standard in Ohio law. *See* Ohio Rev. Code Ann. § 9.78. In addition, anyone with a conviction may request at any time that a licensing authority make a preliminary determination whether their conviction will be disqualifying. A fee of no more than $25 may be charged. Within thirty days of receiving a request, the licensing authority must inform the person of its decision. The decision is not binding if the licensing authority determines that the person's convictions differ from what was included in the request. Finally, SB 255 enacts an elaborate legislative sunset review procedure that will presumably include consideration of how licensing agencies treat individuals with a criminal record under the applicable "least restrictive alternative" standard.
OK	Occupational Licensing	HB 1373	HB 1373 is a comprehensive revision of Oklahoma's occupational licensing laws, with certain generally applicable provisions contained in a new Section 4000.1 of Title 59, and provisions added into specific licensing schemes. It provides that a person with a criminal history record may request an initial determination from the licensing agency of whether his or her criminal history record would potentially disqualify him or her from obtaining the desired license, including before obtaining any required education or training for such occupation. It requires each state entity with oversight authority over a particular licensed occupation or profession to "list with specificity any criminal offense that is a disqualifying offense for such occupation." Any disqualifying offense must "substantially relate" to the duties and responsibilities of the occupation and "pose a reasonable threat to public safety." "Substantially relate" is defined to mean the nature of the criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation." "Pose a reasonable threat" means "the nature of the criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation." Each entity must respond within 60 days and may charge no more than $95. In addition, the specific regulatory schemes of dozens of professions and occupations were amended to strike references to "good moral character" and "moral turpitude," and to include the two requirements of disqualification ("substantial relationship" and "reasonable threat") in the conjunctive.

State	Issue	Bill	Summary
OK	Record Relief, Executive Clemency	SB 815	SB 815 allows anyone pardoned to seek expungement; and lessens other expungement eligibility requirements such that a person convicted of not more than two felony offenses, neither of which is of serious violence or requires registration as a sex offender, may petition to have the record expunged ten years after completion of sentence. *See* 22 Okla. Stat. Ann. § 18.
OK	Record Relief	HB 1269	HB1269 authorizes expungement for persons convicted of a nonviolent felony offense which was subsequently reclassified as a misdemeanor under Oklahoma law, 30 days after completion of sentence, if restitution ordered by the court has been paid in full and any treatment program has been successfully completed. *See* 22 Okla. Stat. Ann. § 18(A)(15).
OK	Voting Rights	HB 2253	HB 2253 clarifies that voting rights are lost upon conviction of a felony and are restored upon completion of sentence. *See* 26 Okla. Stat. Ann. § 4-101.
OR	Diversion	HB 2462	HB 2462 provides for courts to notify defendants at time of arraignment that their status as a military service member may make them eligible for treatment programs, diversion, specialty courts or sentencing mitigation.
OR	Diversion, Immigration	HB 3201	HB 3201 removes a guilty plea requirement from the controlled substances diversion statute, making this benefit available to non-citizens without exposing them to deportation. The law specifically provides that "[e]ntering into a probation agreement does not constitute an admission of guilt" and is "not sufficient to warrant a finding or adjudication of guilt by a court." *See* Or. Rev. Stat. § 475.245. However, the bill added a provision requiring defendants to agree to pay restitution to victims and court-appointed counsel fees as a condition of participation, with no provision for waiver.
OR	Executive Clemency, Record Relief	SB 388	SB 388 requires the governor to inform courts when a pardon is granted so the court may seal the record. The governor must inform courts of pardons granted in previous five years to enable them to seal the record, and the bill authorizes individuals convicted before that time to apply to the court for sealing of the record. *See* Or. Rev Stat. § 144.650.
OR	Immigration	HB 2932	HB 2932 prohibits a criminal court from inquiring about a defendant's immigration status and requires the court to allow a defendant additional time to consider a plea after being informed of immigration consequences. *See* Or. Rev. Stat. § 135.385.
OR	Occupational Licensing, Employment	SB 725	SB 725 loosens standards for care-giving employment, providing that in conducting fitness determinations pursuant to criminal records checks for certain employees in agencies providing direct care to vulnerable populations, state licensing agencies "may not consider" convictions more than 10 years old, non-conviction records (including diversions), marijuana convictions, DUI more than five years old. *See* Or. Rev. Stat. § 181A.195. The new standards do not apply to certain specified serious offenses, or to positions in residential care centers, home health aides, childcare centers or workers, or EMTs.

State	Issue	Bill	Summary
OR	Record Relief	SB 420	SB 420 authorizes set-aside for qualifying marijuana convictions, as long as the sentence has been fully served (added to Or. Rev. Stat. § 475B.010 to 475B.545). A person filing a motion under this section is "not required to pay the filing fee established under ORS 21.135 or any other fee, or file a set of fingerprints," and no background check or identification by the Department of State is required.
OR	Record Relief	SB 975	SB 975 authorizes the reduction of offense classifications for certain marijuana convictions.
RI	Diversion	SB 962	SB 962 authorizes superior court diversion programs. *See* R.I. Gen. Laws § 8-2-39.3.
SC	Diversion	H3601	H3601 authorizes conditional discharge for first offense public disorderly offenses. *See* S.C. Code Ann. § 16-17-530.
SD	Executive Clemency	HB 1005	HB 1005 authorizes a hearing panel of the Board of Pardons to make clemency recommendations to the governor, rather than the entire Board as under preexisting law. *See* S.D. Codified Laws §§ 24-13-4.6, 24-15A-10, 24-15A-11.
TN	Diversion	HB 624 (SB 544)	HB 624 expands provisions governing the circumstances under which a person's name must be removed from the sex offender registry, to add successful completion of judicial diversion for certain offenses. *See* Tenn. Code Ann. § 40-39-207.
TN	Diversion	HB 1319 (SB 1325)	HB 1319 makes juveniles eligible for diversion not only after a plea, but also after an adjudication. *See* Tenn. Code Ann. § 37-1-107(d).
TN	Record Relief	SB 214 (HB 168)	SB 214 authorizes court clerks to "dispose" of juvenile records 10 years after a person reaches age 18. *See* Tenn. Code Ann. § 18-1-202.
TN	Record Relief	SB 577 (HB 193)	SB 577 provides for expungement of a prostitution conviction along with other non-violent offenses for victims of human trafficking. *See* Tenn. Code Ann. § 40-32-105.
TN	Record Relief	SB 778 (HB 266)	SB 778 requires sentencing judges to notify those convicted of misdemeanors about eligibility for expungement. *See* Tenn. Code Ann. § 40-2-102.
TN	Record Relief, Diversion	SB 797 (HB 941)	SB 797 repealed a $180 fee for petitioning for an expunction of certain criminal offenses and a $350 fee for applying for expunction following diversion.
TX	Diversion	HB 2758	HB 2758 expands eligibility for deferred adjudication community supervision to victims of human trafficking. *See* Tex. Code Crim. Proc. art. 42A.054.
TX	Diversion	HB 3529	HB 3529 creates a family violence pretrial diversion pilot program in Bexar County.

State	Issue	Bill	Summary
TX	Employment	HB 918	HB 918 requires the corrections department to provide persons released from prison with documents to help with employment. Tex. Gov. Code § 501.0155.
TX	Occupational Licensing	HB 1342	HB 1342 deletes a provision in existing law that allowed disqualification based on a conviction unrelated to the occupation within five years of application, and otherwise made major modifications to the standards and procedures for obtaining a license in most occupations (other than the medical field). *See* Tex. Occ. Code § 53.022, *et seq.* The law creates a new "restricted license" aimed at facilitating licensure in air-conditioning and electrical work for people returning to the community from prison. See §§ 51.357, 51.358. HB 1342 also tightens procedures and standards applied by licensing agencies and requires an agency to explain its reasons for denial in writing. Certain violent and sexual crimes, and drug felonies are excepted from the requirements of the law.
TX	Occupational Licensing	SB 1217	SB 1217 prohibits licensing agencies affected by HB 1342 (see above) from considering arrests not resulting in conviction or placement on deferred adjudication community supervision.
TX	Occupational Licensing	SB 1531	SB 1531 modifies standards that apply to certain specific licenses, primarily by deleting overbroad categories of disqualification or antiquated references to moral integrity (podiatrist, midwife, electrician, animal breeder, auctioneer).
TX	Occupational Licensing	HB 1865	HB 1865 loosens restrictions on licenses for massage therapists.
TX	Occupational Licensing	HB 1899	HB 1899 loosens restrictions on licenses for health care providers.
TX	Record Relief	HB 1760	HB 1760 directed juvenile courts upon entering a finding that charges are unfounded, to seal all records immediately and without a hearing. *See* Tex. Fam. Code § 58.005.
TX	Record Relief	HB 3582	HB 3582 authorizes deferred adjudication and nondisclosure for certain intoxication offenses. *See* Tex. Code Crim. Proc. art. 17.144(a).
TX	Record Relief	SB 562	SB 562 provides for expunction after successful completion of a mental health court program. *See* Tex. Code Crim. Proc. art. 42.09.
TX	Record Relief	SB 1801	SB 1801 provided for non-disclosure of conviction or deferred adjudication for certain prostitution, theft, and marijuana offenses for victims of human trafficking. *See* Tex. Gov't Code § 411.0728.
TX	Record Relief, Employment	HB 714	HB 714 makes defendant who is a veteran placed on community supervision for a misdemeanor offense eligible to participate in a veteran's reemployment program, and to obtain an order of nondisclosure upon successful completion of the program. *See* Tex. Code Crim. Proc. art. 42A.381.

State	Issue	Bill	Summary
U.S.	Employment	S.1790	The Fair Chance to Compete for Jobs Act of 2019, enacted as part of the National Defense Authorization Act of 2020 (S.1790), prohibits employers in all three branches of the federal government, and private-sector federal contractors, from asking about job applicants' arrest and conviction record until a conditional offer of employment has been extended. The Act's "ban the box" prohibition on pre-offer inquiries extends to records that have been "sealed or expunged pursuant to law," and sealed records of juvenile adjudications. See 5 U.S.C. §§ 9201(4)(B) and (C), 9206. Certain types of employment would be excepted. It prohibits agency procurement officials from asking persons seeking federal contracts and grants about their criminal history, until an "apparent award" has been made. Post-offer, it would appear that non-conviction records could continue to be the subject of inquiry by federal hiring and contracting authorities, as well as any records that have been sealed or expunged – but only if they are otherwise available to criminal justice agencies for background checks. The Act will become effective two years after enactment, or December 28, 2021.
UT	Immigration	HB 244	HB 244 reduces the maximum prison term for misdemeanors to "one year with a credit for one day," but made no provision for retroactive application. *See* Utah Code. Ann § 76-3-204.
UT	Sex Offender Registration	HB 298	HB 298 loosens restrictions on persons required to register as sex offenders, including rescinding a requirement that they renew driver's licenses annually, expanding the number of offenses that qualify for removal from the registry after 5 years, and enacting a new provision authorizing the court to terminate registration after 10 years (HB298). Utah Code Ann. §§ 53-3-105, 77-41-112.
UT	Occupational Licensing	HB 90	HB 90 authorizes preliminary determinations as to whether a criminal record would disqualify individuals from obtaining a license in an occupation or profession regulated by Title 58 of the Utah code (HB 90). Utah Code Ann. § 58-1-310. The Division of Occupational and Professional Licensing must make a written determination, and the decision may include additional steps the individual could take to qualify for a license.
UT	Record Relief	HB 108	HB 108 authorizes vacatur for juvenile human trafficking victims. *See* Utah Code Ann. § 78A-6-1114.
UT	Record Relief	HB 212	HB 212 makes records of a collateral actions (i.e. forfeiture) related to an expunged criminal record also subject to expungement.
UT	Record Relief	HB 431	HB 431 is a clean slate law that provides for automatic expungement of a variety of non-conviction, infraction, and misdemeanor criminal records (and deletion of certain traffic records) when the law takes effect on May 1, 2020, and will apply retroactively to cases adjudicated prior to its effective date (HB 431). *See* Utah Code Ann §§ 77-40-102, *et seq.*
VA	Driver's Licenses	HB 1700	HB 1700 (budget bill) removes automatic suspension of driver's licenses for failure to pay fines.

State	Issue	Bill	Summary
VA	Record Relief	HB 2278	HB 2278 Authorizes automatic expungement of absolute pardon (for innocence). *See* § 19.2-392.2.
VT	Occupational Licensing	H104	H104 Authorizes study of licensure to consider unnecessary barriers to licensure. (Section 7)
VT	Record Relief	H 460	H 460 brings a variety of drug possession offenses and forgery within the definition of a "qualifying crime" for purposes of sealing or expungement (both remedies are potentially available), made some DUI offenses eligible after 10 years (sealing only), and youthful burglary after 15 years. Heightened procedural protections were made applicable to eligible DUI and burglary offenses. *See* 13 V.S.A. § 7601. Also enables vacatur and expungement of offenses committed by victims of human trafficking other than serious violent offenses. See 13 V.S.A. § 2658.
VT	Record Relief, Diversion	S 105	S105 enlarges courts' authority to expunge records of juvenile diversion cases, by deleting the age limits so that it no longer applies only where the defendant is under 28 years of age. Courts are authorized to impose a deferred sentence for a less serious crime even if the prosecutor objects. S 105 Sealing and expungement for diversion. *See* 13 V.S.A. § 7601.
WA	Diversion	SB 5380	SB 5380 authorizes state funds for substance use diversion program. *See* Wash. Rev. Code § 71.24.580.
WA	Diversion	HB 1767	HB 1767 provides for a law enforcement grant program to expand alternatives to arrest and jail processes. *See* Wash. Rev. Code § 36.28A.
WA	Record Relief	HB 1041	HB 1041 substantially expands eligibility for sealing, including consolidating waiting periods and easing requirements to satisfy financial obligations. Now the necessary conviction-free period will be coextensive with the otherwise applicable waiting period, and a person need not have paid all court debt in order to qualify for relief if five years have elapsed since release from custody and all non-financial requirements are met. The bill also makes eligible for the first time certain assault and robbery felonies, as long as they did not involve a firearm or "sexual motivation" (HB 1041). Wash. Rev. Code §§ 9.94A.640, 9.94A.030, 9.94A.637 and 9.96.060.
WA	Record Relief	HB 5605	HB 5605 provides for expedited procedures for vacatur for marijuana misdemeanor conviction for conduct committed at age 21 and older, with no waiting period or other eligibility criteria. *See* Wash. Rev. Code § 9.96.060(5).
WA	Voting Rights	SB 5207	SB 5207 requires the corrections department to notify prisoners prior to release of the process for voting rights restoration and voter registration, and to provide them with a voter registration form. *See* Wash Rev. Code ch. 72.09.
WV	Diversion	SB 40	SB 40 establishes a specialized court program for military service members. *See* W. Va. Code §§ 62-16-1, *et seq.*

State	Issue	Bill	Summary
WV	Occupational Licensing	HB 118	HB 118 is West Virginia's first law imposing broad procedural and substantive limits on licensing boards in consideration of criminal records. Boards (with a few exceptions) may not disqualify based on conviction unless the crime "bears a rational nexus to the occupation." *See* W. Va. Code § 30-1-24(a) (considering seriousness of crime, passage of time, and rehabilitation). It also provides for a preliminary determination within 60 days (but no cap on the application fee as with other similar laws) and discourages the use of the term "moral turpitude." It reenacts several specific licensing schemes that prohibit convictions within the last five years, deleting a requirement that applicants to have "good moral character."
WV	Record Relief	SB 152	SB 152 significantly expands the availability of expungement beyond the limited class of youthful misdemeanants, to cover certain non-violent felonies and misdemeanors. *See* W. Va. Code §§ 61-11-26, -26a. Felonies are eligible for expungement relief for the first time. (A 2017 law is repealed that had authorized reduction of these felonies to misdemeanors, but withheld expungement.) Violent and sexual crimes are ineligible. Persons convicted of eligible misdemeanors may petition for expungement one year after conviction, or completion of incarceration or supervision if later. The waiting period is two years for persons convicted of more than one eligible misdemeanor, and five years for eligible felonies. Persons who have completed substance abuse treatment or graduated from a state-approved job training program have an abbreviated waiting period. Employers required by law to conduct a background check may access expunged convictions.
WY	Record Relief, Diversion	HB 44	HB 44 provides for improved procedural and substantive rules for expungement of juvenile records and the records of minor, including authorizing the prosecutor to seek expungement, eliminating filing fees, and authorizing expungement for minors admitted to a diversion program or granted a deferral or whose case results in a non-conviction or non-adjudication. *See* Wyo. Stat. §§ 7-13-1401, 14-6-241, 14-6-440.