

## State Reforms Promoting Employment of People with Criminal Records: 2010-11 Legislative Round-Up<sup>1</sup>

The severe economic climate facing the states has fueled a growing recognition of the need for cost-saving alternatives to incarceration. This paper seeks to contribute to this momentum for state-level reform by identifying policies that reduce the employment barriers faced by people with criminal records. As policy makers and advocates evaluate opportunities for reform heading into the 2012 state legislative sessions, the bills highlighted here, which seek to reduce crime and reward rehabilitation, warrant close attention.

People with criminal records now confront unprecedented employment challenges that are not solely the result of a weak labor market. States, for example, have collectively adopted more than 30,000 laws that significantly restrict access to employment and other basic rights and benefits for people with criminal records, according to an exhaustive [analysis](#)<sup>2</sup> by the American Bar Association. Recognizing that many such barriers fail to increase public safety, [U.S. Attorney General Eric Holder](#) urged states to evaluate and remove laws that prevent people from living and working productively.<sup>3</sup>

The inspiring work of state policy makers and advocates across the country has led to new model policies that allow qualified people with criminal records to compete more fairly for employment. This paper highlights these laws enacted in 2010 and 2011 and reports on state trends of concern that broadly restrict employment based on a criminal record.

This paper is organized into the following policy categories: (1) [inventories of collateral consequences](#), (2) [fair hiring and occupational licensing standards](#), (3) [restoration of eligibility for employment and occupational licensing](#), (4) [expungement and sealing of records](#), (5) [prohibiting](#)

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<sup>1</sup> This paper is a collaboration of the National Employment Law Project (NELP), the National H.I.R.E. Network, and the Sentencing Project to support policy makers and advocates who are advancing the employment rights of people with criminal records. The paper will be regularly updated. Please forward relevant pending measures and bills enacted into law to the authors: Michelle Natividad Rodriguez, [mrodriguez@nelp.org](mailto:mrodriguez@nelp.org); Elizabeth Farid, [efarid@lac.org](mailto:efarid@lac.org); or Nicole Porter, [nporter@sentencingproject.org](mailto:nporter@sentencingproject.org). The authors are grateful to all the advocates that contributed to this paper.

<sup>2</sup> The online version of this Legislative Update includes hyperlinks.

<sup>3</sup> See National Reentry Resource Center website for more information, *available at* <http://www.nationalreentryresourcecenter.org/reentry-council>.

[discrimination based on a criminal record](#), (6) [securing identification documents](#), (7) [reducing child support arrearages](#), (8) [training and job placement for people with criminal records](#), and (9) [employer negligent hiring protections](#). Key developments on these policy fronts include:

- Three states (Connecticut, Massachusetts, and New Mexico) have adopted “ban the box” policies that prescribe the point at which an individual’s criminal record may be revealed in the hiring process.
- Two states (North Carolina and Ohio) passed laws that create certificates that recognize an individual’s rehabilitation and thereby reduce employment sanctions and disqualifications.
- Thirteen states (Arkansas, California, Colorado, Delaware, Indiana, Louisiana, Mississippi, North Carolina, Oregon, Rhode Island, South Dakota, Texas, and Utah), recognizing that old, minor offenses can plague job seekers years later, took positive steps to allow the expungement and sealing of a number of low-level offenses.
- Five states (Colorado, Kentucky, Nevada, New York, and Virginia) created new rights for workers to more easily access identification documents and other information needed to secure employment.
- Three states (Colorado, Massachusetts, and North Carolina) adopted laws, in conjunction with other reforms, to limit the liability of employers that hire people with criminal records.

## Positive Reforms

### (1) Inventories of Collateral Consequences

Collateral consequences are those legal, non-criminal penalties that attach to a conviction, but that were not part of the punishment at sentencing. These penalties have been called the “invisible punishment”<sup>4</sup> because they are civil penalties that do not fall within the jurisdiction of the criminal justice system. Collateral consequences can make an individual with a criminal history ineligible for various types of employment and occupational licenses, rendering a job search nearly futile. Despite the numerous collateral consequences that flow from various criminal convictions, judges and lawyers are frequently unaware of their substantial impact upon defendants. State inventories of collateral consequences are one means to draw attention to this issue.

*Model:* Although not a legislative measure, the [Ohio CIVICC database](#) is a model for an effective inventory. It is a state-wide tool for identifying the civil impacts of criminal convictions. The database is free and publicly available, and users may search for offenses and identify the related collateral

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<sup>4</sup>Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion in Collateral Consequences of Mass Imprisonment* (Marc Mauer & Meda Chesney-Lind, eds., 2002) at 16 (these penalties constitute invisible punishment because they operate largely without public acknowledgment of their imposition).

sanctions associated with the offense. Users may also search for a particular right or privilege and find all the offenses that create a barrier to it. Similarly, in North Carolina, the Collateral Consequence Assessment Tool (C-CAT),<sup>5</sup> a web-based database in the final phase of development, will allow users to search and compile collateral consequences associated with offenses. C-CAT will be available for public use in 2012.

- **Florida Senate Bill 146 (2011) (report of state agency disqualifications)**

Known as the “Jim King Keep Florida Working Act,” this [measure](#) was enacted into law unanimously. Under the [Act](#), each state agency must submit a report to the Governor by December 31, 2011, and every four years thereafter. The report must list all agency rules that disqualify people with convictions from employment or licensing and must identify and evaluate alternatives to disqualification that would maintain public safety without impeding employment. *Introduced by:* Sen. Chris Smith (D), see [bill information](#).

*Commentary:* Although the Florida inventory does not offer the degree of public access or utility as does the web-based models described above, it may lay the groundwork for substantive reform by raising awareness of the breadth of collateral consequences.

## (2) Fair Hiring and Occupational Licensing Standards

According to a recent survey, 90 percent of companies use criminal background checks in making hiring decisions.<sup>6</sup> Another study found that a criminal record reduces the likelihood of a job callback or offer by nearly 50 percent.<sup>7</sup> Considering that one in four adults in the United States has an arrest or conviction record,<sup>8</sup> the implications of barring people with criminal histories from employment are staggering. Many jurisdictions around the nation have begun reforming their hiring practices in order to reduce these negative consequences.

### ***Ban the box***

Widely known as “ban the box,” this fair hiring policy removes any questions about the applicant’s criminal history from initial employment applications.<sup>9</sup> When background checks are deferred until later in the interview process, job applicants have a better chance of being evaluated based on their

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<sup>5</sup> The [North Carolina School of Government](#), in conjunction with the [North Carolina Office of Indigent Defense Services](#), was awarded a grant by the Z. Smith Reynolds Foundation to identify and compile the collateral consequences of criminal convictions in North Carolina.

<sup>6</sup> See Society for Human Resources Management, *Background Checking: Conducting Criminal Background Checks* (Jan. 22, 2010) at 3.

<sup>7</sup> Devah Pager, Bruce Western & Naomi Sugie, *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*, 623 *The Annals of the American Academy*, 195, 199 (2009).

<sup>8</sup> E.g., NELP, *65 Million “Need Not Apply:” The Case for Reforming Criminal Background Checks for Employment* (2011) at 1, available at [http://www.nelp.org/page/-/SCLP/2011/65\\_Million\\_Need\\_Not\\_Apply.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1).

<sup>9</sup> National League of Cities Institute for Youth, Education, & Families & NELP, *Cities Pave the Way: Promising Reentry Policies that Promote Local Hiring of People with Criminal Records* (2010) at 1.

qualifications for the job. To date, at least six states and 30 local jurisdictions have implemented some form of a “ban the box” policy.<sup>10</sup> Numerous organizations such as [All of Us or None](#), a leader in these efforts, have contributed to campaigns across the country.

*Model:* Out of the [six states](#) with “ban the box,” Massachusetts’ reform is the most comprehensive. Significantly, the state’s policy applies to both private and public employers and sets sensible limits on the information available on the criminal record. It also ensures that a denied applicant receives a copy of his or her record, paralleling one component of the federal consumer protection law, the [Fair Credit Reporting Act](#), which applies to commercially-prepared background checks.

- **Connecticut House Bill 5207 (2010) (applies to state employment and licensing)**

Connecticut’s [bill](#) to ban the box unanimously passed both the house and senate, but was vetoed by the Governor. In response, Connecticut’s lawmakers returned to the capitol to override the veto. The sweeping support for the legislation was undergirded by the advocacy of a coalition (including [A Better Way Foundation](#)) that had won campaigns to institute “ban the box” in the cities of Norwich, Hartford, and New Haven in 2009. The new law, which took effect on October 1, 2010, prohibits applicants from being disqualified for licensure or employment by state agencies solely because of a conviction, unless otherwise disqualified. State employers and licensing agencies must now wait until an applicant has been deemed otherwise qualified for the position before obtaining a criminal background report.

Significantly, the law also requires that the employer or licensing agency consider (1) the nature of the crime and its relationship to the job or occupation; (2) rehabilitation information; and (3) the time elapsed since the conviction or release before making an employment or licensure determination. The law further requires that the employer or licensing agency provide an applicant with a written letter of rejection specifically stating the evidence presented and reasons for rejection if the applicant is disqualified. It also prohibits the use, distribution, or dissemination of records of arrests that did not lead to conviction, or records of convictions that have been erased. *Introduced by:* Labor and Public Employees Committee, see [bill information](#).

*Commentary:* The passage of this bill, overriding the Governor’s veto, speaks to the effectiveness of the local campaigns and the strong groundwork laid by grassroots organizing.

- **Massachusetts Senate Bill 2583 (2010) (private employer ban the box)**

Governor Deval Patrick signed [Chapter 256 of the Acts of 2010](#) on August 6, 2010. The legislation was precipitated by the work of a strong coalition (including [Massachusetts Law Reform Institute](#) and [Boston Workers Alliance \(BWA\)](#)). As of November 4, 2010, employers can no longer use an initial written employment application to ask whether an applicant has been convicted of an offense unless a legal restriction applies to the specific job or

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<sup>10</sup>States include California, Connecticut, Hawaii, Massachusetts, Minnesota, and New Mexico. In addition, Wisconsin, Pennsylvania, and New York have laws reducing barriers to employment for people with criminal records. See NELP, *State Initiatives*, available at <http://www.nelp.org/page/-/SCLP/ModelStateHiringInitiatives.pdf?nocdn=1>. For local jurisdictions see NELP, *Resource Guide: Ban the Box*, available at <http://www.nelp.org/page/-/SCLP/2011/CityandCountyHiringInitiatives.pdf?nocdn=1>.

occupation. Effective May 4, 2012, the law requires that applicants receive a copy of their criminal history report prior to being questioned about their history and if an adverse decision is made based on the report.

As a self-auditing mechanism, individuals will be able to determine if the report was run. Criminal records may only contain (1) felony convictions for 10 years following disposition; (2) misdemeanor convictions for 5 years following disposition; and (3) pending criminal charges. See [bill information](#), [MCAD factsheet](#), and [BWA factsheet](#).

*Commentary:* This sweeping effort to “ban the box” includes model provisions and uniquely tackles the issue of inaccurate commercial background screeners by creating an incentive for employers to use the state’s criminal history database (see [limiting employer liability](#)), which then limits the length of time that criminal history information is available.

- **New Mexico Senate Bill 254 (2010) (restricts screening after selected as finalist)**

On March 8, 2010, Governor Richardson signed this [measure](#) into law (N.M. Stat. § 28-2-3) prohibiting state agencies from inquiring into an applicant’s conviction history on an initial employment application. An applicant’s criminal history may be considered only after an applicant has been “selected as a finalist for a position.” The law permits convictions to be considered when determining eligibility for employment or licensure, but states that convictions “may not operate as an automatic bar to obtaining such public employment or license.” The law further prohibits the use of records of arrest not leading to conviction and misdemeanor convictions not involving moral turpitude. The criminal history information may not be distributed or disseminated in connection with an application for any public employment, license or other authority. *Introduced by:* Sen. Clinton D. Harden (R), see [bill information](#).

*Commentary:* Within the array of “ban the box” legislation, two noteworthy features of this bill are that the background check may only be considered after the applicant has been selected as a finalist and that certain misdemeanor convictions may not be considered.

## ***Waiver and Appeal of Disqualifying Offenses***

The fairness and integrity of the background check process increases when there is a robust *appeal procedure* that allows workers to promptly challenge background check inaccuracies and a distinct *waiver policy* that permits persons with disqualifying criminal records to produce evidence of rehabilitation that demonstrates the absence of risk to workplace safety and security. These procedures may be incorporated into “ban the box” policies and temper occupational license exclusions based on background checks.

*Model:* California’s [Assembly Bill 2423](#), which passed in 2008, permits probationary licenses for individuals with disqualifying offenses for specified occupational licenses. In the determination of whether to issue the probationary license, evidence of rehabilitation must be considered and special consideration must be given to dismissed convictions. AB 2423 increases transparency by requiring that an applicant receive a specified statement of reason for denial. The bill also requires that a copy

of the criminal record be provided upon an applicant's request. While other components of the process remain in need of reform, these protections are substantial and replicable in other states.

- **California Senate Bill 1055 (2010) (adding waiver and appeal to screening)**

Adding Cal. Gov. Code § 11546.6, this [bill](#) requires that the state chief information officer obtain state and federal criminal history information on prospective employees, contractors, or volunteers who would have access to confidential or sensitive information. The worker protections are: (1) the rejected individual receives a copy of his or her record; (2) there is a written appeal process; and (3) any evidence of rehabilitation, as well as the age and specifics of the offense, must be taken under consideration. *Introduced by:* Sen. Roy Ashburn (R), see [bill information](#).

*Commentary:* This bill is an example of expanding criminal background screening for a specific group of workers. As in this bill, advocates should ensure that whenever screening is imposed, worker protections are viewed as necessary corollaries. The protections could be strengthened by ensuring there are distinct waiver and appeal processes, elaborating upon what qualifies as evidence of rehabilitation, and clearly stating that only substantially job-related convictions should be considered.

- **Delaware Senate Bill 59 (2011) (waiver uniformity—shortened wait time)**

This [legislation](#) standardizes a component of the waiver requirements applying to all state occupational and professional licensing codes by shortening the waiting periods for all waivers. The waiting period for a disqualifying felony is reduced from five years after the discharge of all sentences to five years from the date of conviction. The five-year limitation for misdemeanors is removed entirely. *Introduced by:* Sen. Karen E. Peterson (D), see [bill information](#).

*Commentary:* Worker protections are often added piecemeal, resulting in varied standards between groups of workers, which in turn obfuscates the process. The reduced waiting period across all licensing codes is a step toward demystification of licensing barriers.

### **(3) Restoration of Eligibility for Employment and Occupational Licensing**

Due to advances in technology and the post-9/11 boom in security measures, criminal background checks are now ubiquitous. As a result, many individuals are plagued even by decades-old convictions. Although research indicates that a person, after a limited period of time, is at no greater risk of being arrested than a counterpart in the general population,<sup>11</sup> workers are still punished for their past. Certificates demonstrating rehabilitation are an attempt to encourage and reward individuals who steer clear of the criminal justice system. These certificates may open up opportunities to people with conviction histories by lifting automatic employment bans, reinstating occupational licensing eligibility, and restoring voting and other rights.

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<sup>11</sup> See Alfred Blumstein & Kiminori Nakamura, "Redemption" in an Era of Widespread Criminal Background Checks, National Institute of Justice Journal, Issue No. 263 (June 2009) at 14.

*Model:* New York’s Certificate of Relief from Disabilities and Certificate of Good Conduct ([N.Y. Correct. §§ 700-705](#)), like other states’ certificates,<sup>12</sup> are intended to mitigate employment barriers. New York’s certificates are distinctive because they lift occupational bars and establish a “presumption of rehabilitation” before public agencies and private employers ([N.Y. Correct. § 753](#)).<sup>13</sup> However, a criticism of certificates (particularly compared with expungements) is that employers and licensing agencies may still consider the offenses in hiring decisions, and acquiring the certificates is often onerous.<sup>14</sup>

- **North Carolina House Bill 641 (2011) (low-level offenses certificate)**

The [Certificate of Relief Act](#) establishes a new process for people convicted of no more than two low-level felonies or misdemeanors to petition the court for relief from collateral sanctions and disqualifications. The certificate does not expunge an individual’s record nor is it a pardon. Courts may issue a certificate if the individual meets certain requirements, including that 12 months must have elapsed since completion of the sentence. The bill was based on a recommendation of the [Street Safe Task Force](#), a 2009 initiative to reduce recidivism. The bill was strongly supported by the [NC Second Chance Alliance](#). *Introduced by:* Rep. David Guice (R), see [bill information](#).

*Commentary:* Although more expansive bills that include a broader array of convictions may be feasible in some states, by targeting people with low-level convictions, this bill may be the appropriate incremental step for introducing the concept of a certificate.

- **Ohio House Bill 86 (2011) (removal of licensure bar)**

This extensive sentencing reform [legislation](#) includes the creation of a [Certificate of Achievement and Employability](#) ([Ohio Revised Code §§ 2961.21-2961.24](#)), which ensures individualized consideration from a state licensing agency when applying for an employment-related license. The certificate supersedes any statute or regulation that creates an automatic, mandatory bar to that license. In order to be eligible, applicants must have completed an accredited, in-prison vocational program; an accredited behavior program; and community service hours. The [Ohio Justice & Policy Center](#) supported the certificate. *Introduced by:* Rep. Louis W. Blessing, Jr. (R); Rep. Tracy Maxwell Heard (D), see [bill information](#).

*Commentary:* A notable component of this certificate is that employers who hire certificate holders are protected from negligent hiring liability. See discussion *infra*, [employer negligent hiring protections](#).

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<sup>12</sup> States that offer some type of certificate of rehabilitation or restoration of rights include Alabama, Arizona, California, Connecticut, Hawaii, Illinois, and Iowa, New Jersey, and New York. See LAC, *Roadblocks to Reentry*, available at <http://www.lac.org/roadblocks-to-reentry/main.php?view=vision&subaction=employment>.

<sup>13</sup> See Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction* (March 2007), available at <http://www.sentencingproject.org/doc/File/Collateral%20Consequences/NewYork.pdf>.

<sup>14</sup> For recommendations for model legislation, see LAC, *Certificate of Rehabilitation Model Legislation*, available at <http://www.lac.org/toolkits/certificates/Model%20legislation%20-%20certificates.pdf>.

## (4) Expungement and Sealing of Criminal Records

There are more than two million individuals incarcerated in the United States,<sup>15</sup> and an estimated 700,000 will be released from prisons this year, with an additional 12 million being released from local jails.<sup>16</sup> As research has shown, the mark of a criminal record is so stigmatizing that the majority of employers will be deterred from hiring a worker because of it. Sealing or expunging criminal history information<sup>17</sup> so that employers are unable to obtain those records may eliminate a severe roadblock to employment. Evidenced by the growing number of bills introduced, expungement or sealing bills are the forms of reentry legislation that have gained the widest acceptance in recent years.

*Model:* Advocates have successfully established legislation to seal or expunge arrests that did not lead to conviction and old or minor conviction records. For example, under [Conn. Gen. Stat. § 54-142a](#), records of arrest not leading to conviction are automatically “erased” and the individual with the erased record may assert that he or she has not been arrested. These types of efforts afford individuals with criminal records a fairer opportunity to rebuild their lives, support their families, and become productive members of their communities.<sup>18</sup>

- **Arkansas House Bill 1608 (2011) (expungement and sealing for misdemeanors)**

This [bill](#) expanded the availability of expungement and sealing for misdemeanors. All misdemeanor convictions are now eligible for expungement; however a five-year waiting period is imposed for certain serious misdemeanor convictions (including DWIs). Although the expungement is not automatic for misdemeanors, there is a presumption of granting the petition unless there is clear and convincing evidence opposing it. In addition, the legislation requires expungement for individuals placed on probation as part of a deferred judgment for a misdemeanor controlled substance offense. *Introduced by:* Rep. Jim Nickels (D), see [bill information](#).

*Commentary:* This bill is an example of expanding expungement policies and prioritizing relief mechanisms for persons with low-level offenses. The measure could be strengthened by requiring notice to be given to persons convicted of eligible offenses.

- **California Assembly Bill 1384 (2011) (technical fix of expungement)**

Supported by numerous civil rights groups and other organizations (led by the [East Bay Community Law Center](#)), this [bill](#) corrects an unintended inconsistency in California’s

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<sup>15</sup>Re-Entry Policy Council, Council of State Governments, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* xviii (2005).

<sup>16</sup>Smart on Crime Coalition, *Smart on Crime: Recommendations for the Administration and Congress* 235 (The Constitution Project, 2011).

<sup>17</sup>The terms “seal,” “expunge,” “set aside,” and “purge” are sometimes used interchangeably, although depending on the state law they can have very different meanings. “Sealing” technically means that access to a criminal record is limited, but the record is usually not erased or destroyed. “Expunging” or “purging” technically means that the record is completely destroyed.

<sup>18</sup>For examples of model expungement or sealing legislation, see LAC, Model Sealing/Expunging Law, available at <http://www.lac.org/toolkits/sealing/Model%20Expungement%20Statute.pdf>.

expungement law. The legislation allows people convicted of a misdemeanor, whose sentence did not include probation, to seek expungement under judicial discretion even if they had contact with law enforcement in the year immediately following the conviction. Prior to the bill, only people convicted of a felony or misdemeanor with a term of probation could seek an expungement under judicial discretion. *Introduced by:* Rep. Steven Bradford (D), see [bill information](#).

*Commentary:* This bill demonstrates that statutes can be inconsistent and that policy development is a process. Efforts to advance expungement policies could start with a review of current statutes and identify opportunities for improvement.

- **Colorado House Bill 1167 (2011) (reduced waiting period to seal; limits disclosure)**

Prior to this legislation, a person convicted of drug use or possession was subject to a 10-year waiting period before being able to petition to seal the criminal record. Under this [bill](#), the waiting period was reduced for several categories of drug offenses based on the severity. Significantly, it also prohibits employers, government agencies, landlords and others from requiring an applicant to disclose any information contained in a sealed record; an applicant with a sealed record may state that she or he has not been criminally convicted. *Introduced by:* Rep. Mark Ferrandino (D), see [bill information](#).

*Commentary:* Many states that authorize expungement relief for persons with convictions impose waiting periods. Policymakers should consider the impact of waiting periods on the ability of the individual to reintegrate into the community and whether they enhance public safety.

- **Delaware House Bill 169 (2010) (programs eliminate waiting period; limits disclosure)**

Lawmakers eliminated the five-year waiting period to obtain an expungement for persons who successfully complete the Probation Before Judgment (“PBJ”) program, and the two-year waiting period for persons who have successfully completed the First Offenders Controlled Substances Diversion Program (“CSDP”). Persons can have records expunged relating to the arrest and conviction for eligible offenses. Additionally, this [bill](#) clarified that offenses for which records have been expunged do not have to be disclosed as arrests, and corrects inconsistencies between the Family Court and Superior Court expungement statutes. *Introduced by:* Rep. Melanie George (D), [bill information](#).

*Commentary:* Incentivizing rehabilitation can promote reentry. However, lawmakers should carefully consider the purpose of such conditions and whether or not they actually strengthen public safety or establish additional barriers for people with convictions.

- **Indiana House Bill 1211 (2011) (expungement of certain arrests and low-level convictions)**

Prior to this [legislation](#), individuals could only petition the court to expunge their records under certain circumstances, including the dropping of criminal charges. This bill provides that persons charged with a crime may petition a court to restrict disclosure of arrest records if the person is acquitted of all criminal charges. The legislation also limits disclosure of arrest records if the petitioner is convicted of the crime and the conviction is later vacated. Additionally, it authorizes expungement after eight years for persons convicted of certain misdemeanor or Class D felony

offenses that did not result in injury to a person; sex offenses are excluded. Eligible petitioners may request the sentencing court to restrict access to their arrest and criminal records.

*Introduced by:* Rep. Eric Turner (R), [bill information](#).

*Commentary:* Limiting expungement policies to a narrow population can undermine fairness and effectiveness. There is opportunity for future reform efforts as this bill excludes felony offenses such as certain nonviolent property and drug offenses.

- **Louisiana House Bill 102 and House Bill 927 (2010) (fee exemption; low-level offenses)**

State lawmakers passed two measures in 2010 that strengthen expungement policy. [House Bill 102](#) adds an additional exemption from fees with the consent of the district attorney in cases that are dismissed or instances where the district attorney declined to prosecute the case prior to the time limitations. The measure excludes applicants who participated in pre-trial diversion programs. *Introduced by:* Rep. John Bell Edwards (D), [bill information](#).

[House Bill 927](#) authorizes expungement after five years for various offenses, including the violation of a municipal or parish ordinance, a traffic violation, or certain misdemeanor offenses. Persons may submit a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he or she was arrested for expungement of the arrest record. *Introduced by:* Rep. Richard Gallot (D), [bill information](#).

*Commentary:* Measures that waive expungement fees for applicants whose cases were not prosecuted can do a lot to restore trust in the criminal justice system.

- **Mississippi House Bill 160 (2010) (first-felony conviction expungement)**

Lawmakers authorized expungement relief with this [measure](#) for persons with certain first-time felony convictions, including drug possession, shoplifting, and writing bad checks. This provision allows eligible petitioners to apply for relief for a felony conviction five years after completing the terms and conditions of their sentence. The measure allows a judge to decide if the conviction should be removed from the record. *Introduced by:* Rep. Robert Moak (D), [bill information](#).

*Commentary:* Authorizing expungement for certain low-level felony offenses committed by first-time defendants can incentivize rehabilitation and strengthen reentry efforts. Lawmakers should consider expanding relief mechanisms to persons with longer criminal histories that demonstrate rehabilitation as well.

- **North Carolina Senate Bill 397 (2011) (juvenile offense expungement; limits disclosure)**

Persons with criminal convictions who are under 18 years of age at the time of the commission of a nonviolent felony are eligible to petition for expungement under this [bill](#) after four years have passed or the sentence is served. If expungement is granted, the conviction will be expunged from court records, and the court will direct law enforcement agencies to expunge their records. Persons whose nonviolent felony has been expunged shall not be guilty of perjury for failing to provide any information regarding the expunged offense. The bill was supported by the [NC Second Chance Alliance](#). *Introduced by:* Sen. Warren Daniel (R), [bill information](#).

Commentary: Measures that provide relief to persons with juvenile convictions can ensure that offenses committed during one's youth will not impede opportunities for a second chance at life.

- **Oregon House Bill 3376 (2011) (narrow expansion of expungement)**

The [measure](#) expands expungement provisions to people who committed nonviolent property crimes after 20 years if they have not committed a new offense. Specifically, the measure authorizes expungement relief for persons convicted of nonviolent Class B felony offenses including bribery, theft, and embezzlement. The legislation garnered broad support and received a unanimous vote in the house. *Introduced by*: Rep. Chris Harker (D), [bill information](#).

Commentary: This bill narrowly expands the state's expungement policy; it is more restrictive, given its lengthy waiting period, than other states that passed similar measures in recent years.

- **Rhode Island House Bill 7923 and Senate Bill 2646 (2010) (expungement expansion)**

During 2010, the legislature authorized two measures, [House Bill 7923](#) and [Senate Bill 2646](#), that enhanced the state's expungement policy. The measures expand relief to additional persons with criminal convictions. Prior to reform, Rhode Island limited expungement to persons convicted of a first nonviolent offense. Currently, eligibility for expungement varies depending on one's criminal record. Individuals convicted of a misdemeanor are eligible to have their record sealed five years after completion of sentence, while persons with certain felony convictions can seek relief 10 years after the sentence is completed. Additionally, the criminal record of anyone who has been given a deferred sentence after pleading guilty or no contest will be expunged after five years, provided that he or she stays on good behavior. HB 7923—*introduced by*: Rep. Joseph Almeida (D), [bill information](#); SB 2646—*introduced by*: Sen. Harold Metts (D), [bill information](#).

Commentary: These measures are examples of state policymakers expanding narrow expungement policies to include additional offenses in order to minimize the impact of collateral consequences.

- **South Dakota House Bill 1105 (2010) (expungement of unprosecuted arrests; limits disclosure)**

This [measure](#) provides for expungement of arrest records if the state has not filed an indictment one year after the date of arrest. Arrest records may also be expunged at any time after an acquittal. The state's expungement policy seals records and does not actually destroy physical records. Sealing of records means that those records may only be accessed by order of the court. There is no statute of limitations on expungement of arrests. Following reform of the state's expungement provision, individuals are no longer required to disclose arrests or indictments after those records have been expunged. *Introduced by*: Rep. Joni M. Cutler (R), [bill information](#).

Commentary: Some states allow prospective employers and housing authorities to inquire about prior arrests, which results in individuals being barred from certain rights and public benefits. Thus, policies providing relief to persons with prior arrests that did not result in convictions should be advanced. Waiting periods should be discouraged as they deny the presumption of innocence and undermine a core tenet of the nation's legal system.

- Texas House Bill 351 and Senate Bill 462 (2011) (expungement for “actual innocence”)**  
 As explained by the [sponsor](#), Texas law only permitted expungement (referred to as “expunction”) under a narrow set of circumstances, including acquittals, pardons, and when the charges are the result of mistaken or misused identity. [HB 351](#) expands the circumstances that allow for expungement to include people found to be “actually innocent.” This bill also clarifies that defendants whose charges are not pending and did not lead to convictions, or defendants whose indictments were quashed or dismissed due to mistake, false information, or lack of probable cause, do not have to wait for the statute of limitations to expire before being granted an expungement. HB 351 and [SB 462](#) contain similar language; however, SB 462 does not provide for expungement based on “actual innocence.” HB 351—*introduced by*: Rep. Marc Veasey (D), [bill information](#); SB 462—*introduced by*: Sen. Royce West (D), [bill information](#).

*Commentary:* Texas expungement policy is one of the most restrictive in the nation, as persons with prior convictions are ineligible for expungement relief. These measures codify into statute that persons found innocent are eligible for expungement—a useful addition to Texas expungement policy, yet there is still great need for reform.

- Utah House Bill 21 (2010) (fees and waiting period; multiple offenses as one episode)**  
 This [bill](#) created a new chapter known as the Utah Expungement Act and includes various provisions relating to the sealing of criminal records for certain individuals with prior convictions. One salient provision allows the mandatory waiting period to begin after a sentence has been completed. Prior to reform, the law required that all restitution and fines be paid before the waiting period could begin. Another reform allows judges to treat multiple offenses as one episode for the purpose of expungement. Previously, the law required judges to treat each offense as a separate occurrence, which resulted in many rehabilitated people being denied expungement. *Introduced by*: Rep. Julie Fisher (R), [bill information](#).

*Commentary:* The financial penalties that can result from criminal convictions are rarely considered by lawmakers and can be impossible to pay for many persons with criminal justice debt. Enacting policies that carefully consider how these collateral consequences impede rehabilitation and reentry will only enhance public safety.

## (5) Prohibiting Discrimination Based on a Criminal Record

Several states have laws that limit how and under what circumstances an employer may consider an applicant's criminal record.<sup>19</sup> These laws make it illegal for an employer to discriminate against a person with a criminal record unless his or her conviction record is related to the duties of the job. Additional factors that are generally considered include the time that has elapsed since the offense, the person's age at the time of the crime, the seriousness of the offense, and rehabilitation efforts. These state policies build on federal law such as [Title VII of the Civil Rights Act of 1964](#), which

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<sup>19</sup> See LAC, *Enforce Anti-Discrimination Laws*, available at [http://www.lac.org/toolkits/titlevii/title\\_vii.htm#how](http://www.lac.org/toolkits/titlevii/title_vii.htm#how).

prohibits employers from banning people with criminal records from jobs and requires an individualized consideration of a conviction’s job-relatedness.

*Model:* Enacted in 1977, [N.Y. Correct. Law § 752](#) prohibits “[u]nfair discrimination against persons previously convicted of one or more criminal offenses” in public and private employment and licensing. Disqualification of applicants from employment or licensure is appropriate where there is a “direct relationship” between the conviction and the employment or license sought. Enacted 30 years ago, Wisconsin law prohibits discrimination on the basis of arrest or conviction record, and requires a conviction to be “substantially related” if it is used to deny employment or licensure. See Wisc. Stat. §§ [111.321](#), [111.322](#), [111.335](#). However, the recently introduced Wisconsin [Senate Bill 207](#) seeks to roll back its anti-discrimination laws.

- **Arkansas Senate Bill 806 (2011) (no disqualification for benefits)** ([Cross-referenced](#) under training and job placement.) The [bill](#) states that a criminal conviction shall not be used to disqualify a person from eligibility for a scholarship, grant, loan forgiveness program, or other state-funded benefit unless there is a statutory bar. *Introduced by:* Sen. Joyce Elliott (D), see [bill information](#).

*Commentary:* Although not explicitly framed as an anti-discrimination measure, the bill has the impact of preventing discrimination based on a conviction.

- **Florida Senate Bill 146 (2011) (no denials based on lack of civil rights)** ([Cross-referenced](#) under inventories of collateral consequences.) Effective January 1, 2012, [SB 146](#) amended [Fla. Stat. § 112.011](#) to prevent a state agency from denying an application for licensing or employment based solely on the applicant’s lack of voting rights or other civil rights. However, employment may still be denied if the felony or first-degree misdemeanor conviction is directly related to the job or for public safety reasons. *Introduced by:* Sen. Chris Smith (D), see [bill information](#).

*Commentary:* Like the Arkansas bill, this legislation does not use anti-discrimination language, yet it prohibits state agencies from discriminating against an applicant based on disenfranchisement status. The bill appears to temper one aspect of the negative fallout from the recent [roll back](#) of the rules alleviating disenfranchisement of people with convictions in Florida.

## **(6) Securing Identification Documents**

Individuals being released from a period of incarceration often need assistance in applying for various forms of identification and other important documents, such as a driver’s license, Social Security card, and birth certificate. These documents are vital because they are frequently required for obtaining employment or housing. Applying for these documents can be a confusing and frustrating experience, as one piece of identification is often required in order to obtain the other documents. Another catch-22 is the prohibitive cost of identification—without identification, individuals often cannot earn a living.

*Model:* To ease the difficult process of exiting correctional facilities, states like Minnesota have facilitated collaboration between the Department of Corrections and the Department of Motor Vehicles (DMV) to issue identification to prisoners *prior* to release.<sup>20</sup> By having the DMV issue identification cards to inmates, released individuals can immediately begin reintegrating into the community by seeking work.

- **Colorado Senate Bill 6 (2010) (free identification card)**

The “legislative declaration” to this [bill](#) acknowledges that the “lack of valid identification is an impediment to successful re-entry and employment.” Recommended by the [Economic Opportunity Poverty Reduction Task Force](#), the bill establishes that individuals referred by or released from the Department of Corrections, the Division of Youth Corrections, or a county jail are eligible for a free identification card within six months of release. The bill also changes prior law by permitting a person convicted of a felony to apply for a name change. *Introduced by:* Sen. Betty Boyd (D); Rep. Ken Summers (R), see [bill information](#).

*Commentary:* This bill recognizes that many people exiting prison have limited resources that may prevent their ability to reenter the community successfully.

- **Kentucky House Bill 428 (2010) (permits issuance of identification or license)**

This [bill](#) permits issuing an identification card or driver’s license to an individual with a felony conviction who has been released from a state correctional facility. The individual must be able to present identification, including a birth certificate, a notice of discharge, a photograph, and a release letter. *Introduced by:* Rep. Jesse Crenshaw (D), see [bill information](#).

*Commentary:* Although a step in the right direction, many persons exiting prison lack other forms of identification, including birth certificates. Lawmakers interested in eliminating such barriers might explore an inter-agency collaboration that provides access to the various forms of identification one might need to reenter the community.

- **Nevada Senate Bill 159 (2011) (free birth certificates; duplicate drivers’ licenses)**

The [bill](#) requires the director of the department of corrections to provide an individual released from prison with information regarding employment, bonding programs, and access to a driver’s license or identification card. It provides a waiver of fees for issuance of copies of birth certificates and duplicate drivers’ licenses for individuals released from prison within 90 days. *Introduced by:* Sen. Don Gustavson (R), see [bill information](#).

*Commentary:* This measure requires exiting prisoners to receive relevant information that should improve their reintegration into the community. Research shows that the first few weeks after release are critical to successful reentry and preventing recidivism.

- **New York Assembly Bill 9706 (2010) (free birth certificates)**

Assembly Bill [3686A](#) was originally introduced in 2009 to amend N.Y. Pub. Health L. §§ 4174 (4)

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<sup>20</sup> See LAC, *Securing Official Identification for People Leaving Jails and Prisons*, available at <http://www.lac.org/toolkits/ID/ID.htm>.

and § 4179 in order to provide free birth certificates when the department of correctional services, a local correctional facility, or a juvenile detention facility requests a certificate for an inmate or juvenile in anticipation of release. The amendments were incorporated into the omnibus Assembly Bill 9706 and enacted as Ch. 56. Prior to this [bill](#), the department of health had been unwilling to waive the fee despite the fact that inmates and juveniles were generally unable to pay. See [bill information](#).

*Commentary:* Like the Colorado bill, this measure improves access to identification, and thus, strengthens opportunities for employment and securing housing.

- **Virginia House Bill 1161 (2010) (special identification card)**

If a prisoner does not possess a government-issued identification card, under this [bill](#) the sheriff or jail administrator may issue a special identification card to be given upon release. All costs and fees must be paid by the inmate. *Introduced by:* John A. Cosgrove (R), see [bill information](#).

*Commentary:* Many incarcerated persons are indigent and find it difficult to pay the costs associated with this policy. Lawmakers should consider waiving fees for indigent prisoners in an effort to enhance the reentry process and strengthen public safety.

## **(7) Reducing Child Support Arrearages**

Parents returning to their communities after incarceration have faced overwhelming judgments for child support arrears that accrued while they were incarcerated. Provisions that allow the courts to consider the loss of income due to incarceration and make adjustments increases the likelihood that noncustodial parents will have more involvement in their children's lives and fulfill their financial obligations.

*Model:* Although 2010-2011 did not yield relevant legislation in this area, New York [Assembly Bill 8178](#), enacted in 2009, gives courts the authority to modify child support obligations when there is a reduction in income due to incarceration. The outcomes are strengthened families, reduced recidivism, and increased public safety. Also, Maryland's Senate Bill 154 and [House Bill 263](#), which passed in 2008, allowed child support obligors to reduce the amount of arrearages in exchange for a payment agreement. Although not exclusive to people with criminal records, the bill benefited this population. The Maryland bills were supported by the [Job Opportunities Task Force](#) and many others.

## **(8) Training and Job Placement for People with Criminal Records**

Without assistance to make a successful transition, many with criminal histories could reoffend, as joblessness has been broadly linked to high recidivism rates. Compounding the problem, people with criminal records also typically have low levels of educational attainment. In order to be successful, it is essential that people leaving incarceration or post-conviction possess the skills necessary to enter

and compete for jobs in the labor market. Job training and placement programs that are designed to anticipate the legal and socioeconomic obstacles that people with records face provide the resources and infrastructure that can interrupt recidivism.

*Model:* Researchers have identified some of the key aspects of quality vocational and educational programs for incarcerated individuals. For example, effective programs offer the attainment of high school or postsecondary credentials, encourage participation, and build skills that are in demand in the job market.<sup>21</sup> Some examples of noteworthy programs include Project RIO in Texas, Transitions Project in Oregon, and Corrections Enterprises in North Carolina.<sup>22</sup>

- **Arkansas Senate Bill 806 (2011) (high-demand job training)**  
([Cross-referenced](#) under anti-discrimination.) Known as the [Arkansas Restorative Justice Responsibility Act](#), this measure charges the Department of Labor to work with other agencies and groups to promulgate rules for placement and training programs for people with convictions. In addition, the Department of Correction is directed to create training and skills programs to prepare inmates for gainful employment upon release. *Introduced by:* Sen. Joyce Elliott (D), see [bill information](#).

*Commentary:* One of the critiques of job training programs is that they only provide the formerly incarcerated with general skills. In that vein, this bill charges the Department of Correction to identify and focus on training for “high-demand vocations and careers.” The programs are also made available to “all inmates.”

- **Colorado House Bill 1112 (2010) (expanded job training eligibility)**  
Amending the Correctional Education Program Act of 1990, this [bill](#) expands eligibility of programs to individuals expected to be released from custody within five years. The prior statute limited eligibility to individuals with two or more years to serve. The Department of Corrections must report specified information and meet performance objectives, including assessing the vocational needs of individuals and providing training for marketable, in-demand skills. *Introduced by:* Rep. Joe Miklosi (D), see [bill information](#).

*Commentary:* Like the Arkansas bill, this measure has a focus on building individuals’ marketable, in-demand skills. However, the programs here are limited to only certain individuals; when resources are scarce, this may be a strategic prioritization.

- **Idaho Senate Bill 1030 (2011) (permits rehabilitative services)**  
[SB 1030](#) amends the code to permit the Idaho Department of Correction to provide research-based rehabilitative services for incarcerated and community-based offenders as resources permit. See [bill information](#).

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<sup>21</sup> For recommendations, see Council of State Governments, *Report of the Re-Entry Policy Council Charting the Safe and Successful Return of Prisoners to the Community* (2005) at Policy Statements 15-16, available at <http://reentrypolicy.org/publications/1694;file>.

<sup>22</sup> *Id.* at 215, 217.

*Commentary:* Although this bill does not require rehabilitative services, it opens the door to further advocacy.

- **Iowa House Bill 2522 (2010) (funding appropriated)**

Various appropriations are packaged in this [legislation](#), including funds to the Department of Workforce Development for the development and administration of an employment skills reentry program (Sec. 14, (4)). The department must also provide staff to correctional facilities with the goal of enhancing the skills of people with convictions to find employment. See [bill information](#).

## (9) Employer Negligent Hiring Protections

Many employers hesitate to hire individuals who have been arrested or convicted of a crime—ruling out about 65 million of the country’s adults,<sup>23</sup> even though they may be the best qualified for the job. Despite the fact that an employer’s reasonable efforts to consider a prospective employee’s background will generally eliminate the risk of employer liability and the lack of evidence that persons with criminal records are any more likely to offend on the job than their counterparts, some employers are still unduly fearful of hiring someone with a criminal record. As part of the legislative package to press fair hiring policies forward and allay employer concerns, some states have added negligent hiring protections to limit employer liability related to the hiring of people with records.

*Model:* The Massachusetts and North Carolina bills described below both couple a negligent hiring provision with a fair hiring policy. This can be an effective means of garnering broader support for the bill as long as the safe harbor provision does not encroach upon protections against unlawful employer actions.

- **Arkansas Senate Bill 806 (2011) (study of limited liability)**

([Cross-referenced](#) under training and job placement.) In addition to the [bill](#)’s establishment of job placement and training programs for people with convictions and incarcerated persons, it includes a study to explore the feasibility of the state assuming responsibility for limited liability for employers of people with convictions. *Introduced by:* Sen. Joyce Elliott (D), see [bill information](#).

*Commentary:* Although framed as an initial study, the bill indicates that if it “proves feasible and prudent,” rules implementing limitation of liability shall be promulgated.

- **Colorado House Bill 10-1023 (2010) (restricting information at trial)**

This [measure](#) limits employer liability exposure by preventing the introduction of an employee’s criminal record at trial unless the facts of the case directly relate to the prior conviction. The information regarding an employee’s criminal history also will be excluded if the employee’s record is sealed, if the employee received a pardon, or if the record involves an arrest or charge that did not result in a conviction. *Introduced by:* Rep. Mark Waller (R); Sen. Evie Hudak (D), see

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<sup>23</sup>See *supra*, fn. 8.

[bill information](#).

*Commentary:* Although not attached to any particular fair hiring policy, the bill is an attempt to generally encourage the hiring of people with convictions by assuaging employers' fears of litigation.

- **Massachusetts Senate Bill 2583 (2010) (safe harbor attached to CORI)** ([Cross-referenced](#) under “ban the box.”) Within this comprehensive “ban the box” [legislation](#), safe harbor provisions for employers were added. They ensure that employers are not liable for negligent hiring practices by reason of relying solely on the Criminal Offender Record Information (CORI); however, the provision only applies if the employer received the CORI from the state and followed relevant regulations pertaining to verification of the subject's identity. See [bill information](#).

*Commentary:* The state is encouraging employers to refrain from using commercially-prepared background checks by attaching the negligent hiring protection to the use of the CORI. Unlike third-party background checks, the CORI is subject to conviction-reporting limitations.

- **North Carolina House Bill 641 (2011) (limited liability attached to certificate)** ([Cross-referenced](#) under restoration of rights.) [HB 641](#), establishing a certificate of relief, includes a provision protecting employers and others against negligence actions. The certificate acts as a bar to any action alleging lack of due care in employment, licensing, admission to a school or program, or business transaction if the person knew of the certificate at the time of the alleged negligence. *Introduced by:* Rep. David Guice (R), see [bill information](#).

*Commentary:* By attaching the limited liability provision to the certificate, the state is promoting the use of the certificate.

## Playing Defense

As criminal justice reform becomes a more mainstream goal and the public develops an understanding of how barriers to employment undermine communities, we would expect to see fewer policies that impede employment. However, in the job areas that require working with sensitive populations—such as children or the elderly—there persists a ramping up of employment barriers, often without regard to the overbroad and excessively severe nature of the restrictions.

### (1) Lifetime Bans from Employment

Both the Equal Employment Opportunity Commission (EEOC) [guidelines](#) and the latest empirical research strongly support reasonable age limitations on disqualifying offenses. As cited above, research has demonstrated that within a narrow period of time, an individual's “criminal record

empirically may be shown to be irrelevant as a factor in a hiring decision.”<sup>24</sup> The courts have also taken issue with state laws that disqualify individuals for excessive periods of time from employment—even in areas such as healthcare. For example, a Massachusetts court found that the plaintiffs, who had been convicted of violent offenses, did not clearly pose “so grave a danger and so high a risk of reoffense as to warrant a lifetime mandatory conclusive presumption of dangerousness.”<sup>25</sup> Nonetheless, legislatures have sought to impose lifetime bans.

- **Florida House Bill 7069 (2010) (direct health care restrictions)**

This [measure](#) requires state and federal background checks and fingerprints to be submitted electronically for direct health care workers and expands the list of disqualifying offenses to include a variety of fraud-related offenses. The bill also changes the waiting period for an exemption for disqualifying felonies from starting at the commission of the offense to starting once the applicant has completed the sentence. It also adds a waiting period to disqualifying misdemeanors. Lifetime bans are added for any person designated as a sexual predator, a career offender, or a sexual offender. *Introduced by:* Policy Council and Criminal & Civil Justice Policy Council; see [bill information](#).

*Commentary:* Each component of this bill highlighted above seeks to limit more people with convictions from working in the healthcare field, whether by expanding disqualifications, reducing the availability of exemptions, or adding lifetime bans. As advised by U.S. Attorney General Holder, every barrier to employment should be evaluated. If there is an alternative means to improve public safety without job disqualifications, that alternative should be considered.

- **Pennsylvania House Bill 1352 (2011) (school employment restrictions)**

Providing the enabling language for the education budget for fiscal year 2011-2012, this [bill](#) also amended 24 P.S. §1-111(e). It expanded a prohibition against individuals who have committed any one of 27 offenses from being employed by schools. The measure also establishes a tiered employment ban depending on the conviction, including a lifetime, 10-year, 5-year, and 3-year disqualification from school employment. Current school employees must notify the school of any arrest or conviction within 72 hours of its occurrence. Also, if there is a reasonable belief that an employee was arrested or has been convicted, a criminal history background check may be requested at the expense of the school. *Introduced by:* Rep. Todd Stephens (R); see [bill information](#).

*Commentary:* A particularly confusing aspect of this policy is the impact on current school employees who may have a disqualifying offense. As noted in one [article](#), the Pennsylvania State Education Association raised the concern of whether an “arrest” or “conviction” would be grounds for termination under the law.

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<sup>24</sup> Alfred Blumstein & Kiminori Nakamura, “Redemption” in an Era of Widespread Criminal Background Checks, National Institute of Justice Journal, Issue No. 263 (June 2009) at 14.

<sup>25</sup> *Cronin v. O’Leary*, 13 Mass. L. Rep. 405 (Mass. Super. Ct. 2001).

## (2) Sex Offenses

In an effort to protect vulnerable populations, employment restrictions against people with sex offense records have proliferated. However, many of these laws are extremely overbroad and capture even those individuals who pose no threat to public safety. Because people with sex offenses do not reoffend at a high rate and most sexual crimes are not committed by strangers, many of these employment restrictions miss the target of preventing sexual offenses by undermining efforts at acquiring stable employment. Given that one of the factors that decreases the probability of reoffending is employment, it is in society's interest to ensure that people with sex offense records can find meaningful work.<sup>26</sup>

- **New York Assembly Bill 4151 (pending) (employment with substantial contact with children)**  
Drafted very broadly, the proposed [bill](#) would prohibit the employment of a sex offender in any position having substantial contact with children where "substantial contact" is defined as any activity involving children. *Introduced by:* Rep. Steve Englebright (D); see [bill information](#).

*Commentary:* As [argued](#) by the New York Civil Liberties Union ([NYCLU](#)), this bill could be a barrier to a wide swath of jobs including "everything from working in a restaurant to being a janitor in an office building or taking tickets at a movie theater." Further, the bill does not distinguish between people with gradations of sex offenses. For example, teenagers convicted of engaging in consensual sex with other teenagers may be registered as sex offenders and would be unfairly subject to these restrictions.

- **Pennsylvania House Bill 123 (pending) (employer information on internet)**  
The federal Sex Offender Registration and Notification Act ([SORNA](#)) requires collection of the address and name of the employer of any registered sex offenders, but this [bill](#) would necessitate the posting of the employer's information on the internet. *Introduced by:* Rep. Julie Harhart (R); see [bill information](#).

*Commentary:* By requiring the posting of the employer's information on the internet, employers may be further deterred from hiring individuals with sex offense convictions.

## Conclusion: Upcoming Trends

Trends in state-level legislation in 2010-2011 suggest reasons for both concern and optimism. As the nation works through this period of economic distress and uncertainty, people with criminal records must confront growing economic stressors, including high unemployment and loss of public benefits. Despite positive trends such as the passage of numerous expungement and sealing laws and the growing "ban the box" movement, the spreading adoption of *lifetime bans against employment* laws continues to threaten the long-term economic security of people with criminal records.

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<sup>26</sup> See Candace Kruttschnitt, et. al, *Predictors of Desistance Among Sex Offenders: The Interactions of Formal and Informal Social Controls*, Justice Quarterly (2000).

Other trends, however, point toward the “next generation” of reentry legislation—policies that seek to eliminate or reduce the legal barriers faced by people with criminal convictions through evidence-based practices and public education about the issues.

In times of tight budgets, conservatives and liberals alike are interested in enacting cost-effective public safety policies. Data collection mandates can help state agencies achieve cost-effectiveness while ensuring fair hiring and licensing policies. For example, a state agency could be required to regularly collect and report data regarding its hiring, employment, and licensure practices, including (1) the number of people with criminal records who apply, (2) the number of people who are offered jobs or licenses, and (3) the number who are disqualified and the reasons for disqualification. Race and ethnicity data should be tracked in order to ascertain the impact on communities of color. Examples of data collection policies are the [Second Chance Act](#) and the [Arkansas’ Public Safety Improvement Act 2011 Act 570](#).

Also encouraging, more states are mandating public education about reentry policies. Several recent reentry bills have required the state agencies to raise public awareness about reentry and employment of people with criminal records, or educate employers about the particulars of a fair hiring policy. A good example is the [2010 order regarding criminal history reform in Massachusetts](#), which requires an interagency effort to develop an educational campaign to notify the public of their legal rights with respect to criminal records and to inform employers of permissible uses of the state criminal history report. These and other public education campaigns further a state’s public policy to encourage the employment of qualified individuals with criminal histories and works to dispel stereotypes and dismantle stigma.

## Summary of State Reforms: 2010-2011 Legislative Round-Up

State	Category	Reform
<b>Arkansas</b> ( <a href="#">HB 1608</a> )	<b>Expungement</b> ( <i>misdemeanors</i> )	Expands misdemeanor expungement availability; five-year waiting period exists for certain serious misdemeanor convictions (e.g., DUI).
<b>Arkansas</b> ( <a href="#">SB 806</a> )	<b>Anti-discrimination</b> ( <i>state-funded benefits</i> ); <b>Training</b> ( <i>high-demand</i> ); <b>Employer liability</b>	Provides that criminal convictions cannot be used to disqualify persons from state-funded benefits. Agencies are directed to create training and skills programs for inmates. Includes study of limited liability for employers.
<b>California</b> ( <a href="#">AB 1384</a> )	<b>Expungement</b> ( <i>technical fix</i> )	Expands eligibility for expungement to persons convicted of misdemeanor offenses whose sentence did not include probation.
<b>Colorado</b> ( <a href="#">HB 1167</a> )	<b>Sealing</b> ( <i>waiting period</i> )	Reduces waiting period for sealing a criminal record for certain drug offenses.
<b>Colorado</b> ( <a href="#">SB 6</a> )	<b>Identification</b> ( <i>free ID</i> )	Provides that individuals from correction facilities are eligible for free identification cards.
<b>Colorado</b> ( <a href="#">HB 1112</a> )	<b>Training</b> ( <i>eligibility</i> )	Expands eligibility of programs to those to be released in five years.
<b>Colorado</b> ( <a href="#">HB 10-1023</a> )	<b>Employer liability</b> ( <i>at trial</i> )	Limits employer liability by preventing introduction of employee's record at trial.
<b>Connecticut</b> ( <a href="#">HB 5207</a> )	<b>Hiring standards</b> ( <i>ban the box</i> )	Prohibits applicants from being initially disqualified for licensure or employment by public employers because of a conviction.
<b>Delaware</b> ( <a href="#">SB 59</a> )	<b>Waivers</b> ( <i>waiting period</i> )	Standardizes waiver requirements for appealing denials of occupational and professional licenses by shortening the waiting periods for waivers.
<b>Delaware</b> ( <a href="#">HB 169</a> )	<b>Expungement</b> ( <i>waiting period</i> )	Eliminates the expungement waiting period for persons who successfully complete certain programs.
<b>Florida</b> ( <a href="#">SB 146</a> )	<b>Inventory of collateral consequences;</b> <b>Anti-discrimination</b>	Requires state agencies to submit report of rules disqualifying people with convictions and identify alternatives; lack of civil rights cannot be a basis for employment denial.
<b>Idaho</b> ( <a href="#">SB 1030</a> )	<b>Training</b> ( <i>permits services</i> )	Permits agency to provide research-based rehabilitative services.
<b>Indiana</b> ( <a href="#">HB 1211</a> )	<b>Expungement</b> ( <i>low-level offenses</i> )	Authorizes expungement after eight years for persons convicted of certain low level offenses; also allows persons acquitted to restrict disclosure of arrests.
<b>Iowa</b> ( <a href="#">HB 2522</a> )	<b>Training</b> ( <i>appropriation</i> )	Funds appropriated for employment skills reentry program.
<b>Kentucky</b> ( <a href="#">HB 428</a> )	<b>Identification</b> ( <i>permits issuance</i> )	Permits issuance of identification card or drivers' license to individual with felony conviction released from correctional facility.

<b>Louisiana</b> ( <a href="#">HB 102</a> , <a href="#">HB 927</a> )	<b>Expungement</b> ( <i>fees; low-level offenses</i> )	Expands fee exemption for certain applicants (HB 102); authorizes expungement after five years for various low-level offenses (HB 927).
<b>Massachusetts</b> ( <a href="#">SB 2583</a> )	<b>Hiring standards</b> ( <i>ban the box</i> ); <b>Employer liability</b>	Prohibits applicants from being initially disqualified for licensure or employment by public or private employer because of a conviction; limits employer liability.
<b>Mississippi</b> ( <a href="#">HB 160</a> )	<b>Expungement</b> ( <i>first-time felonies</i> )	Authorizes expungement relief for persons with certain first-time felony convictions including drug possession and shoplifting.
<b>New Mexico</b> ( <a href="#">SB 254</a> )	<b>Hiring Standards</b> ( <i>ban the box</i> )	Limits state agencies from inquiring into an applicant's conviction history on an initial employment application.
<b>New York</b> ( <a href="#">AB 9706</a> )	<b>Identification</b> ( <i>free birth certificates</i> )	Permits free birth certificates when requested by correctional facility for inmate or juvenile.
<b>Nevada</b> ( <a href="#">SB 159</a> )	<b>Identification</b> ( <i>free birth certificates</i> )	Provides a waiver of fees for copies of birth certificates and duplicate drivers' licenses for individuals released from prison within 90 days.
<b>North Carolina</b> ( <a href="#">HB 641</a> )	<b>Certificate</b> ( <i>low-level offenses</i> ); <b>Employer liability</b>	Persons convicted of certain low-level offenses may petition for a certificate of relief from collateral sanctions and disqualifications; limits employer liability.
<b>North Carolina</b> ( <a href="#">SB 397</a> )	<b>Expungement</b> ( <i>juveniles</i> )	Permits expungement for young people convicted of certain felony offenses.
<b>Ohio</b> ( <a href="#">HB 86</a> )	<b>Certificate</b> ( <i>state licensure</i> )	Certificate of Achievement and Employability ensures individualized consideration from state licensing agency.
<b>Oregon</b> ( <a href="#">HB 3376</a> )	<b>Expungement</b> ( <i>narrow</i> )	Expands expungements to nonviolent property crimes after twenty years.
<b>Rhode Island</b> ( <a href="#">HB 7923</a> , <a href="#">SB 2646</a> )	<b>Expungement</b> ( <i>waiting period</i> )	Permits persons with misdemeanors to seal record five years after completion of sentence; 10 years for certain felony convictions.
<b>South Dakota</b> ( <a href="#">HB 1105</a> )	<b>Expungement</b> ( <i>unprosecuted arrests</i> )	Allows expungement of arrest records one year after the date of arrest if the state has not filed an indictment.
<b>Texas</b> ( <a href="#">HB 351</a> , <a href="#">SB 462</a> )	<b>Expungement</b> ( <i>"actual innocence"</i> )	Expands expungement to include people found to be innocent.
<b>Utah</b> ( <a href="#">HB 21</a> )	<b>Expungement</b> ( <i>waiting period</i> )	Permits mandatory waiting period for expungement to begin after completion of sentence.
<b>Virginia</b> ( <a href="#">HB 1161</a> )	<b>Identification</b> ( <i>special ID</i> )	Permits issuance of special identification card to inmate upon release.