

# The Collateral Consequences of Drug Convictions and LAPPA's Model Act

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# What Are Collateral Consequences of Conviction?



# First, the Direct Consequences of Conviction

- A criminal conviction has direct consequences for a person who is convicted of a crime. These include:
  - Incarceration in a jail or prison facility
  - Legal financial obligations
  - Probation
- These are the most obvious consequences of a criminal conviction. These conditions are part of the sentence itself, which the judge has discretion in setting, and which are subject to the Eighth Amendment Cruel and Unusual Punishment Clause.



# What are Collateral Consequences of Conviction?

- Collateral consequences of conviction are “legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other opportunities.”<sup>1</sup>
- Collateral consequences are generally imposed by statute. Sometimes by regulation.
  - E.g. "A conviction for a felony suspends the following civil rights of the person sentenced: 1. The right to vote. 2. The right to hold public office of trust or profit. 3. The right to serve as a juror." Arizona Revised Statute 13-904(A).
- Collateral consequences are not part of a sentence and are not “punishment” for purposes of Constitutional law. Therefore, the Eighth Amendment does not apply to collateral consequences. A general, very low “rational basis” standard applies to collateral consequences of conviction.<sup>2</sup>

1. Council of State Governments, *National Inventory of the Collateral Consequences of Conviction* (2024), <https://niccc.nationalreentryresourcecenter.org/#:~:text=Collateral%20consequences%20are%20legal%20and%20regulatory%20restrictions%20that%20limit%20or,rights%2C%20benefits%2C%20and%20opportunities>; 2. Joshua Kaiser, *We Know It When We See It: The Tenuous Line between 'Direct Punishment' and 'Collateral Consequences'*, 59 *Howard L.J.* 341-372 (2016); Sandra G. Mayson, *Collateral Consequences and the Preventive State*, 91 *Notre Dame L. Rev.* 301 (2015).

# Who Do Collateral Consequences Apply To?

- 1 in 3 Americans have a criminal record of some kind.<sup>1</sup> 8.1% of Americans have been convicted of a felony.<sup>2</sup>
- The criminal justice system has a well-documented racially disproportionate impact. Black people in the US are five times and Latino/a people in the US are three times more likely to be incarcerated than white people in the US.<sup>3</sup>
- Collateral consequences not only apply to people who go to jail or prison, but can also apply to people with a conviction even if they aren't sentenced to time in jail or prison.
  - **Scholar Jack Chin notes that we are not only in an era of mass incarceration, we are also in an era of mass conviction.**

1. Marina Duane, et al., *Criminal Background Checks*, Urban Institute (Mar. 2017), [https://www.urban.org/sites/default/files/publication/88621/2001174\\_criminal\\_background\\_checks\\_impact\\_on\\_employment\\_and\\_recidivism\\_2.pdf](https://www.urban.org/sites/default/files/publication/88621/2001174_criminal_background_checks_impact_on_employment_and_recidivism_2.pdf).
2. Cherrie Bucknor & Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Economic and Policy Research (June 2016), <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.
3. The Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System* (Apr. 19, 2018), <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>.

# In What Domains Do Collateral Consequences Impact People?

- There are over **45,000 state and federal collateral consequences** of conviction.<sup>1</sup> Each state's collateral consequences look different.
- **Housing:** In some states, there is a “one strike and you're out” policy for residents of public housing.<sup>2</sup>
- **Employment:** Mandatory background checks, flat prohibitions on certain jobs
  - In New York, there is a prohibition on people convicted of certain crimes from being a bingo caller.<sup>3</sup>
  - Licensing: there are often limits on receiving professional licensure due to a criminal conviction, which can make trade school or higher education not worth the cost.
- **Welfare Benefits:** Some states have a partial ban on SNAP or TANF for people convicted of certain drug crimes.
- **Family law:** Some states limit the ability to adopt or become a foster parent.
- **More:** As discussed elsewhere in this presentation, collateral consequences can include loss of voting rights, deportation, and more.<sup>4</sup>

1. Cameron Kimble & Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, Brennan Center (June 21, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment>. 2. Kathryn V. Ramsey, *One-Strike 2.0: How Local Governments Are Distorting a Flawed Federal Eviction Law*, 65 UCLA L. Rev. 1146 (2018). 3. 9 CRR-NY 4820.35. 4. Examples of each category can be found here: Council of State Governments, *National Inventory of the Collateral Consequences of Conviction* (2024), <https://niccc.nationalreentryresourcecenter.org/#:~:text=Collateral%20consequences%20are%20legal%20and%20regulatory%20restrictions%20that%20limit%20or,righs%2C%20benefits%2C%20and%20opportunities>

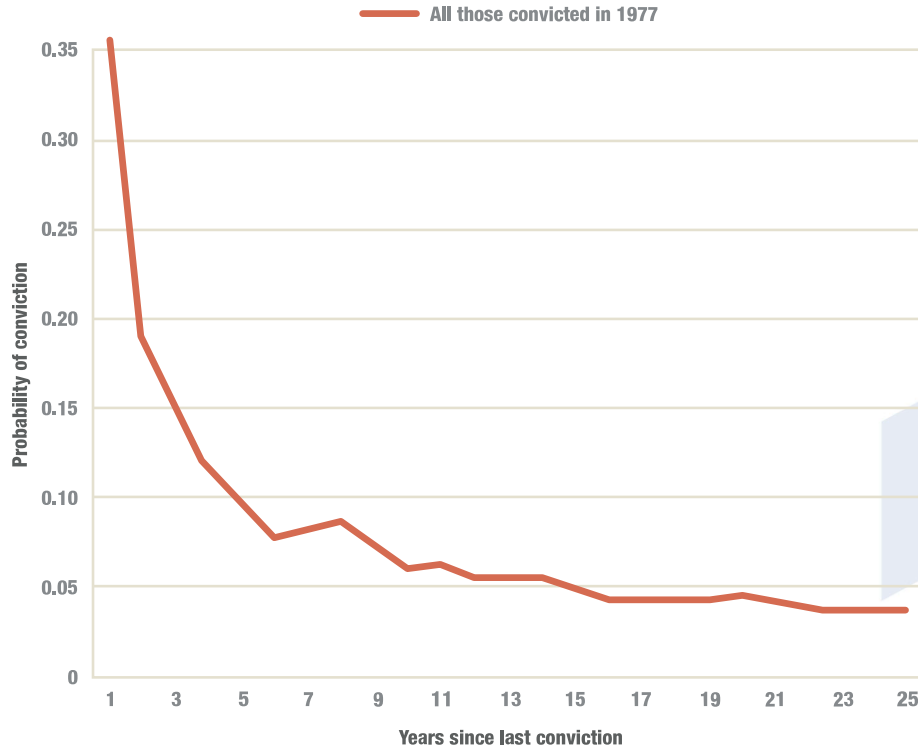
# Some Collateral Consequences Are Narrowly Tailored, But Many Are Too Punitive

- There are some collateral consequences that are narrow and logical, such as:
  - Preventing someone convicted of child sexual abuse from being a foster parent
  - Preventing someone convicted of a violent felony from getting a firearm license
- But social science shows us that, with the passage of time, the likelihood of another criminal conviction plummets, to the point of being about equal to the general population.<sup>1</sup>



1. Shawn D. Bushway, *Resetting the Record*, RAND (2024), [https://www.rand.org/pubs/research\\_briefs/RBA2968-1.html#fn13](https://www.rand.org/pubs/research_briefs/RBA2968-1.html#fn13); Alfred Blumstein & Kiminori Nakamura, *Report to the National Institute of Justice* (Sept. 2010), <https://www.ojp.gov/pdffiles1/nij/grants/232358.pdf>.

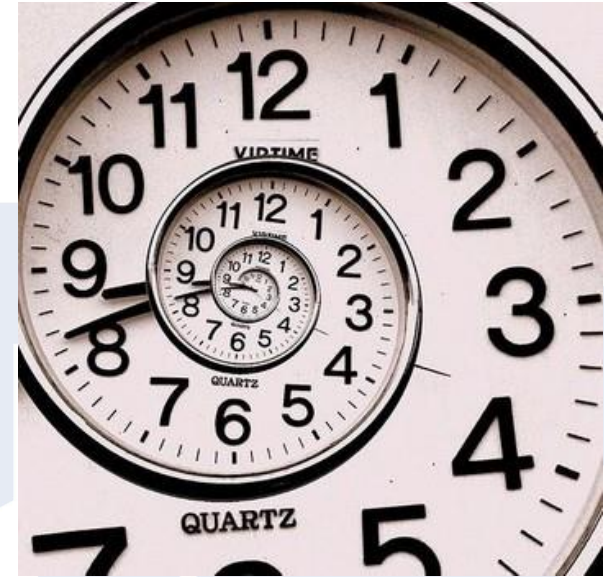
# Risk of Committing Another Crime as Time Passes





# For How Long Do They Apply?

- Oftentimes, collateral consequences apply for life.
  - Some sunset, are expunged, pardoned, etc.
  - Pardons of crimes used to be much more common, however, they are more rare now.
  - There are some relief provisions, but many are not automatic and are burdensome to apply for.
- Note: if we are talking about *collateral* consequences, then that necessarily means that the individual affected was not sentenced to prison for life.
  - The irony, as scholar Jack Chin points out, is that people convicted of less serious crimes will be *more* impacted by collateral convictions.



# How can you find out which collateral consequences apply in your jurisdiction?

- If you think this is an overwhelming amount of information, you are right.
- The Supreme Court held that attorneys must inform their clients if a criminal conviction may lead to their deportation from the United States.<sup>1</sup>
  - Other than that, it is unclear what duty attorneys have to inform their clients of the collateral consequences of their conviction.
- The National Inventory of Collateral Consequences of Conviction—funded by the federal government—is a database of the more than 45,000 collateral consequences of conviction, both on a federal and a state level.
- It can be found here:  
<https://niccc.nationalreentryresourcecenter.org/consequences>

1. *Padilla v. Kentucky*, 559 U.S. 356 (2010)

# NICCC

NATIONAL INVENTORY OF  
COLLATERAL CONSEQUENCES  
OF CONVICTION

[Inventory](#) | [Resources](#) | [About](#) | [Help](#)

## Collateral Consequences Inventory

Use the categories below to search and view details of policies relating to collateral consequences of a criminal conviction.

**Disclaimer:** The legal content of this site is updated alongside state legislative sessions and is current as of the date specified on the details page of each consequence. Note that some content may not yet be updated through the most recently completed legislative session in a state.

DESCRIPTION:

Include Federal Consequences

[?](#) [Export](#) [Clear](#) [Search](#)

JURISDICTION [?](#)

Select all that apply

CONSEQUENCES [?](#)

Select all that apply

KEYWORDS [?](#)

Select all that apply

OFFENSE TYPE [?](#)

Select all that apply

DISCRETION [?](#)

Select all that apply

DURATION [?](#)

Select all that apply

Use the filters above to begin your search



### Need Help With Your Search?

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# NICCC

Disclaimer: The legal content of this site is updated alongside state legislative sessions and is current as of the date specified on the details page of each consequence. Note that some content may not yet be updated through the most recently completed legislative session in a state.

DESCRIPTION:   Include Federal Consequences 1 Export Clear Search

JURISDICTION 1                   

1 2 3 4 5 6 7 8 9 10

Matched 259 entries with 485 consequences

Title	Jurisdiction	Consequences	Keywords	Offense Type	Discretion	Duration
ORC Ann. 2925.14 <a href="#">Forfeit drug paraphernalia</a>	Ohio	Civil fines, liability, forfeiture & property rights	Civil litigation & administrative proceedings	Controlled substances offenses	Mandatory/Automatic	Indefinite
ORC Ann. 2923.241 <a href="#">Ineligible to possess vehicle with hidden compartment</a>	Ohio	Motor vehicle licensure (non-commercial)	Driving & noncommercial motor vehicles	Controlled substances offenses	Mandatory/Automatic	Indefinite
ORC Ann. 4112.02 <a href="#">Entry sale/rental of housing accommodations</a>	Ohio	Housing & residency	Real estate & property	Controlled substances offenses	Discretionary	Indefinite
OAC Ann. 123-1-76-11 <a href="#">Remove from public employment</a>	Ohio	Employment & volunteering	Public employment Public office	Controlled substances offenses	Discretionary	Indefinite
OAC Ann. 4501-1-1-18 <a href="#">Suspend temporary instruction permit/driver's license</a>	Ohio	Motor vehicle licensure (non-commercial)	Driving & noncommercial motor vehicles	Controlled substances offenses Motor vehicle offenses	Varies	Varies
OAC Ann. 4123-6-21.4 <a href="#">Impose requirement that injured worker obtains prescription drugs through coordinated services program</a>	Ohio	Government benefits	Health care Pharmacy & drugs	Controlled substances offenses	Discretionary	Indefinite
OAC Ann. 901-19-25 <a href="#">Ineligible to participate in a livestock exhibition</a>	Ohio	Employment & volunteering	Agriculture, livestock & food	Controlled substances offenses Other	Mandatory/Automatic	Indefinite
ORC Ann. 2923.13 <a href="#">Ineligible to possess weapons</a>	Ohio	Recreational license & participation, including firearms	Firearms, weapons & explosives	Controlled substances offenses Crimes of violence, including person offenses	Mandatory/Automatic	Indefinite
ORC Ann. 1547.111 <a href="#">Impose drug test during arrest for operating a water vessel under the influence (DUI)</a>	Ohio	Recreational license & participation, including firearms	Maritime & sea vessels	Controlled substances offenses Motor vehicle offenses	Mandatory/Automatic	Indefinite
OAC Ann. 5122-40-05 <a href="#">Ineligible for employment at a licensed methadone program</a>	Ohio	Employment & volunteering	Health care Pharmacy & drugs	Controlled substances offenses	Mandatory/Automatic	Indefinite

## Consequence Details

### Ineligible for employment at a licensed methadone program

[OAC Ann. 5122-40-05](#) »

#### RELEVANT SUBSECTIONS ⓘ

(F)(1),(2)

#### DURATION ⓘ

Indefinite

#### NOTES & OTHER INFORMATION ⓘ

Number of consequences: 1

#### KEYWORDS ⓘ

Health care  
Pharmacy & drugs

#### OFFENSES ⓘ

Controlled substances offenses

#### DISCRETION ⓘ

Mandatory/Automatic

#### RELATED LAWS ⓘ

Additional offense details:  
Only felony offenses

#### CURRENT THROUGH ⓘ

2022 legislative session and all 2022 regulatory rulemaking

#### TYPE ⓘ

Employment & volunteering

Print

#### Have questions or feedback about this consequence?

Learn how to get in touch with the NICCC.

[Contact Us](#) »

THIS INFORMATION IS NOT LEGAL ADVICE. USERS ARE CAUTIONED TO RESEARCH AND VERIFY THIS INFORMATION INDEPENDENTLY AT AN OFFICIAL SOURCE.

# NICCC

(2) A program will not employ in a position which allows access to any form of medication to any person who has been convicted of a felony relating to controlled substances.



# How Are Re-Entry Populations Doing?

- In the first full year after incarceration, nearly 50% of recently incarcerated people made less than \$500. Only 20% made more than \$15,000.<sup>1</sup>
- A criminal record reduces the chances of a call back for a job by 67% for Black people and 50% for white people.<sup>2</sup>
- A 2018 study showed that 46% of 35-year old men looking for work had a non-traffic-related criminal conviction.<sup>3</sup>
- Incarcerated people earn nearly half a million dollars less over their lifetime than if they had not been incarcerated.<sup>4</sup>
- Among people who inject drugs, 75% of property crime is motivated by financial need.<sup>5</sup>

1. Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, Brookings Institute (Mar. 2018), [www.brookings.edu/wp-content/uploads/2018/03/es\\_20180314\\_looneyincarceration\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf). 2. Devah Pager, *The Mark of a Criminal Record*, 108.5 AJS 937 (Mar. 2003), [https://scholar.harvard.edu/files/pager/files/pager\\_ajs.pdf](https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf). 3. Shawn D. Bushway, *Resetting the Record*, RAND (2024), [https://www.rand.org/pubs/research\\_briefs/RBA2968-1.html#fn13](https://www.rand.org/pubs/research_briefs/RBA2968-1.html#fn13). 4. Terry-Ann Craigie, et al., *Conviction, Imprisonment, and Lost Earnings*, Brennan Center for Justice (2020), [https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport\\_pdf.pdf](https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf). 5. Rachel Sutherland, et al., *Motivations, Substance Use and Other Correlates Amongst Property and Violent Offenders Who Regularly Inject Drugs*, 45 Addict Behav. 207 (Jun. 2015), <https://pubmed.ncbi.nlm.nih.gov/25705014/>.



# What Makes for Successful Re-Entry?

- Exactly the things that collateral consequences of conviction limit access to<sup>1</sup>:
  - Employment
  - Housing
  - Food/SNAP benefits
- This is not to mention the huge spike in overdose deaths for people with OUD in the first two weeks after release.<sup>2</sup>
  - Discriminatory barriers to MOUD in jails/prisons/probation/parole and lack of community-treatment options are also getting in the way of re-entry.



1. Christine Lindquist et al., *Cross-Site Evaluation of the Bureau of Justice Assistance FY 2011 Second Chance Act Adult Offender Reentry Demonstration Projects: Final Report*, Final report to the National Institute of Justice, award number 2012-RY-BX-0001, May 2018, NCJ 251703, <https://www.ojp.gov/pdffiles1/nij/grants/251703.pdf>; and Tanya N. Whittle, *Felony Collateral Sanctions Effects on Recidivism: A Literature Review*, Criminal Justice Policy Review 29 no. 5 (2018): 505-524, <https://doi.org/10.1177%2F0887403415623328>. 2. Ingrid A. Binswanger, et al., Release from Prison—A High Risk of Death for Former Inmates, *New England Journal of Medicine* 356, no. 2 (2007), 157–65, 161, <https://perma.cc/L49X-7MZ7>.

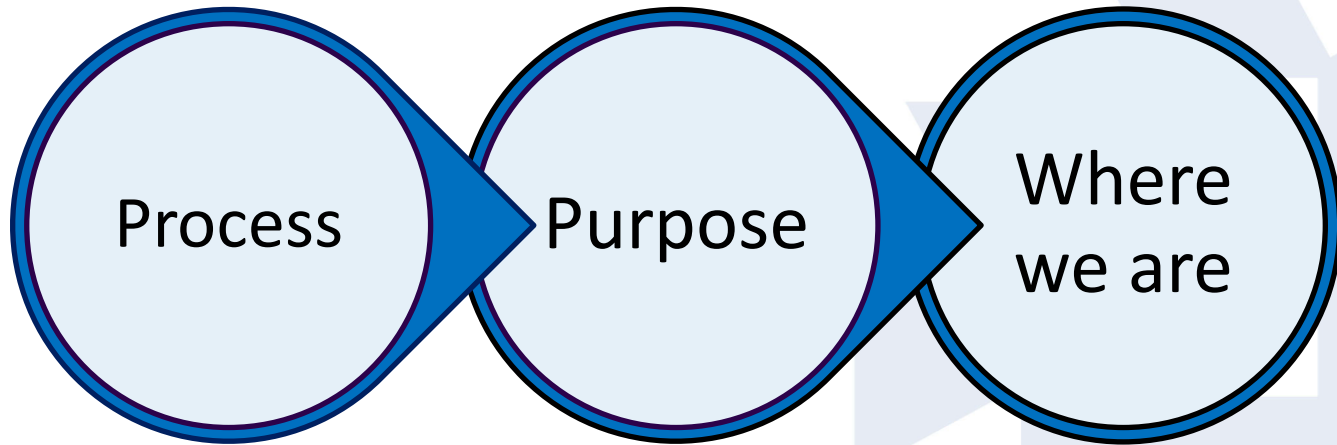
LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

# MODEL RELIEF FROM THE COLLATERAL CONSEQUENCES OF CONVICTION ACT

2024



# Model Relief from Collateral Consequences of Conviction Act



# Model Law Elements

Collection and publication of collateral consequences and relief information

Notice to justice involved individuals

Sealing

Expungement

Certificates of relief

Employment practices

Fair housing

Disclosure of criminal history records and penalties for wrongful disclosure

Data collection and reporting

Education

Funding

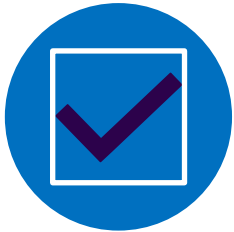
# Compilation and Notice



Gather information



Publication



Annual updates



Notice to justice  
involved individuals

# Sealing

What is sealing?



# Sealing

What is sealing?

Takes records out of public view



# Sealing

What is sealing?

Takes records out of public view

Limited availability



# Sealing



**AUTOMATIC SEALING**



**SEALING BY PETITION**

# Sealing



AUTOMATIC  
SEALING

- Certain arrest records
- Non-conviction records
- Certain drug offenses
- Waiting period

# Sealing



## SEALING BY PETITION

- Available for most offenses not eligible for automatic sealing
- Ineligible offenses
- Waiting period

# Sealing

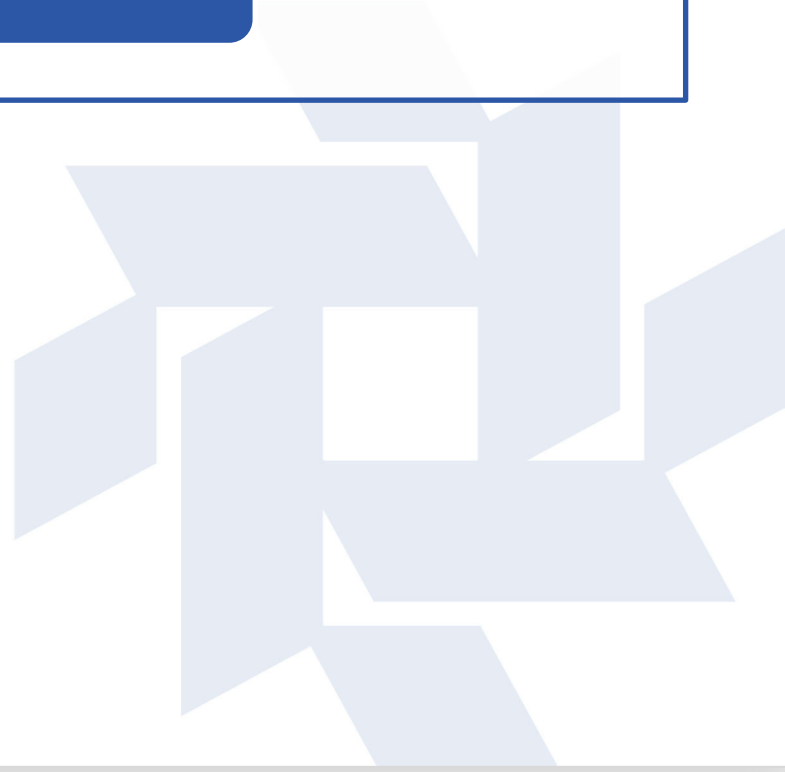


## EFFECT OF SEALING

- Should not appear in background checks
- Allows individual to deny records exist
- Reinstates lost civil rights

# Expungement

What is expungement?



# Expungement

What is expungement?

Deletion of  
records



Longer waiting  
periods



Some offenses  
are ineligible

# Expungement

Records eligible for expungement



# Expungement

Records eligible for expungement

Records ineligible for expungement



# Expungement

Records eligible for expungement

Records ineligible for expungement

Effect of expungement

# Certificate of Relief

Document issued to  
provide relief from  
collateral  
consequences of  
conviction



# Certificate of Relief



Who is eligible?



# Certificate of Relief

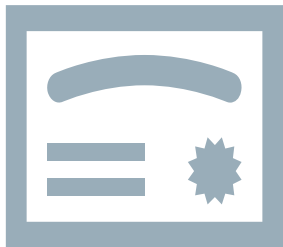


Who is eligible?



**Everyone**

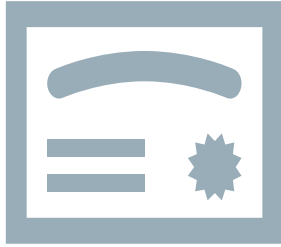
# Certificate of Relief



Who can issue a  
certificate and  
when?



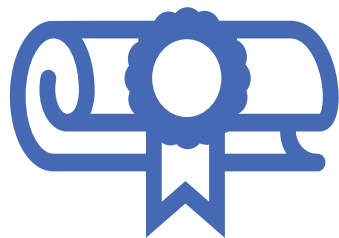
# Certificate of Relief



Who can issue a certificate and when?

- Courts
- Correctional facilities
- Probation/parole officers
- Timing varies

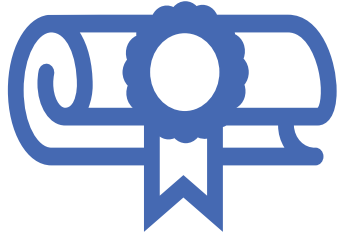
# Certificate of Relief



Effect of certificate



# Certificate of Relief



Effect of certificate

- Suspends all collateral consequences unless otherwise specified
- Primarily used for employment and housing



# Employment and Housing

- Anti-discrimination provisions
- When employers and housing providers can look at criminal history (“Ban the Box”)
- Preliminary application for licensure, certification, registration
- When criminal history records can be taken into consideration
- Individualized assessments

# Employment and Housing

Anti-discrimination provisions

When employers and housing providers can request criminal history (“Ban the Box”)

When criminal history records can be taken into consideration

# Employment and Housing

Preliminary application for licensure,  
certification, registration

A light blue downward-pointing arrow indicating the flow from the first step to the second.

Eligibility determination

A light blue downward-pointing arrow indicating the flow from the second step to the third.

Timing – when can application be filed

A light blue downward-pointing arrow indicating the flow from the third step to the fourth.

# Employment and Housing

Individualized  
Assessment



# Disclosure and Penalties

Records that have been sealed or expunged may not be disclosed unless otherwise permitted by law

Requirements for commercial criminal history records providers

Process for correcting records

Penalties for unlawful disclosure

# Education for All

Public and private employers

Judges and attorneys

Law enforcement

Licensing boards

Corrections employees

Housing providers

# Contact Information

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# Q&A

