

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

MODEL RELIEF FROM COLLATERAL CONSEQUENCES OF CONVICTION ACT

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Readers should note that this Model Act uses the terminology most commonly in use at this time. Some of our working group members object to the continued use of such terminology as dehumanizing; however, the drafters chose to use the currently-in-use terminology as it is the language most familiar to legislators. Over time, terminology and language evolve to become less stigmatizing and more humanizing. As such, we encourage legislatures to adopt the new language. Additional discussion of the changing terminology can be found in the commentary to Section III.

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SECTION I. SHORT TITLE.

This Act may be referred to as the “Model Relief from Collateral Consequences of Conviction Act,” “the Act,” or “Model Act.”

SECTION II. LEGISLATIVE FINDINGS AND PURPOSE.

(a) Legislative findings.—The [legislature]¹ finds that:

- (1) By the end of 2022, the most recent year for which data is available, more than 1.2 million people were incarcerated in state and federal correctional facilities across the United States, with 1,070,800 being housed in state facilities.² This figure includes [number of individuals] incarcerated in [state] correctional facilities;³
- (2) An additional 3,745,000 individuals were under the supervision of either probation (2,963,000 individuals) or parole (803,200 individuals) at year-end 2021;⁴
- (3) Further, at mid-year 2022, approximately 663,100 individuals were confined in local jails;⁵
- (4) Approximately 27 percent of individuals incarcerated in state correctional facilities in 2020 were convicted of offenses classified as non-violent property offenses or drug offenses;⁶
- (5) In a recent survey of state and federal prisoners, 38 percent of individuals reported using drugs at the time of the offense for which they were incarcerated, and 30 percent reported drinking alcohol at the time of the offense;⁷

¹ This Act contains certain bracketed words and phrases (e.g., “[legislature]”). Brackets indicate instances where state lawmakers may need to insert state-specific terminology or facts.

² E. Ann Carson, Ph.D., *Prisoners Report Series: Preliminary Data Release*, U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., Tables 1 and 2 (Dec. 2023), [Preliminary Data Release - Prisons | Bureau of Justice Statistics \(ojp.gov\)](#).

³ States should include statistics relevant to their specific state. As of November 2023, this information can be found in Table 2, pages 8-9, of *Prisoners in 2021 – Statistical Tables*, *infra* note 6.

⁴ E. Ann Carson, Ph.D. and Rich Kluckow, *Correctional Populations in the United States, 2021 – Statistical Tables*, U.S. DEPT OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., Table 1 (Feb. 2023), [Correctional Populations in the United States, 2021 – Statistical Tables \(ojp.gov\)](#).

⁵ Zhen Zeng, *Jail Inmates in 2022 – Statistical Tables*, U.S. DEPT OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., 1 (Dec. 2023), [Jail Inmates in 2022 – Statistical Tables \(ojp.gov\)](#).

⁶ E. Ann Carson, Ph.D., *Prisoners in 2021 – Statistical Tables*, U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., Tables 16 and 17, 31-32, [Prisoners in 2021 – Statistical Tables \(ojp.gov\)](#). Property crimes include burglary, larceny/theft, motor vehicle theft, and fraud. Drug offenses include possession.

⁷ *Alcohol and Drug Use and Treatment Reported by Prisoners*, U.S. DEPT OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT. 1 (July 2021), [Alcohol and Drug Use and Treatment Reported by Prisoners: Survey of Prison Inmates, 2016 \(ojp.gov\)](#).

- (6) In the year 2021, 404,346 individuals were released from state correctional facilities across the country, including [number of individuals] released from [state] facilities;⁸
- (7) In addition to any penalties such as community service, incarceration, probation, parole, restitution, forfeiture, and other fines imposed as part of the sentence for conviction of a crime, other state and federal consequences, known as “collateral consequences” or “permanent punishments,” also attach to individuals convicted of a criminal offense;
- (8) Such collateral consequences include, but are not limited to, barriers to obtaining public or private housing, identification, employment, professional licensure, certain state and federal benefits, including Supplemental Nutrition Assistance Program (SNAP) benefits, certain types of loans, including student loans, credit, and admission to universities and colleges. Collateral consequences can be time limited, e.g., the right to vote may be restored upon release from a correctional facility, or may persist for an indefinite period of time;⁹
- (9) Most collateral consequences, such as barriers to obtaining housing or SNAP benefits, or the inability to obtain a loan, generally bear no relation to the crime for which the individual was convicted;
- (10) Research shows that the inability to obtain housing and employment following release from incarceration significantly impairs an individual’s successful reunification with their community and increases the rate of recidivism among such individuals;¹⁰ and
- (11) [State] has an interest in supporting the successful reunification of individuals impacted by the criminal justice system into their communities and reducing recidivism and ensuring the successful reentry of individuals arrested for, charged

⁸ Carson, *supra* note 6, at Table 9, 19-20.

⁹ See the *National Inventory of Collateral Consequences of Conviction* search engine published by The National Reentry Resource Center funded in part through a grant from the Bureau of Justice Assistance for more information on types and duration of consequences in each state: [Collateral Consequences Inventory | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](https://www.nationalreentryresourcecenter.org/collateral-consequences-inventory). States may wish to tailor this paragraph to include state-specific consequences.

¹⁰ See, e.g., Tanya N. Whittle, *Felony Collateral Sanctions Effects on Recidivism: A Literature Review*, 29(5) CRIM. JUST. POL’Y REV. 505-524 (Jan. 12, 2016), [Felony Collateral Sanctions Effects on Recidivism: A Literature Review - Tanya N. Whittle, 2018 \(sagepub.com\)](https://www.sagepub.com/journalsPermissions.nav).

with, or convicted of a criminal offense.

(b) Purpose.—The purpose of this Act is to:

- (1) Establish a process for the identification, collection, and publication of state and federal collateral consequences that impact an individual who has been convicted of a crime and provide for a method to notify such individual of those consequences;
- (2) Establish a process by which an individual can obtain a certificate of relief from certain collateral consequences before records are eligible to be sealed or expunged;
- (3) Establish mechanisms for the automatic sealing and automatic expungement of criminal history records;
- (4) Establish a process by which an individual can petition to seal or expunge his or her criminal history records which includes a rebuttable presumption in favor of granting such petitions;
- (5) Prohibit certain individuals and entities from inquiring into an individual’s criminal history unless an exception applies; and
- (6) Establish penalties for the unlawful disclosure of sealed or expunged criminal history records.

Commentary

Collateral consequences are legal, regulatory, and policy barriers imposed against an individual arrested for, charged with, or convicted of a criminal offense that often have no connection to the criminal offense.¹¹ These consequences include, but are not limited to, loss of particular civil rights, including the rights to vote and serve on a jury, barriers in obtaining housing, employment, professional licenses, federal and state government benefits, including Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits, as well as access to higher education and student loans.¹² According to the database of the National Inventory of Collateral Consequences of Conviction (NICCC), there are nearly 44,000 state and federal collateral consequences currently in place across the country that have the ability to impact all aspects of a person’s life and may affect the lives of the individual’s families and loved ones, as well.¹³ This does not include collateral consequences

¹¹ See *What are Collateral Consequences?*, NAT’L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (2024), [Welcome to the NICCC | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](https://www.nationalreentryresourcecenter.org/welcome-to-the-niccc-national-inventory-of-collateral-consequences-of-criminal-conviction) and *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities – Briefing Report, Letter of Transmittal*, U.S. COMM’N ON CIV. RTS. (June 2019), [06-13-Collateral-Consequences.pdf \(usccr.gov\)](https://www.usccr.gov/publications/collateral-consequences).

¹² *Id.*

¹³ *Collateral Consequences Inventory*, NAT’L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (2024), [Collateral Consequences Inventory | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](https://www.nationalreentryresourcecenter.org/collateral-consequences-inventory-national-inventory-of-collateral-consequences-of-criminal-conviction).

that may be imposed at the local level. According to the U.S. Commission on Civil Rights, “[c]ollateral consequences exacerbate punishment beyond the criminal conviction after an individual completes the court-imposed sentence,” and while there may be some “valid public safety bases” to support certain consequences, “[m]any ... are unrelated either to the underlying crime for which a person has been convicted or to a public safety purpose.”¹⁴ Due to the nature of collateral consequences and their potential to impact an individual’s daily life for years, if not the individual’s entire life, there is a growing movement to rename them “permanent punishments.”¹⁵ This Act continues to use the term “collateral consequences” as it is the term most familiar to legislators and others in the field; however, readers should be aware of the movement to change this terminology.

Collateral consequences can attach as soon as an individual is arrested, regardless of the eventual outcome of the arrest, including where no criminal charges against the individual are ever filed, where the charges are dismissed, or where the individual is exonerated.¹⁶ Many individuals are not aware of the existence of collateral consequences until they or their family members are impacted by them. “Collectively, at least 70 to 100 million people nationwide are currently or will be affected by the collateral consequences of incarceration, arrest, or conviction.”¹⁷ These consequences have a disparate impact on people of color, particularly Black men, who are more likely to come into contact with the criminal justice system.¹⁸

In 2019, the most recent year for which data is available, law enforcement in the United States made more than 10 million arrests across the country.¹⁹ Of those, offenses classified as “violent crimes” represented fewer than five percent of arrests, while arrests for drug violations represented 15 percent, the highest number of arrests.²⁰ Drug violations include the sale or

¹⁴ Letter from Catherine E. Lhamon, U.S. Comm’n on C.R. Chair, to President Donald J. Trump, Vice President Mike Pence, and Speaker of the House Nancy Pelosi, in *COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES* (June 2019), [06-13-Collateral-Consequences.pdf \(usccr.gov\)](#).

¹⁵ See, e.g., Ermolaev Alexander, *Marlon Chamberlain and the Campaign to End “Permanent Punishments,”* BUREAU OF JUST. ASSISTANCE, U.S. DEP’T OF JUST. (April 19, 2023), [Marlon Chamberlain and the Campaign To End “Permanent Punishments” | Bureau of Justice Assistance \(ojp.gov\)](#); and Andrew Wimer, *Permanent Punishments Keep People from Serving Our Communities*, FORBES (Oct. 30, 2023), [Permanent Punishments Keep People From Serving Our Communities \(forbes.com\)](#).

¹⁶ See, e.g., 42 U.S.C. § 1320a-7 (2024), which defines “conviction” to include circumstances where an individual participates in a first offender, deferred adjudication, or other similar program where there is no judgment of conviction entered against the individual, but the individual is still subject to mandatory and/or discretionary disqualification to work as a healthcare provider if convicted, as defined in this statute, of certain controlled substances offenses. See also Eisha Jain, *Arrests as Regulation*, 67 STANFORD L. REV. 809-867 (2015), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2427&context=facpub>.

¹⁷ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. COMM’N ON C.R. 2-3 (June 2019), [06-13-Collateral-Consequences.pdf \(usccr.gov\)](#) (internal citations omitted).

¹⁸ See Dennis Schrantz and Jerry McElroy, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, THE SENTENCING PROJECT (Oct. 2000), and Nazgol Ghandnoosh, Celeste Barry, and Luke Trinko, *One in Five: Racial Disparity in Imprisonment – Causes and Remedies*, THE SENTENCING PROJECT (Dec. 7, 2023), [One in Five: Racial Disparity in Imprisonment — Causes and Remedies – The Sentencing Project](#). See also COMM’N ON C.R., *supra* note 17, at 19, FN 103.

¹⁹ *2019 Crime in the United States*, U.S. DEP’T OF JUST., FED. BUREAU OF INVESTIGATION, CRIM. JUST. INFO.SERVS. DIV. (Fall 2020), [FBI — Persons Arrested](#).

²⁰ *Id.*

manufacture of certain drugs (accounting for 13.3 percent of total drug arrests) and possession (accounting for 86.7 percent of total drug arrests).²¹ Additionally, as of the most recent period for which data is available, 47 percent of all federal prisoners were incarcerated for drug offenses, and 13 percent of all state prisoners were incarcerated for drug offenses.²² More than 1.2 million individuals were incarcerated in state or federal prison facilities during 2022, with 1.18 million serving sentences of one year or longer.²³ Although Black individuals make up only 13.6 percent of the U.S. population, they accounted for more than 26 percent of drug-related arrests and 27 percent of total arrests in 2019.²⁴ Additionally, although people of color in the United States account for less than half of the population, preliminary data shows that, in 2022, minorities made up roughly 68 percent of individuals incarcerated in state or federal prisons, meaning that they are the individuals most likely to be impacted by collateral consequences.²⁵

Collateral consequences fall into two general categories: (1) those classified as collateral sanctions; and (2) those classified as disqualifications.²⁶ Collateral sanctions are mandatory and are imposed by operation of law. In many states, loss of the right to vote or the right to possess a firearm are collateral sanctions imposed automatically upon conviction of a felony.²⁷ In order to regain those rights, many states require that individuals obtain a pardon or take other affirmative steps in order to have those rights restored.²⁸ In contrast, collateral consequences that act as disqualifications are discretionary, where an entity or individual is authorized to impose a consequence against an individual but is not required to do so. Most collateral consequences involving employment and housing are disqualifications and, therefore, discretionary with the decision-maker.²⁹ As stated by the U.S. Commission on Civil Rights:

²¹ *Id.*

²² Carson, *supra* note 6, at Tables 16 and 19. Drug offenses under this study include possession as well as trafficking, distribution, and other drug-related offenses, some of which may include elements of violence.

²³ Carson, *supra* note 2, at Table 1.

²⁴ U.S. DEP'T OF JUST., *supra* note 19, at Table 43A, and *see*, QUICK FACTS, U.S. CENSUS BUREAU (2020), [U.S. Census Bureau QuickFacts: United States](#).

²⁵ Carson, *supra* note 2, at Table 1, and *see*, QUICK FACTS, U.S. CENSUS BUREAU (2020), [U.S. Census Bureau QuickFacts: United States](#).

²⁶ *See ABA Standards for Criminal Justice, Third Edition: Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, AM. BAR ASS'N (2004), [collateral-sanctions.pdf \(americanbar.org\)](#).

²⁷ *See 50-State Comparison: Loss & Restoration of Civil/Firearms Rights*, RESTORATION OF RTS. PROJECT, COLLATERAL CONSEQUENCES RES. CTR. (last updated March 2024), [50-State Comparison: Loss & Restoration of Civil/Firearms Rights | Collateral Consequences Resource Center \(ccresourcecenter.org\)](#); and Margaret Colgate Love, *The Reintegration Report Card: Grading the States on Laws Restoring Rights and Opportunities after Arrest or Conviction*, COLLATERAL CONSEQUENCES RES. CTR. (March 2022), [The-Reintegration-Report-Card.3.2122.pdf \(ccresourcecenter.org\)](#)

²⁸ *See supra* note 27; Andrea Miller, Briana Paige, and Allison Trochesset, *Collateral Consequences of Criminal Records – Caseload Highlights: Special Issue*, CT. STAT. PROJECT, NAT'L CTR. FOR STATE CTS. 9 (Nov. 12, 2021); and *Felon Voting Rights*, NAT'L CONF. OF STATE LEGISLATURES (updated Dec. 5, 2023), [Felon Voting Rights \(ncsl.org\)](#).

²⁹ *See Collateral Consequences Inventory*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (2024), [Collateral Consequences Inventory | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](#).

Collateral consequences may serve public safety or regulatory purposes; examples include prohibiting convicted sex offenders³⁰ from managing day care centers or forcing public officials convicted of bribery to resign from office. Some collateral consequences directly relate to the specific crime, such as driver's license suspensions for people convicted of a serious traffic offense. Other collateral consequences apply regardless of any connection between the consequence and the nature or severity of the crime, how long ago the crime was committed, or the individual's post-conviction record.³¹

According to NICCC, of the nearly 44,000 state and federal collateral consequences identified, roughly 62 percent attach for an indefinite period of time.³² For example, there are nearly 10,000 collateral consequences that affect occupational and professional licensure or certification that last for an indefinite period, and nearly 3,400 of those are imposed automatically.³³

The imposition of collateral consequences may negatively impact public safety due to the risk of recidivism.³⁴ The effects of collateral consequences can be felt across nearly all aspects of an individual's life. For example, federal law restricts both SNAP and TANF benefits if an individual is convicted of felony possession, use, or distribution of drugs.³⁵ Given the high rate of people convicted of and incarcerated for drug offenses mentioned above, parents convicted of drug offenses may find themselves unable to qualify for such benefits, or may only qualify on behalf of their children, potentially affecting their ability to feed, clothe, and house themselves and their children, particularly since "people with criminal convictions face barriers to employment [and] are more likely to need financial assistance to survive and avoid recidivism."³⁶ States may elect to opt out of or modify the federal bans on TANF and SNAP benefits; however, some of the state-adopted modifications can result in additional hardships.³⁷ As of December 5, 2023, 25 states and the District of Columbia have opted out of both federal bans, meaning that residents in those jurisdictions who otherwise meet the eligibility requirements for receipt of benefits can receive those benefits without any of the conditions imposed by federal law.³⁸ With the exception of South Carolina, every state has either opted out of or modified the ban on at least one benefit (e.g., Florida, Iowa, Maryland, and Utah opted out

³⁰ Note that this is the term used in this quote for individuals charged with or convicted of a sex offense and that such term is considered dehumanizing. See, *Words Matter: Using Humanizing Language*, THE FORTUNE SOCIETY, [Words Matter: Using Humanizing Language | The Fortune Society](#).

³¹ U.S. COMM'N ON C.R., *supra* note 17, at 10-11 (internal citations omitted).

³² NICCC, *supra* note 29.

³³ *Id.*

³⁴ U.S. COMM'N ON C.R., *supra* note 17, at 133.

³⁵ 21 U.S.C. § 862a (2023).

³⁶ U.S. COMM'N ON C.R., *supra* note 17, at 26.

³⁷ Margaret Love and Nick Sibilla, *Access to SNAP and TANF Benefits after a Drug Conviction: A Survey of State Laws*, COLLATERAL CONSEQUENCES RES. CTR. (Dec. 2023), [Accessing SNAP and TANF Benefits after a Drug Conviction: A Survey of State Laws | Collateral Consequences Resource Center \(ccresourcecenter.org\)](#).

³⁸ *Id.*

of the ban on SNAP benefits but modified the ban on TANF benefits to impose conditions).³⁹ The conditions imposed by states with modified bans run the gamut from merely completing one's sentence and complying with the terms of any community supervision (*e.g.*, Alabama, California, Georgia, Idaho, Indiana, Montana, and Texas for SNAP benefits) to compliance with financial legal obligations and community supervision, participation in drug treatment and drug testing, and waiting periods for certain offenses (*e.g.*, Pennsylvania).⁴⁰ The inability to access benefits can also impact an individual's ability to obtain housing, employment, and certain types of loans.⁴¹ To help inform individuals who might be affected by collateral consequences, this Model Act requires each state that enacts the Model Act compile and publish information regarding all federal and state specific collateral consequences and the methods by which such consequences can be relieved, and to notify justice-involved individuals at various stages of the proceedings regarding such information, how to access it, and how to obtain relief.

There are various types of relief available to individuals subject to the imposition of collateral consequences, including pardons, record sealing and/or expungement, restoration of certain civil rights, and the issuance of various types of certificates relieving the individual of some or all of the consequences imposed.⁴² Despite the availability of these various forms of relief, individuals who are eligible for one or more types of relief are oftentimes unaware that relief is available, or the process for obtaining relief is unclear, complex, or unduly onerous.⁴³ Additionally, relief might only be available for certain types of records (*e.g.*, arrest records), or might involve unduly long waiting periods. Maryland limits sealing (called "shielding" in Maryland) to court and police records for conviction of one of 12 specific crimes (*e.g.*, possession of drug paraphernalia), and imposes a waiting period of three years. Iowa, in contrast, allows expungement of criminal history records related to conviction of a misdemeanor only if eight years have passed since the date of conviction and prohibits expungement of a list of 24 crimes, including consuming alcohol in a public place; purchase, or attempt to purchase, alcohol by an underage person; driving while license is canceled, suspended, or revoked; and removal of a law enforcement officer's communication device.⁴⁴

The Act addresses three distinct types of relief: certificates of relief, sealing criminal history records, and expungement of criminal history records. The Act does not address pardon relief as, in many states, pardons are governed by state constitutional law and not subject to modification by statute. Pardons are typically granted either by the governor or the state board of probation and parole and offer various types of relief, including the release of the individual from all collateral consequences resulting from conviction of a criminal offense. However, pardons can be difficult to obtain, have long waiting periods, and, in some states, are rarely granted. For

³⁹ *Id.*

⁴⁰ *Id.*, and *see*, 62 PA. STAT. AND CONS. STAT. § 432.24 (West 2023).

⁴¹ Miller et al, *supra* note 28.

⁴² *See infra*, Section VI and its Commentary for more information on certificates of relief. *See also* the many 50-State Comparisons setting out the different types of relief available across the country which can be found on the Restoration of Rights Project website ([Restoration of Rights Project \(ccresourcecenter.org\)](https://www.ceresourcecenter.org)) published by the Collateral Consequences Resource Center.

⁴³ *Model Law on Non-conviction Records*, COLLATERAL CONSEQUENCES RES. CTR., n.12 and 13 (Dec. 2019).

⁴⁴ *See* MD. CODE ANN., CRIM. PROC. §§ 10-301 and 10-303 (West 2023) and IOWA CODE ANN. § 901C.3 (West 2024).

example, Maryland Pardon Guidelines specify that most individuals convicted of a felony must be “crime-free” for 10 years “from the date of sentence, release from incarceration, or release from parole or probation,” whichever occurred last before they are eligible to seek a pardon, though the Guidelines permit the Parole Commission to consider cases in limited circumstances when only seven years have passed.⁴⁵ For individuals convicted of “crimes of violence” or felonies involving controlled substances, the wait time is 15-20 years.⁴⁶ By comparison, Alaska does not have a specific time period before an individual can request a pardon, but has only granted three pardons since 1995.⁴⁷ The drafters believe that the other forms of relief provided in this Act ensure that an individual will not require a pardon in order to obtain relief from collateral consequences.

The first type of relief addressed by the Act is the issuance of certificates of relief. Certificates of relief are granted to individuals who may not otherwise be eligible for other forms of relief, or may not be eligible yet, and are intended to show that the individual has been rehabilitated and is entitled to relief from certain collateral consequences. The relief provided by such certificates may be limited to only certain collateral consequences, those related to housing or employment, for example, or may be broad enough to relieve an individual of all collateral consequences. The Act does not include waiting periods or onerous proof of rehabilitation requirements to obtain a certificate of relief so that individuals can more easily obtain such relief. Certificates of relief are also known, among other titles, as certificates of rehabilitation and certificates of employability.⁴⁸ Certificates of relief do not relieve an individual from the obligation to disclose a citation, arrest, charge, or conviction and may be modified or revoked. Under the provisions of the Act, certificates of relief may be issued by a court or the state board of probation and parole to individuals whose records are not yet, or may never be, eligible for sealing or expungement and can be issued as early as an individual’s sentencing phase.

Sealing records does not destroy them; it simply removes them from the public domain, although some information may remain on the internet or in published court opinions. Records remain available for limited, typically criminal justice, purposes. Sealing provides relief to individuals by allowing them, in most cases, to exclude mention of the arrest, charge, and/or conviction in response to an inquiry. The Act provides for the automatic sealing of certain criminal history records, namely non-conviction records and certain non-criminal or petty crimes

⁴⁵ *Parole FAQs: Legal Effects of a Pardon in Maryland*, MD. PAROLE COMM’N, DEP’T OF PUB. SAFETY & CORR. SERVS., [PAROLE FAQ.pdf \(state.md.us\)](#).

⁴⁶ *Id.*

⁴⁷ See *50-State Comparison: Pardon Policy & Practice*, RESTORATION OF RTS. PROJECT, COLLATERAL CONSEQUENCES RES. CTR. (last updated Oct. 2023), [50-State Comparison: Pardon Policy & Practice | Collateral Consequences Resource Center \(ccresourcecenter.org\)](#). But see Margaret Colgate Love, *The Many Roads from Reentry to Reintegration: A National Survey of Laws Restoring Rights and Opportunities after Arrest or Conviction*, RESTORATION OF RTS. PROJECT, COLLATERAL CONSEQUENCES RES. CTR. (March 2022), [MRFRTTR_8.24.22.pdf \(ccresourcecenter.org\)](#) for more information on states with robust pardon systems in place.

⁴⁸ Judicial certificates of relief are available in 14 states: Arizona, California, Colorado, Connecticut, Illinois, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, and Washington. For more state specific information on sealing, expungement, and certificates of relief, see, *Restoration of Rights Project, 50-State Comparison: Expungement, Sealing & Other Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. (March 2024), [50-State Comparison: Expungement, Sealing & Other Record Relief | Collateral Consequences Resource Center \(ccresourcecenter.org\)](#).

and misdemeanors and drug offenses (as defined by this Act) and streamlines the process by which individuals can petition to seal records ineligible for automatic sealing. With the exception of collateral sanctions included in specific state or federal laws and certain circumstances related to employment and professional or occupational licensure, sealing criminal history records relieves individuals of all collateral consequences that attached to them as the result of a citation, arrest, charge, or conviction. Criminal history records that have been sealed may only be disclosed for limited purposes (see commentary following Sections IX and X for more information).

Expunging criminal history records may or may not result in the destruction of the records depending on the jurisdiction, but regardless of whether records are destroyed or simply segregated, expungement also allows an individual to respond in the negative to any inquiry related to the criminal offense that has been expunged and does not permit use of the records for any purpose, including criminal justice purposes, though de-identified information may be used for research purposes. As with sealing, the Act provides a simplified process for petitioning to expunge eligible records. The relief provided to individuals whose records have been expunged is virtually the same as for records that have been sealed with the exception that records that have been expunged may not be used for any purpose. As a result, the Act includes longer waiting periods before criminal history records are eligible to be expunged than there are for such records to be sealed.

Finally, the Act includes sections devoted to reducing barriers in housing and employment, which include obtaining professional licensure, registration, or certification and an education campaign. The education campaign is meant to educate individuals and entities subject to the provisions of this Act. These include those involved in the criminal justice system, such as judges, prosecutors, defense attorneys, and corrections officials, as well as employers through the state department of labor, and housing providers.

SECTION III. DEFINITIONS.

[States may already have definitions in place for some or all of the following terms. In such case, states may use the existing definitions in place of those listed below.]

For purposes of this Act, unless the context clearly indicates otherwise, the words and phrases listed below have the meanings given to them in this section:

- (a) Arrest records.—“Arrest records” means any information about an individual having been formally questioned or interrogated regarding an offense, apprehended, taken into custody or detained, held for investigation, charged with an offense, served a summons, or arrested with or without a warrant pursuant to any law enforcement authority. “Arrest records” includes information gathered from the national crime information center or another criminal record database, photographs, fingerprints, booking sheets, and

biometric information;⁴⁹

- (b) Biometric information.—“Biometric information” includes impressions, reproductions, or representations of human physical characteristics, such as DNA, fingerprints, palm prints, footprints, retina and iris images, voice patterns, and facial images, such as booking and driver’s license photographs, that, when measured and analyzed, can be used for identification purposes;⁵⁰
- (c) Business screening service.—“Business screening service” means a person or entity regularly engaged in the business of collecting, assembling, evaluating, or disseminating criminal history information on individuals for a fee and includes, but is not limited to, consumer reporting agencies. “Business screening service” does not include a government entity or the news media;⁵¹
- (d) Collateral consequences.—“Collateral consequences” means a penalty, prohibition, bar, disadvantage, or disqualification, however denominated, whether mandatory or discretionary, imposed on an individual as a result of the individual’s arrest for or conviction of a criminal offense, which consequence applies regardless of whether the penalty, prohibition, bar, disadvantage, or disqualification is included in a criminal judgment or sentence. “Collateral consequences” includes collateral sanctions and disqualifications, but does not include imprisonment, parole, probation, supervised release, forfeiture, restitution, fine, assessment, or costs associated with prosecution;⁵²
- (e) Collateral sanction.—“Collateral sanction” means a mandatory penalty, disability, disadvantage, or bar that is imposed against an individual who has been arrested for, charged with, or convicted of a criminal offense that applies by operation of law;⁵³
- (f) Completion of sentence.—“Completion of sentence” means the point in time when an individual is unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest; provided, that nonpayment of fees, fines, restitution, or any other monetary assessments imposed by a court or as part of a

⁴⁹ Taken from HAW. REV. STAT. ANN. § 378-1 (West 2023) and N.M. STAT. ANN. § 29-3A-2 (West 2023).

⁵⁰ FLA. STAT. ANN. § 943.045 (West 2023).

⁵¹ Taken from MINN. STAT. ANN. § 332.70 (West 2023).

⁵² Taken from COLO. REV. STAT. ANN. § 16-17-103 (West 2023).

⁵³ *ABA Standards for Criminal Justice, Third Edition: Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, AM. BAR ASS’N 1 (2004), [collateral-sanctions.pdf \(americanbar.org\)](https://www.americanbar.org/collateral-sanctions.pdf).

plea agreement, shall not prevent completion of sentence;⁵⁴

- (g) Conviction.—“Conviction” means the entry of judgment on a verdict or finding of guilty by a judge or jury, or a plea of guilty, Alford plea, or plea of nolo contendere entered by the criminal defendant and accepted by the court;⁵⁵
- (h) Court.—“Court” means a chancery, circuit, criminal, general sessions, or specialty court in this state;⁵⁶
- (i) Court record.—“Court record” means an official record of a court that the clerk of a court, or other court personnel, keeps regarding a criminal proceeding or any other proceeding concerning a civil offense or infraction enacted under state or local law as a substitute for a criminal charge. “Court record” includes: a record of a violation of the transportation code for which a term of imprisonment may be imposed; and an index, docket entry, charging document, pleading, memorandum, transcription of proceedings, electronic recording, order, and judgment;⁵⁷
- (j) Criminal history records.—“Criminal history records” means arrest records, biometric information, domestic incident reports, court records, criminal justice records, and any information collected by criminal justice agencies on individuals including notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release, and includes the age and gender of each victim as provided by criminal justice agencies;⁵⁸
- (k) Criminal justice agency.—“Criminal justice agency” means any court with criminal jurisdiction and any agency of the state, including, but not limited to, any agency of any county, city, or other political subdivision of the state, governing boards of institutions of higher education, school district, special district, or other political subdivision of the state, judicial district, or law enforcement authority, including any entity employing law

⁵⁴ Taken from D.C. CODE ANN. § 16-801 (West 2023).

⁵⁵ Taken from DEL. CODE ANN. tit. 14, § 9002C (West 2023) and D.C. CODE ANN. § 16-801 (West 2023). With an Alford plea, the defendant acknowledges that the prosecution has enough evidence to secure a conviction in a criminal case and, although the defendant maintains his or her innocence, agrees to accept punishment for the offense. An Alford plea is treated the same as a guilty plea under the law for purposes of punishment. Alford pleas originate from the case of *North Carolina v. Alford*, 91 S.Ct. 160 (1970). See *Alford plea*, CORNELL LAW SCH., LEGAL INFO. INST., [Alford plea | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#).

⁵⁶ Specialty courts include, but are not limited to, drug courts, family courts, veterans courts, and domestic violence courts.

⁵⁷ MD. CODE ANN., CRIM. PROC. § 10-101 (West 2023).

⁵⁸ Taken from GA. CODE ANN. § 35-3-30 (West 2023).

enforcement officers as defined in [insert reference to applicable state law], that performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation or treatment of individuals arrested for, charged with, or convicted of one or more criminal offenses; or criminal identification activities or the collection, storage, or dissemination of criminal history records;⁵⁹

- (l) Criminal justice records.—“Criminal justice records” means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, including electronic information, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency or other entity, public or private, in the state for use in the exercise of functions required or authorized by law or administrative rule, including arrest records, biometric information, and identification information;⁶⁰
- (m) Criminal offense.—“Criminal offense” means an act which is a state felony, misdemeanor, non-criminal or petty crime, or a violation of a county or municipal ordinance;⁶¹
- (n) Custodian.—“Custodian” means an individual, entity, or organization responsible for the maintenance of criminal history records in the ordinary course of business;⁶²
- (o) Department.—“Department” means the state department of corrections;
- (p) Disposition.—“Disposition” means a final outcome regarding a criminal offense. It includes a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution including deferred adjudication; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive pardon;⁶³
- (q) Disqualification.—“Disqualification” means a penalty, disability, disadvantage, or bar

⁵⁹ COLO. REV. STAT. ANN. § 24-72-302 (West 2023).

⁶⁰ Taken from COLO. REV. STAT. ANN. § 24-72-701 (West 2023).

⁶¹ GA. CODE ANN. § 35-3-30 (West 2023).

⁶² Taken from *Records Custodian Law and Legal Definition*, USLEGAL (accessed Nov. 2, 2023), [Records Custodian Law and Legal Definition | USLegal, Inc.](#)

⁶³ COLO. REV. STAT. ANN. § 24-72-302 (West 2023).

that is imposed against an individual who has been arrested for, charged with, or convicted of a criminal offense that a licensing entity, government official, or other entity is authorized, but not required, to impose against such individual on grounds relating to the individual's arrest, charge, or conviction;⁶⁴

(r) Drug.—“Drug” means any of the following:

- (1) Any substance recognized as a drug, medicine, or medicinal chemical in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, or official Veterinary Medicine Compendium, or other official drug compendium or supplements thereto;
- (2) Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals;
- (3) Any chemical substance, other than food, intended to affect the structure or any function of the body of man or other animal; or
- (4) Any substance intended for use as a component of any items specified in paragraphs (1), (2), or (3) of this subsection, but does not include medical devices or their components, parts, or accessories;⁶⁵

(s) Drug offense.—“Drug offense” means misdemeanor possession of a controlled substance or misdemeanor possession of drug paraphernalia [insert statutory reference(s) to additional drug crimes that might be covered by the provisions of this Act];

(t) Expunge.—“Expunge” means that all criminal history records related to a case, including any electronic records, are segregated or placed in the custody of the [state agency charged with maintenance of such records], and are not released in conjunction with any inquiry, including for any criminal justice purpose, unless specifically authorized by this Act;⁶⁶

(u) Felony.—“Felony” means [insert state specific information here or reference to state law];

(v) Housing provider.—“Housing provider” means a landlord, owner, lessor, sublessor,

⁶⁴ *ABA Standards for Criminal Justice, Third Edition: Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, AM. BAR ASS'N 1 (2004), [collateral-sanctions.pdf \(americanbar.org\)](#).

⁶⁵ Taken from WASH. REV. CODE ANN. § 69.04.009 (West 2023).

⁶⁶ Taken from DEL. CODE ANN. tit. 11, § 4372 (West 2023).

assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental dwelling unit;⁶⁷

(w) Identification information.—“Identification information” includes the name, place and date of birth, last known address, social security number, occupation and address of employment, physical description, photograph, handwritten signature, sex/gender, and any known aliases of an individual;⁶⁸

(x) Judge.—“Judge” means an individual elected or appointed to a court in this state whose duties include deciding questions of law, determining the guilt or innocence of an individual in connection with a criminal proceeding, or determining the appropriate sentence for a criminal defendant;⁶⁹

(y) Law enforcement authority/agency.—“Law enforcement authority/agency” means:

- (1) A state, local, or tribal police department or sheriff’s office that is situated in, part of, or administered by, [state] or any political subdivision thereof;
- (2) A private police department in [state] that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highways laws of [state]; or
- (3) Any full-time or part-time, paid or volunteer, staff or employee of such police department or sheriff’s office;⁷⁰

(z) Misdemeanor.—“Misdemeanor” means [insert state definition here];⁷¹

(aa) Non-conviction records.—“Non-conviction records” means arrest records, biometric information, identification information, court records, and any other criminal history records relating to an individual arrested for a criminal offense that either did not result in charges being filed or resulted in charges being dismissed, or where the individual participated in a deferred adjudication or diversion program that resulted in dismissal of the charges, or where the individual was acquitted or otherwise exonerated;

⁶⁷ N.J. STAT. ANN. § 46:8-54 (West 2023).

⁶⁸ COLO. REV. STAT. ANN. § 24-72-302 (West 2023).

⁶⁹ Taken from *Judge*, LEGAL INFO. INST., CORNELL LAW SCH. (last updated June 2023), [judge | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/legalinfo/judge).

⁷⁰ See *Model Overdose Mapping and Response Act*, LEGIS. ANALYSIS AND PUB. POL’Y ASS’N 7-8 (March 2020), <http://legislativeanalysis.org/wp-content/uploads/2021/03/Model-Overdose-Mapping-and-Response-Act.pdf> (definition of “law enforcement officer”).

⁷¹ States have different categories of crimes, including, but not limited to, gross misdemeanor and petty misdemeanor. States should include definitions for the categories of crime that exist within that state.

- (bb) Parole.—“Parole” means the release by the [board of pardons/probation and parole or other state entity responsible for determining an individual's eligibility for parole] of an individual from incarceration to the community prior to the expiration of the individual’s term of imprisonment, subject to the supervision and guidance of the department;⁷²
- (cc) Private employer.—“Private employer” means an individual or entity that has one or more employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, and does not include a public employer;⁷³
- (dd) Probation.—“Probation” means a court-ordered sanction imposed upon an individual for a period of supervision no greater than that set by statute which is imposed as an alternative to incarceration or in conjunction with incarceration or intermediate sanctions;⁷⁴
- (ee) Probation and parole officer.—“Probation and parole officer” means an employee of the [department/board of probation and parole] with the qualifications required by the position, and having the powers and responsibilities pertaining to investigation, supervision, and otherwise, provided by law or determined by the [department/board of probation and parole];⁷⁵
- (ff) Professional regulatory board.—“Professional regulatory board” means a state department, board, authority, or entity whose duties include issuing, renewing, revoking, and suspending occupational or professional licenses, registrations, or certifications to practice a particular occupation or profession;
- (gg) Prosecutor.—“Prosecutor” means any county attorney, solicitor general, district attorney, city attorney, or the attorney general, and their assistants and deputies, when such attorney is prosecuting any criminal offense;⁷⁶
- (hh) Public employer.—“Public employer” means an employer that is the state or any administrative subdivision of the state, including a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of state

⁷² DEL. CODE ANN. tit. 11, § 4302 (West 2023).

⁷³ UTAH CODE ANN. § 34-52-102 (West 2023).

⁷⁴ MINN. STAT. ANN. § 609.02 (West 2023).

⁷⁵ DEL. CODE ANN. tit. 11, § 4302 (West 2023).

⁷⁶ Taken from NEB. REV. STAT. ANN. § 29-104 (West 2023).

government; a state institution of higher education; or a municipal corporation, county, municipality, school district, special district, or other political subdivision of the state;⁷⁷

(ii) Recidivism.—“Recidivism” means conviction of a new felony or misdemeanor committed within three (3) years of release from incarceration or placement on community supervision for a previous conviction;⁷⁸

(jj) Seal.—“Seal” means to sequester or otherwise restrict dissemination of criminal history records and prohibit the dissemination of such records for a non-criminal justice purpose, subject to the exceptions contained within this Act;⁷⁹

(kk) Substance use disorder.—“Substance use disorder” or “SUD” means a pattern of use of alcohol, cannabis, hallucinogens, opioids, sedatives, or other drugs leading to clinical or functional impairment, in accordance with the definition in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, or in any subsequent editions, and includes, but is not limited to, alcohol use disorder, opioid use disorder, and stimulant use disorder;⁸⁰

(ll) Victim.—“Victim” means any natural person against whom any crime has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct or plan as the crime is defined under the laws of this state or the United States, or, if such person is deceased or incapacitated, the person’s spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or lawful representative.⁸¹

Commentary

Many of the terms defined in this section may already be defined under state law, and states are free to use those definitions in lieu of the definitions provided in this section. However, some of the definitions included in this section may have been revised to better fit the needs and circumstances of this Act, and changes to such definitions may impact the effectiveness of the Act.

⁷⁷ UTAH CODE ANN. § 34-52-102 (West 2023).

⁷⁸ Taken from *Definitions of Key Terms*, CAL. BD. OF STATE AND CMTY. CORR., [AB-1050-Key-Term-Definitions.pdf \(ca.gov\)](#).

⁷⁹ Taken from ARK. CODE ANN. § 16-90-1404 (West 2023) and 20 ILL. COMP. STAT. ANN. 2603/5.2 (West 2023).

⁸⁰ Taken from LEGIS. ANALYSIS & PUB. POL’Y ASS’N, *Model Withdrawal Management Protocol in Correctional Settings Act*.

⁸¹ COLO. REV. STAT. ANN. § 24-72-701 (West 2023).

As defined in this Act, and as used throughout the statutory language of this Act, “drug offense” is limited to misdemeanor possession of a controlled substance and misdemeanor possession of drug paraphernalia and does not include drug distribution, manufacture, or trafficking. However, some states make possession of small amounts of a controlled substance a felony under state law, and those states should consider including felony possession of certain substances in the definition of “drug offense.” States may also choose to add additional drug-related crimes to which they wish the provisions of this Act to apply.

Readers should note that the terminology used by individuals working in this field is changing to be less stigmatizing and more humanizing. For example, in addition to renaming “collateral consequences” as “permanent punishments,” there is a movement to change “correctional facilities” to “carceral facilities,” “criminal justice system” to “criminal legal system,” and a move away from referring to crimes as “offenses.”⁸² This Act uses the terminology currently in use as it is the most familiar to legislators; however, states should consider a shift to the less stigmatizing language when adopting this Act.

SECTION IV. IDENTIFICATION AND PUBLICATION OF COLLATERAL CONSEQUENCES INFORMATION.

- (a) Identification of collateral consequences.—The [state agency tasked with such requirement] shall identify, or cause to be identified, all provisions in the [state] constitution, laws of the state of [state], and administrative rules adopted by any agency in this state authorized to promulgate such rules, that impose, or may impose, a collateral consequence against an individual arrested for, charged with, or convicted of a criminal offense.
- (b) Identification of provisions related to relief from collateral consequences.—The [state agency tasked with such requirement] shall identify, or cause to be identified, all provisions in the [state] constitution, laws of the state of [state], and administrative rules adopted by any agency in this state authorized to promulgate such rules, that provide relief from any collateral consequence, including the certificate of relief provided for in Section X of this Act.
- (c) Collection of collateral consequences information.—Upon identifying the information collected in subsections (a) and (b), the [state agency tasked with such requirement] shall compile the information in a manner and in a format that is readily accessible to members

⁸² See, e.g., Nguyen Toan Tran et al, *Words Matter: A Call for Humanizing and Respectful Language to Describe People Who Experience Incarceration*, BMC INT’L HEALTH AND HUM. RTS. 18:41 (Nov. 16, 2018), [Words matter: a call for humanizing and respectful language to describe people who experience incarceration - PMC \(nih.gov\)](https://doi.org/10.1186/s12916-018-1111-1).

of the judicial system, law enforcement, employees of the [department corrections/board of probation and parole], employees of state and local licensing entities, and the general public. Such information shall include, at a minimum, a list of the constitutional, statutory, regulatory, and policy citations and a brief description of each collateral consequence or relief provision.

- (d) Publication of collateral consequences information.—The [state agency tasked with such requirement] shall publish the collection of collateral consequences and relief from collateral consequences information on [its/their] website[s] and shall provide at least one (1) printed copy to each of the following entities:
- (1) The court clerk’s office for each court with jurisdiction to hear criminal cases within [state];
 - (2) The office of the attorney general, and the office of each district attorney, county attorney, city attorney, and any other office charged with the prosecution of crimes within [state];
 - (3) The office of the public defender for each county, city, or other political subdivision of the state charged with representing individuals charged with a criminal offense;
 - (4) Each jail, prison, or other correctional facility within [state], including any private or for-profit correctional facility, which shall be made available to individuals housed in such facilities within [1/3/5] days upon request. This provision may be satisfied by ensuring access to collateral consequences information through the facility law library; and
 - (5) The [department of probation and parole] responsible for the community supervision of individuals convicted of a criminal offense.
- (e) Alternative to printed copy.—In lieu of a printed copy, the [state agency tasked with such requirement] may provide the entities listed in subsection (d) with 24-hour online access to the publication and written notice of the publication’s existence.
- (f) Updates.—The [state agency tasked with such requirement] shall update the collection of collateral consequences and relief information at least annually.

Commentary

Sections IV and V are inspired by the Uniform Collateral Consequences of Conviction Act drafted by the National Conference of Commissioners on Uniform State Laws, a copy of

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which can be found here: [Collateral Consequences of Conviction Act - Uniform Law Commission \(uniformlaws.org\)](https://www.uniformlaws.org/).

This section requires the state to appoint an agency to identify, collect, and publish a compendium setting forth all federal and state-specific collateral consequences that may attach to an individual upon arrest, charge, or conviction of a criminal offense and the various types of relief available for such consequences. The primary reason for this requirement is that, “[i]n the absence of clear tabulation of the range of collateral consequences that may attach to particular convictions, judges, prosecutors, and even defense counsel may lack an understanding or knowledge about which crimes trigger certain (or how many) collateral consequences.”⁸³ As expressed by the U.S. Commission on Civil Rights:

Currently, states and local jurisdictions impose thousands of collateral consequences, which are “scattered throughout state and federal statutory and regulatory codes and can be unknown even to those responsible for their administration and enforcement,” making it difficult to identify all of the penalties.⁸⁴

This section does not explicitly name the agency that should be tasked with performing the duties required under the provisions of this section; however, states should choose the entity that is best suited to complete such requirements in that particular state. Potential agencies include the Administrative Office of the Courts and the State Office of the Attorney General.

NICCC identified and gathered information regarding all federal and state collateral consequences across the country and created a searchable database with this information that is generally updated at the end of each state’s legislative session.⁸⁵ The entity or entities designated as being responsible for gathering information in a state could use this database as a starting point for gathering information specific to that state. The database does not include information regarding relief from collateral consequences; however, that information might be found in the resources on the Collateral Consequences Resource Center website.⁸⁶

SECTION V. NOTIFICATION TO INDIVIDUALS ARRESTED FOR, CHARGED WITH, OR CONVICTED OF A CRIMINAL OFFENSE.

- (a) In general.—Individuals who have been arrested for, charged with, or convicted of a criminal offense shall be provided with notice of the existence of collateral consequences that might attach to the individual upon arrest, charge, or conviction, including where to obtain a copy of or access to the collection of collateral consequences information

⁸³ U.S. COMM’N ON C.R., *supra* note 17, at 11 (internal citations omitted).

⁸⁴ *Id.* at 29.

⁸⁵ NICCC, *supra* note 29.

⁸⁶ See *State-specific Resources*, COLLATERAL CONSEQUENCES RES. CTR. (2021), [State-Specific Resources | Collateral Consequences Resource Center \(ccresourcecenter.org\)](https://ccresourcecenter.org/).

gathered in Section IV and the methods by which an individual may obtain relief from such collateral consequences.

- (b) Notice of collateral consequences information.—The notice required by subsection (a) shall be provided by the individuals or entities listed below at each of the following times:
- (1) By the prosecutor as part of the charging process following the filing of formal charges against the individual. If the individual is represented by an attorney, notice shall be given by the individual’s defense attorney;
 - (2) By the presiding judge and the individual’s defense attorney, if any, during arraignment and prior to entry by the individual of a plea of guilty or nolo contendere or an Alford plea;
 - (3) By the prosecutor upon entry of a nolle prosequi by such attorney or agency. If the individual is represented by an attorney, notice shall be given by the individual’s defense attorney;
 - (4) By the presiding judge and the individual’s defense attorney, if any, as part of the sentencing process following the conviction of an individual on one or more criminal charges;
 - (5) By an authorized individual or entity or authorized correctional staff as part of the intake process when an individual who has been convicted of a criminal offense enters a state, local, private, or for-profit correctional facility in this state for the purpose of serving the individual’s sentence;
 - (6) By an authorized individual or entity or authorized correctional staff as part of the release process no earlier than six (6) months and no later than one (1) month prior to the scheduled release of an individual from a state, local, private, or for-profit correctional facility in this state; and
 - (7) By a probation or parole officer when an individual begins a sentence of community supervision and no earlier than six (6) months and no later than one (1) month prior to the scheduled release of the individual from community supervision.
- (c) Form of notice.—The notice required by subsections (a) and (b) shall be provided orally and in writing and shall be:

- (1) Made available in the primary language of the individual to whom notice is being provided; and
 - (2) Made available at a sixth (6th) grade reading level.
- (d) Notice of eligibility for certificate of relief.—Individuals eligible to apply for a certificate of relief pursuant to Section VI shall receive notice of the process for applying for such certificate at the same time as the individual receives notice of collateral consequences information pursuant to subsections (a) and (b).
- (e) Acknowledgement.—The criminal history record of an individual receiving the notice required by this section shall include an acknowledgement signed by the individual stating that the individual received the notice and had an opportunity to ask questions or otherwise discuss the notice of collateral consequences with counsel.
- (f) Failure to provide notice.—
- (1) Unless such failure is knowing or intentional, failure of a court or prosecutor to provide the notice required pursuant to subsections (a) and (b) shall not be considered an error, defect, irregularity, or variance affecting the substantial rights of the individual and does not constitute grounds for appeal, reversal of conviction, or nullify a plea of guilty or nolo contendere or an Alford plea.
 - (2) Unless such failure is knowing or intentional, failure of a defense attorney to provide the notice required pursuant to subsections (a) and (b) shall not be considered ineffective assistance of counsel and shall not be the basis for an appeal following a plea of guilty or nolo contendere or an Alford plea.⁸⁷
 - (3) Failure to provide the required notice by any individual or entity as required by this section shall not be the sole basis for civil litigation.
 - (4) Without regard to intent, failure of a court or prosecutor to provide the notice required pursuant to subsections (a) and (b) shall be grounds for automatic approval of a petition to seal criminal history records filed by an individual. Evidence of such failure shall include the absence of the signed acknowledgment required by subsection (e) from the individual’s criminal history records.

⁸⁷ Taken from LA. CODE CRIM. PROC. ANN. 556.1 (2023).

Commentary

This section works in tandem with Section IV and requires that certain listed individuals or entities notify those arrested for, charged with, or convicted of a criminal offense of the existence of collateral consequences and the relief available at specified periods throughout their involvement with the criminal justice system, including prior to entering a guilty plea, and upon release from a correctional facility. Currently, except for the potential of deportation for immigrants if convicted of a criminal offense, there is no federal or state constitutional requirement to inform an individual of any potential collateral consequences that might attach to them as a result of their involvement with the criminal justice system. “The general public, attorneys, and the courts often lack knowledge of what the totality of the collateral consequences are in their jurisdiction, how long they last, and whether they are discretionary or mandatory, or even if they are relevant to public safety or merely an extended punishment beyond a criminal sentence.”⁸⁸

Moreover, because notice of collateral consequences to individuals charged with a crime is not required, many individuals are ignorant of the ramifications of entering a guilty plea or a plea of *nolo contendere* until they are faced with such consequences. Additionally, lack of knowledge regarding relief from collateral consequences results in many individuals who may be eligible for relief continuing to experience the effects of collateral consequences long after they could have applied for and been granted relief, which has implications for their families and the general public. “Research strongly suggests that relieving some formerly incarcerated individuals from the burdens of certain collateral consequences cultivates successful reintegration into society, helps reduce recidivism, and promotes public safety.”⁸⁹ Individuals cannot take advantage of such relief if they are unaware that relief exists.

Some working group members suggested that individuals be notified of the specific collateral consequences that would apply to them based on their particular circumstances, and that they also be notified of the benefits and limitations attendant to the various forms of relief. However, other working group members objected to including that requirement as they felt it would add an additional, likely time-consuming, burden to the already overextended caseloads of judges, prosecutors, public defenders, and defense attorneys in many jurisdictions. Therefore, the drafters have opted not to include that additional requirement; however, states with the resources to do so may certainly choose to add that provision.

This section includes prosecutors in the requirement to provide notice to individuals at certain times; however, those provisions will only be triggered in those rare circumstances when an individual is not represented by defense counsel at the time of the required notice. The notice required by this section must be provided both orally and in writing in order to ensure that all individuals, including those who are hearing or sight impaired or unable to read, receive the required notice. Failure to provide such notice does not amount to ineffective assistance of counsel or grounds for an appeal, unless such failure is knowing or intentional.

⁸⁸ U.S. COMM’N ON C.R., *supra* note 17, at 133.

⁸⁹ *Id.* at 6.

SECTION VI. CERTIFICATE OF RELIEF.

(a) In general.—

- (1) An individual, referred to as “eligible individual” in this section, who has been convicted of one or more criminal offenses, whether in this state or in another state if such individual is currently a resident of this state, is eligible to apply for a certificate of relief pursuant to the provisions of this Act.
- (2) The fact of prior or subsequent criminal convictions does not render an individual ineligible for relief under this section; however, such convictions may be taken into consideration by the entity issuing the certificate.

(b) Entities authorized to issue certificates of relief.—

- (1) If the eligible individual was convicted of one or more criminal offenses in this state, the court in which the eligible individual was convicted may issue a certificate of relief, on its own motion or upon application of the eligible individual, at the time of sentencing the individual or at any time thereafter, including while the individual is incarcerated.
- (2) If the court in which the eligible individual was convicted is more than [*n*] miles from the individual’s current residence within [state], the individual may file an application for relief in any court with jurisdiction to hear criminal cases in the individual’s current county of residence, and such court shall have access to any and all case information necessary in order to issue a certificate.
- (3) If the eligible individual was convicted of one or more criminal offenses in another state or in a federal court, any court with jurisdiction to hear criminal cases in the individual’s current county of residence may issue a certificate of relief to such individual upon application, and such court shall have access to any and all case information necessary in order to issue a certificate.
- (4) If the eligible individual was convicted of one or more criminal offenses in [state] but currently resides in another state and is not eligible for relief under the laws of that state due solely to the conviction having been obtained in this state, the individual may file an application for relief with any court of competent jurisdiction in [state] and such court shall have access to any and all case information necessary in order to issue a certificate.

(5) In all cases, the board of probation and parole, on its own initiative or upon application of the individual, may issue a certificate of relief to an eligible individual at any time after the individual is sentenced including, but not limited to, at any time prior to the eligible individual's release from community supervision.

(c) Application for certificate of relief.—

(1) An application for a certificate of relief shall include all of the following:

(A) The individual's full legal name, date of birth, and social security or other identification number;

(B) All aliases by which the individual is known or under which the individual has been arrested, and all social security or other identification numbers associated with such aliases;

(C) If the individual was convicted in this state but currently resides in another state, the address where the individual resides;

(D) If the individual is seeking relief from an out-of-state conviction or conviction rendered by a federal court, evidence of residency in this state and the length of time the individual has been a resident of this state, expressed in years and months of residence;

(E) The specific collateral consequence(s) for which the applicant is seeking relief; and

(F) The grounds upon which the applicant is basing the request for relief.

(2) An applicant may, but is not required to, include verifiable references and/or endorsements or evidence of rehabilitation with the application.⁹⁰

(d) Filing fee.—The applicant shall pay a filing fee of [\$] at the time of filing the application for relief which may be waived by the deciding entity upon a finding that the applicant is indigent or that payment of the fee would create a substantial financial hardship.

(e) Denial of application.—

(1) If an application for certificate of relief is denied, the deciding entity shall set forth the reasons for the denial and any actions the applicant can take to improve the likelihood of success in a subsequent application.

⁹⁰ Taken from COLO. REV. STAT. ANN. § 18-1.3-107 (West 2023) and TENN. CODE ANN. § 40-29-107 (West 2023).

- (2) If the deciding entity is not a court of competent jurisdiction in this state, the applicant may file an appeal with such a court within thirty (30) days of the denial or, if more than thirty (30) days have elapsed, may file a subsequent application for relief pursuant to the provisions of subsection (e)(4) below.
 - (3) If the deciding entity is a court of competent jurisdiction in this state, the applicant may file an appeal with the [state court of appeals] within the time prescribed by the [Rules of Appellate Procedure].
 - (4) If an application is denied, an applicant may not file a subsequent application with another deciding entity unless:
 - (A) The applicant is no longer eligible to apply for relief from the entity that denied the original application; or
 - (B) [Number of days/months/years] has passed.
- (f) Effect of certificate of relief.—
- (1) The eligible individual shall be provided with a certified copy of the certificate at the time of issuance.
 - (2) Unless modified or revoked, a certificate of relief suspends all collateral consequences, except those listed as ineligible for relief in subsection (m) below, or those specifically set forth in the certificate as to which relief has not been granted.⁹¹
 - (3) A certificate of relief preempts any state statute or rule that authorizes or requires the denial or refusal to issue, restore, or renew a professional or occupational license, certificate, or registration based solely on an individual’s conviction of a criminal offense, except for those listed as ineligible for relief in subsection (m) below and subject to the provisions of subsection (n).⁹²
 - (4) A certificate of relief does not entitle an individual to deny the existence of the conviction that is the basis for the certificate in response to any inquiry unless the records related to such conviction are subsequently sealed and/or expunged.
 - (5) The issuance of a certificate of relief, and any modification or revocation thereafter, shall be noted in the individual’s criminal history records.

⁹¹ Taken from N.C. GEN. STAT. ANN. § 15A-173.2 (West 2023).

⁹² Taken from TENN. CODE ANN. § 40-29-107 (West 2023).

- (g) Standard for issuance.—The deciding entity shall issue a certificate of relief if it is satisfied that:
- (1) The individual is an eligible individual;
 - (2) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible individual; and
 - (3) The relief to be granted is consistent with the public interest.⁹³
- (h) Investigation.—The entity making the determination to issue a certificate of relief may, for the purpose of determining whether such certificate should be issued, request that its staff conduct an investigation of the applicant and submit a report of the investigation, a copy of which shall be provided to the applicant, who shall be given an opportunity to respond.
- (i) Modification of certificate.—The entity that previously issued a certificate of relief to an eligible individual may, at any time after the initial issuance, issue a subsequent certificate to enlarge, limit, or circumscribe the relief previously granted, and the standards set forth in subsection (g) of this section shall apply to the issuance of any such new certificate.⁹⁴
- (j) Temporary certificate.—Any certificate of relief issued to an eligible individual who is, at the time of issuance, still incarcerated or under community supervision shall be deemed to be a temporary certificate until such time as the individual has successfully completed his or her sentence. Such certificate, unless revoked pursuant to the terms of subsection (k), shall become permanent upon the completion of the individual’s sentence.
- (k) Revocation.—
- (1) The entity that issued a certificate of relief shall revoke the certificate if the entity knows or becomes aware that the individual is no longer eligible to receive a certificate due to a subsequent arrest or violation of community supervision. For purposes of this subsection, criminal offenses that might subject the individual to revocation of a certificate of relief do not include [list of offenses, including minor traffic offenses].

⁹³ Taken from 730 ILL. COMP. STAT. ANN. 5/5-5.5-15 (West 2023).

⁹⁴ Taken from COLO. REV. STAT. ANN. § 18-1.3-107 (West 2023) and 730 ILL. COMP. STAT. ANN. 5/5-5.5-15 (West 2023).

- (2) Upon revocation, the collateral consequences thereby relieved shall be reinstated as of the date the individual to whom the certificate was issued receives written notice of the revocation.⁹⁵
- (3) An individual who knowingly uses or attempts to use a revoked certificate, or a certificate that is no longer valid, in order to obtain a benefit or avoid a collateral sanction or disqualification, shall not be eligible to receive another certificate of relief in the future.⁹⁶
- (l) Confidentiality.—Any written report submitted to the entity making the determination to issue a certificate of relief is confidential and may not be made available to any person or public or private agency except that it shall be made available for examination by the eligible individual or the eligible individual’s attorney.
- (m) Collateral consequences ineligible for relief.—Unless otherwise specifically stated in the certificate of relief, such certificate shall not provide relief from:
- (1) An eligible individual’s obligation to register with the sex offense registry pursuant to [insert reference to state law];
 - (2) The suspension, cancellation, or revocation of a driver’s license, commercial driver’s license, or other license to operate a motorized vehicle, if the criminal offense of which the individual was convicted was related to the operation of a motor vehicle, including [list of criminal offenses, such as driving under the influence or reckless driving];
 - (3) A disqualification or bar from employment established or required by state or federal law including, but not limited to, [list of employment positions which state or federal law prohibits an individual convicted of a specific criminal offense from practicing]; or
 - (4) Prohibitions against possessing a firearm.
- (n) Limitations and restrictions on certificate of relief.—A certificate of relief shall not be deemed to prevent:
- (1) Any judicial proceeding, administrative, licensing, or other body, or authority from relying upon the facts underlying the conviction specified in the certificate as the

⁹⁵ Taken from CONN. GEN. STAT. ANN. § 54-130e (West 2023).

⁹⁶ Taken from N.J. STAT. ANN. § 2A:168A-11 (West 2023).

- basis for the exercise of its discretionary power to suspend, revoke, or refuse to issue or renew any license, permit, or other authority or privilege;
- (2) The introduction of evidence of a prior conviction for purposes of impeachment of a witness in a judicial or other proceeding where otherwise authorized by the applicable rules of evidence; or
- (3) The enhancement of a criminal charge when a prior conviction mandates such enhancement.⁹⁷
- (o) Forms.—All applications, certificates of relief, and orders of revocation necessary for the purposes of this section shall be on forms provided by the [administrative office of the courts]. This subsection does not prevent another agency or entity from using its own forms as long as such forms are consistent with this section.
- (p) Assistance of attorney.—
- (1) [A petitioner in need of assistance with applying for a certificate of relief may be eligible to have the court appoint an attorney to assist the individual with such filing upon a showing that the petitioner is indigent.]⁹⁸
- (2) If a public defender or other defense counsel represents an individual at the time of applying for the certificate of relief, such attorney may, as part of their representation of the individual, assist their client with applying for the certificate of relief.
- (q) Immunity.—No public or private employer shall be civilly or criminally liable for an act or omission by an employee who has been issued a certificate of relief, except for a willful or wanton act by the employer in hiring the employee who has been issued such a certificate.⁹⁹
- (r) Reliance on certificate as evidence of due care.—In any proceeding alleging negligence, a certificate of relief is a bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued, if the

⁹⁷ Taken from R.I. GEN. LAWS ANN. § 13-8.2-6 (West 2023).

⁹⁸ Subsection (p)(1) is included as an optional provision for states. See commentary for more information.

⁹⁹ Taken from 730 ILL. COMP. STAT. ANN. 5/5-5.5-15 (West 2023).

person or entity against whom the proceeding is brought relied on the certificate of relief at the time of the alleged negligence.¹⁰⁰

(s) Confirmation of issuance.—

(1) Upon request, the entity issuing a certificate of relief shall confirm whether a certificate has been issued to a named individual and whether the certificate is valid at the time of the inquiry.¹⁰¹

(2) A copy of the certificate shall be included in the individual’s criminal history records and reported as part of the record maintained by the state criminal history record repository.

(t) Full faith and credit.—A certificate of relief or equivalent document issued by another state shall be given the same effect as a certificate issued by an authorized entity in this state and shall be subject to the same limitations and restrictions as a certificate issued in this state.

Commentary

Certificates of relief are known by various names across the country, including Certificate of Employability, Certificate of Rehabilitation, Certificate of Relief from Disabilities, Certificate of Recovery and Re-entry, and Certificate of Good Conduct. At least 16 states have statutes currently in place offering a certificate of some type to eligible individuals. Most of these states, however, include limitations on who can apply, including a maximum number of convictions or limits based on the class of conviction (*e.g.*, can only have one felony conviction). Additionally, many of those certificates only apply to employment barriers leaving the individual in no better position with regard to other collateral consequences, including housing and government benefits.

According to the National Center for State Courts, “[s]ome collateral consequences limit people’s ability to successfully reintegrate into society to such a large extent that they *increase* the likelihood of recidivism” (emphasis in original).¹⁰² A study of Ohio Certificates of Qualification for Employment shows that possession of a certificate of relief had “tangible benefits to employment seekers” with a criminal history background.¹⁰³ Therefore, this section provides an avenue for individuals whose records do not qualify for sealing or expungement to obtain a certificate of relief entitling them to relief from all or some collateral consequences to which they are subject.

¹⁰⁰ N.C. GEN. STAT. ANN. § 15A-173.5 (West 2023).

¹⁰¹ Taken from MICH. COMP. LAWS ANN. § 791.234d (West 2023).

¹⁰² Miller et al, *supra* note 28, at 2.

¹⁰³ Peter Leasure and Tia Stevens Andersen, *The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study*, 35 YALE L. & POL’Y REV. INTER ALIA 11, 20 (2016), [leasure.certificates_of_relief.produced.pdf\(yalelawandpolicy.org\)](https://leasure.certificates_of_relief.produced.pdf(yalelawandpolicy.org)).

Subsection (b) permits a variety of entities to issue a certificate of relief to an eligible individual including courts and boards of probation and parole. The purpose for this is to provide multiple avenues through which individuals can obtain a certificate. Pursuant to the terms of this section, courts can issue a certificate at any time, either on their own motion or upon application of the individual. If, for example, an individual is sentenced to probation for a misdemeanor drug offense, a court may wish to simultaneously issue a certificate so that the individual faces fewer collateral consequences due to the conviction. Additionally, if an individual is sentenced to a period of incarceration, the individual may apply to a court at any time prior to the individual's release for a certificate so that the individual can have it in hand upon release.

Earlier drafts of this Act included a provision allowing correctional facilities to issue certificates of relief; however, that provision was removed at the request of the majority of working group members. Their primary objection was based on the power differential between correctional facility staff and the individuals incarcerated in those facilities and the risk that staff would abuse their authority to issue certificates to the detriment of the individuals who need them. States that choose to allow correctional facilities to issue certificates should ensure that there are proper safeguards in place to prevent such abuse and include an objective standard under which such certificates will be issued. A working group member also suggested that any certificate issued while an individual is incarcerated be of more limited effect for a set period of time after the individual's release.

In order to prevent individuals from filing multiple applications with different entities in order to obtain the requested relief after a denial, subsection (e)(4) provides that an individual may not file a subsequent application for a certificate of relief with a different entity if an initial application was denied and the individual is still eligible to receive relief from that entity. For example, if an individual is on probation and filed an application for a certificate of relief with the board of probation and parole which was denied, that individual could not then file a subsequent application with a court unless either of the exceptions included in subsection (e)(4) applies. Those exceptions include that the individual is no longer eligible to receive a certificate from the entity or that a set period of time has passed since the denial of an application.

Subsection (f) sets forth the effect of a certificate of relief, which is to suspend operation of all collateral consequences against an individual except those set forth in subsection (m) or unless otherwise prohibited by state or federal law. Further, the issuing agency can delineate any collateral consequences to which the certificate does not apply.

Subsection (p)(1) is bracketed to indicate that it is included as an optional provision for states. Working group members felt it was important to provide assistance to individuals seeking a certificate of relief; however, requiring that such individuals be appointed an attorney if they don't already have one could be quite expensive. Funding would likely be required in order to make this provision feasible.

Additional provisions in this section provide protections from civil litigation for entities that rely on valid certificates as well as providing that certificates issued by other states will be given full faith and credit in all other states.

SECTION VII. AUTOMATIC SEALING OF CERTAIN CRIMINAL HISTORY RECORDS.

- (a) In general.—Beginning [January 1, 2025] and continuing thereafter, unless another time period is specified in this section, on at least a monthly basis, the custodian(s) of the criminal history records specified in this section shall review the databases containing the records under their custody and control and, based on information in such databases, identify individuals with criminal history records that meet the criteria set forth in this section and who are eligible for automatic sealing of such records.¹⁰⁴
- (b) Mistaken identity.—Any law enforcement agency that determines, subsequent to the arrest of an individual, that such person was erroneously or incorrectly arrested as the result of mistaken identity or any other reason, or erroneously fingerprinted, photographed, or otherwise has generated any record of arrest for investigatory purposes and, as a result of such erroneous arrest, no charges have been filed in any court in this state, shall, within thirty (30) days of such determination, seal all such arrest records and any associated biometric or identification information.¹⁰⁵
- (1) Any law enforcement agency that arrests and reports an arrest based on mistaken identity to any other law enforcement agency shall, within sixty (60) days of making the determination that the arrest was wrongful, notify all other agencies to which it has transmitted such identifying information including, but not limited to, the Federal Bureau of Investigation, the National Crime Information Identity Center (NCIC), and any other state or federal agency that compiles, retains, or collects any arrest or biometric information of arrestees, that the arrest was wrongful and that any and all records transmitted or generated shall be sealed as provided for herein.¹⁰⁶
- (2) The law enforcement agency shall notify the individual who is the subject of the records that it has sealed the records of the wrongful arrest within thirty (30) days from the date the record is sealed.¹⁰⁷

¹⁰⁴ Taken from CAL. PENAL CODE § 851.93 (West 2023).

¹⁰⁵ Taken from R.I. GEN. LAWS ANN. § 12-1-12.2 (West 2023).

¹⁰⁶ R.I. GEN. LAWS ANN. § 12-1-12.2 (West 2023).

¹⁰⁷ Taken from R.I. GEN. LAWS ANN. § 12-1-12.2 (West 2023).

- (c) Arrest records.—The custodian of records shall seal all arrest records that meet one or more of the following circumstances:
- (1) The arrest leading to conviction was for a misdemeanor or a drug offense, and it has been at least one (1) year since the completion of sentence;
 - (2) The arrest was for a misdemeanor or felony offense, there is no indication that criminal proceedings have been initiated or charges filed, and there has been no documented case activity within the past twelve (12) months, or the statute of limitations has expired, whichever occurs first;
 - (3) The arrest was for a misdemeanor or felony offense, the charges were dismissed without prejudice, and there has been no documented case activity within the past twelve (12) months, or the statute of limitations has expired, whichever occurs first;
- or
- (4) The individual successfully completed, as set forth in [reference to state law]:
 - (A) A diversion or drug diversion program;
 - (B) A deferred adjudication program; or
 - (C) Treatment in lieu of sentencing,and no charges were ever filed.¹⁰⁸
- (d) Dismissal, acquittal, exoneration.—The clerk of the court or other custodian shall seal all court records of a criminal case in the following circumstances:
- (1) Upon the entry of a nolle prosequi or dismissal of charges with prejudice by the prosecutor;
 - (2) Upon a finding of not guilty by the trier of fact;
 - (3) When charges have been filed against an individual and the period of such filing has expired;
 - (4) When charges were filed against an individual and the individual successfully completed:
 - (A) A diversion or drug diversion program;
 - (B) A deferred adjudication program;
 - (C) A period of community supervision; or

¹⁰⁸ Taken from CAL. PENAL CODE § 851.93 (West 2023) and COLO. REV. STAT. ANN. § 24-72-704 (West 2023).

- (D) Treatment in lieu of sentencing,
and such charges were dismissed upon the successful completion; or
- (5) When the individual is otherwise exonerated of all charges in the criminal case, including by the filing of a [no true bill] by the grand jury or a [no information] by the prosecutor or such charges are dismissed by the court.¹⁰⁹
- (e) Cannabis and drug paraphernalia offenses.—The custodian(s) of records shall seal all criminal history records relating to civil law or misdemeanor criminal violations resulting in citation, arrests, and convictions for offenses related to cannabis and/or drug paraphernalia.¹¹⁰
- (f) Conviction for conduct that is no longer a crime.—The custodian(s) of records shall seal all criminal history records relating to the arrest or conviction of an individual for conduct that was unlawful at the time of the arrest or conviction, but which is no longer unlawful under state law.¹¹¹
- (g) Pardons.—The custodian(s) of records shall seal the criminal history records of individuals who have been granted a pardon pursuant to [insert state constitutional/statutory/regulatory reference(s) to pardon procedures].
- (h) Records involving more than one individual.—If a record includes the name of more than one individual and one or more of the individuals is entitled to have the record sealed pursuant to the provisions of this section, the custodian(s) shall seal the record by redacting all identifying information related to the individual(s) entitled to sealing from the record.¹¹²
- (i) Automatic sealing.—The records provided for in this section shall be sealed automatically within thirty (30) days of being identified as being eligible for sealing without the necessity of the filing of a petition by the individual who is the subject of the records.¹¹³
- (j) Effect of automatic sealing.—In addition to the provisions of Section IX, an individual who has been granted relief pursuant to the provisions of this section is released from any

¹⁰⁹ Taken from R.I. GEN. LAWS ANN. §§ 12-1-12 and 12-1-12.1 (West 2023).

¹¹⁰ Taken from 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2023).

¹¹¹ Taken from COLO. REV. STAT. ANN. § 24-72-706 (West 2023).

¹¹² Taken from LA. CODE OF CRIM. PROC. 985 (West 2023).

¹¹³ Taken from CAL. PENAL CODE § 851.93 (West 2023).

collateral sanctions or disqualifications, including any loss of civil rights, that accrued as the result of the arrest, charge, or conviction.¹¹⁴

- (k) Plea agreements.—No plea agreement shall include a provision waiving the right to automatic sealing of eligible records and any such provision included in a plea agreement shall be of no effect.
- (l) Notification.—The custodian that sealed the criminal history records shall:
 - (1) Within thirty (30) days of sealing, notify the individual who is the subject of the records by email, U.S. mail, or other means, at their last known address, that such records have been sealed; and
 - (2) Within sixty (60) days of sealing, notify all other agencies to which information regarding the sealed records has been transmitted, including, but not limited to, the Federal Bureau of Investigation and any other state or federal agency that compiles, retains, or collects criminal history records, that such records have been sealed.
- (m) Purposes for which sealed records may be used.—Records sealed pursuant to this section:
 - (1) Shall not be available for public inspection and shall be exempt from disclosure under [reference to state public records law];
 - (2) Shall not be disclosed by a business screening service responding to a criminal history records request; and
 - (3) Shall, with the exception of those records sealed pursuant to subsection (b), subsection (c)(2) or (c)(3), subsection (d)(1), (d)(2), (d)(3) or (d)(5), or subsection (f) (broadly classified as non-conviction records), or records sealed pursuant to subsection (g) following a pardon, remain available to criminal justice agencies, including prosecutors and judicial officials, for criminal justice purposes.
- (n) Backlog of eligible records.—For records that are eligible for automatic sealing pursuant to the provisions of this section that occurred prior to [January 1, 2025], and for which a petition to seal the records has not been filed by the individual who is the subject of such records prior to the indicated date, the custodian(s) of such records shall, as funding and resources permit:

¹¹⁴ Taken from CAL. PENAL CODE § 851.93 (West 2023).

- (1) For records that became eligible from [2019 to 2024], seal the records by [January 1, 2027];
- (2) For records that became eligible from [2014 to 2018], seal the records by [January 1, 2028];
- (3) For records that became eligible from [2009 to 2013], seal the records by [January 1, 2029];
- (4) For records that became eligible from [2004 to 2008], seal the records by [January 1, 2030];
- (5) For records that became eligible from [1999 to 2003], seal the records by [January 1, 2031]; and
- (6) For all records that became eligible prior to [1999], seal the records by [January 1, 2032].¹¹⁵

Commentary

Sealing criminal history records removes them from the public sphere, meaning that access to such records is limited. In most cases, as in this section, with the exception of those records set forth in subsection (m)(3), sealed records may only be used for criminal justice purposes. For example, a judge may access sealed records to determine if an offense is an individual's first offense for purposes of sentencing where second and subsequent convictions for the same offense result in enhanced sentences. By way of illustration, an individual may only be subject to a 30-day suspended sentence for a first driving under the influence offense but subject to a sentence of up to 12 months for a second offense. The records specified in subsection (m)(3) may not be used for any purpose once they are sealed and may be eligible for automatic expungement pursuant to the provisions of Section X.

This section requires that the appropriate record custodians automatically seal certain criminal history records without the necessity of the filing of a petition by the subject of the records.¹¹⁶ This requirement applies to a variety of criminal history records, including non-conviction records; that is, those records of arrest that either did not result in charges being filed or where the individual participated in a deferred adjudication or diversion program that resulted in dismissal of the charges or situations in which the individual was acquitted or otherwise exonerated.

As mentioned in the Commentary for Section II, law enforcement in the United States made more than 10 million arrests in 2019; however, many of those arrests have not led to charges being filed or resulted in charges being dismissed, either because the individual

¹¹⁵ Taken from COLO. REV. STAT. ANN. § 24-72-704 (West 2023).

¹¹⁶ Pursuant to the Bureau of Justice Statistics report (*see infra*, note 161), as of 2020, 95 percent of criminal history records maintained by states are housed in a state criminal history repository.

participated in a diversion program or because the prosecutor decided not to pursue the case.¹¹⁷ However, despite the fact that the individual was not convicted of the criminal offense for which he or she was arrested, the individual may still face collateral consequences as if there was a conviction. As Justice Sonia Sotomayor wrote in her dissent in the case of *Utah v. Strieff*, “Even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the ‘civil death’ of discrimination by employers, landlords, and whoever else conducts a background check.”¹¹⁸

Obtaining relief from collateral consequences as the result of an arrest that did not result in a conviction can be difficult. For instance, Florida law prohibits the sealing of non-conviction records if an individual has ever been convicted of a criminal offense, unless the records of such conviction were expunged.¹¹⁹ That law also requires that the individual first obtain a certificate of eligibility for sealing, pay a \$75 filing fee, and file a sworn petition with the court, and leaves it to the court’s discretion to grant or deny the petition.¹²⁰ In some states, sealing of non-conviction records and misdemeanor convictions can be subject to the same standards as for the sealing of more grievous criminal offenses, resulting in processes that are confusing or financially out of reach for many individuals involved with the criminal justice system (*i.e.*, inability to hire an attorney to assist with filing the proper petitions or substantial filing and court fees).¹²¹

In addition to non-conviction records, this section requires the automatic sealing of records in cases of mistaken identity, where law enforcement arrested the wrong individual, as well as in situations where the state grants an individual a pardon through the state pardon process. Moreover, automatic sealing is required for misdemeanor offenses, certain drug offenses (as defined by this Act), misdemeanor cannabis offenses, and drug paraphernalia offenses as well as convictions for conduct that is no longer criminal under state law. For example, an individual convicted of cannabis possession in a state that has legalized or decriminalized personal use of cannabis would be entitled to automatic sealing of that conviction. Further, subsection (c)(4) requires the automatic sealing of criminal history records in circumstances where prosecutors hold charges against an individual in abeyance if the individual agrees to participate in an alternative sentencing program, such as a diversion or deferred adjudication program. If the individual successfully completes the program, no charges against the individual are ever filed. If the individual fails to complete the program, charges are filed and the case against the individual proceeds.

Because criminal cases may have more than one defendant, this section also includes provisions to address that situation so that individuals who fit those circumstances can obtain relief through redaction.

¹¹⁷ 2019 *Crime in the United States*, U.S. DEP’T OF JUST., FED. BUREAU OF INVESTIGATION, CRIM. JUST. INFO.SERVS. DIV. (Fall 2020), [FBI — Persons Arrested](#).

¹¹⁸ *Utah v. Strieff*, 579 U.S. 232, 253 (2016) (Sotomayor, J., dissenting).

¹¹⁹ FLA. STAT. ANN. § 943.059 (West 2023).

¹²⁰ *Id.*

¹²¹ See, e.g., *Record Clearing Fees and Waivers*, NAT’L CONF. OF STATE LEGISLATURES (updated Aug. 14, 2020), [Record Clearing Fees and Waivers \(ncsl.org\)](#).

Subsection (m) sets forth how sealed records may be used in the future. It provides that, with the exception of specified non-conviction records, not including records where charges were dismissed due to successful completion of an alternate sentencing program (*e.g.*, deferred adjudication or treatment in lieu of sentencing) and records sealed pursuant to the grant of a pardon, sealed records may still be used for criminal justice purposes, including, for example, determining whether an individual should be charged with a second or subsequent offense for the same crime.

Finally, subsection (n) requires that custodians seal older records pursuant to the timeline set forth in that subsection. Although federal law limits arrest record “look-back” periods to seven years, or until the statute of limitations has expired, under the Fair Credit Reporting Act, many business screening services fail to properly delete older records so that arrests older than seven years may appear in the criminal history background information they provide.¹²² Therefore, this section requires that the older records also be sealed on a timely basis.

SECTION VIII. SEALING BY PETITION.

- (a) In general.—Records not eligible for automatic sealing pursuant to Section VII may be eligible to be sealed by petition in accordance with this section.
- (b) More than one conviction.—
 - (1) Unless otherwise permitted by this Act, a petition to seal criminal history records must be filed in the jurisdiction where the conviction occurred.
 - (2) If an individual has multiple eligible convictions in the same jurisdiction, the individual may file one petition requesting the sealing of records related to each such conviction.
 - (3) If an individual has multiple eligible convictions in different jurisdictions, the individual must file a separate petition in each jurisdiction.
- (c) Conviction records.—
 - (1) The individual who is the subject of the records to be sealed may petition the court in which any conviction records pertaining to the individual are located for the sealing of such records.
 - (2) If the offense is a non-criminal or petty offense, or class [lower-level misdemeanor offenses (2, 3, or 4) (B, C, or D)] misdemeanor or drug offense, the petition may be filed on or after one (1) year from the date of the final disposition of all proceedings

¹²² 15 U.S.C. § 1681c (2023).

against the individual or the completion of the individual's sentence, whichever comes later.

- (3) If the offense is a class [1/A/highest level misdemeanor in the state] misdemeanor, the petition may be filed on or after three (3) years from the date of the final disposition of all proceedings against the individual or the completion of the individual's sentence, whichever comes later.
 - (4) If the offense is [classified as a non-violent] [a class (2, 3, or 4) (B, C, or D) lower-level felony] felony, the petition may be filed on or after five (5) years from the date of the final disposition of all proceedings against the individual or the completion of the individual's sentence, whichever comes later.
 - (5) If the offense is [classified as a violent] [a class 1/A highest level felony], the petition may be filed on or after seven (7) years from the date of the final disposition of all proceedings against the individual or the completion of the individual's sentence, whichever comes later.¹²³
 - (6) If the record sought to be sealed includes the name of more than one individual and one or more of the individuals is entitled to have the record sealed pursuant to the provisions of this section, any individual so entitled may file a petition to have the records sealed by redaction.¹²⁴
- (d) Forms.—The [Administrative Office of the Courts or other appropriate state agency] shall create a standard petition form which shall be made available at each court clerk's office in [state] and include written instructions on how to complete and file such petition.
- (e) Contents of petition.—A petition filed pursuant to this section shall include:
- (1) The individual's full legal name and any aliases by which the individual is known or under which the individual has been arrested;
 - (2) The individual's date of birth;
 - (3) The individual's current address; and
 - (4) Any other information that, to the best knowledge and belief of the individual, accurately and completely identifies the records to be sealed including, but not

¹²³ Taken from COLO. REV. STAT. ANN. § 24-72-706 and NEV. REV. STAT. ANN. § 179.245 (West 2023).

¹²⁴ Taken from LA. CODE OF CRIM. PROC. 985 (West 2023).

limited to, the case number, the date of arrest, the identity of the arresting authority, the specific conviction(s) to which the records to be sealed pertain, and such other information that the court may require.¹²⁵

(f) Procedure following filing of petition.—

- (1) The clerk of the court shall promptly serve a copy of the petition and supporting documentation on the prosecutor charged with prosecuting the criminal offense.
- (2) The prosecutor may file an objection to the petition within [*n*] days of service of process which shall be in writing, be filed with the court clerk, and state with specificity the basis of the objection.
- (3) The prosecutor may notify any victim(s) identified in the criminal history records to be sealed of the petition by U.S. Mail or email. Such victim(s) may submit a statement for the court to the prosecutor, who may present the statement to the court in the prosecutor's discretion.
- (4) The prosecutor may request one extension of time to file an objection which shall be freely granted as long as such extension does not prejudice the petitioner.
- (5) The prosecutor may stipulate in writing or orally on the record to the sealing of the records.
- (6) If the prosecutor stipulates to the sealing of the records, or does not file an objection within the required time period, the court shall order that the records be sealed.
- (7) If the prosecutor files an objection to the relief requested, the court shall consider such objection in making the decision of whether to grant the relief requested and may conduct a hearing on the issue.
- (8) The court may grant or deny the petition without the necessity of conducting a hearing.
 - (A) All orders denying a petition to seal shall be entered without prejudice to permit the individual to file a subsequent petition at a later date if facts and circumstances have changed.

¹²⁵ Taken from COLO. REV. STAT. ANN. § 24-72-706 (West 2023), 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2023), and NEV. REV. STAT. ANN. § 179.245 (West 2023).

- (B) If the court denies the petition without a hearing, the court shall provide the petitioner with notice of the denial, including the basis for its decision to deny the petition, and an opportunity to request a hearing.
- (C) If the court grants the petition without a hearing, and the prosecutor filed an objection, the court shall provide notice to the prosecutor of the basis for its decision to grant the petition.
- (9) In cases where no hearing on the petition is held, the prosecutor stipulates to the sealing of the record, or no objections are filed, the court shall enter an order granting the relief within [*n*] days of the expiration of the deadline to file an objection.
- (10) In cases where a hearing on the petition is held, the court shall enter an order granting or denying the relief within [*n*] days of the hearing, unless the time is extended by agreement of the parties.¹²⁶
- (11) The petitioner or prosecutor may file a motion to vacate, modify, or reconsider the order pursuant to subsection (l).
- (g) Standard for grant of relief.—The court shall grant a petition to seal criminal history records if it is satisfied, based on a preponderance of the evidence, that:
- (1) The individual meets all requirements as set forth in this section;
 - (2) The relief to be granted is consistent with the rehabilitation of the eligible individual; and
 - (3) The relief to be granted is consistent with the public interest.¹²⁷
- (h) Rebuttable presumption.—There is a rebuttable presumption in favor of granting petitions to seal criminal history records. Such presumption may be rebutted upon presenting evidence of the following:
- (1) The individual does not meet the requirements of this section;
 - (2) Evidence supports denying the petition based on the underlying conviction itself; or
 - (3) The petitioner’s conduct during the [*n*] years prior to filing the petition supports denying the petition.

¹²⁶ Taken from COLO. REV. STAT. ANN. § 24-72-706 (West 2023) and NEV. REV. STAT. ANN. § 179.245 (West 2023).

¹²⁷ Adapted from 730 ILL. COMP. STAT. ANN. 5/5-5.5-15 (West 2023).

- (i) Filing fees.—
- (1) The petitioner shall pay a processing fee of [\$] to cover the actual costs related to the sealing of criminal history records.
 - (2) The court shall waive the fee upon a determination that:
 - (A) The petitioner is indigent or presents evidence that payment of the filing fee would be a substantial financial burden; or
 - (B) The petitioner’s records are eligible for automatic sealing and the date by which such records should have been sealed pursuant to Section VII has passed.
- (j) Service of order.—
- (1) Upon entry of an order granting or denying the requested relief, the court shall provide copies of the order to the petitioner, the prosecutor, and to each custodian identified in the petition as having custody or control of records to be sealed.
 - (2) The order granting or denying the petition shall become final for purposes of appeal or a motion to vacate, modify, or reconsider thirty (30) days after service of the order.
- (k) Duties following order granting relief.—
- (1) If the petition is granted, each custodian identified by the court as having custody or control of records to be sealed shall seal the records identified in the order within [30/60/90] days of receipt of the order.
 - (2) If the petition requested sealing by redaction, each custodian identified in the petition as having custody or control of the records shall seal the records by redaction within [30/60/90] days of receipt of the order.
- (l) Motion to vacate, modify, or reconsider.—Pursuant to the [state] Rules of Civil Procedure, the petitioner or prosecutor may file a motion to vacate, modify, or reconsider the order granting or denying the petition within [number of days provided by rule] days of service of the order.
- (m) Appeal.—Upon entry of an order on a motion to vacate, modify, or reconsider filed by any party pursuant to subsection (l), a party may file a notice of appeal to the [state court of appeals] within [number of days as provided by the state Rules of Appellate Procedure].

- (n) [Assistance of attorney.—A petitioner in need of assistance with filing a petition to seal records may be eligible to have the court appoint an attorney to assist the individual with such filing upon a showing that the petitioner is indigent.]
- (o) Outstanding fees, fines, and restitution.—
- (1) Notwithstanding any other provision of law, a court shall not deny a petition filed under this section because the petitioner has not satisfied an outstanding legal financial obligation established, imposed, or originated by a court, law enforcement agency, or a municipal, state, county, or other unit of local government, including, but not limited to, any cost, assessment, restitution, fine, or fee unless the outstanding balance is due to a willful failure to pay.
 - (2) The court may order that a sealed judgment or other court record necessary to demonstrate the amount of any outstanding legal financial obligation due and owing be made available for the limited purpose of collecting any such legal financial obligations owed by the petitioner that were established, imposed, or originated in the criminal proceeding for which those records have been sealed.
 - (A) Records made available under this paragraph shall not be entered into the official index required to be kept by the court clerk and shall be immediately sealed upon the collection of the outstanding legal financial obligation.
 - (B) Notwithstanding any other provisions of this section, a court clerk may access a sealed record for the limited purpose of collecting payment for any legal financial obligations that were established, imposed, or originated in the criminal proceedings for which those records have been sealed.
 - (C) If litigation to collect a legal financial obligation is initiated after records have been sealed, the court shall order that the records related to the underlying conviction be unsealed for use as evidence in such litigation.
 - (3) Nothing in this subsection waives, rescinds, or abrogates a legal financial obligation or otherwise eliminates or affects the rights of the holder of any financial obligation to pursue collection under applicable federal, state, or local law.¹²⁸

¹²⁸ 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2023).

- (p) Plea agreements.—No plea agreement shall include a provision waiving the right to sealing of eligible records and any such provision included in a plea agreement shall be of no effect.
- (q) Records not eligible for sealing.—An individual convicted of one or more of the following criminal offenses may not petition to seal the records related to such conviction: [states should set forth the crimes for which sealing is not available, which may include the list below]
- (1) [Offenses against children (set forth relevant state statutory references);
 - (2) Sexual offenses (set forth relevant state statutory references);
 - (3) Offenses against vulnerable adults;]
 - (4) [List of other crimes].¹²⁹

Commentary

This section sets forth the provisions for sealing criminal history records that do not qualify for automatic sealing under the provisions of Section VII, including the procedure for filing a petition, information required to be included in the petition, filing fees, and service requirements. In addition to the procedural components, it also includes provisions related to what record sealing does not do, as well as the criminal convictions ineligible for sealing.

With regard to the classes of crimes as set out in subsection (c), several working group members disagreed with using the terms “violent” and “non-violent” as descriptors. However, the drafters used those terms as that is how they are classified in some states. The classes are bracketed based on the understanding that crimes are classified differently across the country, and states should replace the bracketed language with the language used in that state. We strongly recommend that states move away from classifying crimes as either “violent” or “non-violent” as those terms can be imprecise and overly broad.

Additionally, some working group members suggested shorter time periods for subsection (c) related to when convictions become eligible to be included in a petition to seal records. States should consider choosing shorter time periods; however, the working group members recommend that states consider the time periods included in subsection (c) as the longest time before records are eligible and that they not increase the listed time periods.

Subsection (f) does not include suggested deadlines within which certain tasks must be completed (*e.g.*, filing an objection by a prosecutor). States should insert the number of days either required by their state or local rules of procedure or a period of time that is mindful of the caseloads shouldered by judges and prosecutors that does not also prejudice the petitioner or cause a substantial delay in the grant of relief.

¹²⁹ Taken from NEV. REV. STAT. ANN. § 179.245 (West 2023).

Subsection (n) is bracketed to indicate that it is included as an optional provision for states. Working group members felt it was important to provide assistance to individuals seeking to seal their records; however, requiring that such individuals be appointed an attorney if they don't already have one would likely be quite expensive. Most states would need to provide funding in order to make this provision feasible.

One of the most important features of this section is subsection (o) related to outstanding fines, fees, and other legal financial obligations. According to research, legal financial obligations “are the biggest barrier to closing cases and fully reentering society.”¹³⁰ Additionally, there may be constitutional implications.¹³¹ Therefore, in order to be eligible for sealing or expungement of criminal history records under the provisions of this Act, the individual requesting sealing or expungement is not required to have satisfied all legal financial obligations prior to being eligible for relief under this section as long as the outstanding balance is not the result of a willful failure to pay on the part of the individual. Individuals convicted of a criminal offense are more likely to have been living at or below poverty level prior to their conviction and to have more difficulty obtaining employment following conviction (*see infra*, Section XI Commentary). This leads to a vicious cycle – the individual cannot obtain employment because of his or her criminal history but, although the individual may be eligible in all other respects, he or she cannot seal the records because of outstanding legal financial obligations, which the individual cannot pay because the individual cannot obtain employment. Therefore, this Act removes the requirement that such financial legal obligations be paid in full prior to filing a petition but does not remove the obligation to pay the outstanding fees owed. Records are left available to the court clerk or other entity responsible for collection of the legal financial obligations, and records that are sealed may be unsealed if civil litigation is later filed to collect the outstanding balance.

Finally, subsection (q) allows states to set forth those convictions for which the related records are ineligible to be sealed. It includes three bracketed suggested categories of offenses; however, a few working group members objected to including broad categories of crimes as being ineligible and, further, suggested that such categories exclude misdemeanor and low-level felony offenses. States may choose to include or omit convictions as they wish; however, states should be circumspect in adding ineligible crimes and should limit ineligible convictions to those that have a proven direct impact on public safety. Many states include “violent crimes,” the definition of which can be vague and vary greatly from state to state, or long lists of ten or more crimes that make records ineligible for sealing.¹³² When using this model legislation, states

¹³⁰ Miller et al, *supra* note 28, at 2.

¹³¹ See DEAR COLLEAGUE LETTER, OFF. OF THE ASSOC. ATT'Y GEN., U.S. DEP'T OF JUST. (Apr. 20, 2023), [dl \(justice.gov\)](https://www.justice.gov).

¹³² See, e.g., ALA. CODE §§ 15-27-1 and 15-27-2 (2023) (permits an individual to file a petition to expunge certain records if, among other criteria, the offense is not a violent offense as defined in ALA. CODE § 12-25-32) and ALA. CODE § 12-25-32 (2023) (definition of “nonviolent offense” means “all offenses which are not violent offenses”); R.I. GEN. LAWS ANN. § 12-1.3-2 (West 2023) (permits the filing of a motion to expunge certain records as long as the person has not been convicted of “a crime of violence,” but does not define that term or provide a cross-reference to a definition); and W. VA. CODE ANN. § 61-11-26 (West 2023) (expungement limited to certain

should ensure that the list of ineligible convictions included in this section be limited to the current list, or fewer, of ineligible convictions and should not add additional exclusions later. Criminal history records that are eligible for sealing do not also have to be eligible for expungement, which would keep records available for criminal justice purposes even if they are no longer accessible by the general public.

SECTION IX. EFFECT OF SEALING OF CRIMINAL HISTORY RECORDS.

- (a) In general.—The effect of sealing criminal history records pursuant to Sections VII and VIII shall be to:
- (1) Restore an individual, in the contemplation of the law, to the status the person occupied before being arrested, charged, or convicted, including, unless otherwise prohibited by the [state] constitution or federal law,¹³³
 - (2) Remove all collateral consequences that have attached to the individual as the result of the arrest, charge, or conviction, except as otherwise provided by this Act; and
 - (3) Remove the specified records from public view and permit restricted, non-public access by specific parties for specific purposes.
- (b) Sealing of records.—
- (1) The custodian(s) of records shall eliminate from all publicly available physical and electronic records any references that identify the individual who is the subject of such records as having been cited, arrested, prosecuted, or convicted.
 - (2) Within sixty (60) days of sealing, the custodian(s) shall notify all other agencies to which information regarding the sealed records has been transmitted including, but not limited to, the Federal Bureau of Investigation and any other state or federal agency that compiles, retains, or collects criminal history records, that such records have been sealed.
- (c) Response to inquiries.—

misdemeanors and nonviolent felonies; includes a list of 15 crimes which are not eligible for expunction; petition must be served on the superintendent of the State Police; the prosecuting attorney(s); the chief law enforcement officer of the agency that arrested the petitioner; the superintendent, warden, or commissioner of corrections for the correctional facility where petitioner was incarcerated; the court that disposed of the criminal charge; and any identified victims; must pay a filing fee to the court clerk plus a \$100 fee to the State Police for the cost of processing the expungement order with no exceptions for indigent persons).

¹³³ Taken from D.C. CODE ANN. § 16-804 (West 2023).

- (1) No individual as to whom criminal history record sealing relief has been granted, or whose records have been automatically sealed pursuant to the provisions of Section VII, shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge or disclose the citation, arrest, charge, prosecution, disposition, or conviction, in response to any inquiry made of them for any purpose, unless such disclosure is otherwise required by law or this Act.¹³⁴
 - (2) Any custodian or business screening entity that receives an inquiry related to the sealed records shall respond that no such records exist.
 - (3) An individual involved in civil litigation as a party related to the citation, charge, arrest, or conviction may not deny the existence of any sealed records in response to an inquiry made during the civil litigation proceedings if the criminal offense that is the subject of the records directly relates to the litigation. Individuals may request that such records be subject to an order of protection or reviewed in camera prior to being released to the requestor, and the courts shall freely grant such requests.
- (d) Effect on civil rights.—Unless otherwise prohibited by the [state] constitution or federal law, sealing of criminal history records automatically reinstates any civil rights lost by an individual by virtue of a criminal conviction.
- (e) Effect on registries.—
- (1) Nothing in this section shall relieve an individual of the obligation to register with the sex offense registry pursuant to [insert reference to state law].
 - (2) If the individual is listed on [list of state registries other than sex offense registry, e.g., felony or drug registry] as a person convicted of a [felony/drug offense] and the records related to such offense have been sealed, the individual shall be removed from that registry.¹³⁵
- (f) Effect on [orders of protection/restraining orders].—Nothing in this section shall relieve an individual of the obligation to abide by the terms of an [order of protection/restraining order] and any records which form the basis for the issuance of such [order of

¹³⁴ Taken from ARIZ. REV. STAT. ANN. § 13-911 (West 2023) and D.C. CODE ANN. § 16-804 (West 2023).

¹³⁵ Taken from CONN. GEN. STAT. ANN. § 54-142a (West 2023). States should include reference to all registries in the state with which an individual convicted of various crimes may be required to register for a set period of time.

protection/restraining order] may be used in any subsequent proceedings to extend the [order of protection/restraining order].

(g) Access to records.—The custodian(s) of records shall be entitled to retain sealed records in a non-public, restricted access file. Except as provided in Section VII related to non-conviction records, such records shall only be available to:

- (1) The individual who was the subject of the records and such individual’s attorney, if any;
- (2) A prosecutor; defense attorney; or law enforcement, corrections, pretrial, or community supervision agency, for any lawful purpose, including:
 - (A) Investigating, prosecuting, or defending another criminal case;
 - (B) Complying with disclosure obligations in another criminal case;
 - (C) Determining the person’s suitability for diversion, release, sentence reduction, sealing, or expungement in another criminal case;
 - (D) The determination of conditions of release for a subsequent arrest;
 - (E) The determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes;
 - (F) Employment decisions;
 - (G) Sex offender registration and notification; or
 - (H) In determining whether a person has been in possession of a firearm in violation of [reference to state law/disqualifying offense];
- (3) Any person or entity authorized to engage in the collection of outstanding legal financial obligations for the purpose of collecting such outstanding legal financial obligations;
- (4) Agencies charged with licensing, certifying, or registering individuals for employment but only if the individual was convicted of a disqualifying criminal offense and there is no exception in applicable state or federal law for records that have been sealed or expunged; and
- (5) Other persons or entities for the purpose of:
 - (A) Use in civil litigation related to the arrest, charge, or conviction; or
 - (B) De-identified records for statistical, research, or reporting purposes only.

- (h) Confidentiality.—If access to sealed records is granted, the custodian and requestor shall take all reasonable measures to ensure that the records are secure and that the contents are not identifiably disclosed, published, or redistributed, such as by issuing a protective order or electronically limiting access to verified requestors.
- (i) Reliance on custodial response.—A person, upon making inquiry of any custodian with the care and custody of sealed records concerning the existence of criminal history records involving an individual, shall be entitled to rely, for any purpose under law, upon the custodian’s response that no records exist.¹³⁶

Commentary

Pursuant to the terms of this section, the primary effects of sealing an individual’s criminal history records is to make such records unavailable to the public and removing collateral consequences from the individual, increasing the likelihood that such individuals will be able to live their lives as though they had never been involved in the criminal justice system.

In addition to removing the records from the public domain, sealing allows an individual to deny that the records ever existed, except in certain limited circumstances. For example, if the individual was convicted of a disqualifying offense for employment licensing purposes, he or she would be required to disclose the existence of that conviction on an application for licensure (*see infra*, Section XII Commentary). Additionally, pursuant to the terms of this section, sealing criminal history records restores any civil rights lost by the individual as a result of the criminal offense, unless otherwise prohibited by the state constitution or federal law.

Subsection (g) sets forth those who may access sealed records and the purposes for which such records may be accessed. Primarily, records may still be used for criminal justice purposes, *e.g.*, a sealed record may be used as evidence of a prior conviction for sentencing purposes involving a separate criminal offense. Records may also be used in civil proceedings related to the criminal offense that is the subject of the sealed records. For example, an individual driving while impaired who is involved in a motor vehicle accident and subsequently convicted of driving while under the influence would be permitted to seal the records if he or she meets all other eligibility requirements, but the records would still be available for use in a civil proceeding involving the motor vehicle accident. Further, the individual must respond to any inquiry during such proceedings, including in response to discovery requests, that such records exist.

Additionally, this section does not authorize the removal of individuals from the state sex offense registry and, further, does not relieve an individual of the obligation to abide by the terms of an order of protection or restraining order. The relief provided to an individual must be balanced with valid public safety concerns and the rights of the victim.

¹³⁶ Taken from D.C. CODE ANN. § 16-807 (West 2023).

Finally, subsection (i) provides a certain level of protection from civil liability for entities conducting background checks on individuals who then rely on the results of such checks to, for example, make hiring decisions.

SECTION X. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS.

- (a) In general.—An individual is eligible for a grant of expungement relief if:
- (1) The individual’s records were sealed pursuant to the provisions of this Act, or such records are eligible to be sealed when a petition to expunge is filed;
 - (2) The applicable waiting period as set forth in subsection (b) of this section has elapsed;
 - (3) The individual has not been cited, arrested, charged, prosecuted, or convicted of a new offense, with the exception of [list of offenses, including minor traffic offenses], during the applicable waiting period;
 - (4) The individual is not currently engaged in civil litigation related to the criminal offense which is the subject of the records sought to be expunged, including an action to collect outstanding legal financial obligations, or such litigation has been concluded and the time period for filing an appeal has passed, or the statute of limitations for filing a civil lawsuit related to the criminal offense has lapsed; and
 - (5) The individual is not currently the subject of an active [order of protection/restraining order].
- (b) Automatic expungement.—The following records that were automatically sealed pursuant to Section VII shall be automatically expunged one (1) year from the date on which the records were sealed, as long as the individual otherwise meets the eligibility requirements of subsection (a)(1), (3), (4), and (5) above:
- (1) Records sealed pursuant to Section VII(b) (mistaken identity);
 - (2) Records sealed pursuant to Section VII(d) (dismissal, acquittal, or exoneration);
 - (3) Records sealed pursuant to Section VII(f) (no longer unlawful); and
 - (4) Records sealed pursuant to Section VII(g) (pardons).
- (c) Applicable waiting period.—The following waiting periods apply before an individual is entitled to expungement of criminal history records:
- (1) If records were sealed pursuant to Section VII(e) (cannabis and drug paraphernalia offenses), one (1) year after sealing.

- (2) If records were sealed pursuant to Section VII(c) (arrest records), five (5) years after sealing.
 - (3) If records were sealed pursuant to Section VIII (conviction records), ten (10) years after sealing.
 - (4) If the individual's records have not been sealed but are eligible to be sealed pursuant to Sections VII or VIII and the requisite waiting periods have elapsed.
- (d) Petition to expunge records.—An individual who is eligible to have criminal history records expunged pursuant to this section may file a verified petition with the court having jurisdiction over the offense which is the subject of the records. The petition shall include the following information:
- (1) The individual's full legal name and any aliases by which the individual is known or under which the individual has been arrested;
 - (2) The individual's date of birth;
 - (3) The individual's current address; and
 - (4) Any other information that, to the best knowledge and belief of the individual, accurately and completely identifies the records to be expunged including, but not limited to the case number, the date of arrest, the identity of the arresting authority, the specific conviction(s) to which the records to be expunged pertain, and such other information that the court may require.
- (e) Procedure following filing of petition.—
- (1) The clerk of the court shall promptly serve a copy of the petition and supporting documentation on the prosecutor charged with prosecuting the criminal offense.
 - (2) The prosecutor may file an objection to the petition within [*n*] days of service of process which shall be in writing, be filed with the court clerk, and state with specificity the basis of the objection.
 - (3) The prosecutor may notify any victim(s) identified in the criminal history records to be expunged of the petition by U.S. Mail, email, or telephone. Such victim(s) may submit a statement to the prosecutor, who may present the statement to the court in the prosecutor's discretion.
 - (4) The prosecutor may request one extension of time to file an objection which shall be freely granted as long as such extension does not prejudice the petitioner.

- (5) The prosecutor may stipulate in writing or orally on the record to the expungement of the records.
- (6) If the prosecutor stipulates to the expungement of the records or does not file an objection within the required time period, the court shall order that the records be expunged.
- (7) If the prosecutor files an objection to the relief requested, the court shall consider such objection in making the decision of whether to grant the relief requested and may conduct a hearing on the issue.
- (8) The court may grant or deny the petition without the necessity of conducting a hearing.
 - (A) All orders denying a petition to expunge records shall be entered without prejudice to permit the individual to file a subsequent petition at a later date if facts or circumstances change.
 - (B) If the court denies the petition without a hearing, the court shall provide the petitioner with notice of the denial, including the basis for its decision to deny the petition, and an opportunity to request a hearing.
 - (C) If the court grants the petition without a hearing, and the prosecutor filed an objection, the court shall provide notice to the prosecutor of the basis for its decision to grant the petition.
- (9) In cases where no hearing on the petition is held, the prosecutor stipulates to the expungement of the record, or no objections are filed, the court shall enter an order granting the relief within [*n*] days of the expiration of the deadline to file an objection.
- (10) In cases where a hearing on the petition is held, the court shall enter an order granting or denying the relief within [30/60] days of the hearing, unless the time is extended by agreement of the parties.¹³⁷
- (11) The petitioner or prosecutor may file a motion to vacate, modify, or reconsider the order pursuant to subsection (i).

¹³⁷ Taken from COLO. REV. STAT. ANN. § 24-72-706 and NEV. REV. STAT. ANN. § 179.245 (West 2023).

- (f) Standard for grant of relief.—The court shall grant a petition to expunge criminal history records and shall issue an order directing the custodian(s) of records to expunge the records identified in the petition if it is satisfied, based on a preponderance of the evidence, that:
- (1) The individual meets all requirements as set forth in this section;
 - (2) The relief to be granted is consistent with the rehabilitation of the eligible individual; and
 - (3) The relief to be granted is consistent with the public interest.¹³⁸
- (g) Rebuttable presumption.—There is a rebuttable presumption in favor of granting petitions to expunge criminal history records. Such presumption may be rebutted upon presenting evidence of either of the following:
- (1) Evidence supports denying the petition based on the underlying conviction itself; or
 - (2) The petitioner’s conduct during the [*n*] years prior to filing the petition supports denying the petition.
- (h) Order denying petition.—
- (1) If the court finds that the individual is not eligible pursuant to the requirements of subsection (a), the court shall enter an order denying the petition and shall set forth the reasons for the denial.
 - (2) If denial of a petition is due to the fact that the applicable waiting period has not yet elapsed, the court shall include the date on which the records will be eligible for expungement in the order denying the petition.
 - (3) If denial of a petition is due to the fact that the criminal offense is ineligible for expungement as set forth in subsection (k) below, the court shall specify as such in the order.
- (i) Motion to vacate, modify, or reconsider.—Pursuant to the [state] Rules of Civil Procedure, the petitioner or prosecutor may file a motion to vacate, modify, or reconsider the order granting or denying the petition within [number of days provided by rule] days of service of the order.

¹³⁸ Adapted from 730 ILL. COMP. STAT. ANN. 5/5-5.5-15 (West 2023).

- (j) [Appointment of attorney.—A petitioner in need of assistance with filing a petition to seal records is eligible to have the court appoint an attorney to assist the individual with such filing upon a showing that the petitioner is indigent.]
- (k) Records not eligible for expungement.—Records related to convictions for any of the following offenses are not eligible for expungement:
- (1) [Crimes against children [insert statutory references];
 - (2) Crimes against vulnerable adults [insert statutory references];
 - (3) Crimes requiring registration as a sex offender [insert statutory references]; and]
 - (4) [List of any other crimes with applicable statutory references].
- (l) Records not affected by expungement.—Nothing in this section shall require the expungement of any information contained in published memoranda of decisions of any appellate or [supreme/superior/higher court] of this state related to matters considered by such courts.¹³⁹
- (m) Expungement of records.—
- (1) Within [*n*] days of receiving notice of the order granting expungement, the custodian(s) shall eliminate from all available physical and electronic records any references that identify the individual as having been cited, arrested, prosecuted, or convicted.
 - (2) The custodian(s) may retain a de-identified copy of the records for statistical, reporting, and research purposes only.
- (n) Effect of expungement.—
- (1) The effect of expungement shall be to restore an individual, in the contemplation of the law, to the status the person occupied before being cited, arrested, charged, or convicted, including, unless otherwise prohibited by the [state] constitution or federal law:¹⁴⁰
 - (A) The restoration of any civil rights lost as the result of the conviction; and
 - (B) Relief from all collateral consequences that have attached to the individual as the result of the citation, arrest, charge, or conviction.

¹³⁹ Taken from CONN. GEN. STAT. ANN. § 54-142a (West 2023).

¹⁴⁰ Taken from D.C. CODE ANN. § 16-804 (West 2023).

- (2) Expunged records may not be used by any individual or entity for any reason not authorized by this Act, including any criminal justice purpose.
- (o) Effect on registries.—The grant of an expungement under this section shall result in the removal of an individual from a state [felony/abuse/other] registry.¹⁴¹
- (p) Response to inquiries.—No individual as to whom criminal history record expungement relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to acknowledge or disclose that citation, arrest, charge, prosecution, disposition, or conviction, in response to any inquiry made of them for any purpose, including in response to questions on employment, housing, financial aid, or loan applications.¹⁴²
- (q) Plea agreements.— No plea agreement shall include a provision waiving the right to expungement of eligible records and any such provision included in a plea agreement shall be of no effect.
- (r) Payment of fees.—
- (1) An individual whose records have been expunged is not entitled to remission of any fines, costs, or other money paid as a consequence of the expungement.¹⁴³
- (2) If there are outstanding legal financial obligations owed by the individual seeking expungement, the court may grant the expungement and waive such obligations or convert the outstanding legal financial obligations to a civil judgment.¹⁴⁴

Commentary

This section sets forth the provisions related to expungement of criminal history records. In general, with limited exceptions, records that were either sealed pursuant to the terms of this Act or were eligible for sealing even if they were never sealed, are eligible for expungement. Expungement of records results in those records being removed and treated as if they never existed, even for criminal justice purposes. Although this section does not require the destruction of such records, custodians are only authorized to retain de-identified records for statistical, reporting, and research purposes. The records cannot be used for any other purpose. Additionally, as with sealing, expungement restores all civil rights to an individual, including the rights to possess a firearm, vote, or sit for jury service. This provision is duplicated in this section for circumstances where an individual’s records were never previously sealed.

¹⁴¹ Criminal offenses that result in an individual being placed on the sex offender registry are not eligible for expungement. Therefore, “sex offender registry” is not included as an optional category in this subsection.

¹⁴² Taken from ARIZ. REV. STAT. ANN. § 13-911 (West 2023) and D.C. CODE ANN. § 16-804 (West 2023).

¹⁴³ 20 ILL. COMP. STAT. ANN. 2630/12 (West 2023).

¹⁴⁴ Taken from DEL. CODE ANN. tit. 11, § 4372 (West 2023).

Pursuant to subsection (a)(4) of this section, an individual is eligible for expungement of his or her criminal history records if the individual is not engaged in civil litigation related to the criminal offense which is the subject of the records. As mentioned in the commentary for Section IX, this might arise in situations where the victim of the offense is suing the individual in civil court for damages related to the offense, for example, where the underlying offense was driving under the influence and, while driving under the influence, the individual caused a motor vehicle accident resulting in property and personal injury damages to the victim/plaintiff in the civil suit. The rationale for this exception is that the criminal history records might need to be available as evidence in the civil litigation and should not, therefore, be eligible for expungement until either the statute of limitations for filing a civil suit has lapsed or the litigation has been concluded and the time period within which to file an appeal has passed.

Subsection (b) provides that certain records that were automatically sealed pursuant to the provisions of Section VII shall be automatically expunged one year after such records were sealed. Given the nature of the records included in this subsection, the drafters felt that requiring individuals to file a petition to expunge those particular records would place an unnecessary burden on both the individual and the court system.

This section also sets forth optional (bracketed) categories of crimes for which records would not be eligible for expungement. As with records ineligible for sealing, states should be cautious when determining what offenses should be ineligible for expungement and should ensure that there is a direct relationship between the offense and valid public health and safety concerns. For example, a broad prohibition against expunging records related to crimes classified as “violent” offenses may not serve a valid public safety purpose depending on how state law defines such crimes.

Finally, the provisions of this section permit an individual to deny that the arrest, charge, or conviction ever occurred in response to any inquiry, including inquiries related to licensure, housing, or government benefits.

SECTION XI. FAIR EMPLOYMENT PRACTICES.

(a) In general.—Individuals in this state have a fundamental right to pursue an occupation, including the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual’s personal qualifications.¹⁴⁵

(b) Unlawful discrimination.—It is unlawful for a public or private employer to discriminate against an individual on the basis of the individual’s criminal history or to refuse to hire

¹⁴⁵ Taken from NEB. REV. STAT. ANN. § 84-947 (West 2023).

or employ, promote, or issue a license, registration, or certification, to an individual based on the assumption that an individual has a criminal history.¹⁴⁶

- (c) Prohibition.—Except as otherwise provided in this section, it is an unlawful employment practice for a private employer or public employer to do any of the following:
- (1) To knowingly or intentionally publish, or cause to be published, any employment advertisement that explicitly provides that the employer will not consider any applicant who has been arrested for or convicted of one or more criminal offenses, unless such offense acts as an automatic disqualifier pursuant to state law;
 - (2) To include on any application for employment, or to inquire during an interview at any point during the hiring process:
 - (A) Any question regarding an individual’s arrest record when such arrest did not result in a conviction, including any arrest that resulted in a deferred adjudication or the individual’s participation in a diversion program;
 - (B) Any question regarding any conviction that has been pardoned, sealed, dismissed, expunged, or otherwise eradicated pursuant to law with the exception of [list of employment positions which state or federal law prohibits an individual convicted of a specific criminal offense from practicing];
 - (3) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant’s criminal history;
 - (4) To conduct a search of any online court or department of corrections database, prior to a conditional offer of employment, for evidence that an applicant was previously incarcerated;
 - (5) To consider, distribute, or disseminate information about any of the following while conducting a criminal history background check in connection with any application for employment:
 - (A) Arrest not followed by conviction;
 - (B) Referral to or participation in a diversion program or deferred adjudication; or

¹⁴⁶ Taken from HAW. REV. STAT. ANN. § 378-2 (West 2023).

- (C) Convictions that have been pardoned, sealed, dismissed, expunged, or eradicated pursuant to law; and
- (6) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.
- (d) No bar to inquiry.—This section does not prohibit a private or public employer from conducting a criminal history background check that does not conflict with the provisions of this section, the Fair Credit Reporting Act, and Title VII of the Civil Rights Act of 1964.¹⁴⁷
- (e) Individualized assessment.—Prior to making a hiring decision, a public or private employer shall make an individualized assessment of whether the applicant’s criminal history has a direct and adverse relationship with the specific duties of the position for which the individual is applying.¹⁴⁸
- (1) The individualized assessment shall include consideration of the following factors:
- (A) The public policy of this state, as evidenced by this Act, to encourage the employment of individuals with a criminal history;
 - (B) The specific duties and responsibilities necessarily related to the license or employment sought or held by the individual;
 - (C) The impact, if any, the criminal offense or offenses for which the individual was previously convicted will have on the individual’s ability to perform one or more such duties or responsibilities;
 - (D) The nature and seriousness of the criminal offense(s);
 - (E) The number of prior convictions;
 - (F) The time since the last conviction;
 - (G) The age of the individual at the time of the last offense; and
 - (H) Any information produced by the individual, or produced on the individual’s behalf, regarding the individual’s rehabilitation, including the existence of a certificate of relief.¹⁴⁹

¹⁴⁷ Taken from CAL. GOV’T CODE § 12952 (West 2023).

¹⁴⁸ Taken from IOWA ADMIN. CODE 205-9.2 (2023).

¹⁴⁹ Taken from N.Y. Correct. Law § 753 (McKinney 2023). *See also*, Megan Denver and Abigail Ballou, *Collateral Consequences & Public Safety*, ARNOLD VENTURES 6 (July 2022); IDAHO CODE ANN. § 67-9411 (West 2023); 225 ILL. COMP. STAT. ANN. 41/15-72 (West 2023); and COMM’N ON C.R., *supra* note 17.

- (2) A public or private employer that rescinds a conditional offer of employment to an individual on the basis of an individualized assessment shall notify the applicant of the decision in writing and shall include the specific conviction or convictions that form the basis of the decision.
 - (3) The applicant may request a copy of the criminal history report, if any, used by the employer to make its determination, which report shall include the name and contact information of the entity from whom the criminal history report was obtained.
 - (4) Any decision to rescind a conditional offer of employment to an individual by a public employer shall be subject to the administrative appeals process set forth in [reference to state law].
- (f) Prohibition against non-specific language.—A public employer or private employer may not use non-specific terms, such as moral turpitude or good character, as a requirement for employment.
- (g) Immunity.—Public and private employers subject to the provisions of this section shall be immune from liability in any civil action arising as a result of the employer’s decision to hire an individual with a criminal history record or who were otherwise convicted of a criminal offense, or as the result of the employer’s decision to not engage in criminal background screening.
- (h) Ambiguity.—Any ambiguity in a statute, regulation, or policy related to a collateral sanction or disqualification shall be resolved in favor of the individual.

Commentary

According to a report by the Center for Economic and Policy Research, the economic cost to the United States in terms of gross domestic product of lost employment opportunities for men with a criminal background is an estimated \$57 to \$65 billion per year.¹⁵⁰ A similar report from the Brennan Center for Justice found that aggregate annual earnings lost by individuals who were formerly incarcerated was an estimated \$55.2 billion in year 2017.¹⁵¹ “Employment discrimination can be one of the most ‘serious and pervasive’ collateral consequences faced by people with criminal convictions.”¹⁵² Applicants with a criminal history are far less likely to receive a callback or job offer than those without a criminal history, and Black individuals with a

¹⁵⁰ John Schmitt and Kris Warner, *Ex-offenders and the Labor Market*, CTR. FOR ECON. & POL’Y RSCH. 14 (Nov. 2010), [ex-offenders-2010-11.pdf \(cepr.net\)](#).

¹⁵¹ Terry-Ann Craigie et al, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CTR. FOR JUST., N.Y. UNIV. SCH. OF LAW 15 (Sept. 15, 2020), [Conviction Imprisonment and Lost Earnings.pdf \(brennancenter.org\)](#).

¹⁵² U.S. COMM’N ON C.R., *supra* note 17, at 35 (internal citation omitted).

criminal history are even less likely to receive a job offer.¹⁵³ A 2021 study by the Bureau of Justice Statistics followed 51,500 individuals released from federal prison in 2010 and found that 33 percent of those individuals did not find employment at any time during the four-year period of the study.¹⁵⁴ Further, the study found that, in the first quarter following release, 46 percent of whites in the study population were employed compared with only 36 percent of Black individuals.¹⁵⁵

While there may be a few valid reasons to restrict individuals with certain criminal convictions from being employed in certain occupations, most objections to hiring an individual with a criminal history are unrelated to the conduct for which the individual was arrested, charged, or convicted. This section includes what is commonly known as a “ban the box” provision which prohibits employers from considering a criminal conviction or criminal history records prior to making a conditional offer of employment. The purpose of this provision is to prevent employers from discriminating against an otherwise qualified candidate due to a prior criminal conviction. This section also includes an unlawful discrimination provision in subsection (b) which prohibits an employer from denying employment on the assumption that the applicant has a criminal record based on race.¹⁵⁶

Subsection (c) sets forth the parameters regarding when an employer can inquire about and access an individual’s criminal history records, the purpose of which is to attempt to limit the influence an individual’s criminal history may have on the hiring decision. Additionally, subsection (e) requires that employers make an individualized assessment of an applicant’s criminal history before making a hiring decision. Among other items, the individualized assessment should consider the type of offense, the time that has elapsed since the offense, the age at which the individual committed the offense, and any other information the individual cares to submit to show rehabilitation or mitigation.¹⁵⁷

Finally, this section provides that any ambiguity in statute, regulation, or policy shall be resolved in favor of the individual with a criminal history, as such individuals should not be penalized due to such ambiguity.

SECTION XII. OCCUPATIONAL AND PROFESSIONAL LICENSING, REGISTRATION, AND CERTIFICATION.

- (a) Preliminary determination.—Notwithstanding any other law or rule to the contrary, all professional regulatory boards that issue a license, registration, certification, or other state-issued document evidencing an individual’s personal qualifications to practice an

¹⁵³ See Devah Pager, Bruse Western, and Naomi Sugie, *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*, 623:1 AM. ACAD. OF POL. & SOC. SCI. 195-213 (May 2009).

¹⁵⁴ E. Ann Carson et al, *Special Report: Employment of Persons Released from Federal Prison in 2010*, U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT. 1 (Dec. 2021), [eprfp10.pdf \(ojp.gov\)](#).

¹⁵⁵ *Id.*

¹⁵⁶ See COMM’N ON C.R., *supra* note 17, at 41-44 and Denver et al, *supra* note 149, at 7.

¹⁵⁷ See Denver et al, *supra* note 149; and COMM’N ON C.R., *supra* note 17.

occupation in this state, shall permit an individual to submit a preliminary application for a determination as to whether a criminal record or conviction would make the applicant ineligible to receive an occupational or professional license, registration, or certification.¹⁵⁸

(b) Submission of preliminary application.—Within [*n*] months of the passage of this Act, each professional regulatory board to which this Act applies shall include information regarding the submission of a preliminary application on its website, which may include a preliminary application form. The information provided shall include, at a minimum, the following:

- (1) That a preliminary application may be submitted at any time, including prior to obtaining the required education or other skills necessary to qualify for the occupation;
- (2) That the applicant may include additional information with the preliminary application regarding the individual's current circumstances, including the time that has elapsed since the arrest, charge, conviction, or completion of the sentence, a certificate of relief or other evidence of rehabilitation, testimonials, employment history, and employment aspirations; and
- (3) Information regarding preliminary application fees.

(c) Fees for preliminary applications.—

- (1) A professional regulatory board may charge a fee to cover the reasonable costs incurred in processing a preliminary application, provided the fee does not exceed the actual cost to the board of processing the application or the initial fee for the applicable license, registration, or certificate.
- (2) If an applicant subsequently applies for the license, registration, or certificate, the amount of the preliminary application fee paid by the applicant shall be credited toward the applicant's initial fee for the license, registration, or certificate.
- (3) Applicants may request a waiver of the fee, which shall be granted for good cause.

(d) Individualized assessment.—Professional regulatory boards shall make an individualized assessment as to whether the applicant's criminal history has a direct and adverse

¹⁵⁸ MINN. STAT. ANN. § 214.035 (West 2023).

relationship with the specific duties of the license, registration, or certification that justify denying the preliminary application.¹⁵⁹

- (1) The individualized assessment shall include consideration of the following factors:
 - (A) The public policy of this state, as evidenced by this Act, to encourage the licensure, registration, or certification of individuals with a criminal history;
 - (B) The specific duties and responsibilities necessarily related to the license sought or held by the individual;
 - (C) The impact, if any, the criminal offense or offenses for which the individual was previously convicted will have on the individual's ability to perform one or more of the duties or responsibilities required by the license, registration, or certificate;
 - (D) The nature and seriousness of the criminal offense(s);
 - (E) The number of prior convictions;
 - (F) The time since the last conviction;
 - (G) The age of the individual at the time of the last offense; and
 - (H) Any information produced by the individual, or produced on the individual's behalf, regarding the individual's rehabilitation, including the existence of a certificate of relief.¹⁶⁰
- (e) Binding effect.—The determination of a professional regulatory board that an individual's criminal conviction(s) as set forth in the individual's preliminary application does not make the individual ineligible to receive an occupational or professional license, registration, or certification shall be binding upon the professional regulatory board. The board may not consider such conviction(s) in the board's later decision to issue a license, registration, or certificate to practice such profession but may consider any subsequent conviction(s) as permitted by this Act or state or federal law.

¹⁵⁹ Taken from IOWA ADMIN. CODE 205-9.2 (2023).

¹⁶⁰ Taken from N.Y. CORRECT. Law § 753 (McKinney 2023). *See also*, Megan Denver and Abigail Ballou, *Collateral Consequences & Public Safety*, ARNOLD VENTURES 6 (July 2022); IDAHO CODE ANN. § 67-9411 (West 2023); 225 ILL. COMP. STAT. ANN. 41/15-72 (West 2023); and COMM'N ON C.R., *supra* note 17.

- (i) Determination of disqualification.—If a professional regulatory board determines, based on a preliminary application, that an individual’s criminal conviction(s) disqualifies such individual from obtaining a license, registration, or certification and the criminal history records related to such conviction(s) are later sealed or expunged pursuant to the provisions of this Act, the professional regulatory board may no longer consider such conviction(s) when making a determination to issue a license, registration, or certification to an individual unless otherwise permitted by this Act.
- (j) Prohibition against non-specific language.—Professional regulatory boards may not use non-specific terms, such as moral turpitude or good character, as a requirement for issuing an initial or renewal license, registration, or certification.
- (k) Disqualifying criminal convictions.—Professional regulatory boards shall:
 - (1) Revise licensing, registration, or certification regulations to the extent necessary to explicitly list the crimes that may disqualify an individual convicted of such crime from receiving or renewing a license, registration, or certification.
 - (2) Limit disqualifying criminal convictions to those crimes directly related to the duties and responsibilities of the occupation or profession for which the individual is applying or holds a license, registration, or certification.¹⁶¹
 - (3) Promulgate regulations setting forth the relevant period(s) of disqualification for criminal convictions that may disqualify an individual from obtaining or renewing a license, registration, or certification.
 - (4) Consider the nature of the crime and its relationship to the duties and responsibilities of the occupation for which a license, registration, or certification is required in determining an appropriate period of disqualification.
- (l) Ambiguity.—Any ambiguity in a statute, regulation, or policy related to a collateral sanction or disqualification shall be resolved in favor of the individual.

Commentary

This section requires state professional regulatory boards to permit individuals to submit a preliminary application for a determination as to whether their criminal conviction will disqualify them from obtaining a license, registration, or certification to practice a particular profession. It provides that such applications can be submitted at any time, including prior to the

¹⁶¹ Taken from IOWA CODE ANN. § 272C.15 (West 2023) and KAN. STAT. ANN. § 74-120 (West 2023).

individual obtaining the required education or training needed to practice the profession. These provisions are meant to prevent individuals from spending time and expense to obtain the education or training required only to find that their criminal conviction will prevent them from being able to get the professional credentials necessary to practice their chosen profession.¹⁶²

Subsection (j) requires licensing boards to specifically list the criminal convictions that may disqualify an individual from obtaining an initial or renewing a credential and (i) prohibits the use of non-specific language, such as “moral turpitude” or “good character.” In many states, definitions for such terms do not exist, which leads to inconsistent enforcement and the denial of credentials to individuals who would otherwise be eligible. Rather than use such vague terminology, this section requires that boards list the criminal convictions with specificity so that an individual seeking licensure knows precisely what criminal convictions may disqualify him or her from practicing that occupation. It also requires that professional regulatory boards include a time limit for disqualifying convictions. Disqualifying convictions should have a direct connection to the occupation at issue (*e.g.*, prohibiting an individual convicted of elder abuse from working in an assisted living facility or preventing an attorney convicted of fraud for misuse of client funds from working as a trustee).

SECTION XIII. FAIR HOUSING.

- (a) In general.—Unless otherwise required by federal law, the fact that an individual has a criminal history record shall not prevent such individual from obtaining housing.
- (b) Definition of conditional offer.—As used in this section, “conditional offer” means an offer to house, rent, or lease a residential dwelling unit to an applicant that is contingent on a subsequent inquiry into the applicant’s criminal history records, or any other eligibility criteria that the housing provider may lawfully utilize.
- (c) Unlawful discrimination.—It is unlawful for a housing provider to discriminate against an individual on the basis of the individual’s criminal history records or to refuse to house, lease, rent, or sell a property to an individual based on the assumption that an individual has a criminal history.¹⁶³
- (d) Housing providers.—
 - (1) A housing provider shall not require an applicant for residency to complete any housing application that includes any inquiries regarding an applicant’s criminal

¹⁶² See, *e.g.*, Margaret Colgate Love, *The Many Roads from Reentry to Reintegration: A National Survey of Laws Restoring Rights and Opportunities after Arrest or Conviction*, RESTORATION OF RTS. PROJECT, COLLATERAL CONSEQUENCES RES. CTR. (March 2022), [MRFRTTR_8.24.22.pdf \(ccresourcecenter.org\)](https://ccresourcecenter.org/MRFRTTR_8.24.22.pdf).

¹⁶³ Taken from HAW. REV. STAT. ANN. § 378-2 (West 2023).

history, or make any oral or written inquiry, prior to the provision of a conditional offer unless otherwise required to do so pursuant to federal law.¹⁶⁴

(2) Prior to accepting an application fee, a housing provider shall notify the applicant in writing:

(A) If the eligibility criteria of the housing provider includes a review of the applicant's criminal history records; and

(B) That the applicant may provide evidence demonstrating inaccuracies in the criminal history records or other mitigating factors.

(3) A housing provider shall apply the standards established by this section to each applicant in a non-discriminatory manner.

(4) A housing provider shall not conduct a search of any online court or department of corrections database, prior to the conditional offer, for evidence that an applicant was previously incarcerated.

(5) A housing provider shall not knowingly or intentionally publish, or cause to be published, any housing advertisement that explicitly provides that the housing provider will not consider any applicant who has been arrested for or convicted of one or more criminal offenses.

(6) Unless otherwise required by law, a housing provider shall not distribute or disseminate an applicant's criminal history records to any person who is not expected to use such records for the purpose of evaluating the applicant in a manner consistent with this section.

(7) A housing provider may not use an applicant's criminal history records in a manner inconsistent with the provisions of this Act.

(e) Restrictions on use of criminal history records.—A housing provider shall not, either before or after the issuance of a conditional offer, evaluate an applicant based on any of the following types of criminal records, unless otherwise required by federal law:

(1) Records that have been sealed, expunged, or otherwise eradicated pursuant to law;

¹⁶⁴ See 42 U.S.C. § 1437n(f) (2023) (permanently prohibits a person convicted of manufacture of or otherwise producing methamphetamine from occupying any public housing dwelling); and 42 U.S.C. § 13663 (2023) (prohibiting any individual subject to a lifetime sex offender registration requirement from occupying any federally assisted housing).

- (2) Convictions that have been pardoned;
 - (3) Convictions that are more than [n] years old with no subsequent convictions; or
 - (4) Any other non-conviction records.
- (f) Withdrawal of offer.—
- (1) The housing provider may withdraw a conditional offer based on an applicant’s criminal history records only if the housing provider determines that the withdrawal is necessary to fulfill a substantial, legitimate, and non-discriminatory interest.
 - (2) If the offer is withdrawn, the housing provider shall, within [5/10] business days, provide the applicant with written notice that includes a copy of the criminal history records relied upon by the housing provider and the specific reason(s) for the withdrawal.
 - (3) Upon receiving such notice, the applicant shall have an opportunity to appeal the denial by providing evidence to the housing provider, within [5/10] business days of such receipt, demonstrating inaccuracies within the applicant’s criminal history records or evidence of other mitigating factors.
 - (4) Within [3/5] business days of receiving such evidence, the housing provider shall make a final determination as to whether to withdraw or accept the conditional offer.
- (g) Individualized assessment.—The housing provider shall perform an individualized assessment of the application in light of the following factors:
- (1) Nature and severity of the criminal offense(s);
 - (2) The number of prior convictions;
 - (3) The age of the applicant at the time of the last conviction;
 - (4) The time which has elapsed since the last conviction;
 - (5) Whether the conviction(s) was related to any disability of the applicant, including a substance use disorder, and whether any reasonable accommodation could be provided to lessen any perceived risk;
 - (6) Any information produced by the applicant, or on the applicant’s behalf, related to the applicant’s conduct since the time of the offense;
 - (7) Whether the applicant has received a certificate of relief;
 - (8) The individual’s history as a tenant before and/or after the conviction;

- (9) The degree to which the criminal conduct, if it reoccurred, would impact the safety of the housing provider’s other tenants or property; and
 - (10) Whether the criminal offense occurred on or was connected to property that was rented or leased by the applicant.¹⁶⁵
- (h) Request for copy of records.—
- (1) Within thirty (30) days of the withdrawal of a conditional offer, the applicant whose conditional offer has been withdrawn may request a copy of all information upon which the housing provider relied in considering the applicant, including criminal history records and/or criminal history information not previously provided to the applicant, which shall include the contact information of the individual or entity from whom such records were obtained.
 - (2) The housing provider shall provide the requested information, free of charge, within ten (10) working days of a timely request.¹⁶⁶
- (i) Drug and alcohol testing.—A housing provider may not require an applicant to submit to a drug or alcohol test or request the applicant’s consent to obtain information from a substance use disorder treatment provider.
- (j) Complaints.—An applicant who believes that a housing provider has violated the provisions of this Act may file a complaint with the [agency in charge of landlord/tenant complaints] in the same manner and following the same process as for other complaints pursuant to [insert reference to state landlord/tenant law].
- (k) Immunity.—Housing providers subject to the provisions of this section shall be immune from liability in any civil action arising as a result of the provider’s decision to rent to individuals with a criminal history record or who were otherwise convicted of a criminal offense, or as the result of the provider’s decision not to engage in criminal background screening.
- (l) Preemption.—This section represents the minimum requirements for housing providers and does not preempt any expanded housing rights that may currently exist in statute,

¹⁶⁵ See Denver et al, *supra* note 149; IDAHO CODE ANN. § 67-9411 (West 2023); and COMM’N ON C.R., *supra* note 17.

¹⁶⁶ Taken from the “Fair Chance Housing Act,” N.J. STAT. ANN. §§ 46:8-52 to -64 (West 2023).

rule, ordinance, or policy, or which may be enacted or adopted after the effective date of this Act.

Commentary

Speaking to the U.S. Commission on Civil Rights, Kate Walz, the Director of Housing Justice and Director of Litigation at the Sargent Shriver National Center on Poverty Law, said of individuals being released from a correctional facility, “For many, a common question emerges on the first night: ‘Where will I sleep?’”¹⁶⁷ According to researchers, in order to successfully reenter society, find employment, maintain family connections, and avoid substance use, individuals leaving correctional facilities need stable housing.¹⁶⁸ Most formerly incarcerated individuals fall at or below the poverty level and would ordinarily qualify for public housing; however, federal law permanently bans individuals convicted of certain crimes from occupying public or federally assisted housing and, as long as the decision to deny housing to an individual is not based on discrimination, housing providers can choose not to rent property to an individual based on their criminal history.¹⁶⁹ This lack of ability to find permanent housing can result in formerly incarcerated individuals becoming homeless, which can result in such individuals being arrested under municipal ordinances that prohibit sleeping in public or vehicles, panhandling, and loitering, and being returned to jail.¹⁷⁰

This section attempts to ease the burdens on individuals with a criminal history in finding housing. It prohibits a housing provider from discriminating against an individual due to a criminal conviction. It also prohibits a housing provider from making any inquiry into an individual’s criminal history until a conditional offer of housing is made. It further prohibits a housing provider from considering any non-conviction records, convictions that are beyond the look-back period, or records that have been sealed, expunged, or otherwise eradicated by law in determining whether to lease, rent, or otherwise provide housing to an individual. Additionally, it provides avenues for an individual denied housing to obtain a copy of the information upon which the housing provider relied to deny housing to the individual as well as a complaint procedure if the individual believes the denial was based on a violation of this Act.

SECTION XIV. DISCLOSURE OF CRIMINAL HISTORY RECORDS; PENALTIES.

- (a) In general.—An individual shall not be required to disclose the existence of any criminal history record related to a record that has been sealed, expunged, or otherwise eradicated pursuant to law and may answer any inquiry regarding a criminal charge, conviction, or

¹⁶⁷ U.S. COMM’N ON C.R., *supra* note 17, at 61.

¹⁶⁸ Claire W. Herbert, Jeffrey D. Morenoff, and David J. Harding, *Homelessness and Housing Insecurity among Former Prisoners*, 1:2 THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 44, 45 (Nov. 2015), [Homelessness and Housing Insecurity Among Former Prisoners \(rsfjournal.org\)](https://www.rsfjournal.org/).

¹⁶⁹ See 42 U.S.C. § 1437n(f) (2023) (permanently prohibits a person convicted of manufacture of or otherwise producing methamphetamine from occupying any public housing dwelling); and 42 U.S.C. § 13663 (2023) (prohibiting any individual subject to a lifetime sex offender registration requirement from occupying any federally assisted housing).

¹⁷⁰ U.S. COMM’N ON C.R., *supra* note 17, at 63.

arrest that has been sealed, expunged, or otherwise eradicated pursuant to law that no such records exist unless otherwise required by state or federal law or the provisions of this Act.¹⁷¹

- (b) Criminal history record inquiries.—Except as set forth below, a custodian or other entity in possession of criminal history records shall respond to any inquiry for information regarding criminal history records that have been sealed, expunged, or otherwise eradicated pursuant to law the same as if such records never existed.¹⁷²
- (c) Inquiries into sealed records.—A custodian or other entity in possession of criminal history records that have been sealed shall:
- (1) In response to any inquiry from a person or entity not authorized by law to access such records, respond the same as if such records never existed; and
 - (2) Upon request by the individual who is the subject of the sealed records, provide the individual with written confirmation that the record was sealed.¹⁷³
- (d) Dissemination by business screening services.—
- (1) A business screening service must only disseminate a criminal history record that reflects the complete and accurate record provided by the source of the data.
 - (2) A complete and accurate record is one that has:
 - (A) Been updated within thirty (30) days of its receipt; or
 - (B) Been verified with the source of the data within the previous ninety (90) days as being up to date.¹⁷⁴
- (e) Deletion of expunged or sealed records.—A business screening service shall delete any criminal history record it knows or should reasonably know has been sealed, expunged, or otherwise eradicated pursuant to law.¹⁷⁵
- (f) Date and notice required.—A business screening service that disseminates a criminal history record shall include the date when the record was collected by the business screening service and a notice that the information may include criminal history records

¹⁷¹ Taken from DEL. CODE ANN. tit. 11, § 4372 (West 2023).

¹⁷² Taken in part from 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2023).

¹⁷³ Taken from 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2023).

¹⁷⁴ MINN. STAT. ANN. § 332.70 (West 2023).

¹⁷⁵ *Id.*

that have been expunged, sealed, or otherwise eradicated pursuant to law since that date.¹⁷⁶

(g) Correction and deletion of records.—

- (1) An individual who is the subject of criminal history records maintained by a custodian or business screening service may dispute the accuracy of said records and request correction or deletion of such records by submitting a written request to the custodian or business screening service setting forth identifying information regarding the disputed records and the factual basis for the dispute.
- (2) The custodian or business screening service shall, without charge, investigate the disputed record and determine its accuracy.
- (3) If the custodian or business screening service determines that the record is not accurate, the custodian or business screening service shall correct the disputed record, as follows:
 - (A) If it is found by a custodian that the disputed record should have been sealed, expunged, or otherwise eradicated pursuant to law, the custodian shall take whatever action is necessary to seal or expunge such record;
 - (B) If it is found by a business screening service that the disputed record is sealed, expunged, or otherwise eradicated pursuant to law, the business screening service shall immediately delete such record;
 - (C) If the dispute to correct or delete a criminal history record filed by the individual who is the subject of that record arose due to the dissemination of incorrect information, the business screening service shall, at its own expense, notify the person or entity to whom the information was disseminated of the corrected information; and
 - (D) A business screening service that complies with this paragraph shall not be in violation of this section.
- (4) A custodian or business screening service may terminate the investigation of a disputed record if it determines that the dispute is frivolous or that the disputed record is accurate. In such case, the custodian or business screening service shall

¹⁷⁶ *Id.*

notify the individual who has disputed the record of the specific reasons why it has determined that the dispute is frivolous or that the disputed record is accurate.

- (5) The custodian or business screening service shall notify the individual who is the subject of the disputed record of the correction or deletion of the record, or the termination of the investigation, within thirty (30) days of the date the custodian or business screening service receives notice of the dispute from the individual.¹⁷⁷

(h) Unauthorized disclosure.—

- (1) Neither a custodian nor a business screening service may disclose any information regarding a record that has been sealed, expunged, or otherwise eradicated pursuant to law.
- (2) A custodian shall not be liable for any damages resulting to any individual as a consequence of expunging, sealing, or redacting a record or the failure to expunge, seal, or redact a record where the order directing such expungement, sealing, or redaction does not specifically identify all locations of the records to be expunged or sealed, or specify the information to be redacted.
- (i) Civil action.—An individual whose records have been wrongfully disclosed may seek damages against a custodian or business screening service in civil court for such wrongful disclosure. The individual shall be entitled to compensation in the amount of [\$] for each such wrongful disclosure or actual damages caused by the violation, whichever is greater, plus costs and reasonable attorney fees.¹⁷⁸

Commentary

According to a 2016 study, 82 percent of companies that perform background checks screen potential employees for criminal history.¹⁷⁹ According to the Bureau of Justice Statistics, the fifty states, the District of Columbia, and Guam report holding more than 114 million criminal history files.¹⁸⁰ In 49 states and the District of Columbia, 36 percent of arrests in state databases do not have final dispositions reported five years after the arrest; yet, these records are still used to make determinations regarding an individual's "fitness" for employment, housing, or

¹⁷⁷ Taken from MINN. STAT. ANN. § 322.70 (West 2023).

¹⁷⁸ Taken from MINN. STAT. ANN. § 322.70 (West 2023).

¹⁷⁹ Marina Duane, Nancy La Vigne, Mathew Lynch, and Emily Reimal, *Criminal Background Checks: Impact on Employment and Recidivism*, URB. INST. JUST. POL'Y CTR. v (updated Nov. 2017) (internal citations omitted).

¹⁸⁰ Becki R. Goggins and Dennis A. DeBacco, *Survey of State Criminal History Information Systems, 2020*, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT. 2 (Dec. 2022), [Survey of State Criminal History Information Systems, 2020 \(ojp.gov\)](https://ojp.gov).

qualifying for a loan.¹⁸¹ Additionally, some criminal history reports include information on records that have been sealed or expunged.¹⁸² Sealing and expungement of records do not benefit the individual who is the subject of the records if such records are still available in the public domain or if such records do not include the final disposition (*e.g.*, when an individual is charged with multiple offenses, many of which are dismissed during the pendency of the case). Therefore, this section delineates the process for responding to inquiries related to sealed or expunged records and penalties for any custodian or business screening service that violates this Act.

Pursuant to the terms of this section, business screening services must maintain up-to-date and accurate criminal history records for purposes of responding to criminal history background checks. Additionally, they must delete any records that have been sealed or expunged. This section also sets forth a procedure by which an individual can dispute the accuracy of his or her criminal history records and have such records corrected.

SECTION XV. DATA COLLECTION AND REPORTING.

- (a) In general.—This section sets forth the data collection and submission requirements for entities related to criminal history records and certificates of relief.
- (b) Submission of data related to sealing and expunging records.—Beginning [date] and every quarter thereafter, each entity that hears petitions to seal and/or expunge criminal history records and each custodian that seals and/or expunges criminal history records shall submit the following information to the [administrative office of the courts]:
 - (1) The number of petitions to seal criminal history records received;
 - (2) The number of petitions to expunge criminal history records received;
 - (3) The number of petitions to seal criminal history records that were granted and the number that were denied;
 - (4) The number of petitions to expunge criminal history records that were granted and the number that were denied;
 - (5) The number and type of criminal history records sealed automatically pursuant to the provisions of Section VII;
 - (6) The number and type of criminal history records expunged automatically pursuant to the provisions of Section X;

¹⁸¹ *Id.* at 3.

¹⁸² Duane et al, *supra* note 179, at v.

- (7) The number of individuals whose records were unsealed during the reporting period and the reason for the unsealing;
 - (8) The number of individuals whose records were sealed who were subsequently arrested for, charged with, or convicted of a criminal offense; and
 - (9) The number of individuals whose records were expunged who were subsequently arrested for, charged with, or convicted of a criminal offense.
- (c) Submission of data related to certificates of relief.—Beginning [date] and every quarter thereafter, each entity with authority to grant or deny a certificate of relief shall submit the following information to the [administrative office of the courts/board of probation and parole]:
- (1) The number of certificates of relief issued by a court on its own motion at the time of sentencing an individual;
 - (2) The number of applications for a certificate of relief received and the entity with which the application was filed;
 - (3) The number of applications granted and any restrictions placed on a certificate;
 - (4) The number of applications denied and the basis for the denial;
 - (5) The number of individuals with certificates who were arrested for, charged with, or convicted of another criminal offense subsequent to the issuance of the certificate of relief;
 - (6) The number of certificates of relief that were revoked and the basis for the revocation;
 - (7) The number of certificates of relief that were modified, whether such modifications were to enlarge or limit the relief granted, and the basis for the modification; and
 - (8) Any other information the [appropriate agency] may require.
- (d) Submission of data by licensing entities.—Beginning [date] and every quarter thereafter, each entity charged with issuing a license, registration, or certification to practice a profession within this state shall submit the following information to the [board of professional regulation]:
- (1) The number of preliminary applications received by the entity, the qualification sought by the applicant, and the outcome of the preliminary application;

- (2) The number of applications received from individuals with a criminal history, the number of such applications that were approved, the number that were denied, and the basis for denial; and
 - (3) The number of applications received from individuals with a valid certificate of relief, the number of such applications that were approved, the number that were denied, and the basis for the denial.
- (e) Report to legislature.—Each entity receiving the data required pursuant to this section shall aggregate the data received and provide it in the form of a report to the legislature, the [House and Senate justice committees], and the Governor, on an annual basis, beginning [date] and each year thereafter.

Commentary

This section requires certain entities to submit data regarding the sealing and expungement of criminal history records, as well as data relating to certificates of relief. The purpose of these requirements is to track how well these programs are working and how many individuals who are eligible for relief are actually taking advantage of such relief.

SECTION XVI. EDUCATION.

- (a) In general.—There shall be a targeted education campaign for the purpose of educating certain entities, including public and private employers, housing providers, and other individuals to whom this Act applies, as well as the general public regarding the provisions of this Act.
- (b) Public and private employers.—Within [*n*] months of the passage of this Act, the [board of professional regulation], jointly with the department of labor, shall develop an education campaign for public and private employers regarding the provisions of this Act applicable to such employers including, but not limited to:
 - (1) Requirements regarding when it is permissible to inquire into a potential new employee’s criminal history records;
 - (2) Certificates of relief and the rights applicable thereto; and
 - (3) Immunity for employers when hiring an individual in possession of a certificate of relief.
- (c) Administrative office of the courts.—Within [*n*] months of the passage of this Act, the administrative office of the courts shall develop an education campaign, which may

include continuing legal education courses, for members of the court system including, but not limited to, judges, court clerks, defense attorneys, district attorneys, and other attorneys charged with prosecuting crimes in this state, regarding the provisions of this Act applicable to such individuals, which education shall include, but not be limited to:

- (1) The notice requirements set forth in Section V;
 - (2) Petitions to seal or expunge criminal history records;
 - (3) Automatic sealing and automatic expungement of certain criminal history records;
- and
- (4) Applications for certificates of relief.

- (d) Department of justice.—Within [*n*] months of the passage of this Act, the state department of justice shall develop an education campaign for members of law enforcement regarding the provisions of this Act applicable to law enforcement, which education shall include, but not be limited to, the uses for which law enforcement may access sealed criminal history records.
- (e) [Board of professional responsibility].—Within [*n*] months of the passage of this Act, the [board of professional responsibility or other state agency with oversight of attorneys in the state] shall develop an education campaign, which may include continuing legal education courses, regarding the provisions of this Act applicable to attorneys, which education shall include, but not be limited to:
- (1) The notice requirements as set forth in Section V;
 - (2) Provisions related to automatic sealing or expungement of records;
 - (3) Provisions related to filing a petition to seal or expunge records on behalf of clients;
- and
- (4) Provisions related to certificates of relief.
- (f) Corrections employees.—The [department of corrections, jointly with the board of probation and parole], shall develop an education campaign for employees regarding the provisions of this Act applicable to such employees, which education shall include, but not be limited to, the notice requirements as set forth in Section V.
- (g) Housing providers.—The [agency in charge of landlord/tenant relationships] shall develop an education campaign for its employees, for housing providers, and the general

public regarding the provisions of this Act applicable to such individuals, which education shall include, but not be limited to:

- (1) The rights of individuals seeking housing in [state];
- (2) The responsibilities of housing providers;
- (3) Provisions related to certificates of relief; and
- (4) Immunity from liability in civil actions.

Commentary

This section requires that the named agencies implement education campaigns in order to make those individuals and entities affected by this Act aware of their rights, responsibilities, and duties under the terms of the Act.

SECTION XVII. FUNDING.

(a) Budget allocation.—

- (1) Unless otherwise fully funded through another funding source, the legislature shall appropriate sufficient funds for each fiscal year to the department for the purposes of the initial collection of collateral consequences information and the costs associated with updating such information.
- (2) If the department works in conjunction with other agencies, the funds appropriated in this subsection shall be divided among the agencies.
- (3) In addition to any other funds, the legislature shall appropriate [\$] for fiscal year [year] to the [state public defender's office] for the additional costs related to education and assistance for individuals eligible for the relief under this Act.

(b) Funding for automatic sealing and automatic expungement of records.—Unless fully funded through another funding source, the legislature shall appropriate sufficient funds for each fiscal year to be allocated to each custodian of criminal history records for the purpose of funding the automatic expungement or sealing of records pursuant to the provisions of this Act.

(c) Pursuit of funding.—The department and any agency with which the department collaborates on the collection of collateral consequences information and the annual updating of such information may pursue all federal funding, matching funds, and foundation or other charitable funding to fund such activities.

- (d) Acceptance of gifts.—The department and any agency with which the department collaborates may accept such gifts, grants, and endowments, from public or private sources, as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this Act and expend the same or any income derived from it according to the terms of the gift, grant, or endowment, as allowed by state and federal law.

Commentary

Funding sections in model laws can be complicated, as states fund projects through legislation in a variety of ways, and there is no “one size fits all” approach. However, if the Model Act omits the funding discussion altogether, the legislation could give the appearance of an unfunded mandate.

SECTION XVIII. RULES AND REGULATIONS.

The department shall promulgate such rules and regulations as are necessary to effectuate this Act.

SECTION XIX. SEVERABILITY.

If any provision of this Act or application thereof to any individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provisions or applications, and to this end, the provisions of this Act are severable.

SECTION XX. EFFECTIVE DATE.

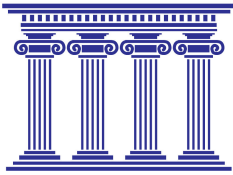
This Act shall be effective on [specific date or reference to normal state method of determination of the effective date].

ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

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