

COLLATERAL CONSEQUENCES OF CRIMINAL JUSTICE INVOLVEMENT

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WHAT ARE COLLATERAL CONSEQUENCES?

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. These consequences include but are not limited to: (1) the loss of the rights to vote, serve on a jury, or possess a firearm; (2) barriers in obtaining housing, employment, higher education, professional licensure, and federal and state government benefits; and (3) barriers in obtaining credit and loans, including student loans. 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 also affect the lives of the individual's families and loved ones. This does not include collateral consequences 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.”¹

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. 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.”² 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.

Collateral consequences fall into two general categories: (1) those classified as collateral sanctions; and (2) those classified as disqualifications. 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. To regain those rights, many states require that individuals obtain a pardon or take other affirmative steps, such as filing a petition to expunge the records, in order to have those rights restored. 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.

RELIEF FROM COLLATERAL CONSEQUENCES

Certificate of Relief

Certificates of relief are granted to individuals who may not otherwise be eligible for other forms of relief, or may not

¹ 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 \(usccr.gov\)](#).

² *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).

yet be eligible 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 (e.g., those related to housing or employment) or may be broad enough to relieve an individual of all collateral consequences. Certificates of relief are also known, among other titles, as certificates of rehabilitation and certificates of employability. 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. Twenty-two states (Alabama, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, Vermont, and Washington) and Puerto Rico offer a process by which an individual who meets the requirements can obtain a certificate of relief.³

Sealing Criminal History Records

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. 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, such as for enhancing a sentence for a subsequent criminal conviction.

Only 10 states (Alabama, Delaware, Iowa, Kansas, Louisiana, Mississippi, New Mexico, North Carolina, Tennessee, and Wisconsin) and Puerto Rico do not expressly permit the sealing of any criminal history records. In a number of states, sealing is only available for non-conviction records; that is, criminal history records where the arrest or charge resulted in an acquittal or dismissal of all charges, or where the prosecutor entered a nolle prosequi, for example. Non-conviction records might also include situations where the individual successfully completed a deferred prosecution or diversion program.

Six states limit sealing to certain records after an order of expungement has been granted. Hawaii, Indiana, West Virginia, and Wyoming require court records to be sealed without a petition once an order granting a petition to expunge criminal history records has been entered, as the order to expunge does not otherwise affect records held by the state courts. Kentucky also limits sealing to court records after an order of expungement has been entered; however, certain records of drug convictions are also eligible to be automatically sealed. Finally, South Carolina requires that law enforcement and prosecution agencies and detention and correctional facilities retain certain criminal history records under seal for a period of three years and 120 days after the entry of an order of expungement.

Technically, Oklahoma, South Dakota, Utah, and the Virgin Islands also permit the sealing of criminal history records; however, in Oklahoma, “seal” and “expunge” are used interchangeably, and in South Dakota, Utah, and the Virgin Islands, “expunge” is specifically defined to mean the sealing of records.

Expungement of Criminal History Records

The primary difference between sealing and expungement of criminal history records is that expunged records may be “destroyed” (depending on the jurisdiction) and are typically not available for any purpose after expungement. Note that in many cases, although state law says the records will be “destroyed,” the records are not usually physically or electronically destroyed but are segregated from all other records and made inaccessible for any purpose except research purposes in certain jurisdictions if the information has been de-identified. Because expunged records are typically not available for any reason, including law enforcement purposes, the waiting periods before an

³ See LAPPAs [Methods to Obtain Relief from the Collateral Consequences of Criminal Convictions: Summary of State Laws](#) and [Model Relief from Collateral Consequences of Conviction Act | LAPPAs \(legislativeanalysis.org\)](#) for more information.

individual's records are eligible to be expunged tend to be longer than those for sealing records. As with sealing, an individual whose records have been expunged can answer any inquiry regarding the arrest, charge, and/or conviction in the negative (with some exceptions for certain professions). It also requires that any agency to which a request for criminal history records is made respond that no such records exist. Nine states (Alaska, Arkansas, California, Georgia, Maine, Michigan, Nevada, North Dakota, and Oregon) do not have any provisions for the expungement of criminal history records. The remaining states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands do have processes in place for the expungement of records; however, they may include limits on the types of records that are eligible. For example, Arizona limits expungement to drug charges only, while Hawaii limits it to property offenders and non-conviction records. Colorado only provides expungement for records related to cases of mistaken identity, and New Hampshire only permits the expungement of DNA records. In most states, however, expungement is available for various types of criminal history records after the required time period has elapsed.

Automatic Expungement and/or Sealing of Criminal History Records

In addition to those states that have processes in place that allow an individual to petition or otherwise request the sealing or expungement of criminal history records, 37 states and the U.S. Virgin Islands require that certain records be automatically sealed or expunged in certain circumstances. For example, Montana law requires that certain non-conviction records be automatically expunged and that records related to the deferred imposition of a sentence where the individual successfully completed the program be made "confidential" and unavailable to the public after the expiration of the required time periods. Texas provides for the automatic expunction of records if an individual's conviction is reversed, or he or she is granted a pardon on the basis of innocence. Records are also automatically expunged upon an individual's successful completion of a veteran's treatment or mental health court program.

CONCLUSION

To have the best chance of success following interaction with the criminal justice system, whether through arrest, citation, charge, or conviction of a criminal offense, individuals should be able to obtain some relief from the collateral consequences that arise from such interaction. While every state, the District of Columbia, and most U.S. territories include at least one method by which individuals can obtain relief from collateral consequences, requirements vary from and may require long waiting periods before a person is eligible. Certificates of relief provide one avenue by which an individual can obtain relief faster, but such certificates are not readily available.

RESOURCES

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