Understanding the Legal Landscape of Criminal Records in Hiring Decisions
Overview

01 Collateral Consequences of Criminal Convictions

02 Policy Options for Addressing Criminal Records in Hiring Decisions

03 Landscape of Legislative Reform
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Criminal records impact the individual, their family, and the larger community. A criminal record reduces the likelihood of a job offer by nearly 50 percent. 1

180,000 women are subject to the lifetime ban on Temporary Assistance for Needy Families. 3

The U.S. economy loses about $87 billion in annual GDP when people with records can’t work. 2

Criminal records have greater impact on people and communities of color.

*Rate of Imprisonment per 100,000, by Gender, Race, and Ethnicity, 2015

*Imprisonment is just one point at which a person acquires a criminal record.
The effect of a criminal record is more pronounced for black applicants than for white applicants

**WITHOUT**

- **White**: 34%
- **Black**: 14%

**WITH**

- **White**: 17%
- **Black**: 5%
Criminal convictions trigger various state and federal “collateral consequences.”

NATIONAL INVENTORY OF THE
COLLATERAL CONSEQUENCES
OF CONVICTION

The collateral consequences of a criminal conviction—legal sanctions and restrictions imposed upon people because of their criminal record—are hard to find and harder to understand. Now it will be easier to do both. Congress directed the National Institute of Justice to collect and study collateral consequences in all U.S. jurisdictions, and NIJ selected the ABA Criminal Justice Section to perform the necessary research and analysis. The results are now being made available through this interactive tool.

https://niccc.csgjusticecenter.org
A number of collateral consequences restrict employment avenues for people with criminal convictions

Approximately 30,000 employment-related collateral consequences are peppered throughout the civil, criminal, and regulatory codes of the federal system and states.

Across the 50 states and federal system, there are nearly 15,000 provisions of law (contained both in statutory and regulatory codes) that limit occupational licensing opportunities for individuals with criminal records.

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States are adopting different strategies to address the treatment of criminal records in employment decisions

**Record Clearance**
- Allow a person to remove criminal record from public viewing (seal, expunge, vacate, dismiss, set aside, shield, annul, or destroy).
- Record clearance may relieve a person from disclosing the existence of a criminal record when seeking employment.*

*Varies by state and clearance policies

**Fair Chance Hiring/”Ban the Box”**
- Remove conviction history check-box from job application and delay conviction history inquiries.
- Account for time passed since the conviction
- Provide job applicants an opportunity to explain their criminal record.

**Occupational Licensing**
- Give guidance for reviewing criminal records in licensing decisions.
  - No “blanket bans”
  - Consider evidence of rehabilitation
  - Direct relationship test
  - Allow pre-qualification
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Many states have some type of fair chance hiring policy.
States have enacted policies in line with the EEOC arrest and conviction record guidance

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<tr>
<th>Fair Chance Hiring</th>
<th>Occupational Licensing</th>
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<tr>
<td><strong>CA-AB 1008 (2018):</strong> Requires both public- and private-sector employers to delay background checks and inquiries about job applicants’ conviction records until later in the hiring process.</td>
<td><strong>IN- H.B. 1245 (2018):</strong> Allows applicants to seek a determination, before going through the application process, as to whether the individual’s prior conviction will disqualify the individual from receiving the license or certification.</td>
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<td><strong>AZ- Exec. Order 2017-07:</strong> Directs the Department of Administration to establish hiring procedures that will be used by all state agencies; state agencies will not inquire about an applicant’s criminal record until an applicant has received an initial interview.</td>
<td><strong>CT -H.B. 5764 (2017):</strong> Prohibits state or national criminal history checks as a prerequisite to licensure for barbers, hairdresser, cosmeticians.</td>
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<td><strong>LA-HB 266/Act 398 (2016):</strong> For state employers; If no interview is to take place, employers may not ask about an applicant’s record until after a conditional offer of employment is extended to that applicant.</td>
<td><strong>GA- S.B. 367 (2016):</strong> Requires professional licensing boards to consider certain factors relating to felonies before denying a license to an applicant or revoking a license.</td>
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<td><strong>MA-SB 2583 (2010):</strong> Applies to public and private employment; can no longer use an initial employment application to ask about conviction unless there is a legal restriction that applies to the specific job or occupation.*</td>
<td><strong>OH-S.B. 337 (2012)— Defines crimes that constitute a “crimes of moral turpitude” for occupational licensing purposes..</strong></td>
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Resources


• National Inventory of Collateral Consequences of Criminal Conviction; https://niccc.csgjusticecenter.org/

• Clean Slate Clearinghouse; https://cleanslateclearinghouse.org/
Contact

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