Criminal Records and Employment: Legislative Trends

“Ban the Box”
“Ban the Box” is a term used to describe policies that prohibit employers from asking about an applicant’s criminal history on an initial application for employment. Currently, 21 states and the District of Columbia have laws that regulate when during the hiring process certain employers can inquire about an applicant’s criminal history. Many localities and a few governors also taken action to ban the box for government jobs.


Legislatively Enacted Ban the Box Laws

Certificates of Employability and Employer Liability Protection
These laws authorize administrative certificates of employability or rehabilitation that serve as proof of rehabilitation for employment purposes or allow some occupational disqualifications to be lifted. Some of these laws also carry employer liability protections for hiring ex-offenders who have been granted these certificates. In cases where a certified employee causes injury or damages, the policies protect employers from suits alleging negligent hiring or a failure to adequately supervise a certified employee solely because of a previous criminal conviction.

Two states—Louisiana and Washington—enacted legislation this year. Both created certificates and provided employer liability protections. At least 20 states have authorized certificates of employability and at least 12 states and the District of Columbia have laws that protect employers who hire people with criminal records.
State Certificate of Employability and Employer Liability Protection Laws


Conviction Record Clearing

As recently as 10 years ago, expungement or sealing procedures were typically only available to first-time offenders, to low-level offenders sentenced to probation, or to those convicted of misdemeanors. Many states did not authorize expungement of any adult felony convictions. Since 2009, however, more than half the states have enacted laws expanding the eligibility record expungement in some form.

Recently states have expanded eligibility for expungement or record-sealing in a variety of ways:

- In the past two years, Colorado (2016 HB2165), Illinois (2015 HB169), North Carolina (2015 SB233), and Tennessee (2016 HB2102) expanded eligibility to people whose convictions are a result of mistaken identity or identity theft or fraud.
- In 2015, Florida (HB465) and Idaho (SB1154) expanded eligibility to people who incurred criminal records as a result of being victims of human trafficking.
- In 2015, Maryland (SB651) and Vermont (SB115) expanded eligibility explicitly to people whose convictions are for acts that are no longer crimes.
- In the past two years, California (2015 AB1492), Oklahoma (2016 HB2275), Vermont (2016 SB10), and Washington (2015 HB1069) have all addressed the expungement of DNA samples and corresponding records in certain instances.


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