



LEGISLATIVE UPDATE

September 2012

State Reforms Reducing Collateral Consequences for People with Criminal Records: 2011-2012 Legislative Round-Up¹

Over the past forty years the prison population in the United States has skyrocketed 600% and the number of Americans with felony convictions has grown to 19.8 million adults or 8.6% of the adult population.² According to the National Employment Law Project (NELP), an estimated 65 million Americans have a criminal record.³ Although it might be reasonable to assume that individuals who have completed their sentences are free from conviction-related constraints,⁴ according to Attorney General Eric Holder, the American Bar Association (ABA) has identified over 38,000 penalties, called collateral consequences that can impact people long after they complete their criminal sentence.⁵

Collateral consequences are the additional penalties tied to a conviction that greatly impact an individual's capacity to engage politically, economically and socially upon their reentry to society. These consequences include barriers to housing, education, and employment, felony disenfranchisement, and ineligibility for public benefits. Collateral consequences are distinct from direct consequences of convictions in that they are not factored into the calculation of punishment or sentencing, and are triggered outside the jurisdiction of the courts.

Nationwide there is a growing bipartisan awareness of the long-term negative impact of collateral consequences and states are taking steps to combat the ill effects of these sanctions.

¹ This paper is a collaboration of the ACLU, Crossroad Bible Institute, The Sentencing Project, the National Employment Law Project (NELP), and the National H.I.R.E. Network.

² Shannon S., Uggen C., Thompson M., Schnittker J., and Massoglia M. 2011. "Growth in the U.S. Ex-Felon And Ex-Prisoner Population, 1948 to 2010." Paper presented at the 2011 Annual Meetings of the Population Association of America.

³ Rodriguez M. and Emsellem M. 2011. "65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment." The National Employment Law Project. New York, NY.

⁴ Heumann M., Pinaire B. K., and Clark T. 2005. "Beyond the Sentence: Public Perceptions of Collateral Consequences for Felony Offenders." *Criminal Law Bulletin*, 41, pp. 24-46.

⁵ Written Testimony for Amy Soloman, Senior Advisor to the Asst. Attorney General, Office of Justice Programs, U.S. Dept. of Justice. "EEOC to Examine Arrest and Conviction Records as a Hiring Barrier," Meeting of July 26, 2011, available at <http://www1.eeoc.gov/eeoc/meetings/7-26-11/solomon.cfm?renderforprint=1>. A new interactive tool was released by the ABA, called the National Inventory of the Collateral Consequences of Conviction, available at <http://www.abacollateralconsequences.org/CollateralConsequences/index.html>.

During 2012, legislation was championed by Republican and Democratic state lawmakers to scale back the collateral consequences of convictions. This paper documents the important reforms enacted and introduced throughout the country during the 2012 legislative session.

This paper is organized into the following policy categories: (1) [“ban the box”](#); (2) [employer negligent hiring protections](#); (3) [expungement and sealing](#); (4) [federal public benefits opt-out legislation](#); (5) [felony enfranchisement](#); and (6) [Uniform Collateral Consequences of Conviction Act legislation](#). Key developments include:

- One state (Colorado) adopted a “ban the box” policy, which delays background checks until later in the hiring process, while seven states introduced legislation to adopt or expand the policy.
- At least eight states considered new limitations on negligent hiring liability (Colorado, Minnesota, New Jersey, New York, Ohio, Vermont, West Virginia, and Wisconsin), though only one—Ohio—ultimately adopted new protections.
- Eight states (Delaware, Georgia, Louisiana, Ohio, Maryland, North Carolina, Tennessee and Utah) enacted provisions to expunge or seal criminal history information in an effort to eliminate barriers to employment. At least three states—New Mexico, South Carolina, and West Virginia—vetoed measures while at least eight states introduced legislation.
- At least four states—Alabama, California, Missouri, and Pennsylvania—introduced measures to improve access to public benefits for persons with felony convictions.
- One state (Delaware) enacted the first part of a two-year process to repeal the five-year waiting period for persons with certain felony convictions to have their voting rights restored. At least three states introduced measures to restore voting rights for persons with certain convictions.
- Five states—New York, Minnesota, Wisconsin, West Virginia, and Vermont—introduced legislation that would significantly mitigate the effects of collateral consequences for individuals who plead guilty.

(1) “Ban the box”: Fair Hiring and Occupational Licensing Standards

Widely known as “ban the box,” this fair employment policy typically removes the question on the job or licensing application about an individual’s conviction history and delays the background check until later in the hiring or licensing process. The purpose of this reform is to provide applicants a better chance of being evaluated based on their qualifications. To date, [seven states](#) (California, Colorado, Connecticut, Hawaii, Massachusetts, Minnesota, and New Mexico) and [about 40 local jurisdictions](#) have implemented some form of a “ban the box” policy. In addition, seven states introduced legislation in 2012 to adopt or expand “ban the box” policies. Although these bills were not passed, advocates laid the foundation for future efforts. Numerous organizations such as [All of Us or None](#), a leader in these efforts, have contributed to successful “ban the box” campaigns across the country.

Model: Out of the [seven states](#) with “ban the box” policies in place, Massachusetts’ policy is the most comprehensive. Significantly, the state’s policy applies to both private and public employers and sets sensible limits on the information that can be made available in the criminal record. It also requires that denied applicants receive a copy of their records, paralleling one component of the federal consumer protection law, the [Fair Credit Reporting Act](#), which applies to commercially-prepared background checks.

Successful Legislation

Colorado House Bill 12-1263 (2012) (applies to state employment and licensing; job-related factors)

Signed on May 29, 2012 by Governor John Hickenlooper (D), [HB 12-1263](#) prohibits state agencies and licensing agencies from performing a background check until the agency determines that the applicant is a finalist for the position or receives a conditional offer. In determining whether a conviction disqualifies an applicant, the state or licensing agency must consider (1) nature of the conviction; (2) direct relationship of the conviction to the job; (3) rehabilitation and good conduct; and (4) time elapsed from date of conviction. The law further prevents agencies from using arrests not leading to conviction in deciding whether to deny or withdraw an offer. Agencies may not disqualify an applicant based on an expunged, sealed, or pardoned conviction or charges dismissed pursuant to a deferred judgment, unless the agencies first consider the four factors listed above.

This law does not apply where a statute bars licensing based on criminal convictions nor to certain public safety or correction-related jobs. Consideration of criminal history information that the applicant voluntarily provides is permitted. The law addresses blanket bans in job ads by prohibiting the advertisement of a position with a statement that a person with a criminal record may not apply. The legislation was supported by the [Colorado Criminal Justice Reform Coalition](#). Introduced by Rep. Claire Levy (D), see [bill information](#).

Commentary: Before passage of this law, Colorado state employment applications omitted inquiries about applicants’ convictions or arrests. Thus, unlike the typical ban the box legislation, this bill does not include language that requires removing the question about convictions on the application.

Introduced Legislation

California Assembly Bill 1831 (would have applied to city and county employment)

[AB 1831](#) would have required city and county agencies to delay consideration of an applicant’s criminal history until after the agency determines that the applicant is minimally qualified for the position. The bill exempts agencies that were required by law to run a criminal background check and all positions within a criminal justice agency. After passing through the Assembly, the bill was held in the Senate Committee on Governance and Finance. On the day of the hearing,

an influential local newspaper supported the bill with an [editorial](#). Introduced by Asm. Roger Dickinson (D), see [bill information](#).

Commentary: Nine cities and counties in California implement some form of ban the box, which makes California the state with the most ban the box local jurisdictions without statewide legislation. Since 2010, California has had an [administrative directive](#) in place, which removed the conviction history question from the initial application for state agency jobs.

Illinois House Bill 1210, House Committee Amendment No. 1 (would have applied to state employment)

A prior version of [HB 1210](#) was passed out of the legislature but vetoed by former Governor Rod Blagojevich (D). With the addition of [House Committee Amendment No. 1](#), which offers stronger protections than HB 1210, the bill will likely be considered in the months to come. It would prohibit state employers from asking on job applications whether an applicant has a criminal conviction. The threshold for inquiry into an applicant's criminal background is after the interview or conditional offer for a position. If federal or state law disqualifies a person from holding a position or if an applicant is applying to be a peace officer, then the positions are exempted. Introduced by Rep. La Shawn Ford (D), see [bill information](#).

Commentary: As legislation is being considered, advocates are exploring administrative options. The [Illinois Commission on the Elimination of Poverty](#) and groups such as [Safer Foundation](#) and [Heartland Alliance](#) are supporting these efforts.

Maryland Senate Bill 671/House Bill 800 (would have applied to state employment)

[SB 671/HB 800](#) was introduced for the third year. It would have prohibited the branches of the state government from inquiring into the criminal history of an applicant for employment until the applicant is selected for an interview. The bill exempts public safety and corrections positions, positions for which a criminal history records check is statutorily required, and certain positions determined by the Secretary of the State Personnel Management System. The bill passed the Senate Finance Committee but stalled in House Appropriations. Introduced by Sen. Catherine Pugh (D) see [bill information](#).

Commentary: As [noted](#) by the [Job Opportunities Task Force](#), the bill had bipartisan support and went further this year than prior attempts.

Minnesota House File 1448/Senate File 1122 (would have applied to private employment)

[HF 1448/SF 1122](#) would have prohibited private employers from inquiring into or considering the criminal history of an applicant until the applicant has been selected for an interview. The bill exempts those employers who have a statutory duty to conduct a criminal background check or consider the criminal records of applicants during the hiring process. The bill stalled in committee. Introduced by Rep. Carol McFarlane (R), see [bill information](#).

Commentary: This bill would have expanded the “ban the box” legislation adopted in 2009—[HF 1301](#)— which prohibited public employers from inquiring into or considering an applicant’s

criminal history until after the applicant has been selected for an interview by the state, its agency, or political subdivision. Advocates from the [Second Chance Coalition](#) are continuing efforts at the local level to expand ban the box to private employers.

New Jersey Assembly 2300 (would have applied to public and private employment; job-related factors; limits on information)

This [bill](#) would have prohibited employers from requesting information about criminal records on job applications unless certain convictions legally disqualify an applicant. An employer is permitted to inquire about convictions during an interview, but the employer cannot deny employment on the basis of a criminal record unless there is a direct relationship between the conviction and the employment sought (factors are specified), or if granting the employment would involve an unreasonable risk to property or safety. Time limits for certain convictions to be considered are specified. Written notice of denial and opportunity to appeal are provided. The penalty for violation is \$10,000 for a first offense and not more than \$20,000 for a second offense. Introduced by Asm. Bonnie Watson Coleman (D), see [bill information](#).

Commentary: A penalty for violation is becoming more popular; it is one means to ensure robust enforcement. Advocates are hopeful that a new bill version will be introduced. Meanwhile, advocates such as the [New Jersey Institute for Social Justice](#) have sought to educate the private employer community on these issues through business roundtables.

Rhode Island House Bill 7760/Senate Bill 2411 (would have applied to public and private employment and licensing; job-related factors)

Building on prior years' efforts, [HB7760/SB2411](#) would have prohibited licensing and public agencies, and private employers from denying an applicant because of prior convictions, unless (1) there is a "direct causal relationship" between the offense and the license or employment (an analysis that includes consideration of rehabilitation); (2) the employment is in law enforcement or corrections; (3) the individual is not bondable; or (4) issuing a license or granting employment would involve unreasonable risk to property or safety. It also prohibits conviction inquiries on applications, subject to exceptions. By request, denied applicants may be provided reasons for denial. The bill was held in committee for further study. Efforts are supported by [Direct Action for Rights and Equality](#). Introduced by Rep. Scott Slater (D), see [bill information](#).

Commentary: Of note, the factors to determine whether a "direct causal relationship" exists between the offense and the license or employment includes (1) the public policy to encourage people with records to find employment and (2) specifies that a "lack of good moral character" based solely on convictions is not sufficient for denial.

Vermont House 717 (would have applied to public and private employment)

Introduced in Vermont for the first time, this [measure](#) would have prohibited employers from inquiring into an applicant's criminal history unless the inquiry took place during an interview or the applicant was found otherwise qualified for the position. The bill exempts positions that have mandatory or presumptive disqualifications under law. The bill also provides that

employers could be fined up to \$100.00 for each violation. The bill stalled in the House committee. Introduced by Rep. Mark Woodward (D), see [bill information](#).

Commentary: Although the fine is minimal, it provides an example of enforcement.

(2) Employer Negligent Hiring Protections

Many employers hesitate to hire individuals who have been arrested or convicted of a crime—ruling out about 65 million of the country’s adults, even though they may be the best qualified for the job. In many cases, employers know that giving a person a second chance is the right thing to do, but they are concerned that hiring a person with a criminal record might expose them to liability for negligent hiring if the person commits a crime on the job. To address these concerns, five states (Colorado, Florida, Massachusetts, New York, and North Carolina) have previously passed legislation limiting negligent hiring liability for employers who hire people with criminal records. During their 2012 legislative sessions, eight states considered new limitations on negligent hiring liability (Colorado, Minnesota, New Jersey, New York, Ohio, Vermont, West Virginia, and Wisconsin), though only one—Ohio—ultimately adopted new protections.

Model: Limiting employer liability for negligent hiring has often been included as part of a legislative package that also includes new fair hiring requirements or the adoption of certificates of relief for individuals who have demonstrated rehabilitation after receiving a conviction. North Carolina’s provision limiting employers’ liability for negligent hiring, [N.C. Gen. Stat. § 15A-173.5](#), shields an employer who hires an individual with a criminal record from any claim of negligent hiring based on the criminal record if the employee has a Certificate of Relief that the employer knows about.

Successful Legislation

Ohio Senate Bill 337 (immunity from negligent hiring of employee with certificate)

Signed into law by Governor John R. Kasich (R) on June 26, 2012, this [bill](#) creates a certificate of qualification for employment that not only relieves individuals of automatic disqualifications from some state-issued occupational licenses but also provides immunity for employers from negligent hiring liability based on their hiring an individual with a criminal record when they know they are hiring an individual to whom a certificate has been issued. The certificate is available to an individual either six months or one year after completing his or her sentence, depending on the offense, based on certain specified factors. In addition to providing immunity from negligent hiring liability for employers, the certificate can be offered in other cases alleging negligence as evidence of a person’s due care. Introduced by Sen. Bill Seitz (R), see [bill information](#).

Commentary: Like the North Carolina model referenced above, SB 337 provides an employer with immunity from negligent hiring liability when the claim of liability is based on the

employer's alleged lack of due care in hiring an individual with a criminal record. Immunity is the highest level of protection an employer can receive from these claims. SB 337 does not simply reduce employers' exposure to liability for negligent hiring, it completely eliminates the criminal record as a potential source of liability for the employer.

Introduced Legislation

Colorado Senate Bill 12-105 (certificates as evidence of employer's due care)

This [measure](#) would have created certificates of rehabilitation and judicial orders of collateral relief that an employer would be able to offer as evidence of their due care in hiring the employee to whom the certificate or judicial order was issued. The bill passed the Senate on May 8, 2012, but the next day it was postponed indefinitely in the House Committee on State, Veterans, and Military Affairs where it languished until the 2012 legislative term expired. Introduced by Sen. Pat Steadman (D) and Rep. Claire Levy (D), see [bill information](#).

Commentary: At the other end of the spectrum from immunity, identifying certificates of relief as evidence of due care provides a lower level of protection for employers but still should relieve many employers' concerns about liability. Colorado adopted other protections for workers with criminal records during its 2012 session and has some negligent hiring protections already on the books, which may have made passage of SB 12-105 less urgent.

Minnesota House File 489/Senate File 1448 (certificates as evidence of employer's due care as part of UCCA legislation)

[HF489/SF1448](#) would have enacted the Uniform Collateral Consequences Act (UCCA), including a provision that would create orders of limited relief and certificates of restoration of rights that an employer could offer as evidence of due care to defend against a claim for the negligent hiring of an individual with a criminal record to whom such an order or certificate had been issued. Introduced by Rep. Steve Smith (R) and Sen. John Harrington (D), see [bill information](#).

Commentary: Unfortunately, the measure did not make it far in the legislative process in either the House or Senate, but introduction in both houses of the legislature is a promising first step toward relieving Minnesota residents of unreasonable collateral consequences. Demonstrating the momentum building behind these reforms, during their 2012 legislative sessions, [New York](#), [Vermont](#), [West Virginia](#), and [Wisconsin](#) all considered adopting the UCCA and its limitations on employers' negligent hiring liability when they hire individuals who have obtained certificates of relief.

New Jersey Assembly 1434/Senate 863 (use of multifactor employment test would have created rebuttable presumption against employer negligence)

[A 1434/S 863](#) would have required public and private employers to use a multifactor test established to evaluate job applicants with criminal convictions for employment suitability. Under the measure, unless a position was subject to a legal barrier based on a criminal record, employers who used criminal history information to make hiring and retention decisions would have to consider a number of factors, including the state's policy favoring employment for

people with criminal records and job-related factors. Employers who used the multifactor test would be protected from liability by a rebuttable presumption that the employer was not negligent. Introduced by Reps. Bonnie Watson Coleman (D), Albert Coutinho (D) and Grace Spencer (D); and Sen. Sandra Cunningham (D), see [bill information](#).

Commentary: Modeled largely on New York’s approach ([N.Y. Correct. Law § 752](#)), this bill would have required public and private employers who use criminal history information to make employment decisions based on job-related factors, similar to those highlighted in the “ban the box” section. The bill creates a rebuttable presumption that an employer who conducts this analysis has demonstrated an appropriate level of care in determining the suitability of the worker with a criminal record.

(3) Expungement and Sealing: Reducing Employment Barriers

There are more than two million individuals incarcerated in the United States and an estimated 700,000 will be released from prisons this year, with an additional 12 million being released from local jails. As research has shown, the mark of a criminal record is so stigmatizing that the majority of employers will be deterred from hiring a worker because of it. Sealing or expunging criminal history information so that employers are unable to obtain those records may eliminate a barrier to employment, and can serve to ease reentry into the community, reduce recidivism, and improve public safety.

During 2012, at least eight states—Delaware, Georgia, Louisiana, Ohio, Maryland, North Carolina, Tennessee and Utah—adopted measures that authorize or expand expungement relief for criminal convictions. These provisions range from establishing expungement relief for certain felony drug offenses to expanding expungement for defendants whose cases are not handled exclusively in juvenile court. At least eight other states, including Alabama, Florida, Kentucky, Louisiana, Missouri, New Jersey, New York and Rhode Island, introduced expungement provisions during 2012. However, three measures—in New Mexico, South Carolina, and West Virginia—were adopted by the legislature, but vetoed by the governor.

Model: The state of Connecticut offers a model. Advocates there made a successful push for legislation to seal or expunge arrests that did not lead to conviction and old or minor conviction records. The state’s statute, [Conn. Gen. Stat. § 54-142a](#), stipulates that records of arrest not leading to conviction are automatically “erased” and the individual with the erased record may assert that he or she has not been arrested. These types of efforts afford individuals with criminal records a fairer opportunity to rebuild their lives, support their families, and become productive members of their communities.

Successful Legislation

Delaware House Bill 285 (technical fix of juvenile expungement provision)

This [bill](#) enhances the provisions in [House Bill 177](#), enacted in 2011, which dealt with juvenile expungement provisions. The measure addresses confusion that arose following the enactment of a 2011 bill regarding whether a Family Court judge may order expungement of charges arising in other counties. HB 177 authorized expungement for certain juvenile felony and misdemeanor offenses in Family Court. The correction allows the Court to order expungement of charges originating in a different county. Introduced by Rep. Michael Barbieri (D), see [bill information](#).

Commentary: HB 285 offers an example of the need and opportunity to improve upon previously enacted legislation. Additionally, targeting expungement policies to persons with juvenile convictions can offer a second chance and reduce the stigma associated with a youthful conviction.

Georgia House Bill 1176 (sealing of arrest that did not lead to conviction)

This [bill](#) authorizes the sealing (suppression) of cases that were never referred for prosecution, dismissed or nolle prossed, no true bills, and certain low-level drug possession offenses after completion of probation after a certain period of time. "Youth offender" cases with one misdemeanor or a series of misdemeanors stemming from one arrest may be sealed after a period of time. Additionally, the bill authorized "dead docket" cases that are older than 12 months to be sealed at the request of the subject of the record. Introduced by Reps. Golick (R), Neal (R), Willard (R), Lindsey (R), Oliver (D), and Jacobs (R), see [bill information](#).

Commentary: These provisions were part of a larger criminal justice reform bill that included sentencing and reentry reforms. The [Georgia Justice Project](#) worked for almost three years to advocate for major changes to the state's record restriction laws. The original sealing bill was introduced by Rep. Jay Neal as a stand-alone but the provisions were eventually added to the Governor's criminal justice reform package and passed by the Georgia General Assembly earlier in 2012.

Louisiana Senate Bill 403 (expungement for persons with eligible offenses)

[Senate Bill 403](#) authorizes expungement for persons convicted of their first, nonviolent felony offense for certain drug crimes including low-level drug possession, manufacturing, and selling offenses. This bill allows individuals with one felony conviction for possession, distribution or possession with intent to distribute 28 grams or less of cocaine, amphetamines, oxycodone or methadone to apply to have their records expunged. To qualify for expungement, the individual must also have completed a "boot camp" rehabilitation program while in prison. A process already exists for expunging misdemeanor convictions. Introduced by Sen. Jean-Paul Morrell (D), see [bill information](#).

Commentary: The bill drew opposition from the Louisiana District Attorney's Association and lawmakers who encouraged a legislative study of the issue. Other opponents emphasized that

clearing a state criminal record does not necessarily translate into a cleared commercially-prepared report, and thus this bill would generate confusion. An employer may find evidence of a prior conviction on a background check report although the applicant expunged the conviction. If the individual indicated he or she did not have a conviction on the application, then the individual might be accused of dishonesty. Some states have addressed this problem by prohibiting the reporting of dismissed convictions by consumer reporting agencies.

Ohio Senate Bill 337 (authorizes sealing of criminal records)

This [measure](#) includes several expungement provisions to improve reentry outcomes for persons with prior convictions. One provision modifies eligibility requirements for the sealing of a criminal record. The act stipulates that persons are eligible only if convicted of specified offenses and only if they do not have more than one felony conviction, or two separate misdemeanors, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction. Violent and sex offenses are not eligible for expungement. The law will also help persons with juvenile convictions by authorizing expungement after six months instead of two years except in cases involving murder, attempted murder, and rape. The measure expands judicial authority to seal the records of juveniles convicted of certain sex crimes. Introduced by Sen. Bill Seitz (R), see [bill information](#).

Commentary: The measure garnered significant bipartisan support, passing the Ohio Senate by a 27-4 vote at the end of May and legislation mirroring the bill, House Bill 524, passed 96-1 in the Ohio House. Officials who supported the juvenile provisions of the Act emphasized that it will enhance the ability of teens to reenter the community in a constructive way following their incarceration.

Maryland House Bill 708 (expands expungement relief for juvenile convictions)

This [bill](#) authorizes a person to file, and “requires a court to grant,” a petition for expungement of a juvenile criminal charge that was not handled exclusively in juvenile court. Prior to reform, Maryland law authorized expungement relief for cases that were handled exclusively in juvenile court. Introduced by Del. Geraldine Valentino-Smith (D), see [bill information](#).

Commentary: This measure garnered support from children’s and sentencing reform advocates. The bill affords individuals with juvenile convictions access to opportunity through education and other pursuits that build healthy lives, families, and communities. Expanding expungement relief helps to reduce the adverse effects of a criminal record on a person’s ability to lead a productive and meaningful life.

North Carolina House Bill 1023 (expungement for certain low-level offenses)

This Act allows individuals with nonviolent misdemeanors or felonies to expunge their records after 15 years.

Commentary: The bill garnered bipartisan support and was signed after a two-month wait. It passed through both the House and the Senate after being amended four times, and was a victory for its Republican champion. There were efforts to get the 15-year wait time reduced,

but that timeframe was the only number that garnered the support needed for enactment. The measure had failed during the 2009-2010 legislative cycle. Introduced by Rep. Leo Daughtry (R), see [bill information](#).

Tennessee House Bill 2865 (expungement for low-level misdemeanors and felonies)

This [bill](#) authorizes expungement relief for individuals convicted of certain first-time, non-violent and non-sexual misdemeanors, and Class E felonies after a five-year waiting period. At the time of application for expungement, the individual must have met all conditions of supervised or unsupervised release, including the payment of all fines and restitution. Introduced by Rep. Karen Camper (D), see [bill information](#).

Commentary: This measure garnered broad support, including an endorsement from the Tennessee District Attorneys General Conference, which worked with the bill sponsors to create the list of eligible offenses and the steps necessary to have the crimes expunged. The measure requires a \$350 filing fee for expungement that is expected to fund costs associated with the process, as well as provide revenue for the state's general fund.

Utah Senate Bill 201 (expands expungement relief under certain circumstances)

[SB 201](#) expands expungement relief to include specified traffic offenses. The measure authorizes individuals to petition the Bureau of Criminal Identification of the Department of Public Safety for a certificate of eligibility to expunge records of arrest, investigation, and detention, subject to specified conditions. Introduced by Sen. Curtis Bramble (R), see [bill information](#).

Commentary: Until passage of this bill, Utah motorists could not have their driving records cleared, although specified criminal offenses could be expunged after a certain amount of time. Senator Curtis Bramble, a Republican, agreed to pursue a change in the law after hearing from a constituent who was denied employment as a truck driver because of a 5-year-old citation for running a red light.

Vetoed Legislation

New Mexico Senate Bill 2 (would have authorized expungement relief)

Governor Susana Martinez (R) vetoed this expungement [measure](#). The Act would have codified the authority of the courts to expunge an individual's criminal conviction in specified circumstances. One provision of the bill authorizes expungement for the wrongfully convicted or for individuals convicted of certain misdemeanor or felony offenses. The Governor, a former prosecutor, said she could not sign a bill that would "fundamentally and negatively alter the New Mexico criminal justice system." Introduced by Sen. Michael Sanchez (D), see [bill information](#).

Commentary: With bipartisan support, the bill passed the New Mexico Senate 35-4 and the House 41-27. Lawmakers also said the bill was an important tool to help people move forward from petty crimes committed years earlier. Twice before, the legislature had approved bills to

allow criminal record expungement, but those measures were each vetoed by former Governor Bill Richardson (D).

South Carolina House Bill 3127 (would have authorized expungement relief)

Governor Nikki Hayley (R) vetoed this [measure](#), authorizing persons seeking a pardon also to apply to the South Carolina Board of Pardons and Paroles for expungement if ten years had passed since the completion of all terms and conditions of their sentence. The bill also would have authorized prosecuting attorneys and law enforcement agencies to file an objection opposing an individual’s expungement application. Introduced by Rep. Todd Rutherford (D), [see bill information](#).

Commentary: Law enforcement fiercely opposed the bill. The goal of the legislation, supporters said, was to make it easier for people who made youthful mistakes to get a job. However, lawmakers opposing the bill argued it had an overly broad list of eligible offenses. The Governor has committed to working with the bill’s champion to develop a narrower bill that would improve employment opportunities for pardoned individuals convicted of eligible offenses.

West Virginia Senate Bill 547 (would have authorized expungement for certain offenses)

Governor Earl Ray Tomblin (D) vetoed this [measure](#). This bill would have removed the current age restriction (18-26) and expanded possible expungement relief to those convicted of certain nonviolent felonies three years after the end of any sentence or probation, whichever is later. Introduced by Sen. Mark Wills (D), [see bill information](#).

Commentary: Lawmakers should consider the benefits of reducing the stigma associated with prior convictions for individuals who have demonstrated rehabilitation before rejecting such changes in policy.

(4) Federal Opt-Out Legislation: Restoring Public Benefits

The federal welfare law imposes a lifetime ban on anyone convicted of a drug-related felony from receiving federally funded food assistance (Supplemental Nutrition Assistance Program, or SNAP) and cash assistance (Temporary Assistance to Needy Families, or TANF). Unless a state passes legislation opting out of the federal law, individuals with these convictions are permanently barred from receiving benefits even if they have completed their sentence, overcome an addiction, been gainfully employed and subsequently laid off, or earned a certificate of rehabilitation or other form of clemency. Denying persons with felony drug convictions food, clothing, and shelter makes it more difficult for them to support themselves as they leave the criminal justice system and reenter society. An additional barrier can arise when states institute suspicion-based drug testing programs for people applying for different forms of public benefits and consider a criminal record or drug felony conviction a form of “reasonable” suspicion.

A majority of states have eliminated or modified the lifetime ban on SNAP and TANF for people with felony drug convictions because of the recognition that public assistance is sometimes

essential in the lives of indigent individuals with a prior criminal conviction. Modifications include permitting an individual to receive benefits if he or she has completed the sentence or drug or alcohol treatment, limiting the duration of the ban, or permitting individuals with convictions for simple possession to receive benefits. However, 9 states maintain the federal ban for SNAP, and 10 states maintain the federal TANF ban without modification. These states permanently deny benefits, even if the underlying crime occurred years before and regardless of an individual's successful job history, participation in drug and alcohol treatment, or other evidence of rehabilitation.⁶

During 2012 at least four states—Alabama, California, Missouri, and Pennsylvania—introduced measures to improve access to public benefits for persons with felony drug convictions. Unfortunately, none of these measures was adopted in 2012. However, [Georgia](#), [Oklahoma](#), [Tennessee](#), [Utah](#) and [West Virginia](#), all adopted measures that require drug testing for individuals applying or receiving public benefits ranging from cash assistance to workforce readiness programs. While no state opted out of the drug felony ban in 2012, champions of the opt-out legislation in states that introduced measures worked to shift the mood and potentially laid the groundwork through advocacy and public education for future legislative cycles.

Model: Fifteen states and the District of Columbia have eliminated the SNAP ban and thirteen states have eliminated the TANF ban.⁷ The [Maine](#) and [Ohio](#) statutes are good examples of laws that “opt out” of the federal ban on people with drug felony convictions receiving food stamps or TANF. These measures specifically reference the federal law as required by statute, yet Ohio in particular avoids raising “red flags” by omitting potentially controversial language such as “people with drug felony convictions are eligible to receive benefits.” States wishing to eliminate the federal ban should model language on these statutes.

Introduced Legislation

Alabama House Bill 53 (eligibility for federal benefits for certain persons)

[HB 53](#) would have modified eligibility for SNAP and TANF for persons with felony drug convictions if they met certain conditions. Specifically, the measure would have authorized eligibility upon completion of a sentence, or upon the applicant satisfactorily serving a sentence of probation including participating in mandatory drug or alcohol treatment. Introduced by Sen. Coleman (D), see [bill information](#).

Commentary: According to recent reports, of Alabama's more than 4.7 million residents, 1.7 million are receiving assistance for food. SB 328 would have relaxed eligibility requirements for persons with felony drug convictions. Critics of SB 328 said the ban should be kept because it deters people from becoming involved in illegal drug activity. Supporters argued the assistance helps individuals with felony drug convictions sustain themselves and their families and obtain

⁶ Legal Action Center. 2011. “Opting Out of Federal Ban on Food Stamps and TANF,” available at <http://www.lac.org/toolkits/TANF/TANF.htm>.

⁷ *Ibid.*

drug and alcohol treatment and other essential services, which increase public safety and reduce crime.

California Senate Bill 1060 (eligibility for federal benefits for certain persons)

CalWORKS eligibility would have been expanded to include persons with felony drug convictions, if they met certain requirements for eligibility under this bill. CalWORKS is a welfare program that gives cash aid and services to eligible needy California families. The grants are primarily used by families to pay some of their housing costs. SB 1060 would have allowed California to join 13 other states in opting out of the federal lifetime ban on receiving TANF funding for those with past drug felonies. California already allows those with certain drug-related felonies to receive SNAP or CalFresh benefits. Introduced by Sen. Loni Hancock (D), see [bill information](#).

Commentary: California’s “realignment” shifts responsibility from the state to counties for the custody, treatment, and supervision of individuals convicted of specified nonviolent, non-serious, non-sex crimes. Counties believed that SB 1060 would have provided an important tool post-realignment by supporting individuals’ reintegration into the communities. Supporters of SB 1060 believed that in the long-term, the bill would have assisted in reducing recidivism. The bill passed out of the Senate Human Services Committee, but stalled in the Senate Appropriations Committee.

Missouri House Bill 1238 (eligibility for federal benefits for certain persons)

This [bill](#) would have modified eligibility for persons with felony drug convictions if the Missouri Department of Social Services determined the individual satisfactorily completed drug treatment, was accepted for treatment, or was on the waiting list for treatment. Introduced by Rep. Bob Nance (R), see [bill information](#).

Commentary: Bills were introduced in both chambers. HB 1238 was championed by a Republican legislator who garnered bipartisan support for the bill and shepherded the measure out of committee. The bill made it farther in 2012 than in previous sessions when it was amended and made part of a larger crime bill. Unfortunately, the legislation did not move in the Senate. Supporters of the bill included the Missouri Association for Social Welfare and the Kansas City Metropolitan Crime Commission.

Pennsylvania Senate Bill 1173 (eligibility for federal benefits for certain persons)

This [bill](#) would have expanded eligibility for federal public assistance to include individuals with felony drug convictions if they complied with certain conditions including participating in court ordered substance abuse treatment and submitting to drug testing. Introduced by Sen. Donald White (D), see [bill information](#).

Commentary: Pennsylvania has modified the federal drug felon ban. People convicted of felony or misdemeanor offenses are eligible for cash or food stamps once they have “satisfied the penalty” (i.e. remain in compliance with probation/parole obligations, completed their sentence and/or paid any fines, costs and/or restitution imposed). Expanding eligibility while

also institutionalizing drug testing requirements is regressive and may further stigmatize persons with felony convictions who are attempting to reintegrate into the community.

(5) Felony Enfranchisement: Restoring Voting Rights

As of 2010 a record 5.85 million people⁸ were ineligible to vote as a result of a felony conviction. The number of disenfranchised persons has increased dramatically in recent decades, rising from an estimated 1.17 million in 1976 to 5.85 million today, as the number of people under correctional control has sky-rocketed. In recent years, significant reforms in felony disenfranchisement policies have been achieved at the state level. Increased public exposure has resulted in legislative initiatives that expand civil rights to individuals with felony convictions and in neighborhood-level efforts to educate and register people with felony convictions.

This escalation in attention to felony disenfranchisement policies has translated into substantial state-level reform. Since 1997, twenty-three states⁹ have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility. During 2012, several states, including Virginia, Kentucky, and Oklahoma, introduced measures to expand voting rights to persons with felony convictions. However, only one state legislature— Delaware—authorized a measure to extend voting rights to persons with felony convictions.

Model: Only two states, Maine and Vermont, allow incarcerated persons the right to vote. While it is unlikely that many states would consider extending voting rights to people in prison in the short run, it may be possible as the experiment of American democracy continues. As noted, twenty-three states have enacted some type of reform to their felony disenfranchisement practices since 1997—a remarkable pace of activity in a relatively short period.

Successful Legislation

Delaware House Bill 9 (repeals waiting period to have voting rights restored)

This [Act](#) amends the Delaware Constitution to eliminate the five-year waiting period for persons with certain felony convictions who have fully discharged their sentences, before their voting rights are restored. The same version of HB 9 must pass next year in order to be enacted as a constitutional amendment and does not have any force of law until then. Introduced by Rep. Keeley (D), see [bill information](#).

Commentary: Currently, Delaware disenfranchises approximately 46,600 individuals, including over 28,000 who have completed their sentence. In Delaware, African Americans constitute

⁸ Uggen C., Shannon S. and Manza J. 2012. “State-Level Estimates of Felon Disenfranchisement in the United States, 2010.” The Sentencing Project. Washington D.C.

⁹ Porter N. 2010. “Expanding the Vote: State Felony Disenfranchisement Reform, 2010.” The Sentencing Project, Washington D.C.

about 45% of those disenfranchised, an estimated 20,862 persons. Delaware is one of only 11 states in which a felony conviction can result in the loss of voting rights post-sentence. This measure would align Delaware with a majority of states, including Pennsylvania, Maryland, and West Virginia—states with less restrictive disenfranchisement policies. Supporters of HB 9 included the Delaware Center for Justice, ACLU of Delaware, League of Women Voters, Delaware Commission for Women, and the NAACP Delaware State Conference.

Introduced Legislation

Kentucky House Bill 70 (would have amended constitution to authorize voting rights)

This measure would have amended the Kentucky constitution to restore voting rights for people with convictions after expiration of probation, final discharge from parole, or maximum expiration of sentence, unless the person was convicted of treason, intentional killing, a sex crime, or bribery. Introduced by Rep. Jesse Crenshaw (D), see [bill information](#).

Commentary: Currently, Kentucky disenfranchises over 243,000 individuals with felony convictions. HB 70 passed out of the Kentucky House in 2012 but did not advance beyond the committee level in the Senate. Supporters of the Kentucky voting rights amendment included the Kentuckians for the Commonwealth, ACLU of Kentucky, Kentucky State Conference of the NAACP, and the League of Women Voters.

Virginia House Bill 16 (would have authorized voting rights for persons with certain offenses)

Delegate Greg Habeeb, a conservative Republican, championed this bill to extend voting rights to individuals with eligible offenses. HB 16 would have authorized automatic restoration of civil rights to persons convicted of nonviolent felonies (excepting felony drug and election fraud crimes) upon completion of their sentence. Currently, in Virginia all persons convicted of a felony are barred from voting for life, absent gubernatorial action. Introduced by Del. Greg Habeeb (R), see [bill information](#).

Commentary: Legislation was also introduced in 2012 to amend the constitution to extend rights to all individuals with felony convictions. More than 451,000 individuals are disenfranchised in Virginia. The Governor has the sole discretion to restore a person's civil rights under the Virginia Constitution. While there is no process for appealing his decision, a person may reapply after one year. Governor Bob McDonnell (R) reports that he has restored voting rights to more than 3,000 individuals with felony convictions since taking office.¹⁰ Organizations working to restore voting rights in the state include the Advancement Project, ACLU of Virginia, and the NAACP State Conference of Virginia.

¹⁰ Bryan A. and Jones S., "Would restoring felon voting rights change VA's political landscape?" WTVR.com July 25, 2012. Download online on August 23, 2012: <http://wtvr.com/2012/07/25/would-restoring-felon-voting-rights-change-vas-political-landscape/>

(6) Uniform Collateral Consequences of Conviction Act Legislation

As discussed above, collateral consequences, such as employment barriers and public benefit restrictions which are often not disclosed during sentencing or pleading—can follow an individual for a lifetime. Because of this, the American Bar Association incorporated several standards that equip jurisdictions with information and resources to regulate the breadth and impact of collateral consequences on individuals who are convicted of crimes. In accordance with these standards, the Uniform Law Commission drafted what became the [Uniform Collateral Consequences of Conviction Act](#) to address the impact of collateral consequences on an individual after criminal sentencing and to provide a relief mechanism for those affected.

Model: The Uniform Collateral Consequences of Conviction Act (UCCCA), published in 2009, has six key provisions including the collection and notification of collateral consequences at critical times in a criminal case. It requires that collateral sanctions be authorized by statute and that an individual convicted of a crime can be disqualified from the receipt of a benefit or opportunity, but only if it is closely related to the conviction(s). It further ensures that pardoned or overturned convictions may not be subject to collateral consequences and gives jurisdictions a choice about other types of relief based on rehabilitation or good behavior. Finally, it provides two mechanisms of relief which begin as early as sentencing and another after a period of law-abiding conduct, entitled An Order of Limited Relief and a Certificate of Restoration of Rights, respectively. Though UCCCA has not been enacted in its entirety by any state, advocates are hopeful that the next legislative session will achieve this milestone.

Introduced Legislation

Minnesota House Bill 489/Senate Bill 1448 (would have enacted the UCCCA in its entirety) [HB 489/SB 1448](#) was introduced for the second time this year. It would have implemented the UCCCA and other laws regarding collateral consequences and the rehabilitation of criminal offenders, which conformed to the uniform act. If it had passed, it would have repealed all statutes in chapter 609B surrounding collateral sanctions. Introduced by Rep. Steve Smith (D) and Sen. John Harrington (D), see [bill information](#).

Commentary: This bill was brought forward to the committee by the [Uniform Law Commission](#) but received considerable opposition from lawmakers concerned that adopting such a measure would appear too soft on crime. Advocates from the ULC will be meeting in September to determine the best way to proceed with this legislation next year.

New York Assembly 8546 (would have required the collection and notification of collateral consequences)

This [bill](#) would have required the Division of Criminal Justice Services to compile an exhaustive list of collateral consequences that can affect an individual at guilty plea and that such individuals would be advised of collateral consequences that flow from a particular conviction.

It also would have required access for defendants to existing online resources. Introduced by Asm. Joseph Lentol (D), see [bill information](#).

Commentary: If passed, this bill would have supplemented the online resources New York currently provides that explain the impact of collateral consequences with a mechanism for calculating sanctions or disqualifications specifically in immigration and housing eligibility. It is currently being revised and will be introduced again next year.

Vermont Senate 38 (would have enacted the UCCCA in its entirety)

This [bill](#) received bipartisan support in the House and was unanimously passed. In the Senate, there was concern about whether the study of collateral consequences was extensive enough to act on. Further action was deferred until the next legislative session. Introduced by Sen. Dick Sears (D), see [bill information](#).

Commentary: The first portion of the Collateral Consequences of Conviction Study conducted by the American Bar Association will be released in late September and is expected to address concerns raised in the Senate regarding the lack of documentation of collateral consequences.

West Virginia House Bill 2010/Senate Bill 340 (would have enacted the UCCCA in its entirety)

[HB 2010/SB 340](#) was originally recommended by the Joint Standing Committee on the Judiciary, though no action was taken. It was reintroduced this year but never received a public hearing and stalled in committee. Introduced by Del. Tim Miley (D), see [bill information](#).

Commentary: Advocates of this bill continue to be hopeful that more headway can be gained next session with additional support from local organizations and individuals.

Wisconsin Senate Bill 304 (would have enacted the UCCCA in its entirety)

This [bill](#) would have provided a list of collateral consequences that result from the application of state law and administrative rules. It provides the charged individual with information about collateral consequences when he or she is charged or indicted. The bill did not receive a public hearing and stalled in committee due to opposition from the chair. Introduced by Sen. Lena Taylor (D); Sen. Jim Holperin (D); Sen. Fred Risser (D), see [bill information](#).

Commentary: Criminal justice reform has been slow moving in Wisconsin due to polarized views on the rights of individuals previously incarcerated. Sponsoring offices will reintroduce this legislation next year.

Summary of State Reforms: 2012 Legislative Round-Up

State	Bill Numbers	Category of State Reform
Alabama	HB 53 (introduced)	Federal opt-out
California	(1) AB 1831 (introduced) (2) SB 1060 (introduced)	(1) Ban the box (2) Federal opt-out
Colorado	(1) HB 12-1263 (passed) (2) SB 12-105 (introduced)	(1) Ban the box (2) Employer negligent hiring protections
Delaware	(1) HB 285 (passed) (2) HB 9 (passed)	(1) Expungement (2) Felony Enfranchisement
Georgia	HB 1176 (passed)	Sealing
Illinois	HB 1210 (introduced)	Ban the box
Kentucky	HB 70 (introduced)	Felony Enfranchisement
Louisiana	SB 403 (passed)	Expungement
Maryland	(1) SB 671/HB 800 (introduced) (2) HB 708 (passed)	(1) Ban the box (2) Expungement
Minnesota	(1) HF 1448/ SF 1122 (introduced) (2) HF 489/ SF 1448 (introduced)	(1) Ban the box (2) Employer negligent hiring protections; UCCCA
Missouri	HB 1238 (introduced)	Federal opt-out
New Jersey	(1) A 2300 (introduced) (2) A 1434/ S 863 (introduced)	(1) Ban the box (2) Employer negligent hiring protections
New Mexico	SB 2 (vetoed)	Expungement
New York	A 8546 (introduced)	UCCCA
North Carolina	HB 1203 (passed)	Expungement
Ohio	SB 337 (passed)	Employer negligent hiring protections; Sealing
Pennsylvania	SB 1173 (introduced)	Federal opt-out
Rhode Island	HB 7760/ SB 2411 (introduced)	Ban the box
South Carolina	HB 3127 (vetoed)	Expungement
Tennessee	HB 2865 (passed)	Expungement
Utah	SB 201 (passed)	Expungement
Vermont	(1) H 717 (introduced) (2) S 38 (introduced)	(1) Ban the box (2) UCCCA
Virginia	HB 16 (introduced)	Felony Enfranchisement
West Virginia	(1) SB 547 (vetoed) (2) HB 2010/ SB 340 (introduced)	(1) Expungement (2) Felony Enfranchisement; UCCCA
Wisconsin	SB 304 (introduced)	UCCCA

About the Organizations

The [ACLU](#) is our nation's guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

[Crossroad Bible Institute](#) is the largest prison mentoring program in the United States and abroad, providing faith-based reentry education to incarcerated persons for successful reentry upon release since 1984. CBI educates the church, religious communities and the public on criminal and restorative justice issues. We break down barriers for formerly incarcerated persons by informing and influencing state policy with the help of affiliates nationwide.

The [Legal Action Center](#) is the only non-profit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas. LAC's [National HIRE Network Project](#) focuses on public policy advocacy for people with criminal records.

The [National Employment Law Project](#) is a national organization that conducts research, education and advocacy on issues affecting low-wage and unemployed workers.

[The Sentencing Project](#) is a national organization that works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.