

# Updates on State Criminal Justice Policies and Programs that Affect Access to Employment

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Almost half of men in the labor pool and more than 25% of workers in the active workforce have a prior conviction which can pose a significant barrier to employment and income.<sup>1</sup> Upon reentering the labor market after incarceration, formerly incarcerated individuals suffer from lower skills and work experience, lack of access to social networks that might help them get jobs, and discrimination.<sup>2,3</sup> Among the many challenges they face are employer fears about their work performance and concern about the possibility of future criminal conduct, even in low-risk situations.<sup>4</sup>

In 2016, 47% of people in state prisons and 57% in federal prisons were parents of minor children and most of these are fathers.<sup>5</sup> Not only do unemployed ex-offenders experience higher rates of recidivism than their employed counterparts, but their children are also more apt to grow up in poverty, and to suffer from a cluster of disadvantages and negative outcomes, including intergenerational poverty.<sup>6</sup>

- 1 National Conference of State Legislatures. (2024). *Barriers to work: Increasing access to licensed occupations for individuals with criminal records*. <https://www.ncsl.org/labor-and-employment/barriers-to-work-improving-employment-in-licensed-occupations-for-individuals-with-criminal-records>.
- 2 Holzer, H., Raphael, S., & Stoll, M. (2007). The effect of an applicant's criminal history on employer hiring decisions and screening practices: Evidence from Los Angeles. In S. Bushway, M. Stoll, & D. Weiman (Eds.) *Barriers to reentry? The labor market for released prisoners in post-industrial America*. Russell Sage Foundation. <https://gspp.berkeley.edu/research-and-impact/publications/the-effect-of-an-applicants-criminal-history-on-employer-hiring-decisions-a>.
- 3 Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 108(5), 937-975. <https://doi.org/10.1086/374403>
- 4 Bushway, S., Cabrerros, I., Paige, J. W., Schwam, D., & Wenger, J. B. (2022). Barred from employment: More than half of unemployed men in their 30s had a criminal history of arrest. *Science Advances*, 8(7). <https://doi.org/10.1126/sciadv.abj6992>.
- 5 Ghandnoosh, N., Stammen, E., & Muhitch, K. (2021). *Parents in prison*. The Sentencing Project. Retrieved from <https://www.sentencingproject.org/publications/parents-in-prison>
- 6 Duwe, G., & Henry-Nickie, M. (2021). *A better path forward for criminal justice: Training and employment for correctional populations*. Brookings-AEI Working Group on Criminal Justice Reform. <https://www.brookings.edu/articles/a-better-path-forward-for-criminal-justice-training-and-employment-for-correctional-populations/>.

This brief provides updates on recent state actions that may affect the access of formerly incarcerated individuals to more and better jobs as well as actions that reflect a resurgence of "tough on crime" policies. It augments Chapter 4 of *Policies and programs affecting fathers: A state-by-state report* (Pearson & Wildfeuer, 2022).<sup>7</sup>

## State Legislative Measures that Might Increase Access to Employment

### Clean Slate Legislation

Record clearing laws aim to allow greater access to jobs and housing for people who were previously involved with the criminal justice system and are considered rehabilitated. They either shield or expunge (erase) certain misdemeanor and felony convictions in a person's past without requiring people with criminal records to go through a complicated process that involves petitioning a judge or court. Currently, 25 states have at least one statutory automatic record clearing provision.<sup>8</sup>

A subset of those states has enacted legislation, known as "clean slate laws", that automates the record clearing process. The minimum features of effective legislation established by the Clean State Initiative include automation of record clearance, automatic clearance upon meeting eligibility standards established by the state, inclusion of arrest records, inclusion of misdemeanors and a strong recommendation for laws to include eligibility for at least one felony record.<sup>9</sup>

The Clean Slate Initiative has identified 12 states that have passed laws meeting their more stringent criteria. These states, and their dates of enactment, are: **California** (2022), **Colorado** (2022), **Connecticut** (2020), **Delaware** (2021), **Michigan** (2020), **Minnesota** (2023), **New Jersey** (2019), **New York** (2023), **Pennsylvania** (2018), **Oklahoma** (2022), **Utah** (2019), and **Virginia** (2021).<sup>10</sup> Additionally, in 2023, the **District of Columbia** enacted legislative provisions providing for the automatic expungement of certain misdemeanor and felony offenses and **Illinois** enacted legislation providing for the sealing or vacation and expungement of trafficking victims' crimes.<sup>11</sup>

There are active Clean Slate campaigns in many states as well as support building for future efforts in others. Twelve states have Clean Slate Coalition websites, eight of which have passed legislation (**Colorado**, **Connecticut**, **Delaware**, **Illinois**, **Michigan**, **New York**, **Pennsylvania**, and **Utah**) and four of which have not yet passed legislation (**Kentucky**, **Missouri**, **North Carolina**, and **Texas**).<sup>12</sup>

7 Pearson, J., & Wildfeuer, R. (2022). *Policies and programs affecting fathers: A state-by-state report* (Chapter 4: Criminal Justice). Center for Policy Research and Fatherhood Research & Practice Network. <https://www.frpn.org/asset/policies-and-programs-affecting-fathers-state-state-report-chapter-4-criminal-justice>.

8 National Conference of State Legislatures. (2024). *Automatic and/or automated criminal record clearing*. <https://www.ncsl.org/civil-and-criminal-justice/automatic-criminal-record-clearing-database>.

9 Sinyangwe, S., & Kelley, J. (2024). *Clean slate laws: Pathways to equity and justice for Black communities in America*. Clean Slate Initiative. <https://www.cleanslateinitiative.org/research-data-publications/2024-bhm-policy-short>.

10 Clean Slate Initiative. (2024). *Clean slate in states*. <https://www.cleanslateinitiative.org/states>.

11 National Conference of State Legislatures. (2024). *Barriers to work: Increasing access to licensed occupations for individuals with criminal records*. <https://www.ncsl.org/labor-and-employment/barriers-to-work-improving-employment-in-licensed-occupations-for-individuals-with-criminal-records>.

12 Clean Slate Initiative. (2024). *Clean slate in states*. <https://www.cleanslateinitiative.org/states>.

## Occupational Licensing and Credentialing

Fair chance licensing laws seek to expand access to licensure for individuals with criminal histories. They remove provisions that automatically disqualify people with criminal records from engaging in certain types of jobs, drop regulations that exclude from practice people with a criminal record because they "lack moral character," and end costly occupational licensure procedures that present additional burdens for justice-impacted individuals.<sup>13</sup> An [interactive map](#) created by the Council of State Government's Justice Center shows that 18 states (Arizona, Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Mississippi, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, Washington, Wisconsin, and West Virginia) have fully prohibited disqualifications of persons with criminal backgrounds based on vague terms such as "lack of moral character," or "any crime" and an additional five states (Kentucky, Missouri, New Jersey, Utah, and Wyoming) have partially addressed the problem of broad disqualification.<sup>14</sup>



The following are examples of additional legislation enacted by states since 2020 that aim to overcome barriers to occupational licensing and credentialing for those with criminal records.<sup>15</sup> They include:

- **Arizona's** 2021 measure to restore occupational licensure for individuals who have had a judgement of guilt set aside by issuing a "certificate of second chance,"
- **Colorado's** 2022 measure requiring its Department of Regulatory Agencies to audit the occupations they regulate to determine barriers to entry for individuals with a criminal history,
- **Maine's** 2023 measure to reestablish a Criminal Records Review Committee and to submit a report with findings and recommendations,
- **Minnesota's** 2023 legislation directing the Bureau of Criminal Apprehension to maintain a computerized data base relating to certain misdemeanor and felony offenses that may become eligible for expungement,
- **New Mexico's** 2021 measure that provides for expungement of arrest and conviction records for certain cannabis offenses, dismisses sentences of incarcerated persons, and revises the list of criminal records that

13 National Conference of State Legislatures. (2024). *Barriers to work: Increasing access to licensed occupations for individuals with criminal records*. <https://www.ncsl.org/labor-and-employment/barriers-to-work-improving-employment-in-licensed-occupations-for-individualswith-criminal-records>.

14 The Council of State Governments. (2024). *Fair Chance Licensing Project: States expand access to in-demand jobs*. <https://csgjusticecenter.org/projects/fair-chance-licensing/state-by-state-licensing-maps>.

15 National Conference of State Legislatures. (2024). *Barriers to work: Increasing access to licensed occupations for individuals with criminal records*. <https://www.ncsl.org/labor-and-employment/barriers-to-work-improving-employment-in-licensed-occupations-for-individuals-with-criminal-records>.

cannot be considered in an application for public employment, licensure, or other authority to practice a trade, business, or profession,

- **Tennessee's** 2023 measures that 1) provides for the cost-free removal of public records of a person who has been charged with a misdemeanor or felony upon petition by that person, and 2) provides that a person who was convicted of illegal registration or voting is eligible for expungement,
- **Vermont's** 2020 measure that provides a pre-application determination regarding whether an applicant's criminal background would disqualify the applicant from licensure, and give the applicant a second chance determination if requested and upon payment of a \$25 fee, and
- **Washington's** 2022 measure that revises the process for an individual with a criminal conviction to request a determination of whether that criminal history is disqualifying for obtaining a professional license.

### State Legislative Measures that Might Restrict Access to Employment

Not all legislative action has been favorable to people with a criminal history. Despite decreases in violent crime to pre-COVID levels in 2022, public opinion has hardened. In a Gallup poll released in November 2023, 58% of respondents said that they believed the “criminal-legal system is too soft,” up from 41% in 2020. Additionally, for the first time in 30 years, the percentage of Americans who think the United States is “not tough enough on crime” grew. In at least some jurisdictions, these reversals in public sentiment are translating to recriminalizations of certain behavior and/or enactment of other “tough-on-crime” policies.<sup>16</sup> The following are some examples.

**Oregon** rolled back a 2020 voter-approved measure that made the personal use of illicit drugs as heroin, cocaine, and methamphetamine only punishable by a ticket and a maximum fine of \$100. Thus, on April 1, 2024, its Democratic governor signed into law a bill that makes possession of small amounts of drugs a misdemeanor punishable by up to six months in jail, although the new law also offers ways for treatment to be offered as an alternative to criminal penalties.<sup>17</sup>

In March 2024, **San Francisco** voters approved a ballot initiative that would require drug screenings for welfare recipients and loosen restrictions on police operations. In a similar vein, the **District of Columbia** enacted a package of laws that toughen penalties for gun crimes, establishes drug-free zones and allows police to collect DNA from suspects before a conviction.

The **Vermont** House recently approved a bill that would stiffen repeat retail theft violations, allowing aggregation of stolen goods' value to shift charges from misdemeanors to felonies. Similarly, in **California**, a bipartisan effort is underway to allow prosecutors to charge repeat retail theft offenders on a cumulative basis for goods stolen. If enacted, it would amend a voter approved initiative passed in 2014 to reduce prison overcrowding which raised the threshold to \$950 of stolen goods for shoplifting to be considered a felony and reclassified some drug charges from felonies to misdemeanors.

16 Hernández, A. (2024). 'Tough-on-crime' policies are back in some places that had reimagined criminal justice. Stateline. <https://stateline.org/2024/03/18/tough-on-crime-policies-are-back-in-some-places-that-had-reimagined-criminal-justice/>.

17 AP News. (2024). Oregon governor signs a bill recriminalizing drug possession into law. [https://apnews.com/article/oregon-drug-recriminalization-law-signed-governor-96e36ed60e999572bbf47c160b412a73?utm\\_source=copy&utm\\_medium=share](https://apnews.com/article/oregon-drug-recriminalization-law-signed-governor-96e36ed60e999572bbf47c160b412a73?utm_source=copy&utm_medium=share).

**Louisiana** legislators met for a special session in 2024 and considered numerous bills including allowing 17-year-olds to be charged as adults, unsealing some juvenile criminal records, limiting post-conviction appeals and expanding the state's methods of performing executions to include nitrogen gas and electrocution.

**Tennessee's** Senate passed a bill that would overturn a Memphis city ordinance that bans the practice of police using minor traffic infractions such as broken taillights as grounds to investigate motorists for more serious crimes.

**Georgia's** legislature passed a bill that would add 30 additional felony and misdemeanor crimes to the state's list of bail-restricted offenses and consequently require people accused of those crimes to post cash bail.<sup>18</sup>

**New Mexico's** Democratic governor announced a special legislative session on public safety in mid-summer, 2024, to address violent crime including proposals to allow judges to order criminal defendants with mental health or substance abuse problems into treatment programs treatment, new restrictions on panhandling on busy thoroughfares and increased criminal penalties for felons in possession of a firearm.<sup>19</sup>

In **North Carolina**, legislation has been approved by a House Committee that would end the automatic removal of some criminal records.<sup>20</sup>

## Conclusions

Recent criminal justice policy reflects both the adoption of more progressive policies as well as their undoing. Even as states adopt measures to make it less likely that years-old crimes don't perpetually block people from jobs and professional opportunities, they are also enacting laws to recriminalize certain street drugs and behaviors, toughen penalties, and expand police powers. Nor is the adoption of key reform legislation like a "clean slate law" a panacea for ex-offenders. For example, although Colorado's 2022 Clean Slate Act enables an automatic record sealing process that removes certain convictions from background checks without requiring the defendant to take any action, the defendant must remain conviction-free for seven years before misdemeanors can be automatically



18 Hernández, A. (2024). 'Tough-on-crime' policies are back in some places that had reimagined criminal justice. Stateline. <https://stateline.org/2024/03/18/tough-on-crime-policies-are-back-in-some-places-that-had-reimagined-criminal-justice/>.

19 Lee, M. (2024). New Mexico special legislative session to focus on public safety initiatives. AP News. [https://apnews.com/article/new-mexico-governor-special-session-crime-cc70807f7adb7e1738439e72283a8a45?utm\\_source=copy&utm\\_medium=share](https://apnews.com/article/new-mexico-governor-special-session-crime-cc70807f7adb7e1738439e72283a8a45?utm_source=copy&utm_medium=share).

20 Robertson, G. D. (2024). Bill OK'd by North Carolina House panel would end automatic removal of some criminal records. AP News. [https://apnews.com/article/north-carolina-legislature-criminal-records-erasure-782d2ba11cce59f14330d337715b062a?utm\\_source=copy&utm\\_medium=share](https://apnews.com/article/north-carolina-legislature-criminal-records-erasure-782d2ba11cce59f14330d337715b062a?utm_source=copy&utm_medium=share).

sealed and 10 years for felonies. In addition, a recent investigation revealed considerable variation in the implementation of the Clean Slate Act, with prosecutors in Colorado counties imposing different standards for conviction sealing. While prosecutors in some counties objected to fewer than 1% of cases eligible for automatic sealing, prosecutors in other counties objected to up to 31%.<sup>21</sup>

With more than 600,000 individuals released from state and federal prisons each year, it is imperative that the federal government do more to address unemployment and underemployment among workers reentering the labor market after incarceration.<sup>22</sup> The challenges to additional federal support are considerable. For example, in 2023, Congress introduced but did not pass a bill (H.R. 2930) to automatically seal records related to: 1) a conviction for simple possession of a controlled substance or for any nonviolent offense involving marijuana, or 2) an arrest for an offense that does not result in a conviction.<sup>23</sup> Additionally, although the federal Reentry Employment Opportunities (REO) program, with a 2023 budget of \$115 million, assists returning offenders with retaining employment, the program operates as an "Evaluations and Research" activity that is administered by the Employment and Training Administration of the U.S. Department of Labor, rather than being a core component of the federal workforce development statute, the Workforce Innovation and Opportunity Act (WIOA). According to a recent brief by Jobs for the Future, the REO program's competitive grant structure outside of WIOA authority limits its scope and effectiveness. Unlike WIOA-authorized programs, REO is subject to an annual appropriation process and lacks WIOA's accountability and reporting requirements. The remedy would be to authorize REO in WIOA.<sup>24</sup>

Improving the employment and earnings of people with criminal records is critical for the wellbeing of fathers and their children. Continued reform at the state and federal levels are key components of that effort.



21 Bradbury, S. (2024). *Colorado is about to wipe 100,000 criminal convictions from the public record*. The Denver Post. <https://www.denverpost.com/2024/05/19/colorado-clean-slate-act-criminal-records-sealed/>.

22 Office of the Assistant Secretary for Planning and Evaluation. (2024). *Incarceration & reentry*. U.S. Department of Health and Human Services. <https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0>.

23 Clean Slate Action of 2023. H. R. 2930, 118<sup>th</sup> Cong. (2023-2024). <https://www.congress.gov/bill/118th-congress/house-bill/2930>.

24 Jobs for the Future. (2024). *A strong REO program helps build a strong workforce*. [https://info.jff.org/hubfs/240319\\_REO\\_Policy\\_Report\\_SS.pdf?\\_gl=1\\*1whکید\\*\\_ga\\*ODQ2OTkzMzgoLjE3MTY0OTM3MTU.\\*\\_ga\\_3YKPLRZBRG\\*MTcxNjU3ODEzNi4yLjEuMTcxNjU3ODE4My4xMy4wLjA](https://info.jff.org/hubfs/240319_REO_Policy_Report_SS.pdf?_gl=1*1whکید*_ga*ODQ2OTkzMzgoLjE3MTY0OTM3MTU.*_ga_3YKPLRZBRG*MTcxNjU3ODEzNi4yLjEuMTcxNjU3ODE4My4xMy4wLjA).

