



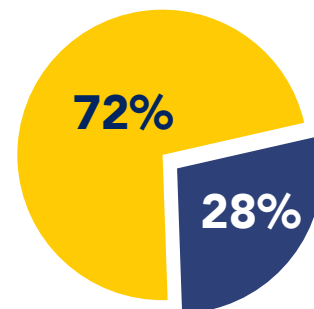
**JANUARY 2021**

# **AFTER THE SENTENCE, MORE CONSEQUENCES: A NATIONAL SNAPSHOT OF BARRIERS TO WORK**

The negative effects of a conviction rarely end when a person has completed their criminal sentence. A complex web of local, state, and federal statutes and regulations—known as collateral consequences of conviction—can make it all but impossible for some people with criminal records to truly rebuild their lives. While these consequences can affect everything from housing to public benefit eligibility, no area is more impacted than the ability to find and retain meaningful employment.

Some of these barriers to work may be responsive to legitimate public safety concerns, but many others pose unnecessary barriers to the employment opportunities that are critical in reducing recidivism and supporting the long-term success of people in the justice system.

**Nationally, 72 percent of all collateral consequences impact employment opportunities.**



The **National Inventory of Collateral Consequences of Conviction** catalogs collateral consequences imposed by the statutes and regulations of the 50 states, the federal system, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

**40,000+**

consequences are imposed by state, federal, and territorial law overall

**750** average number of consequences imposed by state and territorial law in each jurisdiction

**+ 950** number of consequences imposed by federal law that apply in every jurisdiction

**=** average of **1,700** consequences per jurisdiction

## The Big Picture

Collateral consequences limit employment opportunities in three main ways:

- Directly limiting the ability of employers to hire or retain workers with certain convictions
- Restricting access to occupational licenses needed to work in certain fields
- Restricting access to business licenses needed to pursue self-employment

### Consequences impact employment opportunities in three major ways

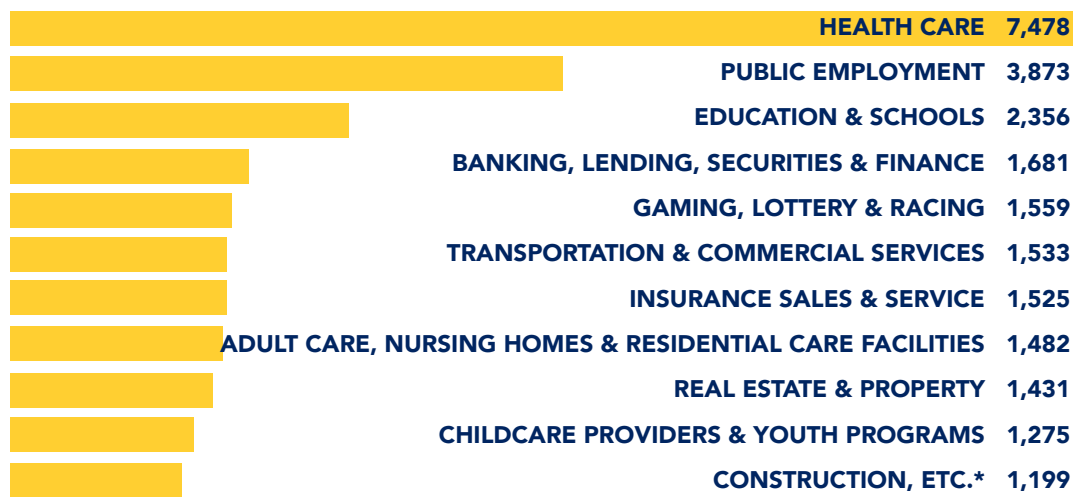
TYPE / NUMBER OF CONSEQUENCES

|                                       |        |
|---------------------------------------|--------|
| OCCUPATIONAL & PROFESSIONAL LICENSING | 13,787 |
| BUSINESS LICENSING                    | 11,137 |
| HIRING & RETENTION                    | 10,658 |

From accounting to plumbing, hundreds of fields and industries are impacted by employment-related collateral consequences. Fields and industries where job growth, pay, and upward mobility are relatively high, such as health care, are often impacted the most.

### Collateral consequences impact a broad range of fields and industries—the top ten are shown below<sup>1</sup>

FIELD OR INDUSTRY / # OF CONSEQUENCES



*\* Includes construction, improvement & repair, engineering, plumbing, HVAC, surveying, design & architecture*

### How Are Consequences Imposed?

Restrictions to employment based on a person’s criminal record may be automatic or subject to the discretion of employers and other decision-makers. Nearly half of all employment-related collateral consequences are “mandatory,” meaning they prohibit the employment, retention, or licensing of a person with a conviction for a specified offense regardless of evidence of rehabilitation, the relationship between the person’s offense and the job, or other considerations. The remaining “discretionary” consequences allow employers, licensing entities, and other decision-makers to impose a consequence, but do not require it.

### Just over half of consequences are subject to the discretion of decision-makers<sup>2</sup>



## How Long Do Collateral Consequences Last?

Collateral consequences can impact a person for varying lengths of time. While some consequences remain in effect for a set number of years after conviction or completion of sentence, the vast majority pose lifetime restrictions unless a person is able to expunge their record, receive a pardon, or obtain other relief.<sup>3</sup>

### The overwhelming majority of employment-related consequences persist indefinitely



## What Offenses Trigger Collateral Consequences?

Collateral consequences affect people who have been convicted of a wide range of criminal offenses. Some consequences are triggered by specific offenses, while others are triggered by broader categories of offenses such as “any felony” or “violent crimes.” Nearly a quarter of all consequences may impact a person who has been convicted of any offense at all.

### Consequences are triggered by a broad variety of offenses<sup>4</sup>

TRIGGERING OFFENSES CATEGORY / PERCENTAGE OF EMPLOYMENT-RELATED OFFENSES TRIGGERED BY CATEGORY<sup>5</sup>



# Considerations for Policymakers

Policymakers seeking to address the impacts of employment-related collateral consequences have a number of strategies available to them, including the following:

## **Limit mandatory collateral consequences.**

- Where appropriate, remove mandatory collateral consequences that automatically disqualify workers solely on the basis of their conviction for a particular offense.
- Convert mandatory consequences into discretionary ones that allow decision-makers to consider granting a license or position in spite of a potentially disqualifying conviction.

## **Promote fair, consistent, and transparent application of discretionary consequences.**

- Require decision-makers to give individualized consideration to the relationship between an individual's conviction and the license or job at hand. Provide decision-makers with clear standards to guide their consideration.
- Require decision-makers to consider relevant factors such as time since conviction, the nature of the offense, evidence of rehabilitation, and other relevant factors.
- Require decision-makers to share with applicants rejected due to criminal history a written description of the specific reasons for rejection.
- Create and disclose to applicants clear pathways for appeal of discretionary disqualifications.

## **Limit the potential deterrent effects of discretionary consequences.**

- Clearly state in licensing and public employment application materials and other resources that a conviction will not necessarily disqualify an applicant. Ensure that materials clearly explain how convictions will factor into decision-making.
- Prohibit applications and interviewers from inquiring about convictions that decision-makers are not authorized to consider.
- Allow prospective licensees to seek a pre-application determination on whether their criminal history will disqualify them.

### **Limit the offenses that trigger a consequence to those that indicate an increased risk to public safety for the particular job.**

- Eliminate from individual consequences any triggering offenses that do not implicate clear increased risks to public safety (as determined by the duties and responsibilities of the license or job at issue).
- Where appropriate, prohibit the consideration of specified “low-level” convictions or classes of convictions that are unlikely to suggest significant public safety concerns.
- Eliminate the use of broad and vaguely defined categories of triggering offenses such as “crimes of moral turpitude” or “offenses evidencing a lack of moral character.”

### **Limit the duration of time that consequences remain in effect.**

- Where appropriate, ensure that the effects of collateral consequences automatically terminate after a specific period of time measured from either the date of conviction or completion of sentence.

### **Expand the availability and effect of relief mechanisms.**

- Create or expand record clearance mechanisms and other forms of relief, such as certificates of relief, that remove consequences or convert mandatory consequences into discretionary ones.
- Shorten waiting periods for relief mechanisms such as record clearance, certificates of relief, and pardons so that individuals whose offenses do not suggest a public safety risk can return to work sooner.
- Ensure that targeted relief from individual consequences is made available in appropriate cases. Relief may include robust procedures for appealing discretionary decisions and individual waivers from the imposition of consequences that would otherwise be mandatory.

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## **ENDNOTES**

1. Note that the number of collateral consequences that impact a particular field or industry does not necessarily correlate with the number of workers that may be impacted in that field or industry.
2. Some laws require criminal background checks of applicants for employment or licensure without indicating how the decision-maker should act in response to the results. For the purposes of the graphic, “background check-only” provisions are considered discretionary consequences.
3. A consequence described as indefinite may not be permanent if state or federal law allows the consequence to be removed through a legal process such as criminal record clearance or executive pardon. For the purposes of the graphic, consequences that end once a person satisfies some legal condition, such as completing a drug treatment program or driver training course, are treated as time limited.
4. Note that a consequence assigned to a triggering offense category like “controlled substances offenses” may be triggered by only one specific type of controlled substance offense in the jurisdiction, not necessarily all controlled substance offenses.
5. Many consequences are triggered by more than one category of offenses, resulting in the sum of the percentages displayed exceeding 100 percent.