

# WEST VIRGINIA

The following report shows the progress your state has made toward meeting the five key goals related to collateral consequences that prevent people with criminal records from getting jobs or occupational licenses.



## Goal 1:

### **Allow decision-makers greater flexibility in deciding whether to hire workers with convictions and allow workers to be free from collateral consequences after a reasonable period of time.**

#### **1A. Reduce mandatory consequences.**

- + West Virginia's general fair chance licensing law purports to override mandatory barriers to occupational and professional licensure in covered fields (see 3A), converting them into discretionary barriers.
- Nearly 50 percent of the more than 550 employment-related consequences imposed by West Virginia law are mandatory and must be imposed regardless of the specifics of the offense or evidence of a worker's rehabilitation.\*

#### **1B. Limit the duration of consequences.**

- + Licensing bodies covered by West Virginia's general fair chance occupational and professional licensing law (see 3A) may not generally disqualify an applicant due to a conviction once five years have passed since the date of conviction or release from incarceration, whichever is later (so long as the person has no subsequent convictions). Exceptions apply for "offenses of a violent or sexual nature."
- West Virginia law places no general limits on the age of convictions that may be considered by employers.
- Only 18 percent of the more than 550 employment-related consequences imposed by West Virginia law are limited in their duration. The remainder persist indefinitely.\*

## Goal 2:

### **Align offenses that trigger collateral consequences with valid public safety concerns.**

#### **2A. Eliminate the use of vague terms to describe triggering offenses and offense categories.**

- + Licensing bodies covered by West Virginia's general fair chance occupational and professional licensing law (see 3A) "may not rely upon the description of a crime for which an applicant has been convicted as one of 'moral turpitude' as a basis for denying licensure."
- State law places no general limits on the use of vague terms to describe triggering offenses and offense categories in the employment or business licensing context.

#### **2B. Broadly prohibit consideration of lower-level offenses.**

- West Virginia law places no general limits on the categories of offenses that may be used to disqualify workers from employment or licensure.

#### **2C. Remove triggering offenses that do not suggest an increased risk to public safety.**

- Nearly 300 of the employment-related collateral consequences imposed by West Virginia law may be triggered by any felony, and over 150 may be triggered by any crime at all, indicating that more can be done to eliminate triggering offenses that do not suggest an increased risk.\*

## Goal 3:

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

#### **3A. Require decision-makers to apply a "direct relationship" test.**

- + West Virginia law generally prohibits occupational and professional licensing bodies from denying applicants due to convictions that do not "bear a rational nexus to the profession or occupation requiring licensure."

- ➖ However, several licensing bodies are not subject to this general standard, including many that regulate a broad range of health care professions.
- ➖ The “rational nexus” standard is considerably weaker than the “direct relationship” standard required by many states and it does not incorporate consideration of the specific duties and responsibilities of the licensed activity.
- ➖ West Virginia law places no general limits on the denial of employment or business licensure for convictions that are not directly related to the job or licensed activity.

### **3B. Require individualized consideration of applicants with convictions.**

- ➕ West Virginia law generally prohibits conviction-based denial of occupational or professional licensure without first giving individualized consideration to an applicant and their conviction. Evaluation of applicants must include consideration of various factors, including the nature and severity of the offense, the age of the person when the crime was committed, time elapsed since commission of the crime, and evidence of rehabilitation.
- ➖ However, several licensing bodies are exempt from this requirement (see 3A).
- ➖ West Virginia law does not generally require individualized consideration of applicants and their convictions in employment or business licensing determinations.

### **3C. Provide rejected applicants with a written explanation of the reasons for denial.**

- ➖ West Virginia law does not generally require employers or licensing bodies to provide applicants with a written explanation of conviction-based reasons for denial.

**3D. Create or expand accessible pathways to appeal.**

- West Virginia law does not generally provide accessible pathways to appeal or review of final decisions that are specific to conviction-based licensing or public employment denials. Administrative and/or judicial review may be available under the state's general administrative procedure laws, but such review can be complex, costly, and prolonged.

## Goal 4:

**Promote transparency about how workers' convictions are likely to impact employment and licensing opportunities.****4A. Ensure that application materials and other resources clearly explain how convictions are factored into decision-making.**

- West Virginia law does not generally require employers or licensing bodies to provide any specific information about criminal history consideration or other similar materials.
- Few licensing applications provide specific information about whether or how criminal history is considered, even those that inform applicants that background checks may be required.
- Accessible online information about how criminal history is considered in the licensing context is scant.

**4B. Provide prospective applicants with a list of the specific offenses that may be disqualifying.**

- West Virginia law does not generally require employers or licensing bodies to list the specific offenses that may result in a discretionary denial.
- Publicly accessible information listing the types of convictions that will trigger a mandatory denial is scant and not routinely included on application materials.

**4C. Allow for a pre-application determination of eligibility.**

- ➕ West Virginia law generally allows individuals to petition an occupational or professional licensing body for a decision about whether the individual's specific criminal history will be disqualifying. The opinion may be sought at any time, even before the individual has taken steps to meet the general requirements for licensure.
- ➖ Pre-application eligibility determinations are unavailable for several licensing bodies (see 3A).

## Goal 5:

**Expand the availability and effect of relief mechanisms.****5A. Create or expand long-term relief mechanisms.**

- ➕ In West Virginia, long-term relief is most commonly available in the form of expungement. Most misdemeanors and many nonviolent felonies are generally eligible after a waiting period of one to five years, depending upon the offense. Eligibility may be restricted for people with multiple convictions.
- ➖ Expungement is discretionary in all instances, and the law provides little in the way of standards to guide the courts' consideration.

**5B. Create or expand targeted near-term relief mechanisms.**

- ➖ West Virginia does not offer generally applicable near-term relief from structural barriers to employment or licensure, either in the form of certificates of relief or other mechanisms that mitigate the impact of structural barriers.

**5C. Limit barriers to accessing relief.**

- ➖ Expungement is not automatic and is available only upon petition to the court.
- ➖ The process for obtaining expungement can be burdensome for petitioners who are filing without an attorney due to filing and service requirements and the fact that a hearing may be required.

- ➖ Filing fees associated with seeking expungement are a minimum of \$200, which can be prohibitive to many who are qualified for relief.
- ➕ Outstanding fines, fees, and restitution orders are not an absolute bar to expungement. (However, they may be taken into account when the court is considering whether to grant a request for expungement.)

#### **5D. Ensure that the effects of relief mechanisms on collateral consequences are clear.**

- ➕ Per West Virginia law, upon expungement of records “the proceedings in the matter shall be considered, as a matter of law, never to have occurred.”
- ➕ Records of expunged convictions are generally unavailable to the public, employers, or licensing bodies.
- ➖ However, per state law, “any person required by state or federal law to obtain a criminal history record check on a prospective employee is authorized to have knowledge of any convictions expunged.”
- ➕ State law generally prohibits licensing boards from considering expunged records.
- ➕ A person whose record is expunged is given the explicit right to deny the existence of the conviction in most inquiries.
- ➖ State law does not explicitly prohibit employers from considering convictions that have been expunged.

*\*Despite the terms of the laws that impose individual barriers, the operation of a specific barrier upon a specific individual—i.e., whether it is mandatory, time-limited, or triggered by certain types of convictions—may change depending on superseding law (like fair chance licensing provisions) or whether an individual has been granted some form of relief (like expungement or sealing). Significant superseding laws and relief mechanisms are discussed herein to the extent they are applicable.*