

After the Sentence, More Consequences

A National Report of Barriers to Work

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Reentry Week | April 26–30, 2021

#ReentryMatters | #ReentryWeek | #ReentryWeek21

During Reentry Week, the National Reentry Resource Center (NRRC) will be your home for resources and virtual events.

Speakers

- **Chidi Umez**, *Deputy Program Director, Economic Mobility, the CSG Justice Center*
- **Josh Gaines**, *Project Manager, Economic Mobility, the CSG Justice Center*
- **Nate Brown**, *Policy Advisor, Division of Professions and Occupations, Colorado Department of Regulatory Agencies*

Agenda

- Employment and Reentry
- Overview of Employment Collateral Consequences
- Considerations for Policymakers
- Lessons Learned from Colorado Department of Regulatory Agencies

Collateral consequences impact individuals and their families



1 in 4 people were denied or barred from educational loans because of their conviction.



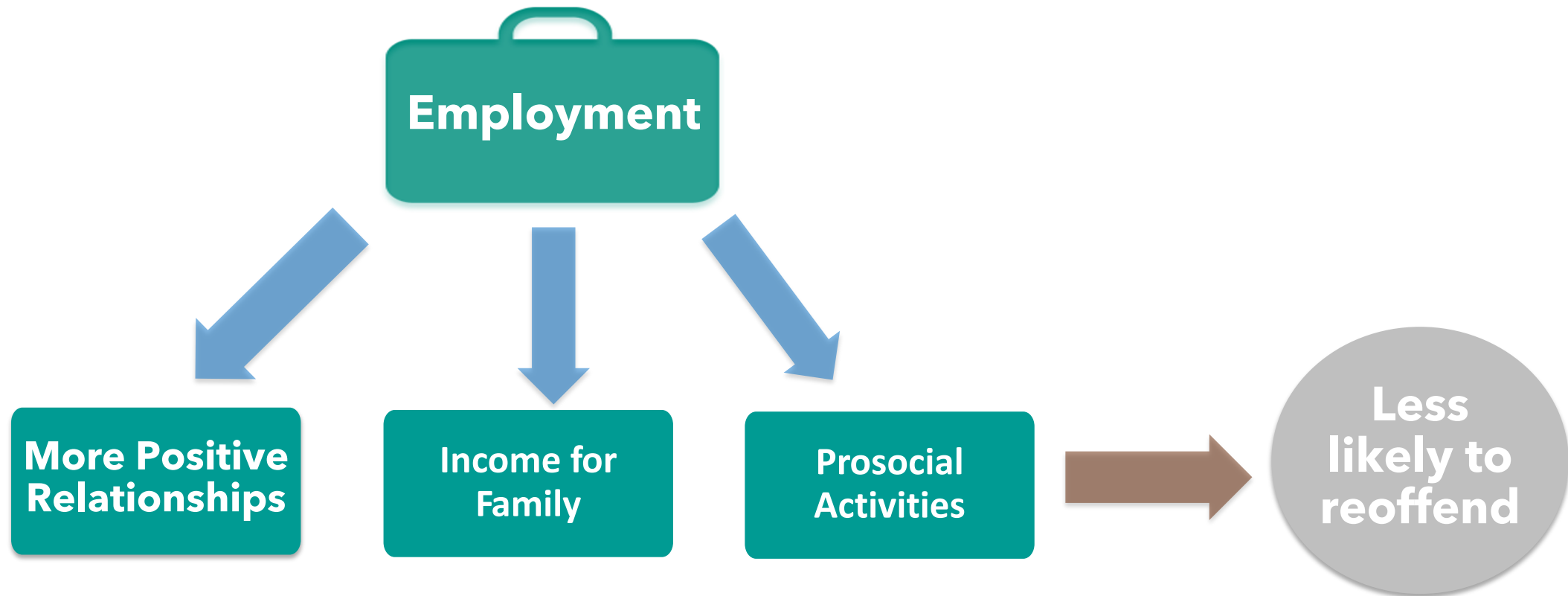
26% remained unemployed 5 years after release



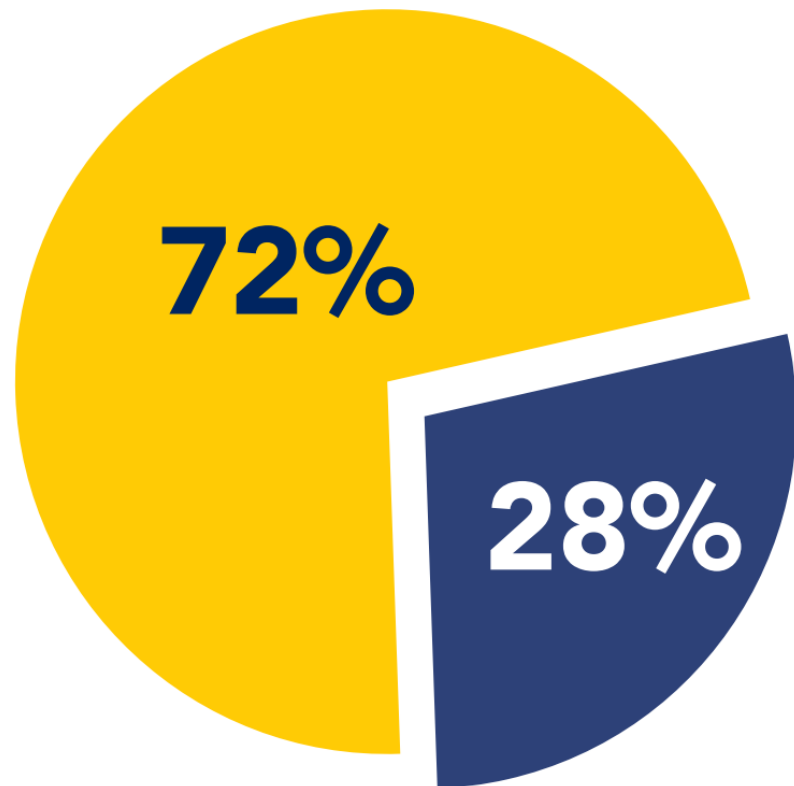
79% of people were ineligible or denied housing due to their own or a loved one's conviction.

Saneta deVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families* (Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015).

Employment is an important factor in reentry



No area is more affected by collateral consequences than the opportunity to work

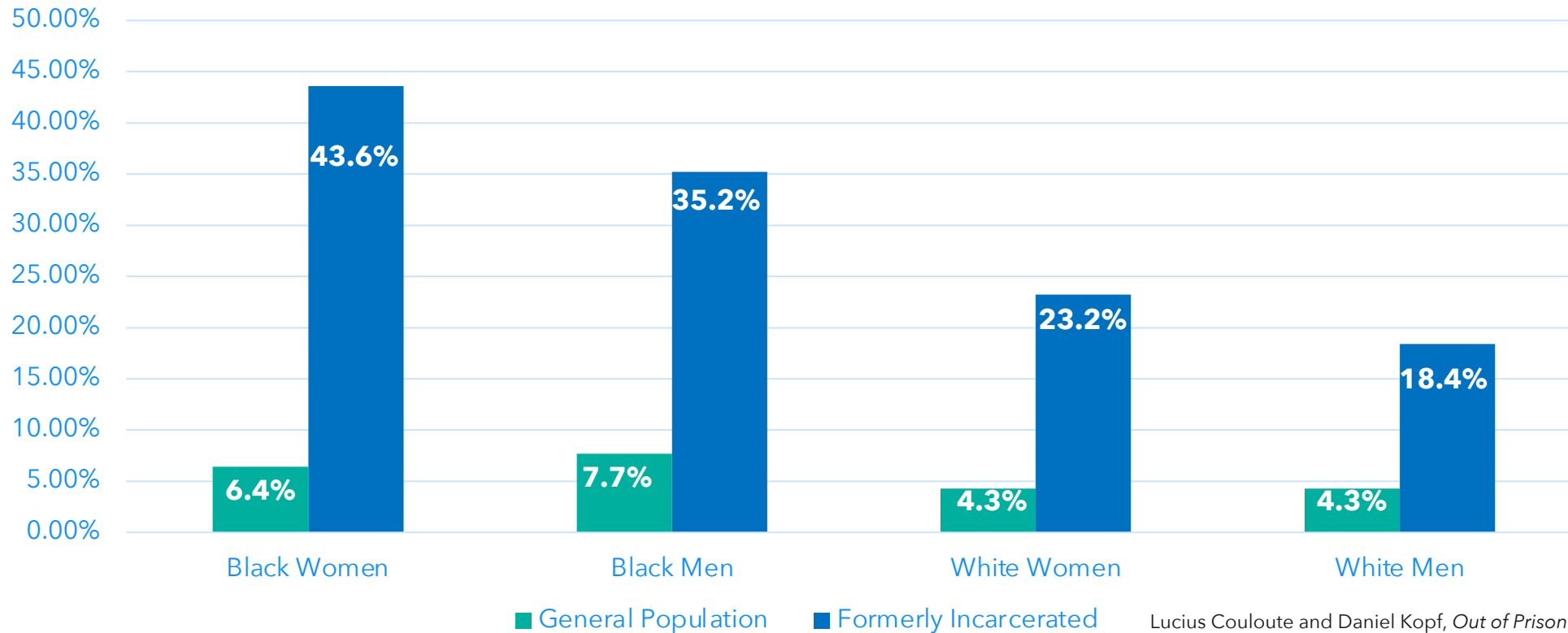


Collateral consequences that limit employment opportunities account for over 70 percent of the 40,000-plus consequences

Chidi Umez and Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work* (New York: The Council of State Governments Justice Center, 2020).

Collateral consequences have a greater impact on work for people of color

Unemployment rates of people age 35-44 among the U.S. general public and formerly incarcerated population



Lucius Couloute and Daniel Kopf, *Out of Prison & Out of Work: Unemployment among formerly incarcerated people* (Prison Policy Initiative, July 2018).

Consequences related to employment and work exist in three ways



Include limits on:

- Employee hiring and retention
- Occupational licensing
- Business licensing and participation

Licensing opportunities are most commonly impacted by employment-related consequences

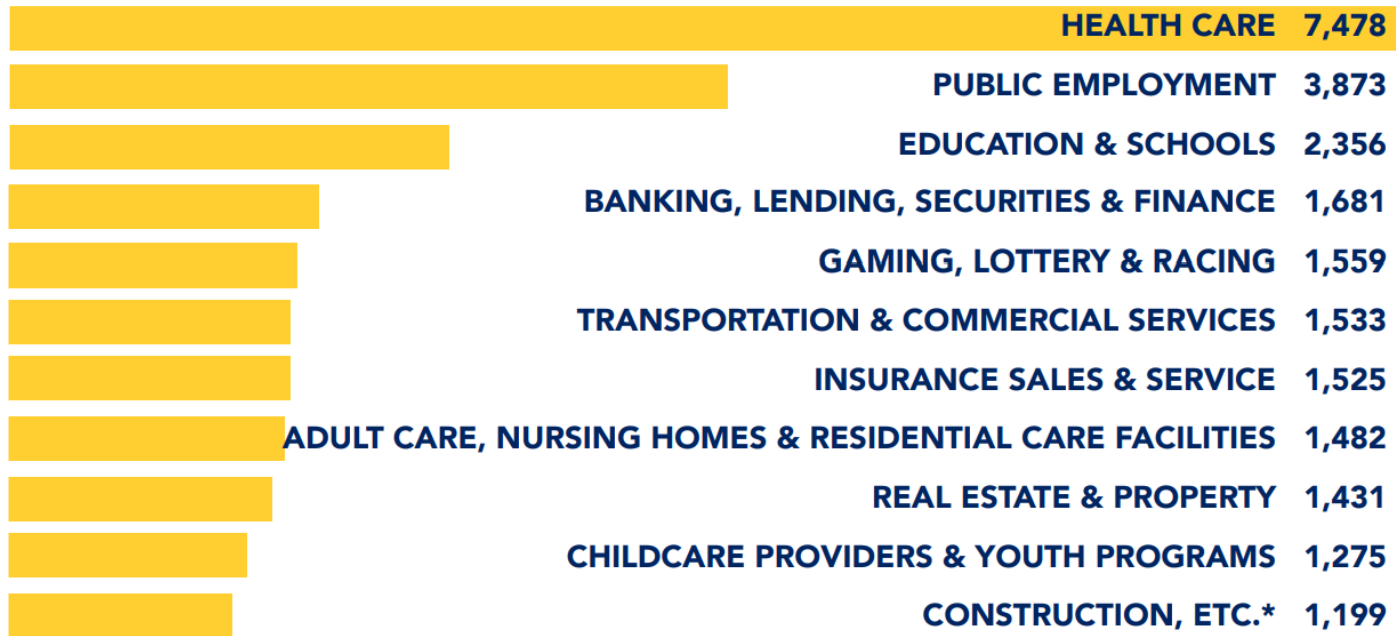
Types and numbers of employment-related consequences nationwide



Chidi Umez and Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work* (New York: The Council of State Governments Justice Center, 2020).

The health care industry is most affected by employment-related consequences

Most-impacted industries nationwide & number of consequences



Chidi Umez and Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work* (New York: The Council of State Governments Justice Center, 2020).

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

Numbers vs. impact: not all barriers are equal

Ga. Comp. R. & Regs. r. 391-4-11-.02 - "Commercial Alligator Farming "

(4) An alligator farming license shall not be issued to any person who has been convicted of any violation of O.C.G.A., Title 27, Sections 27-2-10 and 27-3-19 or rules of the Department of Natural Resources relating to the illegal taking of any crocodylian species, or their eggs, for two (2) years following such conviction

3 V.S.A. 129 - "Unprofessional Conduct"

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action.....

....

*(10) Conviction of a crime related to the practice of the profession or **conviction of a felony, whether or not related to the practice of the profession.***

Just over half of employment-related consequences are subject to the discretion of decision-makers

Mandatory vs. discretionary

Mandatory: must be imposed upon a person with a disqualifying conviction

Discretionary: may be imposed upon a person with a potentially disqualifying conviction

Portion of mandatory and discretionary consequences nationwide



DISCRETIONARY 56%

MANDATORY 44%

Chidi Umez and Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work* (New York: The Council of State Governments Justice Center, 2020).

The overwhelming majority of employment-related consequences persist indefinitely

Time-limited vs. indefinite

Time-limited: person is only subject to the barrier for a limited period of time (usually measured in years since conviction)

Indefinite: person is subject to the barrier for life unless relief is provided via expungement, waiver, or other legal mechanisms.

Portion of indefinite & time-limited consequences nationwide



INDEFINITE 83%

TIME LIMITED 17%

Chidi Umez and Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work* (New York: The Council of State Governments Justice Center, 2020).

Employment-related consequences are triggered by a broad variety of offenses not necessarily related to the job or license

Percentage of employment-related consequences triggered by significant offense categories nationwide*



Chidi Umez and Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work* (New York: The Council of State Governments Justice Center, 2020).

*Totals exceed 100% since many consequences are triggered by multiple categories of offenses

Considerations for policymakers

1. Limit mandatory and indefinite 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.
- ❑ 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.

Considerations for policymakers

2. 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. 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.
- ❑ Require decision-makers to share with applicants rejected due to criminal history a written description of the specific reasons for rejection.

Considerations for policymakers

3. 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.

Considerations for policymakers

4. 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.”

Considerations for policymakers

5. 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.
- ❑ Ensure that existing relief mechanisms are effective at mitigating the impact of collateral consequences.
- ❑ 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.

Considerations for policymakers




COLORADO


SNAPSHOT OF EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES

JANUARY 2021

The National Inventory of Collateral Consequences of Conviction (NICCC) is an online database that catalogs the state and federal statutes and regulations that limit or prohibit people convicted of crimes from accessing various rights, benefits, and opportunities.

As of 2020, the NICCC identifies 683 provisions of Colorado law that impose these “collateral consequences,” a large majority of which act as barriers to employment for people with criminal convictions (see FIG. A). This fact sheet provides an overview of employment-related collateral consequences in Colorado.

FIGURE A
PERCENTAGE OF TOTAL CONSEQUENCES RELATED TO EMPLOYMENT



- EMPLOYMENT-RELATED 74%
- OTHER 26%

FIGURE B
NUMBER OF EMPLOYMENT-RELATED CONSEQUENCES BY TYPE



- 218 OCCUPATIONAL LICENSING
- 189 BUSINESS LICENSING
- 185 EMPLOYMENT (DIRECT)

IMPACTED FIELDS
Collateral consequences affect a range of employment fields. FIG. C identifies the top 10 fields impacted by employment-related consequences in Colorado. The figures indicate the number of employment-related consequences that impact each field.

FIGURE C
FIELDS MOST IMPACTED



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

DISCRETION IN APPLICATION
State law determines whether a consequence must be imposed or may be imposed. Mandatory consequences generally prohibit, without exception, the employment, retention, or licensing of a person with a conviction for a specified offense. Discretionary consequences

For more, visit niccc.nationalreentryresourcecenter.org

authorize employers, licensing entities, and other decision-makers to impose a consequence, but do not require that they do so. Note that 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 FIG. D, these “background check-only” provisions are considered discretionary consequences. FIG. D indicates the percentage of Colorado’s employment-related consequences that are either mandatory or discretionary.

TRIGGERING OFFENSES
Collateral consequences can be triggered by convictions for 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.” FIG. F highlights some of the triggering offense categories used by the NICCC and the number of Colorado’s employment-related consequences triggered by convictions within each category. Note that a consequence assigned to a triggering offense category like “controlled substances offenses” may be triggered only by one specific type of controlled substance offense in the jurisdiction, not all controlled substances offenses.

FIGURE D
DISCRETION TO IMPOSE CONSEQUENCES



DISCRETIONARY 60% MANDATORY 40%

DURATION OF EFFECT
Employment-related consequences may remain in effect for a time-limited duration (usually a specific length of time, beginning on the date of conviction or completion of sentence) or may be indefinite in duration (i.e., no specific time included in the law). FIG. E indicates the percentage of Colorado’s employment-related consequences that are either time-limited or indefinite. For the purposes of FIG. E, 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. Note that 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 (see General Relief from Collateral Consequences for more).

FIGURE E
CONSEQUENCE DURATION



INDEFINITE 83% TIME-LIMITED 17%

FIGURE F
NUMBER OF EMPLOYMENT-RELATED CONSEQUENCES TRIGGERED BY OFFENSE CATEGORIES

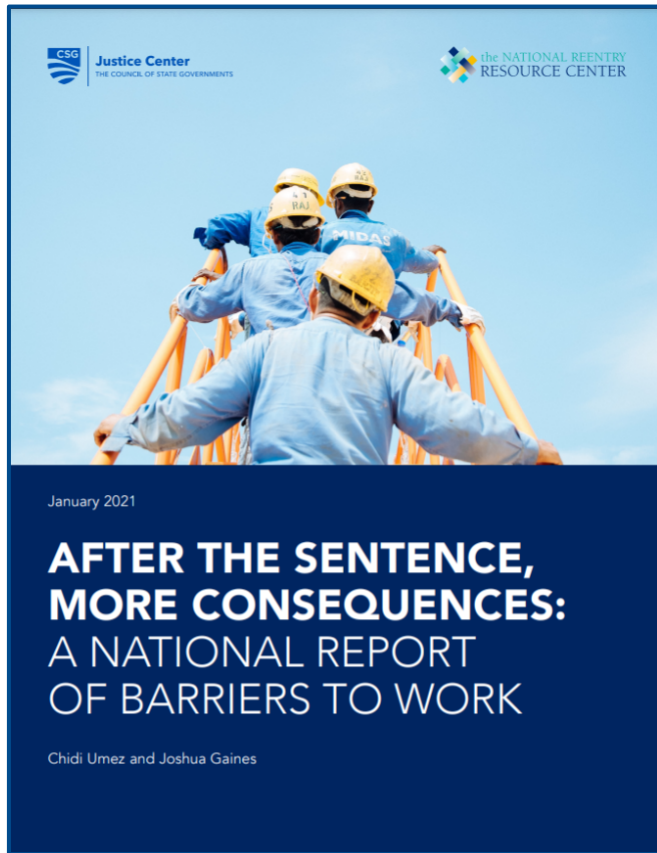


GENERAL RELIEF FROM COLLATERAL CONSEQUENCES
RECORD CLEARANCE: Most offenses are eligible for sealing after five years, with exceptions for certain felonies. Sealing limits the imposition of occupational licensing consequences and many employment consequences. Prior convictions may limit eligibility.
LIMITS ON CONSIDERATION OF CONVICTIONS: Most occupational licensing boards and public employers must consider various factors when assessing criminal history, including whether the offense is directly related to the license or job, time since conviction, and evidence of rehabilitation.
JUDICIAL ORDERS OF RELIEF: An Order of Collateral Relief may be issued by the sentencing court at any time to provide relief from specified collateral consequences.

For information on record clearance in Colorado, see the Clean Slate Clearinghouse website at CleanSlateClearinghouse.org.

This project was supported by Grant No. 2016-MU-BX-4011 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice’s Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Considerations for policymakers



CSG Justice Center THE COUNCIL OF STATE GOVERNMENTS

the NATIONAL REENTRY RESOURCE CENTER

NEW YORK

SNAPSHOT OF EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES

JANUARY 2021

The National Inventory of Collateral Consequences of Conviction (NICCC) is an online database that catalogs the state and federal statutes and regulations that limit or prohibit people convicted of crimes from accessing various rights, benefits, and opportunities.

As of 2020, the NICCC identifies 1,052 provisions of New York law that impose these “collateral consequences,” a large majority of which act as barriers to employment for people with criminal convictions (see FIG. A). This fact sheet provides an overview of employment-related collateral consequences in New York.

FIGURE A
PERCENTAGE OF TOTAL CONSEQUENCES RELATED TO EMPLOYMENT

- EMPLOYMENT-RELATED 77%
- OTHER 23%

TYPES OF EMPLOYMENT-RELATED CONSEQUENCES

Collateral consequences impact employment opportunities either by restricting access to occupational licenses needed to work in certain fields, restricting access to business licenses needed to pursue self-employment, or directly limiting the ability of employers to hire or retain workers with certain conviction histories. FIG. B shows the number of New York consequences that impact each of these three employment-related opportunities.

FIGURE B
NUMBER OF EMPLOYMENT-RELATED CONSEQUENCES BY TYPE

- 393 BUSINESS LICENSING
- 331 EMPLOYMENT (DIRECT)
- 298 OCCUPATIONAL LICENSING

IMPACTED FIELDS

Collateral consequences affect a range of employment fields. FIG. C identifies the top 10 fields impacted by employment-related consequences in New York. The figures indicate the number of employment-related consequences that impact each field.

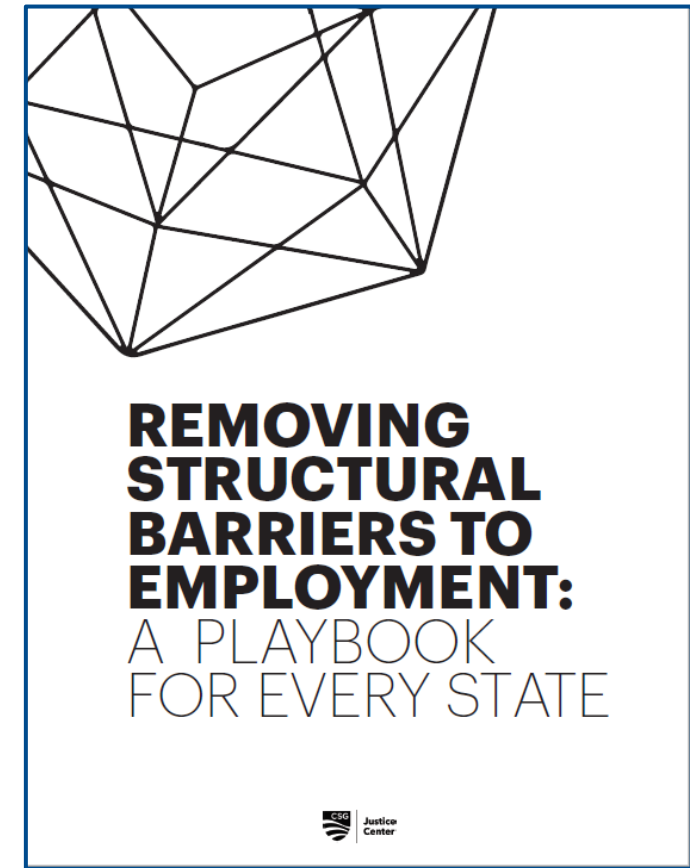
FIGURE C
FIELDS MOST IMPACTED

- 123 HEALTH CARE
- 78 GAMING, LOTTERY & RACING
- 77 EDUCATION & SCHOOLS
- 72 REAL ESTATE & PROPERTY
- 56 BANKING, LENDING, SECURITIES & FINANCE
- 50 PUBLIC EMPLOYMENT
- 33 ADULT CARE, NURSING HOMES & RES. CARE FACILITIES
- 30 TRANSPORTATION & COMMERCIAL MOTOR VEHICLES
- 29 PRIVATE SECURITY, INVESTIGATION & LOCKSMITHS
- 27 HAZARDOUS MATERIALS, PESTICIDES, CHEMICALS & WASTE

DISCRETION IN APPLICATION

State law determines whether a consequence must be imposed or may be imposed. Mandatory consequences generally prohibit, without exception, the employment, retention, or licensing of a person with a conviction for a specified offense. Discretionary consequences

For more, visit nicc.nationalreentryresourcecenter.org



<https://csgjusticecenter.org/publications/removing-structural-barriers/>
<https://csgjusticecenter.org/publications/after-the-sentence-more-consequences/>

For more information, visit: niccc.nationalreentryresourcecenter.org

National Inventory of Collateral Consequences of Conviction (NICCC)

NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION

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Welcome to the NICCC

Collateral consequences are legal and regulatory sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities. [More About this Project »](#)

Search Collateral Consequences

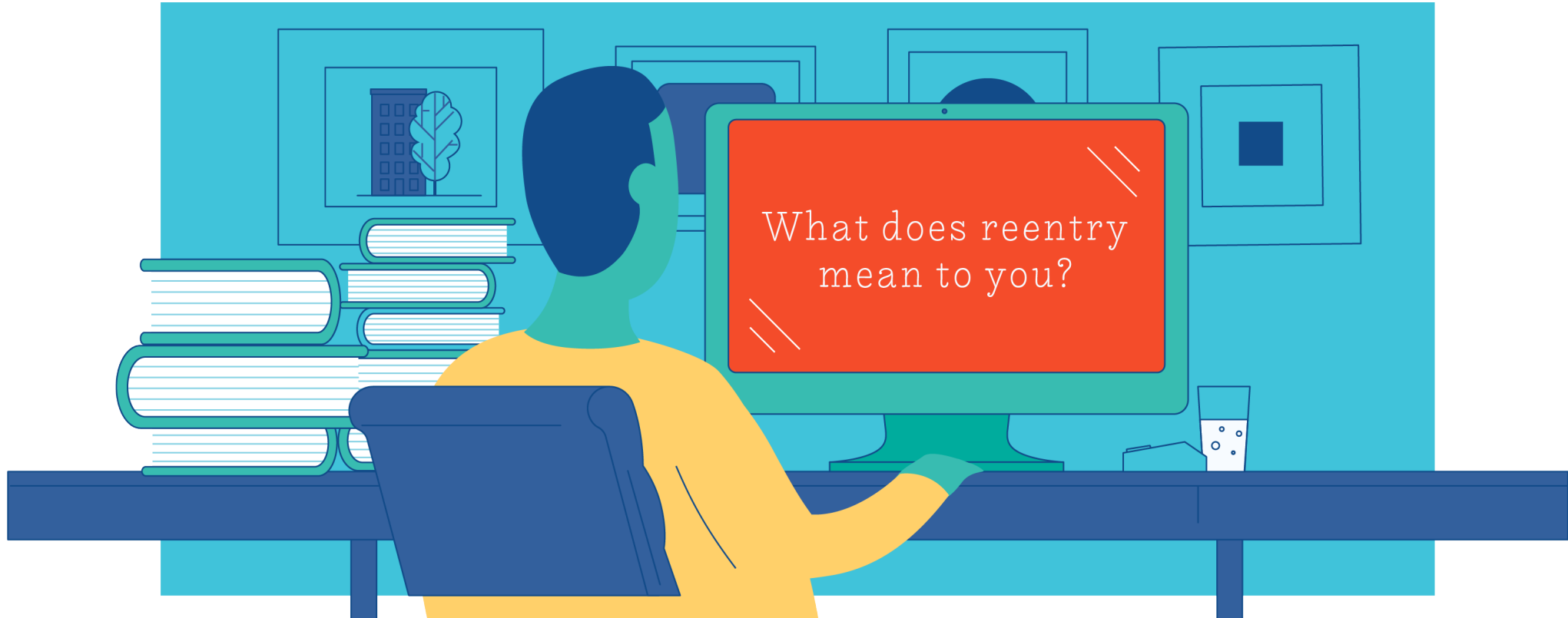
Use these categories to search and view details of policies relating to collateral consequences of a criminal conviction.

KEYWORDS ⓘ

JURISDICTION ⓘ **CONSEQUENCE TYPE** ⓘ

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The primary mission of the NRRC is to advance the knowledge base of the reentry field.
The NRRC serves as a convener and coordinator of SCA grantees.

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