After the Sentence, More Consequences

A National Report of Barriers to Work

This project was supported by Grant No. 2020-CZ-BX-K001 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.
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.

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.

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

<table>
<thead>
<tr>
<th></th>
<th>General Population</th>
<th>Formerly Incarcerated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Women</td>
<td>6.4%</td>
<td>43.6%</td>
</tr>
<tr>
<td>Black Men</td>
<td>7.7%</td>
<td>35.2%</td>
</tr>
<tr>
<td>White Women</td>
<td>4.3%</td>
<td>23.2%</td>
</tr>
<tr>
<td>White Men</td>
<td>4.3%</td>
<td>18.4%</td>
</tr>
</tbody>
</table>

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

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

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

Most-impacted industries nationwide & number of consequences

<table>
<thead>
<tr>
<th>Industry</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>HEALTH CARE</td>
<td>7,478</td>
</tr>
<tr>
<td>PUBLIC EMPLOYMENT</td>
<td>3,873</td>
</tr>
<tr>
<td>EDUCATION &amp; SCHOOLS</td>
<td>2,356</td>
</tr>
<tr>
<td>BANKING, LENDING, SECURITIES &amp; FINANCE</td>
<td>1,681</td>
</tr>
<tr>
<td>GAMING, LOTTERY &amp; RACING</td>
<td>1,559</td>
</tr>
<tr>
<td>TRANSPORTATION &amp; COMMERCIAL SERVICES</td>
<td>1,533</td>
</tr>
<tr>
<td>INSURANCE SALES &amp; SERVICE</td>
<td>1,525</td>
</tr>
<tr>
<td>ADULT CARE, NURSING HOMES &amp; RESIDENTIAL CARE FACILITIES</td>
<td>1,482</td>
</tr>
<tr>
<td>REAL ESTATE &amp; PROPERTY</td>
<td>1,431</td>
</tr>
<tr>
<td>CHILDCARE PROVIDERS &amp; YOUTH PROGRAMS</td>
<td>1,275</td>
</tr>
<tr>
<td>CONSTRUCTION, ETC.*</td>
<td>1,199</td>
</tr>
</tbody>
</table>

*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 crocodilian 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%

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%

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Felony</td>
<td>50%</td>
</tr>
<tr>
<td>Crimes Involving Fraud, Dishonesty, Misrepresentation, or Money Laundering</td>
<td>32%</td>
</tr>
<tr>
<td>Any Crime</td>
<td>23%</td>
</tr>
<tr>
<td>Controlled Substances Offenses</td>
<td>16%</td>
</tr>
<tr>
<td>Crimes of Violence &amp; Sex Offenses</td>
<td>10%</td>
</tr>
<tr>
<td>All Other Categories</td>
<td>15%</td>
</tr>
</tbody>
</table>

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

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

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

The National Inventory of Collateral Consequences (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 583 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.

**COLORADO SNAPSHOT OF EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES**

**NUMBER OF EMPLOYMENT-RELATED COLLATERAL CONSEQUENCES TYPE BY TYPE**

<table>
<thead>
<tr>
<th>Type</th>
<th>Number of Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISCRIMINATION DISABILITY</td>
<td>120</td>
</tr>
<tr>
<td>DISCRIMINATION AGE</td>
<td>60</td>
</tr>
<tr>
<td>IMPACTED FIELDS DISCRIMINATION</td>
<td>30</td>
</tr>
<tr>
<td>IMPACTED FIELDS AGE</td>
<td>20</td>
</tr>
</tbody>
</table>

**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.

**TYPES OF EMPLOYMENT-RELATED CONSEQUENCES**

Collateral consequences impact employment opportunities either by restricting access to occupational/licensure requirements or 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. D shows the number of Colorado consequences that impact each of these three employment-related opportunities.

**DISCRIMINATION IN APPLICATION**

(1) law determines whether a consequence must be imposed or may be imposed. Mandatory consequences generally prohibit, without exception, the employment, rehiring, or licensing of a person with a conviction for a specified offense. Discretionary consequences 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 an individualized review of applicants for employment or licensure without indicating how the decision-maker should act in response to the facts. For the purposes of FIG. D, these "background checks only" provisions are considered discretionary consequences.

**TRIGGERING OFFENSES**

Collateral consequences may 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 "relevant crimes." FIG. F highlights some of the triggering offense categories used by the NICCC and the number of Colorado employment-related consequences triggered by convictions within each category. Note that a consequence assigned to a triggering offense category like "controlled substance offenses" may be triggered only by one specific type of controlled substance offense in the jurisdiction, not all controlled substance offenses.

**GENERAL RELIEF FROM COLLATERAL CONSEQUENCES**

**RECORD CORRECTION:** Most offenses are eligible for sealing after five years, with exceptions for certain federal offenses, failing to complete occupational licensing consequences, and many employment consequences. Prior convictions may limit eligibility.

**LIMITS ON CONSIDERATION OF CONVICTIONS:** Most occupational licensing boards and public programs are required to consider all criminal history, including whether the offense is 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 and must be published and submitted to all affected entities. For more information, see Colorado’s Code of Judicial Conduct at www.courts.state.co.us/Documents/Article_9.pdf

For more, visit nationalreentryresource.org

---

The National Reentry Resource Center
The Council of State Governments

21
Considerations for policymakers

National Inventory of Collateral Consequences of Conviction (NICCC)

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
Select all that apply

JURISDICTION
Select all that apply

CONSEQUENCE TYPE
Select all that apply

Search Consequences

The information about collateral consequences accessible through this website is solely for educational and informational purposes and does not constitute legal advice.

For more information, visit: niccc.nationalreentryresourcecenter.org
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.**
Track News and Updates on Social Media

#ReentryMatters
#ReentryWeek
#ReentryWeek21
Thank you!

Join our distribution list to receive National Reentry Resource Center updates!
https://nationalreentryresourcecenter.org/subscribe

For more information, contact:
info@nationalreentryresourcecenter.org
cumez@csg.org