

# A STUDY BY THE LEGAL ACTION CENTER

## AFTER PRISON: ROADBLOCKS TO REENTRY

### A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

## 2009 Update

### Executive Summary

The Legal Action Center (LAC) is pleased to provide an updated review and comprehensive analysis of state laws and policies that serve as legal barriers to reentry in the areas of employment, public housing, public benefits, voting, access to criminal records, adoptive and foster parenting, and drivers' licenses. In 2004, we released a landmark two-year study of the legal obstacles that people with criminal records face when they attempt to reenter society. The LAC **Report Card** graded and ranked every state based on how and to what extent its specific laws and policies create roadblocks to reentry – unfair or counterproductive barriers - in each of the areas listed above.

#### KEY FINDINGS

We have now re-graded the states and ranked them to reflect their progression or regression in improving opportunities for people with criminal histories to successfully reintegrate into society to become productive, law-abiding citizens. Our new study found significant improvements in some federal laws and in many state laws in several categories. Twenty eight states passed new laws or amended policies in the areas we studied (some enacted more than one), and well over half of those (twenty) improved their laws or policies to remove roadblocks to reentry, thereby supporting the reintegration of people with criminal histories into the community. However, other states changed laws or policies that created new roadblocks for reentry. Our major findings include:

- Five states (CT, DE, FL, MA, and NY) implemented laws or policies to improve employment and occupational licensing opportunities for people with criminal histories. However, most states continue to allow employers and occupational licensing agencies to deny people jobs or licenses if they were arrested but never convicted or if convicted of an old or even minor offense.
- Seven states (AZ, CA, IN, KS, MT, SD, and VA) modified or eliminated the lifetime felony drug ban on receiving public assistance and food stamps. States have now eliminated or modified the ban. However, states still ban some or all people with drug felony convictions from being eligible for federally funded public assistance and food stamps for the rest of their lives.
- Five states (FL, IA, KY, MD, and NE) addressed voting disenfranchisement for individuals convicted of a felony by either automatically restoring an individual's right to vote after completion of sentence or streamlining the restoration of rights process for people with felony convictions to regain the right to vote. However, all but two states restrict in some way the right to vote for people with criminal convictions.
- Nine states (AK, DC, HI, ME, MN, MO, PA, TN, and VT) created additional roadblocks by implementing new policies that increased access to criminal records on-line. Most states now make criminal history information accessible to the general public through the Internet, making it very easy for employers and others to discriminate against people on the basis of old or minor convictions.

In the past five years many states have removed or lowered roadblocks to the reentry of people with criminal records by changing either a state law completely, amending a state law to allow for exceptions where flat bans existed, or amending or implementing new administrative policies. However, there were some states that changed laws or policies that created new roadblocks for reentry. Most often, this occurred in the area of access to criminal records. The trend around the country appears to be allowing the public more access to criminal record information, particularly from an on-line source; nine states increased public access to criminal records by making records available on-line to the public. Unfettered public access to criminal records creates barriers to reentry for several reasons:

- Criminal record reports are often plagued with errors;
- Employers and other individuals that have open access to this information are often not qualified or trained to evaluate the detailed and often incomplete information that are contained in these reports; and
- Many arrests that never led to conviction, and most old and minor convictions, are not sealed or expunged, and anyone who sees them may use that knowledge against the individual.

Thus, the availability of criminal records on the web is a significant roadblock to people's ability to obtain employment, housing, or other necessities of life, even after paying their debt to society.

Despite the trend to make criminal record information more accessible, the passage of new federal and state legislation that work to reduce roadblocks faced by people with a criminal history marks the beginning of a new design for how America addresses reentry. In fact, on March 18, 2009 President Obama's response to a laid-off California auto worker with a 20 year old felony conviction demonstrates that his Administration is committed to helping people with criminal records. President Obama stated, "The fact that you've been working steadily for 13 years post-felony seems to me a message that you made amends for your past mistakes and that you are rehabilitated and that you've proven yourself in the job market...I have confidence you will find a job."

President Obama's statement embodies this new approach and heralds a new and more promising day in how this nation treats people who made a mistake but have paid their debt to society and seek to become productive and law-abiding Americans. Additionally, many state and local leaders have efforts underway to reverse counterproductive policies and practices that hinder successful reintegration of individuals returning to their communities from prisons and jails.

Moreover, there have been other significant improvements on the federal level. In 2005, the Higher Education Act was amended to make only individuals who receive a drug conviction while receiving student aid ineligible for federal financial assistance—a modification of the previous ban that made all students convicted of a drug-related offense ineligible to receive federal financial assistance whether or not the student was receiving aid at the time of conviction. In April 2008, the Second Chance Act was signed into law to authorize federal, state, and local grant programs to fund education, employment, and alcohol and drug treatment services for people reintegrating into communities from prison. The Act also requires states and localities receiving funds to examine their statutory barriers to reentry in a variety of areas. In August 2008, Congress again amended the Higher Education Act to authorize grant programs that support higher education programs in prison. This measure in part ameliorates the harm created when the law was amended in 1994 to exclude people in prison from being eligible for Pell grants, but does not repeal that barrier.

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## **ANALYSIS OF BARRIERS**

Most legal barriers are created by state laws and practices, but some are created by federal law. LAC studied how states apply five federal laws that restrict access to public assistance and food stamps (Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)); housing (Housing Opportunity Program Extension Act (P.L. 104-120) and Quality Housing and Work Responsibility Act (P.L. 105-276)); parenting (the Adoption and Safe Families Act (ASFA) (P.L. 105-89)); and driving (Department of Transportation and Related Agencies Appropriation Act (P.L. 102-388)). Since states have some flexibility in how they apply all of these federal laws, LAC examined the extent to which the various states avail themselves of the right to modify or override federal bans. However, since states cannot opt out of or change the Higher Education Act's (P.L. 105-244) ban on student loans and other assistance for people with drug convictions, LAC did not address this law on a state-by-state basis. This study also examines areas that are largely and exclusively within the control of states: access to criminal records, employment and voting.

### **BASIC PRINCIPLES**

In selecting the laws and practices to be compiled in this report, and in developing the criteria to evaluate them and grade the states, we applied four overarching principles:

- **An arrest alone should never bar access to rights, necessities and public benefits. Doing so denies the presumption of innocence – the core value of our legal system- to many millions of Americans. Employers, housing authorities and other decision-makers should not be permitted to consider arrest records.**
- **A conviction should never bar access to a citizen's right to vote or to basic necessities such as food and clothing.**
- **In all other situations, including employment, housing, adoptive and foster parenting, or a driver's license, eligibility determinations should be based on individuals histories and circumstances, including the community's legitimate interest in public safety. Blanket, across-the-board bans of entire categories of people (i.e. everyone convicted of a felony or certain kinds of crimes) are neither wise nor fair because they do not take into account the nature or circumstances of the conviction and the of the individual, what the person has done since the commission of the offense, and other important factors.**
- **Ensuring that people with criminal records can successfully assume the responsibilities of independent, law-abiding citizens is a critical component of guaranteeing and reinforcing the community's legitimate interest in public safety.**

While there has been some progress in supporting the successful reintegration of people with criminal histories, this report demonstrates that most states are not adhering to these four principles. As a result, many individuals with criminal and arrest records are being unreasonably denied both basic survival necessities and fundamental rights. Their efforts to lead productive lives are being thwarted rather than encouraged, at great cost to their

families and communities and the nation as a whole.

In each of the categories we studied, we analyzed the following information:

**Access to Criminal Records:**

Does the state allow individuals to seal/expunge arrests and/or convictions? And if so, can the individuals deny the existence of the sealed/expunged record? And are criminal records available on the Internet?

**Adoptive and Foster Parents:**

Does the state make individualized determinations about a person's suitability to be a foster or adoptive parent and considers evidence of rehabilitation?

**Driver's Licenses:**

Does the state automatically revoke/suspend an individual's license if convicted of any drug offense, even if the offense is not driving-related? Does the revocation/suspension go beyond a period of more than 6 months for the first offense? And does the state offer a restrictive license to those affected by this bar for purposes of employment, education, and/or medical care?

**Employment:**

Does the state allow employers and/or occupational licensing agencies to ask about arrests that did not lead to conviction?

Does the state allow employers and/or occupational licensing agencies to have flat bans against hiring or licensing individuals with criminal records?

Does the state offer certificates of rehabilitation or another restoration of rights process to remove employment and/or occupational licensing bars that result from convictions?

**Public Benefits:**

Did the state adopt the federal ban to deny public assistance and food stamps to people with drug felonies? Or, did the state modify its law to allow some or all individuals to qualify for benefits if certain criteria were met?

**Public Housing:**

Does the Housing Authority in a large metropolitan area of the state make individualized determinations about applicants with criminal records or does it have flat criminal record bars to eligibility for housing?

Does the Housing Authority consider arrests that did not lead to conviction?

**Voting:**

Does the state invoke a lifetime bar or limited bar (while incarcerated or on parole or probation) to voting for individuals convicted of a felony?

In the [What's the Law](#) section of the on-line report we have updated all of the laws or policies that have changed in each of the 50 states since the original study was released in

June 2004. We have also added the District of Columbia to the report. For simplicity, we refer to the District of Columbia throughout this report as a state.

## **WHAT WE FOUND**

### **Roadblocks Removed**

Over half of the states (28) passed new laws or amended policies in the areas we studied (some enacted more than one), and well over half of those (20) improved their laws or policies to remove roadblocks to reentry, thereby supporting the reintegration of people with criminal histories into the community:

- Access to Criminal Records: Two states (NY and NE) enacted legislation to allow sealing/expungement of criminal records and one state (NE) limited access to criminal records on the Internet;
- Adoptive and Foster Parenting: Two states (CO and IL) amended their policies to eliminate permanent criminal record bars to becoming an adoptive or foster parent and instead require individualized assessments;
- Driver's Licenses: Two states (AZ and NJ) amended their laws to allow restricted driver's licenses to be issued to individuals convicted of drug-related offenses for purposes of maintaining employment, education, or treatment or to give judges discretion not to suspend the license of someone with a drug conviction;
- Employment: Five states (CT, DE, FL, MA, and NY) implemented laws or policies to improve employment and occupational licensing opportunities for people with criminal histories;
- Public Benefits: Seven states (AZ, CA, IN, KS, MT, SD, and VA) modified or eliminated the lifetime felony drug ban on receiving public assistance and food stamps;
- Public Housing: Two housing authorities (in IL and MD) changed their admission policies to either stop considering arrests that did not lead to conviction or removed flat criminal record bars for eligibility; and
- Voting: Five states (FL, IA, KY, MD, and NE) addressed voting disenfranchisement for individuals convicted of a felony by either automatically restoring an individual's right to vote after completion of sentence or streamlining the restoration of rights process for people with felony convictions to regain the right to vote.

### **Roadblocks Erected**

Some states changed laws or policies that created new roadblocks for reentry in the past five years. While these changes most often occurred in the area of access to criminal records, barriers were also erected in the categories of adoptive and foster parenting, public benefits, and public housing:

- Access to Criminal Records: Nine states (AK, DC, HI, ME, MN, MO, PA, TN, and VT) implemented new policies that increased access to criminal records on-line;
- Adoptive and Foster Parenting: One state (AK) amended its law to eliminate the use

of individualized determinations for foster parents with criminal histories and now has flat bans on eligibility to be a foster parent for anyone with certain criminal records;

- **Public Benefits:** One state (OR) amended its law to ban eligibility for food stamps for individuals convicted of certain drug offenses; and
- **Public Housing:** A housing authority in ME changed its admission policy to begin considering arrests that did not lead to conviction and another in TN implemented an absolute ban for people convicted of any violent or drug-related offense.

In the **Where We Are Today** section of this report we provide a comparison of the data we collected in 2004 and 2009 to analyze comprehensively where the country stands in addressing each of the issues we studied. (We adjusted some of the 2004 data to reflect our re-categorization of some policies. The adjustments are footnoted within each section.) In some cases, states changed their laws or policies but those changes did not affect the grading. For example, New York amended its anti-discrimination law to add protections for current employees. However, because its anti-discrimination law already satisfied our criteria, we had not assessed any roadblock points, so strengthening the law did not change its score. In the **State-By-State Update** section we give a more detailed account of the law and policy changes that have occurred in each state between June 2004 and March 2009. Lastly, in the **Report Card** section we provide the new scores and ranks for each state based on all of the relevant changes in laws and policies; Illinois is now ranked number one with a score of 6.5 and Alaska is last with a score of 46.

# Where We Are Today

## Where We Were in 2004 and Where We Are in 2009

(Note: 2009 data includes the District of Columbia; 2004 does not)

As a nation, we have a long way to go in changing laws and policies to fully support the reintegration efforts of individuals who are returning home to communities from prison. While states are showing progress, a national overview of reentry reform paints a picture of where we really need to be to truly be the “Land of Second Chances.” As previously noted, we added the District of Columbia to the report and counted it as a state; therefore the 2009 state count total is 51 and 2004 is 50.

### ACCESS TO CRIMINAL RECORDS:

#### I. A majority of states never expunge or seal conviction records but most states do allow arrest records to be sealed or expunged when the arrest did not lead to conviction.<sup>i</sup>

##### In 2004:

- **28** states did not permit the expungement or sealing of any conviction records.
- **22** states allowed some conviction records to be expunged or sealed, such as first-time offenses.<sup>ii</sup>
- **45** states allowed people to seal or expunge records of some or all arrests that did not lead to conviction.<sup>iii</sup>
- **30** states allowed people to deny the existence of a sealed or expunged arrest record when it did not lead to a conviction, if asked on employment applications or similar forms.

##### In 2009:

- **27** states do not permit the expungement or sealing of any conviction records.
- **24** states allow some conviction records to be expunged or sealed, such as first-time offenses.<sup>iv</sup>
- **47** states allow people to seal or expunge records of some or all arrests that did not lead to conviction.
- **31** states allow people to deny the existence of a sealed or expunged arrest record when it did not lead to a conviction, if asked on employment applications or similar forms.

**II. In a majority of states, virtually anyone with an Internet connection can find information about someone's conviction history on-line without his or her consent or any guidance on how to interpret or use the information.<sup>v</sup>**

**In 2004:**

- **34** states allowed Internet access to criminal records or posted records on the Internet.
- **17** of those states made all conviction records available on the Internet.<sup>vi</sup>
- **8** made available on the Internet records of people who are incarcerated and those on probation or parole.<sup>vii</sup>
- **9** posted on the Internet only records of people currently incarcerated.<sup>viii</sup>

**In 2009:**

- **35** states allow Internet access to criminal records or post records on the Internet.
- **20** of these states make all conviction records available on the Internet.<sup>ix</sup>
- **7** make available on the Internet records of people who are incarcerated and those on probation or parole.
- **8** make available on the Internet only records of people currently incarcerated.

**ADOPTION AND FOSTER PARENTING:**

**I. Most states make individualized determinations about an applicant's suitability to be an adoptive or foster parent that considers the person's criminal record, as well as rehabilitation.**

**In 2004:**

- **35** states considered the relevance of an applicant' criminal record in making a determination about an applicant's suitability to be an adoptive or foster parent.
- **15** states had flat bars against people with criminal records becoming adoptive or foster parents.

**In 2009:**

- **38** states consider the relevance of an applicant' criminal record in making a determination about an applicant's suitability to be an adoptive and/or foster parent.<sup>x</sup>
- **13** states have flat bars against people with criminal records becoming adoptive or foster parents.

## DRIVERS' LICENSES:

### In 2004:

**27** states automatically suspended or revoked licenses for some or all drug offenses; **23** states either suspended or revoked licenses only for driving-related offenses or opted out of the federal law.

- Of the **27** states that automatically suspended or revoked licenses for some or all drug convictions, **22** limited the revocation or suspension of licenses to up to six months for a first offense.
- **5** states—Arizona<sup>xi</sup>, Colorado, Delaware, Massachusetts, and South Carolina—revoke or suspend drivers' licenses for longer than six months for drug convictions unrelated to driving.

### In 2009:

**28** states automatically suspend or revoke licenses for some or all drug offenses<sup>xii</sup>; **23** states either suspend or revoke licenses only for driving-related offenses or have opted out of the federal law.

- Of the **28** states that automatically suspend or revoke licenses for some or all drug convictions, **22** limit the revocation or suspension of licenses up to six months for a first offense.
- **5** states—Arizona, Colorado, Delaware, Massachusetts, and South Carolina—revoke or suspend drivers' licenses for longer than six months for drug convictions unrelated to driving.

**II. Many states made restrictive licenses available so individuals whose licenses would otherwise be suspended could go to work, attend drug treatment, or obtain an education.**

### In 2004:

- **38** states offered restrictive licenses; **12** did not.<sup>xiii</sup>

### In 2009:

- **40** states offer restrictive licenses or give discretion to judges to not suspend; **11** do not.<sup>xiv</sup>

## EMPLOYMENT

**I. Employers and occupational licensing agencies in most states can deny jobs or licenses to people who were arrested but never convicted of any crime.**<sup>xv</sup>

## Inquiries and Consideration of Arrest Records by Employers and Occupational Licensing Agencies

### In 2004:

- **37** states permitted public and private employers and occupational licensing agencies to ask about and rely upon arrests that never led to convictions.
- **2** states limited public employers and occupational licensing agencies but not private employers.
- **1** state limited public employers but not private employers or occupational licensing agencies.
- **10** states prohibited use of arrests that never led to convictions by any employers.

### In 2009:

- **38** states permit public and private employers and occupational licensing agencies to ask about and rely upon arrests that never led to convictions.<sup>xvi</sup>
- **2** states limit public employers and occupational licensing agencies but not private employers.
- **1** state limits public employers but not private employers or occupational licensing agencies.
- **10** states prohibit any use of arrests that never led to convictions by employers.

## II. Employers in most states can deny jobs to – or fire- anyone with a criminal record, regardless of individual history, circumstance, or “business necessity.”

### Standards Governing the Relevance of Conviction Records in Hiring or Licensing Decisions

#### In 2004:

Occupational Licensing Agencies:	<b>26</b> states had no standards <b>24</b> states required individualized determinations <sup>xvii</sup>
Public Employers:	<b>34</b> states had no standards <b>16</b> states required individualized determinations <sup>xviii</sup>
Private Employers:	<b>42</b> states had no standards <b>8</b> states required individualized determinations <sup>xix</sup>

#### In 2009<sup>xx</sup>:

Occupational Licensing Agencies:	<b>26</b> states have no standards <b>25</b> states require individualized determinations
Public Employers:	<b>34</b> states have no standards <b>17</b> states require individualized determinations
Private Employers:	<b>43</b> states have no standards <b>8</b> states require individualized determinations

## **PUBLIC BENEFITS**

**I. Most states restrict at least some people with drug felony convictions from being eligible for federally funded public assistance and food stamps, but currently only 10 states have left the lifetime ban in place.**

**In 2004:**

- **17** states had adopted the federal drug felon ban without modification. They permanently denied benefits, even if a crime occurred years before or the person had been treated and rehabilitated.
- **24** states had limited the ban in some way to enable those with drug felony convictions to get public assistance if they met certain conditions, such as participation in alcohol or drug treatment, met the waiting period, had a “possession only” conviction, or satisfied other conditions.<sup>xxi</sup>
- Only **9** states had eliminated the ban entirely.

**In 2009:**

- **9** states maintain the federal drug felon ban without modification. They permanently deny benefits, even if a crime occurred years before or the person has been treated and rehabilitated.
- **33** states limit the ban in some way to enable those with drug felony convictions to get public assistance and/or food stamps if they meet certain conditions, such as participation in alcohol or drug treatment, meeting the waiting period, having a “possession only” conviction, or satisfying other conditions.
- Only **9** states have eliminated the ban entirely.<sup>xxii</sup>

## **PUBLIC HOUSING**

**I. In a majority of states, public housing authorities make individualized determinations about an applicant’s eligibility that include considering the person’s criminal record, as well as evidence of rehabilitation.**

**In 2004:**

- In **47** states, public housing policies provided for individualized determinations.
- In **3** states, housing authorities did not make individualized determinations but instead flatly banned applicants with a wide range of criminal records.

**In 2009:**

- In **48** states, public housing policies provide for individualized determinations.<sup>xxiii</sup> In **3** states they flatly ban applicants with a wide range of criminal records.

**II. Many public housing authorities consider arrest records that did not lead to conviction in determining eligibility for public housing.**

**In 2004:**

- **27** housing authorities surveyed made decisions about eligibility for public housing based on arrests that never led to a conviction; **23** did not.

#### **In 2009:**

- **30** housing authorities surveyed make decisions about eligibility for public housing based on arrests that never led to a conviction; **21** do not.<sup>xxiv</sup>

#### **VOTING**

**All but two states (Maine and Vermont) place some restriction on the right to vote for people with felony convictions.**

#### **In 2004:**

- **14** states had lifetime bans on voting for some or all people convicted of crimes, **5** states prohibited voting for life by those convicted of certain classes of crimes; **9** states had a lifetime bar that may be lifted only if the state grants a formal "restoration of civil rights."<sup>xxv</sup>
- **17** states barred people from voting while they were incarcerated or serving parole or probation sentences.
- **6** states barred people from voting while they were incarcerated or on parole.
- **13** states denied voting rights to people only while they were incarcerated.<sup>xxvi</sup>

#### **In 2009:**

- **11** states have lifetime bans on voting for some or all people convicted of crimes, **3** states prohibit voting for life by those convicted of certain classes of crimes; **8** states have a lifetime bar that may be lifted only if the state grants a formal "restoration of civil rights."<sup>xxvii</sup>
- **20** states bar people from voting while they were incarcerated or serving parole or probation sentences.
- **4** states bar people from voting while they were incarcerated or on parole.
- **14** states deny voting rights to people only while they were incarcerated.<sup>xxviii</sup>

# STATE-BY-STATE UPDATE

Below is a summary of the law and policy changes states have made — positive and negative — in the seven issue areas we studied.

## Access to Criminal Records

As many as 71 million people have arrest records, many of which never resulted in conviction. Criminal background checks have become a standard part of many application procedures, whether to qualify for employment, housing, or other essential benefit, which can make it much more difficult for the millions of individuals with criminal records to become or remain productive, law-abiding members of society. Many of these individuals encounter the stigma associated with having a criminal record as they try to become productive members of society. State law predominately governs policies and legal standards that authorize employers and other non-criminal justice related agencies to access to criminal records.

**Two states amended their laws to allow for sealing/expungement of criminal records.**

- In March 2009, New York State passed legislation to allow conditional sealing of certain first-time felony drug offenses and up to three drug-related misdemeanor convictions. Individuals with conditionally sealed convictions may deny the existence of the record to most employers.
- In 2007, Nebraska passed legislation to allow arrests due to the error of law enforcement agencies, cases where the District Attorney declines to prosecute, or dismissed charges to be expunged/suppressed from public review after certain waiting periods have lapsed.

**One state (Nebraska) amended its policy to limit access to criminal record information. Nine states (Alaska, District of Columbia, Hawaii, Maine, Minnesota, Missouri, Pennsylvania, Tennessee, and Vermont) amended their law or policy to allow on-line public access to criminal record information.**

- The Nebraska Department of Corrections maintains an on-line database listing of currently incarcerated individuals. See: [http://dcs-inmatesearch.ne.gov/Corrections/COR\\_input.html](http://dcs-inmatesearch.ne.gov/Corrections/COR_input.html). The state previously reported criminal records of anyone with a felony record.
- In March 2009, the District of Columbia began posting criminal record information on-line. Records are available for free on the website of the DC Superior Court at <https://www.dccourts.gov/pa/>.
- In 2008, Vermont made criminal records available to the public on-line for a fee at <http://www.dps.state.vt.us/cjs/recordcheck/faq.htm>.
- In 2006, Alaska began posting criminal court records on-line at <http://orca.courts.state.ak.us/names>.
- In 2006, Hawaii began posting criminal records on-line. eHawaii.gov is a direct link to different government resources, including a link that allows people to “search for an individual’s conviction information based on the

search criteria that you provide.” An individual may be searched by their “name, social security number, date of birth, and/or gender.”

- In 2006, the Tennessee Bureau of Investigation began providing name-based criminal background information on-line for a fee at [http://www.tbi.state.tn.us/tbibackgrounds/background\\_checks\\_main.htm](http://www.tbi.state.tn.us/tbibackgrounds/background_checks_main.htm).
- The Maine State Patrol provides both adult and juvenile criminal history records on-line for a \$25 fee. Available at <http://www10.informe.org/PCR/>.
- As of August 1, 2005 by law the Minnesota Department of Public Safety and the Minnesota Bureau of Criminal Apprehension were required to provide criminal conviction records within the last 15 years free to the public. Available at <https://cch.state.mn.us/>.
- In 2005, Missouri made case records available on-line, including docket entries, parties, judgments, and charges in public court free of charge; however, only court records of courts that have implemented the case management system are available on the website, <https://www.courts.mo.gov/casenet/base/welcome.do>.
- As of 2005, criminal record information was made available through the Pennsylvania Access to Criminal History (“PATCH”) website, which is maintained by the Pennsylvania State Police. <https://epatch.state.pa.us/Home.jsp;jsessionid=91E2304020C8426362024371F702C2A8>.

## Adoption and Foster Care Parenting

The federal Adoption and Safe Families Act (ASFA) set national standards for the placement of children in the child welfare system, emphasizing safety, permanency, and the child’s well-being. One of its provisions mandates that states perform criminal record checks on prospective parents and bar individuals with certain convictions from being foster or adoptive parents. Any family member with a criminal record can be disqualified from caring for a child whose parent is in prison. ASFA allows states to substitute its own rules for the federal requirements and make individualized determinations about the suitability of applicants. Unfortunately, some states have adopted the federal standard without any allowance for individualized consideration of the prospective parent’s suitability or the interests of the child.

**Two states (Colorado and Illinois) changed their laws to require individualized determinations for applicants and one state eliminated such requirement. They removed flat criminal record bars and began making individualized determinations of applicants with criminal histories.**

- In 2007, Colorado passed legislation to require individualized determinations for individuals applying to be foster care parents who have disqualifying offenses. In 2006, Colorado had passed similar legislation for individuals who applied to be adoptive parents.
- In 2007, Illinois passed legislation to require agencies to make individualized determinations of applicants with criminal histories who apply to be foster care or adoptive parents.

## **Alaska began imposing flats bans for individuals with certain convictions beyond what the federal law requires.**

- In 2007, Alaska passed legislation which eliminated individualized determinations for applicants with criminal record histories who apply to be foster care parents. Previously, the state imposed flat bans for certain serious criminal records but has since added a number of additional crimes.

## **Driving**

The suspension or revocation of drivers' licenses is a significant but often overlooked barrier to economic advancement for people with criminal records who have paid their debt to society and want to become productive, tax-paying citizens. While there is a clear societal interest in keeping those who are unfit to drive off the roads, broadly restricting licenses for convictions unrelated to an individual's ability to drive safely is an unfair penalty that does society more harm than good. Prohibiting people convicted of a non-driving-related drug offense from driving makes it harder for them to look for and keep jobs, participate in addiction treatment or healthcare, and get education or job training. Especially in suburban and rural areas that lack extensive public transportation, a valid driver's license can be crucial to an individual's ability to successfully reenter society.

In 1992, Congress amended the Federal Highway Apportionment Act to withhold a portion of federal highway funds from any state that failed to adopt a license suspension/revocation law for people convicted of drug offenses. This law loosely defines "drug offense" as any criminal offense involving the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance (prohibited by the Controlled Substances Act), or the operation of a motor vehicle under the influence of such a substance. The federal law requires a suspension or revocation of at least six months.

**Two states amended their policy to offer restricted licenses. Arizona amended its law to allow restricted licenses to be issued to individuals convicted of a drug-related offense for purposes of maintaining employment, education, or treatment and New Jersey gave judges discretion to suspend or not suspend the license of someone with a drug conviction.**

- In 2005, Arizona passed legislation that allowed for the issuance of restrictive licenses to persons subject to suspension or revocation of their driver's license that resulted from a drug or alcohol-related offense. The state began using interlock device systems in individuals' vehicles.
- In 2006, New Jersey amended the law to grant judges the discretion on whether or not to suspend/revoke the license of someone convicted of a drug-related offense.

## **Employment**

Most states allow employers to refuse to hire people with criminal records; not only individuals who have been convicted -- even if they have paid their debt to society and demonstrated their ability to work without risk to the public -- but also those who were arrested and never convicted. Although no one questions the legitimate concerns of employers who do not want to hire someone with a conviction record who clearly demonstrates a threat to public safety or who otherwise has a conviction history directly

related to a specific job, policies that encourage employers to adopt broad sweeping exclusions (i.e. not hiring or considering anyone with any type of criminal history) simply locks out and eliminates many qualified, rehabilitated individuals from the job market.

LAC encourages States to enact legislation that:

- Prohibits inquiries about arrests that never led to conviction.
- Creates an employment standard that establishes a limited “look-back” period for how old a record can be for consideration. Consideration of a criminal record should not be permitted beyond 7 years after completion of sentence.
- Prohibits across-the-board employment bans based on conviction records and requires employers (as well as agencies that conduct criminal history background checks) to assess job applicants individually on their merits.
- Create certificates that lift automatic bars to employment and occupational licenses.

**Five states (Connecticut, Delaware, Florida, Massachusetts, and New York) enacted employment laws or policies to improve employment and occupational licensing opportunities for individuals with criminal histories by removing: (1) employment barriers through a restoration of rights process and helping to provide evidence of rehabilitation to its residents who have criminal records; (2) criminal record barriers to occupational licensing; or (3) barriers to public employment.**

- In 2007, New York amended its anti-discrimination law, which originally only covered individuals who were applicants for jobs, to cover applicants and currently employed individuals. The law was also amended to prohibit employers from asking about or considering youthful offender adjudications and sealed non-criminal convictions in its employment decisions. In 2009, the law was further amended to allow these individuals the right to not disclose these records if illegally asked the question. N.Y. Correct. Law §§75—754, N.Y. Exec. Law § 296 (16).
- In 2007, Massachusetts Governor, Deval Patrick, issued Executive Order 495 to require each agency of the Executive Department to prohibit background checks of prospective or current employees before s/he is deemed otherwise qualified for employment and each agency is required to make individualized determinations.
- In 2006, Connecticut created a provisional pardon to allow individuals who may not qualify for a full pardon to have an opportunity remove employment barriers. A provisional pardon does not erase the criminal history or relieve the person from disclosure of criminal history. Conn. Gen. Stat. §54-130a.
- In 2006, Florida’s former Governor, Jeb Bush, issued Executive Order 06-89 requiring all executive agencies to analyze and report its hiring policies, within the agency or in an agency that is licensed or regulated by that agency, regarding the employment of people with criminal records. The Governor encouraged all agencies to develop or strengthen their policies to give qualified individuals with criminal histories optimal opportunity to be considered for employment with the state.

- In 2004, Delaware amended Title 24 to require that the refusal, revocation or suspension of licenses for professions and occupations regulated under Title 24 based upon conviction of crimes must be "substantially related" to the profession or occupation at issue, and not for crimes that are unrelated to the profession or occupation.

## Housing

Local housing authorities are permitted by federal law to use their discretion in crafting policies regarding the admission of people with criminal records to public housing. Some have used this discretion to implement policies which permanently ban people with criminal records from public housing. Public housing authorities and private landlords should adopt policies that, rather than barring any applicants who have criminal records, instead individually assess each applicant based on: the seriousness and nature of his or her conviction, the relevance of that conviction to the tenancy, the length of time that has passed since the conviction, and evidence of rehabilitation.

**Two public housing authorities amended their admissions policies to exclude the consideration of arrest records and began to make individualized determinations rather than having flat criminal record bans on eligibility for people with criminal records. The Chicago Housing Authority (CHA) and the Housing Authority of Baltimore City amended their policies to not consider arrests that did not lead to conviction, make individualized determinations, and allow for the submission of evidence of rehabilitation.**

- In 2007, Illinois' Chicago Housing Authority amended its admission policy to make individualized determinations about criminal history information thereby considering the severity of an applicants criminal record, how old the record(s), and any evidence of rehabilitation.
- In 2008, Maryland's Baltimore Public Housing Authority amended its policy to no longer consider arrests that did not lead to conviction in its admission decisions.

**Two public housing authorities in Maine and Tennessee began considering arrests that did not lead to conviction.**

- In 2006, Maine's Portland Housing Authority began considering arrests that did not lead to conviction in its admission decisions.
- In 2004, the Nashville Metropolitan and Development Agency began considering arrests that never led to conviction in its admission decisions.

## Public Benefits

The federal 1996 Personal Responsibility and Work Opportunity Reconciliation Act dramatically changed the American welfare system. Under this law, anyone convicted of a federal or state felony for conduct occurring after August 22, 1996 involving the possession, use, or distribution of drugs is permanently ineligible to receive food stamps or TANF. Although the law allows states to decide not to adopt the ban, unless and until a state adopts specific legislation opting out from or modifying it, people with drug felony convictions are barred for life from receiving food stamps and cash assistance.

**Seven states (Arizona, California, Indiana, Kansas, Montana, South Dakota, and Virginia) amended the drug felon ban on public assistance and food stamps to allow individuals in drug or alcohol treatment or who have completed treatment to receive one or both benefits.**

- In 2009, South Dakota modified the federal drug felon ban to allow individuals to qualify for food stamps if complying with the conditions of probation or has been discharged and has completed, or is actively participating in, drug or alcohol treatment, if required. 84<sup>th</sup> Legislative Session, HB 1123, signed into law March 2009.
- In 2006, Kansas modified the federal drug felon ban to allow persons to receive benefits if: (1) s/he has been assessed by a licensed substance abuse provider as not requiring treatment; or (2) s/he has been assessed by a licensed substance abuse provider and recommended for treatment and is currently receiving treatment or has successfully completed treatment. Kan. Admin. Regs. 30-4-50(d).
- In 2005, Indiana modified the federal drug felon ban for individuals who are successfully participating in a re-entry drug court program. Ind. Code § 12-14-29-4.
- In 2005, Montana modified the federal drug felon ban to allow an applicant who is actively complying with the conditions of supervision or treatment, or has discharged the sentence associated with the felony to receive benefits. Mont. Code Ann. § 53-4-231(3).
- In 2005, Virginia modified the federal drug felon ban to allow food stamp eligibility for anyone convicted of a felony offense of possession of a controlled substance, provided such person is complying with, or has already complied with, all obligations imposed by the criminal court, is actively engaged in or has completed a substance abuse treatment program, participates in periodic drug screenings, and any other obligations as determined by the Department. Va. Code Ann. §63.2-505.2. TANF cash benefits may be directed to third parties upon receipt of notification from a probation or parole officer that a TANF caretaker under his supervision has failed a drug test. After twelve months, the local department may reinstate such caretaker as the payee for the assistance unit provided such caretaker has failed no subsequent drug test within such twelve-month period. Va. Code Ann. §63.2-605.
- In 2004, Arizona modified the federal drug felon ban to allow the courts to render a person convicted of any drug offense ineligible to receive any public benefits.
- In 2004, California modified the federal drug felon ban to allow persons convicted of possession participating in or have completed a drug-treatment program to receive food stamps. Cal. Wel. & Inst. § 18901.3(d). However, the ban remains in place for individuals convicted of drug offenses involving transporting, importing into this state, selling, furnishing, administering, giving away, possessing for sale, purchasing for purposes of sale, manufacturing a controlled substance, possessing precursors with the intent to manufacture a controlled substance, or cultivating, harvesting, or processing marijuana or procuring a minor's participation in any of these activities. Cal. Wel. & Inst. Code § 18901.3(a), (b), (c).

**Oregon, which had previously opted out of the drug felon ban, banned eligibility for food stamps for individuals convicted of manufacturing or selling drugs and community corrections agencies may recommend suspension of food stamp benefits for individuals under supervision.**

- In 2005, Oregon modified the federal drug felon ban to allow the Department of Human Services to suspend a person's food stamp benefits if: (a) the person has been convicted of the manufacture or delivery of a controlled substance under ORS 475.840 (1) (a) to (c); and (b) the person is on probation, parole or post-prison supervision and the agency supervising the person makes a recommendation to the Department of Human Services that it suspend the person's food stamp benefits Or. Rev. Stat. § 411.119.

## Voting

States have absolute power to decide whether someone with a criminal record can vote. LAC researched what limitations, if any, states place on the right to vote. We encourage states not to limit the voting rights of individuals with conviction records, whether incarcerated or not. Voting rights play an important role in reintegration and laws that disenfranchise people with felony convictions are a “[contradiction] to the promise of rehabilitation.” (See The Sentencing Project and Human Rights Watch, *“Losing the Vote: The Impact of Felony Disenfranchisement in the United States, 1998.”*)

**Five states (Florida, Iowa, Kentucky, Maryland, and Nebraska) modified their felon disenfranchisement laws or policies. Iowa and Maryland changed their policy and automatically restored the right to vote to some or all individuals convicted of felonies upon completion of their sentence. Florida, Kentucky, and Nebraska eased the restoration of civil rights process to restore voting rights.** (Some information extracted from the Sentencing Project's paper, *Felony Disenfranchisement Laws in the United States, 9/08.*)

- In 2008, Kentucky Governor, Steve Beshear, issued an executive policy directive to make it easier for individuals to get their voting rights restored. He eliminated the requirement that individuals write an essay or get three references, and requires prosecutorial notice once instead of twice.
- In 2007, Florida's Office of Executive Clemency voted to amend the state's voting rights restoration procedure to automatically approve the reinstatement of rights for many persons who have been convicted of non-violent offenses. Persons convicted of certain violent crimes are now immediately eligible to apply for review and approval without a hearing while others must still seek restoration through a hearing before the Clemency Board.

In Florida, individuals convicted of a felony who serve a prison sentence are ineligible to vote unless civil rights have been restored by either a full pardon, completion of the sentence, or final release from parole. Fla. Const., Art. VI § 4 and Fla. Stat. Ann. § 940.05. Individuals with certain less serious felony convictions are automatically given executive clemency and civil rights are restored, including the right to vote. Rules of Executive Clemency 9A, available at <https://fpc.state.fl.us/Policies/ExecClemency/ROEC04052007.pdf>.

- In 2007, Maryland modified its voting law to allow individuals who have completed their sentences to be automatically restored to the right to vote. Md. Code, Election Law, §3-102(b) (1).
- In 2005, Iowa's former Governor Tom Vilsack issued Executive Order Number 42 in 2005 to automatically restore the voting rights of all individuals convicted of a felony who completed their sentences. See [www.governor.iowa.gov/administration/docs/vilsack-eo-42.pdf](http://www.governor.iowa.gov/administration/docs/vilsack-eo-42.pdf).
- In 2005, the Nebraska legislature lifted the lifetime ban on voting for individuals convicted of a felony and instead required a two-year post-sentence ban. Neb. Rev. Stat. §32-313(1).

\*\*\*A note on methodology: LAC first researched relevant federal laws, including how states exercised the latitude allowed by most of the federal laws. Then, for each state, we analyzed state laws and regulations pertaining to civil legal barriers facing people with past criminal records, when statutes or regulations did not directly address a particular issue, we researched case law to determine if the courts provided further clarification. Finally, in the absence of statute, regulation, or case law, we spoke with officials from the relevant state agency to determine whether there was any applicable administrative policy. In all, we surveyed over 27 different kinds of laws and practices.

# Report Card

A report card provides a quick picture of progress – or failure – to achieve optimal success. Therefore, in addition to documenting the laws and policies that create roadblocks to reentry we graded and ranked states as best, average, or worst according to the total points they received in each of the seven categories we studied. States were assigned a maximum of ten points for each roadblock category; therefore, the fewer the points, the better the score. While states had the possibility of earning a total score of 70 points, no state scored over 50, which shows overall that states may have policies that are acceptable in some areas but problematic in others.

Charts I, II, and III reflect the Best, Average, and Worst ranked states in our survey. Each chart lists the current and past rank and score for each state. States that qualified for Best Ranked had current scores from 0 to 25, the Average Ranked states had current scores from 26 to 34, and the Worst Ranked states had current scores from 36 to 50.

There were some adjustments in scores that were a result of further analysis and review of each law. Therefore, there were some states that did not have new laws or policies enacted but had a change in score and rank. Some of these changes are highlighted in the endnotes for the **Where We Are Today** section of this report.

Chart I lists the eighteen Best Ranked states. The top five states are Illinois, New York, California, Hawaii, and New Hampshire. In our previous report card study, New York State was ranked number one because of its progressive state laws and policies. While New York has further improved its score by improving its criminal record sealing provisions (see **State-by-State Update** for details), both Illinois and Maryland made the most significant progress in improving its laws and policies to support the reintegration of people with criminal histories in the past five years. Both Illinois' and Maryland's largest public housing authorities (Chicago and Baltimore Housing Authorities) changed their admission policies to allow for individualized determinations of applicants with criminal histories and both do not consider arrests that did not lead to conviction. Furthermore, Illinois amended its Adoption and Safe Families Act provision to remove blanket criminal record bars to becoming a foster or adoptive parent and Maryland amended its voting law to allow individuals with felony convictions to vote upon completion of their sentence. These changes drastically improved both states' national rank in our study.

Illinois edged past New York by one-half point to the number one position and Maryland has now moved up to the 17<sup>th</sup> position from its previous rank of 38. It is important to note that New York is the only state in the top five that automatically suspends the licenses of individuals convicted of any drug/alcohol offense, including those that are not related to driving. Oklahoma continues to be the only southern state in the Best Ranked category, 16<sup>th</sup> best out of 51.

Chart II lists the eighteen states with average scores and ranks. Of the states in this range, Florida made significant steps toward addressing its roadblocks by requiring its executive agencies to review barriers to reentry and to take steps to address those barriers. Furthermore, the state made some changes to the voting restoration of rights process for individuals convicted of felonies. Yet it is still important to note that many of its recent changes have not significantly reduced its points in any one area.

As noted in Chart III, the five states with the greatest number of roadblocks are Pennsylvania, Georgia, South Carolina, Virginia, and Alaska. Most of the southern states remained categorized as the worst ranked states in our survey. Many either made no change to its laws or policies or made policy changes that did not yield a significant score modification. Alaska moved to last place after slipping 15 spots from a rank of 35<sup>th</sup> out of

50 states to 51 out of 51 with a score of 46 points. Alaska moved in a regressive direction by passing legislation that erected more barriers to successful reentry. While it was not the only state to regress, it did so in more categories. In 2006, Alaska put all criminal records on-line giving the public unfettered access to criminal record information and in 2007 the state eliminated the requirement for agencies to conduct individualized assessment of foster care parent applicants who have criminal histories and began to impose flat criminal record bars. Moreover, the state added additional disqualifying offenses.

Click [here](#) for a Report Card for each state.

## Best Rank

Chart I

<u>State</u>	<u>Current Rank</u>	<u>Past Rank</u>	<u>Current Score</u>	<u>Past Score</u>
IL	1	14	6.5	22.5
NY	2	1	7	10
CA	3	3	10.5	14
HI	4	2	11	12
NH	4	5	11	16
KY	6	11	19	22
OH	6	10	19	19.5
MA	8	11	20	22
VT	8	8	20	18
OR	10	5	20.5	16
MI	11	9	21	19
WA	11	17	21	25
CT	12	26	22	31.5
ME	12	4	22	15
UT	12	7	22	17
OK	16	15	23	23
DC	17		24	
MD	17	38	24	37

## Average Rank

Chart II

<u>State</u>	<u>Current Rank</u>	<u>Past Rank</u>	<u>Current Score</u>	<u>Past Score</u>
KS	19	27	26	32
MT	20	28	27	33
NV	20	11	27	22
WI	20	21	27	28
AZ	23	20	28	26
LA	23	23	28	30
MN	25	24	29	31
NJ	25	44	29	39
AR	27	28	30	33
NE	27	32	30	35
WV	29	24	31	31
FL	30	28	32	33
ND	30	28	32	33
TX	30	35	32	36
ID	33	21	33	28
RI	34	17	34	25
TN	34	17	34	25
WY	34	38	34	37

### Worst Rank

Chart III

<u>State</u>	<u>Current Rank</u>	<u>Past Rank</u>	<u>Current Score</u>	<u>Past Score</u>
IN	37	38	35	37
IA	37	42	35	38
NM	37	16	35	24
SD	40	42	36	38
AL	41	45	37	41
CO	41	50	37	48
MS	41	38	37	37
NC	44	32	39	35
MO	45	35	40	36
DE	46	46	40.5	41.5
PA	47	32	41	35
GA	48	47	42	43
SC	48	49	42	47
VA	48	47	42	43
AK	51	35	46	36

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<sup>i</sup> In the updated research we re-categorized states to include those that also offered limited relief; for example, expungement after deferred judgments or pardons.

<sup>ii</sup> We re-categorized 5 states (AR, MD, MN, SC, & SD) based upon further analysis of states' expungement/sealing provisions, which increased the original total from 17 to 22.

<sup>iii</sup> We re-categorized 5 states (IA, ME, MI, NM, & WY) and increased the original total from 40 to 45.

<sup>iv</sup> The District of Columbia allows some convictions to be sealed/expunged.

<sup>v</sup> We re-categorized states in the 2004 data based upon further analysis of the sources of criminal record information. We only considered those states that made records available through a government source such as the state criminal record repository or court system.

<sup>vi</sup> We re-categorized 3 states (GA, NM, & TX), which increased the original 2004 tally from 14 to 17.

<sup>vii</sup> We re-categorized 2 states (IN & OH), which increased the original 2004 tally from 6 to 8.

<sup>viii</sup> We re-categorized 1 state (IL), which increased the original 2004 tally from 8 to 9.

<sup>ix</sup> In 2009, the District of Columbia began posting court records on-line.

<sup>x</sup> The District of Columbia does not impose flat bans and makes individualized determinations.

<sup>xi</sup> Arizona was added because state law requires suspensions of one year or more.

<sup>xii</sup> The District of Columbia automatically suspends the licenses of individuals convicted of any drug offense, even those that are non-driving related.

<sup>xiii</sup> We re-categorized some states as having a restrictive license policy if they allowed for early reinstatement of a license for employment, education, or medical purposes. We adjusted the 2004 data to include 6 additional states: CO, FL, MA, ND, OH, and TX.

<sup>xiv</sup> The District of Columbia does not offer a restrictive license.

<sup>xv</sup> Employers and occupational licensing agencies were considered to have a standard if the law prohibited consideration of any type of criminal record—arrests, minor convictions, annulled convictions, pardoned convictions, sealed/expunged records, etc.

<sup>xvi</sup> The District of Columbia permits employers and occupational licensing agencies to ask about and consider arrests that did not lead to conviction.

<sup>xvii</sup> In the 2004 data we re-categorized 3 states (SC, VA, & WV) that have some standard that apply to occupational licensing agencies, no matter how limited the standard.

<sup>xviii</sup> We re-categorized 2 states (CA & MT) that have standards that apply to public employers. In the *State-by-State Update* section you will note that FL and NY have made positive employment policy changes. However, the changes had no affect on the tally because their existing policies were improved rather than completely changed.

<sup>xix</sup> We re-categorized 3 states (CT, MT, & NJ), which have standards that apply to private employers.

<sup>xx</sup> The District of Columbia has no employment or occupational licensing standards for the consideration of applicants with criminal records.

<sup>xxi</sup> In the 2004 data, we re-categorized 3 states (ID, PA, & UT) to have a modified ban because there are stipulations that must be met for an individual with a felony drug conviction to be eligible for benefits.

<sup>xxii</sup> The District of Columbia opted out of the federal drug felon ban.

<sup>xxiii</sup> The DC Housing Authority makes individualized determinations.

<sup>xxiv</sup> MO's Missoula Housing Authority considers arrest records in its admissions policy.

<sup>xxv</sup> We re-categorized OR and FL because both states require the restoration of rights for voting eligibility, increasing the 2004 tally from 12 to 14.

<sup>xxvi</sup> LA was re-categorized because the state prohibits incarcerated people from voting.

<sup>xxvii</sup> In the *State-by-State Update* section you will note that FL and KY have made positive changes to its felony disenfranchisement policies. However, the changes had no affect on the tally because their existing policies were improved rather than completely changed.

<sup>xxviii</sup> The District of Columbia denies voting rights to people who are incarcerated.