

# CALIFORNIA

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

## Goal 1

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

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

- + California's general fair chance licensing law purports to override most mandatory licensing barriers imposed under the state's Business and Professions Code, converting them into discretionary consequences.
- California law places no general limitations on the mandatory imposition of structural barriers to employment.
- Despite the limitation on the mandatory imposition of barriers to licensure, nearly 60 percent of the more than 1,100 employment-related consequences imposed by California law are described as being mandatory.\*

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

- + California law generally prohibits the denial of licensure for convictions that are over seven years old (excluding any time that a person was incarcerated). Exceptions apply for certain convictions, including those for specified "serious felonies" and those requiring sex offender registration.
- California law places no general limits on the age of convictions that may be considered by employers.
- Only 16 percent of the more than 1,100 employment-related consequences imposed by California law are limited in their duration. The remainder persist indefinitely.\*

## Goal 2

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

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

- ➖ California law places no general limits on the use of vague terms to describe triggering offenses and offense categories in the employment or licensing context.

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

- ➖ California law places no general limits on the categories of offenses that may disqualify workers from public employment or licensure.

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

- ➖ Over 500 of the employment-related collateral consequences imposed by California law may be triggered by any felony, and over 450 may be triggered by any crime at all, indicating that more can be done to eliminate triggering offenses that do not suggest an increased risk.\*

## Goal 3

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

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

- ➕ California law generally prohibits the discretionary denial of private or public employment for convictions that do not have a “direct and adverse relationship with the specific duties of the job.”
- ➕ California law generally prohibits the denial of licensure for convictions that are not “substantially related to the qualifications, functions, or duties of the business or profession for which application is made.”

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

- ➕ California law generally prohibits the discretionary denial of public or private employment or licensure without first giving individualized consideration to an applicant and their conviction. Evaluation of applicants must include consideration of the nature and gravity of the offense, time since commission of the crime, the nature of the job or licensed activity, and evidence of rehabilitation.

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

- ➕ California law generally requires licensing bodies to provide a written explanation of the reasons a conviction was deemed disqualifying.
- ➖ California law does not generally require employers to provide applicants with a written explanation of conviction-based reasons for denial.

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

- ➕ California law creates a procedure that allows workers to respond to a private or public employer's preliminary decision to reject an applicant due to conviction by challenging the accuracy of criminal records used by the employer and/or presenting evidence of rehabilitation or mitigating circumstances.
- ➕ Procedural protections related to the use of convictions in private and public employment are enforced by the Department of Fair Employment and Housing, and complaints may be brought by adversely impacted workers.
- ➕ California law creates specific standards and procedures for formal administrative review of conviction-based license denials. Licensing bodies are required to notify rejected applicants of the availability of formal review and any other available reconsideration processes.

## Goal 4

### **Promote transparency about how workers' convictions are likely to impact employment and licensing opportunities.**

#### **4A. Ensure that application materials and other resources clearly explain how convictions are factored into decision-making.**

- ➕ California law generally requires each licensing body to “post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.”
- ➖ California law does not generally require employers to provide any specific information about criminal history consideration or other similar materials.

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

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

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

- ➖ California law does not generally require or authorize a process for pre-application eligibility determinations in employment or licensure.

## Goal 5

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

#### **5A. Create or expand long-term relief mechanisms.**

- In California, long-term relief is most commonly available in the form of set-aside/expungement. California law provides various authorities for granting a set-aside, with different procedures and eligibility standards depending on the offense, sentence, and the type of relief. Most misdemeanors are generally eligible, as are most felonies not resulting in incarceration in state prison after a waiting period of up to two years. “Record relief” is a form of automatic relief with a similar effect as set-aside/expungement (see 5C).
- Set-aside/expungement is generally unavailable for felonies resulting in imprisonment in state prison.
- A Certificate of Relief issued by the courts is also available for most offenses after a person has resided in the state for five years (following release or discharge) and two to four additional years have elapsed (depending on the offense). A Certificate mitigates the impact of licensing barriers and some employment barriers, but its effects have become less significant since the enactment of more robust standards governing licensing decisions.

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

- California’s set-aside/expungement/record relief authorities generally provide both long- and near-term relief from structural barriers due to their broad impact and short waiting periods (see 5A). (Unlike most other jurisdictions that offer judicial certificates of relief, the Certificates of Relief authorized by California law have significant waiting periods and are more appropriately considered a form of long-term relief.)
- Relief is generally unavailable for felonies resulting in imprisonment in state prison.

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

- + Pursuant to a 2019 enactment, “record relief” (which is functionally similar to the relief provided by set-aside/expungement) will soon be automatic for most eligible convictions that occurred on or after January 1, 2021. No action will be needed on the part of people with eligible convictions. The state is currently in the process of implementing technical and infrastructure changes necessary to make automatic relief possible.
- Set-aside/expungement is generally unavailable for felonies resulting in imprisonment in state prison.
- + Waiting periods for set-aside/expungement are relatively brief (up to two years, depending on the offense).
- Only individuals convicted after January 1, 2021, are eligible for automatic record relief. People convicted prior to that date must petition for set-aside/expungement, which may be denied at the court’s discretion depending on the offense/sentence.
- The process for obtaining petition-based relief can be burdensome for petitioners who are filing without an attorney due to filing and documentation requirements and the fact that a hearing may be required.
- The fees associated with petition-based relief (from \$60 to \$150, depending on the offense/sentence) can be prohibitive for many who are eligible for relief.

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

- + California law generally prohibits public and private employers and licensing bodies from inquiring about or considering convictions that have been set aside. Exceptions apply.
- California law does not address whether an individual with a set-aside or “record relief” conviction has the right to deny the existence of the conviction if asked about it.

- Record relief releases a person “from all penalties and disabilities resulting from the offense of which the person has been convicted,” although certain exceptions apply.
- Records of set-aside and “record relief” convictions are generally unavailable to the public, employers, or licensing bodies (effective 2022).

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