



AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

A Report by the Legal Action Center
www.lac.org/roadblocks.html

Acknowledgments

This project was researched and written by the staff of the Legal Action Center. Paul Samuels, Director/President, and Debbie Mukamal, Staff Attorney and Director of our National H.I.R.E. Network, wrote the report. We would like to acknowledge the invaluable assistance of Senior Attorney Anita Marton, as well as former Staff Attorney Terri Stevens who undertook the majority of the legal research underlying this project and Administrative Assistant Michelle Harrison, who compiled the database to analyze the state scores.

We would like to thank the Open Society Institute for its generous support and we would like to express our gratitude to Susan Tucker, Director of The After Prison Initiative, for her leadership and active participation, which were vital to the success of this project.

We are grateful to Cabengo LLC. (www.cabengo.com) for design and development.

We would also like to thank Eddie Ellis, Felice Ekelman, Elizabeth Gaynes, Martin Horn, William Maher, JoAnne Page, and Charles See for sharing their invaluable insights and assisting us in developing the criteria for evaluating state laws.

OVERVIEW 8

WHAT'S THE LAW: ROADBLOCKS TO REENTRY 9

EMPLOYMENT 10

PUBLIC ASSISTANCE AND FOOD STAMPS 12

VOTING 14

ACCESS TO CRIMINAL RECORDS 15

PUBLIC HOUSING 16

DRIVERS' LICENSES 17

ADOPTIVE AND FOSTER PARENTING 18

STUDENT LOANS 18

REPORT CARD 19

VISION FOR THE FUTURE 22

CONCLUSION 23

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

This report summarizes the findings of an exhaustive two-year study by the Legal Action Center (LAC) of the legal obstacles that people with criminal records face when they attempt to reenter society and become productive, law-abiding citizens. Our research found that people with criminal records seeking reentry face a daunting array of counterproductive, debilitating and unreasonable roadblocks in almost every important aspect of life.

The study is in three parts. **What's the Law** is a comprehensive catalogue of each state's legal barriers to employment, housing, benefits, voting, access to criminal records, parenting, and driving. The **Report Card** grades each state on whether its laws and policies help or hurt those seeking reentry. **Vision for the Future** outlines how federal and state policymakers can help reintegrate people with criminal records into society in ways that better promote public safety. A complete compilation of our findings including statutory citations and an explanation of methodology are available on our web site, www.lac.org/roadblocks.html. For those who do not have Internet access, please contact the Legal Action Center with specific requests for information.

OVERVIEW

More than 630,000 people are released from state and federal prisons every year, a population equal to that of Baltimore or Boston, and hundreds of thousands more leave local jails. Rather than helping them successfully transition from prison to community, many current state and federal laws have the opposite effect, interfering with the rights and obligations of full citizenship in nearly every aspect of people's lives. These laws diminish public safety and undermine the nation's commitment to justice and fairness, creating roadblocks to basic necessities for hundreds of thousands of individuals who are trying to rebuild their lives, support their families, and become productive members of communities.

Here are some startling facts about existing legal barriers:

- Most states allow employers to deny jobs to people who were arrested but never convicted of a crime.
- Most states allow employers to deny jobs to anyone with a criminal record, regardless of how long ago or the individual's work history and personal circumstances.
- Most states ban some or all people with drug felony convictions from being eligible for federally funded public assistance and food stamps.
- Most states make criminal history information accessible to the general public through the Internet, making it extremely easy for employers and others to discriminate against people on the basis of old or minor convictions, for example to deny employment or housing.
- Many public housing authorities deny eligibility for federally assisted housing based on an arrest that never led to a conviction.
- All but two states restrict the right to vote in some way for people with criminal convictions.

In the past 20 years, the federal government and many states have dramatically increased the number, range, and severity of civil penalties for those with criminal convictions – and, in some cases, even applied them to people never convicted of a crime. Congress and state legislatures created new restrictions on eligibility for food stamps, public assistance, public housing, student loans, and drivers' licenses, while further expanding bars to employment, parenting, and voting.

As a result of the explosive growth of legal roadblocks in the last three decades, successful reentry into society is much more difficult for people who have been arrested or convicted of crimes, many of whom are fully qualified to work and

participate in society and can demonstrate they are rehabilitated. Because African-Americans and Latinos are arrested and convicted at significantly higher rates than Caucasians, individuals and whole communities of color are disproportionately harmed by these policies, leading to widespread economic and political disenfranchisement.

Today, the good news is that there appears to be increasing support in Congress and in the states for the repeal of these counterproductive laws and policies. A number of initiatives are currently underway that will help people with criminal records who have paid their debt to society become independent, law-abiding citizens, thereby strengthening community safety. The Legal Action Center hopes that this study will help advance efforts to reform those laws and policies that endanger public safety by excluding people with criminal records from mainstream society and opportunities to lead law-abiding lives.

WHAT'S THE LAW: ROADBLOCKS TO REENTRY

This report presents the most comprehensive picture to date of the legal roadblocks that confront people with criminal records in each state, and in the nation as a whole. LAC studied roadblocks created by both state and federal law. Since many states are re-examining these issues and there may have been changes that have not yet come to our attention, we advise our readers to verify the information before relying on it as the basis of legal action.



EMPLOYMENT

Employers in most states can deny jobs to people who were arrested but never convicted of any crime.

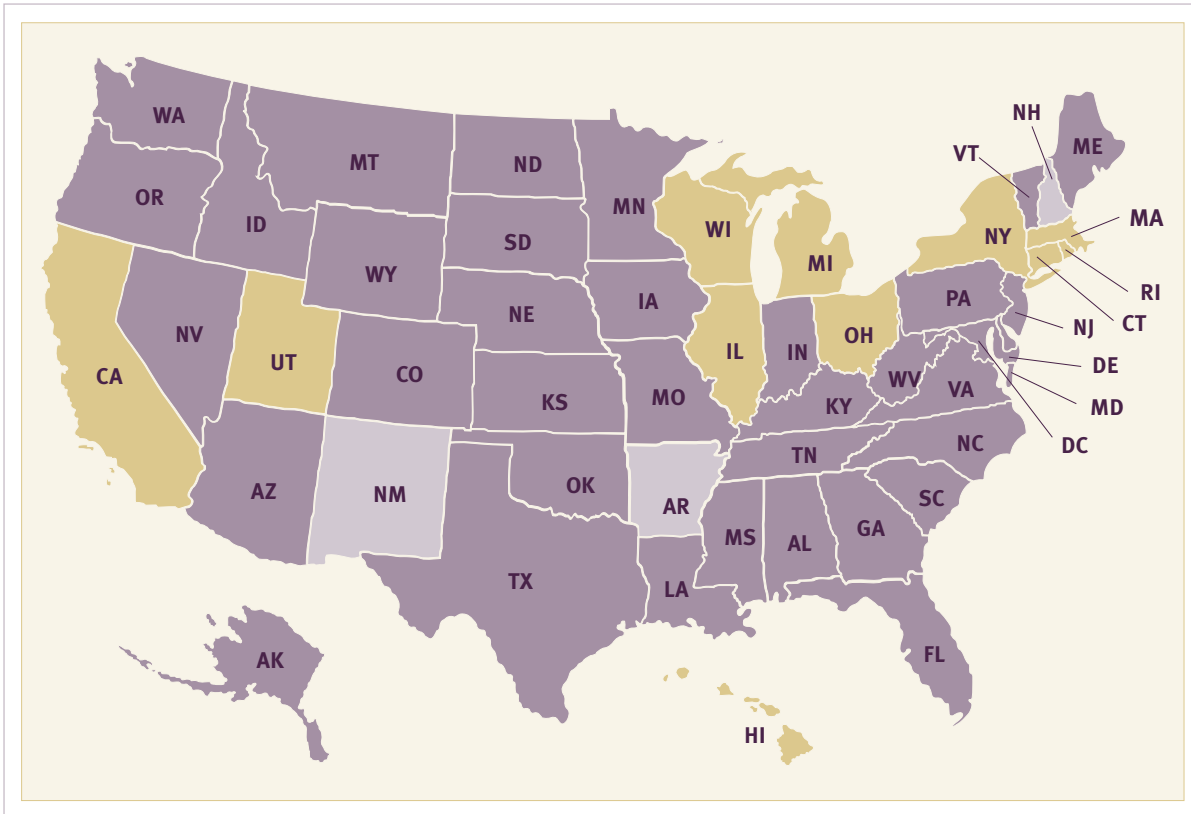
- 37 states have laws permitting all employers and occupational licensing agencies to ask about and consider arrests that never led to conviction in making employment decisions.
- Only 10 states prohibit **all** employers and occupational licensing agencies from considering arrests if the arrest did not lead to conviction, and 3 states prohibit **some** employers and occupational licensing agencies from doing so.

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

- 29 states have no standards governing the relevance of conviction records of applicants for occupational licenses. That means occupational licensing agencies can deny licenses based on any criminal conviction, regardless of history, circumstance or business necessity. 21 states do have standards that require a “direct,” “rational,” or “reasonable” relationship between the license sought and the applicant’s criminal history to justify the agency’s denial of license.
- 36 states have no standards governing public employers’ consideration of applicants’ criminal records; 14 do.
- 45 states have no standards governing private employers; 5 do.

States have the power to offer certificates of rehabilitation but few issue them. Employers in a growing number of professions are barred by state licensing agencies from hiring people with a wide range of criminal convictions, even convictions which are unrelated to the job or license sought. All states have the power to lift those bars to employment by offering certificates of rehabilitation, but only 6 states - Arizona, California, Illinois, Nevada, New Jersey and New York – offer them.

INQUIRIES ABOUT ARRESTS



STATES PROHIBITING ALL EMPLOYERS AND OCCUPATIONAL LICENSING AGENCIES FROM CONSIDERING ARRESTS NOT LEADING TO CONVICTION



STATES PROHIBITING SOME EMPLOYERS AND OCCUPATIONAL LICENSING AGENCIES FROM DOING SO



STATES PERMITTING ALL EMPLOYERS AND OCCUPATIONAL LICENSING AGENCIES TO ASK ABOUT ARRESTS NOT LEADING TO CONVICTION



PUBLIC ASSISTANCE AND FOOD STAMPS

The 1996 federal welfare law prohibits anyone convicted of a drug-related felony from receiving federally funded food stamps and cash assistance (also known as TANF - Temporary Assistance for Needy Families). This is a lifetime ban -- even if someone has completed his or her sentence, overcome an addiction, been employed but got laid off, or earned a certificate of rehabilitation. States have the option of passing legislation to limit the ban or eliminate it altogether.

Most states restrict at least some people with drug felony convictions from being eligible for federally funded public assistance and food stamps.

- 17 states have adopted 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.
- 21 states have limited the ban in some way to enable those with drug felony convictions to get public assistance if they meet certain conditions, such as participating in alcohol or drug treatment, meeting the waiting period, having a “possession only” conviction, or satisfying other conditions.
- Only 12 states have eliminated the ban entirely.

DRUG FELON BAN ON TANF AND FOOD STAMPS

ADOPTED FEDERAL BAN	OPTED OUT OF FEDERAL BAN ENTIRELY	OPTED OUT OF FOOD STAMPS AND MODIFIED BAN ON TANF	MODIFIED BAN BY REQUIRING TREATMENT	MODIFIED BAN BY REQUIRING COMPLETION OF SENTENCE OR TREATMENT	OTHER MODIFICATIONS *
Alabama Alaska Arizona California Georgia Indiana Kansas Mississippi Missouri Montana Nebraska North Dakota South Dakota Texas Virginia West Virginia Wyoming	Idaho Maine Michigan New Hampshire New Mexico New York Ohio Oklahoma Pennsylvania ** Oregon Utah Vermont	Illinois Massachusetts	Colorado Hawaii Iowa Kentucky Nevada South Carolina Tennessee	Connecticut	Arkansas Delaware Florida Louisiana Maryland Minnesota New Jersey North Carolina Rhode Island Washington Wisconsin

* Limiting ban to distribution or sale offenses or requiring submission to drug testing.

**The new statute opting out specifically requires the department to follow pre-existing procedures for referral for assessment and treatment if available and appropriate.



VOTING

States have absolute power to decide whether someone with a criminal record can vote.

All but two states place some restrictions on the right to vote for people with felony convictions.

- 12 states have lifetime bans on voting for some or all people convicted of crimes, 5 states prohibit voting for life by those convicted of certain classes of crimes; 7 states have a lifetime bar that may be lifted only if the state grants a formal “restoration of civil rights.”
- 18 states bar people from voting while they are incarcerated or serving parole or probation sentences.
- 6 states bar people from voting while they are incarcerated or on parole.
- 12 states deny voting rights to people only while they are incarcerated.

NO RESTRICTIONS	CANNOT VOTE WHILE INCARCERATED	CANNOT VOTE WHILE INCARCERATED OR ON PAROLE	CANNOT VOTE UNTIL COMPLETION OF SENTENCE	LIFETIME BAR THAT CAN BE LIFTED	LIFETIME BAR
Maine Vermont	Hawaii Indiana Illinois Massachusetts Michigan Montana New Hampshire North Dakota Ohio Oregon South Dakota Utah	Alaska California Colorado Connecticut New York Wisconsin	Arizona Arkansas Florida Georgia Idaho Kansas Louisiana Minnesota Missouri New Jersey New Mexico North Carolina Oklahoma Pennsylvania Rhode Island South Carolina Texas West Virginia	Alabama Iowa Nebraska Nevada Virginia Washington Wyoming	Delaware Kentucky Maryland Mississippi Tennessee



ACCESS TO CRIMINAL RECORDS

States have the right to permit the sealing or expungement of arrests that never led to conviction and conviction records after an appropriate period of time has elapsed.

Most states never expunge or seal conviction records but do allow arrest records to be sealed or expunged when the arrest did not lead to a conviction.

- 33 states do not permit the expungement or sealing of any conviction records.
- 17 states allow some conviction records to be expunged or sealed, such as first-time offenses.
- 40 states allow people to seal or expunge records of some or all arrests that did not lead to conviction.
- 30 states allow you 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.

Virtually anyone with an Internet connection can find information about someone's conviction history online without his or her consent or any guidance on how to interpret or use the information.

- 28 states allow Internet access to criminal records or post records on the Internet.
- 14 of these states make all conviction records available on the Internet.
- 6 make available on the Internet records of people who are incarcerated and those on probation or parole.
- 8 post on the Internet only records of people currently incarcerated.



PUBLIC HOUSING

Federal laws give local housing agencies leeway in most situations to decide whether to bar individuals with criminal records from public housing premises and whether to consider the individual circumstances and history of applicants or arrests that never led to conviction. The primary exceptions are for people convicted of the production of methamphetamine on public housing premises and people who are required to be registered under a state's lifetime sex offender registry program. Public housing agencies must deny admission to housing to households with family members with these types of convictions. Since local housing agencies set these policies, LAC examined self-reported policies of the local housing agency of the largest city in each state.

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 47 states, public housing policies provide for individualized determinations.
- In 3 states, housing authorities do not make individualized determinations but instead flatly ban applicants with a wide range of criminal records.

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

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



DRIVERS' LICENSES

In 1992, Congress passed a law withholding 10 percent of certain highway funds unless a state enacts a law revoking or suspending driver's licenses of anyone convicted of any drug offense for at least six months after the time of conviction. States can opt out of the law, limit it to drug convictions related to driving such as driving under the influence of a controlled substance, and impose a longer period than six months. Restricting the ability to drive makes it harder to be employed, participate in addiction treatment or healthcare, or get education or job training.

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

- Of the 27 states that automatically suspend or revoke licenses for some or all drug convictions, 21 limit the revocation or suspension of licenses to six months for a first offense.
- 4 states – Colorado, Delaware, Massachusetts, and South Carolina – revoke or suspend drivers' licenses for longer than six months for drug convictions unrelated to driving.

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

- 32 states offer restrictive licenses; 18 do not.



ADOPTIVE AND FOSTER PARENTING

The federal Adoption and Safe Families Act of 1997 (ASFA) bars people with certain convictions from being foster or adoptive parents. States may follow these standards or adopt their own policies.

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 evidence of rehabilitation.

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



STUDENT LOANS

The Higher Education Act of 1998 makes students convicted of drug-related offenses ineligible for any grant, loan or work assistance. This federal legal barrier cannot be altered by the states. No other class of offense, including violent offenses, sex offenses, repeat offenses, or alcohol-related offenses, results in the automatic denial of federal financial aid eligibility.

Financial aid is suspended on the date of conviction for varying lengths of time, depending on the type of offense and whether or not it is a repeat offense. This restriction applies even if the person is not receiving financial assistance at the time of conviction. A person convicted of a drug-related offense who is in school may become eligible for a student loan before the end of the suspension period if he or she completes substance abuse treatment approved by the Secretary of Education and passes two unannounced drug tests. Eligibility for financial aid may also be reinstated if the conviction is reversed.

REPORT CARD

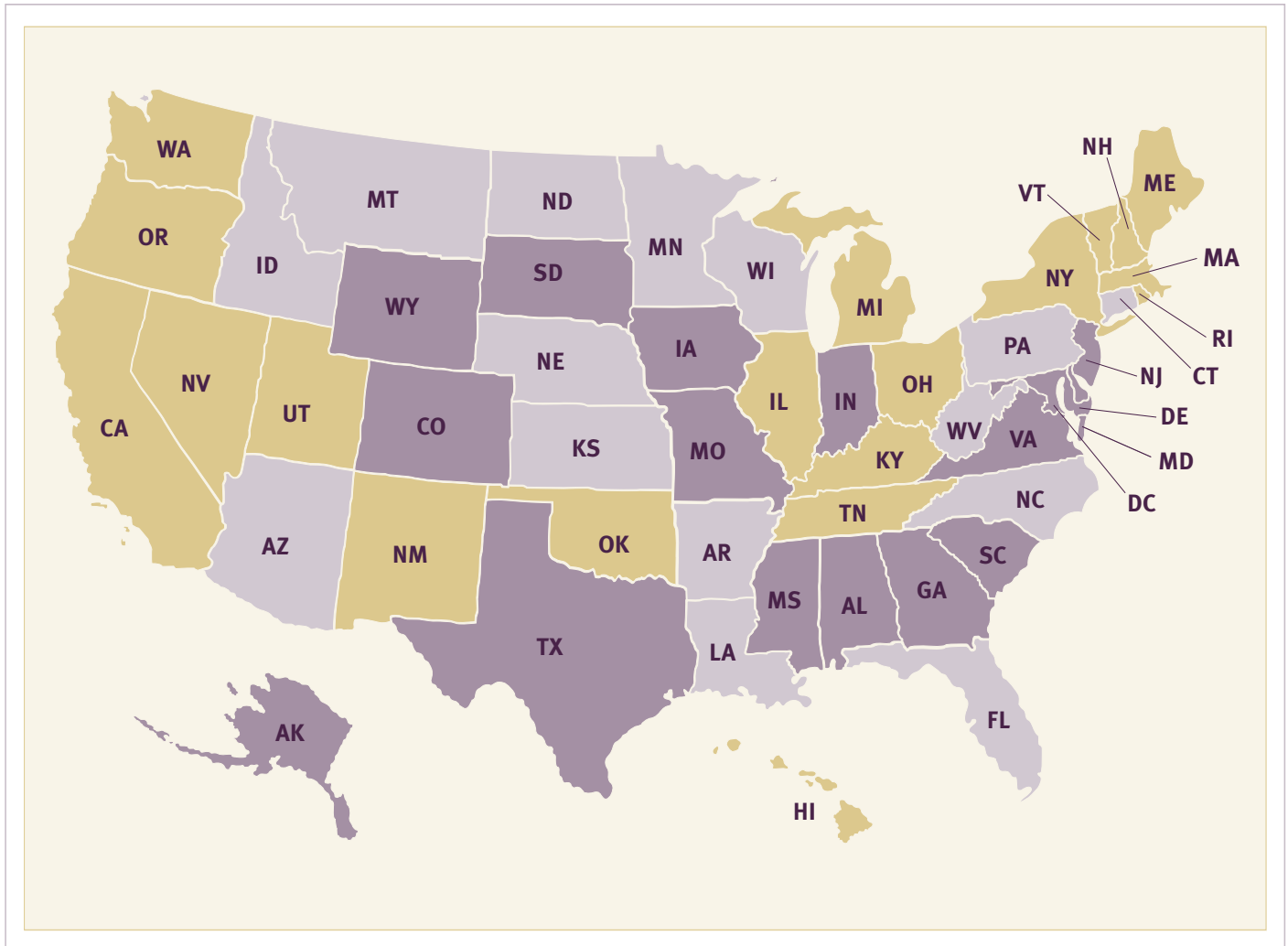
LAC's Report Card grades every state based on to what extent its laws and policies create roadblocks to reentry – unfair or counterproductive barriers - in the areas of employment, public assistance and food stamps, access to criminal records, voting, public housing, adoptive and foster parenting, and drivers' licenses.

Society has an important interest in protecting the safety of the public by promoting the successful reentry of people with criminal records. This Report Card distinguishes between policies that may serve legitimate ends, such as enabling employers to screen out individuals whose criminal behavior demonstrates they pose an unreasonable risk to public safety, and roadblocks that unfairly prevent those who do not pose a threat to public safety from successfully reentering society.

LAC developed the criteria for grading the states in close consultation with a diverse panel of experts from around the country, including attorneys, criminal justice policymakers, victim advocates, people with criminal records, and housing officials. Two overarching principles emerged as key criteria in the grading system (with 0 being best and 10 the worst):

- State and federal laws should require individualized determinations about the suitability of someone with a criminal conviction for the opportunity, benefit or right sought that takes into consideration the nature of the conviction(s), the time that has elapsed since the conviction(s), the age of the person at the time of the conviction(s) and any evidence of rehabilitation.
- State and federal laws should prohibit government agencies, public and private employers, and others from considering information about arrests that did not lead to conviction when making decisions about a person's eligibility for employment, housing, or other services.

RANKING THE STATES



	BEST			AVERAGE			WORST		
	RANK	STATE	SCORE	RANK	STATE	SCORE	RANK	STATE	SCORE
1	NY	10	20	AZ	26	35	MO	36	
2	HI	12	21	ID	28	35	AK	36	
3	CA	14	21	WI	28	35	TX	36	
4	ME	15	23	LA	30	38	MD	37	
5	OR	16	24	WV	31	38	IN	37	
5	NH	16	24	MN	31	38	MS	37	
7	UT	17	26	CT	31.5	38	WY	37	
8	VT	18	27	KS	32	42	IA	38	
9	MI	19	28	AR	33	42	SD	38	
10	OH	19.5	28	ND	33	44	NJ	39	
11	KY	22	28	FL	33	45	AL	41	
11	NV	22	28	MT	33	46	DE	41.5	
11	MA	22	32	NC	35	47	VA	43	
14	IL	22.5	32	NE	35	47	GA	43	
15	OK	23	32	PA	35	49	SC	47	
16	NM	24				50	CO	48	
17	RI	25							
17	TN	25							
17	WA	25							

HOW WE GRADED THE STATES

States were assigned a maximum of ten points for each roadblock category.

Therefore, the fewer the points, the better the score.

A Report Card for each state can be found on our website at:

www.lac.org/roadblocks/reportcardstates.html

A full description of the criteria and methodology we used to develop the Report Card can be found at:

www.lac.org/roadblocks/reportcardcriteria.html

VISION FOR THE FUTURE

To promote and guarantee the public's safety, the U.S. government and the 50 states should adopt policies and practices that facilitate the successful reintegration into society of people with criminal records. Each person should be judged on his or her merits and not on stereotypes, prejudice, or stigma, and have a second chance to establish him or herself in a law-abiding life with the privileges and responsibilities of citizenship.

The state and federal governments should enact legislation that protects public safety by making sure that people with past criminal records are able to re-integrate successfully. LAC recommends the following principles and reforms:

- Maximizing the chance 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.
- 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 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, clothing, housing, and education.
- Eligibility for employment, housing, adoptive and foster parenting, or a driver's license should be based on the community's legitimate interest in public safety and the particulars of an individual's history and circumstances. Blanket bans of entire categories of people, such as everyone convicted of a felony, are neither wise nor fair; they do not take into account such important factors as the nature or circumstances of the conviction and what the person has done since the commission of the offense, including receiving an education, acquiring skills, completing community service, maintaining an employment history, or earning awards or other types of recognition.
- States should enact legislation to provide for the automatic sealing or expungement of any arrest that never led to conviction, and of conviction records after an appropriate amount of time has elapsed. States also should issue certificates to qualified people with criminal records that acknowledge rehabilitation and lift automatic bars.
- Given the potential for misuse, conviction information should not be publicly accessible on the Internet. Access should be restricted to those agencies, such as law enforcement, that need to retrieve criminal records to perform their duties.

CONCLUSION

People with criminal records face a daunting array of challenges. Without a job, it is impossible to provide for oneself and one's family. Without a driver's license, it is harder to find or keep a job. Without affordable housing or food stamps or federal monies to participate in alcohol or drug treatment, it is harder to lead a stable, productive life. Without the right to vote, the ability to adopt or raise foster children, or access to a college loan, it is harder to become a fully engaged citizen in the mainstream of society. These roadblocks block the reintegration of people with criminal records, which in turn compromises everyone's safety and the well-being of our communities.

But recent actions in a number of state legislatures and the Congress give us great hope that the tide has turned and major reform is on the way. We hope this report will help concerned Americans all over the country take action to facilitate the ability of people with criminal records to live productive and law-abiding lives.

Legal Action Center

153 Waverly Place

New York, NY 10014

Phone: (212) 243-1313

Fax: (212) 675-0286

Email: lacinfo@lac.org

www.lac.org

Legal Action Center, Washington, DC Office

236 Massachusetts Avenue, NE, Suite 505

Washington, DC 20002

Phone: (202) 544-5478

Fax: (202) 544-5712

Email: info@lac-dc.org