



Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws

*Margaret Love and April Frazier
October 1, 2006*

When a person is convicted of a crime in the United States his legal status changes forever. The statute books in every jurisdiction are filled with laws that disqualify and discriminate against people because of their criminal record, excluding them from jobs, occupational licenses, housing, and other benefits and opportunities. Some restrictions on convicted persons are narrowly tailored to protect against an identified public safety risk. Others are categorical, arbitrary, and without temporal limitation, without regard to any post-conviction rehabilitation. Even where there is no legal basis for disqualification, and even where jurisdictions have adopted a policy of encouraging reintegration of offenders, employers and others who control access to opportunities and benefits still hesitate to give this population a second chance.

Given the current ease of conducting background checks, and (especially since 9/11) official encouragement to do it, it is harder and harder for people who have been convicted of a crime to escape their past, no matter how heroic their efforts to turn their lives around. The imposition of collateral penalties has serious implications, both in terms of fairness to the individuals affected, and in terms of the burdens placed on the community: “If promulgated and administered indiscriminately, a regime of collateral consequences may frustrate the chance of successful re-entry into the community, and thereby encourage recidivism.”¹

People who have successfully completed their court-imposed sentences need to be able to reestablish themselves as law-abiding members of society. At the same time, employers and other decision-makers need to have some reassurance of a person’s reliability. The ABA Commission on Effective Criminal Sanctions has been looking into the ways in which jurisdictions now relieve legal disabilities and certify an offender’s suitability for employment and other appropriate opportunities, looking toward the development of a model administrative or judicial relief procedure.²

¹ See AMERICAN BAR ASSOCIATION, STANDARDS FOR CRIMINAL JUSTICE: VOLUME 19: COLLATERAL SANCTIONS AND ADMINISTRATIVE DISQUALIFICATION OF CONVICTED PERSONS 9-10 (2003). When embedded in the legal system, collateral consequences come in two forms: a legal penalty or disqualification that is imposed automatically upon conviction (“collateral sanction”); and a penalty or disqualification that a court or agency is authorized but not required to impose on grounds related to the conviction (“discretionary disqualification”).

² This paper deals primarily with relief from the collateral consequences of a felony conviction, which tend to be more severe and less tractable than the collateral consequences associated with misdemeanors and

Every jurisdiction in the United States has some legal mechanism for mitigating or avoiding the collateral consequences of a felony conviction, and for certifying an ex-offender's rehabilitation.³ Pardon is of course the "patriarch" of relief procedures, but as a practical matter these days pardon is a realistic option in only a handful of states. Judicial remedies like expungement, sealing and set-aside are available in some states, but are usually restricted to first-time offenders or misdemeanants. A surprisingly large number of states have laws prohibiting denial of employment or licensure based solely upon a previous felony conviction, but very few provide any effective enforcement mechanism. Only one state, New York, offers an administrative certificate that both relieve "disabilities and forfeitures" and provides a judicially enforceable "presumption of rehabilitation" for employment and licensing purposes.

Some state relief mechanisms work better than others, and no two are exactly alike. Ten years after the Justice Department issued its study of collateral consequences in the United States, we still have a "national crazy-quilt of disqualifications and restoration procedures."⁴ While New York's administrative certificate program is unique in its scope, a number of other jurisdictions have relief mechanisms that are fairly effective in restoring criminal offenders to the legal rights and status they enjoyed prior to their conviction. The following brief descriptions are intended introduce the reader to some of the more functional aspects of our "national crazy-quilt."

I. Administrative Certificates of Rehabilitation

Six states offer administrative "certificates of rehabilitation"⁵ that may restore some or all of the legal rights and privileges lost as a result of conviction, and in some cases evidence good character. New York's certificates have the most far-reaching legal effect, but both Illinois and Connecticut⁶ have recently enacted certificate programs of their own to facilitate offender reentry. California, Nevada, and New Jersey also offer certificates of rehabilitation, but they appear to have little operational usefulness.⁷

juvenile offenses, offenses in which adjudication has been deferred, or with arrest records not resulting in conviction.

³ See Margaret Colgate Love, RELIEF FROM THE COLLATERAL CONSEQUENCES OF CONVICTION: A STATE-BY-STATE RESOURCE GUIDE (William Hein 2006). See also <http://www.sentencingproject.org/rights-restoration.cfm>.

⁴ Office of the Pardon Attorney, U.S. Dep't of Justice, "Civil Disabilities of Convicted Felons: A State-by-State Survey" 1 (1996).

⁵ The term "certificate of rehabilitation" is used in a generic sense to describe an official recognition that a criminal offender deserves to regain legal rights and status lost as a result of conviction, and has demonstrated reliability and good character over a period of time.

⁶ Connecticut's "provisional pardon" is included here as a "certificate" because it is awarded by an appointed board and its effects are narrowly defined by statute.

⁷ Mississippi also offers a "certificate of rehabilitation," but it appears intended exclusively to restore firearm rights. See Miss. Code Ann. § 97-37-5 (1) and (3). See also Op. Atty. Gen. No. 2005-0143 (April

- **New York:** New York offers two types of certificates: a certificate of “relief from disabilities” (“CRD”) and a certificate of “good conduct” (“CGC”). See N.Y. Correct. Law §§ 700-705, 703-a, 703-b. These two certificates differ primarily in their eligibility requirements: the CRD is available to misdemeanants and first-time felony offenders, and the CGC is available to repeat offenders. The CRD may be awarded at any time after sentencing by a court where no prison term is involved, or after release from confinement by the state Board of Parole. The CGC is available only from the Parole Board, and only after a waiting period of one to five years of “good conduct,” depending on the seriousness of the offense. The statutory eligibility criteria for the two certificates are otherwise the same (“consistent with rehabilitation” and with the “public interest”). Both certificates have more or less the same legal effect: they relieve an eligible person of “any forfeiture or disability,” and “remove any barrier to . . . employment that is automatically imposed by law by reason of conviction of the crime or the offense.” They also create a “presumption of rehabilitation” that must be given effect by employers and licensing boards, and that is judicially enforceable.⁸

Either certificate may be temporary or limited to particular disabilities, and the relief may be enlarged by the court or Board of Parole at any time. Federal and out-of-state offenders residing in New York may qualify for relief from the Parole Board, if they can show they are suffering from a particular disability under New York law. The entire Parole Board process can take from six months to a year to complete. Approximately 1000 applications are made to the Parole Board for both kinds of certificates annually, of which about half are granted. About 2500 grants are made each year by the courts. A recent report of a New York State Bar Association

1, 2005)(certificate does not “remove” a conviction or allow a convicted felon to be qualified as a candidate for public office.)

⁸ See N.Y. Correct. Law § 753(2); *Arrocha v. Bd. Of Education*, 712 N.E.2d 669 (1999); *Bonacorsa v. Lindt*, 71 N.Y.2d 605(1988). In *Bonacorsa*, the court held that harness racing licensing board must consider presumption of rehabilitation even where there is a direct relationship between conviction and licensed activity, to determine “whether in fact the direct relationship is sufficiently attenuated to warrant issuance of the license.” 71 N.Y. 2d at 611. The “Certificate of Good Conduct” originated in the 1940’s as a kind of administrative pardon given by the Parole Board after a five-year waiting period. The certificate program was expanded in the 1960’s to include a “Certificate of Relief from Disabilities” as a way for first-time felony offenders to regain their rights more quickly. Governor Nelson Rockefeller’s Memorandum accompanying the legislation makes the intent clear: “This bill will reduce the automatic rejection and community isolation that often accompany conviction of crimes and will thus contribute to the complete rehabilitation of [felons] and their successful return to responsible lives in the community.” In 1976 both certificates were given additional legal effect (“presumption of rehabilitation”) under the broad nondiscrimination provisions of N.Y. Correct. Law §§ 750-755, which prohibit denial of employment or licensure based on conviction absent a public safety risk or a “direct relationship” between the conviction and the employment sought. It might be argued that there is little or no difference in legal effect between the CRD and the CGC, although even first offenders who have a CRD must obtain a CGC if they want to qualify for “public office,” including such public employment as firefighter or correctional officer. See § 701(1).

ABA Commission on Effective Criminal Sanctions
October 1, 2006

committee speculated that the relatively low number of certificates issued each year is attributable to the fact that most offenders are not told about their availability.⁹

- **Illinois:** Illinois has recently instituted a certificate scheme that was modeled on New York's, but that differs significantly in its eligibility criteria and legal effect. Eligibility for both a CRD and a CGC is restricted to persons with no more than two non-violent felony convictions, and the two certificates have a very different legal effect. The Illinois CRD is narrowly tailored to facilitate licensing in 27 specified occupational areas, by creating a "presumption of rehabilitation" that must be considered by the licensing board. The CGC evidences a finding by the Illinois Prisoner Review Board (PRB) that an individual "has demonstrated that he or she has been a law-abiding citizen and is fully rehabilitated," but appears to have no independent legal effect.¹⁰ Thus both certificates evidence rehabilitation, but, unlike the New York certificates, neither overrides legal disabilities or absolute disqualifications.

The Illinois CRD is available as early as sentencing, and may be awarded by either the court or the PRB. The CGC is available only from the PRB, and requires a waiting period of one to three years depending upon the seriousness of the offense. Federal and out-of-state offenders are eligible for either certificate as long as they reside in the state. The Illinois certificate program is just getting started, and only a few certificates have been granted to date. The PRB is in the process of developing regulations for both certificates.

- **Connecticut:** The Connecticut Board of Pardons and Parole has recently been given statutory authority to supplement its regular pardon program¹¹ through issuance of "provisional pardons," which will give relief from specific "barriers or forfeitures" relating to employment or licensing. The only findings necessary are 1) that it "may promote the public policy of rehabilitating ex-offenders through employment" and 2) that it "is consistent with the public's interest in public safety and the protection of property." Employers may not deny or terminate employment solely on the basis of a

⁹ See "Reentry and Reintegration: The Road to Public Safety: Report and Recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings" at 99-106 (May 2006), http://www.nysba.org/MSTemplate.cfm?Section=Report__Re-Entry_and_Reintegration__The_Road_to_Public_Safety&Site=Special_Committee_on_Collateral_Consequences_of_Criminal_Proceedings&Template=/ContentManagement/HTMLDisplay.cfm&ContentID=74434.

¹⁰ The process for obtaining a CRD is described in 730 Ill. Comp. Stat. 5/5-5.5-5 through 20, and its effect in the context of licensing decisions is set forth in 5/5-5-5(h). The process for obtaining a CGC is described in 730 Ill. Comp. Stat. 5/5-5.5-25(a) through 30. In the bill as originally introduced, the CGC would have "relieve[d] an eligible offender of any disability, or . . . remove[d] any bar to his or her employment." However, this provision was rewritten in the House so that the entire legal effect of the CGC is contained in the provision describing criteria for its award ("he or she has been a law-abiding citizen and is fully rehabilitated").

¹¹ The Connecticut Board of Pardons and Parole operates wholly independently of the governor, and issues about 200 full pardons each year, acting favorably on about 25% of the applications it receives. A person may apply for a full pardon five years after the completion of the sentence; if successful, the record of conviction is "erased" and the person may deny ever having been convicted.

prior conviction for which the person received a provisional pardon. Federal and out-of-state offenders are eligible as long as they reside in the state. A provisional pardon overcomes disqualifications based on conviction, but it does not appear to have the effect of certifying an offender's rehabilitation.¹² A person who has been awarded a provisional pardon may later seek a full pardon, which has the effect of "erasing" the conviction.

- **California:** California's "certificate of rehabilitation" is the first step in the pardon process, and has only a limited independent legal effect. A person may apply to the court in the county of residence after a seven-to-nine year "period of rehabilitation" after completion of sentence. The statute requires that the person live an "honest and upright life", "conduct himself with sobriety and industry", "exhibit a good moral character", and "obey the laws of the land." CAL. PENAL CODE §4852.05. If the Court finds that the petitioner has demonstrated rehabilitation, it issues a certificate and forwards the case to the Governor (or Supreme Court in the case of recidivists) with a recommendation that the individual be pardoned. The certificate of rehabilitation is recognized as relevant in a few licensing schemes,¹³ but only a gubernatorial pardon can lift occupational licensing bars. California pardons have been very rare in the past decade, and Governor Schwarzenegger has to date issued only three.
- **Nevada:** The State Board of Pardons Commissioners (a panel consisting of "the governor, justices of the supreme court, and attorney general, or a major part of them.") has authority to issue a "certificate of good conduct" five years after a person's release from custody, pursuant to Nev. Admin. Code § 213.130. Such a certificate may issue: 1) to remove a particular legal disability incurred through conviction; 2) to furnish evidence of good moral character where it is required by law; or 3) "upon proof of the person's performance of outstanding public services or if there is unusual and compelling evidence of his rehabilitation." *See* Op. Nev. Att'y Gen. (Nov. 18, 2003). However, the Board has not issued a certificate of good conduct in many years, because certificates are considered effectively indistinguishable from a full pardon.¹⁴
- **New Jersey:** An individual who has been previously denied a license because of his conviction may apply seek reconsideration after a two-year period with a certificate of rehabilitation from the federal or state parole board, or from the responsible chief probation officer, certifying that he "has achieved a degree of rehabilitation indicated

¹² A provision similar to New York's fair employment practices law, which would have given the provisional pardon the effect of creating a "presumption of rehabilitation," was excised from the bill shortly before its passage.

¹³ A certificate of rehabilitation is given independent legal effect to avoid exemption from employment in a few specific professions. See, e.g. Health & Saf. Code, § 1522, subd. (g)(1)(A)(ii)(licensed community care facilities); Cal. Admin. Code tit. 10, § 3723 (real estate license); *Newland v. Board of Governors* (1977) 19 Cal.3d 705, 712-714 (teaching certificate).

¹⁴ In Nevada, a full and unconditional pardon removes all disabilities, including licensing barriers, but does not "erase" conviction or remove stigma of conviction.

that his engaging in the proposed employment would not be incompatible with the welfare of society” Upon receipt of this certificate, the licensing authority “shall [be] preclude[d] from disqualifying or discriminating against the applicant.” N.J. STAT. ANN. §168A-3. No certificate has been sought or granted in the past 15 years.

In addition to the above-described certificate programs, here are a variety of other ways to establish a convicted person’s rehabilitation and facilitate employment.

II. Pardon as Certification of Rehabilitation

- Like Connecticut, *Alabama, Georgia, Idaho, South Carolina, and Utah* all have administrative pardon boards that have authority to grant relief entirely independent of the governor. Georgia’s restoration of rights certificate (available immediately upon completion of sentence) restores the right to sit on a jury and run for public office, although a full pardon (available after an additional five-year waiting period) is necessary to remove licensing and employment restrictions. The Georgia Board of Pardons and Paroles issues between 400 and 500 full pardons each year, and about the same number of “restoration of rights” certificates.¹⁵ South Carolina’s board typically grants 60-70% of the 200-odd cases it hears each year. The Alabama board granted 158 full pardons in 2003, and over 2,000 applications for restoration of voting rights. In Idaho the grants are fewer in absolute number (20-30 per year), but still represent 2/3 of all applications received. (Idaho also provides for a set-aside of conviction and dismissal of charges for probationers upon successful completion of sentence.)¹⁶ In all of these states a pardon relieves disabilities, but it does not have the same effect of expunging the conviction as a pardon in Connecticut.
- *Delaware, Pennsylvania, and Oklahoma* administer the governor’s pardon power through an appointed board with gate-keeping authority (the governor cannot act without their approval), and all three states have a functioning pardon program that issues over 100 pardon grants annually. All three states subject an applicant a formal hearing process, with input from prosecutor and victims. *Arkansas* also has an operational pardon program administered through that state’s Parole Board, though the Board’s recommendations are not binding on the governor and there is no formal hearing. The current governor of *Maryland* has issued a substantial number of pardons, but the operation of the power has not been institutionalized in that state. In all of these

¹⁵ Georgia also has a first offender expungement law, by which all first offenders may be placed on probation or sentenced to confinement without an adjudication of guilt. Upon successful completion of probation or sentence, they are “not considered to have a criminal conviction,” and “suffer no adverse effect upon [their] civil rights or liberties.”

¹⁶ The Utah board receives only about three to five requests for pardon a year, and there have been only about 10 pardons issued in the past decade. The relative paucity of pardon applications and grants in Utah can be explained by the general availability of expungement as an alternative restoration mechanism for all but the most serious offenders. In Utah, most felony offenders are entitled to judicial expungement after a relatively short waiting period, unless the court finds that this would be “contrary to the public interest.” The only people who need a pardon to restore rights in Utah are those who have been convicted of serious violent felonies.

states pardon relieves most legal disabilities imposed by law and signifies rehabilitation.

- ***Pardon as Grounds for Expungement:*** Pardon is grounds for judicial expungement in three of the states that have an operational pardon process: Arkansas, Connecticut, and Pennsylvania. In Maryland and Oklahoma pardon is grounds for expungement only for non-violent first-offenders. Pardon is also grounds for expungement in Indiana, Massachusetts, Ohio, South Dakota, Texas, and Washington, but very few pardons have been issued in those states in recent years.

III. Presumption of Rehabilitation with the Passage of Time

More than half the states have laws regulating the extent to which public employers and/or licensing authorities may consider a felony conviction in connection with deciding whether to hire or license, or whether to terminate employment.¹⁷ These laws generally provide that employment or a license cannot be denied “solely because of” a conviction, but only if the conviction is “directly related” (or “reasonably” or “substantially” related) to the particular employment or profession. Most states give little or no guidance as to how to establish this relationship, though a few states define it by reference to an individual’s “rehabilitation.” As we have seen, New York issues certificates that attest to an offender’s rehabilitation for public and private employment and for occupational licensing, and it appears to be the only state that provides for such case-by-case certification.¹⁸ But the law in five states (**Arkansas, Minnesota, Montana, New Mexico, and North Dakota**) accords an automatic statutory “presumption of rehabilitation” to individuals who have a clear record for a certain period of time. However, only two of these five states (Arkansas and Minnesota) provide for enforcement of their nondiscrimination provisions.¹⁹ Moreover, in most states there are many occupations that are excepted from the nondiscrimination obligation, including those in health, education and care-giving.

- ***Arkansas*** creates a presumption of rehabilitation for occupational licensing purposes five years after release or the completion of parole or probation supervision if a person has no subsequent convictions with an exception for teacher and nursing licenses. The licensing authority is required to state in writing the reasons for denial of the license if the decision is based, in whole or part, on conviction of a felony, and a person may file

¹⁷ See Love, RESOURCE GUIDE, *supra* note 2.

¹⁸ Illinois’ certificates also carry a “presumption of rehabilitation,” but only within the context of a limited number of licensing schemes. See page 2, *supra*.

¹⁹ In addition to New York, Wisconsin and Hawaii provide for enforcement of their nondiscrimination provision through a fair employment practices law. Massachusetts’ nondiscrimination law also provides for FEP enforcement, but it extends only to misdemeanor offenses. A few other states (*e.g.*, Arizona, Arkansas, Louisiana, Minnesota) authorize complaints to be brought under the state’s administrative procedure act.

a complaint under the state administrative procedure act in cases of violations. ARK. CODE ANN. § 17-1-103.

- **Minnesota** bars public employers and licensing agencies from disqualifying a person “solely or in part” based on conviction unless 1) there is a “direct relationship” between occupation or license and conviction history, measured by the purposes of the occupation’s regulation and the relationship of the crime to the individual’s fitness to perform the duties of the position; and 2) individual has not shown “sufficient rehabilitation and present fitness to perform” the duties of the public employment or licensed occupation. Minn. Stat § 364.03, subd. 1. Rehabilitation may be established by a record of law-abiding conduct for one year after release from confinement, or successful completion of probation or parole. § 364.03, subd. 2. Once a person establishes “sufficient rehabilitation and fitness to perform the duties of the public employment sought or the occupation for which the license is sought,” that person “shall not be disqualified from the employment or occupation” even if the conviction “directly relates to the public employment sought or to the occupation for which a license is sought.” Enforced through state administrative procedure act.
- **Montana:** A person is entitled to a presumption of rehabilitation for occupational licensing purposes once he or she successfully completes probation or parole supervision without any subsequent criminal convictions. Mont. Code Ann. §3 7-1-205.
- **New Mexico:** In application for public employment or occupational license, a “presumption of sufficient rehabilitation” is recognized after a period of “three years after final discharge or release from any term of imprisonment without any subsequent conviction” when the criminal conviction does not directly relate to the particular employment, trade, business or profession. N.M. STAT. ANN. § 28-2-4. Presumption does not apply to convictions that directly relate to the profession or to persons seeking licensing or employment in education and child-care facility licenses if they were convicted of drug trafficking, sexual offenses, or child abuse.
- **North Dakota:** A person may be denied license because of a prior conviction only “if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.” Completion of five years after final discharge without subsequent conviction “shall be deemed prima facie evidence of sufficient rehabilitation.” If conviction is used “in whole or in part” as a basis for disqualification, it “shall be in writing and shall specifically state the evidence presented and the reasons for disqualification.” N.D. Cent. Code § 12.1-33-02.1.²⁰

²⁰ The “direct bearing” standard and “rehabilitation” tests of this statute are incorporated into dozens of licensing statutes in the N.D. Cent. Code, including: liquor licenses (§ 5-03-01.1); teachers (§ 15.1-13-25); residential treatment centers for children (§ 25-03.2-04); architects and landscape architects (§ 43-03-13); lawyers (§ 27-14-02); barbers (§ 43-04-31.1); electricians (§ 43-09-09.1); funeral service director (§ 43-10-11.1); and pharmacists (§ 43-15-18.1).

IV. Judicial Expungement

In eight states the courts have primary responsibility for administering the state's certification scheme through statutory expungement-type relief that is available for most adult felony convictions. In **Arizona, Kansas, Massachusetts, Nevada, New Hampshire, Oregon, Utah, and Washington**, judicial relief from collateral legal disabilities is available for all but serious and violent crimes and sex offenses. In every jurisdiction but Arizona, a person whose conviction has been expunged (or set aside, sealed, vacated, annulled) may deny its existence in response to most inquiries. However, the record of conviction remains available to law enforcement authorities, and there is no guarantee that it will not turn up in a private screener's search. Most expungement schemes include an eligibility waiting period, which in several cases is quite lengthy (e.g., 15 years for felonies in Massachusetts).

- ***Arizona:*** Arizona law permits all state offenders except those convicted of serious violent offenses, to have their convictions "set aside" or "vacated" by the sentencing court, and the charges against them dismissed, upon successful completion of probation or sentence and discharge. Ariz. Rev. Stat. Ann. §§ 13-907(A). Convicted persons are entitled to be informed of their "right" to a set-aside at the time of discharge. *Id.* See also Ariz. R. Crim. P. 29.1, requiring notice to probationers at time of discharge of right to have conviction "vacated." This relief restores all rights and generally releases the person "from all penalties and disabilities resulting from the conviction." However, it does not relieve the offender from having to report the conviction if asked. Arizona courts are also authorized to restore voting rights to repeat Arizona offenders, and to federal offenders.
- ***Kansas:*** Kan. Stat. Ann. § 21-4619 (expungement). Some serious offenses (murder, rape, sex offenses) are excluded from the procedure, and a waiting period is imposed of three to five years after discharge from probation or parole, depending on the offense. After expungement, person shall be treated "as not having been convicted," and an order of expungement "erases" the conviction, save that it may be brought up in subsequent prosecutions and may be used in connection with licensing decisions. A person must be informed at each stage of the criminal process about the possibility of obtaining expungement. § 21-4619(g).
- ***Massachusetts:*** Mass. Gen. Laws Ann. ch., 276, § 100A (sealing). A state felony offender may apply to the sentencing court to have his record sealed after 15 years, provided he has no subsequent conviction (misdemeanant 10 years). An applicant for employment whose record has been sealed may deny the existence of the conviction and licensing authorities are prohibited from disqualifying the applicant based on the record, though the conviction may still be taken into account for law enforcement purposes. In addition, governor's pardon accomplishes sealing of record, Mass. Gen. Laws Ann. ch. 127, § 152.), but there have been few pardons issued in recent years (the current governor has apparently granted none).

ABA Commission on Effective Criminal Sanctions
October 1, 2006

- **Nevada:** Nev. Rev. Stat. § 179.245 (sealing). After an eligibility waiting period that varies depending on the seriousness of the offense (seven to 15 years after the date of conviction or release from actual custody, whichever is later, three years for misdemeanors), a person may petition the court in which he was convicted to seal all records related to the conviction. Nev. Rev. Stat. § 179.245(1)(a). If the court seals the records, “all proceedings recounted in the record are deemed never to have occurred” (with exceptions related to law enforcement and subsequent offenses), and the person “may properly answer accordingly to any inquiry concerning the arrest, conviction, or acquittal and the events and proceedings related to the arrest, conviction, or acquittal.” Nev. Rev. Stat. § 179.285.
- **New Hampshire** – Convictions of all but serious violent crimes may be “annulled” following completion of the sentence and waiting periods ranging from 1 to 10 years. N.H. Rev. Stat. Ann. §§ 651:5(III) and (IV). Those convicted of more than one offense may have a longer waiting period. Upon entry of an order of annulment, the person “shall be treated in all respects as if he had never been arrested, convicted, or sentenced”, except that, upon conviction of any later crime, the annulled conviction may be taken into account for sentencing purposes and may be counted toward habitual offender status. N.H. Rev. Stat. Ann. § 651:5(X)(a).
- **Oregon** - Adult felony offenders (except for violent, sex, and traffic offenses) may apply to the sentencing court to have conviction “set aside” three years after sentence served. Must have no pending criminal proceedings, and no conviction within 10 years. Misdemeanants have a one-year waiting period. If conviction set aside offender may deny its existence. Or. Rev Stat. § 137.225(1) through (6).
- **Utah** - Expungement is available from sentencing court for most offenses. Eligibility waiting period seven years for felonies, three to five for misdemeanors. Longer (10 years) for alcohol- and drug-related offenses. Utah Code Ann § 77-18-11(1), (11). Certain violent and sex offenders categorically ineligible. Recidivists must wait 20 years. § 77-18-12(3) *amended by* 2005 Utah Laws 2. If an offender is eligible, expungement “shall issue” unless the court determines that it would be contrary to the public interest. Recipient may deny conviction, though it may be used for various purposes, as in sentencing and firearms prosecutions. §§ 77-18-13(3), 77-18-15(4), (7).
- **Washington** - After discharge, after a specified period of time (5 or 10 years) certain offenders may apply to have sentence “vacated,” and may then deny having been convicted. Wash Rev. Code §§ 9.94A.640, 9.95.240, 9.96.060 (vacation). Governor’s pardon also has effect of vacating conviction, but very few are given. Wash. Rev. Code. § 9.94A.030.
- **Michigan, New Jersey, Ohio, and Rhode Island** make some form of expungement or sealing available to some or all first felony offenders upon completion of sentence, including those sentenced to prison. Rhode Island’s expungement provisions are widely used, with 4,201 misdemeanors and 490 felonies

ABA Commission on Effective Criminal Sanctions
October 1, 2006

expunged in 2004 alone. Ohio's sealing statute is also widely used, but applies only to non-violent offenses that are not subject to a mandatory prison term.

- ***Deferred Adjudication:*** A growing number of jurisdictions expunge or seal the entire record where an offender successfully completes probation pursuant to a deferred adjudication agreement, and the charges are dismissed or the conviction set aside. Arkansas, Connecticut, Iowa, Louisiana, Missouri, Nevada, South Dakota, Texas, and Vermont all provide for expungement or sealing of the entire record in deferred adjudication cases. Iowa, Mississippi, Montana, Oklahoma, and South Dakota make this relief available only to first offenders.

- ***Pardon Grounds for Expungement:*** *See p. 7, supra.*