

**Relief from the Collateral Consequences  
of a Criminal Conviction:  
A State-by-State Resource Guide**

**by**

**Margaret Colgate Love**

William S. Hein & Co., Inc.  
Buffalo, New York  
2006

*Library of Congress Cataloging-in-Publication Data*

Love, Margaret Colgate.

Relief from the collateral consequences of a criminal conviction : a state-by-state resource guide / Margaret Colgate Love.

p. cm.

Includes bibliographical references.

ISBN 0-8377-3412-6 (alk. paper)

1. Ex-convicts—Legal status, laws, etc.—United States—States.
2. Post-conviction remedies—United States—States. I. Title.

KF390.E87L68 2006

345.73'03—dc22

2006043427

© 2006 William S. Hein & Co., Inc.  
All rights reserved.

Printed in the United States of America



This volume is printed on acid-free paper  
by William S. Hein & Co., Inc.

**Prepared with support from an  
Open Society Institute fellowship  
June 2005**

# TABLE OF CONTENTS

Summary of Research Findings and Conclusions . . . . .	ix
Scope, Methodology, and Organization . . . . .	1
Disclaimer . . . . .	4
Introduction and Background . . . . .	6
Pardoning Policy and Practice in the United States . . . . .	18
Summary . . . . .	37
Judicial Expungement, Sealing and Set-Aside of Adult Felony Convictions . . . . .	39
State Laws Regulating Licensure and Employment of Convicted Persons . . . . .	62
Regaining the Right to Vote in the 50 States . . . . .	85
Conclusion . . . . .	96
Appendix A. Tables	
Table 1. Models for Administration of the Pardon Power in the United States . . . . .	99
Table 2. Characteristics of Independent Pardon Boards . . . . .	102
Table 3. Characteristics of Boards Whose Recommendations Bind Governor . . . . .	105
Table 4. Characteristics of 13 Most Active Pardon Authorities . . . . .	108
Table 5. Judicial Expungement, Sealing, and Set-Aside . . . . .	113
Table 6. Consideration of Criminal Record in Licensing and Employment . . . . .	125
Table 7. Felony Disenfranchisement in the United States . . . . .	135
Table 8. Discretionary Restoration of Vote after a Felony Conviction . . . . .	141
Appendix B. Jurisdictional Profiles	
Alabama . . . . .	ALABAMA-1
Alaska . . . . .	ALASKA-1
Arizona . . . . .	ARIZONA-1
Arkansas . . . . .	ARKANSAS-1
California . . . . .	CALIFORNIA-1
Colorado . . . . .	COLORADO-1
Connecticut . . . . .	CONNECTICUT-1

Delaware	DELAWARE-1
District of Columbia	DISTRICT OF COLUMBIA-1
Federal	FEDERAL-1
Florida	FLORIDA-1
Georgia	GEORGIA-1
Hawaii	HAWAII-1
Idaho	IDAHO-1
Illinois	ILLINOIS-1
Indiana	INDIANA-1
Iowa	IOWA-1
Kansas	KANSAS-1
Kentucky	KENTUCKY-1
Louisiana	LOUISIANA-1
Maine	MAINE-1
Maryland	MARYLAND-1
Massachusetts	MASSACHUSETTS-1
Michigan	MICHIGAN-1
Minnesota	MINNESOTA-1
Mississippi	MISSISSIPPI-1
Missouri	MISSOURI-1
Montana	MONTANA-1
Nebraska	NEBRASKA-1
Nevada	NEVADA-1
New Hampshire	NEW HAMPSHIRE-1
New Jersey	NEW JERSEY-1
New Mexico	NEW MEXICO-1
New York	NEW YORK-1
North Carolina	NORTH CAROLINA-1
North Dakota	NORTH DAKOTA-1
Ohio	OHIO-1
Oklahoma	OKLAHOMA-1
Oregon	OREGON-1
Pennsylvania	PENNSYLVANIA-1
Puerto Rico	PUERTO RICO-1
Rhode Island	RHODE ISLAND-1
South Carolina	SOUTH CAROLINA-1
South Dakota	SOUTH DAKOTA-1
Tennessee	TENNESSEE-1

Texas	TEXAS-1
Utah	UTAH-1
Vermont	VERMONT-1
Virginia	VIRGINIA-1
Virgin Islands	VIRGIN ISLANDS-1
Washington	WASHINGTON-1
West Virginia	WEST VIRGINIA-1
Wisconsin	WISCONSIN-1
Wyoming	WYOMING-1

## SUMMARY OF RESEARCH FINDINGS AND CONCLUSIONS

This resource guide surveys the legal mechanisms available in each U.S. jurisdiction by which a person convicted of a crime may avoid or mitigate the collateral penalties and disabilities that accompany a criminal conviction, over and above the sentence imposed by the court. These legal mechanisms range from executive pardon and judicial expungement, which sometimes recognize and reward rehabilitation after the court-imposed sentence has been fully served, to preemptive front end options for deferred adjudication and set-aside, such as executive pardon and judicial expungement. Sometimes they are aimed at keeping certain types of offenders from incurring any criminal record.

The principal conclusions from the research undertaken for this resource guide are as follows:

- ❖ ***In every U.S. jurisdiction, the legal system erects formidable barriers*** to the reintegration of criminal offenders into free society. When a person is convicted of a crime, that person becomes subject to a host of legal disabilities and penalties under state and federal law. These so-called collateral consequences of conviction may continue long after the court-imposed sentence has been fully served. Their scope and duration are often unclear not only to those who experience them, but also to those who administer and enforce them. While most states now routinely restore the right to vote upon completion of the court-imposed sentence, a criminal record can be grounds for exclusion from many benefits and opportunities, including employment in education, health care, and transportation. The collateral consequences of conviction have grown more numerous and more disabling since the terrorist attacks of 9/11, and criminal background checks have become a routine and pervasive way of identifying who should be subject to them. This web of invisible punishment can frustrate the chances of successful offender reentry, and thereby actually increase risk to public safety.
- ❖ ***These legal barriers are always difficult and often impossible to overcome***, so that persons convicted of a crime can expect to carry the collateral disabilities and stigma of conviction to their grave, no matter how successful their efforts

to rehabilitate themselves. Most states have not yet developed a comprehensive and effective way of “neutralizing” the effect of a prior criminal record in cases where it is no longer necessary or appropriate to take it into account. In almost every U.S. jurisdiction, offenders seeking to put their criminal past behind them are frustrated by a legal system that is complex, unclear, and entirely inadequate to the task. As a practical matter, in most jurisdictions people convicted of a crime have no hope of ever being able to fully discharge their debt to society.

- ❖ ***While every jurisdiction provides at least one way that convicted persons can avoid or mitigate*** the collateral consequences of conviction, the actual mechanisms for relief are generally inaccessible and unreliable, and are frequently not well understood even by those responsible for administering them. Relief mechanisms of the same nominal type (e.g., pardon, expungement, sealing, set-aside) vary widely in effect and availability from state to state, and there is no national model to which state or federal authorities seeking guidance may refer. There is also no central clearinghouse of information about state and federal restoration of rights mechanisms, so that authorities in one state have little or no information about law and practice even in their neighboring states. Often officials responsible for administering one type of relief are unaware of alternatives available in their own state for mitigating or avoiding collateral consequences. Federal regulatory schemes sometimes give effect to state pardon and expungement remedies, apparently without considering their wide variation. Few jurisdictions provide information about avenues of relief from collateral disabilities to offenders leaving prison or completing probation, even where the law requires that this be done. It is often unclear what if any relief may be available for persons with convictions from other jurisdictions. The scope or effect of relief is also not well-understood, either by those seeking it or by those responsible for administering it.
- ❖ ***Pardon remains the most common relief mechanism, but it has been allowed to atrophy*** in recent years. In most U.S. jurisdictions, executive pardon is the only way to mitigate the impact of collateral legal penalties and disabilities, and the governor has exclusive and unreviewable authority to exercise the pardon power. At the same time, most governors no longer regard pardoning as a routine function of their office. In at least a dozen states where a governor’s pardon is the exclusive means



of avoiding or mitigating collateral disabilities, the governor has not exercised the power with any regularity for many years. The federal pardoning process has also withered in the past 20 years, producing only a handful of grants despite a steady stream of applications from people who may long since have completed their court-imposed sentences.

- ❖ ***The states that have issued the greatest number of pardons*** are generally ones in which the pardon power has some degree of protection from the political process, through exercise or administration by an independent appointed board. There are only 13 states in which there have been more than a handful of pardons granted each year since 1995, and in only nine of these states is pardon regularly available to ordinary people whose circumstances are not in some way exceptional. In most of the states where pardons are still routinely available, the pardon power is either exercised or controlled by an appointed board.
- ❖ ***Judicial restoration remedies like expungement and sealing*** are generally available to adult felony offenders in only a few states, but where they exist they appear to be widely utilized. In some states expungement and/or sealing are available only to first offenders or misdemeanants, and serious or violent offenses are almost always ineligible for this relief. Persons whose convictions are expunged or sealed are frequently authorized by law to deny their conviction, including for purposes of employment, though the conviction ordinarily remains available for law enforcement purposes.
- ❖ ***A number of jurisdictions provide for some form of deferred adjudication*** or deferred sentencing, whereby minor offenders or persons without a prior criminal record can avoid a criminal record entirely if they successfully complete a term of community supervision. The growing popularity of deferred adjudication and deferred sentencing schemes appears to reflect a recognition that public safety is better served by keeping certain kinds of offenders out of the justice system entirely. Many such schemes offer not only the possibility that the conviction will be set aside or erased after successful completion of a period of probation, but also that the record itself will be expunged or sealed.
- ❖ ***Two-thirds of the states have laws that forbid denial or termination of employment and/or licensure*** solely because of a conviction, and/or require that a conviction be substantially

related to the license or employment at issue; but it is unclear how effective these laws are. Thirty-three states have laws on their books that purport to limit consideration of conviction in connection with employment and/or licensing decisions, requiring that the offense of conviction be “substantially” or “directly” related to the license and/or employment sought. In a few states rehabilitation is presumed after the passage of a certain period of time. Some states apply a general limitation on consideration of conviction only if the conviction has been pardoned, expunged, or sealed. However, these general nondiscrimination laws are subject to significant exceptions in the form of specific prohibitions under state or federal law that apply to particular jobs or licenses. Also, many states have no mechanism for enforcement, so that it is not clear how effective these laws are in discouraging employers from firing or refusing to hire people on grounds related to conviction.

- ❖ ***In all but a handful of states, most offenders regain the vote upon completion of sentence.*** A total of 39 states, the District of Columbia, and the territories either do not suspend the right to vote at all upon conviction of a felony, or restore it automatically to all felony offenders upon the satisfaction of some objective criterion (e.g., release from prison, discharge from sentence, or expiration of sentence plus an additional specified term of years). Another five states restore the vote more or less automatically to less serious offenders but not to recidivists. Eleven states make restoration of the right to vote discretionary for at least some offenders who have completed their court-imposed sentences, but only three states (Florida, Kentucky, and Virginia) currently disenfranchise all felony offenders for life, unless and until they can successfully navigate an executive pardon or restoration process, or obtain a judicial restoration order.
- ❖ ***The ability to overcome the disabling effect of a criminal record*** is becoming an important issue in the national conversation about offender reentry. Of the hundreds of thousands of people coming home from prison each year, many will make a reasonable effort to stay out of further trouble with the law, but will be frustrated by unreasonable legal barriers to their rehabilitative efforts. Particularly since 9/11, people with a felony conviction in their past are disqualified from a wide variety of jobs and licenses. The widespread availability of criminal record information has made it easier for employers

and licensing boards to identify and reject people with a criminal record. Existing relief mechanisms in many jurisdictions have been flooded with applications from people seeking relief from employment barriers. In order to encourage rehabilitation of offenders and reduce recidivism, it has become essential to develop an accessible and reliable way to neutralize the effect of a criminal conviction in appropriate cases.