



EMPLOYMENT

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Hidden or “collateral consequences” are additional penalties that may result from criminal convictions. They have a direct impact on critical areas of life such as: employment, housing, education, public benefits, parental rights, and voting, and can hinder an individuals’ ability to successfully reintegrate. Understanding the relevant legal and regulatory framework that creates these sanctions can be helpful to criminal defense attorneys, other advocates, and all residents of New Jersey affected by incarceration. Please note that these laws can and do change and you should inquire about updates before relying on this information. [June 2006]

SUMMARY: Finding and keeping a job is one of the most important challenges facing people leaving incarceration or detention. Employment provides necessary financial support for individuals and their families and is usually required as condition of parole. Moreover, research confirms the common sense notion that legitimate employment reduces recidivism.

Individuals with criminal records face severe disadvantages in a tight labor market. This impacts national unemployment rates, community economic stability and racial inequality.

It is difficult to find one source that lists all of the various legal restrictions that will be faced by someone looking for employment after incarceration. Below you will find a list of Federal laws and New Jersey Statutes, along with corresponding offenses and consequences for

offenders that may restrict prospects for jobseekers. The last column provides remedies, where available, to help those convicted of offenses overcome barriers to employment.

In the last sections, you will find information about the Rehabilitated and Convicted Offenders Act (RCOA), a statute that may provide relief from occupational licensing barriers; as well as information about expungement and other issues arising from New Jersey law regarding employment and criminal convictions.

NOTE: What follows is not intended to be an exhaustive list of employment barriers that arise from criminal convictions, but rather information about the scope of these barriers and possible opportunities to address them. Please note that these laws change, and that new restrictions on employment arise frequently.

Employment Barriers

STATUTE OR REGULATION	CONVICTION OR OFFENSE	CONSEQUENCES	REMEDIES
N.J.S.A. §2C:51-2 and N.J.S.A. §13:1C-16 ¹	Individuals holding any public office, position, or employment convicted of any offense involving dishonesty or a crime of the 3rd degree or above.	Barred from all public employment or office holding.	None.
49 U.S.C. §44936 and N.J.S.A. §6:1-100	Most felonies and indictable offenses. ²	Disqualified from being aircraft/airport employees. Mandatory background check under both state and federal law.	Prohibition lasts for 10 years.

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15 U.S.C. §5902	Any conviction preventing individual from getting a license to carry a firearm.	Disqualified from being armored car crew members. Mandatory background check.	None.
N.J.S.A §33:1-31.2; N.J.A.C. 13:2-14.5	Conviction of a crime of moral turpitude. ³	Disqualified from being a bartender. (A liquor licensee of the Alcohol and Beverage Commission cannot hire anyone convicted of a crime of moral turpitude).	May after 5 years from the date of conviction apply to the commissioner for an order removing the resulting statutory disqualification.
N.J.S.A. §40A:14-146.2a	Conviction of a crime of moral turpitude.	Prohibited from being a housing guard or patrolman.	None.
N.J.S.A. §40A:14-146.2a	Conviction of a crime of moral turpitude.	Disqualified from working as a paid firefighter.	None.
N.J.S.A. §33:1-31.2; N.J.A.C. §13:2-14.5	Conviction of a crime of moral turpitude.	Disqualified from working in Liquor retail, wholesale, manufacture, or distribution (could encompass warehouse, factory and delivery jobs).	Can be granted permission by the Alcohol and Beverage Commission after 5 years. ⁴
N.J.S.A. §40A:14-122	Conviction of a crime of moral turpitude.	Disqualified from being a Municipal police officer.	None.
N.J.S.A. §40A:9-154.1	Conviction of a crime of moral turpitude.	Disqualified from being a School Crossing Guard.	None.
N.J.S.A. §33:1-31.2; N.J.A.C §13:2-14.5	Conviction of a crime of moral turpitude.	Disqualified from being a waiter in an establishment where liquor is served.	Five years from conviction, special permission can be obtained from ABC.
N.J.A.C §5:5-34	Conviction of a crime of moral turpitude.	Disqualified from being a racetrack employee.	None.
N.J.S.A. §17:9A-18.1; 12 U.S.C. 1829 (FDIC insured banks) N.J.S.A. §17:12B-67 (addresses employees of loan businesses, building and loan associations, and credit unions)	Crimes involving breach of trust or that person is prohibited from serving or continuing to serve in such capacity pursuant to 12 U.S.C. §1829. ⁵	Disqualified from becoming a bank employee.	Minimum 10 year prohibition for certain offenses.
29 U.S.C. §504, 1111	Conviction of certain offenses (robbery,	Disqualified from working as employee	The sentencing court <i>can</i> set a shorter period

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	bribery, extortion, embezzlement, grand larceny, burglary, arson, drug violations, murder, assault with intent to kill, rape, and certain labor organization related offenses).	benefits plan staff for 13 years following conviction or end of imprisonment, whichever is later.	of disqualification of no less than three years.
N.J.A.C. § 2C:58-3	A person convicted of any crime or disorderly person's offense involving domestic violence.	Disqualified from purchasing or working as a firearms purchaser.	None.
N.J.S.A. §40A:14-146.20	Any offense involving dishonesty or affecting suitability.	Disqualified from being Housing Authority Police.	None.
N.J.S.A. § 40:11A-22.2	Any conviction involving dishonesty, or making unfit to perform the duties of his office.	Disqualified from being a Municipal parking enforcement officer.	None.
N.J.A.C § 19:9-5.1;5.3 and 25 N.J.R. 2839(6), 25 N.J.R. 4605(a)	The Authority will consider criminal convictions as part of a good moral character requirement in the pre-employment screening process, but conviction will not be dispositive.	Disqualified from being a New Jersey Turnpike Authority employee.	The executive director may also grant waivers.
N.J.S.A. §45:19-16	Conviction for certain crimes and offenses. ⁶	Can not be employed by a private detective.	None.
N.J.S.A. §18A:6-7.1	Any crime of the first or second degree; crimes against children; drug offenses; violent crimes; resisting arrest; burglary; usury; perjury and false swearing; threat and other improper influence; escape; and conspiracy.	Disqualified from being public school Employees. ⁷	Individuals can challenge accuracy of results of background check but there is no opportunity to show proof of rehabilitation.
N.J.S.A. §18A:39-19.1	1. Any crime for which public school employment candidates would be disqualified, or 2. If the driver has been convicted at least two times within the last 10 years for a	Disqualified from being public school bus drivers. (Suspension or revocation of driver's licenses also disqualifies bus drivers).	Individuals can challenge accuracy of results of background check but there is no opportunity to show proof of rehabilitation.

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	violation of R.S.39:4-50 (Driving while intoxicated).		
N.J.S.A. §30:5B-6.14	Conviction for a wide range of violent crimes. ⁸	Permanently disqualified from ownership of or employment at a child care center.	None, but applicant has an opportunity to challenge the accuracy of the disqualifying criminal history.
N.J.S.A. §48:16-22.3a	Various crimes. ⁹	Disqualified from being a Limousine Driver. Mandatory background check.	None.
N.J.A.C. §10:44A-2.4	Any person who has been adjudged civilly or criminally liable for abuse of a developmentally disabled person receiving services from the Department or placed in a regulated community residence.	Disqualified from working with individuals with developmental disabilities.	None.
N.J.A.C. §10:44A-2.4	Any person convicted of embezzlement, forgery, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like offenses.	Disqualified from working with individuals with developmental disabilities.	Disqualification may be mitigated by the Rehabilitated Convicted Offenders Act. N.J.S.A. 2A:168A
N.J.S.A. §49:3-58	Anyone convicted of crimes involving securities and investments, or crimes of moral turpitude.	Disqualified from working as securities brokers, agents, or investment advisors.	After 10 years good conduct post-conviction can apply for registration.
N.J.S.A. §13:1E-133	Any person required to be listed in the disclosure statement convicted of murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; and a host of other crimes. ¹⁰	Licensing disqualification for anyone having a “beneficial interest” in the solid waste management business.	Upon written request applicant has the opportunity for an administrative hearing within 30 days. License can be approved for any applicant or employee who “would not require disqualification” based on information contained in the disclosure statement and investigative report.

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N.J. ADC 12:34C-1.8	Conviction of a crime of moral turpitude.	Disqualified from licensing as a drug/alcohol counselor.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).
N.J.S.A. §5:12-90, 91, 86	Conviction of a crime of the first degree; and a host of other crimes. ¹¹	Disqualified from licensing as a casino employee or casino service employment.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).
N.J.S.A. §30:4-3.5	Conviction of any crime or disorderly persons offense involving danger to the person; or against the family, children or incompetents.	Disqualified from licensing to work in state institutions in general (i.e. mental hospitals).	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).
N.J.S.A. §45:11-24.3	Conviction of any crime or disorderly persons offense involving danger to the person, against the family, children or incompetents involving theft; or crimes involving a controlled dangerous substance.	Disqualified from licensing as a homemaker/home health aide.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).
N.J.S.A. §26:2H-83	Conviction of any crime or disorderly persons offense involving danger to the person, against the family, children or incompetents involving theft; or crimes involving a controlled dangerous substance.	Disqualified from licensing as a nurse's aide or personal care assistant.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).
N.J.S.A. §17:22B-6	Conviction of an indictable offense or crimes involving frauds or dishonesty.	Disqualified from licensing as an insurance adjuster.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated

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			and Convicted Offender's Act. (See following section).
N.J.S.A. §5:5-34	Conviction of a crime of moral turpitude.	Disqualified from all jobs requiring a Racing Commission license.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).
N.J.S.A. §45:15-10.1 N.J.S.A. §45:15-12.1	Conviction of any crime or disorderly persons offense involving danger to the person; theft; or controlled dangerous substances.	Disqualified from licensing as a real estate appraiser or real estate sales agent.	Evidence of rehabilitation submitted to the licensing agency will be considered under the Rehabilitated and Convicted Offender's Act. (See following section).

Occupational Licensing

SUMMARY: New Jersey's general licensing statute¹² provides that any state licensing board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke a certificate, registration or license upon proof that an individual has been convicted of or engaged in acts constituting a crime of moral turpitude, or relating adversely to the regulated activity. More than fifty professions in New Jersey are subject to state licensing requirements and thus this statute.

However, the state also has passed the Rehabilitated Convicted Offender's Act (RCOA)¹³, which was adopted to override the general licensing bar. It provides that any licensing authority cannot discriminate or

disqualify an applicant on the basis of a conviction of a crime or disorderly person offense, except in the case of public employees convicted of offenses touching on their public offices or crimes relating adversely to the occupation for which the license is sought. Basically, the RCOA supercedes most statutes that allow license denials for crimes of moral turpitude.¹⁴

If a licensing authority seeks to disqualify an individual based on conviction for a crime relating adversely to the occupation, trade, vocation, profession or business for which the license is sought, it must explain in writing how a list of factors relate to the license or business sought and allow for evidence of rehabilitation to be presented.¹⁵

Expungement

SUMMARY: New Jersey law does provide a very limited right to expungement (removal) of criminal records. The purpose of the law is to give a person, particularly young people, who has either one or very few convictions a "fresh start."¹⁶

Unfortunately, many convictions cannot be expunged. They include murder, kidnapping, aggravated sexual assault, robbery, arson and related offenses, perjury, false swearing,

conspiracies or attempts to commit crimes, or convictions for the sale, distribution or possession of drugs with intent to distribute. Motor vehicle convictions, including driving under the influence of alcohol and drugs, cannot be expunged. For other convictions, the following rules apply:

- **Indictable Offenses:** a person cannot have had any other indictable convictions in any state at any time, or more than two other disorderly persons convictions. A person must wait 10

years from the date of the conviction, payment of fine, completion of probation or parole, or release from jail, whichever is *later*.

- **Disorderly Persons Offenses:** cannot have had any other indictable convictions in any state at any time, or more than two other disorderly persons convictions. Waiting period: 5 years.

- **Municipal Ordinances:** Case could not have been for more than 90 days or a \$200 fine. Waiting period: two years.
- **Juvenile Adjudications:** Entire record can be expunged if none were non-expungeable crimes. Waiting period: five years.
- **Drug Offenders Under 21:** Some drug offenses. Waiting period: one year.
- **Arrests not resulting in conviction:** Expungement available anytime after acquittal or dismissal of charge.

Protection from Discrimination

SUMMARY: Unfortunately, New Jersey employers are, for the most part, free to hire or not hire those with criminal records as they wish.

- **N.J. Law Against Discrimination:** Unlike some other states, New Jersey's Law Against Discrimination does not include any protections against discrimination based on arrest or conviction of a crime.
- **Federal Law (EEOC):** The Equal Employment Opportunity Commission has

taken the position that, absent a business necessity, employers who exclude individuals on the basis of criminal convictions are in violation of Title VII of the Civil Rights Act, due to the fact that African-Americans and Latinos are disproportionately represented among those with arrest and conviction records. However, federal cases are rarely brought under this anti-discrimination law and offer little relief.¹⁷

¹ This statute specifically bars individuals from jobs as administrators and supervisors of departments of conservation, parks and reservations.

² 49 U.S.C. §44936 includes: (i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 [49 USCS § 46306, 6308, 6312, 46314, or 46315] or chapter 465 of this title [49 USCS §§ 46501 et seq.] or section 32 of title 18 (crimes associated with interference with air travel and transportation of hazardous materials); (ii) murder; (iii) assault with intent to murder; (iv) espionage; (v) sedition; (vi) treason (vii) rape; (viii) kidnapping; (ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon; (x) extortion; (xi) armed or felony unarmed robbery; (xii) distribution of, or intent to distribute, a controlled substance; (xiii) a felony involving a threat; (xiv) a felony involving-(I) willful destruction of property; (II) importation or manufacture of a controlled substance; (III) burglary; (IV) theft; (V) dishonesty, fraud, or misrepresentation; (VI) possession or distribution of stolen property; (VII) aggravated assault; (VIII) bribery; and (IX) illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year, or any other crime classified as a felony that the Under Secretary determines indicates a propensity for placing contraband aboard an aircraft in return for money; or (xv) conspiracy to commit any of the acts referred to in clauses (i) through (xiv).

³ There is no statutory definition of "crimes of moral turpitude" and New Jersey Courts interpreting the phrase have included a range of crimes. What constitutes a crime of moral turpitude for purposes of disqualification will vary depending on the occupation. Generally, the term encompasses crimes of fraud and dishonesty (such as tax evasion, larceny, stolen property, wire fraud, intentionally passing a bad check) but has also been found to include conspiracy to distribute narcotics, repeated indecent exposure, prostitution and other sexual offenses.

⁴ It must appear to the satisfaction of the commissioner that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest and may, in his discretion enter an order removing the disqualification from obtaining or holding a license or permit because of the conviction.

⁵ Any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or entered into a pretrial diversion or similar program in connection with a prosecution for such offense.

⁶ (a) illegally using, carrying or possessing a pistol or other dangerous weapon; (b) making or possessing burglar's instruments; (c) buying or receiving stolen property; (d) unlawful entry of a building; (e) aiding escape from prison; (f) unlawfully possessing or distributing habit-forming narcotic drugs; (g) any person whose private detective or

investigator's license was revoked or application for such license was denied by the superintendent or authorities of any other State or territory because of conviction of any of the crimes or offenses specified in this section.

⁷ Any position that would require regular contact with pupils: teachers and teachers' aides, school physicians and nurses; custodial and cafeteria staff; and clerical and technical staff.

⁸ Conviction for any of the following crimes and offenses: (1) a crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S. 2C:24-4; child molestation as set forth in N.J.S. 2C:14-1 et seq.; (2) abuse, abandonment or neglect of a child pursuant to R.S. 9:6-3; (3) endangering the welfare of an incompetent person pursuant to N.J.S. 2C:24-7; (4) sexual assault, criminal sexual contact or lewdness pursuant to N.J.S. 2C:14-2 through N.J.S. 2C:14-4; (5) murder pursuant to N.J.S. 2C:11-3 or manslaughter pursuant to N.J.S. 2C:11-4; (6) stalking pursuant to P.L. 1992, c. 209 (C. 2C:12-10); (7) kidnapping and related offenses including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure or isolated area pursuant to N.J.S. 2C:13-1 through 2C:13-6; (8) arson pursuant to N.J.S. 2C:17-1, or causing or risking widespread injury or damage which would constitute a crime of the second degree pursuant to N.J.S. 2C:17-2; (9) terroristic threats pursuant to N.J.S. 2C:12-3; and (10) an attempt or conspiracy to commit any of the crimes or offenses listed in paragraphs (1) through (9) of this subsection.

⁹ In New Jersey or elsewhere any crime as follows: aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S. 2C:39-4 or N.J.S.2C:39-9, or other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2.

¹⁰ Also includes: theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale or purchase of securities; alteration of motor vehicle id numbers; unlawful manufacture, purchase, use or transfer of firearms; drug crimes, except possession of less than 84 grams of marijuana; racketeering; violations of the antitrust act; purposeful or reckless violation of environmental protection laws.

¹¹ Other disqualifying crimes (including attempt and conspiracy crimes): manslaughter; aggravated assault; kidnapping; sexual offenses which constitute a crime of the second or third degree; robbery; arson; causing or risking widespread injury or damage; burglary (second degree); theft (second or third degree); forgery and fraudulent practices (second or third degree); bribery and corrupt influence; perjury and falsification in official matters (second, third or fourth degree); misconduct in office (second degree); manufacturing, distributing or dispensing a controlled (or imitation) dangerous substance (second or third degree) employee a juvenile in a drug distribution scheme; school zone drug offenses; acquisition of controlled substances by fraud; gambling offenses (third or fourth degree); possession of a gambling device; and *other convictions* inimical to casino operations so long as automatic disqualification does not apply to convictions older than 10 years.

¹² N.J.S.A. § 45:1-21(f). Business licensing: in addition to the statutes described above addressing occupational licensing, a number of statutes regarding the licensing of businesses require applicants to provide criminal background information on themselves, officers and their employees. Within the limits of RCOA, licensing agencies for these businesses will consider the criminal records of applicants, officers of an applicant corporation and employees in deciding whether to grant a license: auto body repair; gas stations with inspection licenses; diesel emission inspection stations; towing and highway services providing parkway services; legalized games of chance; community residences for individuals with developmental disabilities (certain convictions an absolute bar); child care centers (certain convictions an absolute bar). *See* N.J.A.C. §13:21-21.5; N.J.A.C. §13:20-44.5; N.J.A.C. §13:20-47.5; N.J.A.C. §19:8-2.12; N.J.A.C. §13:3- 3.9; N.J.A.C. §10:44A-2.4; N.J.S.A. §30:5B-1 through -25.3.

¹³ N.J.S.A. § 2A:168A.

¹⁴ The RCOA doesn't apply to the Alcohol and Beverage Commission, law enforcement agencies, or cases listed in where the statute *requires* disqualification from certain jobs based on convictions of moral turpitude.

¹⁵ These factors include: (a) the nature and duties of the occupation; (b) the nature and seriousness of the crime; (c) circumstances under which the crime occurred; (d) date of the crime; (e) age of the person when the crime was committed; (f) whether the crime was an isolated or repeated incident; (g) social conditions that may have contributed to the crime; and (h) any evidence of rehabilitation. Also, the presentation to the licensing authority of evidence of a pardon, expungement of the conviction, or a certificate of rehabilitation by the Parole Board or Chief Probation Officer of a U.S. District Court will preclude a licensing authority from disqualifying an applicant.

¹⁶ For more complete information on expungement, *see* "Clearing Your Record: A Six-Step Guide to Expunging Criminal Records in New Jersey" at <http://www.lsnjlaw.org/english/courts/statecourts/municipal/cyr/index.cfm>.

¹⁷ *See El v Septa*, United States Court of Appeals for the Third Circuit, No. 05-3857 (2005).