



Justice Center

THE COUNCIL OF STATE GOVERNMENTS

Fair Chance Licensing

Understanding and mitigating barriers to occupational & professional licensure for workers with convictions

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Fair Chance Licensing Initiative

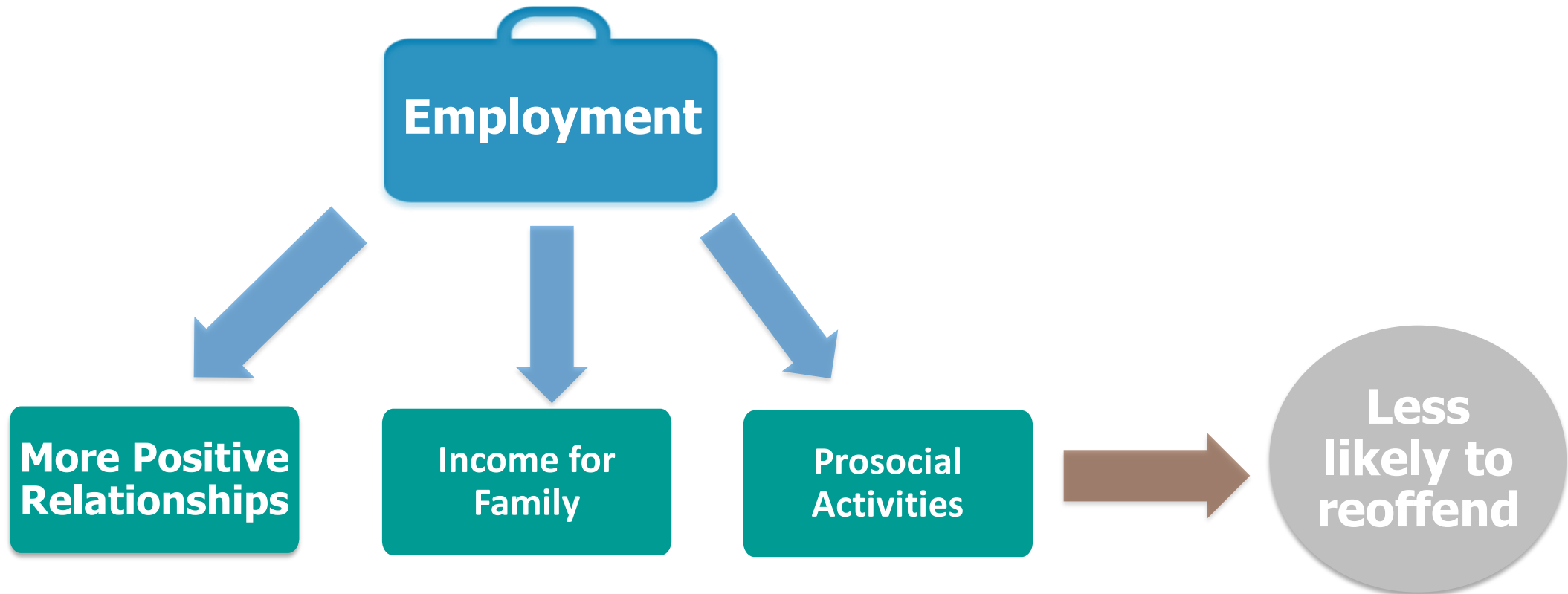
Assist states in economic recovery

Enhance good-paying job access

Improve re-entry & public safety

Provide businesses with qualified candidate pool

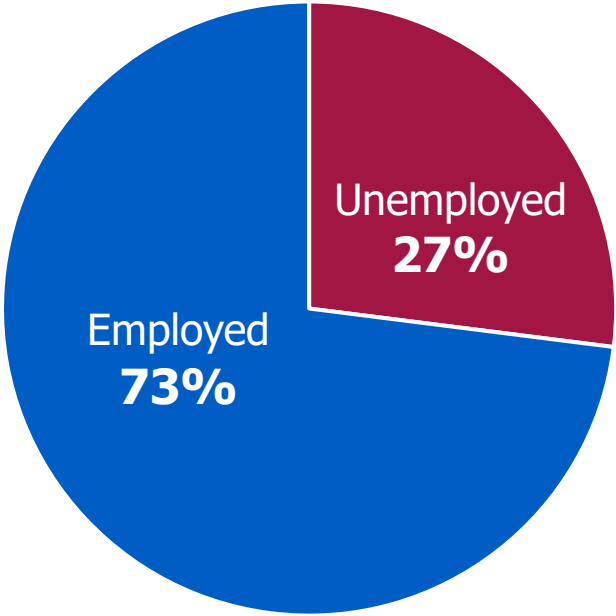
Employment is a key component to successful reentry



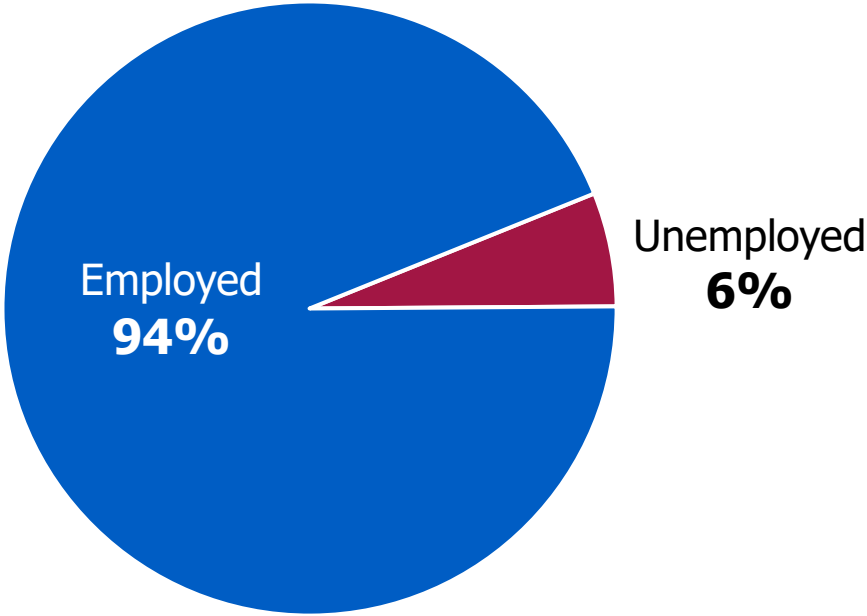
Formerly incarcerated people are unemployed at a far higher rate than the general population

National unemployment rates

(2008 – most recent data for formerly incarcerated population)



Formerly incarcerated

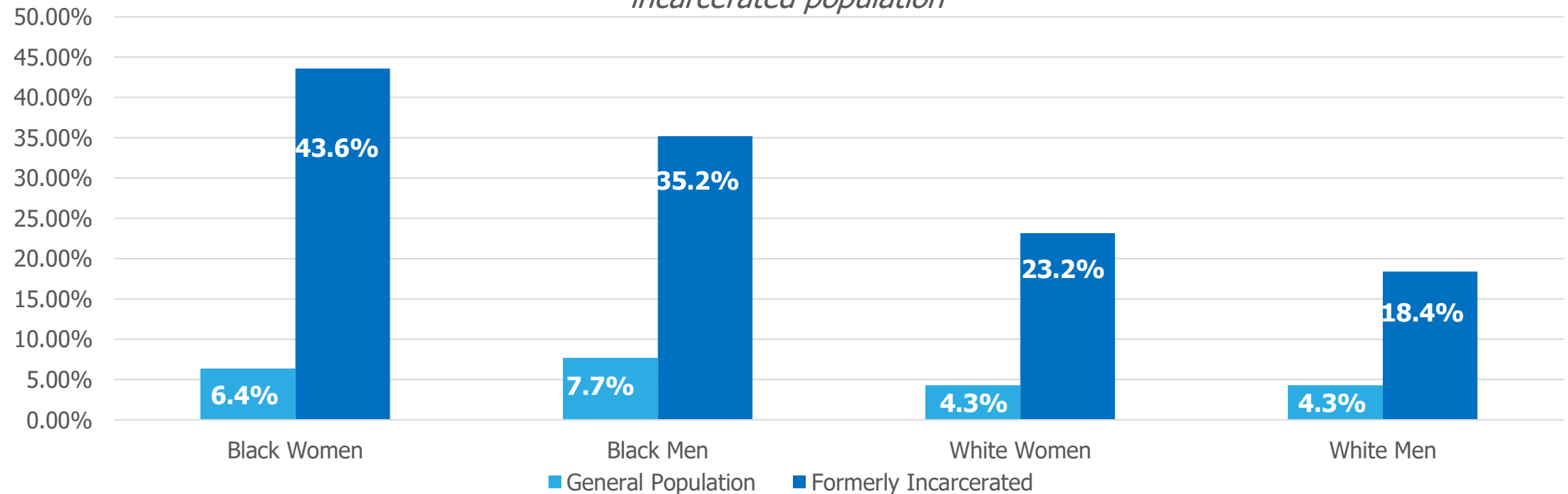


General population

Prison Policy Initiative, Out of Prison & Out of Work: Unemployment among formerly incarcerated people, <https://www.prisonpolicy.org/reports/outofwork.html> (2018)

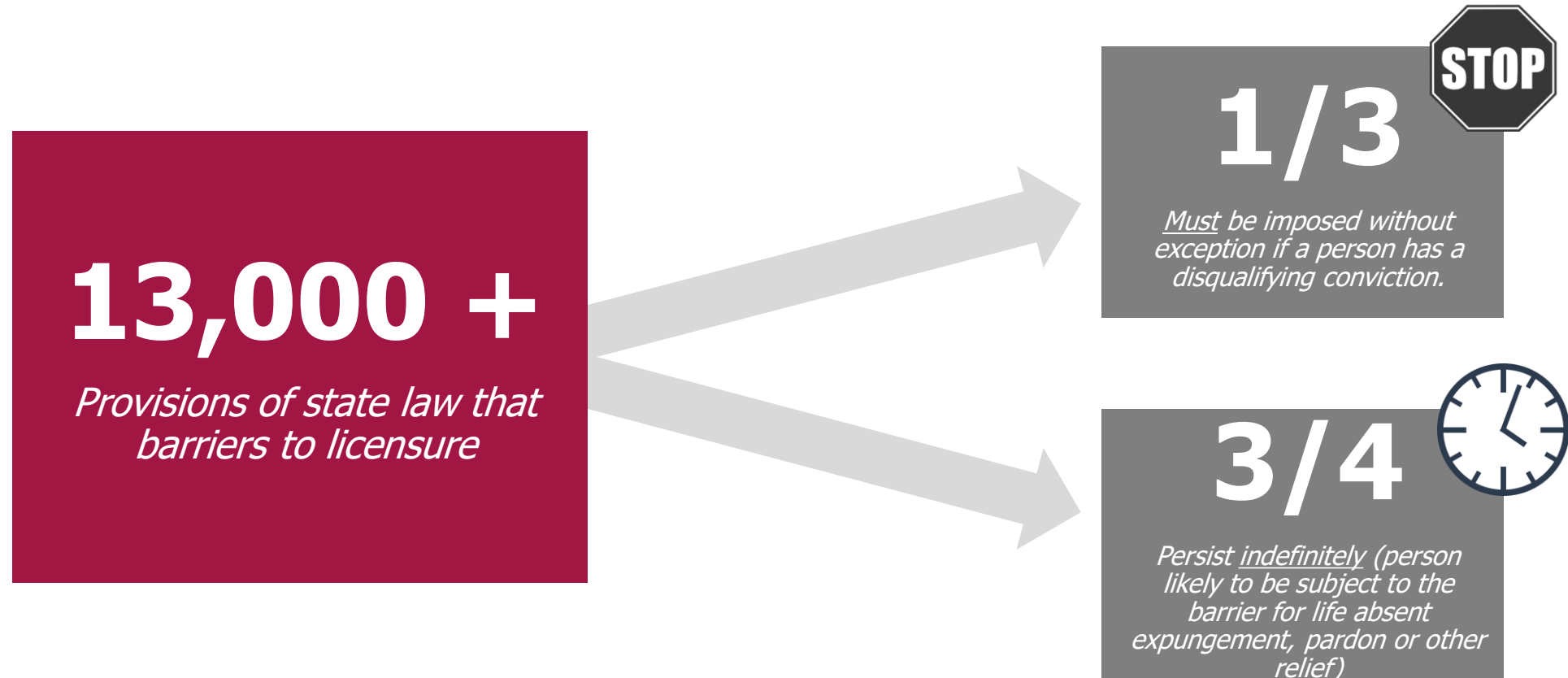
Collateral consequences have a greater impact on work for people of color

Unemployment rates of people age 35–44 among the U.S. general public and formerly incarcerated population



Lucius Couloute and Daniel Kopf, *Out of Prison & Out of Work: Unemployment among formerly incarcerated people* (Prison Policy Initiative, July 2018).

Conviction-based barriers to licensure across the country



Source: National Inventory of Collateral Consequences of Conviction, <https://niccc.nationalreentryresourcecenter.org/>

Discretionary barriers can deter qualified workers who pose no risk from entering licensed fields, even if they would NOT ultimately be disqualified

Should I pursue a cosmetology/barber license with a conviction?



Mitigating licensing barriers and protecting public safety

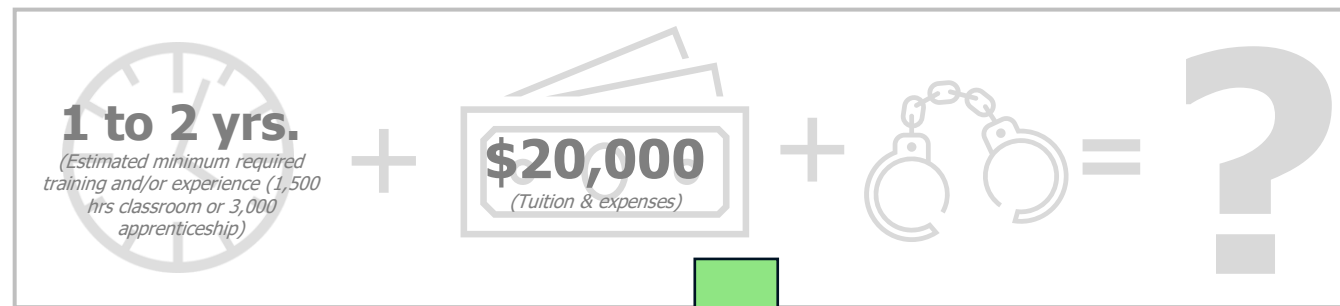
Over half of the states have enacted broadly applicable fair chance licensing laws in one form or another.

Recent reforms are based on three key principles:

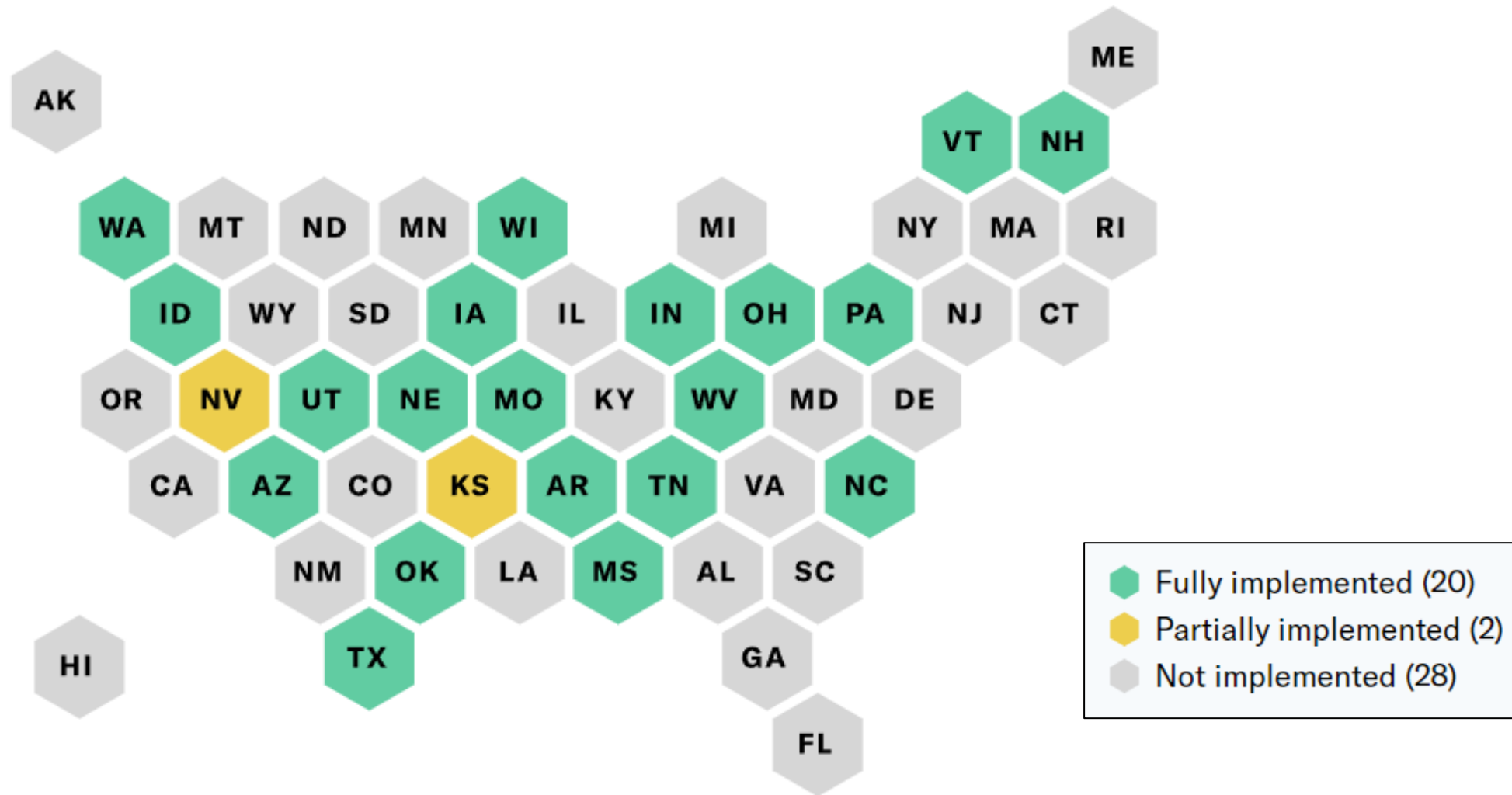
1. Licensing bodies should have the authority to deny applicants with past convictions that **directly relate to the tasks and duties** of a licensed activity such that licensure would create an **appreciable risk to public safety**
2. Workers should not be barred from licensure solely on the basis of a past conviction; instead, they should be given **individualized consideration** that accounts for their past and current circumstances and the unique nature of their criminal conduct
3. Licensing policies and practices involving determinations about the criminal history of applicants should be **transparent and consistently applied**.

Pre-application determination: Changing the calculus and reducing deterrence

Should I pursue a cosmetology/barber license with a conviction?



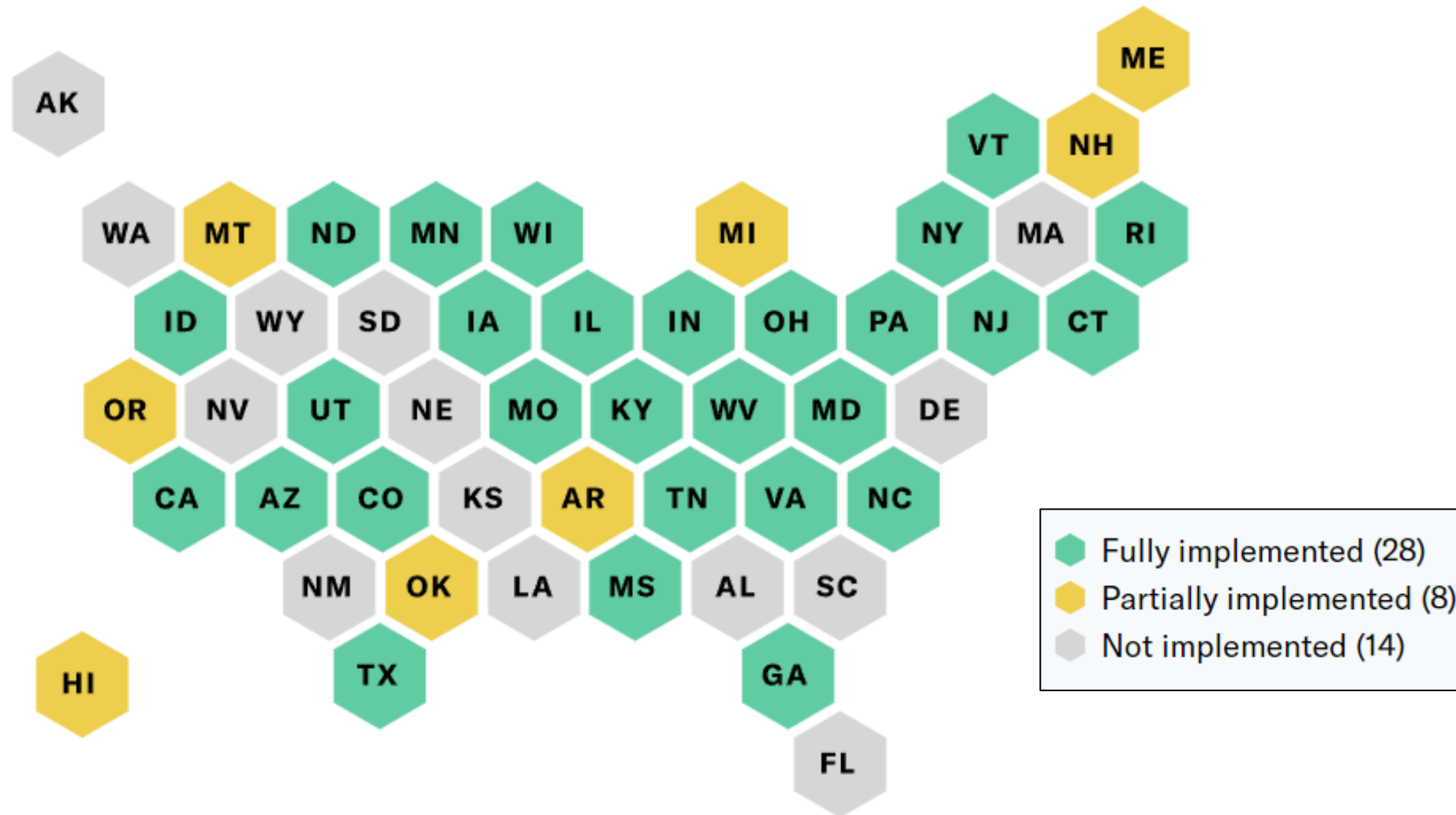
National Practices – Dealing with deterrence



Individualized consideration guided by statutory factors

- Ensures that no offense is automatically disqualifying and allows prospective licensees to be considered in the full context of their crime and their experience.
- Generally requires that whether a crime bears a relationship to the licensed activity be determined on a case-by-case basis based on an evaluation of factors including:
 - Nature and seriousness of the offense
 - Age of the conviction
 - Age of the person when the offense was committed
 - The nature of the specific duties and responsibilities for which licensure is required
 - Evidence of rehabilitation and other mitigating circumstances

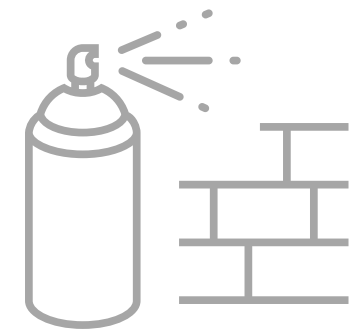
National Practices – Individualized consideration



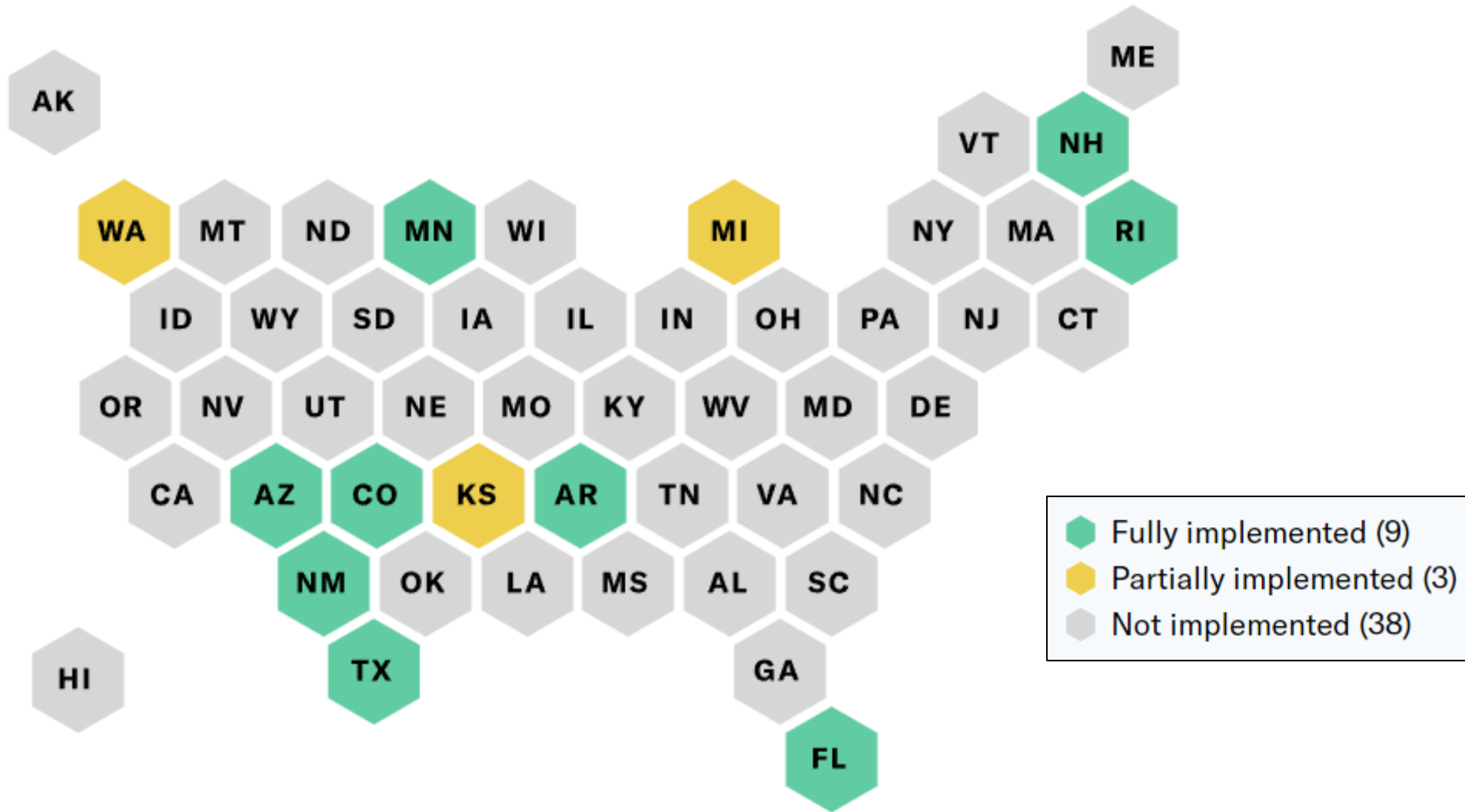
Broadly limit consideration lower-level offenses

Many states have determined that certain lower-level offenses (such as non-violent misdemeanors) will never pose a risk to public safety in the context of licensed work and have broadly prohibited their consideration.

Eliminates the need for licensing bodies to evaluate convictions that would never be cause for concern



National Practices – Low-level offenses



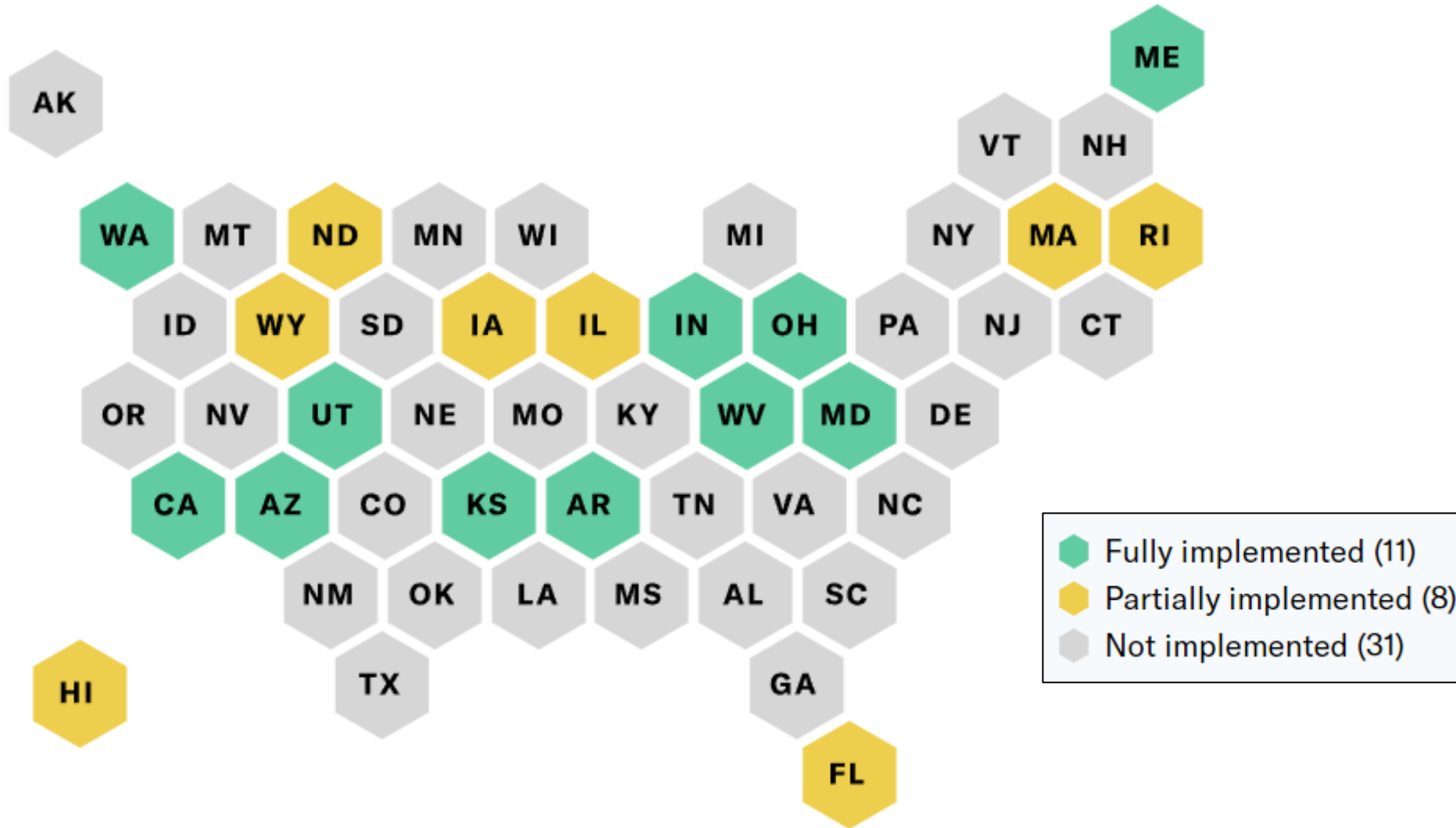
Broadly limit consideration of older convictions

Reflects data that suggests that the risk of re-offense drops dramatically after just 4 years without justice involvement.

Ensures that convictions may not be considered at all after a person has remained conviction-free for a period of years (generally in the range of 3-to-10 years).



National Practices – Older convictions

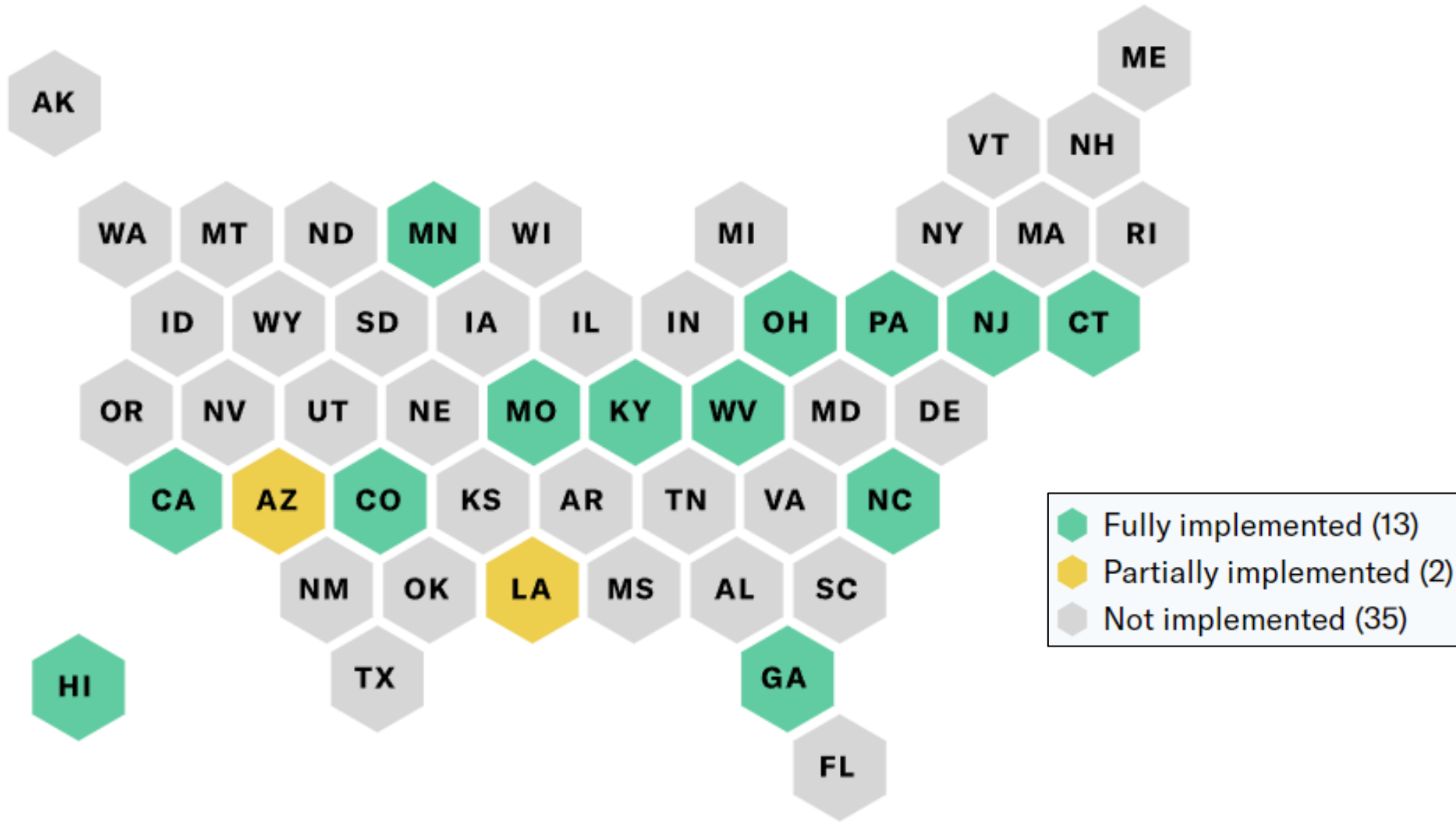


Extend fair chance licensing standards to override mandatory barriers

- Fair chance licensing policies are generally aimed at creating standards to guide the exercise of the discretion granted to licensing bodies when it comes to considering criminal history.
- However, mandatory barriers that exclude people with certain convictions *by operation of law* remain common in many professions.
- Many states have chosen to expand their fair chance licensing laws to override all or most mandatory barriers, essentially converting them to discretionary barriers subject to the standards that apply to all other discretionary determinations



National Practices – Eliminating mandatory barriers

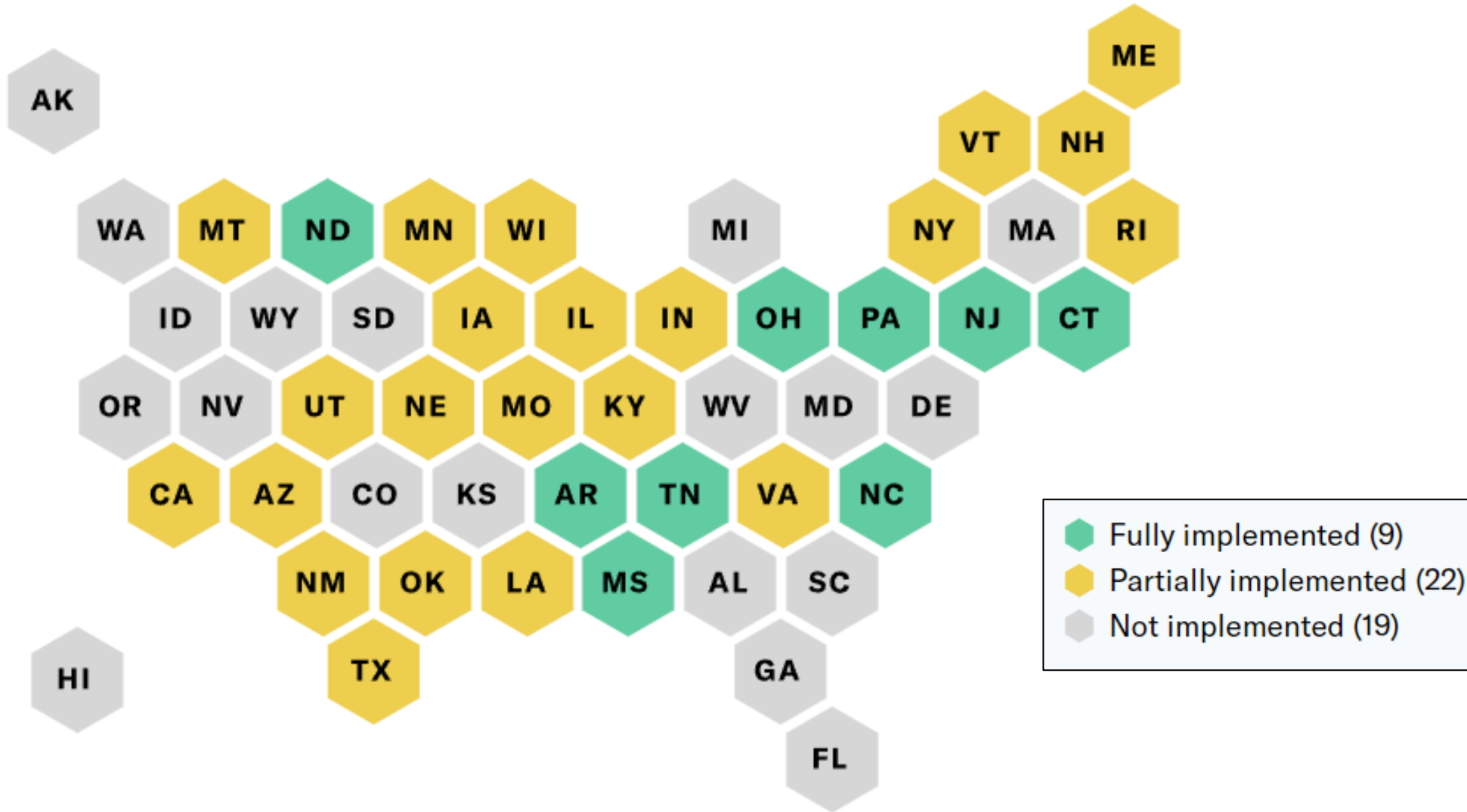


Written explanation of reasons for denial

- Ensures that applicants denied due to a conviction have a record to base a challenge or appeal of the decision upon. Allows those applicants to identify ways to remedy the disqualification.
- Soft enforcement: Ensures that licensing bodies are properly applying the standards for consideration laid out in the law.
- Most effective when written explanation requires reference to any factors that the law requires licensing bodies to consider.



National Practices – Written explanation



Additional best practices reflected in state fair chance licensing laws

Increase transparency in the application process

- Publish online information that explains to applicants how criminal history is considered (*10 states*)

Limit consideration of certain criminal records that are not relevant to public safety concerns

- Explicitly prohibit consideration of arrests not followed by conviction, juvenile adjudications, and expunged/sealed convictions (*15/7/44 states, respectively*)

Significant new legislation (2022)

Arizona	H-2612
Colorado	H-1098
Connecticut	H-52348
Idaho	S-1368
Oklahoma	S-1691
Virginia	S-409
Washington	H-1874
Wyoming	H-39

Thank you



**Justice
Center**

Questions or comments:

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More on Fair Chance Licensing:

<https://csgjusticecenter.org/projects/fair-chance-licensing/>

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