



Unlicensed & Untapped:

Removing Barriers to State Occupational Licenses for
People with Records

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About NELP

For more than 45 years, the National Employment Law Project has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. For more information, visit us at www.nelp.org.

Photo credit: Cover photo used with permission of Transition Clinic Network. Ronald Sanders on the right, assists a TCN patient.

Executive Summary

Nearly one in three U.S. adults has a record in the criminal justice system. It's hardly uncommon, but the resulting stigma and its lifelong consequences prove devastating for many. Sonja Blake is one of the estimated 70 million people in the United States who have an arrest or conviction record.¹ Ms. Blake, a grandmother, cared for children at her Wisconsin in-home daycare center.² After nearly a decade in business, her daycare-owner certification was permanently revoked after a change in state law, because of a 30-year-old misdemeanor conviction for overpayment of public assistance.

Ms. Blake is one of the more than one-quarter of U.S. workers who require a state license to practice their occupations.³ In addition to the more typically known regulated jobs, such as nurses and teachers, many occupations in sales, management, and construction also require a state license.⁴ Critics of licensing argue that regulating occupations does little to advance safety or quality of service and instead negatively impacts consumers and low-wage workers.⁵ Others counter that state licensing for certain jobs is necessary to maintain public safety and results in higher practitioner wages and greater respect for the profession.⁶ Despite this disagreement over the value of licensing, common ground can be found in the call to reduce unnecessary conviction barriers to occupational licenses.

Passing a criminal background check is a common requirement to obtain a state license. In fact, the American Bar Association's inventory of penalties against those with a record has documented 27,254 state occupational licensing restrictions.⁷ Thousands of these restrictions vary widely among states and professions. And because the criminal justice system disproportionately impacts people of color, these extrajudicial penalties—known as “collateral consequences”⁸—perpetuate racial disparities in employment.

Although no national data exists as to the number of people denied licenses because of these collateral consequences, analogous data is available in the hiring context. For example, after submitting a job application,

people with records on average are only half as likely to get a callback as those without a record.⁹ And for black men with records, the impact is more severe—only one in three receive a callback.¹⁰ Thus, having a conviction record, particularly for people of color, is a major barrier to participation in the labor market.

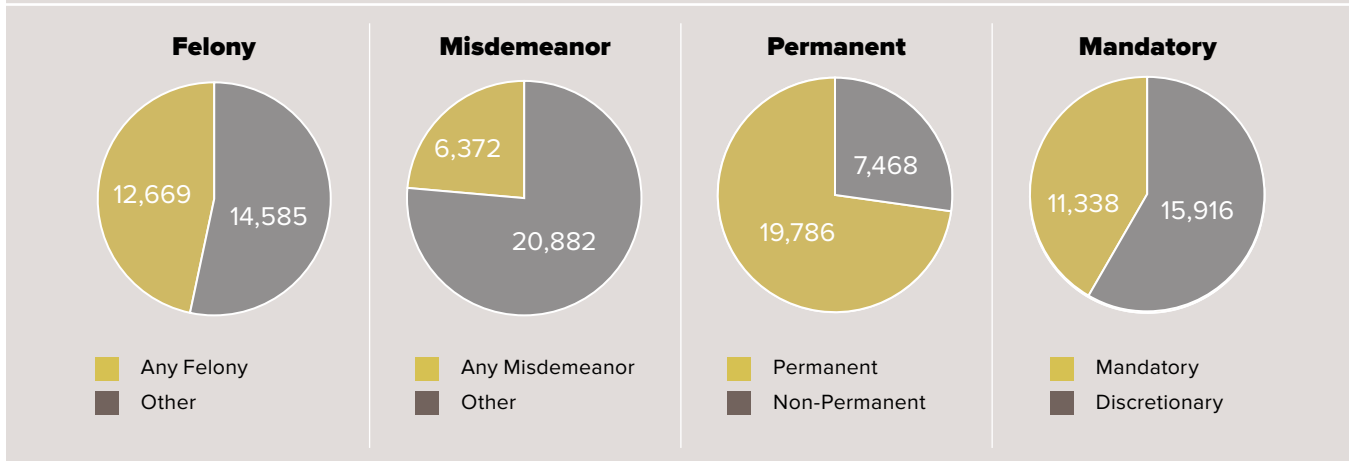
The Landscape of State Occupational Licensing Barriers

This paper examines the significant flaws in state occupational licensing criminal background check requirements.¹¹ One barrier to employment that regularly appears in state occupational licensing laws is the **blanket ban**, which automatically disqualifies people with certain records. As a gauge for the frequency of blanket bans in licensing laws across the nation, the ABA Inventory reports over 12,000 restrictions for individuals with any type of felony and over 6,000 restrictions based on misdemeanors.¹² In addition, the ABA Inventory reports over 19,000 “permanent” disqualifications that could last a lifetime¹³ and over 11,000 “mandatory” disqualifications, for which licensing agencies have no choice but to deny a license.¹⁴

Another aspect of the barriers facing workers with records is the prevalence of **overly broad criminal record inquiries**. The rationale for far-reaching inquiries is ostensibly compelling—licensing agencies seek robust information to advance public safety and health. No research, however, supports the persistent misconception that a workplace is less safe if an employee has a past record. Thus, even seemingly rational inquiries frequently operate as overly broad bans against anyone with a record.

License applicants with records face additional challenges presented by a **lack of transparency and predictability** in the licensure decision-making process and confusion caused by a labyrinth of different restrictions. Requirements for a single occupation vary widely across states, as do the standards applied to evaluate past offenses. Further complicating matters, the statutory language and procedures governing individual, or

Types of Disqualifications Among State Licensing Restrictions



The ABA Inventory documents 27,254 state occupational licensing restrictions. Of these restrictions, over 12,000 are for individuals with any type of felony, over 6,000 are based on misdemeanors, over 19,000 are permanent disqualifications, and over 11,000 are mandatory disqualifications.

classes of, professions often differ from more general state licensing statutes.

The common use of vague statutory terms, such as a “good moral character” requirement or restrictions against offenses of “moral turpitude,” leaves workers without clarity as to whether their past conviction is a disqualification. Without any procedural safeguards, guidelines, or limits on discretion, this opaque process may shroud automatic denials.

Recommendations for Fairer State Licensing Laws

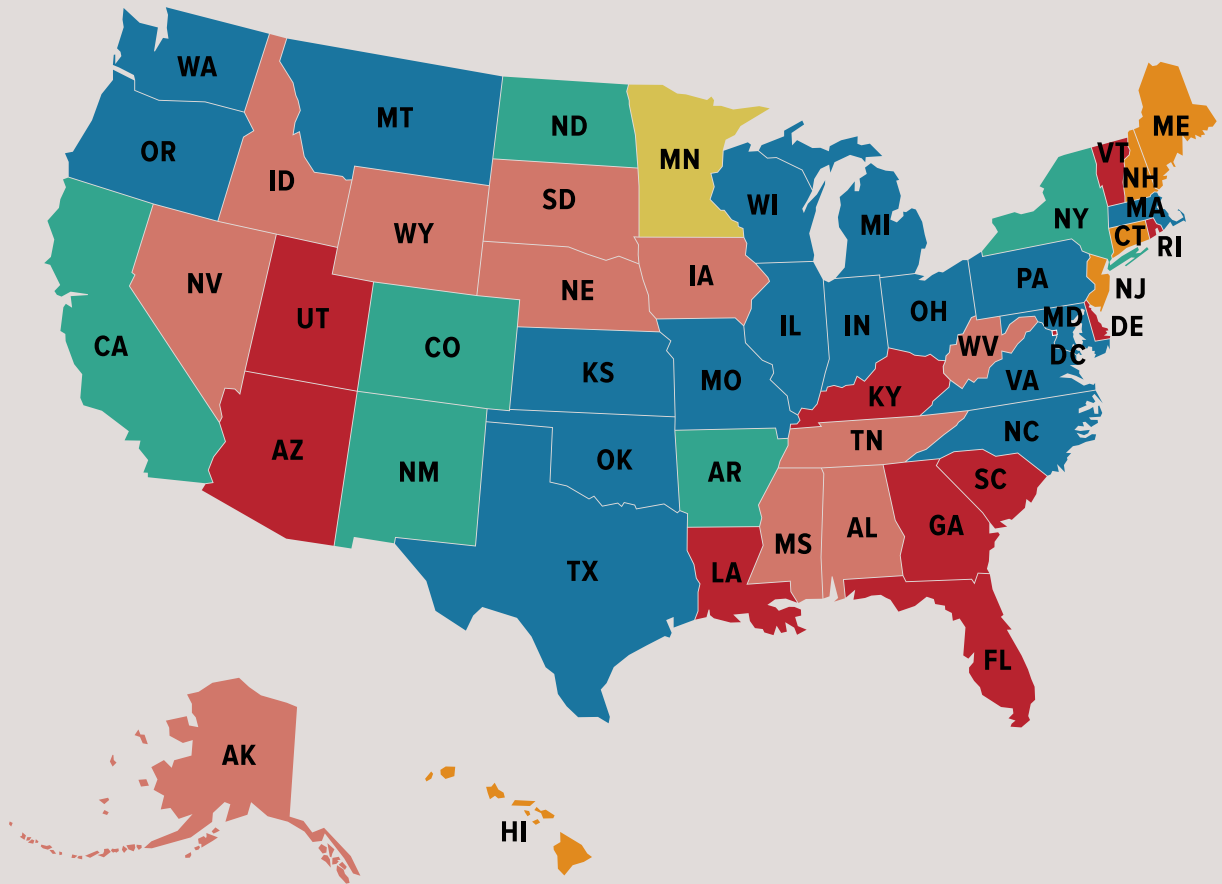
In response to this maze of barriers, we recommend a comprehensive overhaul of licensing laws to incorporate standards that promote greater transparency and accountability—ultimately producing fairer, more consistently applied licensing laws. We provide a *Model State Law* in the *Appendix*, which incorporates our Recommendations. In addition, we have analyzed the general licensing laws of 39 states and the District of Columbia that, to some degree, restrict most licensing boards’ consideration of arrest and conviction records.¹⁵ Only 11 states lack any form of such general laws.¹⁶ Although the quality and effectiveness of the laws vary

widely, these overarching laws largely aim to ensure some basic level of fairness for applicants with records. To identify areas for improvement, NELP compared the 40 laws across four criteria:

1. Does the law prohibit the blanket rejection of applicants with conviction histories?
2. Does the law incorporate “EEOC factors,” which include consideration of whether a conviction is occupation-related and how much time has passed since the conviction?¹⁷
3. Does the law limit the scope of record inquiry or the consideration of certain types of record information?
4. Does the law require consideration of rehabilitation?

After evaluating each state law based on the four criteria listed above, NELP combined those scores to arrive at an overall rank of the law and grouped them into five tiers, from best to worst: (1) Most Effective, (2) Satisfactory, (3) Needs Improvement, (4) Minimal, and (5) Unsatisfactory. Our detailed assessment of the laws is included in the *State Report Cards* in the *Appendix*. Based on the limited criteria considered here, only one state law was graded “Most Effective”; and only five states received a “Satisfactory” grade.

Overall State Grades



NELP graded 40 overall state licensing laws (including D.C.) that, to some degree, restrict occupational licensing boards' consideration of criminal records. The laws are graded against NELP's Model State Law and grouped into five tiers, from best ("Most Effective") to worst ("Unsatisfactory").

- Most Effective: Minnesota
- Satisfactory: Connecticut, Hawaii, Maine, New Hampshire, New Jersey
- Needs Improvement: Arkansas, California, Colorado, New Mexico, New York, North Dakota
- Minimal: District of Columbia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, Montana, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, Wisconsin
- Unsatisfactory: Arizona, Delaware, Florida, Georgia, Kentucky, Louisiana, Rhode Island, South Carolina, Utah, Vermont
- No Overarching Law

Whether motivated by a desire to advance economic growth and public safety, maximize human potential, or address racial bias, fairer occupational licensing laws will benefit our communities. To that end, we propose the following reforms:

1. Consistent with the EEOC guidance¹⁸ and research, remove automatic blanket bans from the laws.
2. Limit the scope of criminal record inquiry for state licenses to reduce bias in the assessment of license applicants.
3. Require assessment of candidates for licensure on a case-by-case basis, incorporating a standard that examines whether a conviction is occupation-related and how much time has passed since the conviction.
4. Mandate consideration of license applicants' rehabilitation and mitigating circumstances prior to any disqualifications based on the record.
5. Provide license applicants notice of potential disqualifications and a fair process that allows the opportunity to respond prior to any disqualifications based on the record.
6. Eliminate any self-reporting in the licensure application process, and "ban the box" from the application.
7. Remove vague and overbroad standards, such as "good moral character" and restrictions against "moral turpitude" offenses.
8. Evaluate the state landscape of occupational licensing restrictions, and incorporate ongoing data collection to facilitate entry into professions for qualified applicants with records.
9. Promote transparency by providing clear guidance to license applicants regarding potential disqualifications for the occupation.
10. Create fairer, more uniform standards by incorporating these recommendations in a broadly applicable state licensing law that supersedes individual state licensing laws containing criminal record restrictions.

Responsible policymaking must acknowledge that licensure barriers rest on a shaky foundation—a criminal justice system born from systemic racism.¹⁹ In addition, we all benefit when individuals willing to contribute to their communities and families are permitted a pathway to professional work and become more financially stable. Just as policymakers from across the political spectrum have invested in job opportunities for people with records by adopting ban-the-box policies that delay conviction history inquiries and by enacting fair-chance hiring laws,²⁰ now is the time for legislators to alleviate criminal record barriers embedded in state occupational licensing laws.

Endnotes

1. *Research Supports Fair Chance Policies*, NELP (March 2016), www.nelp.org/publication/research-supports-fair-chance-policies/.
2. Facts regarding Ms. Sonja Blake's case are derived from Appellant's Brief, *Blake v. Jossart*, 868 N.W. 2d 198 (Wis. Ct. App. 2015) (No. 2012AP2578), review granted, 872 N.W. 2d 668 (Nov. 4, 2015), and from email correspondence with Sheila X. Sullivan, Road to Opportunity Project Director, Legal Action of Wisconsin (March 2016).
3. *The White House, Occupational Licensing: A Framework for Policymakers* (July 2015), at 3, www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf. The White House reports that the percentage of the workforce covered by state licensing laws has grown five-fold since the early 1950s. *Id.* at 17. The most recent estimates indicate that over 1,100 types of occupations are licensed, certified, or registered in at least one state. *See Id.* at 7. For simplicity, this report refers to "licensing" as a catch-all term and does not distinguish between licensing, certification, and registration, unless specifically noted.
4. *See id.* at 21.
5. *See e.g.*, Morris M. Kleiner, *Reforming Occupational Licensing Policies*, The Hamilton Project (Jan. 2015), at 13. The Hamilton Project estimates that such restrictions eliminate as many as 2.85 million jobs nationwide and raise consumer expenses by \$200 billion per year. *Id.* at 6.
6. For example of discussion of benefits of licensing, *see supra* note 3 at 11.
7. Am. Bar Assoc., *National Inventory of the Collateral Consequences of Conviction*, www.abacollateralconsequences.org (accessed March 28, 2016) (hereinafter "ABA Inventory"). The inventory includes information for all 50 states, the District of Columbia, and all U.S. territories. Note that the inventory codes disclosures of backgrounds or background check requirements as freestanding entries in some cases, which may or may not include a specific restriction. *See* ABA Inventory, *User Guide*, Question and Answer 10. The "occupational and professional licenses and certification" includes most professional licensure requirements, among other licenses. The category "business licenses and other property rights" licenses to operate certain facilities and to engage in specific industries. The *User Guide* for the ABA Inventory cautions that the "difference between professional and business licensure will not be clear, and a comprehensive search should select both categories." *See* ABA Inventory, *User Guide*, Question and Answer 13. We followed this recommendation for the purposes of the estimate and included both the professional and business licensure categories for all jurisdictions in the United States available for the search, except for "federal."
8. *See* Margaret Colgate Love, Jenny Roberts, & Cecelia Klingele, *Collateral Consequences of Criminal Convictions: Law, Policy and Practice* (Thomson West, 2013). This volume is a comprehensive resource for practicing attorneys, judges and policymakers on the legal restrictions and penalties that flow from a conviction beyond the court-imposed sentence. *See Collateral Consequences of Criminal Convictions: Law, Policy and Practice Offers Roadmap to the Restoration of Rights After Conviction*, Nat'l Ass'n Criminal Def. Lawyers (Feb. 21, 2013), www.nacd1.org/News.aspx?id=26526.
9. Devah Pager, *The Mark of a Criminal Record* 108 Am. J. Soc. 937, 960 (2003).
10. *Id.* at 959.
11. Although many of the pitfalls and potential solutions discussed here also apply to the federal context, we focus on the universe of state laws.
12. Search of nationwide "any felony" offenses resulted in 12,669 restrictions in occupational and professional licenses and business licenses categories in the ABA Inventory; search for "any misdemeanor" offenses resulted in 6,372 restrictions. ABA Inventory (accessed March 24, 2016).
13. ABA Inventory, *User Guide*, Question and Answer 7.
14. Search of nationwide "permanent" offenses resulted in 19,786 restrictions in occupational and professional licenses and business licenses categories in the ABA Inventory; search for "mandatory/automatic" offenses resulted in 11,338 restrictions. ABA Inventory (accessed March 24, 2016). Definition of "mandatory" provided in ABA Inventory, *User Guide*, Question and Answer 2.
15. NELP identified a total of 40 jurisdictions that have enacted overarching licensing statutes and regulations. In preparing this analysis, we began by reviewing pre-existing research addressing state occupational licensing restrictions. *See, e.g.*, Margaret Colgate Love, Nat'l Ass'n Criminal Def. Lawyers Restoration of Rights Project, www.nacd1.org/rightsrestoration/. We analyzed the text of the laws, reviewed case law, and then contacted state legal advocates, where possible, regarding both our statutory interpretation and any relevant context or laws. Despite our efforts, we recognize that some relevant laws or case law may have been overlooked. We are grateful for any corrections; please contact Michelle Natividad Rodriguez at mrodriguez@nelp.org.
16. Ala., Alaska, Idaho, Iowa, Miss., Neb., Nev., S.D., Tenn., W. Va., and Wyo.
17. EEOC factors are derived from the U.S. Equal Employment Opportunity Commission's *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Apr. 25, 2012), at 11, 16, www.eeoc.gov/laws/guidance/arrest_conviction.cfm (hereinafter "EEOC Guidance").
18. *Id.*
19. *See, e.g.*, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010).
20. Michelle Natividad Rodriguez & Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions*, NELP (April 2016), www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/.

1 Introduction

A grandmother herself, Sonja Blake enjoyed caring for children at her Wisconsin in-home daycare center.¹ It was more than just a business for Ms. Blake—she offered families a much-needed service. But after nearly a decade, she lost it all when her daycare-owner certification was permanently revoked. At the same time, she was also barred for life from ever working as a caregiver in any state-regulated childcare.

Ms. Blake's loss of livelihood was not due to any complaint about the quality of her care. Instead, she was victimized by a state law that banned from childcare anyone ever convicted of an "offense involving fraudulent activity" related to public assistance.² Thirty years earlier, Ms. Blake received a \$294 overpayment of public assistance after she mistakenly failed to report the receipt of gifts from her boyfriend. That overpayment was docked from her benefits, and she continued to receive public assistance. Despite this simple resolution, Ms. Blake's minor error resulted in a criminal conviction that, decades later, has had devastating consequences.

An estimated 70 million people in the United States—nearly one in three adults—have a prior arrest or conviction record.³ Indeed, about 30 percent of individuals in the nation are arrested by age 23; for black men, the percentage nears 50.⁴ As these numbers demonstrate, criminal justice involvement has become a fairly common experience in the United States.⁵ Despite the

ubiquity of having a record and the American value of a second chance, the stigma of criminal justice involvement and its lifelong consequences have proven unshakeable for many.

Ms. Blake is one of the more than one-quarter of U.S. workers who require a state license for their occupations.⁹ In addition to the more typically known regulated jobs, such as nurses, teachers, and barbers, many occupations in sales, management, and construction also require a state license.¹⁰

Critics of occupational licensing argue that regulations do little to advance safety or quality of service, while negatively impacting low-wage workers and consumers.¹¹ Others counter that state licensing maintains public safety, increases practitioner wages, and accords respect to a profession.¹² Common ground for these positions can be found in the call to reduce conviction barriers in occupational licensing. Just as policymakers from across the political spectrum are investing in job opportunities for people with records by enacting fair-chance hiring laws and adopting ban-the-box policies that delay conviction history inquiries,¹³ state occupational licensing is another arena ripe for reform.

Passing a criminal background check is a common requirement to obtain a state license. The American Bar Association's inventory of penalties resulting from having a record has documented 27,254 state

Blanket Ban Misses the Mark in Ensuring Public Safety and Quality Services

"They took everything from me. I can't get a job anywhere," explained Sonja Blake as she reflected on the loss of her profession.⁶ Over a decade ago, Ms. Blake decided to pursue a career as a childcare provider. She took classes, completed training, and submitted to background checks and facility inspections. Her livelihood depended on her license to work in caregiving facilities and her certification as a daycare business owner.

In 2009, the Wisconsin legislature amended the state's caregiver background check laws to include several permanent, automatic bans against people with even minor convictions.⁷ In the law's aftermath, a paperwork error from 30 years ago that resulted in a \$294 overpayment of public assistance and a criminal conviction now bars Ms. Blake from her chosen career. Legal Action of Wisconsin is representing Ms. Blake and others, arguing that the state law is unconstitutional.⁸ The draconian law—essentially a lifetime ban for a \$300 mistake unrelated to childcare—exemplifies how licensing restrictions often stray from the purpose of ensuring safe, quality services.

occupational licensing restrictions.¹⁴ State licensing regimes that include mandatory criminal background checks purportedly aim to advance health and safety. Inquiries into convictions that are clearly related to the occupation—for example, an elder abuse conviction for long-term care professions—can be reasonable and tailored. Yet, too often, ostensibly rational inquiries operate as overly broad bans against anyone with a record. Thousands of these restrictions vary widely among states and professions and are often poorly calibrated to advance public safety and health. The irrationality of these conviction record restrictions and their impact on individual families and the economy have spurred a multitude of voices—from the Center for American Progress to Koch Industries—to call for reform.¹⁵

With the aim of allowing people with records to be evaluated on their merits, this paper examines significant flaws in state occupational licensing criminal background check requirements and provides

recommendations to increase job opportunities for people with records. For state lawmakers, the most effective approach is to adopt a robust, broadly applicable state licensing law that would apply to all of the individual occupational licenses in the state. This comprehensive approach to increasing transparency and accountability in licensing laws ultimately will produce fairer, more consistent licensing standards. To that end, we provide in the *Appendix* a *Model State Law* that incorporates our Recommendations. In addition, we analyze the 40 existing state laws that are intended to broadly reduce unwarranted restrictions based on records. This state-by-state analysis is captured in the *State Report Cards*, which both grade the states according to the extent that they have incorporated key principles reflected in our *Recommendations* and identify areas for improvement. Although many of the pitfalls and potential solutions discussed here also apply to the federal context, we focus on the universe of state laws in this paper.

Overly Broad Background Check Restrictions in Growth Industries

More than 150 occupations have been identified as “rapid growth,” i.e., projected to grow much faster than average over the period of time from 2014–2024.¹⁶ Many of these occupations are in healthcare and education—fields with strict background check restrictions for state licenses. For example, nursing is expected to grow significantly in the coming years.¹⁷ Registered nurses rank second¹⁸ in anticipated overall job growth from 2014 through 2024, with 439,300 new jobs created.¹⁹ Not far behind, nursing assistants rank sixth for growth, with 262,000 new positions anticipated.²⁰ Licensed practical nurse and licensed vocational nurse occupations are expected to add 117,300 new jobs.²¹

Shortages of qualified workers in the healthcare sector hamper the economy. The nation can ill-afford the inefficiencies of weeding out all skilled applicants who happen to have

a conviction in their past. Yet state laws governing nursing are heavily studded with often severe, overbroad restrictions for people with records. Offering a glimpse into the pervasiveness of these restrictions, the ABA Inventory identifies 47 states that potentially allow any felony conviction to be used as grounds for denying a nursing license.²²

Moderate-growth occupations are also expected to add thousands of jobs that may likewise be unreasonably inaccessible to people with records. The field of barbering, hairdressing, and cosmetology is expected to add 64,600 positions (growing by 10 percent) between 2014 and 2024.²³ According to the ABA Inventory, 24 states potentially allow any felony to be used as grounds for denial of a barber’s license.²⁴ Thus, not only the health sector, but even professions with minimal implications for safety, present obstacles for people with records.

2 Background

Criminal Justice System Reinforces Barriers to Professions for People of Color

Punishment does not end after completing one's sentence. Instead, people face a multitude of penalties not imposed by any court.²⁵ These "collateral consequences" include restrictions on voting rights, public benefits, housing, and employment.²⁶ And people of color disproportionately experience these penalties because race-based disparities permeate the U.S. criminal justice system.

Occupational licensing disqualifications constitute one common type of collateral consequence. Although no national data exists as to the number of people denied licenses because of a prior record, analogous data is available in the hiring context. For example, after submitting a job application, people with records are only half as likely to get a callback as those without a record.²⁷ For black men with records, the likelihood of a job callback drops to one-third.²⁸ Providing one snapshot of the overall picture, a poll surveying prime-working-age, unemployed men found that 34 percent had conviction records.²⁹ In another recent survey, two in three formerly incarcerated people were unemployed or underemployed five years after their release.³⁰

Neutral on their face, background check requirements and disqualifications based on convictions do not obviously promote disparate racial outcomes. Indeed, a policymaker championing legislation that adds offense-based disqualifications for a licensed profession may seek to maintain consumer safety. Nevertheless, responsible policymaking must acknowledge that these employment barriers rest on a shaky foundation—a criminal justice system born out of systemic racism.³¹

Blacks are more likely to be stopped by police,³² arrested,³³ and severely sentenced for committing the same acts as whites.³⁴ Despite studies showing similar drug use among racial groups, two-thirds of all those incarcerated for drug offenses are people of color.³⁵ Such disproportionate representation in the criminal justice system reinforces a vilified portrayal of black boys and men as "thugs," which further fuels discrimination.³⁶ Although today's broad criminal records restrictions may not be intended to eliminate people of color from licensed professions,³⁷ racially disparate outcomes must be identified. Broadly excluding people with records does little to advance public safety but further ossifies racial disparities.

More Occupations are Requiring Licensing or Certification

Ronald Sanders has dedicated the last nine years to helping people with chronic health conditions transition back to their communities after prison. As a community health worker (CHW) at Transitions Clinic in San Francisco, he is an essential part of ensuring these vulnerable patients not only communicate effectively with doctors and obtain their medications, but also receive help with issues like housing, food, and employment.

Transitions Clinic Network (TCN) credits CHWs like Mr. Sanders with much of its national success. The group has observed improved health outcomes for patients when compared with expedited primary care facilities that do not follow its CHW model³⁸—each Transitions Clinic employs a CHW with a personal history of incarceration. Mr. Sanders is no exception.

“I was born and raised in dysfunction,” he explains. He watched as relatives and friends sold drugs and his parents struggled with addiction. At just 18, he was sentenced to three years for assault with a deadly weapon and spent the next 14 years bouncing in and out of prison. By 32, he was ready to turn his life around. He received treatment for addiction, was trained as a drug and alcohol counselor, and later returned to college to become a CHW.³⁹

Most states do not currently require CHWs to obtain licenses or certifications⁴⁰, but some states, such as Massachusetts, are

considering that change. With over 54,000 CHWs nationwide, any attendant background check requirements could bar many of the profession's most motivated workers.⁴¹ “Sometimes when I’m working with a client, I can see the same hurt and frustration that I had when I was trying to get my life back together,” says Mr. Sanders. “It motivates me to help them.”⁴² Moreover, given the success of Transitions Clinic Network's program, excluding workers with records could inhibit patient health. “I don’t think that a person who doesn’t have this personal background could do the job. It helps you relate.”⁴³



Ronald Sanders on the right, helps a TCN patient. *Photo used with permission of TCN.*

3 The Landscape of State Occupational Licensing Barriers

Blanket Bans Indiscriminately Eliminate Qualified Candidates

Background check reports are frequently inaccurate yet still form the basis for automatic disqualifications from employment opportunities.⁴⁴ Indeed, for many lawmakers, a statute that creates an automatic, lifetime ban against anyone with a “violent” felony or a “sex offense” for an occupational license may seem reasonable. However, even assuming one’s record is accurate, such categories and labels can nonetheless be misleading.

For example, on its face, “assault” seems to imply a propensity for violence. Without knowing the circumstances—such as age (youthfulness), frequency (first and only time), or situation (defending a friend from a slur that resulted in a barroom brawl)—an automatic disqualification against individuals with the label of “violent offense” could unfairly eliminate strong applicants. Another example, which elicits strong reactions, is the “sex offense” category. Some states include public

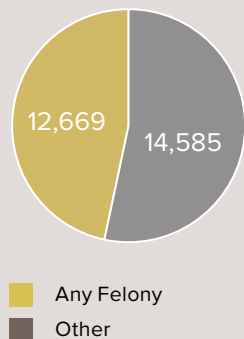
urination in this category,⁴⁵ which defies a common-sense understanding of this stigmatizing label.

Unfortunately, state licensing laws frequently include some type of blanket disqualification—many that last a lifetime. Without considering the wide variation of conduct that a “felony” or “misdemeanor” encapsulates, lawmakers enact automatic prohibitions that vary from broad categories, such as permanent disqualifications for even one misdemeanor or felony, to narrower (but often vague) fields, such as “violent” or “serious” offenses.

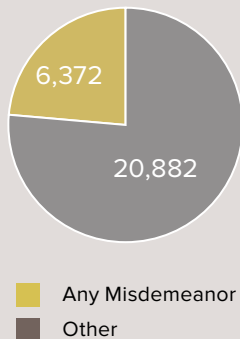
As a gauge for the frequency of blanket bans in licensing statutes and regulations across the nation, the ABA Inventory reports over 12,000 restrictions for individuals with any type of felony and over 6,000 restrictions based on misdemeanors.⁴⁶ The Inventory also reports 19,000 “permanent,” indefinite disqualifications that could last a lifetime⁴⁷ and over 11,000 “mandatory” disqualifications, for which licensing agencies have no choice but to deny a license.⁴⁸

Types of Disqualifications Among State Licensing Restrictions

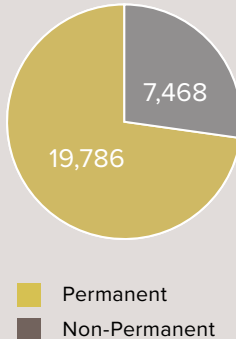
Felony



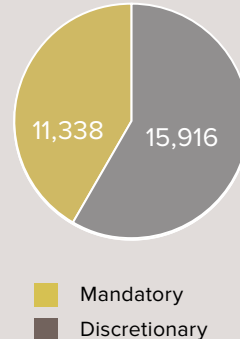
Misdemeanor



Permanent



Mandatory



The ABA Inventory documents 27,254 state occupational licensing restrictions. Of these restrictions, over 12,000 are for individuals with any type of felony, over 6,000 are based on misdemeanors, over 19,000 are permanent disqualifications, and over 11,000 are mandatory disqualifications.

Focusing on the number of laws, Alliance for a Just Society found that each state has, on average, 56 occupational licensing and 43 business licensing laws with mandatory (as opposed to discretionary) restrictions for people with felony convictions.⁴⁹ Topping the chart were Florida, Indiana, New Hampshire, Ohio, and Texas—each with over 100 occupational license laws containing such restrictions.⁵⁰

One egregious example of a blanket disqualification applies even to arrest records:

Georgia Blanket Ban Includes

Arrests. A director or employee working in a childcare facility cannot have a “criminal record”⁵¹—defined as “conviction of a crime” or “arrest, charge, and sentencing” where, for example, an “adjudication or sentence was otherwise withheld or not entered on the charge.”⁵²

In other words, certain non-conviction information can be used as a blanket ban against childcare workers

in Georgia. As the 2012 U.S. Equal Employment Opportunity Commission (EEOC) guidelines on the consideration of arrests and convictions in employment decisions made plain, “[t]he fact of an arrest does not establish that criminal conduct has occurred” and thus an arrest standing alone should “not be used to deny an employment opportunity.”³⁵ Although bans against individuals with arrests are an extreme example, any blanket ban is problematic because it automatically disqualifies individuals without a case-by-case assessment. Other examples of automatic bans are below:

Alabama Ban Includes Unrelated Felonies and Misdemeanors.

“The board shall revoke the certificate of any [engineer/land surveyor] licensee . . . who has been determined to be . . . [c]onvicted of . . . any crime . . . which is a felony, whether related to practice or not and convicted of . . . any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty”⁵⁴

Blanket Disqualifications Spark Litigation

When he was 18 years old, Tyrone Peake rode in a car that he knew his friends had stolen. Now in his 50s, Mr. Peake still struggles with the collateral consequences of this one mistake. He was sentenced to three years of probation in 1982.⁵⁷ Reflecting on the past, Mr. Peake shares, “I regret the mistakes I made over 30 years ago as a teenager, but now I am a completely different person.”

In 2014, he earned his associate degree in behavioral health and human services. In his three years as a Recovery Specialist, he has served his community by helping people recover from addiction.⁵⁸ Earning only \$11 per hour with no benefits in his part-time job, however, has stymied his potential.⁵⁹

With his degree and work experience, Mr. Peake is qualified to work full time providing therapeutic care in a residential

facility. He applied to several full-time positions but was rejected each time because of one barrier:⁶⁰ Pennsylvania’s Older Adult Protective Services Act (OAPSA), which prohibited people with certain convictions from ever working in a wide range of facilities.⁶¹

OAPSA rendered meaningless Mr. Peake’s certifications in addiction studies and as a recovery specialist. Even with a certification or license, professionals are still subject to such independent, additional background check hurdles.

Fortunately, with the help of Community Legal Services of Philadelphia, Mr. Peake successfully challenged OAPSA. The court declared the lifetime ban unconstitutional, demonstrating that blanket disqualifications are not only unjust but also unlawful.⁶²

Iowa Ban Includes Unrelated Felonies and Misdemeanors.

“A license or license renewal [for bail enforcement or private investigation or security license] shall not be issued unless the applicant . . . [h]as never been convicted of a felony or aggravated misdemeanor[,] . . . [h]as not been judged guilty of a crime involving moral turpitude[,] . . . [h]as not been convicted of fraud.”⁵⁵

South Dakota Ban Includes Unrelated Felonies and Misdemeanors.

Every podiatry license “shall be subject to suspension or revocation . . . upon . . . conviction of any offense involving moral turpitude.” fraud.”⁵⁶

Broad Criminal Record Inquiries Do Little for Public Safety and Perpetuate Stigma

The rationale for broad criminal record inquiries is ostensibly compelling—entities seek robust information to advance public safety and health. However, broad inquiries can mislead, confuse, and activate strong negative biases for decision-makers. Indeed, no available evidence demonstrates that the mere existence of a criminal record is related to poor occupational performance or low-quality services. Simply having some type of a past record does not predict an individual’s ability to perform an occupation.

Rather, having an arrest record has been shown to increase the likelihood of re-arrest within a limited time period.⁶³ Yet, as time passes without involvement with the criminal justice system, any predictive value declines.⁶⁴ The reality is that a record is not used to screen out applicants because of any value of predicting re-arrest outside of the workplace. Instead, decision-makers screen in response to their perception of a criminal record as a proxy for immorality or untrustworthiness.

Presumption of Criminality Drives Fear of People with Records

“Every time we’re killed,” reflects 17-year-old Jumoke in *A Conversation About Growing Up Black*, “the first thing you see on the news is . . . oh criminal record or something like that. So from the second the bullet hits us, we’re already starting to be dehumanized.”⁶⁵ Ten-year-old Maddox, another black boy, feels compelled to say earnestly in his video clip, “I’m not going to hurt anybody.” Jumoke and Maddox capture one of the most prevalent stereotypes in America that, tragically, even children can articulate: the “dangerousness” of people of color that is particularly attached to black and brown males.

There’s a perverse circularity to these presumptions of dangerousness; they inspire police to target communities of color, which further exacerbates the disproportionate representation of people of color in the criminal justice system. When a person has a record or is perceived to have engaged in criminal activities, this fear becomes “justified” and acts as a mechanism for dehumanization.

As Professor Ian Haney López has suggested, the stereotype of criminality has been strongly reinforced in the political arena and in the media. Haney López refers to race-coding—the use of facially neutral words that exploit racial anxiety and ultimately sway people into voting against their own economic self-interests.⁶⁶ He posits that a deliberate race-coding strategy that equates people of color with “dangerousness,” thus evoking fear, has fueled mass incarceration, aggravated racial disparities, and helped decimate the middle class.

Writers such as Haney López, Ta-Nehisi Coates, and #BlackLivesMatter activists have catalyzed a public discourse that lays bare these racial biases undergirding inequality.⁶⁷ By affirming the humanity of blacks in the wake of police killings and naming the targeting of blackness, there is a platform for further conversation on structural racism. By questioning these assumptions in other areas of American life, such as the labor market and occupational licensing, we can expose and redress long-standing racial bias.

Even more damaging, deep-seated negative stereotypes associate past “criminality” with dangerousness. Although research does not demonstrate that a workplace is less safe if an employee has a past record, that negative misperception persists. State law can help address and dismantle these widely-held biases by providing the structure and processes to minimize their impact.

Lack of Consistency and Transparency in Licensing Laws and Agency Decision-Making

With over 27,000 record restrictions embedded in occupational license laws, applicants with records unsurprisingly have difficulty navigating this labyrinth of barriers. Requirements for a single occupation vary widely across states, as do the standards states use to evaluate past offenses. Critics of occupational licensing regimes point to variations among licensing laws as evidence of their arbitrariness.⁶⁸ One commentator noted that if “a license is required to protect the public health and safety, one would expect more consistency”⁶⁹—an observation that is especially apt when considering the wide variations among disqualifying convictions across the states.

Further complicating matters, the statutory language and procedures governing individual, or classes of, professions often differ from the general state licensing statutes. In addition, reciprocity statutes that allow a person licensed in one state to become licensed in another state often require a new background check. Another concern regarding transparency is the common use of vague statutory terms that leave workers without clarity as to whether their past conviction is a barrier. Even worse, vague terms leave room for unfettered discretion and overbroad categories of disqualifications. For example, applicants for occupational licenses commonly must satisfy a “good moral character” component, and too often, the existence of a record is equated with character deficiencies.

Idaho’s Overbroad and Vague Law.

An individual can become a certified public accountant only if she is of “good moral character,” which means the “lack of a history of dishonest dealings or a felonious act.”⁷⁰

Vermont’s Overbroad Law.

“[U]nprofessional conduct,” which is grounds for denial of a license, is an overly broad category that includes “[c]onviction of a . . . felony, whether or not related to the practice of the profession.”⁷¹

An example of a vague but common term is an offense of “moral turpitude.” The phrase often operates as a catch-all for a broad range of convictions. Licensing schemes may permit or even mandate disqualifications for any candidate who has committed an offense of moral turpitude. For example, the ABA Inventory lists over 3,000 occupational licensing restrictions based on offenses of moral turpitude.⁷² Even for the laws that define the term, these definitions can be as vague as the following:

New Mexico’s Vague Law. “[B]ehavior that gravely violates the accepted moral standards of the community.”⁷³

Utah’s Vague Law. “[A] crime that involves actions done knowingly contrary to justice, honesty, or good morals.”⁷⁴

Although not memorialized in statutory language, other states give licensing boards extremely wide latitude to deny applicants with records by omitting any standards for evaluating a record. Without any procedural safeguards, guidelines, or limits on discretion, this lack of clarity can function as a blanket ban as biases against accepting an applicant with a record will likely prevail.⁷⁵

Such inefficiencies in occupational licensing, which are unnecessary to advance public safety, can squelch employment and entrepreneurship opportunities for low-income people in particular.⁷⁶ Licensing regimes that support the professionalization of a field need not include such pitfalls for workers with records.

“Good Character” Standards Hurt Good Workers

Ericka Miller wears many hats—she’s a dedicated mother, contributes to her community as a youth minister in her church, and, for the past seven years, has worked at a local hospital. It wasn’t easy, but Mrs. Miller put herself through cosmetology school. She reasoned that even accruing thousands of dollars in student debt would be worth it if she fulfilled her lifelong dream of opening a salon with her daughter.

With her dream on the line, Mrs. Miller was devastated when she was denied her cosmetology license. Seven years earlier, she tried to break up an altercation outside of her house but instead was pulled into it. She ended up with a felony conviction.

Although many workers may not have access to legal services or even know to contact an attorney, Mrs. Miller was lucky. She was able to obtain an attorney through Community Legal Services of Philadelphia, who successfully represented her, proving “good moral character.”⁷⁷

Mrs. Miller faced a common concern for people with past records. Pennsylvania’s law governing the licensure of cosmetologists requires applicants to satisfy the standard of “good moral character” and, too often, a conviction is interpreted as evidence of a character deficiency. These types of character

evaluations afford licensing boards overly broad discretion without adequate guidance. When such vague standards are used, the decision-making process often becomes a black box of frequent denials.



Photo courtesy of Ericka Miller.

4 Summary of State Report Cards

Addressing the problem of complicated, inconsistent licensing restrictions for those with conviction histories presents a challenge for policymakers—but one that can be overcome. Rather than amending the statutory provisions governing each occupation one by one, legislators can adopt overarching rules that apply to all of a state’s individual occupational licenses, ensuring fairer consideration of applicants with records.

A total of 39 states and the District of Columbia have enacted general laws that to some degree regulate most licensing boards’ consideration of arrest and conviction records,⁷⁸ while 11 states lack any form of such general laws.⁷⁹ Although the quality and effectiveness of the 40 laws vary widely, on the whole, these overarching laws aim to ensure some basic level of fairness for applicants with records.

How We Determined Rankings

To identify areas for improvement and state models, NELP compared the 40 laws based on four key criteria:

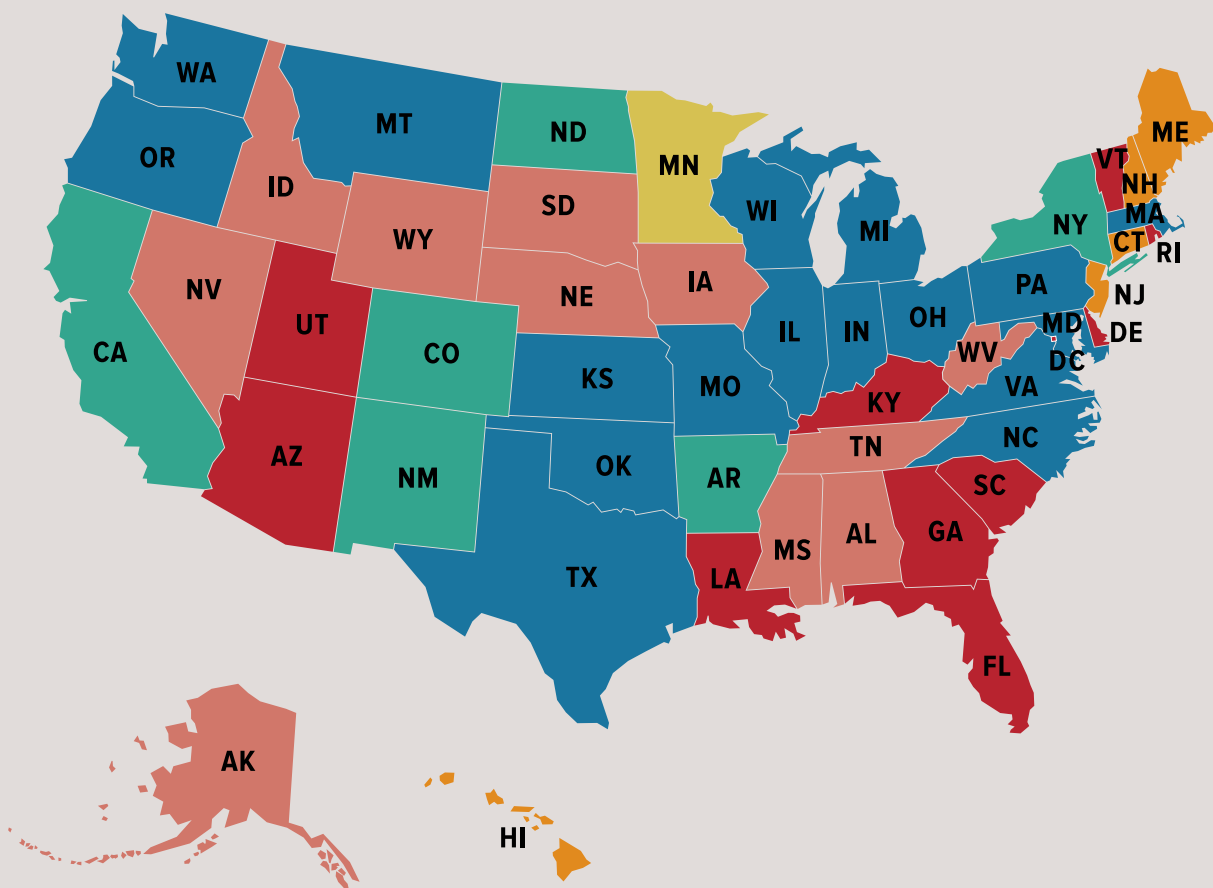
1. Does the law prohibit the blanket rejection of applicants with conviction histories?
2. Does the law incorporate “EEOC factors,” which include consideration of whether a conviction is occupation-related and how much time has passed since the conviction?⁸⁰
3. Does the law limit the scope of record inquiry or the consideration of certain types of record information?
4. Does the law require consideration of rehabilitation?

These four criteria correlate to *Recommendations* in the next section of this report. The *State Report Cards* focus on these four criteria because of both the importance of these factors and the difficulties involved in comparing a wider array of criteria.⁸¹

After evaluating each state based on the four criteria listed above, NELP combined those scores to arrive at an overall rank for each state, grouped into five tiers, from best to worst: (1) Most Effective, (2) Satisfactory, (3) Needs Improvement, (4) Minimal, and (5) Unsatisfactory. A detailed ranking in each criterion as well as the *Grading Methodology* are included in the *Appendix*.

All of the laws assessed here could be enhanced—opportunities for improvement become apparent when the laws are compared with NELP’s *Model State Law* in the *Appendix*. Based on the limited criteria considered here, only one state was graded “Most Effective”; and only five states received a “Satisfactory” grade.

Overall State Grades



NELP graded 40 overall state licensing laws (including D.C.) that, to some degree, restrict occupational licensing boards' consideration of criminal records. The laws are graded against NELP's Model State Law and grouped into five tiers, from best ("Most Effective") to worst ("Unsatisfactory").

- Most Effective: Minnesota
- Satisfactory: Connecticut, Hawaii, Maine, New Hampshire, New Jersey
- Needs Improvement: Arkansas, California, Colorado, New Mexico, New York, North Dakota
- Minimal: District of Columbia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, Montana, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, Wisconsin
- Unsatisfactory: Arizona, Delaware, Florida, Georgia, Kentucky, Louisiana, Rhode Island, South Carolina, Utah, Vermont
- No Overarching Law

1. Does the law prohibit the blanket rejection of applicants with conviction histories?

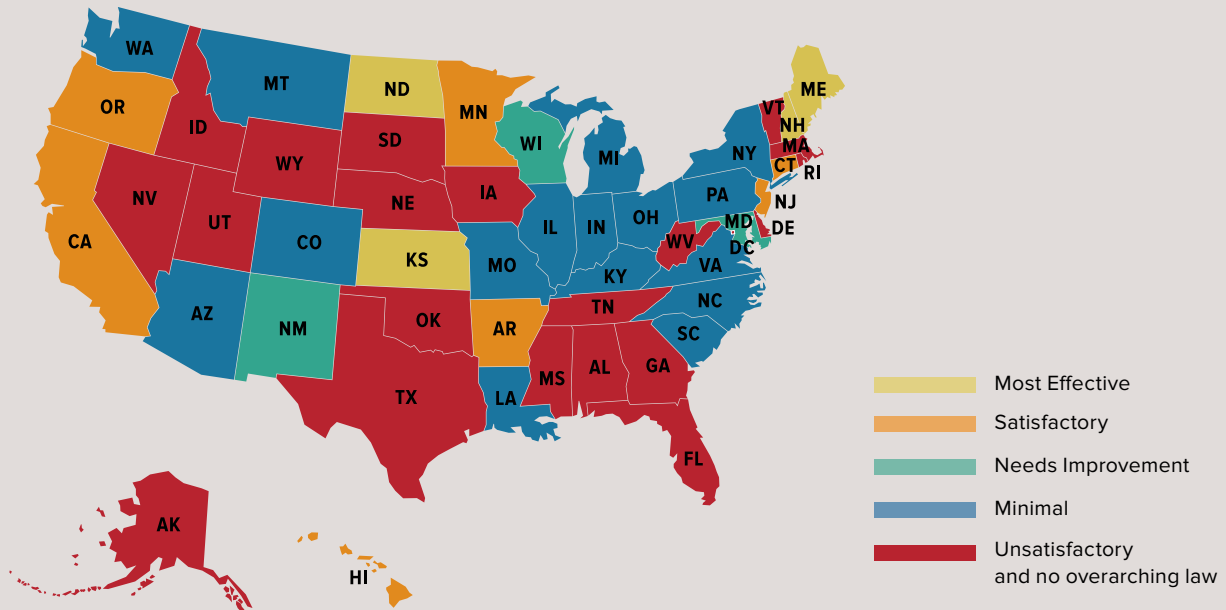
The most common component of laws limiting licensing boards' consideration of conviction histories is a prohibition against denying a license based solely on the applicant's record, without further evaluating the relevance of that record. This element is intended to eliminate automatic, blanket exclusions of people with records, as discussed in *Recommendation 1*. It serves as a common starting point for 29 of the 40 laws considered in this report.

State laws that are graded as "Most Effective" have no explicit exceptions, such as Maine's law, which provides "the existence of [criminal history record] information

shall not operate as an automatic bar to being licensed, registered or permitted to practice any profession, trade or occupation."⁸²

Unfortunately, most of the laws specify at least one exception. For example, Louisiana's overarching occupational licensing law does not apply to 18 exempted professions, such as nursing, physical therapy, and embalming and funeral directing.⁸³ And Arizona's law extends to only those applicants "whose civil rights have been restored."⁸⁴ Such exceptions significantly weaken the scope of the law by allowing state boards to deny occupational licenses based solely on a record, without first conducting an individualized assessment of each applicant.

Blanket Ban Prohibition



NELP graded broadly applicable state laws (including D.C.) that prevent occupational licensing boards from using blanket bans against people with convictions. The laws are graded against NELP's Model State Law and grouped into five tiers, from best ("Most Effective") to worst ("Unsatisfactory").

2. Does the law require consideration of EEOC factors?

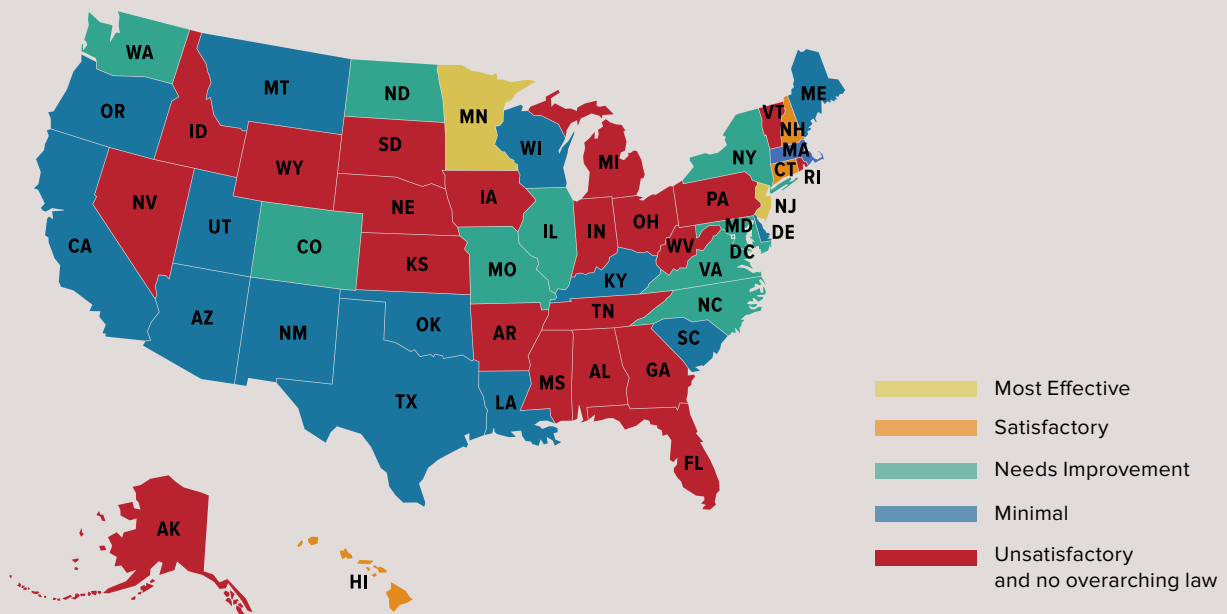
Many overarching licensing laws require that licensing authorities consider (1) whether a conviction directly relates to the occupation for which licensure is sought, and (2) how much time has passed since the offense. As discussed in *Recommendation 2*, these factors mirror the job-relatedness analysis in the 2012 EEOC guidance and are essential for ensuring that licensing boards evaluate applicants with records on a case-by-case basis.

The two state laws receiving a grade of “Most Effective”—Minnesota and New Jersey—clearly prohibit the denial of a license based on an unrelated record and require consideration of the time elapsed since conviction. For example, New Jersey’s law allows licensing boards to disqualify an applicant only “if a conviction for a crime relates adversely to the occupation” and requires the board to explain this adverse relationship in writing.⁸⁵

We lowered state scores most frequently due to vague language in the standards, broad exceptions, or omitting to mandate either an occupation-relatedness or time-elapsed factor. Michigan’s law provides one example of a vague standard. Instead of mandating that a disqualifying conviction relate to the profession for which licensure is sought, it requires that the offense relate to a “person’s likelihood to serve the public in a fair, honest, and open manner.”⁸⁶ As described above, vague standards grant a licensing board overbroad discretion. The increased discretion resulting from these loose standards decreases consistency and predictability among board rulings.

In addition to these weakened standards, some states’ broad exemptions severely undercut the law. For example, Kentucky’s law does not require that a disqualifying conviction relate to the occupation for most offenses, including felonies, high misdemeanors, misdemeanors for which jail time may be imposed, and crimes involving moral turpitude.⁸⁷

EEOC Factors



NELP graded broadly applicable state laws (including D.C.) that require occupational licensing boards to consider EEOC factors (occupation-relatedness and time passed) when evaluating conviction records. The state laws are graded against NELP’s Model State Law and grouped into five tiers, from best (“Most Effective”) to worst (“Unsatisfactory”).

3. Does the law limit the scope of record inquiry or the consideration of certain types of record information?

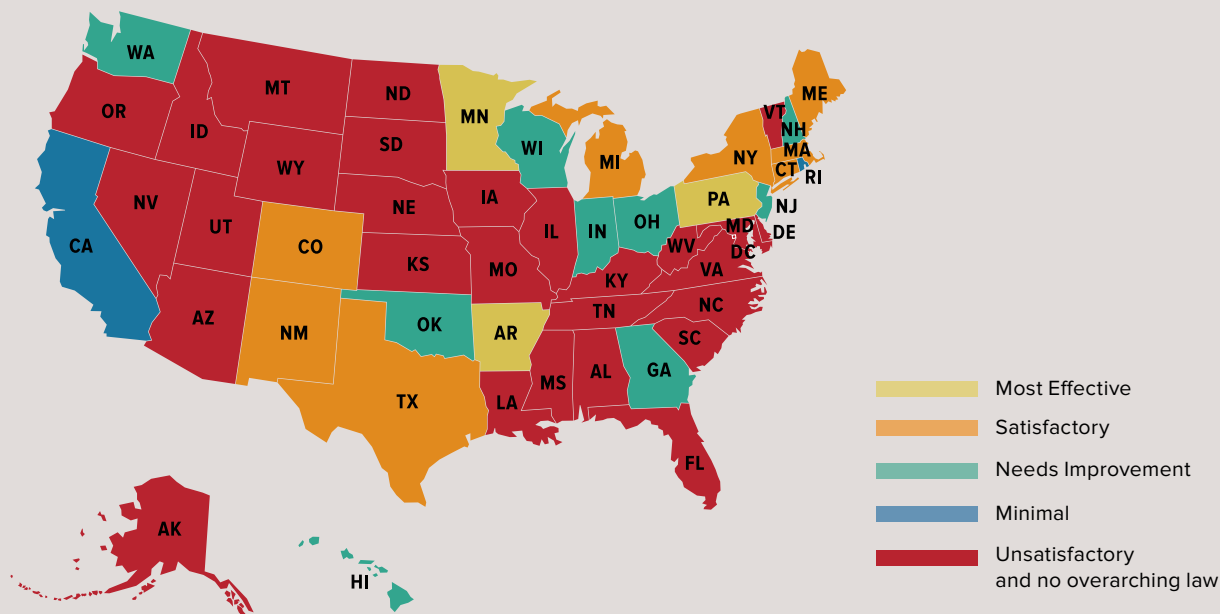
Just over half of the 40 overarching licensing laws expressly limit licensing boards' consideration of at least one of the following types of records: (1) arrests not resulting in conviction, (2) convictions that have been expunged, sealed, pardoned, or subject to some other equivalent relief, (3) lesser offenses, such as misdemeanors, infractions, or summary offenses, or (4) older convictions.

Because these limitations on criminal record information establish clear and easily enforceable protections, they can be effective at reducing barriers. Nevertheless, no state prohibits consideration of all four types of

records. Only four state laws prohibit consideration of three types of records (receiving a grade of "Most Effective"), eight states limit consideration of two types of records (graded as "Satisfactory"), and nine states prohibit only one type of record (graded as "Needs Improvement").

Arkansas' statute provides some of the most comprehensive protections in this arena. It explicitly prohibits the consideration of (i) "arrest[s] not followed by a valid felony conviction," (ii) convictions "that have been annulled or expunged or pardoned," and (iii) "misdemeanor convictions, except misdemeanor sex offenses and misdemeanors involving violence."⁸⁸ Maine's law prohibits licensing boards from considering pardoned offenses as well as convictions for which an applicant was released from the correctional system more than three years prior to submitting his or her application for

Limited Scope of Record Inquiry



NELP graded broadly applicable state laws (including D.C.) that restrict occupational licensing boards' consideration of certain types of criminal record information. The laws are graded against NELP's Model State Law and grouped into five tiers, from best ("Most Effective") to worst ("Unsatisfactory").

licensure (for most professions).⁸⁹

4. Does the law require consideration of rehabilitation?

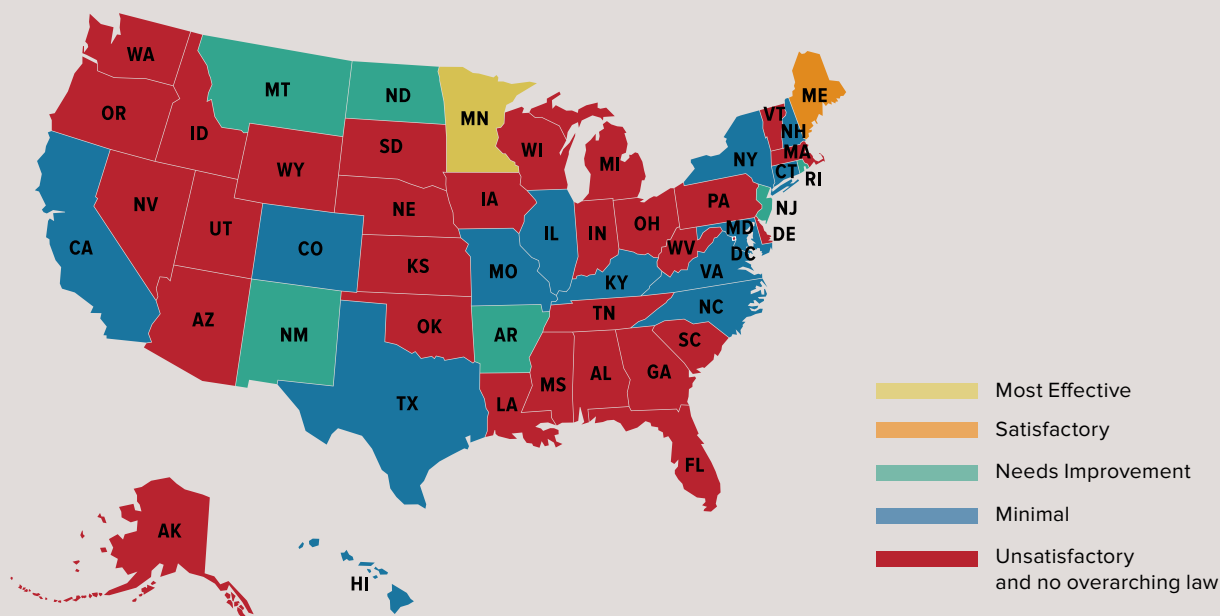
In addition to occupation-relatedness and time-elapsd factors, the EEOC guidance also instructs employers to consider an applicant's rehabilitation when determining whether a particular conviction is disqualifying. Only Minnesota's law was "Most Effective;" it provides that, even if an applicant has a conviction that relates to the occupation, he or she "shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation." The statute then proceeds to list specific factors to be evaluated when making this determination.⁹⁰

Unfortunately, most states fail to include a rehabilitation provision and are therefore graded as

“Unsatisfactory.” The remaining 22 laws, which address rehabilitation, can be further evaluated on whether the law (1) prohibits license disqualification if the applicant can demonstrate sufficient rehabilitation; and (2) provides specific guidelines for evaluating an applicant’s rehabilitation.

As an example of a “Minimal” score, New Hampshire’s overarching licensing law lacks a requirement to consider rehabilitation and any definition of rehabilitation. Instead, it merely provides that a licensing board “may consider information about the rehabilitation of the convicted person” when deciding whether a conviction disqualifies him or her from licensure.⁹¹ By failing to limit a board’s discretion and provide guidance as to what qualifies as rehabilitation, these vague standards promote inconsistency.

Rehabilitation



NELP graded broadly applicable state laws (including D.C.) that require occupational licensing boards to consider the rehabilitation of people with conviction records. The laws are graded against NELP's Model State Law and grouped into five tiers, from best ("Most Effective") to worst ("Unsatisfactory").

5 Recommendations for Fairer State Licensing Laws

Thousands of state occupational licensing restrictions based on arrest and conviction records exist in statutory and regulatory regimes. Whether motivated by a desire to advance economic growth and public safety, maximize human potential, or address racial bias, fairer occupational licensing laws will benefit our communities. In response to the landscape of state occupational licensing barriers embedded in the laws described above, we propose the following reforms.

Recommendation 1: Remove Automatic Blanket Bans

Policymakers should seek to remove any automatic blanket exclusions from the law. As a point of reference in the employment context, the EEOC guidance on the use of arrest and conviction records in employment decisions discourages the use of across-the-board exclusions.⁹² The guidance explains that these types of bans are disfavored because they are not tailored to the risks in particular job positions. To minimize litigation risk and the likelihood of disqualifying skilled applicants who pose no safety risk, avoid any outright blanket disqualification. Instead, encourage applicants by providing an affirmative statement in the law that the existence of a record cannot be the sole basis for disqualification. Kansas law provides one example:

Kansas Example. Although a board “may consider any felony conviction of the applicant, . . . such a conviction shall not operate as a bar to licensure, certification or registration.”⁹³

Recommendation 2: Limit Scope of Criminal Record Inquiry to Reduce Bias

The EEOC recommends limiting inquiries to only job-related convictions.⁹⁴ In the licensing context, this would mean that a licensing agency would request and receive only information on occupation-related convictions as opposed to conducting a broad inquiry into

any criminal background information. These convictions may be potentially disqualifying but should be considered on a case-by-case basis. In the employment context, the EEOC directs employers to consider the following factors, commonly called a job-relatedness analysis:

- The nature and gravity of the offense;
- The time that has passed since the offense or the completion of the sentence; and
- The nature of the job held or sought.

Using these factors to limit the scope of an inquiry to only occupation-related offenses, the stigmatizing bias of unrelated conviction record information could be reduced. The rationale for limiting information is similar to the reasoning that undergirds “ban the box” efforts. The bias against people with convictions is severe and prevalent. By reducing the scope of the record that would be considered, these policies ensure that highly prejudicial information does not enter the decision-making process. The best model would limit consideration only to conviction records that are position-related and were imposed within a certain recent time span, as provided in the *Model State Law* in the *Appendix*:

Model Law. “A licensing authority may inquire into or consider only the directly related conviction history of an applicant for licensing after an applicant is found to be otherwise qualified for the license” but may not consider at any time “misdemeanor convictions older than three years” and “felony convictions older than five years.”⁹⁵

A state agency could implement this practice by pre-determining the narrow occupation-related offenses that are potentially disqualifying. The agency would then limit its request for criminal background check

reports to that subset of offenses; if the agency received unrelated information, it would not be permitted to consider it. Pennsylvania’s law is the closest state model, although its language could be improved. The law at least limits the scope of convictions to those that are related to “suitability” and prohibits certain categories of information:

Pennsylvania’s Example. “The following information shall not be used in consideration of an application for a license, certificate, registration or permit:

1. Records of arrest if there is no conviction of a crime based on the arrest.
2. Convictions which have been annulled or expunged.
3. Convictions of a summary offense.
4. Convictions for which the individual has received a pardon from the Governor.
5. Convictions which do not relate to the applicant’s suitability for the license, certificate, registration or permit.”⁹⁶

Limiting the scope of inquiry to occupation-related offenses and recent offenses and categorizing some inquiries as “off limits” provides for a strong *Model State Law*.

Recommendation 3: Assess on a Case-by-Case, Occupation-Related Basis

The best replacement for a blanket ban is to forego any mandatory disqualifying offenses in favor of a case-by-case assessment of an individual’s record. Criminal background information is susceptible to inaccuracy and misinterpretation; further, a blanket lifetime disqualification could be subject to litigation—such as the *Peake* lawsuit featured above.

New Jersey’s Example. As an example of a case-by-case assessment model, New Jersey allows licensing authorities to disqualify based on a conviction only if it “relates adversely to the occupation”; a structured, transparent analysis is encouraged by mandating that the licensing authority “explain in writing how the following factors . . . relate to the license or certificate sought:

. . . .

- b. 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 which may have contributed to the crime;
- h. Any evidence of rehabilitation”⁹⁷

If, however, any disqualifying offenses are statutorily enumerated, they should be narrowly tailored to the specific occupation. This point is often neglected in the development of disqualifying offenses. Most exclusions are not predicated on the narrowly tailored occupation-relatedness analysis described in *Recommendation 2*. Without this structured process, enumerated disqualifying offenses tend to be overly broad in scope.

An essential complement to any exclusion is an opportunity for the individual to both rebut the accuracy of the conviction record and provide mitigating evidence or evidence of rehabilitation, described below. Absent this individual assessment component, the exclusion would act as an automatic ban.

Recommendation 4: Consider Rehabilitation and Mitigating Circumstances

The consideration of rehabilitation directly reflects the American ideal that a person can change and should be afforded a second chance, instead of being permanently defined by one's past mistakes. Furthermore, the EEOC guidelines caution employers to use individualized assessments to garner more complete information, thus facilitating compliance with federal civil rights law. The EEOC provides some examples of individualized evidence:

- The facts or circumstances of the offense;
- Evidence of work history;
- Rehabilitation efforts such as education and training;
- Employment or character references.⁹⁸

In the licensing context, an applicant with a potentially disqualifying record should be provided an opportunity to submit mitigating information or evidence of rehabilitation. The most helpful laws include clear standards and examples of rehabilitation evidence.

To ensure that the applicant has adequate time to respond, statutory or regulatory schemes may also specify a timeline for this process.

Minnesota's Example. Minnesota's statute provides that a person with a conviction "shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties." It proceeds to list examples of "evidence of sufficient rehabilitation" such as demonstrating completion of probation or parole.⁹⁹

Recommendation 5: Provide Notice and Opportunity to Respond

The Fair Credit Reporting Act (FCRA), a federal consumer protection law, requires entities to obtain an applicant's authorization prior to acquiring a report from a private background check company.¹⁰⁰ In addition, FCRA requires the entity to provide a copy of the background check report to the applicant prior to any adverse action. Licensing authorities, even entities that rely on government-produced background check reports not subject to FCRA, should also satisfy these basic consumer protection standards.

Before a final decision is made, the licensing agency should explain via writing the specific item in the background check report that is considered occupation-related and provide a copy of the report. Background check reports can be rife with errors, so allowing applicants the chance to verify or challenge the information is crucial. Connecticut's licensing statute provides a good example:

Connecticut's Example. "If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant."¹⁰¹

Massachusetts' Example.

Massachusetts' law mirrors some FCRA requirements and applies them to government-produced background checks. It requires entities to:

- i. “notify the applicant of the potential adverse decision based on the criminal offender record information”;
- ii. “provide a copy of the criminal offender record information and the policy to the applicant”; and
- iii. “provide information concerning the process for correcting a criminal record.”¹⁰²

Recommendation 6: Eliminate Any Self-Reporting and “Ban the Box”

The EEOC guidance recommends “as a best practice . . . that employers not ask about convictions on job applications . . .”¹⁰³ That recommendation is commonly known as “ban the box.” In the hiring setting, the check-box conviction inquiry is removed from the job application and any inquiries are delayed until later in the hiring process. The rationale for banning the box in hiring is that employers automatically discard applications indicating a record, regardless of the applicant’s qualifications.¹⁰⁴ In the licensing context, Colorado provides an example of how ban-the-box can operate:

Colorado’s Example. “[T]he agency shall not perform a background check until the agency determines that an applicant is a finalist . . .”¹⁰⁵

By fully evaluating an applicant’s professional qualifications before his or her conviction history is revealed, licensing authorities ensure that their preliminary

assessment of those qualifications is objective and not unduly influenced by bias against people with records. Research on preventing biased decision-making emphasizes removing biasing information and specifying deliberative processes such as previously articulating the elements deemed essential for the job.¹⁰⁶ For licensing, this approach translates into delaying a conviction history inquiry until after considering a clear, pre-determined set of requirements essential to the occupation.

Another important benefit of ban-the-box is to eliminate any self-reporting questions about conviction history. The common rationale for requiring applicants to self-disclose information is that applicants should be forthcoming about their past or that an applicant’s reporting of inaccurate information is evidence of dishonesty. However, discrepancies between self-disclosed information and background checks are often caused by workers misunderstanding their own records. If a background check will be run, no benefit results from this additional step, which trips up honest, well-intentioned applicants.

Recommendation 7: Remove Vague and Overbroad Standards

The U.S. Supreme Court has described the term “good moral character” as “unusually ambiguous,” with the potential to serve as a “dangerous instrument for arbitrary and discriminatory denial” of a professional license.¹⁰⁷ In order to ensure that licensing boards have fair processes in place to consider applicants, broad terms such as “good moral character” and catch-all categories such as offenses of “moral turpitude” should be removed from licensing standards.

Recommendation 8: Understand the Landscape and Incorporate Ongoing Data Collection

Although not a substitute for reform, an audit of current conviction record restrictions in occupational licensing laws could focus efforts. Nationwide, very little data exists on the number of people disqualified from

licensure based on their conviction histories. Thus, policymakers should begin by requesting information such as the number of license applicants, applicants with records, and rejections based on records, as well as the type of records that disqualify applicants. Collecting applicant demographic data can also help identify who is excluded from licensed work. A more limited inquiry could focus on high-growth occupational sectors.

At least two states, Florida and Illinois, have passed laws requiring such data collection.¹⁰⁸ In Illinois, the legislature formed a task force charged with collecting data from every state agency regarding conviction record restrictions on public employment and occupational licensing. The task force then published a report based on its findings in 2012.¹⁰⁹ The Illinois Department of Financial and Professional Regulation (IDFPR) reported on the 36,392 applicants (covering 130 occupational licenses) who were required to disclose conviction histories.¹¹⁰ A few occupations stood out for their higher rates of disqualifications based on convictions: 22.6 percent of applicants for practical nurses (LPNs) and 17.1 percent for private security and private alarm company occupations.¹¹¹

Another area of focus should be on the interpretation of the relevant laws by licensing authorities. If given broad discretion, agencies can be biased gatekeepers to the profession, despite neutral statutory language. For that reason, examining internal agency practices or policies, in addition to the data regarding applicants, is crucial. In addition to applicant data, convening stakeholders could be critical as background check disqualifications tend to have a chilling effect on people with records pursuing an occupation. Thus engaging the education, training, legal services, and formerly incarcerated communities would provide a more complete picture of the issue.

Continued data collection should be incorporated into the statutory scheme to ensure licensing boards reduce the number of people disqualified for non-occupation related convictions. Comparing this information to baseline data established prior to the enactment of a

new law will help ensure effective implementation and increased numbers of licensed individuals. Analyzing demographic data of applicants can also help ensure bias is adequately addressed. With this data, states can test innovative and focused approaches to clearing barriers to high-growth occupations.

Recommendation 9: Provide Clear Guidance to Applicants

In order to help applicants with a record understand whether they should invest time and money in training and applying for a license, policymakers can look to one example from Texas. The Texas Department of Licensing and Regulation allows potential applicants to have their records evaluated by an attorney whose recommendation is sent to the licensing board.¹¹² A recommendation that the conviction history is not a bar to licensure does not dictate a board's decision.¹¹³ However, the department provides guidelines for the types of offenses that will often be deemed related to a license.¹¹⁴ Such processes have the potential to provide greater clarity to applicants. Indeed, all licensing agencies should ensure that their policies and practices for reviewing conviction records are easily accessible to the public.

Recommendation 10: Create Fairer, More Uniform Standards

Some state regimes include dozens of independent boards and hundreds of licensed occupations. Given the number of decision-making bodies and variety of laws, it is essential that licensing laws promote clarity and consistency. Adopting similar, fairer standards among occupations enhances efficiency in their implementation and enforcement.

New statutes in several states—Louisiana, New Hampshire, North Carolina, Ohio, and Texas—aim to unify licensing boards' policies regarding the consideration of criminal records.¹¹⁵ Because of the danger of further complicating the web of licensing laws, a general licensing statute should clearly supersede existing statutory language, and any legislation should include

provisions that amend all relevant statutory schemes of the individual occupational licensing laws. Kentucky offers an example:

Kentucky’s Example. The state’s overarching licensing provision “shall prevail over any other laws, rules and regulations which purport to govern the granting, denial, renewal, suspension, or revocation of a license . . . on the grounds of conviction of a crime or crimes.”¹¹⁶

The 39 states and the District of Columbia that have a broadly applicable occupational licensing law regulating criminal record disqualifications are examined in detail in the *State Report Cards* in the *Appendix*.¹¹⁷ As the *State Report Cards* demonstrate, the scope of these laws vary greatly, and in reality, some offer only minimal alleviation of the conviction record barrier. Nonetheless, the fact that most states have addressed conviction record disqualifications in occupational licensing to some degree indicates that this salient issue is ripe for reform and that stronger, fairer laws could be enacted in the near future.

Conclusion

The inability to obtain work, as well as underemployment, strips earnings from the nearly one in three adults in United States who has a record, which reverberates within their families. Given the severity of the consequences of the unemployment of people with records, the nation has turned its attention to reentry solutions. On the agenda must be occupational licensing reform. As the stories of workers who have struggled with licensing barriers demonstrate, state laws and policies can fail to meaningfully increase public safety but can lead to financial and social devastation. Indeed, the reality is that thousands of licensing laws are poorly calibrated to advance public safety and health. Instead, these laws eliminate well-qualified candidates with records who could contribute to the local economy. The licensing reforms recommended here will allow people with records to be evaluated on their merits, promote a stronger economy, and maintain public safety.

Endnotes

1. Facts regarding Ms. Sonja Blake's case are derived from Appellant's Brief, *Blake v. Jossart*, 868 N.W. 2d 198 (Wis. Ct. App. 2015) (No. 2012AP2578), review granted, 872 N.W. 2d 668 (Nov. 4, 2015), and from email correspondence with Sheila X. Sullivan, Road to Opportunity Project Director, Legal Action of Wisconsin (March 2016).
2. Wis. Stat. Ann. § 48.685(5)(br)(5).
3. *Research Supports Fair Chance Policies*, NELP (March 2016), www.nelp.org/publication/research-supports-fair-chance-policies/.
4. Robert Brame, Shawn D. Bushway, Ray Paternoster & Michael G. Turner, *Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23*, 60(3) *Crime & Delinquency* 471, 471-86 (2014).
5. Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More Than You Think*, *The Wall Street Journal* (Aug. 7, 2015), www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802.
6. Paul Sloth, *Childcare Provider Loses Certification, Suing County to Get it Back*, *The Journal Times* (March 22, 2010), http://journaltimes.com/news/local/childcare-provider-loses-certification-suing-county-to-get-it-back/article_784997e0-33b6-11df-997f-001cc4c002e0.html.
7. Wis. Stat. Ann. § 48.685(5)(br)(5).
8. See *Jossart*, 868 N.W. 2d at 198.
9. The White House, *Occupational Licensing: A Framework for Policymakers* (July 2015), at 3, www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf. The White House reports that the percentage of the workforce covered by state licensing laws has grown five-fold since the early 1950s. *Id.* at 17. The most recent estimates indicate that over 1,100 types of occupations are licensed, certified, or registered in at least one state. See *id.* at 7. For simplicity, this report refers to "licensing" as a catch-all term and does not distinguish between licensing, certification, and registration, unless specifically noted.
10. See *id.* at 21.
11. See e.g., Morris M. Kleiner, *Reforming Occupational Licensing Policies*, *The Hamilton Project* (Jan. 2015), at 13. The Hamilton Project estimates that such restrictions eliminate as many as 2.85 million jobs nationwide and raise consumer expenses by \$200 billion per year. *Id.* at 6.
12. For example of discussion of benefits of licensing, see *supra* note 9 at 11.
13. Michelle Natividad Rodriguez & Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions*, NELP (April 2016), www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/.
14. American Bar Association, National Inventory of the Collateral Consequences of Conviction, www.abacollateralconsequences.org (accessed March 28, 2016) (hereinafter "ABA Inventory"). The inventory includes information for all 50 states, the District of Columbia, and all U.S. territories. Note that the inventory codes disclosures of backgrounds or background check requirements as freestanding entries in some cases, which may or may not include a specific restriction. See ABA Inventory, *User Guide*, Question and Answer 10. The "occupational and professional licenses and certification" includes most professional licensure requirements, among other licenses. The category "business licenses and other property rights" licenses to operate certain facilities and to engage in specific industries. The user guide for the ABA Inventory cautions that the "difference between professional and business licensure will not be clear, and a comprehensive search should select both categories." See ABA Inventory, *User Guide*, Question and Answer 13. We followed this recommendation for the purposes of the estimate and included both the professional and business licensure categories for all jurisdictions in the United States available for the search, except for "federal."
15. See e.g., Rebecca Vallas & Sharon Dietrich, *One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*, Center for American Progress (Dec. 2014), at 59; *After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records*, Legal Action Center (2004). Koch Industries general counsel Mark Holden has opined that reducing occupational licensing restrictions is part of "reforming the criminal justice system." Without the ability to obtain professional licenses, Mr. Holden asks, how can we expect people with conviction records to "create value in their communities and improve their lives?" Mark V. Holden, *How to Keep the Unemployed Out of Work*, *The Wall Street Journal* (Dec. 8, 2015), www.wsj.com/articles/how-to-keep-the-unemployed-out-of-work-1449618512?cb=logged0.5074470604304224.
16. Definition of a "rapid growth" occupation indicates an employment increase of 14 percent or more over the period of 2014-2024 according to the Occupational Information Network (O*NET) database, a project under the sponsorship of the U.S. Department of Labor/Employment and Training Administration (USDOL/ETA) through a grant to the North Carolina Department of Commerce. O*NET Resource Center, www.onetcenter.org/overview.html. We accessed the O*NET database on March 28, 2016 for a list of rapid growth occupations, which resulted in a list of 156 occupations.
17. Nursing is a highly licensed field, with all states requiring RNs and LPNs/LVNs to be licensed. BLS, *Occupational Outlook Handbook—Registered Nurses* (Dec. 17, 2015), www.bls.gov/ooh/healthcare/registered-nurses.htm; BLS, *Occupational Outlook Handbook—Licensed Practical and Licensed Vocational Nurses* (Dec. 17, 2015), www.bls.gov/ooh/healthcare/licensed-practical-and-licensed-vocational-nurses.htm.
18. The Bureau of Labor Statistics (BLS) projects that personal care aides and home health aides will rank first and third in job growth between 2014 and 2024, adding 458,100 and 348,400 jobs, respectively. BLS, *News Release: Employment Projections—2014-24* (Dec. 8, 2015), at Table 6, www.bls.gov/news.release/pdf/ecopro.pdf. A discussion of these occupations, however, falls somewhat outside the scope of this report. While job-seekers must satisfy some formal requirements to hold these positions, they need not obtain an occupational license. Instead, individuals entering these occupations typically face background checks as mandated by federal or state law or to obtain a certification required by employers, albeit not by the state. See BLS, *Occupational Outlook Handbook—Personal Care Aides* (Dec. 17, 2015), www.bls.gov/ooh/personal-care-and-service/personal-care-aides.htm; BLS, *Occupational Outlook Handbook—Home Health Aides* (Dec. 17, 2015), www.bls.gov/ooh/healthcare/home-health-aides.htm.
19. See BLS, *Employment Projections—Occupations with the most job growth* (Dec. 8, 2015), at Table 1.4, www.bls.gov/emp/ep_table_104.htm.
20. *Id.*
21. *Id.*
22. ABA Inventory (accessed Jan. 28, 2016).
23. BLS, *Occupational Outlook Handbook—Barbers, Hairdressers, and Cosmetologists* (Dec. 17, 2015), www.bls.gov/ooh/personal-

- care-and-service/barbers-hairdressers-and-cosmetologists.htm.
24. ABA Inventory (accessed Jan. 28, 2016).
25. See Margaret Colgate Love, Jenny Roberts, & Cecelia Klingele, *Collateral Consequences of Criminal Convictions: Law, Policy and Practice* (Thomson West, 2013). This volume is a comprehensive resource for practicing attorneys, judges and policymakers on the legal restrictions and penalties that flow from a conviction beyond the court-imposed sentence. See *Collateral Consequences of Criminal Convictions: Law, Policy and Practice Offers Roadmap to the Restoration of Rights After Conviction*, Nat'l Ass'n Criminal Def. Lawyers (Feb. 21, 2013), www.nacdl.org/News.aspx?id=26526.
26. See Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. Rev. 457, 457 (2010); Margaret Colgate Love, *Managing Collateral Consequences in the Sentencing Process: The Revised Sentencing Articles of the Model Penal Code*, 2015 Wis. L. Rev. 247 (2015).
27. Devah Pager, *The Mark of a Criminal Record* 108 Am. J. Soc. 937, 960 (2003).
28. *Id.* at 959.
29. Binyamin Appelbaum, *The Vanishing Male Worker: How America Fell Behind*, The New York Times (Dec. 11, 2014), www.nytimes.com/2014/12/12/upshot/unemployment-the-vanishing-male-worker-how-america-fell-behind.html.
30. Ella Baker Center for Human Rights, et al., *Who Pays? The True Cost of Incarceration on Families* (Sept. 2015), at 7, <http://whopaysreport.org/>.
31. See, e.g., Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010).
32. Lynn Langton & Matthew Durose, *Police Behavior during Traffic and Street Stops*, 2011, Bureau of Justice Statistics (Sept. 2013), www.bjs.gov/content/pub/pdf/pbtss11.pdf.
33. For example, blacks are 3.73 times more likely to be arrested for marijuana than whites, even though rates of use of marijuana are similar. *The War on Marijuana In Black and White*, American Civil Liberties Union (June 2013), at 4, www.aclu.org/report/war-marijuana-black-and-white.
34. See Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, Univ. of Michigan Law & Econ., Empirical Legal Studies Center Paper No. 12-002 (2012);
35. See The Sentencing Project, *Racial Disparity*, www.sentencingproject.org/template/page.cfm?id=122.
36. See Nazgol Ghandnoosh, *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies*, The Sentencing Project (Sept. 2014), at 22-24; see also Brave New Films, *Black Protests vs. White Riots* (2015), www.bravenewfilms.org/whiteriots; Ian Haney López, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (Oxford University Press, 2015).
37. Policymakers should also consider the accumulated history of exclusions in occupational licensing laws. In the history of occupational licensing restrictions, legislators have enacted laws intended to stifle competition from "outgroups." Those groups outside of the dominant majority have included immigrants and blacks. See David E. Bernstein, *Licensing Laws: A Historical Example of the Use of Government Regulatory Power Against African-Americans*, 31 San Diego L. Rev. 90 (1994).
38. In a randomized controlled trial, emergency department utilization by TCN patients dropped by about 50 percent over 12 months. See Emily A. Wang, et al., *Engaging Individuals Recently Released From Prison Into Primary Care*, Am. J. of Pub. Health, Sept. 2012, at e22.
39. Telephone Interview with Ronald Sanders, Community Health Worker, Transitions Clinic Network (Apr. 11, 2016).
40. BLS, *Occupational Outlook Handbook—Health Educators and Community Health Workers* (Dec. 17, 2015), www.bls.gov/ooh/community-and-social-service/health-educators.htm.
41. *Id.*
42. Ron's Story, *CHW Testimonials*, Transitions Clinic, <http://transitionsclinic.org/chw-testimonials> (visited Apr. 11, 2016).
43. Telephone Interview with Ronald Sanders, *supra* note 39.
44. Persis Yu & Sharon Dietrich, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, National Consumer Law Center (2012), www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf.
45. See e.g. S.C. Code Ann. §23-3-430; Mass. Gen. Laws ch. 272 §16, Mass. Gen. Laws ch. 6 §§ 178(C), (G).
46. Search of nationwide "any felony" offenses resulted in 12,669 restrictions in occupational and professional licenses and business licenses categories in the ABA Inventory; search for "any misdemeanor" offenses resulted in 6,372 restrictions. ABA Inventory (accessed March 24, 2016).
47. ABA Inventory, *User Guide*, Question and Answer 7.
48. Search of nationwide "permanent" offenses resulted in 19,786 restrictions in occupational and professional licenses and business licenses categories in the ABA Inventory; search for "mandatory/automatic" offenses resulted in 11,338 restrictions. ABA Inventory (accessed March 24, 2016). Definition of "mandatory" provided in ABA Inventory, *User Guide*, Question and Answer 2.
49. See Allyson Fredericksen & Desiree Omli, *Jobs After Jail*, Alliance for a Just Society (Feb. 2016) (using the data provided in Table 1 to provide an average). These numbers are drawn from the ABA Inventory and should not be added together, as they do not account for duplications of laws between the two categories.
50. The number cited does not even account for the over 350 combined laws for each state in the business licensing category. *Id.* at Table 1, Regulations Restricting Employment for People with a Felony Conviction, by State.
51. Ga. Comp. R. & Regs. r. 290-2-5-.05(5)(a)-(d).
52. There are several circumstances where an "arrest, charge, and sentencing" are considered a criminal record. Ga. Comp. R. & Regs. r. 290-2-5-.03(h)(2).
53. EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Apr. 25, 2012), at 11, 16, www.eeoc.gov/laws/guidance/arrest_conviction.cfm (hereinafter "EEOC Guidance").
54. Ala. Code Ann. § 34-11-11(k)(2).
55. Iowa Code Ann. § 80A.4 (1)(c), (f), (g), (h), (i).
56. S.D. Codified Laws § 36-8-16.
57. Peake Affidavit at ¶ 4, *Peake v. Com.*, No. 216 M.D. 2015 (Pa. Commw. Ct. Dec. 30, 2015).
58. *Id.* at ¶¶ 7-8.
59. *Id.* at ¶ 11.

60. *Id.* at ¶ 12.
61. 35 Pa. Stat. Ann. § 10225.503.
62. Community Legal Services of Philadelphia, *Commonwealth Court Declares Lifetime Bans on Employment Unconstitutional* (Jan. 4, 2016), <https://clsphila.org/news/commonwealth-court-declares-lifetime-bans-employment-unconstitutional>; *Peake v. Com.*, No. 216 M.D. 2015 (Pa. Commw. Ct. Dec. 30, 2015).
63. Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47(2) *Criminology* 327, 327-59 (2009).
64. Shawn D. Bushway & Gary Sweeten, *Abolish Lifetime Bans for Ex-Felons*, 6(4) *Criminology and Public Policy* 697, 697-706 (2007).
65. Op-Doc, *A Conversation About Growing Up Black*, *The New York Times* (May 17, 2015), www.nytimes.com/2015/05/07/opinion/a-conversation-about-growing-up-black.html.
66. Ian Haney López, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (Oxford University Press, 2015).
67. See e.g., Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, *The Atlantic* (Oct. 2015), www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/.
68. Dick M. Carpenter II, et al., *License to Work: A National Study of Burdens from Occupational Licensing*, Institute for Justice (2012), www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf.
69. *Id.* at 25.
70. Idaho Code Ann. § 54-209; 54-206(11).
71. Vt. Stat. Ann. tit. 3 § 129a(a)(10) (applies to numerous professions listed in Vt. Stat. Ann. tit. 3 § 122).
72. ABA Inventory (accessed March 29, 2016) (search produced 3,332 entries by choosing both professional license and business categories and “crimes of moral turpitude” as the offense).
73. N.M. Admin. Code 18.20.8.7(P) (definition applies to driving safety instructor certification).
74. The definition includes further articulation that such a crime is “immoral in themselves”, may ordinarily involve fraud or injury, and may involve controlled substances. Utah Admin. Code r. 81-1-16(3)(c) (definition applies to holding an alcohol license).
75. See *infra* note 106.
76. See, e.g., Morris M. Kleiner, *Reforming Occupational Licensing Policies*, *The Hamilton Project* (Jan. 2015), at 13 (although this commentary refers to licensing barriers in particular, it could be applied more narrowly to barriers based on records).
77. 63 Pa. Cons. Stat. § 510 (a)(1) (“No person shall be permitted by the board to receive a license as a cosmetologist unless such person shall be at least sixteen years of age and of good moral character. . .”).
78. NELP identified a total of 40 jurisdictions that have enacted overarching licensing statutes and regulations. In preparing this analysis, we began by reviewing pre-existing research addressing state occupational licensing restrictions. See, e.g., Margaret Colgate Love, Nat’l Ass’n Criminal Def. Lawyers Restoration of Rights Project, www.nacdl.org/rightsrestoration/. We analyzed the text of the laws, reviewed case law, and then contacted state legal advocates, where possible, regarding both our statutory interpretation and any relevant context or laws. Despite our efforts, we recognize that some relevant laws or case law may have been overlooked. We are grateful for any corrections; please contact Michelle Natividad Rodriguez at mrodriguez@nelp.org.
79. Ala., Alaska, Idaho, Iowa, Miss., Neb., Nev., S.D., Tenn., W. Va., and Wyo.
80. EEOC Guidance, *supra* note 53.
81. One criterion omitted is related to appeal and notification procedures. State licensing boards rely on background check reports when reviewing an applicant’s conviction history, but these reports are often riddled with inaccuracies. See e.g., Madeline Neighly & Maurice Emsellem, *Wanted: Accurate FBI Background Checks for Employment*, NELP (2013), www.nelp.org/content/uploads/2015/03/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf. As we discuss in the Recommendations, given the ubiquity of misinformation, allowing applicants an opportunity to challenge the accuracy or relevancy of their records is a crucial step toward preventing unwarranted denials. We omitted ranking this critical recommendation due to the challenge of identifying the relevant administrative procedures and the difficulty of evaluating the effectiveness of the appeals process. For example, New York’s overarching licensing law appeals procedure allows for reversing a board decision only upon a finding that the initial decision was “arbitrary and capricious.” This deferential standard of review often proves insurmountable—even in cases involving a licensing board’s flagrant disregard for legally-mandated applicant protections. See Telephone Interview with Paul Keefe, Supervising Attorney, New York City Commission on Human Rights (Oct. 7, 2015). See also *Dempsey v. NYC Dept. of Educ.*, 108 A.D. 3d 454 (N.Y. App. Div. 2013) (example of a particularly egregious case).
82. Me. Rev. Stat. Ann. tit. 5, § 5301.
83. La. Rev. Stat. Ann. § 37:2950(D)(1)(A).
84. Ariz. Rev. Stat. Ann. § 13-904(E). Restoring one’s civil rights may require the applicant to wait two years and then apply to the judge who criminally sentenced the applicant. See Ariz. Rev. Stat. Ann. § 13-906.
85. N.J. Stat. Ann. § 2A:168A-2.
86. Mich. Comp. Laws Ann. § 338.43(1)(c).
87. Ky. Rev. Stat. Ann. § 335B.020(1).
88. Ark. Code Ann. § 17-1-103(b)(2).
89. Me. Rev. Stat. Ann. tit. 5, § 5303.
90. Minn. Stat. Ann. § 364.03.
91. N.H. Rev. Stat. Ann. § 332-G:10 (emphasis added).
92. EEOC Guidance, *supra* note 53 at 11, 16.
93. Kan. Stat. Ann. § 74-120.
94. EEOC Guidance, *supra* note 53 at 13-14.
95. See *Appendix, Model State Law*.
96. 18 Pa. Cons. Stat. Ann. § 9214(b).
97. N.J. Stat. Ann. § 2A:168A-2.
98. EEOC Guidance, *supra* note 53.
99. Minn. Stat. § 364.03(3).
100. 15 U.S.C. § 1681 *et seq.*
101. Conn. Gen. Stat. § 46a-80.
102. The law provides that “a person who annual conducts 5 or more criminal background investigations,” which include

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- licensing agencies, must maintain a policy that includes all of these provisions. Mass. Gen. Laws Ann. ch. 6 § 171A. *See also* 803 Code Mass. Regs 2.19-2.20 (requiring licensing agencies to provide notice, a copy of the background information, process for correction, and requiring documentation of all steps). Regulations also specify that the licensing agency must provide a copy of the criminal history information to the applicant “before asking [the applicant] any questions regarding [the applicant’s] criminal history.” 803 Code Mass. Regs. 2.13.
103. EEOC Guidance at 13-14.
104. Substantiating this insight, one study showed that 76 percent of hiring discrimination takes place at the initial stage of hiring, before individuals can present their qualifications fully. *See* Marc Bendick, Jr., Lauren Brown, & Kennington Wall, *No Foot in the Door: An Experimental Study of Employment Discrimination*, 10(4) J. Aging & Soc. Policy 5, 10 (1999).
105. Colo. Rev. Stat. § 24-5-101(3)(b); *see also* Colo. Rev. Stat. § 24-34-102(8.7).
106. *See* Cheryl Staats, et al., *State of the Science: Implicit Bias Review 2015*, Kirwan Institute (2015), <http://kirwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kirwan-implicit-bias.pdf>; Rachel D. Godsil, et al., *The Science of Equality, Volume 1: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat in Education and Health Care*, Perception Institute (Nov. 2014), at 47-48, <http://perception.org/app/uploads/2014/11/Science-of-Equality.pdf>.
107. *Konigsberg v. State Bar of Cal.*, 353 U.S. 252, 263 (1957) (stopping short of declaring the “good moral character” standard unconstitutionally vague).
108. 20 Ill. Comp. Stat. 5000/15; Fla. Stat. Ann. § 112.011(2).
109. Illinois Criminal Justice Information Authority, *Inventorying Employment Restrictions Task Force Final Report* (June 28, 2013), www.icjia.state.il.us/assets/pdf/ResearchReports/IERTF%20Final%20Report.pdf.
110. Illinois Department of Financial and Professional Regulation Report, *FPR Report for the Task Force* (2012), at 4, <http://www.icjia.org/IERTF/pdf/StateAgencyReports/Illinois%20Department%20of%20Financial%20and%20Professional%20Regulations/Illinois%20Department%20of%20Financial%20and%20Professional%20Regulations%20report.pdf>.
111. *Id.*
112. Texas Department of Licensing and Regulation Administration, *Guidelines for License Applicants with Criminal Convictions*, www.tdlr.texas.gov/crimconvict.htm#bar (visited Aug. 7, 2015).
113. *Id.*
114. *Id.*
115. H.B. 295 (La. 2012) (prohibiting licensing boards from denying a license based solely on an applicant’s criminal record); H.B. 1368 (N.H. 2014) (same); S.B. 33 (N.C. 2013) (same); S.B. 337 (Ohio 2012) (allowing people to apply for a certificate of qualification for employment that lifts the automatic bar on obtaining a professional license and limiting the extent to which criminal records can be considered in licensing decisions); H.B. 1659 (Tex. 2013) & H.B. 798 (Tex. 2013) (restricting the use of certain misdemeanors and felonies in licensing decisions).
116. Ky. Rev. Stat. Ann. § 335B.060.
117. *See* Margaret Colgate Love, *Consideration of Criminal Record in Licensing and Employment*, Nat’l Ass’n Criminal Def. Lawyers, www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/Consideration_of_Criminal_Record_in_Licensing_And_Employment.pdf.

1 Appendix

Model State Law

The model state legislation below provides a comprehensive example, incorporating the Recommendations described in this report in one overarching licensing law that would apply to all occupational licenses in the state. A more limited approach could be taken by omitting sections or adapting these provisions for particular occupations. A piecemeal approach may be the best way to proceed when introducing the concept, although the benefit of uniformity would be reduced. Note that state-specific terms, such as criminal justice-related terms, must be adjusted for each state. For an example of a comprehensive state law, see Minnesota Statute, Chapter 364 “Criminal Offenders; Rehabilitation.”

Sec. 1. Policy.

The Legislature finds and declares that reducing barriers to employment for people with arrest and conviction records, and decreasing unemployment in communities with concentrated numbers of people with records, are matters of statewide concern. The Legislature further finds and declares that increasing employment opportunities for people with records will reduce recidivism and improve economic stability in our communities.

Sec. 2. Availability and use of criminal record information.

- (a) The information listed in subsections (1)-(6) shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions in connection with an application for a license or certification. Offenses committed outside the State shall be classified as offenses committed within the State based on the maximum penalty that could have been imposed for such act under the laws of such foreign jurisdiction.
 - (1) Non-conviction information, including information related to a deferred adjudication, participation in a diversion program, an arrest not followed by a valid conviction, or infraction; [or other state-specific non-criminal offense]
 - (2) Conviction which has been sealed, dismissed, expunged, or pardoned;
 - (3) Juvenile adjudication;
 - (4) Misdemeanor conviction for which no jail sentence can be imposed; [or other state-specific low-level conviction]
 - (5) Misdemeanor conviction older than three years, excluding any period of incarceration or custody; and
 - (6) Felony conviction older than five years, excluding any period of incarceration or custody.

Sec. 3. No disqualification from licensed occupations.

- (a) No person shall be disqualified from pursuing, practicing, or engaging in any occupation for which a license or certification is required, solely or in part because of a prior conviction, unless the conviction is directly related to the occupation for which the license is sought.
- (b) The applicant who has been convicted of an offense which directly relates to the occupation for which a license is sought shall not be disqualified from the occupation if the applicant can show sufficient mitigation or

rehabilitation and present fitness to perform the duties of the occupation for which the license is sought, as determined per Section (6).

Sec. 4. Consideration of only directly related conviction history.

- (a) Licensing applications shall not include an inquiry about an applicant's conviction history.
- (b) A licensing authority shall not inquire into or consider the conviction history of an applicant for licensing until after an applicant is found to be otherwise qualified for the license.
- (c) After an applicant is found to be otherwise qualified for the license, a licensing authority may inquire into and consider only the directly related conviction history of an applicant as determined pursuant to Section (5).

Sec. 5. Determination of directly related convictions.

- (a) A licensing authority shall limit inquiries into an applicant's conviction history to only those convictions determined to be directly related to the occupation for which the license is sought and shall make this enumerated list available to the public and provide a copy to each licensing applicant. A licensing authority shall not inquire into or consider any conviction history beyond the scope of directly related convictions.
- (b) Within six months after this statute takes effect, each licensing authority shall establish a narrowly tailored list of directly related convictions by considering each of the following:
 - (1) The public policy of this State, as expressed in this act, to encourage the licensure of people with arrest and conviction records;
 - (2) Whether the elements of the offense are directly related to the specific duties and responsibilities of that occupation;
 - (3) Whether the occupation offers the opportunity for the same or a similar offense to occur; and
 - (4) The relationship of the offense to the purposes of regulating the occupation for which the license is sought; and
 - (5) The length of time since the offense occurred.

Sec. 6. Sufficient mitigation or rehabilitation and fitness for occupation.

- (a) An applicant with a directly related conviction shall not be disqualified from the occupation for which a license is sought if the applicant can establish sufficient mitigation or rehabilitation and fitness to perform the duties of the occupation by providing either of the following:
 - (1) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
 - (2) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to:
 - (i) Circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense;
 - (ii) Age of the person at the time the offense was committed;

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- (iii) The length of time since the offense occurred;
 - (iv) Evidence of work history, particularly any training or work experience related to the occupation in question; or
 - (v) Letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

Sec. 7. Notice of potential disqualification and opportunity to appeal.

- (a) If a licensing authority intends to disqualify an applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following, prior to a final decision:
 - (1) Identify the directly related conviction item(s) that form the basis for the potential disqualification and the rationale for occupation relatedness;
 - (2) Provide a copy of the conviction history report, if any, on which the licensing authority relies; and
 - (3) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide, which are described in Section (6).
- (b) After receiving the notice of potential disqualification, the applicant shall have 30 (thirty) business days to respond by challenging the accuracy of the conviction history report and/or submitting evidence of mitigation or rehabilitation. The licensing authority shall make the final decision based on an individualized assessment of the information described in Section (6).
- (c) If a licensing authority disqualifies the applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following:
 - (1) The final disqualification, including a list of the directly related conviction item(s) that form the basis for the disqualification and the rationale for occupation relatedness;
 - (2) The appeal process; and
 - (3) The earliest date the applicant may reapply for the license or certification, which shall be no longer than two years from the date of the initial application.

Sec. 8. Compliance.

- (a) For a minimum of three years, licensing authorities shall retain application forms and other documents submitted by applicants, notices provided to applicants as required by Section (7), all other communications received from and provided to applicants, and conviction history reports of applicants.
- (b) Each licensing authority shall retain the number of applications for each license and the number of applications requiring conviction history inquiries. In addition, each licensing authority shall retain the following information:
 - (1) The number of applicants with a record who received notice of potential disqualification;
 - (2) The number of applicants with a record who provided evidence of mitigation or rehabilitation;

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- (3) The number of applicants with a record who appealed the final disqualification; and
 - (4) The final disposition and demographic information of the applicants described in subsections (1)-(3).
 - (c) At least annually, each licensing authority shall make available to the public the information collected pursuant to subsection (b), while ensuring confidentiality of the individual applicants.

Sec. 9. Application.

The provisions of these sections shall prevail over any other laws and rules, including but not limited to any specific laws and rules, which purport to govern the granting, denial, renewal, suspension, or revocation of a license. In deciding to grant, deny, revoke, suspend, or renew a license, for a lack of good moral character or the like, the licensing authority may consider evidence of conviction of an offense but only in the same manner and to the same effect as provided for in these sections. Nothing in these sections shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license.

2 Appendix

State Report Cards

Below is an analysis of the 40 overarching state licensing laws based on each of these four criteria:

1. Does the law prohibit the blanket rejection of applicants with conviction histories?
2. Does the law incorporate “EEOC factors,” which include consideration of whether a conviction is occupation-related and how much time has passed since the conviction?¹
3. Does the law limit the scope of record inquiry or the consideration of certain types of record information?
4. Does the law require consideration of rehabilitation?

The criteria are ranked into five tiers from best to worst: (1) Most Effective, (2) Satisfactory, (3) Needs Improvement, (4) Minimal, and (5) Unsatisfactory. Apart from providing our assessment, we have also included a brief description of the best features of the laws and the areas to improve in order to increase employment opportunities for people with records.

Alabama

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Alabama Overall Grade: N/A

Alaska

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Alabama Overall Grade: N/A

Arizona

Arizona’s alleviation of licensure barriers extends to only those applicants who have had their civil rights restored; thereby the law is quite limited. The statute also exempts law enforcement agencies.

Arizona Overall Grade: Unsatisfactory

Ariz. Rev. Stat. Ann. § 13-904

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans against those who have had civil rights restored.	Expand blanket ban prohibition to all—not just people who have had civil rights restored.
EEOC Factors	Minimal	Requires consideration of occupation-relatedness in some instances.	- Add explicit prohibition on denying license based on unrelated conviction. - Expand occupation-relatedness requirement to all. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Arkansas

Arkansas' law is one of the stronger statutes in terms of restricting consideration of certain types of records, but its exemptions of certain misdemeanors could be improved. To increase effectiveness, an occupation-relatedness standard and time-elapsed assessment should be incorporated, and the rehabilitation provision should explicitly prohibit a board from denying a license to someone deemed rehabilitated.

Arkansas Overall Grade: Needs Improvement

Ark. Code Ann. § 17-1-103

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	• No blanket bans based on convictions, with no offense-based exemptions.	• Remove exception to coverage for certain occupations.
EEOC Factors	Unsatisfactory		• Require consideration of occupation-relatedness. • Add explicit prohibition on denying license based on unrelated conviction. • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Most Effective	• Prohibits consideration of arrests. • Prohibits consideration of annulled, expunged, or pardoned convictions. • Prohibits consideration of some misdemeanors.	• Prohibit consideration of older offenses and other lesser offenses.
Rehabilitation	Needs Improvement	• Includes rehabilitation component. • Lists specific rehabilitation factors.	• Add explicit prohibition on denying license if applicant is rehabilitated.

California²

This section of the California code applies to the subset of occupational licenses within the jurisdiction of the Department of Consumer Affairs (which includes over 100 business and 200 professional categories).³ Although agencies may deny licenses based only on “substantially related” convictions, the law should further clarify that a conviction cannot operate as an automatic bar. Giving weight to “certificates of rehabilitation” (for felonies) and dismissals (for misdemeanors), boards may not deny a license “solely on the basis” of an applicant’s conviction if the applicant has obtained either. Although the Labor Code prohibits employers from inquiring about arrests or dismissed records, that restriction does not apply to licensing bodies.⁴

California Overall Grade: Needs Improvement

Cal. Bus. & Prof. Code §§ 475 to 489

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	Prohibits blanket bans for most occupations.	- Expand blanket ban prohibition to all occupations with one overarching law. - Adopt clearer blanket ban prohibition to clarify confusing language and structure.
EEOC Factors	Minimal	- Requires consideration of occupation-relatedness in some instances. - Prohibits denial of license based on unrelated conviction in some instances.	- Expand occupation-relatedness requirement to all. - Expand explicit prohibition on denying license based on unrelated conviction to all. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Minimal	Indicates that dismissed convictions and convictions under certificates of rehabilitation cannot be sole basis for denial.	- Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses). - Strengthen law by prohibiting consideration of dismissed convictions or convictions under certificates of rehabilitation.
Rehabilitation	Minimal	Directs board to develop rehabilitation criteria.	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Colorado⁵

Colorado incorporates licensing requirements into its law governing record inquiries for state employment. Weakening the law are a long list of exceptions for several professions and a provision permitting “specific statutory disqualification(s)” in individual licensing laws to trump the overarching law. The law somewhat indicates that expunged, sealed, pardoned, or dismissed charges should not form the basis for denial, but this limitation could be clarified. As a positive, Colorado’s licensing law is the only one in the country that includes a ban-the-box component.

Colorado Overall Grade: Needs Improvement

Colo. Rev. Stat. Ann. §§ 24-5-101 and 24-34-102

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances.	Strengthen blanket ban prohibition by not permitting other statutory disqualifications to control.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances (where statutory disqualifications do not bypass). - Requires consideration of time elapsed in some instances (where statutory disqualifications do not bypass).	- Expand occupation-relatedness requirement to all. - Expand explicit prohibition on denying license based on unrelated conviction to all. - Expand consideration of the time elapsed since conviction to all.
Limit Scope of Record Inquiry	Satisfactory	- Prohibits consideration of arrests. - Prohibits consideration of expunged, sealed, pardoned, or dismissed convictions.	Prohibit consideration of certain record information (e.g., lesser offenses, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component.	- Expand requirement to consider applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Connecticut⁶

While the law incorporates the EEOC factors and a rehabilitation component, the occupation-relatedness standard could benefit from additional clarity. The EEOC factors and rehabilitation component are the basis for an assessment of whether the applicant is “not suitable” for the profession, which invites discretion. On the plus side, provisional pardons and certificates of rehabilitation establish a presumption of rehabilitation. However, a person who is presumed to be rehabilitated is not insulated from denial based on her conviction history—licensing agencies are directed to merely consider the pardon or certificate.

Connecticut Overall Grade: Satisfactory

Conn. Gen. Stat. Ann. § 46a-80

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	• Prohibits blanket bans based on convictions, with no offense-based exemptions. • Clear statement that the overarching statute is the controlling law.	• Remove exception to coverage for certain occupations.
EEOC Factors	Satisfactory	• Requires consideration of occupation-relatedness. • Requires consideration of the time elapsed since conviction.	• Remove “not suitable” language to improve clarity. • Add explicit prohibition on denying license based on unrelated conviction.
Limit Scope of Record Inquiry	Satisfactory	• Prohibits consideration of arrests. • Prohibits consideration of “erased” convictions.	• Prohibit consideration of certain record information (e.g., lesser offenses, older offenses).
Rehabilitation	Minimal	• Includes rehabilitation component.	• Require consideration of the applicant’s rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Delaware⁷

Delaware lacks a unified, overarching licensing statute. Rather, in 2004, the legislature enacted a requirement that an applicant for licensure cannot have been convicted of a “substantially related” offense. That standard was codified into each occupation’s licensing statute, and each board was required to promulgate a list of “substantially related” offenses. Many boards, however, created lengthy lists of offenses that seem largely unrelated to the occupation.⁹ While these lists provide guidance to licensing applicants and boards alike, the enumerated disqualifying offenses undermine the notion that each applicant should receive an individual assessment. Although applicants with “substantially related” offenses can apply for a waiver, eligibility is restricted and boards have considerable discretion to deny waivers based on vague criteria such as public safety and the applicant’s “professional manner.”¹⁰

Delaware Overall Grade: Unsatisfactory

74 Del. Laws 262 (2004)

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions with one overarching law.
EEOC Factors	Minimal	• Requires boards to determine substantially related convictions.	• Require consideration of occupation-relatedness. • Add explicit prohibition on denying license based on unrelated conviction.⁸ • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant’s rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

District of Columbia

The District of Columbia regulates occupational licensing through different statutory schemes for “health related” and “non-health related” occupations. An applicant for a health related occupation (D.C. Code § 3-1205.03) and an applicant for a non-health related occupation (D.C. Code Section 47-2853.17) may be disqualified if the conviction “bears directly on the fitness” of the applicant. While that standard is vague, the law provides further guidance for the non-health related occupations. It requires consideration of seven factors, such as rehabilitation, a clearer occupation-relatedness standard, and time elapsed. The District has adopted regulations for ten enumerated professions that provide some additional relief.¹¹

District of Columbia Overall Grade: Minimal

D.C. Code § 3-1205.03; D.C. Code § 47-2853.17

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		Add blanket ban prohibition to all professions with one overarching law.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness (with a clearer standard for non-health related occupations). - Requires consideration of the time elapsed since conviction (but only for non-health related occupations).	- Strengthen occupation-relatedness standard and expand requirement to all. - Add explicit prohibition on denying license based on unrelated conviction. - Expand time-elapsed requirement to all.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component (but only for non-health related occupations).	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Florida¹²

While Florida explicitly prohibits a state agency from disqualifying an applicant from state *employment* based solely on a record, this prohibition does not apply to licensure. Providing limited relief, a “lack of civil rights” cannot form the sole basis for denying an occupational license. The law permits denials based on felonies or certain serious misdemeanors that are “reasonably related” to health and safety. This standard directs agencies to engage in an occupation-related analysis, but the language is overbroad.

Florida Overall Grade: Unsatisfactory

Fla. Stat. Ann. § 112.011

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions with one overarching law.
EEOC Factors	Unsatisfactory	• Requires consideration of occupation-relatedness in some instances.	• Remove vague occupation-relatedness standard and apply standard to all.¹³ • Require explicit prohibition on denying license based on unrelated conviction. • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant’s rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Georgia¹⁴

Georgia's law specifies that a licensing board may deny an applicant with a felony or any offense of moral turpitude. The law applies to a subset of occupations and does not cover other occupations (e.g., plumbing) that are not considered "professional."¹⁵ Another weakness is that the law explicitly allows licensing boards to consider offenses that have been granted deferred adjudication, even though such offenses are not considered convictions under state law.¹⁶ On April 1, 2016, the Georgia legislature transmitted to the governor a bill (SB 367) amending occupational licensing restrictions. At the time of publication of this report card, the governor had not yet signed that bill. If approved, SB 367 would provide additional relief and improve Georgia's score for the first, second, and fourth criteria.

Georgia Overall Grade: Unsatisfactory

Ga. Code Ann. § 43-1-19

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		Add blanket ban prohibition to all professions with one overarching law.
EEOC Factors	Unsatisfactory		- Require consideration of occupation-relatedness. - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of some non-felonies (although clarity is needed).	Prohibit consideration of certain record information (e.g., arrests, other lesser offenses, dismissed convictions, older offenses).¹⁷
Rehabilitation	Unsatisfactory		- Require consideration of the applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Hawaii

Under Hawaii’s law, licensing boards may consider convictions that occurred within the last ten years that have a “rational relationship” to the occupation. The standard is more stringent for convictions that occurred over ten years ago—only convictions that “directly relate” to performance on the job may be the basis for denial, and only if the applicant is not found to be rehabilitated. Boards are not required, however, to consider rehabilitation for applicants with convictions less than ten years old. None of these restrictions apply to certain licenses that fall under the purview of specified departments—corrections, health, and human services.

Hawaii Overall Grade: Satisfactory

Haw. Rev. Stat. § 831-3.1

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	Prohibits blanket bans based on convictions (except for felonies for applicants for liquor licenses).	Remove exception to coverage.
EEOC Factors	Satisfactory	- Stronger “directly relates” standard applies to conviction records older than 10 yrs. Although the “rational relationship” standard applying to convictions less than 10 yrs. old is weaker, it is still an occupation-related standard. - Appears to prohibit denial of unrelated convictions. - Two types of analysis are based on time elapsed (i.e., stricter standard applies to convictions older than 10 yrs.).	- Remove exception to coverage for certain occupations. - Remove weaker “rational relationship” standard that applies to convictions less than 10 yrs. old. - Although there appears to be a prohibition on denying license based on an unrelated conviction, this could be more clearly stated.
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of expunged convictions.	Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
Rehabilitation	Minimal	- Includes rehabilitation component (but only for people with convictions older than 10 yrs.). - Prohibits denying license if applicant is rehabilitated (but only for people with convictions older than 10 yrs.).	- Require consideration of all applicants’ rehabilitation. - Expand prohibition on denying license based on rehabilitation. - List specific rehabilitation factors.

Idaho

No overarching law(s) limiting licensing agencies' consideration of applicants' records.

Idaho Overall Grade: N/A

Illinois¹⁸

Illinois' statute prevents a determination of a lack of "good moral character" based on a conviction from being a licensure ban, however it does not prevent individual laws from imposing blanket bans based on convictions. A separate avenue to barrier relief is through obtaining a "certificate of relief from disabilities." Applicants with such certificates are exempted from bans, but certificates are available for only 27 licensing categories (excluding a host of occupations and many offenses). Alternatively, a "certificate of good conduct" removes absolute bars. The law explicitly allows for application of certificates of good conduct in public employment; however, advocates have successfully relied on them in the licensing context.¹⁹

Illinois Overall Grade: Minimal

730 Ill. Comp. Stat. 5/5-5-5

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Minimal blanket ban prohibition (within "good moral character" assessment).	Expand blanket ban prohibition to beyond the "good moral character" assessment and apply to all.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances. - Prohibits denial of license based on unrelated conviction in some instances. - Requires consideration of time elapsed in some instances.	- Expand occupation-relatedness requirement to all. - Add explicit prohibition on denying license based on unrelated conviction. - Expand consideration of the time-elapsed factor to all.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component in some instances.	- Expand requirement to consider applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Indiana

Indiana's law is complex and riddled with exceptions. It prohibits boards from denying a license because of the applicant's conviction but allows consideration of the "acts from which the applicant's . . . conviction resulted." In one section, it requires occupation-relatedness for the denial of a license, whereas in another, it allows the acts to "be considered as to whether the applicant or holder should be entrusted to serve the public." The law also allows a multitude of drug offenses to be the basis for bans, requiring license revocation if a licensee is convicted of certain drug offenses.

Indiana Overall Grade: Minimal

Ind. Code §§ 25-1-1.1-1 to -3; Ind. Code § 35-38-9-10

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans based on convictions in some instances.	- Remove broad offense-based exemptions. - Remove exemption based on vague "entrusted" to serve public language, which focuses on consideration of acts underlying conviction.
EEOC Factors	Unsatisfactory	Requires consideration of whether offense affects applicant's "ability to perform duties," which is arguably an occupation-related standard.	- Strengthen occupation-relatedness standard. - Add explicit prohibition on denying license based on unrelated conviction. - Expand consideration of occupation-relatedness to all. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of expunged or sealed convictions.	Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Iowa

No overarching law(s) limiting licensing agencies' consideration of applicants' records.

Iowa Overall Grade: N/A

Kansas

In a single sentence, Kansas' law prohibits felony convictions from forming the sole basis for the denial of an occupational license, but it fails to address how licensing boards should consider such records.

Kansas Overall Grade: Minimal

Kan. Stat. Ann. § 74-120

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Most Effective	- Prohibits blanket bans based on convictions. - Clear statement that overarching statute is the controlling law.	Explicitly clarify that no conviction (including lesser offenses) can constitute a licensure bar.
EEOC Factors	Unsatisfactory		- Require consideration of occupation-relatedness. - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Kentucky

Kentucky's law includes the broadest exceptions of any of the overarching licensing laws considered in this report. The blanket ban prohibition does not apply to a felony, high misdemeanor, misdemeanor for which jail time may be imposed, or offense involving moral turpitude. The exceptions may effectively swallow the rule.

Kentucky Overall Grade: Unsatisfactory

Ky. Rev. Stat. Ann. § 335B.010 to 335B.070

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	• Blanket ban prohibition in some very limited instances.	• Remove broad exception to blanket ban prohibition and expand to all.
EEOC Factors	Minimal	• Requires consideration of occupation-relatedness in some instances. • Prohibits denial of license based on an unrelated conviction in some instances.	• Expand consideration of occupation-relatedness to all. • Expand prohibition of denial of license based on an unrelated conviction to all. • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	• Includes rehabilitation component.	• Require consideration of the applicant's rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated.

Louisiana

Louisiana law provides some relief from licensure barriers, however 17 occupational licensing boards are exempted, including professions such as nursing, physical therapy, and dentistry. This exemption severely undercuts the law.

Louisiana Overall Grade: Unsatisfactory

La. Rev. Stat. Ann. § 37:2950

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	• Blanket ban prohibition in some limited instances. • Clear statement that overarching statute is the controlling law.	• Remove broad exception to blanket ban prohibition and expand to all.
EEOC Factors	Minimal	• Requires consideration of occupation-relatedness (with exceptions for many occupations). • Prohibits denial of license based on unrelated conviction in some instances.	• Expand consideration of occupation-relatedness to all. • Expand prohibition of denial of license based on an unrelated conviction to all. • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant's rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Maine

Maine is one of only three states that limits the consideration of older convictions. Applicants discharged from the correctional system three (or ten, depending on the occupation) years before applying for a license must be considered in the same manner as those with no record. However, the statute permits licensing boards to consider the “conduct which gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action,” which undermines the prohibition against evaluating older convictions. Maine’s law only uses an occupation-related standard to identify categories of convictions that may be considered within the 3-year and 10-year conviction limit.

Maine Overall Grade: Satisfactory

Me. Rev. Stat. Ann. tit. 5, §§ 5301 to 5304

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Most Effective	• No blanket bans based on convictions.	• Improve clarity of statutory language. Law would be clearer if it listed the off-limit conviction information instead of the long list of information that may be considered.
EEOC Factors	Minimal	• Requires consideration of occupation-relatedness in some instances. • Includes time-elapsd analysis through limitation on considering older convictions.	• Expand occupation-relatedness requirement to all. • Remove overbroad standard (e.g., underlying conduct of conviction). • Add explicit prohibition on denying license based on unrelated conviction. • Expand requirement to consider the time elapsed since conviction.
Limit Scope of Record Inquiry	Satisfactory	• Restricts consideration of certain convictions over 3 or 10 years old. • Prohibits consideration of set aside or pardoned convictions.	• Remove overbroad standard (i.e., consideration of conduct underlying the conviction), which undermines older offense limit. • Add explicit limitation on considering non-conviction information (although statute refers to only convictions, this could be clearer). • Prohibit consideration of lesser offenses.
Rehabilitation	Satisfactory	• Explicitly prohibits license denial if applicant demonstrates rehabilitation.	• List specific rehabilitation factors.

Maryland²⁰

Maryland's statute broadly exempts 24 "crimes of violence" from the standards intended to remove licensing barriers for people with records. These standards include a prohibition against blanket bans. A separate statute incorporates similar standards for evaluating applicants with drug-related convictions.

Maryland Overall Grade: Minima-

Md. Code Ann., Crim. Proc. § 1-209; Md. Code Ann., State Gov't §§ 10-1402 to -1405

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Needs Improvement	Prohibits blanket bans in some instances.	- Expand blanket ban prohibition to all. - Remove exceptions to blanket ban prohibition.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances. - Requires consideration of time elapsed in most instances.	- Remove "unreasonable risk" language. - Remove exception to coverage for certain offenses.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component.	- Expand requirement to consider applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Massachusetts²¹

Massachusetts does not have a general law restricting the consideration of records in licensing decisions. Instead, separate statutes limit how certain types of records may be considered. Notably, Massachusetts is one of just three states to limit the consideration of older convictions, and state law requires boards to provide each denied applicant with a copy of the criminal history report on which the board relied. Although Chapter 276, Section 100A limits the consideration of sealed records when hiring for public jobs, this protection does not explicitly extend to the occupational licensing context.

Massachusetts Overall Grade: Minimal

Mass. Gen. Laws ch. 127, § 152; Mass. Gen. Laws ch. 6, §§ 171A & 172

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions with one overarching law.
EEOC Factors	Minimal	• Includes time-elapsed analysis through limitation on considering older convictions.	• Add explicit prohibition on denying license based on unrelated conviction. • Require consideration of occupation-relatedness. • Expand requirement to consider the time elapsed since conviction.
Limit Scope of Record Inquiry	Satisfactory	• Prohibits consideration of pardoned convictions. • Restricts consideration of convictions older than 5 years (misdemeanors) or 10 years (felonies).	• Prohibit consideration of certain record information (e.g. arrests, lesser offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant's rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Michigan²²

Michigan law prevents a conviction from being “in and of itself” the basis for a determination of a lack of “good moral character,” however the conviction can be considered as part of that assessment. Further, by focusing on “good moral character,” the law does not prevent individual laws from imposing blanket bans based on convictions. Instead of incorporating EEOC standards, the law restricts consideration of convictions “unrelated to the person's likelihood to serve the public in a fair, honest, and open manner” — a vague standard. The law provides that, until each licensing board has promulgated a list of related convictions, all felonies may be related. Among its positive attributes, the law prohibits licensing boards from considering a small number of misdemeanors and explicitly requires agencies to provide an applicant with a copy of his or her record. Licensing agencies must also consider an applicant’s certificate of employability, though this does not prevent denial.

Michigan Overall Grade: Minimal

Mich. Comp. Laws §§ 338.41 to .47

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances.	Expand blanket ban prohibition to go beyond the “good moral character” assessment and apply to all.
EEOC Factors	Unsatisfactory	Includes occupation-related standard within assessment of lack of “good moral character.”	- Expand occupation-relatedness requirement to all.²³ - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Satisfactory	- Prohibits consideration of arrests. - Prohibits consideration of some misdemeanors.	Prohibit consideration of certain record information (e.g., dismissed convictions, older offenses, other lesser offenses).
Rehabilitation	Unsatisfactory	Requires licensing agency to consider certificate of employability if an applicant is denied, which is issued for reasons that mirror rehabilitation evidence.	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Minnesota²⁴

Minnesota is the only state to fall into the “Most Effective” category overall. In addition to clearly incorporating the EEOC factors and prohibiting the consideration of several types of records, the law has clear standards on considering rehabilitation. Licensing boards are prohibited from denying a license if the applicant has been released from incarceration for at least one year and can show “sufficient rehabilitation.” The statute lists specific factors that licensing boards must consider when making this determination. The law is not without weaknesses, however. For example, several occupations—including EMTs, school bus drivers, educators, DHS-regulated positions, and various medical professions—are exempted.

Minnesota Overall Grade: Most Effective

Minn. Stat. Ann. § 364

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	- Prohibits blanket bans based on convictions, with no offense-based exemptions. - Clear statement that overarching statute is the controlling law.	Remove exception to coverage for certain occupations.
EEOC Factors	Most Effective	- Requires consideration of occupation-relatedness. - Prohibits denial based on unrelated conviction. - Requires consideration of the time elapsed since conviction.	
Limit Scope of Record Inquiry	Most Effective	- Prohibits consideration of arrests. - Prohibits consideration of some misdemeanors. - Prohibits consideration of expunged and annulled convictions.	Prohibit consideration of older offenses.
Rehabilitation	Most Effective	- Explicitly prohibits license denial if applicant demonstrates rehabilitation. - Lists specific rehabilitation factors.	

Mississippi

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Mississippi Overall Grade: N/A

Missouri

Missouri’s overarching licensing law is codified in two statutes. Although the law clearly prohibits records from serving as the sole basis for denial of a license and does not list any exceptions to that protection, the purpose of the law is undermined by allowing exceptions “otherwise specifically provided by law.” In addition, evaluation of an applicant’s record is framed within a vague “good moral character” analysis and, while licensing boards must consider occupation-relatedness, they are permitted to find an applicant lacks good moral character based on an unrelated conviction.

Missouri Overall Grade: Minimal
Mo. Rev. Stat. §§ 324.029 & 314.200

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances.	- Remove broad exception that allows other laws to supersede. - Clarify Section 324.029 by also listing misdemeanors that cannot be the sole basis for denial (as currently just lists felonies). - Strengthen Section 314.200 by stating that a conviction cannot be the sole basis for demonstrating “good moral character,” as opposed to specifying certain conditions.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances. - Requires consideration of time elapsed in some instances.	- Expand consideration of occupation-relatedness to all. - Add explicit prohibition on denying license based on unrelated conviction. - Expand consideration of the time elapsed factor to all.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	Agency may consider the conduct of the applicant since the conviction and other character evidence, which could be considered as two vague rehabilitation factors.	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Montana

While Montana’s law includes one of the clearest blanket ban prohibitions, it is severely undermined. A licensing board may deny a license if it finds both that a conviction “relates to the public health, welfare, and safety as it applies to the occupation” and “that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust.” The statute also allows for broad discretion when determining whether an applicant has been rehabilitated. While completion of parole or probation supervision “is evidence of rehabilitation,” this is weakened by allowing the facts that led to the correctional supervision to be considered.

Montana Overall Grade: Minimal

Mont. Code Ann. §§ 37-1-203 to -205

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances.	Remove overbroad “relates to . . . health, welfare, and safety” language.
EEOC Factors	Minimal	Includes a vague occupation-related standard (i.e., offense “relates to . . . health, welfare, and safety”).	- Add explicit prohibition on denying license based on unrelated conviction. - Strengthen occupation-relatedness standard. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Needs Improvement	- Includes rehabilitation component. - Lists specific rehabilitation factors.	Add explicit prohibition on denying license if applicant is rehabilitated.

Nebraska

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Nebraska Overall Grade: N/A

Nevada

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Nevada Overall Grade: N/A

New Hampshire

One of the strongest features of New Hampshire's law is that it does not include explicit exceptions to the blanket ban prohibition. The EEOC factors, however, could be stronger. Occupation-relatedness must be considered, but a disqualifying conviction may be unrelated. Similarly, licensing boards are permitted, not required, to consider the time elapsed since conviction and rehabilitation. However, Section 651:5 helps reduce unnecessary barriers by prohibiting licensing board inquiries into annulled offenses.

New Hampshire Overall Grade: Satisfactory

N.H. Rev. Stat. §§ 332-G:10 & 651:5

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Most Effective	Prohibits blanket bans based on convictions, with no offense-based exemptions.	
EEOC Factors	Satisfactory	- Requires consideration of occupation-relatedness. - Includes time elapsed component.	- Add explicit prohibition on denying license based on unrelated conviction. - Add requirement, not just permission, to consider the time elapsed since conviction.
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of annulled convictions.	Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component.	- Require consideration of the applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

New Jersey²⁵

One of the overall “Satisfactory” laws, New Jersey’s statute removes barriers by incorporating strong EEOC standards. It requires licensing boards to consider eight factors to determine occupation-relatedness and, when denying a license, to explain in writing how it applied the factors. The law lists several rehabilitation factors as guidance. Among the weaknesses of the law are various occupation-based exceptions.

New Jersey Overall Grade: Satisfactory

N.J. Stat. Ann. §§ 2A:168A-2 to -9

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	Prohibits blanket bans based on convictions, with no offense-based exemptions.	Remove exception to coverage for certain occupations.
EEOC Factors	Most Effective	- Requires consideration of occupation-relatedness.²⁶ - Requires consideration of the time elapsed since conviction.	
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of expunged or pardoned convictions.	Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
Rehabilitation	Needs Improvement	- Includes rehabilitation component. - Lists specific rehabilitation factors.	Add explicit prohibition on denying license if applicant is rehabilitated.²⁷

New Mexico

New Mexico’s blanket ban prohibition is clearly stated but severely undercut by its exceptions. For example, if the applicant “has not been sufficiently rehabilitated,” a board may deny a license based on a conviction for an offense involving moral turpitude that does not directly relate to the occupation. Offenses of “moral turpitude” is a vague standard that provides agencies arguably unfettered discretion. On the plus side, the law limits consideration of some misdemeanors. Although the statute does not prohibit denial if an applicant can demonstrate rehabilitation, an applicant is presumed rehabilitated if certain conditions are satisfied.

New Mexico Overall Grade: Needs Improvement

N.M. Stat. Ann. §§ 28-2-3 to -4

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Needs Improvement	Prohibits blanket bans in some instances.	- Expand blanket ban prohibition to all. - Remove exceptions to blanket ban prohibition.
EEOC Factors	Minimal	Requires consideration of occupation-relatedness in some instances.	- Expand occupation-relatedness requirement to all. - Remove exception for “moral turpitude” convictions, which currently need not relate. - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Satisfactory	- Prohibits consideration of arrests. - Prohibits consideration of some misdemeanors.	Prohibit consideration of certain record information (e.g., other lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Needs Improvement	- Includes rehabilitation component. - Lists specific rehabilitation factors.	Add explicit prohibition on denying license if applicant is rehabilitated.

New York²⁸

Several New York statutes restrict the consideration of arrest and conviction records in occupational licensing decisions. On the face of the statute, the blanket ban prohibition appears strong. However, the prohibition is undermined by mandatory bars imposed for particular licenses or occupations.²⁹ Removing these mandatory bars requires a “certificate of relief from disabilities,” which creates a presumption that the applicant has been rehabilitated; boards must consider rehabilitation. Unfortunately, the law allows boards to deny a license based on a conviction if issuing the license would be an “unreasonable risk” to property or public safety. On September 21, 2015, the governor announced upcoming amendments to ten state licensing and employment regulations designed to reduce barriers for people with convictions. When this report was published, however, additional details remained unavailable.³⁰

New York Overall Grade: Needs Improvement

N.Y. Correct. Law §§ 702, 752 to 755; N.Y. Exec. Law § 296

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances (very limited because superseded by mandatory bars).	- Expand blanket ban prohibition to all. - Ensure law supersedes mandatory bars in individual laws and remove the condition of obtaining certificate of relief from disabilities to remove bars.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances. - Requires consideration of the time elapsed in some instances.	- Expand occupation-relatedness requirement to all. - Add explicit prohibition on denying license based on unrelated conviction. - Expand requirement to consider the time elapsed since conviction to all.
Limit Scope of Record Inquiry	Satisfactory	- Prohibits consideration of arrests. - Prohibits consideration of sealed convictions.	Prohibit consideration of certain record information (e.g., lesser offenses, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component.	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

North Carolina

North Carolina law prohibits boards from automatically denying a license based on the applicant's convictions but is undermined by allowing individual licensing laws to supersede that protection. Among the law's strengths, a board must consider the EEOC factors. In addition, section 15A 173.2 allows for people with (limited) convictions to apply for a "certificate of relief," designed to ease certain collateral consequences. Unfortunately, obtaining a certificate does not prohibit denial of a license.

North Carolina Overall Grade: Minimal

N.C. Gen. Stat. Ann. §§ 93B-8.1 & 15A-173.2

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances (limited by allowing other laws to supersede).	- Expand blanket ban prohibition to all. - Ensure law supersedes mandatory bars in individual laws.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances. - Requires consideration of time elapsed in some instances.	- Expand occupation-relatedness requirement to all. - Add explicit prohibition on denying license based on unrelated conviction. - Expand time-elapsed requirement to all.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component.	- Require consideration of the applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

North Dakota

North Dakota licensing boards may reject an applicant if it determines that his/her offense has a “direct bearing” upon the occupation or if the board determines that the applicant “has not been sufficiently rehabilitated.” A board’s assessment of the second of those standards — sufficient rehabilitation — requires consideration of occupation-relatedness of the offense and other evidence of rehabilitation. In addition, the law provides a bright-line rule for what establishes “prima facie evidence of sufficient rehabilitation”: expiration of five years without a subsequent conviction after being released from correctional supervision.

North Dakota Overall Grade: Needs Improvement

N.D. Cent. Code §12.1-33-02.1

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Most Effective	Prohibits blanket bans based on convictions, with no offense-based exceptions listed in the law.	Explicitly clarify that this statute is the controlling law.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness under both “direct bearing” standard (vague requirement) and “sufficient rehabilitation” standard (clearer requirement). - Requires consideration of the time elapsed when evaluating “sufficient rehabilitation” (but it need not be considered if “direct bearing” standard is used).	- Add explicit prohibition on denying license based on unrelated conviction. - Remove vague standard as alternative to occupation-relatedness; “direct bearing” standard could be clearer. - Expand time-elapsed requirement to all.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Needs Improvement	- Includes rehabilitation component. - Lists specific rehabilitation factors, including prima facie evidence of rehabilitation.	Add explicit prohibition on denying license if applicant is rehabilitated.

Ohio³¹

Ohio's restrictions on the consideration of records mostly hinge upon whether applicants have obtained either a certificate of qualification for employment (CQE) or a certificate of achievement and employability (CAE). Both certificates lift certain automatic bans, but a CQE is unavailable to applicants for certain professions who have committed specified offenses. A CAE does not include these exceptions, and, unlike a CQE, it creates a rebuttable presumption that the applicant's criminal convictions are insufficient evidence of his or her unfitness for the license. Apart from the certificates, Ohio law merely prohibits consideration of a limited set of expunged convictions and allows consideration of sealed convictions only if they relate to the occupation.

Ohio Overall Grade: Minimal

Ohio Rev. Code Ann. §§ 2953.25 to .33, 2961.23

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances (but only if applicant has obtained certificate).	Expand blanket ban prohibition to all—not just to certificate-holders.
EEOC Factors	Unsatisfactory		- Require consideration of occupation-relatedness. - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Needs Improvement	Limits consideration of some expunged and sealed records.	Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant's rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Oklahoma

Two Oklahoma statutes provide limited relief from licensure barriers for applicants with records. One law prohibits licensing agencies from considering sealed convictions or arrests. The other establishes procedures for evaluating applicants who have been convicted of offenses caused by “substance abuse or mental illness,” mandating consideration of the time elapsed since conviction and the applicant’s recovery status.

Oklahoma Overall Grade: Minimal

Okla. Stat. Ann tit. 22, § 19; Okla. Stat. Ann. tit. 59, § 4000

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions via one overarching law.
EEOC Factors	Minimal	• Requires consideration of time elapsed in very few instances.	• Require consideration of occupation-relatedness. • Add explicit prohibition on denying license based on unrelated conviction. • Require consideration of time elapsed since conviction for all.
Limit Scope of Record Inquiry	Needs Improvement	• Prohibits consideration of sealed information (e.g., arrests, convictions).	• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant’s rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Oregon

Although Oregon law prohibits the denial of a license based solely on a record, this blanket ban prohibition does not extend to teachers. In addition, instead of clearly requiring that any disqualifying conviction be occupation-related, the law provides for consideration of the relationship between the facts of the offense and “the specific occupational or professional standards in determining the fitness of the person.”

Oregon Overall Grade: Minimal
Or. Rev. Stat. § 670.280

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Satisfactory	Prohibits blanket bans based on convictions, with no offense-based exemptions.	Remove exception to coverage for certain occupations.
EEOC Factors	Minimal	Requires consideration of occupation-relatedness in some instances (but this requirement is undermined by vague language).	- Remove vague occupation-relatedness standard. - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Pennsylvania³²

Perhaps the strongest aspect of Pennsylvania’s law is its prohibition against considering several types of record information. Nevertheless, the law’s poor construction produces unclear standards that licensing boards interpret inconsistently.³³ While one subsection limits consideration to convictions that “relate to the applicant’s suitability for the license,” another subsection undermines this already vague occupation-relatedness requirement by permitting denials based on any felony conviction, regardless of how it relates to the occupation.

Pennsylvania Overall Grade: Minimal

18 Pa. Cons. Stat. Ann. § 9214

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in at least one section (but severely undermined).	- Expand blanket ban prohibition to all. - Remove felony blanket ban.
EEOC Factors	Unsatisfactory	Requires consideration of occupation-relatedness in some instances (but only for misdemeanors; not required for felonies).	- Remove vague occupation-relatedness standard. - Remove exception to occupation-relatedness requirement for felonies. - Add explicit prohibition on denying license based on unrelated conviction. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Most Effective	- Prohibits consideration of arrests. - Prohibits consideration of annulled, expunged, or pardoned convictions. - Prohibits consideration of some non-felonies.	Prohibit consideration of older offenses and other lesser offenses.
Rehabilitation	Unsatisfactory		- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Rhode Island³⁴

Rhode Island’s “certificate of recovery and re-entry” is intended to relieve some collateral consequences. Although the certificate must be “one determining factor” of rehabilitation, the law explicitly permits a licensing agency to use its “discretionary power” to deny a license based on a conviction, despite a certificate. And while applicants need not disclose expunged offenses, and records custodians should not disclose them to most boards, no statute expressly prohibits licensing boards from considering expunged records if they are improperly disclosed.³⁵

Rhode Island Overall Grade: Unsatisfactory

R.I. Gen. Laws §§ 13-8.2-1 & -6

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions via one overarching law.
EEOC Factors	Unsatisfactory		• Add explicit prohibition on denying license based on unrelated conviction. • Require consideration of occupation-relatedness. • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Minimal	• Allows a license applicant to state “no convictions” if convictions have been expunged.	• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Needs Improvement	• Includes rehabilitation component and factors (within limited confines of certificate).	• Require consideration of the applicant’s rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors applicable to all applicants.

South Carolina³⁶

South Carolina provides a clear standard that a person may not be refused the ability to practice an occupation solely because of a conviction record. However, the overall effectiveness of the law is undermined by a vague standard that permits an agency to deny a license based on the applicant being “unfit or unsuited” to engage in the profession. Various expungement processes may prevent licensing boards from learning of certain records, but the law fails to explicitly prohibit licensing boards from considering expunged records if they are discovered.³⁷

South Carolina Overall Grade: Unsatisfactory

S.C. Code Ann. § 40-1-140

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances.	- Remove vague “unfit or unsuited” standard, which undermines blanket ban prohibition. - Explicitly clarify that this statute is the controlling law.
EEOC Factors	Minimal	Requires consideration of occupation-relatedness in some instances (although is undermined by an “unfit or unsuited” alternative standard).	- Remove vague standard as alternative to occupation-relatedness. - Expand occupation-relatedness requirement to all. - Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

South Dakota

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

South Dakota Overall Grade: N/A

Tennessee

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Tennessee Overall Grade: N/A

Texas³⁸

The licensing law lists the types of disqualifying offenses for licensure. Convictions related to the occupation constitute one category, but boards may also consider unrelated convictions that occurred within five years as well as several enumerated offenses, regardless of when they occurred. The law lacks an explicit prohibition on blanket bans but requires a licensing authority to issue a license if an applicant has not been convicted of certain disqualifying offenses. That limitation, however, does not apply to law enforcement, public health, education, safety, and financial services licenses. On the plus side, the factors determining occupation-relatedness are one of the clearest articulations among the 40 laws. The law imposes unnecessary barriers by requiring applicants with records to “furnish proof” of steady employment. Texas law allows for expungement of both arrests not leading to conviction and pardoned convictions, prohibiting the “use” of expunged records “for any purpose.”³⁹

Texas Overall Grade: Minimal

Tex. Occ. Code Ann. §§ 53.021 to .052; Tex. Code Crim. Proc. art. 55.01 to .03

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		Add blanket ban prohibition to all professions via one overarching law.
EEOC Factors	Minimal	- Requires consideration of occupation-relatedness in some instances and provides a clear description of standard. - Requires consideration of the time elapsed in some instances.	- Expand occupation-relatedness requirement to all. - Add explicit prohibition on denying license based on unrelated conviction. - Clarify occupation-relatedness standard for offenses under 5 yrs. old. - Expand time-elapsed requirement to all.
Limit Scope of Record Inquiry	Satisfactory	- Prohibits consideration of some limited misdemeanors. - Prohibits consideration of expunged convictions.	Prohibit consideration of certain record information (e.g., arrests, other lesser offenses, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component.	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Utah⁴⁰

Utah's law permits denial of a license if the applicant has engaged in "unprofessional conduct," which includes convictions related to the occupation as well as moral turpitude offenses.⁴¹ Certain Utah regulations provide additional guidance to licensing boards; among other things, they permit, but do not require, consideration of the time elapsed since a conviction occurred.

Utah Overall Grade: Unsatisfactory

Utah Code Ann. §§ 58-1-401 to -501; Utah Admin. Code r. 156-1-302

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions via one overarching law.
EEOC Factors	Minimal	• Requires consideration of occupation-relatedness within confines of "unprofessional conduct." • Includes time-elapsed component, which may be considered.	• Remove vague standard of "unprofessional conduct." • Remove exception to occupation-relatedness requirement for certain offenses. • Add explicit prohibition on denying license based on unrelated conviction. • Mandate consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant's rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Vermont

Similar to Utah, Vermont allows licensing boards to consider convictions when determining whether an applicant has engaged in “unprofessional conduct.” A conviction constitutes unprofessional conduct if it relates to the occupation or is “a felony, whether or not related to the practice of the profession.” This law applies to over forty occupations listed in Vt. Stat. Ann. tit. 3, § 122.

Vermont Overall Grade: Unsatisfactory

Vt. Stat. Ann. tit. 3, § 129a

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Unsatisfactory		• Add blanket ban prohibition to all professions via one overarching law.
EEOC Factors	Unsatisfactory	• Requires consideration of occupation-relatedness within the confines of “unprofessional conduct” (except does not apply to felonies).	• Remove vague standard of “unprofessional conduct.” • Remove exception to occupation-relatedness requirement for felonies. • Add explicit prohibition on denying license based on unrelated conviction. • Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		• Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		• Require consideration of the applicant’s rehabilitation. • Add explicit prohibition on denying license if applicant is rehabilitated. • List specific rehabilitation factors.

Virginia

Virginia law provides restrictions on the consideration of records that are applicable to only those licensing boards within the purview of the Department of Professional and Occupational Regulation, which excludes many occupations (e.g., attorneys, public accountants, health). The law provides a clear standard that a person may not be refused the ability to practice an occupation solely because of a conviction record. However, the overall effectiveness of the law is undermined by a vague standard that permits an agency to deny a license based on the applicant being “unfit or unsuited” to engage in the profession. If a board assesses occupation-relatedness as opposed to general fitness or suitability, it must consider nine factors, including the time elapsed since conviction and evidence of rehabilitation.

Virginia Overall Grade: Minimal

Va. Code Ann. § 54.1-204

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans in some instances.	- Remove vague “unfit or unsuited” standard, which undermines blanket ban prohibition. - Expand blanket ban prohibition to all.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness in some instances (although is undermined by an “unfit or unsuited” alternative standard). - Requires consideration of the time elapsed since conviction in some instances (although is undermined by an “unfit or unsuited” alternative standard).⁴²	- Remove vague standard as alternative to occupation-relatedness. - Add explicit prohibition on denying license based on unrelated conviction. - Expand requirement to consider the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Minimal	Includes rehabilitation component (although is undermined by an “unfit or unsuited” alternative standard).⁴³	- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Washington⁴⁴

The law provides a clear standard that a person may not be disqualified from practicing an occupation solely because of a felony record. Oddly this alleviation of a licensure barrier does not appear to apply to misdemeanors.⁴⁵ Washington is one of only three states that generally limits the consideration of older convictions, allowing denial only if “the time elapsed since the conviction is less than ten years.” However, the law exempts education, health, and law enforcement professions. Furthermore, the law does not apply if “there is another provision of law to the contrary,” which many agencies interpret as meaning the law does not supersede individual licensing statutes containing broader background check requirements.⁴⁶

Washington Overall Grade: Minimal

Wash. Rev. Code Ann. §§ 9.96A.010 to .060

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	Prohibits blanket bans based on felonies (but with broad exemptions allowed for superseding laws).	- Expand blanket ban prohibition to all. - Remove exception to coverage.
EEOC Factors	Needs Improvement	- Requires consideration of occupation-relatedness for felonies (but with broad exemptions based on superseding laws). - Includes some time-elapsed analysis by restricting consideration of felonies to those within 10 yrs.	- Remove exception to occupation-relatedness requirement. - Add explicit prohibition on denying license based on unrelated conviction. - Expand requirement to consider the time elapsed since conviction.
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of felonies more than 10 yrs. old (but with broad exemptions based on superseding laws).	- Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions). - Ensure prohibition on considering older offenses is controlling law.
Rehabilitation	Unsatisfactory		- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

West Virginia

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

West Virginia Overall Grade: N/A

Wisconsin⁴⁷

Wisconsin’s relevant law is an anti-discrimination framework—an arrest or conviction record is one of the enumerated categories. Licensing agencies are permitted to reject an applicant if an offense’s circumstances “substantially relate to the circumstances” of the “licensed activity.” Unfortunately the law does not require consideration of an applicant’s rehabilitation or time elapsed since conviction, and— even worse— courts have held that an applicant’s rehabilitation is irrelevant to the statute’s occupation-relatedness test.⁴⁸

Wisconsin Overall Grade: Minimal

Wis. Stat. Ann. §§ 111.321 & .335

CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Needs Improvement	Prohibits blanket bans in some instances (but with broad occupation- and offense-based exemptions).	- Expand blanket ban prohibition to all. - Remove exception to coverage.
EEOC Factors	Minimal	- Requires consideration of occupation-relatedness in most instances. - Prohibits denial based on unrelated conviction in some instances.	- Remove exceptions to occupation-relatedness requirement. - Add requirement to consider the time elapsed since conviction.
Limit Scope of Record Inquiry	Needs Improvement	Prohibits consideration of arrests.	Prohibit consideration of certain record information (e.g., lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Unsatisfactory		- Require consideration of the applicant’s rehabilitation. - Add explicit prohibition on denying license if applicant is rehabilitated. - List specific rehabilitation factors.

Wyoming

No overarching law(s) limiting licensing agencies’ consideration of applicants’ records.

Wyoming Overall Grade: N/A

3 Appendix

Grading Methodology

We analyzed the 40 laws on four criteria commonly included in the broadly applicable occupational licensing laws, which are intended to reduce unwarranted conviction history disqualifications. The four criteria are as follows:

1. Does the law prohibit the blanket rejection of applicants with conviction histories?
2. Does the law incorporate “EEOC factors,” which includes consideration of whether a conviction is occupation-related and how much time has passed since the conviction?⁴⁹
3. Does the law limit the scope of record inquiry or the consideration of certain types of record information?
4. Does the law require consideration of rehabilitation?

Our assessment of the 40 laws is based on statutory interpretation. With limited ability to interview practitioners who were familiar with these licensing laws, we did not undertake a comprehensive analysis of the on-the-ground application of the laws. Nonetheless, our assessment reflects our recommendation for clear language in the letter of the law.

For each of the four criteria, we grouped the rankings into five tiers, from best to worst: (1) Most Effective, (2) Satisfactory, (3) Needs Improvement, (4) Minimal, and (5) Unsatisfactory. We assigned point values to the criteria based on our assessment of the importance of each criterion’s alleviation of licensure barriers for applicants with records.

We deemed three criteria to be of equal importance and valued them each at 28 points: (1) blanket ban prohibition, (2) EEOC factors, and (3) limiting scope of record inquiry. Although these protections differ with regard to their breadth and enforceability, when maximized, each has the potential to expand licensing opportunities for people with records. The blanket ban prohibition has symbolic value by encouraging applicants with records, although it is often severely undercut by broad exceptions. Limiting the scope of record inquiry may benefit a more limited set of applicants, but it provides a bright-line, enforceable rule by restricting the consideration of specific types of records. Finally, the EEOC factors criterion, which encompasses scores for the occupation-relatedness and time-elapsing components, can provide clear standards for licensing agencies.

As for the fourth criterion, the highest rehabilitation grade—16 points—mirrors the highest grade for the occupation-relatedness component of the EEOC factors. Both rehabilitation and occupation-relatedness require an individualized assessment and may prohibit license denial in certain circumstances. In contrast, the top score for the time-elapsing component for the EEOC factors is lower at 12 points. That top score is reduced because licensing boards are not prohibited from denying licenses based on the time elapsed, but simply must consider it as one factor. Likewise, statutes that require consideration of occupation-relatedness but do not prohibit denial based on unrelated convictions, receive only 12 points for the occupation-relatedness component.

The overall grades are based on the cumulative scores for each of the four criteria, and are grouped into five quintiles:

- **MOST EFFECTIVE** = 81-100 points
- **SATISFACTORY** = 61-80 points
- **NEEDS IMPROVEMENT** = 41-60 points
- **MINIMAL** = 21-40 points
- **UNSATISFACTORY** = 1-20 points

Below are explanations for how each criterion was scored. In general, we lowered scores by 25 percent for each missing component or weakening factor. The point assessments are mutually exclusive.

1. Does the law prohibit the blanket rejection of applicants with conviction histories?		
GRADE	EXPLANATION OF GRADE	POINTS
Most Effective	The law prohibits denial of a license based solely on an applicant's record, with none of the exceptions listed below.	28
Satisfactory	The law includes one of the following weakening exceptions: • Prohibition does not apply to certain occupations. • Prohibition does not apply to certain types of offenses (e.g., felonies, crimes of moral turpitude, recent convictions, etc.).	21
Needs Improvement	The law includes two of the exceptions listed above.	14
Minimal	The law is so severely undermined by an exception as to render it merely symbolic.	7
Unsatisfactory	The law does not explicitly prohibit denial of a license based solely on an applicant's record.	0

2. Does the law require consideration of EEOC factors?

The total score for the EEOC factors criterion equals the sum of the scores for the occupation-relatedness and time-elapsd components described below, with a maximum score of 28 points.

GRADE	POINTS
Most Effective	28
Satisfactory	21-27
Needs Improvement	14-20
Minimal	7-13
Unsatisfactory	0-6

Occupation-Relatedness

EXPLANATION OF POINTS	POINTS
The law clearly prohibits denial of a license based on an unrelated criminal record, with no offense- or occupation-based exceptions listed in the law.	16
The law includes an occupation-relatedness requirement, but includes one of the following weakening elements: • An offense- or occupation-based exception (e.g., felonies, crimes of moral turpitude, recent offenses, drug offenses, certain occupations); or • Either of the following subpar standards: • Vague or overbroad language: Licensing boards may reject applicants based on vague or very overbroad criteria, such as the applicant's "likelihood to serve the public in a fair, honest, and open manner" or "suitability" for licensure; or • No explicit ban on unrelated records: The law requires consideration of occupation-relatedness but does not explicitly prohibit denial of a license based on an unrelated record.	12
The law has two of the weakening elements described above.	8
The law has three of the weakening elements described above.	4
The law does not include an occupation-relatedness component.	0

TIME-ELAPSED

EXPLANATION OF POINTS	POINTS
The law requires consideration of the time elapsed since conviction.	12
The law explicitly permits, but does not require, consideration of the time elapsed since conviction or requires consideration of time elapsed in some instances.	9
The law does not include a time-elapsd component.	0

3. Does the law limit the scope of record inquiry or the consideration of certain types of record information?

GRADE	EXPLANATION OF GRADE	POINTS
Most Effective	The law explicitly prohibits consideration of at least three of the following types of records: • Arrests that did not result in conviction. • Records that have been expunged, sealed, pardoned, dismissed, erased, or granted a similar post-conviction remedy. • Lesser offenses (e.g., misdemeanors, summary offenses). • Older convictions (e.g., occurred more than ten years prior to application for licensure).	28
Satisfactory	The law explicitly prohibits consideration of two of the types of records listed above.	21
Needs Improvement	The law explicitly prohibits consideration of one of the types of records listed above.	14
Minimal	The law provides some type of limitation to alleviate a record barrier (e.g., minimizing consideration of a dismissed record).	7
Unsatisfactory	The law does not explicitly prohibit or limit consideration of any of the types of records listed above.	0

4. Does the law require consideration of rehabilitation?

GRADE	EXPLANATION OF GRADE	POINTS
Most Effective	The law explicitly prohibits denial of a license based on a record if the applicant can demonstrate sufficient rehabilitation, and the law lists specific rehabilitation factors.	16
Satisfactory	The law explicitly prohibits denial of a license based on a record if the applicant can demonstrate sufficient rehabilitation, but it does not list specific rehabilitation factors.	12
Needs Improvement	The law explicitly requires or permits consideration of rehabilitation—but does not prohibit the denial of rehabilitated applicants—and it lists specific rehabilitation factors.	8
Minimal	The law explicitly requires or permits consideration of rehabilitation—but does not prohibit the denial of rehabilitated applicants—and it does not list specific rehabilitation factors.	4
Unsatisfactory	The law does not include a rehabilitation component.	0

Appendix Endnotes

¹ EEOC factors are derived from the U.S. Equal Employment Opportunity Commission's *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Apr. 25, 2012), at 11, 16, www.eeoc.gov/laws/guidance/arrest_conviction.cfm (hereinafter "EEOC Guidance").

² Telephone Interview with Meredith Desautels, Staff Att'y, Lawyers' Comm. for Civil Rights of the S.F. Bay Area (Dec. 22, 2015).

³ California Department of Consumer Affairs "oversees 40 entities that regulate and license over 3 million licensees in more than 100 business and 200 professional categories." Cal. Dept. of Consumer Affairs, 2014/15 Annual Report, at 2.

⁴ Cal. Labor Code § 432.7(a).

⁵ Telephone Interview with Christine Donner, Exec. Dir., Colo. Criminal Justice Reform Coal. (Jan. 7, 2016); Telephone Interview with Claire Levy, Exec. Dir., Colo. Ctr. On Law & Pol'y (Jan. 15, 2016).

⁶ Telephone Interview with David McGuire, Legis. Pol'y Dir., ACLU of Conn. (Feb. 5, 2016).

⁷ Telephone Interview with Ryan Tack-Hooper, Staff Att'y & Legis. Advoc., ACLU of Del. (Dec. 23, 2015).

⁸ The statute's requirement that licensing boards specifically identify substantially-related crimes is reasonably interpreted by some advocates as prohibiting denial based on other convictions. Telephone Interview with Ryan Tack-Hooper, Staff Att'y & Legis. Advoc., ACLU of Del. (Dec. 23, 2015). The language, however, does not *explicitly* forbid denial of licenses based on unlisted convictions.

⁹ *Id.*

¹⁰ See 78 Del. Laws 44 (2011) (amending waiver requirements).

¹¹ D.C. Mun. Regs. tit. 17, § 114.

¹² Telephone Interview with Jonathan Greenberg, Assistant Pub. Defender, Miami-Dade Pub. Defender's Office (Jan. 8, 2016).

¹³ See Fla. Stat. Ann. § 775.16 (applying to drug offenses).

¹⁴ Telephone Interview with Marissa Dodson, S. Reg. Advoc. Assoc., ACLU Campaign for Smart Just. (Nov. 18, 2015).

¹⁵ *Id.*

¹⁶ See Ga. Code Ann. § 42-8-62(a).

¹⁷ The statute does not expressly authorize licensing boards to reject applicants based on arrests not followed by conviction/sentencing, but it also does not explicitly prohibit such consideration. One Georgia advocate reports that boards are *mostly* not considering arrests. See Telephone Interview with Marissa Dodson, S. Reg. Advoc. Assoc., ACLU Campaign for Smart Just. (Nov. 18, 2015).

¹⁸ Telephone Interview with Beth Johnson, Dir. of Legal Programs, Cabrini Green Legal Aid (Nov. 13, 2015).

¹⁹ *Id.*

²⁰ Telephone Interview with Caryn Aslan, Ctr. for Urban Families (Dec. 22, 2015).

²¹ Telephone Interview with Pauline Quirion, Dir. of CORI & Re-entry Project, Greater Bos. Legal Servs. (Dec. 18, 2015).

²² Telephone Interview with Miriam Aukerman, W. Mich. Reg. Staff Att'y, ACLU of Mich. (Jan. 7, 2016).

²³ Any offense appearing on each licensing board's list is presumed to relate, and thus an individualized inquiry is not required.

²⁴ Telephone Interview with Andrea Palumbo, Criminal Record Att'y, Council on Crime & Just. (Nov. 2, 2015).

²⁵ Telephone Interview with Scott M. Welfel, Assistant Deputy Defender, N.J. Office of the Pub. Defender (Dec. 21, 2015).

²⁶ A separate statutory section applicable to many licensing boards allows the denial of a license for "any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board." N.J. Stat. Ann. § 45:1-21. Thus a vague alternative to occupation-relatedness may be applied by many licensing boards. See N.J. Stat. Ann. § 45:1-21 (listing the numerous boards and commissions to which N.J. Stat. Ann. § 45:1-21 applies).

²⁷ While N.J. Stat. Ann. § 2A:168A-2 requires licensing authorities to consider rehabilitation and lists specific factors, it does not prohibit denial of a license if those factors are satisfied. N.J. Stat. Ann. § 2A:168A-3 provides additional protections by prohibiting denial of a license based on a conviction if the applicant obtained a certificate. However, later amendments confused that protection by stating that certificates create only a rebuttable presumption of rehabilitation. See N.J. Stat. Ann. §§ 2A:168A-7 to -9; N.J. Law Revision Comm'n, Draft Tentative Report Relating to the Collateral Consequences of Conviction—Part I: Rehabilitated Convicted Offenders Act in N.J. Stat. Ann. §§ 2A:168A-1 to -16 (Jan. 5, 2015), www.lawrev.state.nj.us/Collateral%20Consequences/rcoadTR010515r.pdf (recognizing tension between the two statutory provisions and recommending revisions).

²⁸ Telephone Interview with Paul Keefe, Supervising Att'y, N.Y.C. Comm'n on Human Rights (Oct. 7, 2015).

²⁹ *Id.*

³⁰ Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces Executive Actions to Reduce Barriers for New Yorkers With Criminal Convictions (Sept. 21, 2015), www.governor.ny.gov/news/governor-cuomo-announces-executive-actions-reduce-barriers-new-yorkers-criminal-convictions.

³¹ Telephone Interview with Stephen JohnsonGrove, Deputy Dir., Ohio Just. & Pol'y Ctr. (Oct. 23, 2015).

³² Email Correspondence with Janet Ginzberg, Staff Att'y, Cmty. Legal Servs. of Phila. (Oct. 6, 2015).

³³ *Id.*

³⁴ Telephone Interview with Steven Brown, Exec. Dir., A.C.L.U. of R.I. (Feb. 2, 2016).

³⁵ See R.I. Gen. Laws § 12-1.3-4.

³⁶ Telephone Interview with Ashley Thomas, Staff Att'y, Appleseed Legal Justice Ctr. (Oct. 30, 2015).

³⁷ *Id.*

³⁸ Telephone Interview with Douglas Smith, Policy Analyst, Tex. Criminal Justice Coal. (Nov. 4, 2015).

³⁹ Tex. Code Crim. Proc. Art. 55.01 to 55.03.

⁴⁰ Telephone Interview with Ray Walker, Regulatory Compliance Manager, Utah Div. of Occupational & Prof'l Licensing (Nov. 17, 2015).

⁴¹ *Id.*

⁴² However, time elapsed need not be considered if a board determines that the applicant is generally “unfit or unsuited” for the occupation. *See* Va. Code Ann. § 54.1-204(A).

⁴³ Rehabilitation need not be considered if a board determines that the applicant is generally “unfit or unsuited” for the occupation. *See* Va. Code Ann. § 54.1-204(A).

⁴⁴ Telephone Interview with Merf Ehman, Staff Att’y, Columbia Legal Servs. (Nov. 19, 2015).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Email Correspondence with Sheila X. Sullivan, Road to Opportunity Project Dir., Legal Action of Wis. (Mar. 2016).

⁴⁸ *Id.*; *see also Collins v. Labor & Indus. Review Comm’n*, 498 N.W.2d 912 (Wis. Ct. App. 1992).

⁴⁹ EEOC Guidance, *supra* note 1.



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