

# Colorado

## Licensing & Other Barriers to Growing Occupations That Unfairly Exclude People with Records

Nearly one in three Colorado adults, disproportionately people of color, has an arrest or conviction record that may prevent them from working in a variety of occupations regulated by the state.<sup>1</sup> Colorado requires a license or certification for **some of the largest and fastest-growing professions**, such as healthcare and education. Colorado’s licensing laws typically require background checks and often grant boards and agencies **broad discretion to reject applicants based on almost any felony or misdemeanor record**—an unfair result that undermines economic health, government efficiency, community wellbeing, and racial equity.

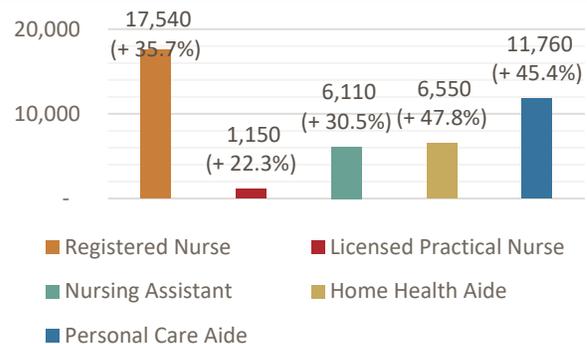
Three major industries—healthcare, K-12 education, and childcare—stand out as including large, growing occupations, for which Colorado law requires a criminal background check. The occupations discussed below are, collectively, growing at a much higher-than-average rate of approximately 30% per decade and already account for approximately 7.5% of annual job openings in Colorado.<sup>2</sup>

### Barriers to Rapidly Growing Healthcare Professions

The healthcare field includes some of the fastest-growing occupations in Colorado, measured by both the number of new jobs and percent growth.

While employers cite difficulties in filling their many healthcare job openings, Colorado background check restrictions often block qualified workers with records from filling those vacancies. The standards used to evaluate a person’s record remain inadequately tailored to the goals of advancing community safety, economic growth, government efficiency, and racial equity.

Rapid Growth in CO Licensed Healthcare Occupations, 2016–2026



Source: U.S. Dep’t of Labor, Bureau of Labor Stats., Employment Projections—2016-2026, <https://data.bls.gov/projections/occupationProj>.

<b>Legend:</b>	✔ Enhances equity	⚠ Potential for bias	✘ Source of unfairness
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Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy
<b>Registered &amp; Licensed Practical Nurses<sup>3</sup></b> (Bd. of Nursing)	⚠ All misdemeanors and felonies discretionary.	✘ “Nolo contendere” pleas and deferred dispositions may be considered. <sup>4</sup>	✔ Must consider time since offense, nature of offense, and relatedness

<b>Certified Nurse Aides<sup>8</sup></b> (Bd. of Nursing)	<ul style="list-style-type: none"> <li>▲ All felonies discretionary.</li> </ul>	<ul style="list-style-type: none"> <li>▲ May not consider arrests not resulting in conviction but may consider the underlying conduct.<sup>5</sup></li> <li>✔ May not consider sealed records or expunged or pardoned offenses.<sup>6</sup></li> </ul>	of offense to occupation, among other factors. <sup>7</sup>
<b>Home Health Aides &amp; Personal Care Aides<sup>9</sup></b> (Dep't of Public Health & Environment)	<ul style="list-style-type: none"> <li>▲ All misdemeanors and felonies discretionary.</li> </ul>	<ul style="list-style-type: none"> <li>✘ No prohibition against considering sealed records,<sup>10</sup> arrests not resulting in conviction, or "nolo contendere" pleas.</li> <li>✔ Applicant need not report expunged juvenile convictions.<sup>11</sup></li> </ul>	<ul style="list-style-type: none"> <li>✔ Regulations require employers at <i>some</i> facility types to consider time since offense, nature of offense, and relatedness of offense to occupation.<sup>12</sup></li> </ul>

## Barriers to Careers in K-12 Education and Childcare

Nearly 100,000 Coloradans are employed in licensed K-12 education jobs or as teaching assistants or childcare providers, both of which require employer background checks. Over 12,000 job openings in those fields emerge each year, and that number continues to increase at an above-average pace. Despite the growing need for qualified applicants, Colorado law unnecessarily prevents many people with records from obtaining the license or other clearance that would enable them to fill vacancies in education and childcare.

### Teaching Assistants (TAs): Vague Standards Enforced by Employers

Colorado does not certify TAs, but the law sets minimum qualifications that school districts must verify during hiring, including that the TA is "of good character." That vague standard may lead to the unfair, inconsistent exclusion of qualified individuals with old or unrelated records who apply to fill hundreds of TA job openings each year.<sup>13</sup>

Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy
<b>K-12 Teachers<sup>14</sup></b> (Dep't of Education)	<ul style="list-style-type: none"> <li>✘ Mandatory, permanent disqualification for certain felonies.</li> <li>✘ Mandatory, time-limited disqualification for drug and domestic violence felonies.</li> <li>▲ All other felonies and misdemeanors discretionary.</li> </ul>	<ul style="list-style-type: none"> <li>▲ "Nolo contendere" pleas and deferred dispositions are considered.<sup>15</sup></li> <li>▲ May not consider arrests not resulting in conviction, but may consider the underlying conduct.<sup>16</sup></li> <li>✔ May not consider sealed records or expunged or pardoned offenses.<sup>17</sup></li> </ul>	<ul style="list-style-type: none"> <li>✔ For discretionary offenses, must consider time since offense, nature of offense, and relatedness of offense to occupation, among other factors.<sup>18</sup></li> </ul>
<b>Childcare Workers<sup>19</sup></b> (Dep't of Human Servs., Div. of Early Care & Learning)	<ul style="list-style-type: none"> <li>✘ Mandatory, permanent disqualification for certain felonies and misdemeanors.</li> <li>✘ Mandatory, time-limited disqualification for drug, assault, or battery felonies or "pattern" of misdemeanors.</li> <li>▲ All other felonies and misdemeanors discretionary.</li> </ul>	<ul style="list-style-type: none"> <li>✘ "Nolo contendere" pleas and deferred dispositions are considered.<sup>20</sup></li> <li>✘ No prohibition against considering sealed records<sup>21</sup> or arrests not resulting in conviction.</li> <li>✔ Applicant need not report expunged juvenile convictions.<sup>22</sup></li> </ul>	<ul style="list-style-type: none"> <li>✘ No express requirement to consider time since offense, nature of offense, and relatedness of offense to occupation.</li> </ul>

## Order of Collateral Relief

Individuals may file a fairly complicated application for an “order of collateral relief” from a specific collateral consequence—including barriers to an occupational license. The sentencing court has **broad discretion** to grant such orders when “in the public’s interest,” but the court may first require a **burdensome hearing**, and it remains unclear how often the orders are issued. Moreover, **various convictions and licensing agencies are excluded**.<sup>23</sup>

## Private Security Guards Licensed Locally

Colorado law leaves private security guard licensing to localities and fails to clearly mandate fair background check requirements. Denver imposes **blanket bans** against anyone convicted (or incarcerated) within five years of any felony or many misdemeanors and municipal violations. An applicant’s “character and reputation” must not “show a pattern of conduct or personal history that does not demonstrate honesty, fairness, and respect for the rights of others or for the law”—a **vague standard**.<sup>24</sup>

# Recommended Fair Chance Licensing Reforms for Colorado

*Impose common-sense limitations on the unchecked discretion of boards and agencies to deny a license or certification based on virtually any criminal record.*

- 1** *Limit the scope of the record inquiry because unlimited and unguided discretion leads to inconsistent and discriminatory decisions, often based on race and national origin.*
  - Arrests alone are not proof of misconduct: Prohibit consideration of arrests that do not result in conviction or result in minor convictions (e.g., all or most misdemeanors).
  - Forever is too long: Set a look-back limit to prevent denials based on old, irrelevant convictions.
  - Vague language leads to discrimination: Remove ambiguous standards, including “good moral character” and “crimes of gross immorality.”
- 2** *Require boards and agencies to justify denials after considering common-sense factors related to relevancy.*
  - Not all records indicate relevant misconduct: Prohibit denial of applicants unless the conviction “directly relates” to the occupation.
  - Clearer guidance means fairer outcomes: List specific factors for determining whether a direct relationship exists (e.g., elements of the offense; specific duties of the occupation; and how a license offers unique possibility for public safety concerns beyond harm an unlicensed person could cause).
- 3** *Mandate consideration by boards and agencies of evidence of rehabilitation and mitigating circumstances.*
  - Rap sheets oversimplify to the point of distortion: Consider circumstances of the offense, including age of the person at that time.
  - Consider evidence of work or volunteer history and letters of reference.

## Vague Terminology Increases Unpredictable Outcomes & Discrimination

Laws and regulations that invoke vague standards—such as “**good moral character**” or “**crimes of moral turpitude**”—reduce predictability, consistency, and fairness in decision-making, while allowing implicit bias to impact outcomes.

## Promote Fairness by Considering Common-Sense Relevancy Factors

To comply with Title VII of the Civil Rights Act of 1964, employers should consider three simple, common-sense factors when contemplating a record-related rejection:

- (1) Nature and gravity of the offense;**
- (2) Time that has passed since the offense; and**
- (3) Nature of the job**

Fair and effective occupational licensing laws similarly require state agencies to weigh the time since an offense and prohibit exclusions based on convictions that are unrelated to the occupation.<sup>25</sup>

➔ For more information, visit <https://www.nelp.org/campaigns/fair-chance-licensing-people-records/>

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## ENDNOTES

<sup>1</sup>NELP, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* app. E (2019),

<https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

<sup>2</sup> U.S. Dep’t of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj> (last visited Nov. 1, 2019).

<sup>3</sup> Colo. Rev. Stat. § 12-38-108.

<sup>4</sup> A “nolo contendere” plea does not admit guilt.

<sup>5</sup> Colo. Rev. Stat. § 24-5-101.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Colo. Rev. Stat. §§ 25-1-124.5, 12-38.1-111.

<sup>9</sup> Colo. Rev. Stat. §§ 25-3-101, 25-27.5-107, 25-1-124.5; 6 Colo. Code Regs. § 1011-1. Although HHAs and PCAs are not licensed occupations in Colorado, licensed healthcare entities, such as a nursing care facility or home care agency, must conduct background checks on employees and determine if they “pose a risk” to patients.

<sup>10</sup> Colo. Rev. Stat. § 24-72-703(4).

<sup>11</sup> Colo. Rev. Stat. § 19-1-306.

<sup>12</sup> See, e.g., 6 Colo. Code Regs. §§ 1011-1:VII (assisted living residences), 1011-1:XXVI (home care agencies).

<sup>13</sup> Colo. Rev. Stat. § 22-32-109.8.

<sup>14</sup> Colo. Rev. Stat. §§ 22-60.5-103, -105, -107.

<sup>15</sup> Colo. Rev. Stat. § 22-60.5-103.

<sup>16</sup> Colo. Rev. Stat. § 24-5-101.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Colo. Rev. Stat. § 26-6-104. Although childcare workers may not need to be directly certified by the state, childcare facilities must be certified and ensure that all childcare workers satisfy strict background check standards.

<sup>20</sup> Colo. Rev. Stat. § 26-6-104(7)(a)(II).

<sup>21</sup> Colo. Rev. Stat. § 24-72-703(4).

<sup>22</sup> Colo. Rev. Stat. § 19-1-306.

<sup>23</sup> Colo. Rev. Stat. § 18-1.3-107.

<sup>24</sup> Denver Rev. Mun. Code ch. 42, art. V.

<sup>25</sup> See, e.g., Equal Emp’t Opportunity Comm’n, *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (2012), [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).