

Delaware

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

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

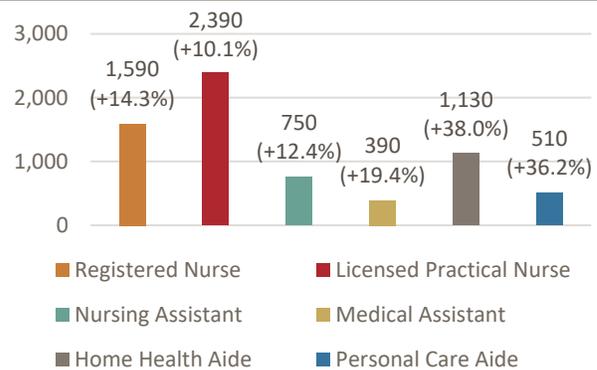
Four major industries—healthcare, K-12 education, childcare, and private security—stand out as including large, growing occupations, for which Delaware law requires a criminal background check. The occupations discussed below account for almost 9.4% of annual job openings in Delaware and have, collectively, a projected growth of 12.7% by 2026, which is more than double the statewide projected growth for all occupations, 6.1%.²

Barriers to Rapidly Growing Healthcare Professions

Healthcare professions include some of the fastest-growing occupations in Delaware, measured by both the number of new jobs and percent growth.

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

Number of New DE Jobs Projected, 2016–2026



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

Legend:

- ✔ Enhances equity
- ⚠ Potential for bias
- ✘ Source of unfairness

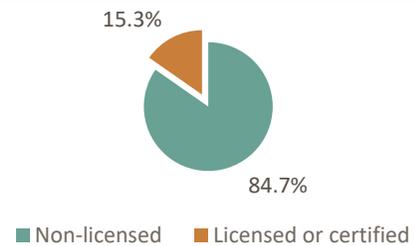
Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
Registered Nurse³ (Bd. of Nursing)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for any felony sexual conviction. ✘ Presumption of denial for any conviction “substantially related” to the practice of nursing, pending waiver.⁴ ⚠ Waiver is possible only if sentence is completed, including parole. For felony convictions, 5 years must have passed since date of conviction. No waiver is possible for sex offense convictions. 	<ul style="list-style-type: none"> ✔ Affirmative exclusion of arrests not resulting in conviction. 	<ul style="list-style-type: none"> ✘ Full discretion with limited statutory instruction as to relevancy, rehabilitation, or limit on look-back period. ⚠ No notice of disqualification or right to appeal before final decision; right to appeal within 30 days after final decision.

Nursing Assistant & Medical Assistant (Dep't of Health & Social Services) ⁵	<ul style="list-style-type: none"> ✘ Mandatory, 15-year disqualification for conviction of abusing, neglecting, or mistreating a resident of a facility or an adult who is impaired. 	<ul style="list-style-type: none"> ⚠ DHSS “adopts” 2012 EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII, but it remains unclear if boards are <i>required</i> to consider time since offense, nature of offense, and relatedness of offense to occupation.
Home Health Aide & Personal Care Aide (Dep't of Health & Social Services) ⁶	<ul style="list-style-type: none"> ✘ Mandatory, 15-year disqualification for conviction of abusing, neglecting, or mistreating a resident of a facility or an adult who is impaired (shorter disqualification for felony or misdemeanor theft convictions). 	

Barriers to Careers in K-12 Education, Childcare, and Private Security

Roughly 19,790 Delaware residents are employed in K-12 education, security, or childcare jobs that require licensure. On average, over 2,000 job openings in these fields emerge each year, and that number continues to increase. Despite the growing need for qualified applicants, Delaware law unnecessarily prevents many people with records from obtaining licensure or other clearance.

Percent of Total Delaware Workforce Licensed



Source: The White House, *Occupational Licensing: A Framework for Policymakers tbl.1 (2015)*, https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_fina_nonembargo.pdf.

Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
K-12 Teacher⁷ & Teaching Assistant (Del. Bd. of Education)	<ul style="list-style-type: none"> ⚠ Discretionary disqualification for many convictions, including any offense against a child, offenses related to manufacture or possession of controlled substances,⁸ “violent” felonies,⁹ felony sexual offenses, sexual offenses against a child, and offenses against public administration involving bribery, improper influence, or abuse of office. ⚠ Vague, discretionary disqualification for any conduct the board finds to signify “immorality,” “incompetence,” or “disloyalty.”¹⁰ 	<ul style="list-style-type: none"> ✘ No express prohibition against denials based on arrests not resulting in conviction. 	<ul style="list-style-type: none"> ✘ No express requirement to consider time since offense, nature of offense, and relatedness of offense to occupation. ✔ Right to notice and hearing prior to denial of license.
Security Guard¹¹ (Bd. of Examiners of Priv. Investigators & Priv. Security Agencies)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for all felony convictions, for any applicant dishonorably discharged from the military, and for any applicant with two misdemeanor convictions involving theft, controlled substances, or “moral turpitude” (limited to 7 years if only one such misdemeanor). ⚠ Discretionary disqualification for any misdemeanor conviction involving “moral turpitude.” ✘ Mandatory, 3-year disqualification for misdemeanor assault conviction. 	<ul style="list-style-type: none"> ⚠ Mandatory disqualification of any applicant facing pending charges that would be disqualifying if convicted. 	<ul style="list-style-type: none"> ✘ No express requirement to consider time since offense, nature of offense, and relatedness of offense to occupation. ✘ No waiver process or notice rights prior to denial identified in statute.
Childcare Worker¹² (Dep't of Services for Children, Youth & their Families)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for any felony conviction involving a child, elderly person, or impaired adult. ✘ Mandatory, time-limited disqualification for other specified convictions (10 years for any felony 	<ul style="list-style-type: none"> ✘ No prohibition against considering non-conviction information (such as 	<ul style="list-style-type: none"> ✘ No express requirement to consider time since offense, nature of offense, and relatedness of offense to occupation

	<p>involving physical or sexual assault; 7 years for any “violent” felony or misdemeanor involving a child).</p> <p>⚠ Discretionary disqualification for long list of felony and misdemeanor convictions.</p>	<p>diversion or a finding of not guilty as a result of “mental disease”).¹³</p>	<p>for discretionary disqualifications.</p> <p>✔ Right to notice and appeal prior to final decision.</p>
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Recommended Fair Chance Licensing Reforms for Delaware

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, pre-trial diversion programs, or intervention in lieu of conviction are not proof of misconduct: Prohibit consideration of non-conviction information and 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 “moral turpitude.”
- 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 “**crimes of moral turpitude**” or convictions signifying “immorality,” “incompetence,” or “disloyalty”—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.¹⁴

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

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ENDNOTES

¹ NELP, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* (2019),

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

² 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).

³ Del. Code Ann. tit. 24, ch. 19; 24 Del. Admin. Code § 1900.

⁴ The “substantially related” standard is poorly defined. Instead, the Board of Nursing identifies a

broad range of examples of substantially related convictions, including misdemeanor shoplifting and misdemeanor drug paraphernalia possession, but disqualifying offenses are not limited to those examples. Del. Code Ann. tit. 24, § 1906(b); 24 Del. Admin. Code § 1900-15.0.

⁵ Del. Code Ann. tit. 16, chs. 11, 30A; 16 Del. Admin. Code § 3105.

⁶ Del. Code Ann. tit. 16, §§ 1145, 1146; Del. Code Ann. tit. 29, § 7972; 16 Del. Admin. Code § 3110.

⁷ Del. Code Ann. tit. 14, ch. 12; 14 Del. Admin. Code § 1513.

⁸ 14 Del. Admin. Code § 1513-3.0.

⁹ “Violent” is defined in Del. Code Ann. tit. 11, § 4201(c).

¹⁰ Del. Code Ann. tit. 14, §§ 1217(a), 1218(6).

¹¹ Del. Code Ann. tit. 24, § 1313-15.

¹² Del. Code Ann. tit. 31, ch. 3; 9 Del. Admin. Code § 100.

¹³ Del. Code Ann. tit. 16, § 902(7).

¹⁴ 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.