FAIR CHANCE LICENSING REFORM:
OPENING PATHWAYS FOR PEOPLE WITH RECORDS TO JOIN LICENSED PROFESSIONS
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.

ACKNOWLEDGEMENTS

This toolkit was made possible with the generous support of the W.K. Kellogg Foundation and the Public Welfare Foundation. The authors are also grateful to former interns Jared Odessky and Allison Que for their research assistance, and to our colleagues Norman Eng and Eleanor Cooney for their editorial and design contributions to this project.

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I. Introduction

Two trends, decades in the making, are colliding.

The first trend, stemming from “tough on crime” policies and mass incarceration, is that more Americans have an arrest or conviction record than ever before. The second trend is the dramatic expansion of occupational licensing, which requires people to obtain permission from a government agency—and, commonly, pass a background check—before they can work.

The result? More than 70 million people with a record in the United States either face significant barriers when seeking a license to work, which is now required for one in four jobs, including many good-paying jobs that are in high demand in healthcare and other industries, or—even worse—they are automatically disqualified, sometimes for life.

Laws that function in this way to permanently stigmatize and keep opportunity out of reach for so many people serve none of us well.

This debate isn’t merely philosophical. The best evidence, highlighted throughout this toolkit, makes a few things clear: policies that make it easier for people with records to work strengthen the economy, improve public safety, help employers find good workers, and advance racial and social justice. Fair chance licensing reforms are critical to realizing these benefits, and policy makers of all political stripes have spoken out in favor of these commonsense policies.

But it’s also important to keep sight of a more basic point: these issues are fundamentally about people. When a person with a record is not permitted—as a matter of public policy—to reach their full potential, real and lasting consequences follow for individuals, families, and entire communities. All of us.

We all have a stake in this work, and it’s time to act. This toolkit is intended to provide lawmakers and advocates in states across the country with the resources necessary to set about the work of fair chance licensing reform.
II. By the Numbers

TREND 1: MASS INCARCERATION HAS LEFT MORE PEOPLE WITH RECORDS THAN EVER BEFORE

Over 70 MILLION PEOPLE in the U.S. HAVE a RECORD. That’s nearly 1 in 3 ADULTS.

More than 19.5 MILLION PEOPLE HAVE a FELONY CONVICTION.

More than 6.7 MILLION PEOPLE HAVE a PRISON RECORD (2010).

A record takes a wrecking ball to employment prospects and economic stability.

EARN 40% LESS

$179,000 OVERALL LOSS by age 50

Formerly incarcerated men can expect to WORK NINE FEWER WEEKS per year and EARN 40% LESS.

60% of people who have been incarcerated REMAIN UNEMPLOYED one year after release.
Today, nearly **HALF** of all **CHILDREN** in America **HAVE A PARENT WITH A RECORD**, causing these **ECONOMIC IMPACTS** to spill **OVER GENERATIONS**.

The impact of a record is more severe for people of color.

Studies have shown that **WHITE MEN** with a **RECORD** are **MORE LIKELY** to receive a **POSITIVE RESPONSE FROM** an **EMPLOYER** than **BLACK MEN** without one.

One study found that the **EFFECT** of a criminal **RECORD** on employment was **40% MORE DAMAGING** for **BLACK MEN** than **WHITE MEN**.

The stigma of a conviction is more significant for women.

One study found that formerly incarcerated **WHITE WOMEN** were **93% MORE LIKELY** to be contacted by employers for an interview or **OFFERED a JOB THAN** formerly incarcerated **AFRICAN AMERICAN WOMEN**.

In one study, nearly **60% of MEN** with a prison **RECORD** would have been **CALLED BACK** for a **JOB INTERVIEW**, but only **30% of WOMEN** would have, with the **SAME RECORD**.

**HISPANIC WOMEN** with a prison record were **61% LESS LIKELY** than **WHITE WOMEN** with a prison **RECORD** to receive a favorable response by employers.
Today, more than 25% of U.S. workers require a license or certification before they can work in their occupation. That’s up dramatically from about 5% in the 1950s.

Some of the fastest growing occupations in America require a license. 2/3 of the growth in licensing comes from an increase in the number of licensed professions, suggesting that licensing has significantly expanded into new sectors.

6 of the 10 fastest growing professions are in healthcare support or personal care:
- Occupational therapy assistants
- Physical therapist assistants
- Physical therapist aides
- Home health aides
- Nurse practitioners
- Physical therapists

But state licensing laws set up major barriers to employment for people with records. There are over 27,000 state occupational licensing restrictions.
Barriers to licensed occupations contributes to income inequality

There are approximately 27,000 state occupational LICENSING RESTRICTIONS.

Of those,

- 6,000 can be based on MISDEMEANORS,
- 19,000 are PERMANENT DISQUALIFICATIONS, and
- 11,000 are MANDATORY DISQUALIFICATIONS.

It takes ¼ of the ECONOMY OFF THE TABLE.

× 600,000 every year

These barriers put many GOOD-PAYING JOBS OUT OF REACH for the more than 600,000 PEOPLE who are released from incarceration every year.

The WAGE ADVANTAGE enjoyed by LICENSED WORKERS relative to comparable unlicensed workers INCREASES WITH AGE.

RISING from about $1.60/hour by age 25 to $3.50/hour by age 64

Each state has an AVERAGE of 56 OCCUPATIONAL LICENSING and 43 BUSINESS LICENSING LAWS with MANDATORY RESTRICTIONS for people with felony convictions.

Topping the chart were FLORIDA, INDIANA, NEW HAMPSHIRE, OHIO, AND TEXAS—each with over 100 OCCUPATIONAL LICENSE LAWS containing such restrictions.

Fair Chance Licensing Laws Would Help Workers, Employers, and the Economy
III. Bipartisan Calls for Reform

Elected Officials

“[M]any individuals have criminal histories that should not automatically disqualify them from employment or licensing, but should instead be examined as part of a review of the person as a whole.”

President Obama, Presidential Memorandum—Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals (April 29, 2016).

“[W]e are releasing thousands of people from jail or prison each year who cannot find a job.” “People who have paid their debt and proven their commitment to rehabilitation deserve a second chance to be productive citizens.”

Kentucky Governor Matt Bevin (R), Op-Ed: Time Has Come for Kentucky to Reform Its Justice System (focused on SB 120 and licensing reforms) (March 2, 2017).

“I am not proud of our title as the most incarcerated state. But that’s going to be part of our history rather than our future.”

Louisiana Governor Bel Edwards (D), Signing Legislation, HB 519, Allowing People with Records to Apply for Occupational Licenses (June 15, 2017).

“Pennsylvania must be a place where people can put their skills, experience and education to work. Requiring a government license to work in certain jobs helps to keep all of us safe, but those requirements should be fair.”

Pennsylvania Governor Tom Wolf (D), calling for the repeal of the automatic 10-year ban on licensing for those convicted of a drug felony. (June 14, 2018).

“[G]ainful employment after release from prison is one of the critical elements necessary to achieve successful reentry after prison” and “has been shown to reduce recidivism and, thus, to make our communities safer.”

Former Florida Governor Jeb Bush (R), Executive Order Number 06-89 (ordering agencies to identify and reform policies that disqualify people with records from employment) (April 25, 2006).

“With the exception of people that get sentenced to life, everybody that goes to prison is going to get out eventually. When they go to reintegrate, we see how incredibly difficult it is for people to meet these standards that we are setting.”

Criminal Justice Reform Organizations

Licensing reform is “a win-win situation, both for the economy, but also for the families that they have to support, as well as for public safety outcomes. If [people with records] have jobs, they have hope.”

Ana Yáñez-Correa, Executive Director of Texas Criminal Justice Coalition (February 9, 2015).

Think Tanks

“Far too often, a criminal record is a permanent obstacle to economic security. This is especially true for communities of color, who have disproportionately felt the effects of mass incarceration and overcriminalization. But it doesn’t have to be that way. Thoughtful, well-executed reforms can ease access to the labor market for people with criminal records.”

Angela Hanks, Center for American Progress, Ban the Box and Beyond: Ensuring Individuals with a Criminal Record Have Access to the Labor Market. (July 27, 2017).

“[E]xpanding job opportunities for returning citizens is the best way to ensure they remain crime-free. In that regard, our Coalition supports eliminating occupational licensing limitations that discriminate solely by prior criminal history and don’t take into account job qualification[s].”

The Coalition for Public Safety, Key Issue: Fair Chances.

“[C]ountless occupational and professional license applications continue to require criminal history disclosure on the initial application.” “[I]t is imperative that action be taken to ensure all [people with records] who are otherwise capable of becoming licensed professionals are given a fair chance to do so.”

American Civil Liberties Union, Second Chances: How Professional Licensing In Nebraska Hurts the Workforce and Our Economy (September 6, 2016).

“Perhaps the most ubiquitous and pernicious collateral consequences” people with records face “are restrictions on their ability to earn a livelihood.” “A multitude of . . . occupational licensing laws compounds the effect of collateral consequences insofar as they may either explicitly exclude individuals convicted of certain criminal convictions or implicitly exclude them through a requirement that applicants be of ‘good moral character’.”

“One particularly egregious legal barrier to escaping the ‘second prison’ is the pervasiveness of occupational licensing regulations, which all but guarantee an uphill battle for those looking for work.”


“The opportunity for people with records “to hold stable jobs is enormously important to society.” “[A] thorough review of all of California’s occupational licensing regulations is needed and part of the review must include whether there are unnecessary barriers”


“[M]any persons with criminal records fail to apply for jobs because they believe their criminal background precludes them from being hired. This is why it is so critical for Maryland to provide accurate, uniform, consistent information to the public regarding eligibility after incarceration. The more returning citizens know, the more they are able to succeed.”

The Honorable Alexander Williams, Jr., Maryland Governor’s Office of Crime and Control Prevention and the University of Maryland, *Final Report of the Collateral Consequences Workgroup* (December 1, 2016).
The Supreme Court has long held that “[i]t is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession” he or she may choose.


“A state law banning all people with records from certain types of employment was deemed to be “totally irrational” and created a scheme “which violate[d] the Equal Protection Clause” of the Constitution.”


“Even those of us who have specific professional responsibilities for the criminal justice system can be neglectful when it comes to the subject of corrections. The focus of the legal profession, perhaps even the obsessive focus, has been on the process for determining guilt or innocence. When someone has been judged guilty and the appellate and collateral review process has ended, the legal profession seems to lose all interest. When the prisoner is taken way, our attention turns to the next case. When the door is locked against the prisoner, we do not think about what is behind it. We have a greater responsibility.”

IV. Growing Momentum for Fair Chance Licensing Laws

Recent Efforts To Reform Occupational Licensing Background Check Standards

Across the nation, millions of people with arrest and conviction records face overly restrictive barriers to licensed professions. However, with support from NELP, bipartisan momentum is building in support of “fair chance licensing” reforms that open up growing occupations with good pay to qualified people with records.

Over the past few years, numerous states have taken steps to improve their licensing laws.

» In 2018, legislation has been signed into law in seven states: California, Delaware, Indiana, Kansas, Maryland, Massachusetts and Tennessee.

» In 2017, legislation was adopted in at least four states: Arizona, Kentucky, Illinois and Louisiana, all of which advanced a range of fair chance licensing protections

» In 2016, new legislation was enacted in at least two states: Illinois and Georgia.

New Laws Signed in 2018

California Governor Jerry Brown (D) signed two bills related to fair chance licensing in September. With limited exceptions, AB 2138 limits licensing agencies to considering convictions that are “substantially related” to the occupation and occurred within 7 years of the application. Agencies must consider specific rehabilitation criteria but not dismissed convictions. The law applies to nearly 40 licensing boards and bureaus, also requiring each to collect data and provide clear written notice to applicants. The second new law, AB 2293, requires emergency medical services (EMS) certifying entities to collect and report a variety of data on applicants with records, including rejection rate and demographic information.
In March, Governor John Carney (D) of Delaware signed HB 97, which establishes a barbering apprenticeship program in the state’s prisons, precludes consideration of convictions dating back more than 10 years when applying for a barbering or cosmetology license, and authorizes the boards to “waive” a disqualifying felony if the individual has not been convicted of a crime in the previous two years. The bill passed unanimously.

In March, Governor Eric Holcomb (R) of Indiana signed HB 1245, which requires that any disqualifying offenses be “directly related” to the occupation and that licensing boards take into account evidence of rehabilitation but not most offenses dating back more than five years. The applicant is entitled to written findings explaining a board’s decision, and individuals may petition the board for a background check decision before satisfying all the other licensing requirements. The bill easily passed 48-1 in the state senate and 95-1 in the state house of representatives.

In May, Kansas Governor Jeff Colyer (R) signed HB 2386, which regulates a range of occupational licenses. The law requires that any disqualifying offenses be “directly related” to each occupation, and it precludes the boards from adopting broad “moral turpitude” disqualifications. In addition, the boards may not take into account arrests or many offenses dating back more than five years since the sentence was served (not including felonies and Class A misdemeanors). The law also adopts new standards and procedures regulating the licensing and certification of workers employed in adult care, home health, and certain hospital and health facilities.

In May, the Maryland Governor Larry Hogan (R) signed HB 1597, which requires the licensing boards to collect and report data documenting the number of licensing applications denied due to specific records and how much time had passed since the reported convictions.

In April, Massachusetts Governor Charlie Baker (R) signed major criminal justice reform legislation (S. 2371), which included a provision allowing people with sealed records to deny that they have a record for licensing and housing purposes (a right that previously only extended to people applying for employment). The law precludes employers from accessing misdemeanor records that are more than 3 years old and felonies that are more than 7 years old (reduced from 5 years for misdemeanors and 10 years for felonies under current law).

In April, Tennessee Governor Bill Haslam (R) signed HB 2248/SB 2465, which passed with unanimous support. The bills require the boards to demonstrate that an applicant’s conviction is “directly related” to the licensed occupation, and they must take into account a number of factors, including the age and nature of the offense, and evidence of rehabilitation or treatment. In addition, the boards must provide the applicant with a written notice explaining the justification for the denial and an opportunity to present mitigating evidence before the board issues a final determination.

New Laws Signed in 2017

In May, Arizona Governor Doug Doucey (R) signed HB 2290. The new law allows licensing agencies to grant temporary provisional licenses to applicants with a conviction record. The law also has an important data collection and reporting component, including the number of provisional license applications that are granted, denied, and revoked each year.

In April, Kentucky Governor Matt Bevin (R) signed S.B. 120 into law, which was part of a broader criminal justice reform package. The law eliminates “absence of moral character” as a basis for denial and removes certain exceptions to requirement that a conviction must directly relate to the occupation, after considering specified factors. Under the new law, a licensing authority
may not deny a license without first providing preliminary written notice to the applicant, demonstrating the connection between the conviction and license sought, and affording the applicant an opportunity to appear. A final notice of denial must follow.

In June, Louisiana Governor John Edwards (D) signed HB 519 into law, which require licensing boards to grant a license (not merely a provisional license) to a person with a conviction history if other requirements for the license are satisfied. However, the law includes numerous, broad exceptions for a variety of offenses and many licensing boards. Moreover, licensing agencies retain discretion to deny a license if the conviction relates to the profession for which the license is sought.

In August, Illinois Governor Bruce Rauner (R) signed SB 1688 into law, which provides that, except where blanket bans exist, mitigating factors and evidence of rehabilitation (including specified factors) must be considered when reviewing a licensing application. Upon denial, the law requires a written explanation. Specifies that certain types of records need not be reported, including juvenile, sealed, and expunged records as well as arrests not followed by conviction.

New Laws Signed in 2016

Illinois Governor Bruce Rauner (R) signed two new laws in 2016. Under HB 5973, which applied to three licensing authorities (funeral, roofing, barbering/cosmetology), a license may be denied based on a conviction only if the offense is a felony directly related to the occupation. The law also requires licensing authorities to consider the age of the offense and age of the person at time of the offense. SB 42 applies to health care professions and allows applicants to petition the department if a license is automatically denied/revoked due to certain felony convictions. When reviewing a petition for license, the department must consider 15 specific factors, including the time elapsed since the conviction and any evidence of rehabilitation.

In April, Georgia Governor Nathan Deal (R) signed SB 367, which prohibits licensing boards from denying/revoking a license based on any felony unless directly related to the occupation. Licensing boards must consider a list of factors when determining whether a conviction is directly related (e.g., nature of offense, age when offense occurred, time elapsed, mitigating circumstances, evidence of rehabilitation).

For more background on the issue, see NELP’s report “Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records” (April 2016).
Appendix A

FACTSHEET: Fair Chance Licensing Reform
Creating Pathways for People with Records to Enter Licensed Professions

I. The Problem: A Story of Two Colliding Trends

The first trend—after decades of “tough on crime” policies and mass incarceration—is that more people in America have an arrest or conviction record than ever before.

- Conservative estimates indicate that approximately 70 million people—or nearly one in three adults—have a record.\(^1\) For perspective, the number of people with records today is roughly equal to the entire U.S. population in 1900.\(^2\)

- In addition, more than 600,000 people re-enter their communities following a term of incarceration every year.\(^3\) A majority of these individuals will never return to prison, underscoring the importance of reconnecting them with the workforce.\(^4\)

- But a record creates a significant barrier to future employment. Nearly 9 in 10 employers conduct background checks on some or all job candidates.\(^5\) Even minor involvement with the criminal justice system—such as a single arrest—dims employment prospects more than any other factor,\(^6\) and upwards of 60 percent of people who have been incarcerated are unemployed one year after release.\(^7\)

Today, millions of Americans are excluded from the workforce due to an arrest or a conviction record. This problem has grown with the rise of occupational licensing, which commonly requires applicants to pass a criminal background check. These exclusionary barriers are counterproductive. Commonsense policy reforms in this area could spur economic growth, promote public safety, help employers, and address racial and gender biases in our society.
Today, more than one in four workers in the United States require a license or certification before they can work in their occupation, which represents a fivefold increase from the 1950s. Notably, two-thirds of the growth in licensing comes from an increase in the number of licensed professions, suggesting that licensing has expanded significantly into new sectors.

According to one estimate, more than 1,100 occupations are licensed, certified, or registered in at least one state, but fewer than 60 are regulated in all 50 states. The percentage of people who hold licenses varies, state by state, ranging from a low of 12 percent of workers in South Carolina to 33 percent in Iowa. Overall, because women tend to work in more heavily regulated industries, such as health care, child care, and elder care, they are more likely to hold a certification or a license than employed men, at 28 percent and 23 percent, respectively. Nearly 26 percent of white workers hold a license or a certificate, compared to 22 percent of Black and 15 percent of Hispanic workers.

Holding a license or certificate will be even more essential in the future: 6 of the 10 fastest-growing occupations are in healthcare support or personal care, which are heavily licensed.

According to the American Bar Association, there are approximately 27,000 state occupational licensing restrictions for people with records. Of those, approximately 6,000 can be based on misdemeanors, 19,000 are permanent disqualifications, and 11,000 are mandatory disqualifications.

Each state has an average of 56 occupational licensing and 43 business licensing laws with mandatory restrictions against hiring people with felony convictions. Topping the chart were Florida, Indiana, New Hampshire, Ohio, and Texas each with more than 100 occupational license laws containing such restrictions.

More than 20 states have no standards in place governing the relevance of conviction records of applicants for occupational licenses. In these states, a licensing board may deny a license to an applicant who has a conviction, regardless of whether the conviction is relevant to the license sought, how recent it was, or whether there were any extenuating circumstances.

Other common and counterproductive features of state licensing laws include blanket bans that exclude qualified candidates with records, overly broad criminal record inquiries, and a lack of transparency and predictability in the licensure decision-making process.

The second trend is that more jobs require “permission to work” than ever before.

These trends, decades in the making, collide because passing a background check is a common requirement to obtain a state license.
II. Fair Chance Licensing Laws Benefit Workers, Employers, and the Economy

- **Advancing Racial Justice**: People of color suffer from racial discrimination in the criminal justice system and are disproportionately excluded from jobs that require a license. African Americans are more than twice as likely to be arrested as whites.20 And more than 60 percent of people in prison today are people of color.21

- **Creating Opportunities for Women**: Reforming licensing laws is particularly important for women with records, because the stigma of a conviction is more significant for women. In one study, nearly 6 in 10 men with a prison record would have been called back for a job interview, but only 3 in 10 women with the same record would have gotten a callback.22 Moreover, some of the fastest-growing occupations in America are dominated by women. For example, 80 percent of all healthcare workers in the United States are women.23 But because of licensing barriers, women with records are often excluded from these good-paying positions.24

- **Addressing Income Inequality**: Studies accounting for differences in education, training, and experience find that licensing results in approximately 10 percent to 15 percent higher wages for licensed workers relative to unlicensed workers.25

- **Expanding Talent Pools for Employers**: Employees with records are less likely to leave voluntarily, likely to have a longer tenure, and are no more likely than people without records to be terminated involuntarily.26 A study of people with a felony record serving in the U.S. military found that they were promoted more quickly and to higher ranks than others, and were no more likely than people without records to be discharged for negative reasons.27

- **Growing the Economy and Lowering Unemployment**: The stigmatization of people involved in the criminal justice system slams the brakes on our economy, and reduced the nation’s gross domestic product by as much as $87 billion in 2014 alone.28 When it comes to unemployment, among people 25 years and over with less than a high school diploma, those who held a certification or license were nearly twice as likely to be employed than were those who did not hold such credentials.29

- **Promoting Public Safety**: Employment is critical in reducing recidivism.30 One study focused on people with records in New York found that receiving permission to work reduced the likelihood of a future arrest by more than 4 percentage points over a three-year timeframe.31 Higher wages, which are more common among licensed professions, also reduce recidivism: one study found that the likelihood of re-incarceration was 8 percent for those earning more than $10 per hour, compared to 16 percent for those earning less than $7 per hour.32

The time has come to overhaul the background check restrictions imposed by state licensing laws. Promoting commonsense reforms in this policy arena would benefit not only people with records, but all of us.
Barred from Your Chosen Profession

*An Arrest or Conviction in [STATE] Can Cast a Long Shadow*

[INSERT FIGURE, Column 2, in Appendix] adults in [STATE] has an arrest or conviction record. The unshakeable stigma and lifelong consequences that accompany a record often prove devastating.

[SUBSTITUTE WORKER STORY FROM THE STATE] In 2010 Sonja Blake, a grandmother, lost her livelihood because of a 30-year-old mistake. As a child-care provider, Ms. Blake is among the [INSERT FIGURE, Column 7] [STATE] workers whose occupations require a state license. But, after caring for children for almost a decade, a change in Wisconsin law required that her day-care-owner certification, along with her license to work in caregiving facilities, be permanently revoked. Decades earlier, Ms. Blake had received a $294 overpayment of public assistance after mistakenly failing to report gifts from her boyfriend. That overpayment was merely docked from her benefits, but her minor error resulted in a misdemeanor conviction with decades-long consequences.

This story is not unique. Passing a criminal background check is a common state licensing requirement across the nation. The American Bar Association’s inventory of penalties resulting from a record includes [INSERT FIGURE, Column 8] occupational licensing restrictions in [STATE]. And because the criminal justice system disproportionately impacts people of color, these “collateral consequences”—penalties that accompany a conviction but weren’t imposed by the court—perpetuate significant race disparities in employment.

State licensing schemes that mandate criminal background checks theoretically aim to protect health and safety. Inquiries into convictions that are directly related to the occupation can be reasonable. But far too often, restrictions are unnecessarily expanded without any benefit to public safety and health. For instance, in [STATE], [SHARE EXAMPLE FROM STATE LAW] a land surveyor is stripped of his license if convicted of any felony, anywhere in the country, even if completely unrelated to the profession.
Policymakers across the political spectrum increasingly support “fair chance” and “ban the box” laws—policies that prohibit employers from asking on job applications whether applicants have a record. Fair chance licensing is another area ripe for reform. Irrational licensing restrictions for those with records, and their impact on individual families and the economy, have spurred calls for change from diverse voices, ranging from the Center for American Progress to Koch Industries. Amid the general partisan rancor, reducing barriers to licensure for people with records represents a singular opportunity for bipartisan cooperation.

Because most occupational licensing is controlled by the states, lawmakers are ideally positioned to reduce barriers for people with records by adopting a robust state law, such as [NAME STATE BILL, IF ONE EXISTS]. A strong law will go long way to help [NAME OF WORKER] and everyone in our state who has paid their debt to society and are seeking a fair chance to work, support their families, and give back to their communities.
 Appendi C
The Pillars of Reform

ELP suggests 10 state policy reforms to promote greater transparency and accountability and help achieve fairer, more consistently applied licensing laws.

1. **Eliminate blanket bans** that automatically disqualify workers with certain records. The ABA’s inventory, noted above, documents thousands of “mandatory” or “permanent” licensing disqualifications across the country.

2. Limit the **types of record information** requested in a background check. The inclusion of less relevant information on a background report—such as offenses that are old, minor, or unrelated to the occupation—can color a reviewer’s opinion of the applicant. Even if licensing boards intend to consider only recent, occupation-related offenses, their opinions may be clouded by any negative, albeit less significant, information.

3. Require licensing boards to assess candidates **case-by-case**, examining both whether a conviction is occupation-related and how much time has passed since the offense.

4. Mandate consideration of applicants’ **rehabilitation** and any **mitigating circumstances**. Allowing an applicant to explain the circumstances of an offense may provide context that reveals the insignificance of a serious-sounding record.

5. Provide applicants with **notice** of potential disqualification and an **opportunity to respond** before the application is rejected. Background reports are regularly inaccurate. The applicant should be allowed to point out errors.
6. **“Ban the box”** by removing questions about conviction records from the application. And then go one step further: don’t ask applicants to self-report their records at any time during the application process. Records are confusing—even to lawyers—and applicants frequently make inadvertent errors that reviewers misinterpret as dishonesty.

7. Remove “good moral character” requirements, restrictions against “moral turpitude” offenses, and other vague legal standards. The use of confusing jargon leaves applicants in the dark as to whether a past conviction will mean disqualification. When the law lacks clear limits on licensing board discretion, opaque statutory language affords cover to automatically reject applicants with virtually any record.

8. Evaluate existing state occupational licensing restrictions and mandate ongoing data collection by licensing boards so that lawmakers can better understand current barriers and ensure that any attempted reforms make headway toward addressing them.

9. Promote transparency by providing clear guidance to applicants regarding potential disqualifications for the occupation. Requirements and standards vary widely among states and occupations. Statutory language and procedures governing individual, or classes of, professions frequently differ from more general state licensing statutes.

10. Create more uniform standards by incorporating these recommendations into a broadly applicable state licensing law that expressly supersedes any conviction record restrictions contained in other laws governing specific professions. Adopting these reforms won’t achieve consistency or accountability if the law is riddled with exceptions.
The model state legislation below provides a comprehensive example, incorporating the recommendations in NELP’s report, Unlicensed & Untapped, 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 specific 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 an existing, 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; [or other state-specific record-clearing terminology]

(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.
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.

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;
   (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;

(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.
## Appendix E
### Appendix: 50 State Data

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*Note: Data for some states are marked with an asterisk (*) indicating a lack of data availability.*
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<td><strong>Total</strong></td>
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Appendix F

References

4. William Rhodes, Following Incarceration, Most Released Offenders Never Return to Prison (2014)
13. Id. at 23.
15. Id.
18. Id. at 11.
19. Id. at 18; Occupational Licensing: A Framework for Policymakers, supra, at 36.
22. Decker, supra, at 57.
29. BLS, 2016 Data on Certifications and Licenses, supra.
32. Christy Visher, Sara Debus, Jennifer Yahner, Urban Institute, Employment after Prison: A Longitudinal Study of Releases in Three States, 8 (October 2016), http://urbn.la/2yPXF1
33. The original numbers of people with arrest or conviction records are from a Bureau of Justice Statistics annual survey of state criminal history information systems. U.S. Dep’t of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report, Table 1 (Feb. 2018), https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf. To account for duplication in the survey for individuals who may have records in more than one state or deceased individuals who have not been removed from the state record systems, NELP conservatively reduced the numbers cited in the state survey by a uniform 30 percent. We caution that this 30 percent deduction may not adequately take into account state specific variations. Thus, in those states where the proportion of people with records is significantly above the national average of 30 percent, we urge advocates and policymakers to corroborate the estimate with other state criminal justice data sources (such as state arrest, conviction and incarceration rates).
34. The numbers of state adult (18+) population are from the U.S. Census Bureau, a spreadsheet of which is available at https://www2.census.gov/programs-surveys/popest/datasets/2010-2016/state/asrh/.
36. Id.
38. The White House, Occupational Licensing: A Framework for


40. Council of State Government, Justice Center, National Inventory of the Collateral Consequences of Conviction, https://niccc.csgjusticecenter.org/ (accessed on Oct. 3, 2017) (hereinafter “ABA Inventory”). The ABA Inventory includes information for all 50 states, the District of Columbia, and all U.S. territories. Note that the ABA 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 (hereinafter “User Guide”), Question and Answer 10, https://www.nij.gov/topics/courts/documents/abacollateralconsequences-userguide.pdf. 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 cautions that the “difference between professional and business licensure will not be clear, and a comprehensive search should select both categories.” See 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 the 50 states and the District of Columbia.

* The estimates were not generated for these three jurisdictions because they are relatively small, which may reduce their reliability, and the jurisdictions closely border other states and cities, which likely inflates the number of people counted as having a record.

** Data include people released from both prison and jail.