

Indiana

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

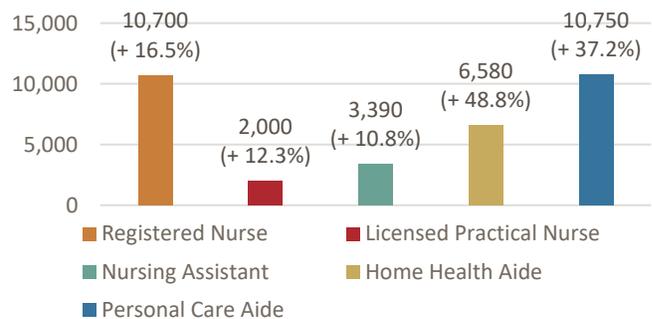
Nearly one in four Indiana adults, disproportionately people of color, has an arrest or conviction record that may prevent them from working in a variety of occupations regulated by the state.ⁱ Indiana requires a license or certification for **some of the largest and fastest-growing professions**, such as healthcare occupations. While Indiana’s licensing laws were reformed in 2018 to establish helpful fair chance standards, some boards and agencies still have **broad discretion to reject applicants based on unrelated or old convictions**—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 Indiana law requires a criminal background check. These occupations account for nearly 1 in 10 annual job openings in Indiana and are, collectively, growing at a rate of over 15%, which is nearly twice the growth rate of the average occupation in the state.ⁱⁱ

Barriers to Rapidly Growing Healthcare Professions

Healthcare professions include some of the fastest-growing occupations in Indiana, measured by both the number of new jobs being created and the percent growth. While employers cite difficulties in filling many healthcare job openings, Indiana background check restrictions often block qualified workers with records from filling certain positions. The standards used to evaluate a person’s record in these fields remain vague and often inadequately tailored to the goals of advancing community safety, economic growth, government efficiency, and racial equity.

Rapid Growth in IN Licensed Healthcare Professions, 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

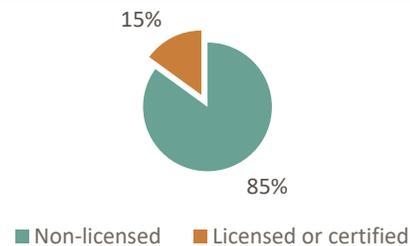
Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
Registered Nurses ⁱⁱⁱ (Bd. of Nursing)	<ul style="list-style-type: none"> ✔ Board required to list potentially disqualifying offenses and may not use vague terms like “moral turpitude” or “good character.” ⚠ Lengthy list of over 250 potentially disqualifying offenses. 	<ul style="list-style-type: none"> ✘ Records of diversion are considered.^{iv} ✔ Applicant need not report arrests not resulting in conviction. 	<ul style="list-style-type: none"> ✔ May not consider most offenses more than 5 years after date of conviction if there have been no additional convictions (violent and sex offenses are exempted). ✔ Must consider nature and seriousness of offense, passage of time, relationship to duties of the position, and evidence of rehabilitation.

			<ul style="list-style-type: none"> ✔ Must provide written findings of the grounds for denial and a hearing.
Home Health Care Agency & Personal Service Agency Worker^v (Dep't of Health)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for offenses involving rape, criminal deviant conduct, exploitation of an endangered adult ✘ Mandatory, 10-year disqualification for theft conviction. 	<ul style="list-style-type: none"> ✔ Disqualifying offenses are limited to convictions. 	<ul style="list-style-type: none"> ✘ No express requirement to consider time since offense, nature of offense, and relatedness of offense to occupation. ✘ No express right to written decision, notice, or appeal.

Barriers to Careers in Education, Childcare, and Private Security

Roughly 120,000 Hoosiers are employed in K-12 education jobs that require certification or as childcare workers or private security guards. Over 12,000 job openings in those fields emerge each year, and that number continues to increase. Despite the growing need for qualified applicants and some positive licensing reforms that were adopted in 2018, Indiana law still prevents many people with records from obtaining the certification or other clearance that would enable them to fill those vacancies, especially in the education and childcare fields.

Percent of Total Indiana 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 Employees^{vi} (Dep't of Educ.)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for a range of violent, drug, and sex offenses. ✘ Mandatory, time-limited disqualification for drug and other selected offenses (10 years) and driving while intoxicated (5 years). 	<ul style="list-style-type: none"> ✔ Disqualifying offenses are limited to convictions. ✘ No express prohibition against denials based on charges 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. ✘ No express right to written decision, notice, or appeal.
Childcare Centers & Home-Based Care^{vii} (Fam. & Soc. Servs. Admin., Div. Fam. & Child.)	<ul style="list-style-type: none"> ⚠ Discretionary, permanent disqualification for specific "dangerous" felonies and sex offenses and misdemeanors related to a child's health and safety. ⚠ Discretionary, 10-year disqualification for certain felonies. 		
Childcare Institutions^{viii} (Dep't of Child Services)	<ul style="list-style-type: none"> ⚠ Discretionary, permanent disqualification for most felonies (5-year limitation for certain felonies) as well as misdemeanors related to a child's health and safety. 		

<p>Private Security Guard^{ix} (Priv. Investigator & Sec. Guard Licensing Bd.)</p>	<ul style="list-style-type: none"> ✔ Board required to list potentially disqualifying offenses and may not use vague terms like “moral turpitude” or “good character.” ⚠ Very long list of over 250 potentially disqualifying offenses. 	<ul style="list-style-type: none"> ✘ Records of diversion are considered. ✔ Applicants need not report arrests not resulting in conviction. 	<ul style="list-style-type: none"> ✔ May not consider most offenses more than 5 years after conviction if there are no additional convictions (violent and sex offenses are exempted). ✔ Must consider nature and seriousness of the offense, passage of time, relationship to duties of the occupation, and evidence of rehabilitation. ✔ Right to a hearing and written explanation for denial.
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Recommended Fair Chance Licensing Reforms for Indiana

Adopt reasonable limitations on the discretion of boards and agencies to deny a license or certification based on a criminal record, filling gaps in the Indiana reforms adopted in 2018 via HB 1245.

- 1 While HB 1245 required many licensing boards and state agencies to adopt fair chance licensing standards (including the nursing and private security boards) that more narrowly limit consideration of unrelated and old offenses and take into account evidence of rehabilitation, the law should be extended to cover the full range of occupations regulated by Indiana boards and agencies.
- 2 Of special concern, the occupational licensing and certification standards regulating home health, personal care, K-12 education, and childcare workers should be reformed to remove lifetime disqualifications, require consideration of relevancy and age of the offense, and provide procedures to challenge the accuracy of the record and the fairness of the determination.
- 3 HB 1245 should be improved upon by auditing the regulated boards and agencies to evaluate their compliance with the law (including the mandate that each board identify and report their disqualifying offenses by November 1, 2018) and to narrow the broad exceptions to the law.

Vague Terminology Increases Unpredictable Outcomes and Discrimination

Laws and regulations that invoke vague standards—such as “good character” or “moral turpitude”—reduce predictability, consistency, and fairness among decisions, while allowing implicit bias to impact outcomes.

Promote Fairness by Considering Civil Rights 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.^x

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

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ENDNOTES

ⁱ 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/>.

ⁱⁱ U.S. Dep't of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj> (last visited Aug. 23, 2019).

ⁱⁱⁱ Ind. Code § 25-1-1.1-6. The protections apply to all boards regulated by Title 25, including the Board of Nursing. *See also* Ind. State Bd. of Nursing, *Emergency Rule LSA Document #19-627(E)* (2019),

<http://iac.iga.in.gov/iac/irdin.pdf?din=20191127-IR-848190627ERA>.

^{iv} Ind. Pro. Licensing Agency, *Frequently Asked Questions: Criminal Background Check Process*,

<https://www.in.gov/pla/3242.htm> (last visited Sept. 24, 2020).

^v Ind. Code § 16-27-2-5.

^{vi} Ind. Code §§ 20-26-5-10, 20-26-5-11, 20-28-5-8. The relevant provisions, which apply to public and private schools, govern K-12 employees and contractors who have “direct, on-going” contact with children.

^{vii} Indiana law separately regulates operators of childcare centers and those employed or volunteering with the childcare center, and individuals who provide childcare in their homes and those employed, volunteering, or living in the household. *See* Ind. Code §§ 12-17.2-4-3, 12-17.2-4-5, 12-17.2-5-3, 12-17.2-5-4. Childcare center operators and residential childcare providers are entitled to additional procedural rights to challenge the denial or revocation of the license

not expressly provided to their employees or volunteers.

^{viii} Employees and volunteers of “child caring institutions” are regulated by a separate set of childcare background check laws. *See* Ind. Code §§ 31-27-3-3, 31-27-3-5, 31-27-4-13.

^{ix} Ind. Code §§ 25-1-1.1-6, 25-30-1.3-9; Priv. Investigator & Sec. Guard Licensing Bd., *Emergency Rule LSA Document #19-566(E)* (2019), <http://iac.iga.in.gov/iac/irdin.pdf?din=20191106-IR-874190566ERA>.

^x *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.