Understanding and mitigating barriers to occupational & professional licensure for people with convictions

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National nonprofit, nonpartisan, membership association of state government officials that engages members of all three branches of state government

Provides practical, nonpartisan research-driven strategies and tools to increase public safety and strengthen communities
Fair Chance Licensing Initiative

- Assist states in economic recovery
- Enhance good-paying job access
- Improve re-entry & public safety
- Provide businesses with qualified candidate pool
Employment is a key component to successful reentry

- More Positive Relationships
- Income for Family
- Prosocial Activities

Less likely to reoffend
Formerly incarcerated people are unemployed at a far higher rate than the general population.

National unemployment rates (2008)

Formerly incarcerated:
- Employed: 73%
- Unemployed: 27%

General population:
- Employed: 94%
- Unemployed: 6%

Collateral consequences have a greater impact on work for people of color

Unemployment rates of people age 35–44 among the U.S. general public and formerly incarcerated population

Conviction-based barriers to licensure across the country

13,000 +
Provisions of state law that barriers to licensure

1/3
Must be imposed without exception if a person has a disqualifying conviction.

3/4
Persist indefinitely (person likely to be subject to the barrier for life absent expungement, pardon or other relief)

Discretionary barriers can deter qualified workers who pose no risk from entering licensed fields, even if they would NOT ultimately be disqualified.

Should I pursue a cosmetology/barber license with a conviction?

1 to 2 yrs. + $20,000 + ? = Licensure uncertain

(Estimated minimum required training and/or experience (1,500 hrs classroom or 3,000 apprenticeship)

(Tuition & expenses)

• https://www.delawarecosmetology.com/cosmetology-tuition/
• 24 Del. C. § 5107
Mitigating licensing barriers and protecting public safety

Over half of the states have enacted broadly applicable fair chance licensing laws in one form or another.

Recent reforms are based on three key principles:

1. Licensing bodies should have the authority to deny applicants with past convictions that directly relate to the tasks and duties of a licensed activity such that licensure would create an appreciable risk to public safety.

2. Workers should not be barred from licensure solely on the basis of a past conviction; instead, they should be given individualized consideration that accounts for their past and current circumstances and the unique nature of their criminal conduct.

3. Licensing policies and practices involving determinations about the criminal history of applicants should be transparent and consistently applied.
Dealing with deterrence: Allow workers to find out whether their conviction is disqualifying **before** beginning training
Pre-application determination: Changing the calculus and reducing deterrence

Should I pursue a cosmetology/barber license with a conviction?

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Require individualized consideration of all applicants guided by a consistent factor-based analysis
Individualized consideration guided by statutory factors

- Ensures that no offense is automatically disqualifying and allows prospective licensees to be considered in the full context of their crime and their experience.

- Generally requires that whether a crime bears a relationship to the licensed activity be determined on a case-by-case basis based on an evaluation of factors including:
  - Nature and seriousness of the offense
  - Age of the conviction
  - Age of the person when the offense was committed
  - The nature of the specific duties and responsibilities for which licensure is required
  - Evidence of rehabilitation and other mitigating circumstances
Written explanation of reasons for denial

- 8 states fully implemented (including NC, MS & AR)

- 24 states partially implemented (including VA, TN, LA, KY & MO)

- Ensures that applicants denied due to a conviction have a record to base a challenge or appeal of the decision upon. Allows those applicants to identify ways to remedy the disqualification.

- **Soft enforcement**: Ensures that licensing bodies are properly applying the standards for consideration laid out in the law.

- Most effective when written explanation requires **reference to any factors that the law requires licensing bodies to consider**.
Providing accessible information for applicants (Texas & 10 other states)
Publish online information for prospective applicants describing how criminal history is considered.
Additional best practices reflected in state fair chance licensing laws

Increase transparency in the application process
- Pre-application eligibility determinations (22 states)
- Publish online information that explains to applicants how criminal history is considered (10 states)

Limit consideration of certain criminal records that are not relevant to public safety concerns
- Explicitly prohibit consideration of arrests not followed by conviction, juvenile adjudications, and expunged/sealed convictions (15/7/44 states, respectively)
- Limit consideration of older offenses (19 states)
- Limit consideration of less serious offenses like non-violent misdemeanors (12 states)

Provide statutory guidance on how boards must evaluate criminal histories
- Prohibit automatic disqualifications (13 states)
- Require individualized consideration that takes into account the full history and experience of the applicant and their crime (27 states)
- Require a direct relationship between a disqualifying offenses and the licensed activity (43 states)

Expand procedural protections
- Require written notice of the reasons for a conviction-based denial (31 states)
Thank you

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