

Testimony of  
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Criminal Record Restrictions in  
State Occupational Licensing

Before the  
State of California's Little Hoover Commission

March 9, 2016



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Thank you to the Committee Members of the Little Hoover Commission for the opportunity to provide testimony on barriers to occupational licensing for people with conviction records. My name is Michelle Natividad Rodriguez and I am a Senior Staff Attorney of the National Employment Law Project.

## **The National Employment Law Project (NELP) Promotes Workers' Rights**

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Over forty-five years ago, NELP was founded to promote the employment rights of the working poor and unemployed. Today, NELP is one of the nation's leading voices promoting employment policies that deliver on the nation's promise of economic opportunity. From our locations throughout the country, we shape model policies at the local, state and national levels through empirical research, legal and policy advocacy, and building alliances. One of our focus areas is to reduce employment barriers and advance opportunities for the employment of people with prior arrest and conviction records.

## **Employment Barriers Exact a Heavy Toll, But Jobs Turn Lives Around**

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NELP estimates that there are 70 million adults with arrest or conviction records in the United States—or about one in three adults.<sup>1</sup> Unfortunately, finding a job is all too difficult for many people with records. Men with criminal records accounted for about 34 percent of all the nonworking men surveyed between the ages of 25-54 (generally considered to be prime working age) in a poll last year.<sup>2</sup> In another recent survey, 2 in 3 formerly incarcerated people were unemployed or underemployed five years after their release.<sup>3</sup>

Persistent joblessness translates into economic losses with far-reaching consequences. One study found that lowered job prospects of people with felonies and formerly incarcerated people cost the U.S. economy between \$57 and \$65 billion in lost output in 2008.<sup>4</sup> At the individual level, serving time reduces annual earnings for men by 40 percent,<sup>5</sup> meaning families too often fall into a poverty trap.<sup>6</sup>

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<sup>1</sup> In 2012, there were 100,596,300 subjects ("individual offenders") according to a Bureau of Justice Statistics survey of the criminal history files within the 50 states, American Samoa, Guam, and Puerto Rico. U.S. Dept. of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (Jan. 2014) at 2, ([www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf](http://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf)). To account for duplication in the survey of the state criminal record repositories (that is, individuals who may have criminal records in more than one state and deceased individuals who have not been removed from the state record systems), NELP conservatively reduced the numbers cited in the state survey by 30 percent to arrive at a total of 70,417,410 individuals with state arrest or conviction records. The U.S. Census 2012 population estimate for those 18 years and over was 240,185,952. *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States April 1, 2010 to July 1, 2012* (U.S. Census Bureau, Population Division, June 2013 ([www.census.gov](http://www.census.gov))). Using these estimates, 29.3 percent of U.S. adults, or nearly one in three, have a criminal history on file with states.

<sup>2</sup> Binyamin Appelbaum, "Out of Trouble, but Criminal Records Keep Men Out of Work," *New York Times* (Feb. 28, 2015) ([www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?\\_r=0](http://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html?_r=0)). Poll available at <http://kff.org/other/poll-finding/kaiser-family-foundation-new-york-times-cbs-news-non-employed-poll/>.

<sup>3</sup> Ella Baker Center for Human Rights, et al., "Who Pays? The True Cost of Incarceration on Families," (Sept. 2015), at 7. (<http://whopaysreport.org/>).

<sup>4</sup> John Schmitt and Kris Warner, "Ex-offenders and the Labor Market," Washington, D.C.: Center for Economic and Policy Research, (2010) ([www.cepr.net/documents/publications/ex-offenders-2010-11.pdf](http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf)).

<sup>5</sup> Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility*, The Pew Charitable Trusts, (2010) ([www.pewtrusts.org/uploadedFiles/Collateral\\_Costs.pdf?n=8653](http://www.pewtrusts.org/uploadedFiles/Collateral_Costs.pdf?n=8653)).

<sup>6</sup> John Tierney, "Prison and the Poverty Trap," *The New York Times* (Feb. 19, 2013) at D1 ([www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&\\_r=0c](http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0c)).

Conversely, new job opportunities for workers with prior records could translate into economic benefits for all. One study found that securing employment for just 100 formerly incarcerated people would increase their combined lifetime earnings by \$55 million and increase their tax contributions by \$1.9 million, all while saving more than \$2 million annually by keeping them out of the criminal justice system.<sup>7</sup>

Clearing the path to employment for people with prior records not only can boost the local economy, but it can also significantly increase public safety. Stable employment has been found to be a significant factor in reducing the likelihood of reoffending.<sup>8</sup>

## Removing Licensing Barriers to Open Pathways to Professions

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The White House reports that the percentage of the workforce covered by state licensing laws has grown five-fold since the early 1950s.<sup>9</sup> Today, not only the health care and education sectors are heavily regulated, but also sales, management, transportation, and even construction.<sup>10</sup> More than one-quarter of U.S. workers require a state license for their occupations.<sup>11</sup> Only when the vast number of state-licensed occupations is viewed in light of the ubiquity of licensing barriers can the enormity of the ramifications be appreciated.

The American Bar Association (ABA) Collateral Consequences Inventory (ABA Inventory) is a nationwide collection of the collateral consequences of arrest and conviction records that exist in the law. According to the ABA Inventory, there are 16,534 occupational licensing restrictions related to criminal records nationwide.<sup>12</sup> An additional 15,782 business license and other property rights restrictions add to the state law tally,<sup>13</sup> many of which limit the ability of those with conviction records to become entrepreneurs by opening their own businesses. Together, over 32,000 occupational and business licensing restrictions embedded in state laws include some type of background check requirement or criminal record disqualification. For California,

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<sup>7</sup> “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” Economy League of Greater Philadelphia (2011) ([http://economyleague.org/files/ExOffenders\\_-\\_Full\\_Report\\_FINAL\\_revised.pdf](http://economyleague.org/files/ExOffenders_-_Full_Report_FINAL_revised.pdf)).

<sup>8</sup> “Safer Foundation Three-Year Recidivism Study, 2008,” (2008) (<http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>).

<sup>9</sup> The White House, *Occupational Licensing: A Framework for Policymakers* (July 2015) at 17 ([www.whitehouse.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](http://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf)).

<sup>10</sup> *Id.* at 21.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> American Bar Association, *ABA National Inventory of the Collateral Consequences of Conviction* ([www.abacollateralconsequences.org](http://www.abacollateralconsequences.org)). The inventory includes information for all 50 states, the District of Columbia, and all U.S. territories. Hereinafter, referred to as “ABA Inventory” (visited March 7, 2016). Note that the inventory codes disclosures of backgrounds or background check requirements as freestanding entries in some cases. See ABA Inventory, *User Guide*, Question and Answer 10, ([www.abacollateralconsequences.org/user\\_guide/](http://www.abacollateralconsequences.org/user_guide/)). The “occupational and professional licenses and certification” includes the following: commercial drivers’ licenses, pilots’ and mariners’ licenses, commercial hunting and fishing licenses, most professional licensure requirements, and endorsements to operate school buses, multiple-person vehicles, and any other commercial vehicles on an ordinary driver’s license.

<sup>13</sup> ABA Inventory (visited March 7, 2016). The category “business licenses and other property rights” includes liquor licenses; livestock, agriculture, and wildlife licenses; lottery and gambling licenses; licenses to operate care-giving or educational facilities; licenses to engage in specific industries; and consequences affecting property rights, such as fines and administrative forfeitures, and corporate ownership interests. The user guide for the ABA Inventory cautions that the “difference between professional and business licensure will not be clear, and a comprehensive search should select both categories.” See ABA Inventory, *User Guide*, Question and Answer ([www.abacollateralconsequences.org/user\\_guide/](http://www.abacollateralconsequences.org/user_guide/)).

the ABA Inventory lists 619 entries for restrictions in occupational licensing laws, with an additional 726 entries for business license restrictions.<sup>14</sup>

Critics of occupational licensing regimes argue that variations among licensing laws demonstrate the arbitrariness of professional licensing requirements.<sup>15</sup> One commentator noted that if “a license is required to protect the public health and safety, one would expect more consistency.”<sup>16</sup> This observation is especially relevant in the conviction history context; if denying a license based on the applicant’s conviction history were necessary for public safety, one would expect consistency among the disqualifying convictions throughout the states.

Instead, thousands of occupational licensing laws are poorly calibrated to advance public safety and health. These restrictions eliminate well-qualified candidates with records who could otherwise contribute to the local economy. One conservative think tank has reported that strict occupational licensing restrictions have a negative effect on both low-wage workers and consumers, while doing little to advance safety or quality of service.<sup>17</sup> They estimate that these restrictions could eliminate 2.85 million jobs nationwide and raise consumer expenses by over 100 billion dollars.<sup>18</sup> Although these statistics reflect the impact of licensing laws generally, they provide a glimpse into the potential benefit to the economy and labor market if states were to more narrowly tailor criminal record licensing restrictions.

Indeed, voices from across the political spectrum have found common ground on reducing conviction barriers in occupational licensing. Koch Industries General Counsel Mark Holden has opined that reducing occupational licensing restrictions is part of “reforming the criminal justice system.” Without the ability to obtain professional licenses, Mr. Holden asks, how can we expect people with conviction records to “create value in their communities and improve their lives?”<sup>19</sup>

With the aim of advancing reforms to state law and policy that will allow people with records to be evaluated on their merits, this testimony examines significant flaws in state occupational licensing criminal background check regimes and provides recommendations.

### **Recommendation 1: Understand the State’s Landscape of Licensing Restrictions**

Auditing the current criminal record restrictions in occupational licensing laws and in licensing agencies’ practices would help direct reform. The ABA Inventory provides a snapshot of the restrictions embedded in statutes and regulations by each state. However, another dimension of the problem is the licensing agencies’ interpretation and application of the laws. With a wide latitude for discretion in decision-making, agencies can be biased gatekeepers to the profession, despite improvements to the letter of law.

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<sup>14</sup> ABA Inventory (visited March 7, 2016).

<sup>15</sup> Dick M. Carpenter II, et al., Institute for Justice, *License to Work: A National Study of Burdens from Occupational Licensing* 25 (2012) ([www.ij.org/images/pdf\\_folder/economic\\_liberty/occupational\\_licensing/licensetowork.pdf](http://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf)).

<sup>16</sup> *Id.*

<sup>17</sup> Morris M. Kleiner, *Reforming Occupational Licensing Policies*, The Hamilton Project, Discussion Paper 2015-01 (Jan. 2015) at 13.

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

<sup>19</sup> Mark V. Holden, “How to Keep the Unemployed Out of Work,” *The Wall Street Journal* (Dec. 8, 2015) ([www.wsj.com/articles/how-to-keep-the-unemployed-out-of-work-1449618512?cb=logged0.5074470604304224](http://www.wsj.com/articles/how-to-keep-the-unemployed-out-of-work-1449618512?cb=logged0.5074470604304224)).

Policymakers could request a baseline of information from the licensing agencies that includes the number of licensee applicants, applicants with records, licensee rejections based on records, the type of records that are disqualifying applicants, and any internal criteria, practice, or policy of the agency used to review applicants. To target reform, an inquiry could examine the high-growth occupational sectors, survey denied licensees and convene stakeholders familiar with the obstacles that licensees experience. An audit or study of the landscape should not be a substitution for reform, but could be helpful in focusing efforts.

### ***Problem: Broad Criminal Record Inquiries Do Little for Public Safety and Increase Bias***

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The rationale for broad criminal record inquiries is ostensibly compelling—entities seek robust information to advance public safety and health. However, broad inquiries can be misleading, confusing and activate strong negative biases for decision makers. Indeed, no available evidence demonstrates that the mere existence of a criminal record is related to poor occupational performance or low-quality services. In other words, simply having some type of a past record does not predict an individual’s ability to perform in an occupation.

Rather, having an arrest record has been shown to predict the likelihood of re-arrest within a certain time period.<sup>20</sup> Yet, after a certain amount of time has passed without involvement with the criminal justice system, this predictive value also declines.<sup>21</sup> The reality is that a criminal record is not used to screen out applicants because of its value of predicting re-arrest. Instead, decision makers are responding to the perception that a criminal record is a proxy for immorality or untrustworthiness.

Even more damaging, there is a deep-seated negative stereotype of “criminality” as being associated with dangerousness. Although research does not demonstrate that a workplace is less safe with an employee with a past record, the negative perception is pervasive. To address and dismantle these stereotypes, state law can provide the structure and processes to minimize the impact of these existing biases.

### **Recommendation 2: “Ban the Box” and Limit Scope of Criminal Record Inquiry to Reduce Bias.**

The 2012 U.S. Equal Employment Opportunity Commission (EEOC) guidelines on the consideration of arrests and convictions in employment decisions recommends “as a best practice . . . that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related . . .”<sup>22</sup>

The first component of the EEOC’s recommendation is commonly known as “ban the box.” In the hiring setting, the check-box conviction inquiry is removed from the job application and any inquiries are delayed until later in the hiring process. The rationale for banning the box in

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<sup>20</sup> Alfred Blumstein and Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks,” *Criminology* 47(2), 2009: 327-359.

([www.search.org/files/pdf/Redemption\\_Blumstein\\_Nakamura\\_2009Criminology.pdf](http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf)).

<sup>21</sup> Shawn D. Bushway and Gary Sweeten, “Abolish Lifetime Bans for Ex-Felons,” *Criminology and Public Policy* 6(4), 2007: 697-706. ([www.reentryaftercare.org/pdf/Bushway%20-%20Abolish%20Lifetime%20Bans%5B1%5D.pdf](http://www.reentryaftercare.org/pdf/Bushway%20-%20Abolish%20Lifetime%20Bans%5B1%5D.pdf))

<sup>22</sup> EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. at 13-14 (Apr. 25, 2012) (“EEOC guidance”) ([www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)).

hiring is that employers automatically reject applications with the checked-box, regardless of the applicant's qualifications. Substantiating this insight, one study showed that 76 percent of hiring discrimination takes place at the initial stage of hiring, before individuals can present their qualifications fully.<sup>23</sup> In the licensing setting, Colorado provides an example of ban the box:

“[T]he agency shall not perform a background check until the agency determines that an applicant is a finalist . . . ”<sup>24</sup>

By fully evaluating an applicant's professional qualifications before his or her conviction history is known, licensing authorities ensure that their assessment of those qualifications is objective and not unduly influenced by bias against people with conviction records. Research on preventing biased decision-making emphasizes deliberative processes such as articulating elements deemed essential for the job early in the process.<sup>25</sup> In the licensing context, this approach could translate into creating a clear set of requirements essential for the occupation that are considered prior to any criminal record inquiry.

The second element of the EEOC's recommendation in considering criminal record information in employment decisions is to limit inquiries to only job-related convictions. In other words, instead of a broad inquiry into any criminal background information, a licensing agency would limit its inquiry to only those convictions that are deemed occupation-related. These convictions may be potentially disqualifying but would be considered on a case-by-case basis. In the employment context, the EEOC directs employers to consider the following factors, commonly referred to as a job-relatedness analysis:

- The nature and gravity of the offense;
- The time that has passed since the offense or the completion of the sentence;
- The nature of the job held or sought.

Using these factors to limit the scope of an inquiry to only occupation-related offenses, a minefield of biases could be potentially avoided.

### ***Problem: Blanket Bans Indiscriminately Eliminate Qualified Candidates***

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Background check reports are inaccurate and misleading, yet still form the basis for automatic disqualifications from employment opportunities.<sup>26</sup> Apart from inaccuracies, merely understanding and evaluating background check reports is challenging. For example, on its face, “assault” seems to imply a propensity for violence. Without knowing the circumstances—such as **age** (youthfulness), **frequency** (first and only time), or **situation** (defending a friend

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<sup>23</sup> Marc Bendick, Jr., Lauren Brown, and Kennington Wall, “No Foot in the Door: An Experimental Study of Employment Discrimination,” *Journal of Aging and Social Policy* 10 (4): 5-23 (1999), at 10.

<sup>24</sup> Colo. Rev. Stat. § 24-5-101 (3)(b); see also Colo. Rev. Stat. § 24-34-102 (8.7).

<sup>25</sup> See Cheryl Staats, et al., *State of the Science: Implicit Bias Review 2015*, Kirwan Institute (2015) (<http://kirwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kirwan-implicit-bias.pdf>); Rachel D. Godsil, et al. *The Science of Equality, Volume 1: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat in Education and Health Care* (Nov. 2014) at 47-48 (<http://perception.org/app/uploads/2014/11/Science-of-Equality.pdf>).

<sup>26</sup> Persis Yu & Sharon Dietrich, “Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses,” National Consumer Law Center (2012) ([www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf](http://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf)).

from a slur that resulted in a barroom brawl)—an automatic disqualification against individuals with the label of “violent offense” could eliminate a strong applicant.

Unfortunately, state licensing laws commonly include some type of blanket disqualification—many that last a lifetime. As a gauge for the frequency, the ABA Inventory reports mandatory disqualifications in over 400 licensing regulations and statutes in California.<sup>27</sup> These run the gamut from broad categories—such as permanent disqualifications against people with any felony—to narrower fields—such as individuals with “violent” or “serious” felonies.

### **Recommendation 3: Remove Automatic Blanket Bans; Provide Anti-Discrimination Framework.**

Policymakers should seek to remove any automatic blanket exclusions from the law. As a point of reference in the employment context, the EEOC guidance on the use of arrest and conviction records in employment decisions discourages the use of automatic, across-the-board exclusions.<sup>28</sup> The guidance explains that these types of bans are disfavored because they are not tailored to the risks in particular job positions.

Thus, the best course would be to avoid any outright blanket disqualification and instead provide an affirmative statement in the law that the existence of a criminal record cannot be the sole basis for disqualification. Minnesota’s statutory scheme provides one example:

“Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.”<sup>29</sup>

### **Recommendation 4: Develop Narrowly Tailored, Targeted Potential Exclusions.**

The best replacement for a blanket ban is to forego any mandatory disqualifying offenses in favor of a case-by-case assessment of an individual’s record. If, however, any disqualifying offenses are statutorily enumerated, then they should be narrowly tailored to the specific occupation. The EEOC job-relatedness factors described above should guide the development of targeted exclusions. However, an essential companion to any exclusion is an opportunity for the individual to both rebut the accuracy of the criminal record and provide mitigating evidence or any evidence of rehabilitation. Without this individual assessment component, the exclusion would be an automatic ban. As discussed above, the categorization of an offense may not necessarily translate to a commonsense understanding of the conduct.

### **Recommendation 5: Provide Notice and Opportunity to Respond.**

The Fair Credit Reporting Act (FCRA), a federal consumer protection law, requires entities to receive an applicant’s authorization prior to acquiring a report from a private background

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<sup>27</sup> Search of California’s “mandatory/automatic” offenses in occupational and professional licenses and business licenses categories in the ABA Inventory resulted in 439 entries for regulations and statutes, removing duplications of entries and court rule entries. (Visited March 9, 2016).

<sup>28</sup> EEOC Guidance, *supra* at 11, 16.

<sup>29</sup> Minn. Stat. § 364.03.

check company.<sup>30</sup> In addition, FCRA requires that prior to any adverse action, the entity must provide a copy of the background check report. Before a final decision is made, the agency should provide the applicant with written notice of the specific item in the background check report that is considered occupation-related, in addition to a copy of the report.

Background check reports can be rife with errors or inaccuracies, so allowing applicants the chance to verify or challenge the information is key. Licensing authorities, even entities that rely on government-produced background check reports that are not subject to FCRA, should meet these basic consumer protection standards. Connecticut's licensing statute provides the following example:

“If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.”<sup>31</sup>

### ***Problem: Overbroad or Vague Standards Foster Biased Decisions***

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Depending on the occupation and the state, applicants for occupational licenses may be required to satisfy a “good moral character” component. Often these types of character evaluations afford licensing boards overly broad discretion and fail to provide adequate guidance. Another example of a vague, but common term is an offense of “moral turpitude.” The phrase often operates as a catch-all for a broad range of convictions. Licensing schemes may permit or even mandate disqualifications for any candidates who have committed offenses of moral turpitude.

### **Recommendation 6: Remove Vague and Overbroad Standards.**

The U.S. Supreme Court has described the term “good moral character” as “unusually ambiguous” with the potential to serve as a “dangerous instrument for arbitrary and discriminatory denial” of a professional license.<sup>32</sup> In an attempt to provide some parameters to the term, the Court has articulated that a “good moral character” standard “must have a rational connection with the applicant's fitness or capacity to practice” in the occupation.<sup>33</sup>

In order to ensure that licensing boards have fair processes in place to consider applicants, vague terms such as “good moral character” and catch-all categories such as offenses of “moral turpitude” should be removed from licensing standards. An alternative to removing the terms would be to add definitions of the terms that allow for individual assessments.

### **Recommendation 7: Licensing Agencies Should Adopt Specific Criteria for Evaluations.**

A licensing board is tasked with evaluating whether someone is fit to practice a profession. Without standards in place—and with unfettered access to irrelevant, but highly stigmatizing criminal record information—it is unsurprising that licensing agencies would disqualify many

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<sup>30</sup> 15 U.S.C. § 1681 *et seq.*

<sup>31</sup> Conn. Gen. Stat. § 46a-80.

<sup>32</sup> *Konigsberg v. State Bar of California*, 353 U.S. 252, 263 (1957). The Court stopped short of declaring the “good moral character” standard unconstitutionally vague.

<sup>33</sup> Although *Schware v. Board of Bar Examiners of State of New Mexico*, 353 U.S. 232, 239 (1957), examined a bar applicant's ability to practice law, this rational connection standard has been imported into other occupational licensing contexts. See, e.g., *Barletta v. Rilling*, 973 F. Supp. 2d 132, 137 (D. Conn. 2013).



applicants with records. The EEOC guidelines recommend the use of individualized assessments to allow employers to consider more complete information, thus helping employers to avoid civil rights law liability. In the licensing context, a potentially disqualified applicant should be provided the opportunity to submit mitigating information or evidence of rehabilitation to demonstrate why the disqualification should not apply to him or her. The EEOC provides some examples of individualized evidence:

- The facts or circumstances of the offense;
- Evidence of work history;
- Rehabilitation efforts such as education and training;
- Employment or character references; and
- Whether the individual is bonded.<sup>34</sup>

To ensure that the individual has the time to respond, statutory or regulatory schemes can provide a timeline for the applicant.

In the context of considering rehabilitation, the most helpful laws provide standards and examples of evidence of rehabilitation as well. Minnesota’s statute provides that a person with a conviction “shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties.” The statute proceeds to list examples of “evidence of sufficient rehabilitation” such as demonstrating completion of probation or parole.<sup>35</sup>

### ***Problem: Lack of Consistency and Transparency Among Licensing Laws***

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Laws for the same occupations can vary widely across states, as do the standards states use to evaluate past offenses. Further complicating matters, the statutes governing individual professions or classes of professions often have different language and procedures from the general state licensing statutes. In addition, reciprocity statutes that allow an applicant who is already licensed and practicing in one state to become licensed in another state often require a new background check.

Navigating this complicated web of intersecting laws is impossible for the average worker. Not specific to criminal background requirements, critics of occupational licensing schemes have highlighted how these inefficiencies squelch employment and entrepreneurship opportunities for low-income people in particular.<sup>36</sup>

### **Recommendation 8: Creating Uniformity in Standards.**

Several states have enacted statutes aimed at creating a more uniform policy regarding the consideration of criminal records by different occupational licensing boards.<sup>37</sup> Despite the

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<sup>34</sup> EEOC Guidance, *supra*.

<sup>35</sup> Minn. Stat. § 364.03 (Subd. 3).

<sup>36</sup> The White House, *Occupational Licensing: A Framework for Policymakers* (July 2015).

<sup>37</sup> Since 2012, Louisiana, New Hampshire, North Carolina, Ohio, and Texas have all passed such laws. H.B. 295 (La. 2012) (prohibiting licensing boards from denying a license based solely on an applicant’s criminal record); H.B. 1368 (N.H. 2014) (same); S.B. 33 (N.C. 2013) (same); S.B. 337 (Ohio 2012) (allowing people to apply for a certificate of qualification for employment that lifts the automatic bar on obtaining a professional license and limiting the extent to which criminal records can be considered in licensing decisions); H.B. 1659 & H.B. 798 (Tx. 2013) (restricting the use of certain misdemeanors and felonies in licensing decisions).

potential benefits of a general licensing statute, without guidance as to the interaction between such a statute and restrictions relevant to only individual occupations, the web of licensing laws could be even more confusing. A general licensing statute should clearly supersede existing statutory languages, and any legislation should include provisions that amend all the relevant statutory schemes of the individual occupational licensing laws. With similar standards in place across occupations, greater efficiencies in the implementation of the laws can be expected.

**Recommendation 9: Clear Guidance for Applicants and Transparency in Decision-Making.**

In order to help applicants understand if they should invest the time and money required for training and applying for a license, policymakers can look to one example in Texas. The Texas Department of Licensing and Regulation allows potential license applicants to have their records evaluated by an attorney whose recommendation is sent to the licensing board.<sup>38</sup> A recommendation that the conviction history is *not* a bar to licensure does not dictate a board's decision.<sup>39</sup> However, the department provides guidelines for the types of offenses that will often be considered related to a license.<sup>40</sup> In addition, licensing agencies could publish their licensing decisions (while preserving confidentiality) in order to provide greater transparency into the decision-making process.

**Recommendation 10: Ongoing Data Collection to Identify Existing Barriers.**

To ensure licensing boards are reducing the number of people disqualified for non-occupation-related convictions, data collection should also be incorporated into the statutory scheme. For example, a law that prohibits blanket disqualifications and specifies certain criteria for considering a past record should require the board to report, at minimum, the following: the number of applicants with criminal records, the number of those denied licenses based on their records, and the type of record that was the basis for the denial. Comparing this information to baseline data established prior to the enactment of a new law will help ensure that the law is implemented as intended.

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<sup>38</sup> Texas Department of Licensing and Regulation Administration, *Guidelines for License Applicants with Criminal Convictions*, [www.tdlr.texas.gov/crimconvict.htm#bar](http://www.tdlr.texas.gov/crimconvict.htm#bar) (visited Aug. 7, 2015).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*