

# Occupational Licensing: Assessing State Policy and Practice Challenges for People with Criminal Records

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# Scope of the Problem: Reach of the criminal justice system

- 2.2 million people in prison or jail
- Approximately 5 million on probation or parole
- Roughly 11 million people cycle in and out of local jails
- Approximately 70-100 million adult Americans with a criminal record
  - Colorado-1.6 million
  - Connecticut-1.1 million
  - Delaware-2.3 million
  - Illinois-6.6 million
  - Maryland-1.5 million

# Scope of the Problem:

## Breadth of collateral consequences

- Over 45,000 potential collateral consequences triggered by contact with the criminal justice system
- These consequences span various aspects of life including:
  - Voting and civic rights
  - Public benefits
  - Education
  - Housing
  - Family and adoption
  - Employment and Occupational licensing
- <https://niccc.csgjusticecenter.org/map/>

# Examples of criminal record based licensing barriers

## Maryland: Can't be a fortune teller

Citation	Md. LOCAL GOVERNMENT Code Ann. § 13-205
Title	Ineligible for Calvert County fortune teller license
Consequence Category	Employment; Occupational and professional license and certification
Consequence Details	<p>(a) License required. --</p> <p>(1) Notwithstanding any provision of the Business Regulation Article, in Calvert County, a palm reader, fortune-teller, soothsayer, or similar individual shall: . .</p> <p>(2) Before an applicant may be issued a license under this section, the applicant shall:</p> <p>(i) be fingerprinted and photographed by the Department of State Police; and</p> <p>(ii) obtain a certificate from the Department of State Police that indicates that the applicant has never been convicted of a crime, other than a motor vehicle violation.</p> <p>(3) The term of the license is 3 months. . .</p>
Consequence Type	Mandatory/Automatic

# Examples of criminal record based licensing barriers

## Kentucky: Can't hold horse racing meeting

Citation	KRS § 230.280
Title	Ineligible for license to hold horse race meeting (permanent for specified offenses) (convictions of applicant/licensee/principals) (gaming)
Consequence Category	Employment; Business license and other property rights
Consequence Details	<p>(1) No person shall hold or conduct any horse race meeting for any stake, purse, or reward within the Commonwealth of Kentucky without securing the required license from the racing commission.</p> <p>(2) The racing commission shall investigate the qualifications of each applicant for a license to conduct a horse race meeting or the renewal of a license to conduct a horse race meeting. The racing commission may issue or renew a license unless the racing commission determines that:</p> <p>...</p> <p>(f) Any of the principals of the applicant or licensee is determined to be unsuitable because he or she has:</p> <ol style="list-style-type: none"> <li>1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;</li> <li>2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky ....</li> </ol>
Consequence Type	Mandatory/Automatic

# Examples of criminal record based licensing barriers

## Indiana: Can't be a athletic trainer

Citation	Burns Ind. Code Ann. § 25-5.1-3-1
Title	Ineligible for athletic trainer's license (health care)
Consequence Category	Employment; Occupational and professional license and certification
Consequence Details	<p>(a) To qualify for a license under this article, an individual must satisfy the following requirements: ...</p> <p>(3) Not have been convicted of a crime that has a direct bearing on the applicant's ability to practice competently as determined by the board. ...</p>
Consequence Type	Mandatory/Automatic
Supplemental Records Check	See Burns Ind. Code Ann. § 10-13-3-27 (limited criminal history check).
Duration Category	Permanent/Unspecified
Duration Details	
Relief	None in statute
Relief Details	
Triggering Offense Category	Any felony; Any misdemeanor

# Remedies to criminal record based licensing barriers

## Forget, Forgive, and Guide Discretion

- Expungement and other clean slate remedies
  - <https://cleanslateclearinghouse.org>
  - <https://cleanslateclearinghouse.org/resources/state-guides/>
- Certificates of Relief
  - <http://ccresourcecenter.org/wp-content/uploads/2017/10/Forgiving-Forgetting-Report-CCRC-Oct-17.pdf>
- Occupational licensing reform (North Carolina example)
  - North Carolina General Statutes
    - Chapter 93B: Occupational Licensing Boards.
    - G.S. 93B-8.1

## G.S. 93B-8.1-Use of Criminal Records (North Carolina example on guiding discretion)

Unless the law governing a particular occupational licensing board provides otherwise, a board **shall not automatically deny licensure on the basis of an applicant's criminal history**. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (7) The subsequent commission of a crime by the applicant.
- (8) Any affidavits or other written documents, including character references.