



Ohio

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

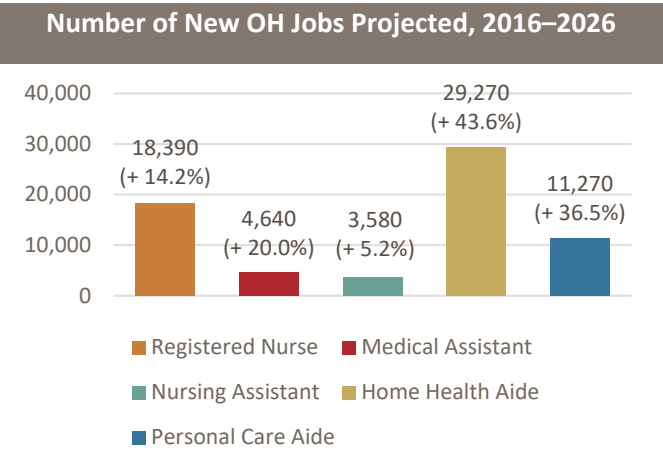
Nearly one in five Ohio adults, disproportionately people of color, has an arrest or conviction record that may prevent them from working in a variety of occupations regulated by state governments.¹ Ohio requires a license or certification for **some of the largest and fastest-growing professions**, such as healthcare and education. Ohio’s licensing laws typically require background checks and grant boards and agencies **broad discretion to reject applicants based on unrelated or old convictions records**—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 Ohio law requires a criminal background check. The occupations discussed below account for almost 10.7% of annual job openings in Ohio and have, collectively, a projected growth of 14.1% by 2026, which compares favorably to the statewide projected growth for all occupations, 4.4%.²

Barriers to Rapidly Growing Healthcare Professions

Healthcare professions include some of the fastest-growing occupations in Ohio, measured by both the number of new jobs and percent growth.

While employers cite difficulties in filling their many healthcare job openings, Ohio background check restrictions often block qualified workers with records from filling those vacancies. The standards used to evaluate a person’s record remain vague and inadequately tailored to the goals of advancing economic health, government efficiency, community safety, and racial equity.



Source: U.S. Dep’t of Labor, Bureau of Labor Stats., *Employment Projections—2016–2026*, <https://data.bls.gov/projections/occupationProj>.

✔ Enhances equity
 ⚠ Potential for bias
 ✘ Source of unfairness

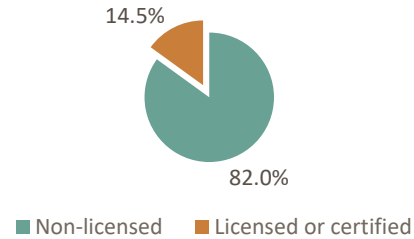
Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
Registered Nurse, Nursing Assistant, Medical Assistant, Home Health Aide, and Personal Care Aide³ (Bd. of Nursing)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for enumerated felony convictions and any conviction requiring sex offense registration. ⚠ Discretionary disqualification for any felony or misdemeanor. ⚠ Vague, discretionary disqualification for any offense involving “gross immorality” or “moral turpitude.” 	<ul style="list-style-type: none"> ✘ Non-conviction information may be disqualifying (e.g., pretrial diversion, intervention in lieu of conviction). ✘ No prohibition against denials based on arrests not resulting in conviction. 	<ul style="list-style-type: none"> ✘ Complete discretion; no instruction to consider relevancy of offense, rehabilitation, or time since offense.⁴ ✔ Right to rehearing if inaccurate records were

	<ul style="list-style-type: none"> ⚠ Discretionary disqualification for any drug-related record or if board finds “habitual or excessive use of controlled substances, other habit-forming drugs, or alcohol.” 	considered or relevant evidence was not.
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Barriers to Careers in K-12 Education, Childcare, and Private Security

Roughly 240,910 Ohio residents are employed in K-12 education, childcare, or security jobs that require licensure. On average, well over 20,000 job openings in these fields emerge each year, and that number continues to increase. Despite growing need for qualified applicants, Ohio law unnecessarily prevents many people with records from obtaining licensure to work in these fields.

Percent of Total Ohio 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 Teacher, Teaching Assistant⁵ (Dep’t of Education)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for enumerated felonies and misdemeanors. ✘ Mandatory, 5-year disqualification for any other felony or misdemeanor conviction. ⚠ Discretionary disqualification for any felony, theft offense, or offense of violence. ⚠ Vague, discretionary disqualification for any “immoral act” or “conduct that is unbecoming.” 	<ul style="list-style-type: none"> ✘ Non-conviction information may be disqualifying (e.g., pretrial diversion or intervention in lieu of conviction). ✘ No prohibition against denials based on arrests not resulting in conviction. 	<ul style="list-style-type: none"> ⚠ Limited consideration of relevancy. For discretionary offenses, some relevancy factors provided in regulations.⁶ ✔ Right to administrative appeal of final decision.⁷
Childcare Worker⁸ (Dep’t of Job & Family Services)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for certain enumerated felony convictions. ✘ Mandatory, time-limited disqualification for several enumerated felony convictions⁹ (10 years) and misdemeanor convictions (3 years). ✘ Mandatory, permanent disqualification for any conviction where victim was under 18 years of age.¹⁰ 	<ul style="list-style-type: none"> ✘ Sealed convictions are considered. ✔ Convictions that are unconditionally pardoned may not be considered. 	<ul style="list-style-type: none"> ⚠ Limited consideration of relevancy. Some relevancy factors provided in regulations.¹¹
Private Security Guard¹² (Dep’t of Public Safety, Private Investigator Security Guard Services Comm.)	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for several enumerated convictions involving “moral turpitude.” ✘ Mandatory, time-limited disqualification for any felony conviction (3 years) or misdemeanor conviction (1 year). 	<ul style="list-style-type: none"> ✘ Consideration of non-conviction information possible via vague, broad standards, such as requirement of “good reputation for integrity.” 	<ul style="list-style-type: none"> ✘ Complete discretion; no instruction to consider relevancy of record rehabilitation, or time since offense.

Recommended Fair Chance Licensing Reforms for Ohio

Impose common-sense limitations on the unchecked discretion of boards and agencies to deny a license or certification based on virtually any criminal record.

- 1** *Limit the scope of the record inquiry because unlimited and unguided discretion leads to inconsistent and discriminatory decisions, often based on race and national origin.*
 - Arrests, pre-trial diversion programs, or intervention in lieu of conviction alone are not proof of misconduct: Prohibit consideration of non-conviction information and minor convictions (e.g., all or most misdemeanors).
 - Forever is too long: Set a look-back limit to prevent denials based on old, irrelevant convictions.
 - Vague language leads to discrimination: Remove vague standards, including “conduct that is unbecoming.”
- 2** *Require boards and agencies to justify denials after considering common-sense factors related to relevancy.*
 - Not all records indicate relevant misconduct: Prohibit denial of applicants unless the conviction “directly relates” to the occupation.
 - Clearer guidance means fairer outcomes: List specific factors for determining whether a direct relationship exists (e.g., elements of the offense; specific duties of the occupation; and how a license offers unique possibility for public safety concerns beyond harm an unlicensed person could cause).
- 3** *Mandate consideration by boards and agencies of evidence of rehabilitation and mitigating circumstances.*
 - Rap sheets oversimplify to the point of distortion: Consider circumstances of the offense, including age of the person at the time.
 - Recent efforts matter: Consider evidence of work or volunteer history and letters of reference.

Vague Terminology Increases Unpredictable Outcomes & Discrimination

Laws and regulations that invoke vague standards—such as “**good reputation for integrity**,” “**crimes of moral turpitude**,” or “**conduct that is unbecoming**”—reduce predictability, consistency, and fairness in decision-making, while allowing implicit bias to impact outcomes.

Promote Fairness by Considering Common-Sense 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.¹³

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

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ENDNOTES

- ¹ 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/>.
- ² U.S. Dep't of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj> (last visited Nov. 1, 2019).
- ³ Ohio Rev. Code Ann. § 4723.
- ⁴ Cf. Ohio Bd. of Nursing, *Disqualifying Offenses Criminal History Fact Sheet* (2019), <http://nursing.ohio.gov/wp-content/uploads/2019/09/92719-DISQUALIFYING-OFFENSES-CRIMINAL-HISTORY-FACT-SHEET.pdf>.
- ⁵ Ohio Rev. Code Ann. §§ 3319.39, 3319.31,

3319.311; Ohio Admin. Code § 3301-20-01; see Ohio Dep't of Educ., *Standards for Licensure and Employment of Individuals with Criminal Convictions* (2009), [https://education.ohio.gov/getattachment/Topics/Teaching/Educator-Conduct/How-Convictions-Affect-Licensure-\(1\)/General-Questions/Is-an-educator-who-has-a-criminal-conviction-eligible/Rehabilitation-Rule-Matrix.pdf.aspx](https://education.ohio.gov/getattachment/Topics/Teaching/Educator-Conduct/How-Convictions-Affect-Licensure-(1)/General-Questions/Is-an-educator-who-has-a-criminal-conviction-eligible/Rehabilitation-Rule-Matrix.pdf.aspx).

⁶ Adopting mandatory relevancy considerations via *statute* would be clearer and more permanent.

⁷ Ohio Rev. Code Ann. § 119.

⁸ Ohio Rev. Code Ann. §§ 5104.013, 109.572(A)(5); Ohio Admin. Code § 5101:2-12-09(G); see Ohio Dep't of Job & Family Servs., *Prohibitive Convictions and Rehabilitation Standards for Child Care Centers, Family Child Care Home Providers, and In-Home Aides* (2017),

<http://jfs.ohio.gov/cdc/docs/ProhibitiveConvictionsOct2017.stm>.

⁹ List includes theft, unauthorized use of a vehicle, cultivation of marijuana, and illegal use of food stamps.

¹⁰ Ohio Admin. Code § 5101:2-12-09 app. A.

¹¹ *Id.* Adopting mandatory relevancy considerations via *statute* would be clearer and more permanent.

¹² Ohio Rev. Code Ann. §§ 4749, 4776.10, 2901.01; Ohio Admin. Code § 4501.

¹³ 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.