FAIR CHANCE LICENSING REFORM:

OPENING PATHWAYS FOR PEOPLE WITH RECORDS TO JOIN LICENSED PROFESSIONS

NELP NATIONAL
EMPLOYMENT
LAW
PROJECT

ABOUT NELP

For 50 years, the National Employment Law Project has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing.

For more information,
visit us at www.nelp.org.

For information on Fair Chance Licensing,
visit: https://www.nelp.org/campaigns/fair-chance-licensing-people-records/

ACKNOWLEDGEMENTS

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I. Introduction

Two trends, decades in the making, are colliding.

The first trend, stemming from "tough on crime" policies and mass incarceration, is that more Americans have an arrest or conviction record than ever before. The second trend is the dramatic expansion of occupational licensing, which requires people to obtain permission from a government agency—and, commonly, pass a background check—before they can work.

The result? More than 70 million people with a record in the United States either face significant barriers when seeking a license to work, which is now required for one in four jobs, including many good-paying jobs that are in high demand in healthcare and other industries, or—even worse—they are automatically disqualified, sometimes for life.

Laws that function in this way to permanently stigmatize and keep opportunity out of reach for so many people serve none of us well.

This debate isn't merely philosophical. The best evidence, highlighted throughout this toolkit, makes a few things clear: policies that make it easier for people with records to work strengthen the economy, improve public safety, help employers find good workers, and advance racial and social justice. Fair chance licensing reforms are critical to realizing these benefits, and policy makers of all political stripes have spoken out in favor of these commonsense policies.

But it's also important to keep sight of a more basic point: these issues are fundamentally about people. When a person with a record is not permitted—as a matter of public policy—to reach their full potential, real and lasting consequences follow for individuals, families, and entire communities. All of us.

We all have a stake in this work, and it's time to act. This toolkit is intended to provide lawmakers and advocates in states across the country with the resources necessary to set about the work of fair chance licensing reform.

II. By the Numbers

TREND 1: MASS INCARCERATION HAS LEFT MORE PEOPLE WITH RECORDS THAN EVER BEFORE

Over **70 MILLION** PEOPLE in the U.S. **HAVE a RECORD**. That's nearly **1 in 3 ADULTS.**

More than **19.5 MILLION** PEOPLE HAVE a FELONY CONVICTION.

More than **6.7 MILLION** PEOPLE HAVE a PRISON RECORD (2010).

A record takes a wrecking ball to employment prospects and economic stability.

HAVING A RECORD

EMPLOYMENT PROSPECTS

ECONOMIC STABILITY

**EARN 40% LESS**

$179,000 OVERALL LOSS by age 50

**60%** of people who have been incarcerated **REMAIN UNEMPLOYED** one year after release.
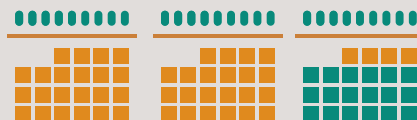
Formerly incarcerated men can expect to **WORK NINE FEWER WEEKS per year** and **EARN 40% LESS.**

60%
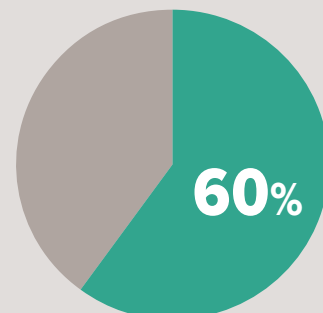
Today, **nearly HALF of all CHILDREN** in America **HAVE A PARENT WITH A RECORD,** causing these **ECONOMIC IMPACTS** to spill **OVER GENERATIONS.**
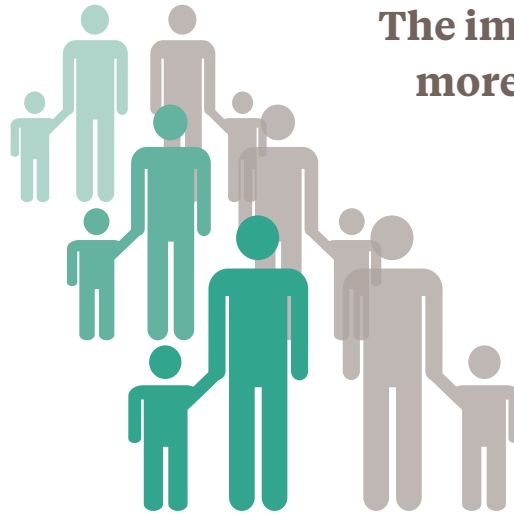
The impact of a record is more severe for people of color.

40%
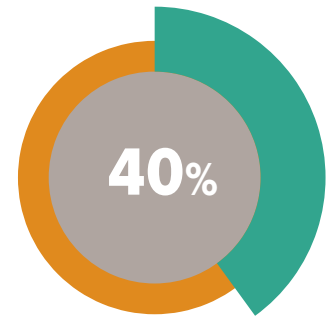
Studies have shown that **WHITE MEN with a RECORD** are **MORE LIKELY to RECEIVE a POSITIVE RESPONSE FROM an EMPLOYER THAN BLACK MEN WITHOUT ONE.**

One study found that the **EFFECT** of a criminal **RECORD on EMPLOYMENT** was **40% MORE DAMAGING for BLACK MEN than WHITE MEN.**

60%

30%
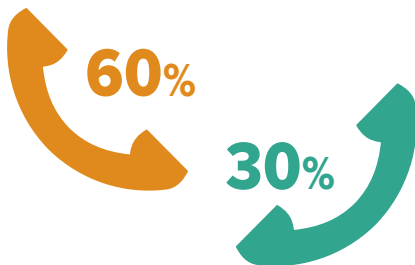
In one study, nearly **60% of MEN with a prison RECORD** would have been **CALLED BACK for a JOB INTERVIEW,** but **only 30% of WOMEN WOULD have, WITH the SAME RECORD.**

The stigma of a conviction is more significant for women.

One study found that **formerly incarcerated WHITE WOMEN** were **93% MORE LIKELY to be** contacted by employers for an interview or **OFFERED a JOB THAN** formerly incarcerated **AFRICAN AMERICAN WOMEN.**

African American women with prison record — **93%**

Hispanic women with prison record — **61%**

White women with prison record
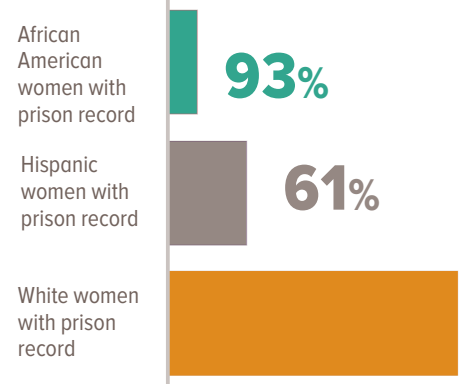
HISPANIC WOMEN with a prison record were **61% LESS LIKELY than WHITE WOMEN with a prison RECORD** to receive a favorable response by employers.

TREND 2:

MORE JOBS IN THE ECONOMY REQUIRE PERMISSION TO WORK THAN EVER BEFORE – OFTEN TO THE EXCLUSION OF PEOPLE WITH ARREST AND CONVICTION RECORDS.

Today, more than **25**% of U.S. **workers require a LICENSE OR CERTIFICATION** before they can work in their occupation. **That's up** dramatically **FROM ABOUT 5% in the 1950s.**

5% 1950s

25% Today
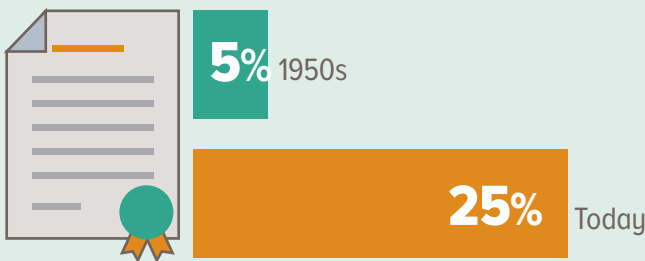
Some of the fastest growing occupations in America require a license.

2/3 of the **GROWTH in LICENSING** comes from an **INCREASE in the NUMBER of LICENSED PROFESSIONS**, suggesting that **LICENSING HAS significantly EXPANDED into new sectors.**

6 of the **10 FASTEST GROWING PROFESSIONS** are in **HEALTHCARE SUPPORT or PERSONAL CARE.**

- occupational therapy assistants
- physical therapist assistants
- physical therapist aides
- home health aides
- nurse practitioners
- physical therapists

But **STATE LICENSING LAWS** set up **MAJOR BARRIERS TO EMPLOYMENT** for people with records. **There are over 27,000 state occupational LICENSING RESTRICTIONS.**

STATE LICENSING LAWS

Barriers to licensed occupations contributes to income inequality

There are **approximately**

27,000 state occupational LICENSING RESTRICTIONS.

Of those,

- **6,000** can be based on **MISDEMEANORS**,
- **19,000** are **PERMANENT DISQUALIFICATIONS**, and
- **11,000** are **MANDATORY DISQUALIFICATIONS**.

25%
of the ECONOMY

It takes **¼ of the ECONOMY OFF THE TABLE.**

X 600,000 every year
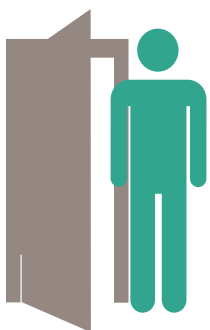
These **barriers put** many **GOOD-PAYING JOBS OUT OF REACH for the more than 600,000 PEOPLE** who are released from incarceration every year.

The WAGE ADVANTAGE enjoyed by LICENSED WORKERS relative to comparable unlicensed workers INCREASES WITH AGE.

RISING from about

$1.60/hour **by age 25**

to $3.50/hour **by age 64**

Each state has an **AVERAGE of 56 OCCUPATIONAL LICENSING and 43 BUSINESS LICENSING LAWS with MANDATORY RESTRICTIONS** for people with felony convictions.

56 average

43 average

Topping the chart were **FLORIDA, NEW HAMPSHIRE, AND OHIO**—each with **over 100 OCCUPATIONAL LICENSE LAWS** containing such restrictions.

Fair Chance Licensing Laws Would Help Workers, Employers, and the Economy

III. Bipartisan Calls for Reform

Elected Officials

> **"[M]any individuals have criminal histories that should not automatically disqualify them from employment or licensing, but should instead be examined as part of a review of the person as a whole."**[1]
>
> President Obama,
> *Presidential Memorandum—Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals* (April 29, 2016).

"[W]e are releasing thousands of people from jail or prison each year who cannot find a job." "People who have paid their debt and proven their commitment to rehabilitation deserve a second chance to be productive citizens."[2]

> Kentucky Governor Matt Bevin (R),
> *Op-Ed: Time Has Come for Kentucky to Reform Its Justice System* (focused on SB 120 and licensing reforms) (March 2, 2017).

"Pennsylvania must be a place where people can put their skills, experience and education to work. Requiring a government license to work in certain jobs helps to keep all of us safe, but those requirements should be fair."[5]

> Pennsylvania Governor Tom Wolf (D), calling for the repeal of the automatic 10-year ban on licensing for those convicted of a drug felony. (June 14, 2018).

"I am not proud of our title as the most incarcerated state. But that's going to be part of our history rather than our future."[3]

> Louisiana Governor Bel Edwards (D), Signing Legislation, HB 519, Allowing People with Records to Apply for Occupational Licenses (June 15, 2017).

"[G]ainful employment after release from prison is one of the critical elements necessary to achieve successful reentry after prison" and "has been shown to reduce recidivism and, thus, to make our communities safer."[4]

> Former Florida Governor Jeb Bush (R), Executive Order Number 06-89 (ordering agencies to identify and reform policies that disqualify people with records from employment) (April 25, 2006).

"With the exception of people that get sentenced to life, everybody that goes to prison is going to get out eventually. When they go to reintegrate, we see how incredibly difficult it is for people to meet these standards that we are setting."[6]

> Utah State Senator Daniel Thatcher (R),
> The Pew Charitable Trusts, *To Reduce Recidivism, States Scrap Barriers for Ex-Offenders* (July 27, 2017).

Criminal Justice Reform Organizations

Licensing reform is "a win-win situation, both for the economy, but also for the families that they have to support, as well as for public safety outcomes. If [people with records] have jobs, they have hope."[8]

Ana Yáñez-Correa,
Executive Director of Texas Criminal Justice Coalition (February 9, 2015).

Think Tanks

"Far too often, a criminal record is a permanent obstacle to economic security. This is especially true for communities of color, who have disproportionately felt the effects of mass incarceration and overcriminalization. But it doesn't have to be that way. Thoughtful, well-executed reforms can ease access to the labor market for people with criminal records."[9]

Angela Hanks,
Center for American Progress, *Ban the Box and Beyond: Ensuring Individuals with a Criminal Record Have Access to the Labor Market*. (July 27, 2017).

"[E]xpanding job opportunities for returning citizens is the best way to ensure they remain crime-free. In that regard, our Coalition supports eliminating occupational licensing limitations that discriminate solely by prior criminal history and don't take into account job qualification[s]."[13]

The Coalition for Public Safety,
Key Issue: Fair Chances.

ACLU
AMERICAN CIVIL LIBERTIES UNION

"[C]ountless occupational and professional license applications continue to require criminal history disclosure on the initial application." "[I]t is imperative that action be taken to ensure all [people with records] who are otherwise capable of becoming licensed professionals are given a fair chance to do so."[7]

American Civil Liberties Union,
Second Chances: How Professional Licensing In Nebraska Hurts the Workforce and Our Economy (September 6, 2016).

"Perhaps the most ubiquitous and pernicious collateral consequences" people with records face "are restrictions on their ability to earn a livelihood." "A multitude of . . . occupational licensing laws compounds the effect of collateral consequences insofar as they may either explicitly exclude individuals convicted of certain criminal convictions or implicitly exclude them through a requirement that applicants be of 'good moral character'."[12]

John Malcolm and John Michael Siebler, The Heritage Foundation, *Collateral Consequences: Protecting Public Safety or Encouraging Recidivism?* (March 7, 2017).

Commissions

"An important cause and consequence of this newfound focus on licensing reform has been the recognition that excessive licensing imposes costs on a wide variety of distinct groups, including people with criminal records . . . . [R]egardless of ideology, it is hard not to be moved by the difficulties that many of these groups encounter in the face of such licensing requirements."[11]

Ryan Nunn,
Op-Ed for the Brookings Institution, *The Future of Occupational Licensing Reform* (January 30, 2017).

"One particularly egregious legal barrier to escaping the 'second prison' is the pervasiveness of occupational licensing regulations, which all but guarantee an uphill battle for those looking for work."[10]

Editorial Team,
Charles Koch Institute, *Second Chance Month: Affording Former Offenders the Redemption They Deserve* (April 28, 2017).

"One of the glaring flaws in the legal system of most states is the absence of an effective mechanism whereby people who have committed a crime may avoid or mitigate statutory disqualifications based on a conviction, and demonstrate their record of fitness for purposes of employment and licensing."[14]

American Bar Association,
Recommendations, Adopted by the House of Delegates, 103C (February 12, 2007).

The opportunity for people with records "to hold stable jobs is enormously important to society." "[A] thorough review of all of California's occupational licensing regulations is needed and part of the review must include whether there are unnecessary barriers"[15]

Little Hoover Commission,
Jobs for Californians: Strategies to Ease Occupational Licensing Barriers, Report #234 (October 2016).

"[M]any persons with criminal records fail to apply for jobs because they believe their criminal background precludes them from being hired. This is why it is so critical for Maryland to provide accurate, uniform, consistent information to the public regarding eligibility after incarceration. The more returning citizens know, the more they are able to succeed."[16]

The Honorable Alexander Williams, Jr.,
Maryland Governor's Office of Crime and Control Prevention and the University of Maryland, *Final Report of the Collateral Consequences Workgroup* (December 1, 2016).

Courts

The Supreme Court has long held that "[i]t is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession" he or she may choose.

Dent v. State of W.Va., 129 U.S. 114, 121 (1889).

A state law banning all people with records from certain types of employment was deemed to be "totally irrational" and created a scheme "which violate[d] the Equal Protection Clause" of the Constitution.

Lewis v. Alabama Dept. of Pub. Safety, 831 F. Supp. 824, 827 (M.D. Ala. 1993).

"Even those of us who have specific professional responsibilities for the criminal justice system can be neglectful when it comes to the subject of corrections. The focus of the legal profession, perhaps even the obsessive focus, has been on the process for determining guilt or innocence. When someone has been judged guilty and the appellate and collateral review process has ended, the legal profession seems to lose all interest. When the prisoner is taken way, our attention turns to the next case. When the door is locked against the prisoner, we do not think about what is behind it. We have a greater responsibility."[17]

Supreme Court Justice Anthony M. Kennedy,
Speech at the American Bar Association Annual Meeting, (August 9, 2003).

1.   Available at http://bit.ly/2yvjRQN
2.   Available at http://bit.ly/2xat7WZ
3.   Available at http://bit.ly/2yATQil
4.   Available at http://bit.ly/2gvftuj
5.   Available at https://bit.ly/2y07v0Q
6.   *Id.*
7.   Available at http://bit.ly/2gw4tN9
8.   Available at http://bit.ly/2gSwfAl
9.   Available at http://ampr.gs/2znJr7i
10. Available at http://bit.ly/2xSyYVc
11. Available at http://brook.gs/2l2Wclc
12. Available at http://bit.ly/2x8JvXG
13. Available at http://bit.ly/2x9A2iV
14. Available at http://bit.ly/2xUDvWW
15. Available at http://bit.ly/2xTfVdk
16. Available at http://bit.ly/2yvRiCZ
17. Available at http://bit.ly/2zBshUF

IV. Growing Momentum for Fair Chance Licensing Laws

Recent Efforts To Reform Occupational Licensing Background Check Standards

Across the nation, millions of people with arrest and conviction records face overly restrictive barriers to licensed professions. However, with support from NELP, bipartisan momentum is building in support of "fair chance licensing" reforms that open up growing occupations with good pay to qualified people with records.

Over the past few years, numerous states have taken steps to improve their licensing laws.

» In **2019**, legislatures adopted fair chance licensing reforms in at least nine states: **Arkansas, Iowa, Maryland, Mississippi, Oklahoma, Nevada, North Carolina, Texas, and Utah**.

» In **2018**, legislation has been signed into law in seven states: **California, Delaware**, **Indiana**, **Kansas, Maryland**, **Massachusetts** and **Tennessee**.

» In **2017**, legislation was adopted in at least four states: **Arizona, Kentucky, Illinois** and **Louisiana**, all of which advanced a range of fair chance licensing protections

» In **2016**, new legislation was enacted in at least two states: **Illinois** and **Georgia**.

New Laws Signed in 2019

■ **Arkansas:** Governor Asa Hutchinson (R) signed [Act 990](#), which limits license ineligibility to 5 years for non-violent and non-sexual offenses. The law also establishes a waiver process for the over 30 convictions that disqualify applicants from most occupational licenses in the state, but also creates permanent disqualification for 12 offenses. The law removes vague requirements such as "good character" and prohibits licensing authorities from considering arrest records. Act 990 passed unanimously in the Senate and by overwhelming majority in the House.

■ **Iowa:** Governor Kim Reynolds (R) signed SF 567 with unanimous support in the Senate and House, restricting license disqualification to certain enumerated felony convictions. However, the law's applicability is limited to the state's Electrical Examining Board and Plumbing and Mechanical Systems Board.

■ **Maryland:** HB 22 became law on May 25, 2019, without the signature of Governor Larry Hogan (R). The law prohibits six state departments from denying an occupational license or certificate based solely on an applicant's prior conviction. However, this prohibition is limited only to nonviolent offenses and applicants for whom 7 years have passed since the completion of all sentencing, including parole. HB 22 passed unanimously in the Senate and by significant majority in the House.

■ **Mississippi:** Governor Phil Bryant (R) signed into law SB 2781 which prohibits most licensing authorities from denying a license based solely or in part on a prior conviction unless the offense is "directly related" to the occupation's duties. The law additionally prohibits licensing authorities from vague, catch-all qualifications such as "moral turpitude" and "good character." SB 2781 passed with near unanimous support in the Senate and 109-1 in the House.

■ **Oklahoma:** Governor Kevin Stitt (R) signed HB 1373, which removes vague terminology such as "good moral character" from qualifications for most occupational licenses. Disqualifying offenses must now "substantially relate" to the occupation's duties and responsibilities and "pose a reasonable threat to public safety." The law additionally requires all licensing entities to specifically list disqualifying offenses for each occupation. HB 1373 passed unanimously in the Senate and with near unanimity in the House.

■ **Nevada:** Governor Steve Sisolak (D) signed AB 319 with unanimous support in the Senate and House, requiring most licensing authorities to implement a pre-application process by which an applicant can receive a determination as to whether the applicant's conviction history will disqualify them from obtaining licensing. Each authority is additionally required to regularly report the number of petitions received and the number of disqualifications issued.

■ **North Carolina:** Governor Roy Cooper (D) signed SL 2019-91 into law with unanimous support in the Senate and House. The law prohibits most of the state's licensing authorities from denying any license based on a conviction unless the conviction is found to be "directly related" to the duties and responsibilities of the occupation or found to be "violent or sexual in nature." Additionally, the law provides the applicant with several procedural protections, including the applicant's right to written notice of an intended disqualification and the opportunity to respond prior to the board's final decision.

■ **Texas:** Governor Greg Abbott (R) signed HB 1342 with unanimous support in the Senate and House, which prohibits disqualification based on a conviction that does not "directly relate" to the occupation's duties and responsibilities. The law takes the further, clarifying step of requiring licensing authorities to examine the correlation between the legal elements of the offense and the occupation's duties and responsibilities. The law additionally provides the applicant with several procedural protections, including the applicant's right to written notice and explanation of an intended disqualification and the opportunity to respond prior to the final decision.

■ **Utah:** Governor Gary Herbert (R) signed HB 90, creating a pre-application process by which an applicant can receive written determination as to whether the applicant's conviction history will disqualify them from obtaining licensing. HB 90 passed unanimously in the House and with near unanimity in the Senate.

New Laws Signed in 2018

- **California** Governor Jerry Brown (D) signed two bills related to fair chance licensing in September. With limited exceptions, AB 2138 limits licensing agencies to considering convictions that are "substantially related" to the occupation and occurred within 7 years of the application. Agencies must consider specific rehabilitation criteria but not dismissed convictions. The law applies to nearly 40 licensing boards and bureaus, also requiring each to collect data and provide clear written notice to applicants. The second new law, AB 2293, requires emergency medical services (EMS) certifying entities to collect and report a variety of data on applicants with records, including rejection rate and demographic information.

- In March, Governor John Carney (D) of **Delaware** signed HB 97, which establishes a barbering apprenticeship program in the state's prisons, precludes consideration of convictions dating back more than 10 years when applying for a barbering or cosmetology license, and authorizes the boards to "waive" a disqualifying felony if the individual has not been convicted of a crime in the previous two years. The bill passed unanimously.

- In March, Governor Eric Holcomb (R) of **Indiana** signed HB 1245, which requires that any disqualifying offenses be "directly related" to the occupation and that licensing boards take into account evidence of rehabilitation but not most offenses dating back more than five years. The applicant is entitled to written findings explaining a board's decision, and individuals may petition the board for a background check decision before satisfying all the other licensing requirements. The bill easily passed 48-1 in the state senate and 95-1 in the state house of representatives.

- In May, **Kansas** Governor Jeff Colyer (R) signed HB 2386, which regulates a range of occupational licenses. The law requires that any disqualifying offenses be "directly related" to each occupation, and it precludes the boards from adopting broad "moral turpitude" disqualifications. In addition, the boards may not take into account arrests or many offenses dating back more than five years since the sentence was served (not including felonies and Class A misdemeanors). The law also adopts new standards and procedures regulating the licensing and certification of workers employed in adult care, home health, and certain hospital and health facilities.

- In May, the **Maryland** Governor Larry Hogan (R) signed HB 1597, which requires the licensing boards to collect and report data documenting the number of licensing applications denied due to specific records and how much time had passed since the reported convictions.

- In April, **Massachusetts** Governor Charlie Baker (R) signed major criminal justice reform legislation (S. 2371), which included a provision allowing people with sealed records to deny that they have a record for licensing and housing purposes (a right that previously only extended to people applying for employment). The law precludes employers from accessing misdemeanor records that are more than 3 years old and felonies that are more than 7 years old (reduced from 5 years for misdemeanors and 10 years for felonies under current law).

- In April, **Tennessee** Governor Bill Haslam (R) signed HB 2248/SB 2465, which passed with unanimous support. The bills require the boards to demonstrate that an applicant's conviction is "directly related" to the licensed occupation, and they must take into account a number of factors, including the age and nature of the offense, and evidence of rehabilitation

or treatment.   In addition, the boards must provide the applicant with a written notice explaining the justification for the denial and an opportunity to present mitigating evidence before the board issues a final determination.

New Laws Signed in 2017

- In May, **Arizona** Governor Doug Doucey (R) signed HB 2290. The new law allows licensing agencies to grant temporary provisional licenses to applicants with a conviction record. The law also has an important data collection and reporting component, including the number of provisional license applications that are granted, denied, and revoked each year.

- In April, **Kentucky** Governor Matt Bevin (R) signed S.B. 120 into law, which was part of a broader criminal justice reform package. The law eliminates "absence of moral character" as a basis for denial and removes certain exceptions to requirement that a conviction must directly relate to the occupation, after considering specified factors. Under the new law, a licensing authority may not deny a license without first providing preliminary written notice to the applicant, demonstrating the connection between the conviction and license sought, and affording the applicant an opportunity to appear. A final notice of denial must follow.

- In June, **Louisiana** Governor John Edwards (D) signed HB 519 into law, which require licensing boards to grant a license (not merely a provisional license) to a person with a conviction history if other requirements for the license are satisfied. However, the law includes numerous, broad exceptions for a variety of offenses and many licensing boards. Moreover, licensing agencies retain discretion to deny a license if the conviction relates to the profession for which the license is sought.

- In August, **Illinois** Governor Bruce Rauner (R) signed SB 1688 into law, which provides that, except where blanket bans exist, mitigating factors and evidence of rehabilitation (including specified factors) must be considered when reviewing a licensing application. Upon denial, the law requires a written explanation. Specifies that certain types of records need not be reported, including juvenile, sealed, and expunged records as well as arrests not followed by conviction.

New Laws Signed in 2016

■ **Illinois** Governor Bruce Rauner (R) signed two new laws in 2016. Under HB 5973, which applied to three licensing authorities (funeral, roofing, barbering/cosmetology), a license may be denied based on a conviction only if the offense is a felony directly related to the occupation. The law also requires licensing authorities to consider the age of the offense and age of the person at time of the offense. SB 42 applies to health care professions and allows applicants to petition the department if a license is automatically denied/revoked due to certain felony convictions. When reviewing a petition for license, the department must consider 15 specific factors, including the time elapsed since the conviction and any evidence of rehabilitation.

■ In April, **Georgia** Governor Nathan Deal (R) signed SB 367, which prohibits licensing boards from denying/revoking a license based on any felony unless directly related to the occupation. Licensing boards must consider a list of factors when determining whether a conviction is directly related (e.g., nature of offense, age when offense occurred, time elapsed, mitigating circumstances, evidence of rehabilitation).

For more background on the issue, see NELP's report

"Unlicensed & Untapped:
Removing Barriers to State Occupational Licenses
for People with Records" (April 2016).

FACTSHEET: Fair Chance Licensing Reform

Creating Pathways for People with Records to Enter Licensed Professions

I. The Problem: A Story of Two Colliding Trends

The first trend—after decades of "tough on crime" policies and mass incarceration— is that more people in America have an arrest or conviction record than ever before.

- Conservative estimates indicate that approximately 70 million people— or nearly one in three adults—have a record.[1] For perspective, the number of people with records today is roughly equal to the entire U.S. population in 1900.[2]

- In addition, more than 600,000 people re-enter their communities following a term of incarceration every year.[3] A majority of these individuals will never return to prison, underscoring the importance of reconnecting them with the workforce.[4]

- But a record creates a significant barrier to future employment. Nearly 9 in 10 employers conduct background checks on some or all job candidates.[5] Even minor involvement with the criminal justice system—such as a single arrest— dims employment prospects more than any other factor,[6] and upwards of 60 percent of people who have been incarcerated are unemployed one year after release.[7]

Today, millions of Americans are excluded from the workforce due to an arrest or a conviction record. This problem has grown with the rise of occupational licensing, which commonly requires applicants to pass a criminal background check. These exclusionary barriers are counterproductive. Commonsense policy reforms in this area could spur economic growth, promote public safety, help employers, and address racial and gender biases in our society.

- Today, more than one in four workers in the United States require a license or certification before they can work in their occupation, which

> **The second trend is that more jobs require "permission to work" than ever before.**

represents a fivefold increase from the 1950s.[9] Notably, two-thirds of the growth in licensing comes from an increase in the number of licensed professions, suggesting that licensing has expanded significantly into new sectors.[10]

- According to one estimate, more than 1,100 occupations are licensed, certified, or registered in at least one state,[11] but fewer than 60 are regulated in all 50 states.[12] The percentage of people who hold licenses varies, state by state, ranging from a low of 12 percent of workers in South Carolina to 33 percent in Iowa.[13]

- Overall, because women tend to work in more heavily regulated industries, such as health care, child care, and elder care, they are more likely to hold a certification or a license than employed men, at 28 percent and 23 percent, respectively.[14] Nearly 26 percent of white workers hold a license or a certificate, compared to 22 percent of Black and 15 percent of Hispanic workers.[15]

- Holding a license or certificate will be even more essential in the future: 6 of the 10 fastest-growing occupations are in healthcare support or personal care, which are heavily licensed.[16]

- According to the American Bar Association, there are approximately 27,000 state occupational licensing restrictions for people with records.

> **These trends, decades in the making, collide because passing a background check is a common requirement to obtain a state license.**

Of those, approximately 6,000 can be based on misdemeanors, 19,000 are permanent disqualifications, and 11,000 are mandatory disqualifications.[17]

- Each state has an average of 56 occupational licensing and 43 business licensing laws with mandatory restrictions against hiring people with felony convictions. Topping the chart were Florida, New Hampshire, and Ohio, each with more than 100 occupational license laws containing such restrictions.[18]

- More than 20 states have no standards in place governing the relevance of conviction records of applicants for occupational licenses. In these states, a licensing board may deny a license to an applicant who has a conviction, regardless of whether the conviction is relevant to the license sought, how recent it was, or whether there were any extenuating circumstances.[19]

- Other common and counterproductive features of state licensing laws include blanket bans that exclude qualified candidates with records, overly broad criminal record inquiries, and a lack of transparency and predictability in the licensure decision-making process.

II. Fair Chance Licensing Laws Benefit Workers, Employers, and the Economy

- **Advancing Racial Justice:** People of color suffer from racial discrimination in the criminal justice system and are disproportionately excluded from jobs that require a license. African Americans are more than twice as likely to be arrested as whites.[20] And more than 60 percent of people in prison today are people of color.[21]

- **Creating Opportunities for Women:** Reforming licensing laws is particularly important for women with records, because the stigma of a conviction is more significant for women. In one study, nearly 6 in 10 men with a prison record would have been called back for a job interview, but only 3 in 10 women with the same record would have gotten a callback.[22] Moreover, some of the fastest-growing occupations in America are dominated by women. For example, 80 percent of all healthcare workers in the United States are women.[23] But because of licensing barriers, women with records are often excluded from these good-paying positions.[24]

> The time has come to overhaul the background check restrictions imposed by state licensing laws. Promoting commonsense reforms in this policy arena would benefit not only people with records, but all of us.

- **Addressing Income Inequality:** Studies accounting for differences in education, training, and experience find that licensing results in approximately 10 percent to 15 percent higher wages for licensed workers relative to unlicensed workers.[25]

- **Expanding Talent Pools for Employers:** Employees with records are less likely to leave voluntarily, likely to have a longer tenure, and are no more likely than people without records to be terminated involuntarily.[26] A study of people with a felony record serving in the U.S. military found that they were promoted more quickly and to higher ranks than others, and were no more likely than people without records to be discharged for negative reasons.[27]

- **Growing the Economy and Lowering Unemployment:** The stigmatization of people involved in the criminal justice system slams the brakes on our economy, and reduced the nation's gross domestic product by as much as $87 billion in 2014 alone.[28] When it comes to unemployment, among people 25 years and over with less than a high school diploma, those who held a certification or license were nearly twice as likely to be employed than were those who did not hold such credentials.[29]

- **Promoting Public Safety:** Employment is critical in reducing recidivism.[30] One study focused on people with records in New York found that receiving permission to work reduced the likelihood of a future arrest by more than 4 percentage points over a three-year timeframe.[31] Higher wages, which are more common among licensed professions, also reduce recidivism: one study found that the likelihood of re-incarceration was 8 percent for those earning more than $10 per hour, compared to 16 percent for those earning less than $7 per hour.[32]

Sample Op-Ed

Barred from Your Chosen Profession
An Arrest or Conviction in [STATE] Can Cast a Long Shadow

[INSERT FIGURE, Column 2, in Appendix] adults in [STATE] has an arrest or conviction record. The unshakeable stigma and lifelong consequences that accompany a record often prove devastating.

[SUBSTITUTE WORKER STORY FROM THE STATE] In 2010 Sonja Blake, a grandmother, lost her livelihood because of a 30-year-old mistake. As a child-care provider, Ms. Blake is among the [INSERT FIGURE, Column 7] [STATE] workers whose occupations require a state license. But, after caring for children for almost a decade, a change in Wisconsin law required that her day-care-owner certification, along with her license to work in caregiving facilities, be permanently revoked. Decades earlier, Ms. Blake had received a $294 overpayment of public assistance after mistakenly failing to report gifts from her boyfriend. That overpayment was merely docked from her benefits, but her minor error resulted in a misdemeanor conviction with decades-long consequences.

This story is not unique. Passing a criminal background check is a common state licensing requirement across the nation. The American Bar Association's inventory of penalties resulting from a record includes [INSERT FIGURE, Column 8] occupational licensing restrictions in [STATE]. And because the criminal justice system disproportionately impacts people of color, these "collateral consequences"—penalties that accompany a conviction but weren't imposed by the court—perpetuate significant race disparities in employment.

State licensing schemes that mandate criminal background checks theoretically aim to protect health and safety. Inquiries into convictions that are directly related to the occupation can be reasonable. But far too often, restrictions are unnecessarily expanded without any benefit to public safety and health. For instance, in [STATE], [SHARE EXAMPLE FROM STATE LAW] a land surveyor is stripped of his license if convicted of any felony, anywhere in the country, even if completely unrelated to the profession.

Policymakers across the political spectrum increasingly support **"fair chance" and "ban the box" laws**—policies that prohibit employers from asking on job applications whether applicants have a record. Fair chance licensing is another area ripe for reform. Irrational licensing restrictions for those with records, and their impact on individual families and the economy, have spurred calls for change from diverse voices, ranging from the **Center for American Progress** to **Koch Industries**. [INCLUDE REFERENCES TO SPECIFIC STATE LAWMAKERS OR ORGANIZATIONS, IF POSSIBLE]. Amid the general partisan rancor, reducing barriers to licensure for people with records represents a singular opportunity for bipartisan cooperation.

Because most occupational licensing is controlled by the states, [STATE] lawmakers are ideally positioned to reduce barriers for people with records by adopting a robust state law, such as [NAME STATE BILL, IF ONE EXISTS]. A strong law will go long way to help [NAME OF WORKER] and everyone in our state who has paid their debt to society and are seeking a fair chance to work, support their families, and give back to their communities.

The Pillars of Reform

*N*ELP suggests *10 state policy reforms* **to promote greater transparency and accountability and help achieve fairer, more consistently applied licensing laws.**

1. **Eliminate blanket bans** that automatically disqualify workers with certain records. The ABA's inventory, noted above, documents thousands of "mandatory" or "permanent" licensing disqualifications across the country.

2. Limit the **types of record information** requested in a background check. The inclusion of less relevant information on a background report—such as offenses that are old, minor, or unrelated to the occupation—can color a reviewer's opinion of the applicant. Even if licensing boards intend to consider only recent, occupation-related offenses, their opinions may be clouded by *any* negative, albeit less significant, information.

3. Require licensing boards to assess candidates **case-by-case**, examining both whether a conviction is occupation-related and how much time has passed since the offense.

4. Mandate consideration of applicants' **rehabilitation** and any **mitigating circumstances.** Allowing an applicant to explain the circumstances of an offense may provide context that reveals the insignificance of a serious-sounding record.

5. Provide applicants with **notice** of potential disqualification and an **opportunity to respond** before the application is rejected. Background reports are regularly inaccurate. The applicant should be allowed to point out errors.

6. "**Ban the box**" by removing questions about conviction records from the application. And then go one step further: don't ask applicants to self-report their records at any time during the application process. Records are confusing—even to lawyers—and applicants frequently make inadvertent errors that reviewers misinterpret as dishonesty.

7. Remove "good moral character" requirements, restrictions against "moral turpitude" offenses, and other **vague legal standards**. The use of confusing jargon leaves applicants in the dark as to whether a past conviction will mean disqualification. When the law lacks clear limits on licensing board discretion, opaque statutory language affords cover to automatically reject applicants with virtually any record.

8. Evaluate existing state occupational licensing restrictions and mandate ongoing **data collection** by licensing boards so that lawmakers can better understand current barriers and ensure that any attempted reforms make headway toward addressing them.

9. Promote transparency by providing **clear guidance** to applicants regarding potential disqualifications for the occupation. Requirements and standards vary widely among states and occupations. Statutory language and procedures governing individual, or classes of, professions frequently differ from more general state licensing statutes.

10. Create more uniform standards by incorporating these recommendations into a **broadly applicable state licensing law** that *expressly* supersedes any conviction record restrictions contained in other laws governing specific professions. Adopting these reforms won't achieve consistency or accountability if the law is riddled with exceptions.

*T*he model state legislation below provides a comprehensive example, incorporating the recommendations in NELP's report, *Unlicensed & Untapped, in one overarching licensing law that would apply to all occupational licenses in the state. A more limited approach could be taken by omitting sections or adapting these provisions for specific occupations. A piecemeal approach may be the best way to proceed when introducing the concept, although the benefit of uniformity would be reduced. Note that state-specific terms, such as criminal justice–related terms, must be adjusted for each state. For an example of an existing, comprehensive state law, see Minnesota Statute, Chapter 364 "Criminal Offenders; Rehabilitation."*

Sec. 1. Policy.

The Legislature finds and declares that reducing barriers to employment for people with arrest and conviction records, and decreasing unemployment in communities with concentrated numbers of people with records, are matters of statewide concern. The Legislature further finds and declares that increasing employment opportunities for people with records will reduce recidivism and improve economic stability in our communities.

Sec. 2. Availability and use of criminal record information.

(a) The information listed in subsections (1)-(6) shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions in connection with an application for a license or certification. Offenses committed outside the State shall be classified as offenses committed within the State based on the maximum penalty that could have been imposed for such act under the laws of such foreign jurisdiction.

(1) Non-conviction information, including information related to a deferred adjudication, participation in a diversion program, an arrest not followed by a valid conviction, or infraction; [or other state-specific non-criminal offense]

(2) Conviction which has been sealed, dismissed, expunged, or pardoned; [or other state-specific record-clearing terminology]

(3) Juvenile adjudication;

(4)   Misdemeanor conviction for which no jail sentence can be imposed; [or other state-specific low-level conviction]

(5)   Misdemeanor conviction older than three years, excluding any period of incarceration or custody; and

(6)   Felony conviction older than five years, excluding any period of incarceration or custody.

Sec. 3. No disqualification from licensed occupations.

(a)   No person shall be disqualified from pursuing, practicing, or engaging in any occupation for which a license or certification is required, solely or in part because of a prior conviction, unless the conviction is directly related to the occupation for which the license is sought.

(b)   The applicant who has been convicted of an offense which directly relates to the occupation for which a license is sought shall not be disqualified from the occupation if the applicant can show sufficient mitigation or rehabilitation and present fitness to perform the duties of the occupation for which the license is sought, as determined per Section (6).

Sec. 4. Consideration of only directly related conviction history.

(a)   Licensing applications shall not include an inquiry about an applicant's conviction history.

(b)   A licensing authority shall not inquire into or consider the conviction history of an applicant for licensing until after an applicant is found to be otherwise qualified for the license.

(c)   After an applicant is found to be otherwise qualified for the license, a licensing authority may inquire into and consider only the directly related conviction history of an applicant as determined pursuant to Section (5).

Sec. 5. Determination of directly related convictions.

(a)   A licensing authority shall limit inquiries into an applicant's conviction history to only those convictions determined to be directly related to the occupation for which the license is sought and shall make this enumerated list available to the public and provide a copy to each licensing applicant. A licensing authority shall not inquire into or consider any conviction history beyond the scope of directly related convictions.

(b)   Within six months after this statute takes effect, each licensing authority shall establish a narrowly tailored list of directly related convictions by considering each of the following:

    (1)   The public policy of this State, as expressed in this act, to encourage the licensure of people with arrest and conviction records;

    (2)   Whether the elements of the offense are directly related to the specific duties and responsibilities of that occupation;

    (3)   Whether the occupation offers the opportunity for the same or a similar offense to occur; and

    (4)   The relationship of the offense to the purposes of regulating the occupation for which the license is sought; and

    (5)   The length of time since the offense occurred.

Sec. 6. Sufficient mitigation or rehabilitation and fitness for occupation.

(a)   An applicant with a directly related conviction shall not be disqualified from the occupation for which a license is sought if the applicant can establish sufficient mitigation or rehabilitation and fitness to perform the duties of the occupation by providing either of the following:

    (1)   Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or

    (2)   Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to:

        (i)   Circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense;

        (ii)   Age of the person at the time the offense was committed;

        (iii)   The length of time since the offense occurred;

        (iv)   Evidence of work history, particularly any training or work experience related to the occupation in question; or

        (v)   Letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

Sec. 7. Notice of potential disqualification and opportunity to appeal.

(a)   If a licensing authority intends to disqualify an applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following, prior to a final decision:

    (1)   Identify the directly related conviction item(s) that form the basis for the potential disqualification and the rationale for occupation relatedness;

    (2)   Provide a copy of the conviction history report, if any, on which the licensing authority relies; and

    (3)   Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide, which are described in Section (6).

(b)   After receiving the notice of potential disqualification, the applicant shall have 30 (thirty) business days to respond by challenging the accuracy of the conviction history report and/or submitting evidence of mitigation or rehabilitation. The licensing authority shall make the final decision based on an individualized assessment of the information described in Section (6).

(c)   If a licensing authority disqualifies the applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following:

    (1)   The final disqualification, including a list of the directly related conviction item(s) that form the basis for the disqualification and the rationale for occupation relatedness;

    (2)   The appeal process; and

    (3)   The earliest date the applicant may reapply for the license or certification, which shall be no longer than two years from the date of the initial application.

Sec. 8. Compliance.

(a)   For a minimum of three years, licensing authorities shall retain application forms and other documents submitted by applicants, notices provided to applicants as required by Section (7), all other communications received from and provided to applicants, and conviction history reports of applicants.

(b)   Each licensing authority shall retain the number of applications for each license and the number of applications requiring conviction history inquiries. In addition, each licensing authority shall retain the following information:

   (1)   The number of applicants with a record who received notice of potential disqualification;

   (2)   The number of applicants with a record who provided evidence of mitigation or rehabilitation;

   (3)   The number of applicants with a record who appealed the final disqualification; and

   (4)   The final disposition and demographic information of the applicants described in subsections (1)-(3).

(c)   At least annually, each licensing authority shall make available to the public the information collected pursuant to subsection (b), while ensuring confidentiality of the individual applicants.

Sec. 9. Application.

The provisions of these sections shall prevail over any other laws and rules, including but not limited to any specific laws and rules, which purport to govern the granting, denial, renewal, suspension, or revocation of a license. In deciding to grant, deny, revoke, suspend, or renew a license, for a lack of good moral character or the like, the licensing authority may consider evidence of conviction of an offense but only in the same manner and to the same effect as provided for in these sections. Nothing in these sections shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license.

Appendix E
Appendix: 50 State Data

States	Estimated Number of People with Arrest or Conviction Records (2016)[33]	Percent of Adult Population with Arrest or Conviction Record (2016)[34]	Number of People with Felony Convictions (2010)[35]	Number of People with Prison Records (2010)[36]	Number of People Released from Prison (2016)[37]	Percent of Workforce Licensed by State (2015)[38]	Percent of Occupations with Lower Incomes Requiring a License (2012)[39]	Number of Disqualifications for a Record in State Occupational Licensing Laws[40]
Alabama	1,613,220	43%	270,813	124,159	12,711	20.9%	46%	508
Alaska	195,230	35%	51,315	28,450	2,159**	25.5%	43%	400
Arizona	1,329,510	25%	38,1243	121,839	13,857	22.3%	63%	573
Arkansas	532,140	23%	179,007	81,789	10,370	20.2%	51%	557
California	7,570,850	25%	2,645,083	1,207,507	34,528	20.7%	61%	1,200
Colorado	1,229,620	29%	266,970	88,660	8,934	17.2%	27%	406
Connecticut	831,880	29%	265,779	73,967	5,618**	24.7%	53%	322
Delaware	N/A*	N/A*	60,996	20,982	4,041**	15.3%	48%	525
District of Columbia	N/A*	N/A*	N/A	N/A	N/A	19.7%	40%	337
Florida	4,566,800	28%	2,105,946	411,961	31,166	28.7%	44%	800
Georgia	2,915,430	37%	1,081,347	229,175	15,053	15.7%	32%	546
Hawaii	392,560	35%	70,679	19,175	1,666**	26.6%	42%	245
Idaho	289,660	23%	112,605	34,421	5,479	22.8%	46%	380
Illinois	4,964,680	50%	729,683	303,536	28,615	24.7%	39%	796
Indiana	1,250,410	25%	566,087	149,685	14,561	14.9%	27%	432
Iowa	525,350	22%	132,815	53,689	5,305	33.3%	53%	381
Kansas	1,070,650	49%	129,409	52,942	6,394	14.9%	33%	329
Kentucky	1,005,060	29%	245,683	118,268	18,552	27.8%	26%	504
Louisiana	1,188,740	33%	358,119	165,221	16,308	22.3%	70%	797
Maine	399,560	37%	47,211	11,780	647	20.7%	38%	377
Maryland	1,140,300	24%	320,422	118,122	9,459	17.2%	41%	621
Massachusetts	1,100,820	20%	438,780	45,763	2,458	21.3%	36%	436
Michigan	2,196,880	28%	464,221	168,115	14,081	20.6%	41%	435
Minnesota	795,130	19%	350,147	59,840	8,254	15.0%	35%	321
Mississippi	722,050	32%	179,006	78,960	7,080	23.1%	54%	533
Missouri	1,167,250	25%	415,377	160,569	18,410	21.3%	30%	484
Montana	170,940	21%	54,462	18,452	2,546	21.3%	43%	302
Nebraska	304,570	21%	67,260	23,013	2,366	24.6%	44%	466
Nevada	615,440	27%	106,970	55,785	5,778	30.7%	54%	423
New Hampshire	330,120	31%	40,129	13,018	1,601	14.7%	33%	782
New Jersey	1,633,520	23%	532,699	160,341	9,685	20.7%	47%	652
New Mexico	443,030	28%	129,551	38,681	3,631	25.9%	51%	451
New York	6,958,700	45%	627,659	295,079	22,047	20.7%	32%	787

States	Estimated Number of People with Arrest or Conviction Records (2016)[33]	Percent of Adult Population with Arrest or Conviction Record (2016)[34]	Number of People with Felony Convictions (2010)[35]	Number of People with Prison Records (2010)[36]	Number of People Released from Prison (2016)[37]	Percent of Workforce Licensed by State (2015)[38]	Percent of Occupations with Lower Incomes Requiring a License (2012)[39]	Number of Disqualifications for a Record in State Occupational Licensing Laws[40]
North Carolina	1,213,240	15%	417,103	172,739	16,677	22.0%	47%	641
North Dakota	136,920	24%	28,737	8,757	N/A	26.6%	39%	359
Ohio	1,725,290	19%	734,341	291,420	22,850	18.1%	30%	1,008
Oklahoma	725,900	25%	269,158	101,303	10,404	25.0%	28%	659
Oregon	888,230	28%	198,289	62,756	N/A	26.1%	58%	606
Pennsylvania	1,980,860	20%	499,392	167,389	20,418	20.2%	43%	489
Rhode Island	N/A*	N/A*	73,286	14,838	939**	14.5%	48%	401
South Carolina	1,212,190	31%	225,827	107,755	6,709	12.4%	50%	452
South Dakota	213,290	33%	53,735	21,851	2,832	21.8%	27%	265
Tennessee	1,627,640	32%	366,395	136,919	13,508	23.1%	52%	563
Texas	10,000,900	49%	1,916,136	671,586	76,733	24.1%	33%	1,033
Utah	544,250	26%	83,005	33,954	3,611	23.8%	45%	445
Vermont	175,000	35%	35,888	16,966	1,733**	16.8%	26%	209
Virginia	1,637,790	25%	446,686	145,977	12,653	17.2%	45%	526
Washington	1,257,900	22%	454,414	118,481	24,940	30.5%	53%	586
West Virginia	492,730	34%	46,262	22,866	3,543	25.8%	48%	532
Wisconsin	1,056,580	24%	232,832	88,443	5,743	18.4%	46%	475
Wyoming	143,360	32%	25,707	8,357	1,041	21.2%	24%	273
Total	**73,425,590**	**30%**	**19,534,666**	**6,725,301**	**567,694**			**26,630**

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38. The White House, *Occupational Licensing: A Framework for Policymakers*, Table 1 (July 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

39. Little Hoover Commission, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers,* 16 (Oct. 2016), http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/234/Report234.pdf.

40. Council of State Government, Justice Center, National Inventory of the Collateral Consequences of Conviction, https://niccc.csgjusticecenter.org/ (accessed on Oct. 3, 2017) (hereinafter "ABA Inventory"). The ABA Inventory includes information for all 50 states, the District of Columbia, and all U.S. territories. Note that the ABA Inventory codes disclosures of backgrounds or background check requirements as freestanding entries in some cases, which may or may not include a specific restriction. See ABA Inventory, User Guide (hereinafter "User Guide"), Question and Answer 10, https://www.nij.gov/topics/courts/documents/abacollateralconsequences-userguide.pdf. The "occupational and professional licenses and certification" includes most professional licensure requirements, among other licenses. The category "business licenses and other property rights" licenses to operate certain facilities and to engage in specific industries. The User Guide cautions that the "difference between professional and business licensure will not be clear, and a comprehensive search should select both categories." See User Guide, Question and Answer 13. We followed this recommendation for the purposes of the estimate and included both the professional and business licensure categories for the 50 states and the District of Columbia.

* The estimates were not generated for these three jurisdictions because they are relatively small, which may reduce their reliability, and the jurisdictions closely border other states and cities, which likely inflates the number of people counted as having a record.

** Data include people released from both prison and jail.

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