

## Fair Chance Licensing in Kentucky

### *Expanding Access to Licensed Jobs for Workers with Criminal Records*

- **20%** of Kentucky workers hold a license required to work in a particular occupation or profession<sup>1</sup>.
- Kentucky workers with criminal histories face an array of statutory and regulatory barriers that can deter or exclude them from licensed jobs. **Nearly 300 provisions of state law** limit access to licensure for Kentuckians with criminal records.<sup>2</sup>
- Eliminating unnecessary barriers to licensure to people with criminal histories provides a variety of benefits, including:
  - **Reducing recidivism** by expanding opportunities for stable higher income employment.
  - Enlarging the pool of **qualified candidates** available to employers.
  - Increasing state and local tax bases while reducing reliance on public assistance.

### Current Law

SB-120, enacted in 2017,<sup>3</sup> adopted a number of significant national fair chance licensing best practices, including:

- **Prohibiting denial absent a direct relationship** between an offense and the licensed activity. *However*, there is a rebuttable presumption that Class A and Class B felonies are “connected” to every license sought.
- Requiring **individualized assessments based on the consideration of relevant factors** including the nature and seriousness of the crime; the passage of time since its commission; and the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.
- **Eliminating broad authorization** to base denial of licensure on an “**absence of good moral character,**” a term that is overbroad and opens the door to arbitrary denials.
- Requiring **notification of intent to deny** based on a criminal record, and the right to an in-person hearing prior to the board making a final decision.
- Requiring **written notice and explanation of conviction-based denials** that includes the grounds for denial, the right to an in-person hearing, the earliest date the person may reapply, and that evidence of rehabilitation may be considered upon reapplication.
- Provides a **right to appeal** denials due to criminal history.

### Going Further - Learning from Other States

In recent years, the majority of U.S. states have enacted or expanded robust occupational and professional licensing policies designed to lower barriers to work for people with criminal histories. These policies are based on three key principles:

- 1) Licensing bodies **should have the authority to deny applicants with past convictions that directly relate to the tasks and duties of a licensed activity** such that licensure would create an appreciable risk to public safety.
- 2) Workers should not be barred from occupational licensure solely on the basis of a past conviction; instead, they should be **given individualized consideration that accounts for their past and current circumstances**

<sup>1</sup> See Morris Kleiner and Evgeny Vorotnikov, At What Cost? State and National Estimates of the Economic Costs of Occupational Licensing (Institute for Justice 2018), <https://ij.org/report/at-what-cost/costs-of-occupational-licensing/>.

<sup>2</sup> CSG Justice Center, Kentucky: Snapshot of Employment Related Collateral Consequences, <https://csgjusticecenter.org/publications/after-the-sentence-more-consequences/state-reports/state/?usState=kentucky> (2020).

<sup>3</sup> See Ky. Rev. Stat. Ann. §§ 335B.020 to -.070.

and the unique nature of their criminal conduct.

3) Licensing policies and practices involving determinations about the criminal history of applicants should be **transparent and consistently applied**.

To better embody these principles in state law, Kentucky may wish to consider implementing the following additional best practices:

**1. Provide a “pre-application determination” process** for prospective applicants to know whether their record is disqualifying before investing in the training and education required for a license.

**27** states - AR, AZ, CT, DE, IA, ID, IN, KS, LA, MO, MN, MS, NC, NE, NH, NV, OH, OK, PA, TN, TX, UT, VT, WA, WI, WV

**2. Explicitly bar consideration of certain records** such as arrests not resulting in conviction, juvenile adjudications, and expunged convictions.

*Arrests without convictions.* **17** states- AZ, CA, CO, CT, DE, IL, IN, IA, KS, MI, MN, NM, OH, OK, RI, TX, UT

*Juvenile adjudications.* **9** states - AZ, CA, DE, IL, MN, NM, PA, RI, WA<sup>4</sup>

*Pardoned/sealed/expunged records.* **27** states – AZ, CA, CO, CT, DE, GA, HI, IL, IN, IA, ME, MD, MI, MN, NH, NJ, NM, NY, NC, OH, OK, PA, RI, TN, WA, WV, WI.<sup>5</sup>

**3. Add evidence of rehabilitation to ‘relevant factors’ required in assessment.** Current law requires boards to notify rejected applicants that “evidence of rehabilitation may be considered upon reapplication.” Many states include “evidence of rehabilitation” as a specific factor that must be assessed as part of the initial decision to grant or reject an applicant based on criminal history.

**4. Limit consideration of older convictions** after a period of conviction-free years.

**21** states – AZ, AR, AZ, CA, DE, FL, HI, IL, IN, IA, KS, ME, MD, MA, ND, OH, OK, RI, UT, WA, WV, WY

**5. Limit consideration of convictions for less serious offenses,** such as non-violent misdemeanors.

**9** states - AR, AZ, CO, FL, MN, NH, NM, RI, TX

FOR MORE INFORMATION ON NATIONAL FAIR CHANCE LICENSING BEST PRACTICES, VISIT

[HTTPS://CSG.JUSTICECENTER.ORG/PROJECTS/FAIR-CHANCE-LICENSING/.](https://CSG.JUSTICECENTER.ORG/PROJECTS/FAIR-CHANCE-LICENSING/)

<sup>4</sup> Consideration of juvenile adjudications may be broadly limited under the general laws of other states, but the extent to which such limitations apply to licensure is frequently ambiguous.

<sup>5</sup> The laws of other states may broadly limit consideration of such records or limit access to them, but the extent to which these limitations apply to licensure is frequently ambiguous.