

Draft 8/17/20

Economic Affairs Interim Committee
prepared by Pat Murdo, Staff Researcher

FINAL REPORT TO THE 67TH MONTANA LEGISLATURE

**SORTING OUT FEAR AND FACTS
UNDERLYING MONTANA'S
OCCUPATIONAL LICENSING OF THOSE
WITH CRIMINAL CONVICTIONS**

A STUDY UNDER SENATE JOINT RESOLUTION 18

ECONOMIC AFFAIRS INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Economic Affairs Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

Senate Members

Senator Jason Ellsworth
1073 Golf Course Rd.
Hamilton, MT 59840
Ph: 406-360-0009
Email: Jason.Ellsworth@mtleg.gov

Senator Nate McConnell
PO Box 8511
Missoula, MT 59807-8511
Ph: 406-214-2445
Email: Nate.McConnell@mtleg.gov

Senator Frank Smith
PO Box 729
Poplar, MT 59255-0729
Ph: 406-942-0615
Email: Frank.Smith@mtleg.gov

Senator Gordon Vance
PO Box 1
Belgrade, MT 59714-0001
Ph: 406-587-8608
Email: Gordon.Vance@mtleg.gov

House Members

Representative Derek Harvey
PO Box 3111
Butte, MT 59701
Ph: 406-490-5472
Email: Derek.Harvey@mtleg.gov

Representative Josh Kassmier
PO Box 876
Fort Benton, MT 59442
Ph: 406-781-5386
Email: Joshua.Kassmier@mtleg.gov

Representative Mark Noland
PO Box 1852
Bigfork, MT 59911-1852
Ph: 406-253-8982
Email: marknolandhd10@gmail.com

Representative Sharon Stewart Peregoy, Chair
PO Box 211
Crow Agency, MT 59022-0211
Ph: 406-639-2198
Email: Sharon.StewartPeregoy@mtleg.gov

Representative Vince Ricci, Vice Chair
1251 5th Ave.
Laurel, MT 59044-9602
Ph: 406-855-9153
Email: Vince.Ricci@mtleg.gov

Representative Katie Sullivan
PO Box 7853
Missoula, MT 59807
Ph: 406-360-3614
Email: Katie.Sullivan@mtleg.gov



LEGISLATIVE SERVICES DIVISION

P.O. Box 201706
Helena, MT 59620-1706
Phone: (406) 444-3064
Fax: (406) 444-3971
Website: <http://leg.mt.gov/eaic>

Economic Affairs Interim Committee Staff

Jameson Walker, Attorney | Pat Murdo, Legislative Research Analyst | Fong Hom, Secretary

This report is a summary of the work of the Economic Affairs Interim Committee, specific to the Economic Affairs Interim Committee’s 2019-2020 Senate Joint Resolution 18 study of occupational licensing for those with criminal convictions, as outlined in the Economic Affairs Interim Committee’s 2019-2020 work plan and SJR 18 (2019). This report highlights key information presented to the Committee or compiled at the request of the Committee. To review additional study-related information, including audio minutes and exhibits, visit the Committee Topics page under the Economic Affairs Interim Committee website: www.leg.mt.gov/eaic.

TABLE OF CONTENTS

Economic Affairs Interim Committee Members	i
House Members.....	i
Senate Members.....	i
This report is a summary of the work of the Economic Affairs Interim Committee,.....	iv
Overview	1
Recommendations	2
Constitutional Basis for Restored Rights, But... ..	3
The Application Process.....	4
Criminal Background Checks.....	5
Determining Good Moral Character/Moral Turpitude	5
Determining Routine or Nonroutine Applications.....	7
Takeaways from Board Rules on Nonroutine Applications	9
Options used in Other States	10
Specificity versus Flexibility.....	10
Application Pre-Review.....	11
Listing of Specified Crimes That Disqualify Applicants	12
Other Options	12
Conclusion.....	13
Appendix 1: Memo on Legal Terminology.....	14
Appendix 2: Disposition of Licensing Board Applications for Those with Criminal History.....	16
Appendix 3: Proposed Department of Labor and Industry Guidance	25
Appendix 3A: Personal History Guidelines.....	25
Appendix 3B: Dept of Labor & Industry Summary of Licensing of Those with Criminal Convictions ..	28
Appendix 3C: Department of Labor and Industry Proposed Rule for Criminal Conviction Reviews ..	30
Appendix 3D: Proposed Department of Labor and Industry Conviction Evaluation Diagram.....	33
Appendix 4: Proposals from Stakeholders: PFR and AFP.....	34
Missoula Partners for Reintegration (PFR)	34
Americans for Prosperity-Coordinated Suggestions*	34

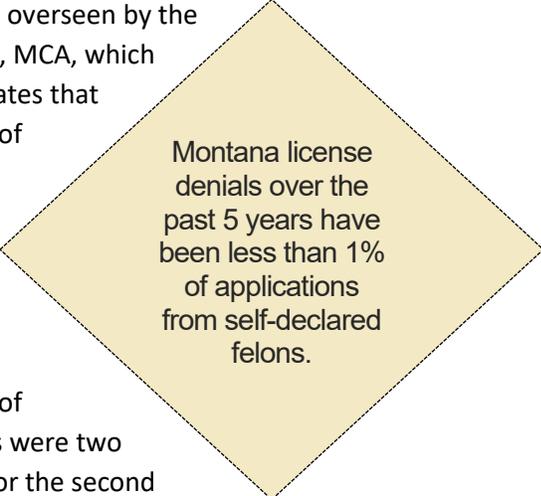
SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

OVERVIEW

The Senate Joint Resolution No. 18 study of licensing for those with criminal convictions focused on professional and occupational licensing. Being able to obtain licensure for a profession or occupation is one way for those with criminal convictions to reenter society with meaningful employment, considered one of the key components that help to avoid recidivism or relapsing. The Economic Affairs Interim Committee chose to keep that focus narrow instead of looking at all the occupations for which a criminal background check might be required, including the issuing of a full-beverage alcohol or beer license or an insurance license.

Most of Montana's laws governing professional and occupational licensing are overseen by the Department of Labor and Industry (DLI). The laws or statutes include 37-1-203, MCA, which states a conviction is not an automatic bar to licensing. That statute further states that after investigation a licensing board may determine--based on considerations of public health, welfare, and safety--that an applicant has not "been sufficiently rehabilitated as to warrant the public trust" for licensure. In fact, over the past five years, according to a DLI [report](#) to the EAIC in early 2020, license denials amounted to less than 1% of the license applications from those who self-declared that they had had criminal convictions.



Montana license denials over the past 5 years have been less than 1% of applications from self-declared felons.

Whether those with criminal convictions do not apply for a license out of fear of rejection or whether actual rejection is happening during the licensing process were two questions posed for the study. The first question was difficult to answer, but for the second question the Economic Affairs Interim Committee determined at its February 2020 meeting that the data from the Department of Labor and Industry (DLI) indicated few licenses had been denied in the past five years from someone with a self-admitted criminal conviction and that licenses had been granted to those with criminal convictions, sometimes but not always with provisional conditions.

The Committee also heard what DLI is doing or plans to do to help reassure those with criminal convictions that their applications will not be summarily rejected as the licensing boards seek both to meet the constitutional and statutory requirements regarding applications by those with criminal convictions and to address public health, welfare, and safety, one of the basic rationales for licensing.

Through public comment, the Economic Affairs Interim Committee heard from those who have had concerns about getting licensed. And the Committee also heard from a representative of the Department of Corrections regarding how the prison in Deer Lodge in particular works to help someone become prepared for life outside the prison once paroled or released.

This study resulted in the following findings:

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

1. Data from the Department of Labor and Industry's licensing boards indicates the state does not automatically bar those with criminal convictions from obtaining licenses and that, in fact, many have received licenses. (proposed)
2. The current case-by-case examination based on board criteria for nonroutine examinations appears not to be a prohibitive barrier to licensing of those with criminal convictions. (proposed)
3. The provision in 37-1-203, MCA, saying that a criminal conviction is not the sole barrier to denial of licensure should apply to all boards so that the two licenses that do not allow for case-by-case examination of a criminal history should be changed to reflect control by 37-1-203, MCA. (proposed)

Also resulting from the study were:

- data regarding applications granted and denied by those who stated that they have had criminal convictions;
- information about DLI's current and planned approaches to guidance to licensing boards reviewing applications from those with criminal convictions;
- in response to a committee request for information, an overview of the preapplication process allowed in Arizona and Ohio;
- information about the nuances related to the phrase "full rights are restored" in the Montana constitution; and
- other options, such as legislation previously brought before the Montana legislature regarding ways to help those with criminal convictions be considered for jobs based on their skills, with consideration of their history taken into account later in the process rather than earlier.

DLI Proposals for Licensing Board Guidance in Reviewing Applications from Those with Criminal Convictions

- **Review Relevancy of the Crime in terms of the Requested License**
 - the nature and circumstances of the offense
 - the time lapse between the offense and the application
- **Review Rehabilitation Information**
 - information on training, subsequent conduct

RECOMMENDATIONS

With this background, the Economic Affairs Interim Committee may decide to make any of the following recommendations: *[(Italicized language is subject to committee decisionmaking.) The committee may choose from the following presented at the November 2019 EAIC meeting or add new ideas or make a recommendation that the Department of Labor and Industry continue to offer guidance that allows case-by-case consideration as suggested in the [memo](#) provided to the EAIC at its June 30, 2020, meeting.]*

- *Do nothing, but recommend that the Department of Labor and Industry move forward with plans to offer boards guidance on determining which license applications are reviewed.*
- *Do nothing with no recommendations, except to note the current process seems to be working.*
- *Remove subjective references for an applicant to have "a good moral character" or no "moral turpitude".*
- *If references to moral character or moral turpitude are not changed, the language in 37-25-308 and 37-60-303, MCA, could be changed to recognize applicants are subject to a case-by-case examination provided in 37-1-203, MCA.*
- *Specify the types of criminal histories or background checks that are or are not allowed on a board-by-board basis.*
- *Clarify in statute the types of actions that may not be considered, for example: arrests without convictions, juvenile records, convictions beyond a certain number of years.*
- *Clarify in statute the types of actions that may be considered, for example, reduced pleas, convictions for crimes of a violent or sexual nature or of a nature that a license gives more opportunity to recommit the crime.*

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

- *Include in statute that youth court adjudications are to be treated similarly whenever statute says criminal convictions are not an automatic bar to being licensed. (This recognizes different terminology for youth, which currently is not recognized under 37-1-203, MCA.)*

CONSTITUTIONAL BASIS FOR RESTORED RIGHTS, BUT...

As with all laws, the basic policy approach arises from the Constitution. The relevant language in the Montana Constitution--as relates to this study--is that a person who has been convicted has "full rights... restored by termination of state supervision for any offense against the state." This language generally has been interpreted to mean that rights as a citizen are restored, but not necessarily full rights in all things. Not all states grant full rights of citizenship after a person is convicted of a felony. But Montana does. However, there are nuances and the following examples describe situations in Montana in which full rights may not be fully restored:

- juvenile records, which are to be sealed but are subject to court petition to be reopened and, for electronic records, perhaps difficult to seal;
- an expungement provision under Montana law, which may be requested for misdemeanors, but which also may be difficult to do for electronic records;
- motor vehicle violations. The Motor Vehicle Division in the Department of Justice retains records of traffic law violations longer than an insured driver's insurance company, which can only use records for a 3-year look-back for purposes of premium determination. Some of the retention recognizes that points related to license/driving violations may accumulate over time.
- someone who is required to register with a sex or violent offender registry. The registration requirement lasts in most cases regardless of whether the person is free of state supervision.

Although this study could have been assigned to the Law and Justice Interim Committee, which would have had familiarity with the nuances related to expungement, state supervision, arrest, and conviction, Legislative Council assigned the study to the Economic Affairs Interim Committee in part because of the focus on occupational and professional licensing. To provide explanations of terms with which the Law and Justice Interim Committee deals routinely, the following table may help licensing boards in making complex determinations related to arrests, convictions, and deferred imposition of sentence.

Legal Terms	Explanation Related to SJR 18 Study
Parole and Probation	<p>Parole is defined in 46-1-202, MCA, as " the release to the community of a prisoner by a decision of the Board of Pardons and Parole prior to the expiration of the prisoner's term subject to conditions imposed by the Board of Pardons and Parole and the supervision of the Department of Corrections.</p> <p>Probation is defined in the same statutes as "release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the Department of Corrections upon direction of the court."</p>
<p>For the purposes of SJ18 - after conviction an offender may have ongoing obligations and limitations according to their probation or parole agreement, the crime they were convicted of and other issues. Any probation or parole obligations expire when the sentence expires. Often during the term of supervision these conditions change depending on how well the offender responds to supervision.</p> <p>DLI has indicated that epersons on probation or parole may be considered for a professional or occupational license, although the conditions for probation or parole may be attached to a provisional license.</p>	

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Expungement	In 2019 the Legislature passed HB 543, the "Misdemeanor Expungement Clarification Act, which defined expunge or expungement as permanent destruction, deletion, or erasure of "a record of an offense from the criminal history record information system maintained by the Department of Justice in a manner that is appropriate for the record's physical or electronic form." (codified in 46-18-1103, MCA)
Some offenders--depending on their crime--may be eligible for expungement. The person who committed the crime is in a place legally as if it had never happened. However, the Department of Justice may not have the technical capability yet to easily accomplish the erasure due to all of the places the data resides and software limitations. Achieving that capability is expensive and time consuming.	
Registry	Persons convicted as a sexual or violent offender are required to register under 46-23-504, MCA. The obligation to register is separate from restoration of rights.
For the purposes of SJ 18, a person who must register as a sexual or violent offender is most likely going to have to report that registration on a licensing application. Some states tie being on the registry to an automatic bar to licensing, but the list of offenses that may land a person on the registry may include streaking at a college football game or an offense against public decency but not necessarily a crime against an individual.	
Deferred Imposition of Sentence	When an offender receives a "deferred imposition of sentence," which many first-time felons who are convicted of nonviolent crimes receive, it technically means the sentence is held in abeyance so long as the offender abides by the conditions of the deferred imposition. Conditions may include jail time, community service, alcohol restrictions, among others. After the term of the deferred expires, the sentence goes away. What it actually means is there is still an electronic record of the conviction. While it seemingly technically means that the conviction never occurred, thus a young offender gets a second chance, in reality it is still searchable in various databases unless the offender is able to have it removed, which is difficult if not impossible from a technical standpoint. It is a question as to how an offender who has successfully completed a deferred sentence should answer the question on a job application of whether he or she was ever convicted of a felony.
Information sent in an email and memo from Julianne Burkhardt, Montana Legislative Services. The memo is in Appendix 1.	

Further, dealing with juvenile offenders raises additional questions with terminology different than that for adults. Legislative Services attorney Joe Carroll points out that youth are not convicted (unless they are tried as adults). Instead, they are adjudicated as delinquent youth. Mr. Carroll further says, "The first thing to note is that action in youth court is civil, not criminal." He added, "Likewise, a youth isn't incarcerated but can be placed in a state youth correctional facility. See [41-5-106](#), MCA. Other aspects that may require recognition of differences between youth and adult offenses is that, while youth court records start out as public records that are open to public inspection, there are provisions to seal them (at the youth's 18th birthday if not before under certain conditions) and eventually to destroy the records. See [41-5-215](#) and [41-5-216](#), MCA.

As provided in the DLI [memo](#) for guidelines to the licensing boards regarding applicants by those with criminal convictions, the goal will be to not require applicants to list arrests or adjudications as a minor.

One of the stakeholders involved from the beginning of the study, the Americans for Prosperity, urged that the Legislature look at the various terms and, in particular, at ways in which expungement of records can be addressed.

THE APPLICATION PROCESS

Montana's licensing boards number 32, handling more than 50 professions and occupations. These include health-related boards like the Board of Medical Examiners, which licenses physicians, podiatrists, physician assistants,

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

nutritionists, acupuncturists, and emergency responders. Other boards license plumbers, electricians, land surveyors, nurses, dentists, and other professions. See Appendix 2 for data on the licensing boards and the outcome of applications for applicants who self-declared that they had had a criminal conviction. (If someone with a conviction does not declare that information on their application and this fact is discovered after the person receives a license, they can be charged with unprofessional conduct for not being truthful on the application.) Questions on applications about personal history include those on criminal history. See Appendix 3A.

The application typically includes a personal history section that asks about prior convictions. Depending on the board, this information is used to trigger review as a nonroutine application.

Criminal Background Checks

For some boards, there is an automatic requirement to provide fingerprints for a criminal background review. Only six boards have the authority to ask for fingerprints by statute. Although all boards have the right under 37-1-307, MCA, to obtain a confidential criminal justice information report (all boards are

designated as criminal justice agencies for the purpose of obtaining that information), only certain boards can specifically require criminal background checks using fingerprints (37-1-307(4), MCA). Those are boards for which the Legislature has passed, and the governor not vetoed, legislation allowing for fingerprint-based criminal background checks. A board does not get blanket authority for fingerprinting, at least in Montana.

Only Certain Boards Can Request Fingerprint-based Criminal Data:

- Board of Behavioral Health for social workers/professional counselors
- Board of Medical Examiners for physicians
- Board of Nursing for nurses
- Board of Pharmacy for wholesale distributors/third-party logistics providers
- Board of Physical Therapy Examiners for physical therapists
- Board of Psychology for psychologists

55 - The number of American medical boards that require fingerprinting of applicants.

Determining Good Moral Character/Moral Turpitude

A somewhat archaic qualifier for licensing is the requirement that an applicant be of "good moral character." For a license as a marriage and family therapist, 37-37-101, MCA, defines "good moral character" as someone who has not "been convicted by a court of competent jurisdiction of a crime described by board rule as being of a nature that renders the applicant unfit to practice marriage and family therapy."

The "good moral character" language once was more common but has been replaced over time as boards have tried to be more specific as to qualifications and less subjective. Nevertheless, a slim majority of licensing boards have retained that language or language referring to crimes of "moral turpitude;" they include:

33 - The number of occupations requiring "good moral character"

19 - The number of occupations not mentioning good moral character

- the Board of Medical Examiners for physicians (37-3-305, MCA), podiatrists (37-6-302, MCA), acupuncturists (37-13-302, MCA), and physician assistants (37-20-402, MCA);
- the Board of Dentistry for dentists (37-4-301, MCA) and dental hygienists (37-4-402, MCA);
- the Board of Pharmacy for pharmacists (37-7-302, MCA)

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

- the Board of Nursing Home Administrators (37-9-301, MCA);
- the Board of Optometry (37-10-302, MCA);
- the Board of Physical Therapy Examiners for physical therapists and assistant physical therapists (37-11-303, MCA);
- the Board of Radiologic Technologists (37-14-302, MCA);
- the Board of Hearing Aid Dispensers (37-16-402, MCA);
- the Board of Psychologists for psychologists (37-17-302, MCA) and behavior analysts and assistants (37-17-403, MCA);
- the Board of Veterinary Medicine for veterinarians (37-18-302, MCA);
- the Board of Funeral Service for morticians (37-19-302, MCA) and crematory operators (37-19-703, MCA);
- the Board of Behavioral Health for social worker licensure candidates (37-22-313, MCA), professional counselor licensure candidates (37-23-213, MCA), and marriage and family therapists (37-37-201, MCA);
- the Board of Alternative Health Care for naturopathic physicians (37-26-402, MCA) and direct-entry midwives (37-27-201, MCA);
- the Board of Barbers and Cosmetologists for barbering and nonchemical barbering (37-31-304, MCA);
- the Board of Massage Therapy (37-33-502, MCA), Board of Accountancy for certified public accountants (37-50-302, MCA);
- the Board of Real Estate Appraisers for appraisers and trainees (37-54-202, MCA), plus each owner of an appraisal management company (37-54-503, MCA), and each contact individual (37-54-504, MCA);
- the Board of Private Security for process servers (37-60-303, MCA).
- the Department of Labor and Industry for construction blasters who do not have a board (37-72-301, MCA).

Not required to prove good moral character are those licensed as realtors, electricians, architects, landscape architects, plumbers, engineers, land surveyors, denturists, speech-language pathologists, chiropractors, nutritionists, cosmetologists, athletic trainers, outfitters, guides, sanitarians, respiratory therapists, addiction counselors, and clinical laboratory science practitioners.

Two boards can deny a license or refuse one based on conviction of crimes of moral turpitude, which is undefined in Montana law. For example, the Board of Medical Examiners has authority under 37-25-308, MCA, to deny licenses to nutritionists "convicted of a crime of moral turpitude." Similarly, an applicant for a license from the Board of Private Security, or someone registering with that board to be a process server, may not have "been convicted in any jurisdiction of any felony or any crime involving moral turpitude..." (37-60-303, MCA) These two examples may contravene 37-1-203, MCA, which says that a crime cannot be the sole reason for denial. Typically, laws that are specific are considered to control over the general.

Moral Turpitude is undefined in Montana law. Two license types reference moral turpitude.

Merriam-Webster's [online definition](#) says moral turpitude is "an act or behavior that gravely violates the sentiment or accepted standard of the community." Or it is a "quality of dishonesty or other immorality that is determined by a court to be present in the commission of a criminal offense."

DLI staff said the imprecise nature of determining good moral character means that other criteria are at the forefront for deciding whether an applicant is qualified for licensure.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Determining Routine or Nonroutine Applications

Typically, the application process starts with staff determining whether a license application is routine or nonroutine. A department rule, [24.101.402](#), provides general criteria for determining what applications are nonroutine: those with evidence of unprofessional conduct as defined by law or rule, with pending complaints or final disciplinary action, or requiring materials that only professional members of the board are qualified to evaluate.

19 of 32 Boards requiring nonroutine review for certain types of convictions (or charges)

Nineteen boards have rules that spell out what types of convictions (or charges, in some cases) trigger a nonroutine evaluation by a licensing board. If the personal history in an applications indicates that there has been a criminal conviction, staff puts that application into the nonroutine category unless a board has determined by rule that only certain categories of crimes merit a closer, case-by-case look. The table below describes the board rules that specify when an application is nonroutine because of crime types and, for some, the look-back period.

Boards That Specify by Rule Criminal Conviction Evaluations

Board of Alternative Care 24.111.407	<p>Direct-Entry Midwives - Nonroutine review done for all Level III-A and Level III-B applications. Levels I and II are nonroutine if any felony conviction of any nature occurred.</p> <p>Naturopathic Physicians - Nonroutine applications are those for which a prior felony conviction is listed of any nature or a misdemeanor related to drugs, sex, or violence is listed.</p>	<p>Nonroutine review is done for 2 or more alcohol-related convictions over any period or one alcohol-related conviction within the past 5 years.</p> <p>The term "conviction" includes any variation other than acquittal, regardless of plea or sentencing.</p>
Board of Athletic Trainers 24.118.502	<p>An application is nonroutine for purposes of prior convictions if it lists:</p> <ol style="list-style-type: none"> 1) a felony conviction, regardless of nature, or misdemeanor conviction related to sex, drugs, or violence, or 2) an applicant had 2 or more alcohol-related convictions over any period or one alcohol-related conviction within the past 5 years. 	
Board of Barbers and Cosmetologists 24.121.406	<p>The board shall review an application with any of the following:</p> <ul style="list-style-type: none"> • Criminal conviction and charges: (i) a felony conviction of any nature if the sentence imposed has not been fully discharged or if the conviction was entered within the past 10 years. • Conviction that involved use or sale of drugs, fraud, deceit, or theft - if the conviction occurred in the past 5 years or is not fully discharged. • Any misdemeanor conviction relating to sex or violence or any misdemeanor for which there are three or more convictions if the sentence has not been discharged and the convictions were within the past 5 years. • A pending criminal charge, if it fits any of the criteria listed above. • A deferred imposition of sentence that has not been discharged is treated as a conviction for determining whether the application is nonroutine. • Misdemeanor traffi offenses not involving alcohol or drugs do not trigger a nonroutine application. 	
Board of Chiropractors 24.126.301	<p>The definition for nonroutine applications includes those in which a civil or criminal charge is pending or the applicant has pleaded guilty or been convicted (including under a plea of nolo contendere) and whether or not an appeal is pending. Exceptions are for minor-in-possession charges or convictions, a misdemeanor committed more than 5 years ago (if only one), or traffic offenses that di not involve the illegal use or possession of alcohol or drugs.</p>	
Board of Clinical Laboratory Science Practitioners 24.129.606	<p>Nonroutine applications include those in which the applicant had:</p> <ul style="list-style-type: none"> • A prior felony conviction within the past 10 years. Only an acquittal is exempt; any other disposition regardless of plea or sentence is considered a conviction for purposes of nonroutine triggers. • 2 or more misdemeanors, other than minor traffic violations, within the past 5 years, regardless of whether an appeal is pending or sentencing is suspended or deferred. 	

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Dentistry 24.138.304	<p>A nonroutine application includes one in which the applicant:</p> <ul style="list-style-type: none"> • Had civil or criminal charges pending or had pleaded guilty, forfeited bond, or been convicted of a crime, including no-contest plea and regardless of suspended or deferred sentencing, unless the charges or convictions were for minor-in-possession or were a misdemeanor committed more than 5 years prior to the application or were for traffic offenses not involving illegal use or possession of drugs or alcohol.
Electrical Board 24.141.509	<p>A nonroutine application is one for which the applicant has not been acquitted and regardless of plea or sentencing is considered convicted of:</p> <ul style="list-style-type: none"> • A felony for which the applicant is on probation or otherwise under supervision; or • A felony committed within 5 years of the application, regardless of whether the applicant is on probation, if the felony was for property crimes or crimes of violence.
Board of Massage Therapy 24.155.613	<p>A nonroutine application is one disclosing:</p> <ul style="list-style-type: none"> • Three or more pending charges or past convictions of misdemeanor crimes related to massage therapy or involving violence, the sale or use of drugs, fraud, deceit, or theft, if the applicant was sentenced in the 5 years preceding the board's receipt of the application. • A pending charge or past conviction for any crime for which the applicant was sentenced within 10 years of applying or for which terms of the sentence have not been fully satisfied. • Any pending charge of a sex crime or past conviction of a sex crime.
Board of Nursing 24.159.403	<p>A nonroutine application includes one listing a conviction of:</p> <ul style="list-style-type: none"> • A felony crime, unless the conviction occurred more than 10 years prior to the application and alal court-ordered conditions have been fully met or discharged. • Any crime involving the abuse of children, the elderly, the disabled, or involving sexual abuse or assault. • Any crime involving fraud, deceit, theft, or violence, or directly related to the licensed practice of nursing unless the conviction occurred 5 or more years prior to the application and court conditions were met. • Two or more misdemeanor convictions involving the use of sale of alcohol within 5 years of the application. <p>The rules also provide that meeting court-ordered conditions satisfy drug or alcohol-related concerns.</p>
Board of Nursing Home Administrators 24.162.503	<p>A nonroutine application includes one listing:</p> <ul style="list-style-type: none"> • A prior felony conviction, which exempts acquittals but covers all other outcomes regardless of plea or sentencing variations, or • Two or more misdemeanors, other than minor traffic offenses, regardless of whether an appeal is pending or sentencing was suspended or deferred.
Board of Occupational Therapy Practice Examiners 24.165.302	<p>The definition of nonroutine applications, except in cases of acquittal, includes regardless of plea or sentencing type:</p> <ul style="list-style-type: none"> • Any prior felony conviction. • Prior misdemeanor conviction related to sex, drugs, or violence. • Two or more alcohol-related convictions over any period or one alcohol-related conviction in the past 5 years.
Board of Optometry 24.168.407	<p>Nonroutine applications include those listing:</p> <ul style="list-style-type: none"> • Any prior felony conviction • Guilty or nolo contendere pleas to two or more misdemeanors, other than minor traffic violations within the past 5 years, regardless of whether an appeal is pending or sentencing suspended or deferred.
Board of Outfitters 24.171.403	<p>Nonroutine applications include those listing:</p> <ul style="list-style-type: none"> • Past Fish, Wildlife, or Parks convictions or pending charges if they resulted in loss of the privileges to hunt or fish and if they numbered two or more for which the applicant was sentenced within 5 years of the board receiving the application or more than three regardless of when sentenced. • Traffic-related convictions if the applicant is considered an habitual offender as of the date the board gets the application. • Other pending charges or past convictions for: <ul style="list-style-type: none"> --misdemeanor crimes if numbering 3 or more within 5 years of the board receiving the application; or --felony pending charges or past convictions within 10 years of the board receiving the application or if the conditions of sentencing had not been satisfied or discharged. <p>The rule says a pending charge includes a deferred prosecution that has not been dismissed prior to submission to the board.</p>

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Plumbers 24.180.405	Nonroutine applications include those listing: <ul style="list-style-type: none">• Felony convictions• Guilty or no contest pleas to two or more misdemeanors, other than minor traffic violations, within the past 5 years, regardless of whether an appeal or pending or sentencing was suspended or deferred.
Board of Private Security 24.182.508	Nonroutine applications include those listing, unless dismissed by a court: <ul style="list-style-type: none">• Conviction or pending criminal charges of<ul style="list-style-type: none">-- a felony or any crime involving the illegal use or possession of a dangerous weapon;-- a misdemeanor crime involving violence, use or sale of drugs, fraud, deceit, or theft, unless the conviction occurred more than 5 years prior to the application filing and all court-ordered conditions have been satisfied, discharged, or dismissed;-- two or more misdemeanor crimes that occurred within 5 years of application, including reckless driving, driving under the influence, and hit-and-run driving.
Board of Psychology 24.189.613	Nonroutine applications include those listing: <ul style="list-style-type: none">• Prior felony conviction, with conviction covering any type of plea or sentence with acquittals excepted.• Two or more misdemeanors, other than for minor traffic violations, within the 5 years prior to the application, whether an appeal is pending or whether the sentence was suspended or deferred.
Board of Realty Regulation 24.210.418	Nonroutine applications include those listing: <ul style="list-style-type: none">• Criminal convictions and charges, including a pending criminal charge and a charge with a deferred sentence not discharged prior to the application.• Felony convictions of any nature if sentencing conditions have not been fully discharged or were imposed within the past 10 years.• Any conviction related to use or sale of drugs, fraud, deceit, or theft if the sentencing conditions have not been fully discharged or the sentencing order was entered within the past 5 years.• Misdemeanor conviction relating to sex or violence.• Three or more misdemeanor convictions.
Board of Speech Language Pathologists and Audiologists 24.222.405	Nonroutine applications include those listing: <ul style="list-style-type: none">• Any felony conviction• Guilty plea or no contest or conviction of 2 or more misdemeanors, other than minor traffic violations, within the past 5 years, regardless or whether an appeal is pending or whether the sentence was suspended or deferred.
Board of Veterinary Medicine 24.225.425	Nonroutine applications include those listing: <ul style="list-style-type: none">• Any felony conviction• Guilty plea or no contest or conviction of 2 or more misdemeanors, other than minor traffic violations, within the past 5 years, regardless or whether an appeal is pending or whether the sentence was suspended or deferred.

Takeaways from Board Rules on Nonroutine Applications

Boards that require review of criminal history vary in their scrutiny. Almost all that list either felony or misdemeanor triggers include the following:

- Language that requires a review of pending charges, any type of plea (guilty, conviction, no contest), and any type of sentencing, including suspended or deferred.
- Of the boards that provide a look-back period, those range from 5 years usually for misdemeanors, to 10 years, usually for felony convictions. Some boards have no look-back period.
- Some boards look at any criminal conviction.
- Some boards look only at the convictions where sentencing orders have not been fully discharged or satisfied.
- Most boards exclude minor traffic violations.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

- Many of the boards put someone with two misdemeanor "convictions" into nonroutine, with a conviction including any type of plea or conviction or sentencing.

The proposed DLI guidance to licensing boards (see Appendix 3) suggests providing some uniformity if the boards adopt the department language. Proposals suggested by American for Prosperity (see Appendix 4) suggest additional options. Neither approach may address the concerns of those who either do not apply or do not appear to follow through with applications out of fear of being rejected because of criminal convictions. The more information available as to actual licensing of those with criminal convictions may erase some of the trepidation of those not applying.

Options used in Other States

Among the requests made by the Committee was one to see what other states had done in terms of reviewing an application by someone with a criminal conviction or offering a pre-review of a criminal history so that those with criminal convictions do not waste time or money in the pursuit of training if licensure is unlikely. The National Conference of State Legislatures includes the prequalification approach among recommended policy options intended to reduce barriers to obtain occupational licenses for those with criminal histories. Others mentioned in a November 2019 report were relevancy limitations, modification of morality clauses, and certificates of rehabilitation.ⁱⁱ The nonpartisan research group notes that at least 20 states have certificates of employability and at least 20 regulate at what point in the process an applicant can be asked about a criminal history.

At least 20

The number of states that have certificates of employability or that regulate at what point an applicant can be asked about a criminal history.

Specificity versus Flexibility

Both the specification of criminal relevancy and the pre-review options were included in a bill proposed in the 2019 session, [SB 347](#). That bill would have revised the current approach for those with criminal convictions by describing certain considerations (for example, a 5-year look-back period for convictions unrelated to the occupation for which licensing is requested). Another provision would have allowed petitioning for a preapplication determination.

The initial proposal for SB 347, suggested by the Foundation for Government Accountability, would have required licensing boards to "determine by rule the specific criminal convictions that may preclude an applicant from being licensed. The list of potentially disqualifying criminal convictions must be specific to the board and directly relate to the duties and responsibilities of the license regulated by the board."ⁱⁱⁱ

The Department of Labor and Industry suggested significant changes to the original proposal for SB 347 but hewed to intent with the following language:

- (1) b) whether the elements of the offense are directly related to the specific duties and responsibilities of the license regulated by the board or program; and (c) whether the performance of the occupation offers the opportunity for the same or a similar offense to occur.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

The Department of Labor and Industry has suggested that too much specificity removes flexibility for licensing boards to determine if an applicant with a criminal history has been rehabilitated. The specificity of a rule that nixes licensing for certain criminal histories or within certain timeframes provides one version of fairness and removes the risk that those with a criminal conviction become subject to overreaching sensitivity. But the opposite can also be true in that specificity loses the flexibility of a case-by-case evaluation.

Application Pre-Review

SB 347 also provided an applicant with a criminal history the opportunity to petition to determine if an application for licensure would be nixed based on the criminal history. Current law already says that denial cannot be based solely on that history. The Department of Labor and Industry's concerns about incorporating a pre-review approach were that an inquiry made when someone is leaving prison without training may not be met with the same response as someone who already had training in the prospective field of licensure. The approach has been case-by-case upon submission of an application, with willingness to invest in training considered to be a sign of a person's move toward rehabilitation.

Whether other states' pre-review approaches have increased licensing of those with criminal histories is unclear. Of the states that have adopted a preapplication review, most have done so in the last two years and, based on limited contact, appear to have little experience with requests. A staff member for an Arizona board said the first requests he remembers were in 2020. Arizona implemented its pre-review bill in 2018. He noted that a "clearance card" that is issued by the Arizona Department of Public Safety appears to have resolved some questions that boards may have had as to suitability for licensing. . Once vetted for the clearance card, he said, that resolves further questions. The Arizona Board of Fingerprinting reviews the fingerprint clearance card requests. (More about this subject below.)

Ohio's pre-review option, adopted with Senate Bill 255 in 2019, also appeared not to be an issue with one board member contacted there, who indicated no requests for a preliminary review.

Indiana, a third state with pre-review authority as of passage in 2018 of H.B. 1245, also allows applicants to see a determination before going through the application process as to whether a prior conviction will disqualify the applicant from being licensed.

Arizona's prereview language (SB 1436 - 2018):

A person with a criminal record may petition a state agency or board, at any time, including before obtaining any required education or experience, taking any examination or paying any fee for a determination of whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate, or other state recognition.

Ohio's prereview language in SB 255 reads (Sec. 9.78):

(B) An individual who has been convicted of any criminal offense may request, at any time, that a licensing authority determine whether the individual's criminal conviction disqualifies the individual from obtaining a license issued or conferred by the licensing authority. An individual making such a request shall include details of the individual's criminal conviction and any payment required by the licensing authority. A licensing authority may charge a fee of not more than \$25 dollars for each request made under this section to reimburse the costs it incurs in making the determination.

Not later than 30 days after receiving a request under this section, the licensing authority shall inform the individual whether, based on the criminal record information submitted, the individual is disqualified from receiving or holding the license about which the individual inquired. A licensing authority is not bound by a determination made under this section, if, on further investigation, the licensing authority determines that the individual's criminal convictions differ from the information presented in the determination request.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Listing of Specified Crimes That Disqualify Applicants

Indiana separately required licensing boards to address what convictions can be considered in licensure. Here's what the Indiana Board of Barbers and Cosmetologists provide in their [regulations](#):^{iv}

(d) Not later than November 1, 2018, a board, commission, or committee shall revise its licensing or certification requirements to the extent necessary to explicitly list the crimes that may disqualify an individual from receiving a license or certificate under this title. The board, commission, or committee may not:

- (1) use nonspecific terms, such as moral turpitude or good character, as a licensing or certification requirement; or*
- (2) consider an arrest that does not result in a conviction.*

Arizona combined two features -- specified crimes and what is known as a clearance card, something similar to a certificate of rehabilitation (see below). To obtain a Level 1 Clearance Card, applicants for certain occupations, particularly those working with children or elders, could not have committed any of at least 65 crimes, both felonies and misdemeanors. [See <https://www.azleg.gov/ars/41/01758-07.htm>.] Level 1 cards primarily are required in Arizona for occupations that in Montana are not licensed through professional and occupational licensing boards, but rather as businesses through Montana's Department of Public Health and Human Services, such as child care centers and nursing homes. See Arizona list: <https://www.azdps.gov/services/public/fingerprint>

Other Options

At the February 2020 Economic Affairs Interim Committee meeting, members heard a summary of past legislation that has been considered that relates to SJ 18. Among these were certificates of rehabilitation and ban the box options in applications.

Certificate of Rehabilitation

A certificate of rehabilitation was at the heart of initial drafts for bills proposed in 2017 and 2019, [SB325](#) and [SB238](#), respectively. The certificate of rehabilitation concept has two sides:

- From the offender's side, a certificate of rehabilitation provides assurance to prospective employers, landlords, or schools that the offender had proved to the sentencing judge or a similar officially designated person that the offender had met benchmark goals and had not been in trouble for a set number of years (often three years). The goal is to use the certificate of rehabilitation as a key to opening doors for what an offender usually needs to begin life anew: a home, education, and a job.
- From the perspective of a future employer, landlord, or school administrator, the certificate of rehabilitation was intended to provide assurance that the offender had met expected goals and was not a risk to other workers, renters, or students. The extrapolation of this idea led to a suggestion of immunity to the future employer, landlord, or school administrator. However, Montana's constitutional bar (in Article II, section 18) to immunity for public employers or entities, meant that eventual certificate of rehabilitation legislation removed public immunity and references to public schools and granted only private immunity.

The 2017 legislation passed in a stripped down version that addressed employer liability.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

As mentioned earlier, Arizona's use of a clearance card operates similarly to a certificate of rehabilitation. Roughly 35 occupations, not all of them requiring licensure, use the fingerprint clearance card as a key to show good behavior or that the person has paid a debt to society for the crimes. More than 65 crimes could disqualify a person from getting a fingerprint clearance card. The crimes range from first- or second-degree murder to shoplifting (see 41-1758.03, Arizona Revised Statutes). A person may request an exception. The clearance card is required for both paid and volunteer positions related to child and elder care, based on a [fact sheet](#) provided to the Arizona Senate for a bill presented in 2020.

Ban the Box Applications

Roughly half the states use applications that do not include a box or question asking whether an applicant has ever been convicted of a crime. Montana's "ban the box" legislation, [SB 168](#) introduced in 2019, would have allowed employers to question those applicants who pass muster through the written job application. See "Past Legislation" [briefing paper](#).

Conclusion

Montana's current laws regarding occupational licensure of those with criminal histories are less restrictive than many states, based on the approach that a criminal record cannot be the sole reason for denying licensure. Data from the Department of Labor and Industry appears to show that the current case-by-case approach has not resulted in significant denial of licensure to those with criminal histories. Could the situation be better? Based on the number of licensing boards that refer to general or specific types of crimes, which may not be specifically relevant to the occupation being licensed, there is room for improvement. The Department of Labor and Industry has suggested offering guidance through rule to make the questions more relevant both in crime and in time to licensure.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 1: Memo on Legal Terminology

MEMO

Date: April 14, 2020
From: Julianne Burkhardt, Legislative Services Division, Legal Department

- **General Concepts of Restoration of Rights**

Constitutional References:

Mont. Const. Art. IV, sec 2 -- Voting rights restored upon release from confinement, still may be under supervision on probation or parole and vote.

Mont. Const. Art. IV, sec 4 -- Convicted felon can't run for elected office until discharge from supervision.

Mont. Const. Art. II, sec 28 -- Full rights of citizenship restored by termination of state supervision.

Statutory Reference:

46-18-801, MCA -- Effect of conviction — civil disabilities

....

(2) Except as provided in the Montana constitution, if a person has been deprived of a civil or constitutional right by reason of conviction for an offense and the person's sentence has expired or the person has been pardoned, the person is restored to all civil rights and full citizenship, the same as if the conviction had not occurred.

- **Gun Rights**

State Law:

Based primarily on Mont. Const. Art II, sec 28, there is an argument that under state law all gun rights are restored. There are some issues that can arise in the application for a concealed weapons permit. Also if the person was convicted of a violation of 45-8-313, MCA -Unlawful possession of a firearm by convicted person (generally because they have a prior conviction where they received a weapons enhancement under 46-18-221) - they may not possess a gun and are subject to 45-8-314, MCA Lifetime firearms supervision of certain convicted persons. As long a person is not convicted under 45-8-313, MCA they may own and possess a firearm.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Federal Law:

18 USC sec 922(g) makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition and specifically includes a person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year. Since a "felony" is defined by a conviction punishable by confinement for a term of 1 year or more, that means that under federal law it is illegal for anyone convicted of a felony to own or possess a firearm.

- **Expungement**

During the 2019 session the "Misdemeanor Expungement Clarification Act" was passed. 46-18-1102, MCA *et seq.* This part provides the method of expunging misdemeanor offenses. I am not aware of a method to expunge a felony conviction although a pardon defined in 46-23-301(1)(b), MCA would relieve an individual of all legal consequences of a prior conviction. However, under misdemeanor expungement and a pardon, I would still have concerns (particularly under the pardon scenario) regarding the destruction of records related to conviction.

- **Deferred Imposition of Sentence**

Under 46-18-201(1), MCA, many first-time felons who are convicted of a nonviolent offense are eligible for a deferred imposition of sentence, which basically means the sentence/conviction is held in abeyance as long as the offender abides by the terms and conditions of the deferred. Conditions may include jail-time, community service, alcohol restrictions, treatment requirements and many others. After the term of the sentence expires and the offender successfully completes the conditions, the sentencing court is required to strike the plea of guilty and order that the charges be dismissed. As under expungement, this does not necessarily mean (and usually does not mean) that all electronic traces of the conviction are removed.

- **Juveniles**

Under 41-5-215(1), MCA, Formal youth court records and orders and decrees on file with the clerk of court are public records and are open to inspection until the records are sealed under 41-5-216(1), MCA, which requires juvenile records to be sealed on the youth's 18th birthday. Note that under 41-5-215(2) social, medical, psychological records and other categories are not public records and are only available to the list of individuals provided in the statute. As far as the sealing of juvenile records, there are concerns with sealing all electronic records.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 2: Disposition of Licensing Board Applications for Those with Criminal History

Board of Medical Examiners	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	1,526	106	6.95%	88	14	1	0	0	1	2	0
FY2016	1,703	92	5.40%	77	14	0	0	1	0	0	0
FY2017	1,726	105	6.08%	87	16	0	0	0	0	2	0
FY2018	1,993	133	6.67%	109	18	0	2	0	1	2	1
FY2019	2,143	133	6.21%	109	8	1	5	0	0	1	9

Board of Nursing	Number of Applications FY 2016	Number of those Applications w/ Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	2,384	378	15.86%	343	32	1	0	0	1	1	0
FY2016	1,978	287	14.51%	267	15	2	0	0	1	2	0
FY2017	2,035	302	14.84%	279	17	2	0	0	3	1	0
FY2018	2,327	289	12.42%	256	26	0	2	0	0	2	3
FY2019	2,347	286	12.19%	256	8	0	0	0	1	1	20

Board of Outfitters	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	462	52	11.26%	46	3	1	0	2	0	0	0
FY2016	472	61	12.92%	53	5	0	0	2	0	1	0
FY2017	507	62	12.23%	53	3	0	0	6	0	0	0
FY2018	475	54	11.37%	43	6	0	0	3	0	1	1
FY2019	493	69	14.00%	52	4	0	2	4	1	0	6

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Private Security	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	621	115	18.52%	103	10	1	0	0	1	0	0
FY2016	579	105	18.13%	84	18	0	0	0	3	0	0
FY2017	563	78	13.85%	58	20	0	0	0	0	0	0
FY2018	646	122	18.89%	87	24	1	0	2	1	0	7
FY2019	717	158	22.04%	119	6	1	0	0	1	4	27

Board of Realty Regulation	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	698	84	12.03%	75	3	0	0	2	3	1	0
FY2016	825	108	13.09%	99	2	0	0	4	1	2	0
FY2017	912	96	10.53%	92	3	0	0	1	0	0	0
FY2018	959	135	14.08%	125	7	0	0	1	0	1	1
FY2018	948	141	14.87%	133	1	0	0	2	0	0	5

Board of Real Estate Appraisers	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	203	4	1.97%	2	2	0	0	0	0	0	0
FY2016	182	8	4.40%	8	0	0	0	0	0	0	0
FY2017	190	7	3.68%	7	0	0	0	0	0	0	0
FY2018	202	8	3.96%	8	0	0	0	0	0	0	0
FY2019	216	8	3.70%	8	0	0	0	0	0	0	0

Board of Respiratory Therapy	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	75	5	6.67%	5	0	0	0	0	0	0	0
FY2016	77	16	20.78%	15	1	0	0	0	0	0	0
FY2017	76	4	5.26%	4	0	0	0	0	0	0	0
FY2018	97	14	14.43%	13	1	0	0	0	0	0	0
FY2019	85	10	11.76%	8	0	0	0	0	0	1	1

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Veterinary Medicine	Number of Applications	Number of those Applications w/ Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	58	4	6.90%	4	0	0	0	0	0	0	0
FY2016	64	2	3.13%	2	0	0	0	0	0	0	0
FY2017	59	5	8.47%	5	0	0	0	0	0	0	0
FY2018	79	6	7.59%	5	0	0	0	0	0	0	1
FY2019	78	5	6.41%	4	0	0	0	0	0	0	1

Board of Pharmacy	Number of Applications	Number of those Applications with Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	951	67	7.05%	59	8	0	0	0	0	0	0
FY2016	1,049	81	7.72%	74	7	0	0	0	0	0	0
FY2017	1,002	78	7.78%	68	10	0	0	0	0	0	0
FY2018	1,068	50	4.68%	39	8	0	0	1	0	0	2
FY2019	1,058	61	5.77%	52	2	1	0	0	0	1	5

Board of Physical Therapy Examiners	Number of Applications	Number of those Applications with Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	Application Voided	App in Process
FY2015	157	9	5.73%	8	0	0	0	1	0	0	0
FY2016	160	8	5.00%	8	0	0	0	0	0	0	0
FY2017	185	17	9.19%	16	1	0	0	0	0	0	0
FY2018	194	8	4.12%	8	0	0	0	0	0	0	0
FY2019	197	12	6.09%	11	0	0	0	0	0	0	1

Board of Plumbers	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	Application Voided	App in Process
FY2015	138	13	9.42%	9	4	0	0	0	0	0	0
FY2016	116	11	9.48%	8	3	0	0	0	0	0	0
FY2017	116	12	10.34%	9	3	0	0	0	0	0	0
FY2018	143	21	14.69%	14	4	0	0	0	0	0	3
FY2019	131	17	12.98%	10	1	0	1	0	1	0	4

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Sanitarians	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	25	2	8.00%	2	0	0	0	0	0	0	0
FY2016	22	3	13.64%	2	1	0	0	0	0	0	0
FY2017	23	1	4.35%	1	0	0	0	0	0	0	0
FY2018	26	0	0.00%	0	0	0	0	0	0	0	0
FY2019	37	2	5.41%	2	0	0	0	0	0	0	0

Alternative Health Care Board	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	Application Voided	App in Process
FY2015	13	1	7.69%	1	0	0	0	0	0	0	0
FY2016	18	2	11.11%	1	1	0	0	0	0	0	0
FY2017	17	0	0.00%	0	0	0	0	0	0	0	0
FY2018	12	2	16.67%	2	0	0	0	0	0	0	0
FY2019	12	4	33.33%	3	0	0	0	0	0	0	1

Board of Architects/Landscape Architects	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	Application Voided	App in Process
FY2015	152	3	1.97%	2	1	0	0	0	0	0	0
FY2016	157	4	2.55%	3	1	0	0	0	0	0	0
FY2017	155	8	5.16%	5	2	0	0	0	0	1	0
FY2018	150	2	1.33%	1	1	0	0	0	0	0	3
FY2019	148	8	5.41%	8	0	0	0	0	0	0	0

Board of Athletic Trainers	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	Application Voided	App in Process
FY2015	20	1	5.00%	1	0	0	0	0	0	0	0
FY2016	21	4	19.05%	4	0	0	0	0	0	0	0
FY2017	20	0	0.00%	0	0	0	0	0	0	0	0
FY2018	24	2	8.33%	2	0	0	0	0	0	0	0
FY2019	21	0	0.00%	0	0	0	0	0	0	0	0

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Barbers and Cosmetologists	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	1,339	98	7.32%	89	7	1	0	0	0	1	0
FY2016	1,353	51	3.77%	42	8	0	0	1	0	0	0
FY2017	1,269	54	4.26%	47	5	0	0	2	0	0	0
FY2018	1,292	63	4.88%	49	7	1	1	5	0	0	0
FY2019	1,297	58	4.47%	38	2	1	1	12	0	1	3

Board of Behavioral Health	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	NA	NA	NA	0	0	0	0	0	0	0	0
FY2016	754	115	15.25%	109	4	0	0	2	0	0	0
FY2017	426	62	14.55%	56	6	0	0	0	0	0	0
FY2018	423	63	14.89%	53	6	0	0	0	0	2	2
FY2019	529	108	20.42%	89	3	2	1	2	0	2	9

Board of Chiropractors	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	39	4	10.26%	3	1	0	0	0	0	0	0
FY2016	28	2	7.14%	2	0	0	0	0	0	0	0
FY2017	32	3	9.38%	3	0	0	0	0	0	0	0
FY2018	32	2	6.25%	2	0	0	0	0	0	0	0
FY2019	31	8	25.81%	6	1	0	0	0	0	0	1

Board of Clinical Laboratory Scientists	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	102	4	3.92%	4	0	0	0	0	0	0	0
FY2016	126	9	7.14%	8	0	0	0	0	0	1	0
FY2017	117	4	3.42%	3	0	1	0	0	0	0	0
FY2018	183	4	2.19%	3	1	0	0	0	0	0	0
FY2019	150	9	6.00%	7	0	1	0	0	0	0	1

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Dentistry	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	119	9	7.56%	8	1	0	0	0	0	0	0
FY2016	131	13	9.92%	11	1	1	0	0	0	0	0
FY2017	118	16	13.56%	15	0	0	0	1	0	0	0
FY2018	133	16	12.03%	15	1	0	0	0	0	0	3
FY2019	113	13	11.50%	12	1	0	0	0	0	0	0

State Electrical Board	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	510	42	8.24%	29	12	0	0	0	0	1	0
FY2016	489	64	13.09%	49	14	0	0	1	0	0	0
FY2017	513	57	11.11%	44	13	0	0	0	0	0	0
FY2018	420	49	11.67%	36	12	0	0	0	0	0	1
FY2019	417	38	9.11%	29	0	0	0	0	0	1	8

Board of Funeral Service	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	41	9	21.95%	9	0	0	0	0	0	0	0
FY2016	35	4	11.43%	3	1	0	0	0	0	0	0
FY2017	36	2	5.56%	2	0	0	0	0	0	0	0
FY2018	45	5	11.11%	3	2	0	0	0	0	0	0
FY2019	27	4	14.81%	4	0	0	0	0	0	0	0

Board of Hearing Aid Dispensers	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	7	1	14.29%	0	1	0	0	0	0	0	0
FY2016	20	2	10.00%	2	0	0	0	0	0	0	0
FY2017	11	3	27.27%	3	0	0	0	0	0	0	0
FY2018	11	3	27.27%	2	1	0	0	0	0	0	0
FY2019	6	1	16.67%	1	0	0	0	0	0	0	0

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Massage Therapists	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	201	22	10.95%	22	0	0	0	0	0	0	0
FY2016	168	14	8.33%	14	0	0	0	0	0	0	0
FY2017	200	18	9.00%	15	3	0	0	0	0	0	0
FY2018	196	20	10.2%	20	0	0	0	0	0	0	0
FY2019	230	18	7.83%	15	0	0	0	1	0	0	2

Board of Nursing Home Administrators	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	34	3	8.82%	1	2	0	0	0	0	0	0
FY2016	41	4	9.76%	1	3	0	0	0	0	0	0
FY2017	50	2	4.00%	1	1	0	0	0	0	0	0
FY2018	64	4	6.25%	4	0	0	0	0	0	0	0
FY2019	86	8	9.30%	7	0	0	0	0	0	1	0

Board of Occupational Therapy Practice	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	87	7	8.05%	7	0	0	0	0	0	0	0
FY2016	90	4	4.44%	4	0	0	0	0	0	0	0
FY2017	77	3	3.90%	3	0	0	0	0	0	0	0
FY2018	100	5	5.00%	5	0	0	0	0	0	0	0
FY2019	95	3	3.16%	3	0	0	0	0	0	0	0

Board of Optometry	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	9	0	0.00%	0	0	0	0	0	0	0	0
FY2016	17	1	5.88%	1	0	0	0	0	0	0	0
FY2017	13	1	7.69%	1	0	0	0	0	0	0	0
FY2018	14	3	21.43%	3	0	0	0	0	0	0	0
FY2019	14	0	0.00%	0	0	0	0	0	0	0	0

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Public Accountants	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	223	15	6.73%	14	0	0	0	0	0	1	0
FY2016	99	0	0.00%	0	0	0	0	0	0	0	0
FY2017	66	0	0.00%	0	0	0	0	0	0	0	0
FY2018	0	0	0.00%	0	0	0	0	0	0	0	0
FY2019	Firms lic	Just firms	0.00%	0	0	0	0	0	0	0	0

Board of Speech Language Pathologists	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	224	4	1.79%	2	2	0	0	0	0	0	0
FY2016	219	2	0.91%	2	0	0	0	0	0	0	0
FY2017	106	7	6.60%	7	0	0	0	0	0	0	0
FY2018	94	3	3.19%	3	0	0	0	0	0	0	0
FY2019	102	5	4.90%	4	0	0	0	0	0	1	0

Board of Radiologic Technologists	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	158	16	10.13%	11	4	1	0	0	0	0	0
FY2016	193	14	7.15%	13	1	0	0	0	0	0	0
FY2017	186	13	6.99%	11	0	0	0	0	0	2	0
FY2018	197	19	9.64%	17	2	0	0	0	0	0	0
FY2019	238	14	5.88%	12	0	2	0	0	0	0	0

Board of Prof. Engineers & Land Surveyors	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	639	59	9.23%	51	8	0	0	0	0	0	0
FY2016	651	65	9.98%	60	4	0	0	1	0	0	0
FY2017	606	57	9.41%	50	6	0	0	0	0	1	0
FY2018	731	58	7.93%	48	7	0	0	0	0	1	2
FY2019	803	66	8.22%	45	5	0	0	0	0	0	16

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Board of Physical Therapy Examiners	Number of Applications	Number of those Applications w/Criminal History	% of Apps w/ Criminal History	Those w/ Criminal History - Final Disposition of Application							
				Issued Active license	Application Timed Out	Application Withdrawn	Pending before Board	Issued with Probation	License Denied	App Voided	App in Process
FY2015	157	9	5.73%	8	0	0	0	1	0	0	0
FY2016	160	8	5.00%	8	0	0	0	0	0	0	0
FY2017	185	17	9.19%	16	1	0	0	0	0	0	0
FY2018	194	8	4.12%	8	0	0	0	0	0	0	0
FY2019	197	12	6.09%	11	0	0	0	0	0	0	1

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 3: Proposed Department of Labor and Industry Guidance

Appendix 3A: Personal History Guidelines

Department of Labor and Industry Personal History Questions, effective Jan. 1, 2020. Approved 12/2019. Revised 7/2020

Questions for all boards	
<p>Question 1: Have you ever held any license, certificate, registration, or other privilege to serve as a volunteer or practice a profession denied, revoked, suspended, or restricted by a public or private local, state, federal, tribal, religious, or foreign authority?</p>	<p>Followup Question 1: For each occurrence, provide the date of action, type of action, the license, certificate, registration, or privilege impacted, the name and location of the authority, the basis for the authority's action, and your response to the authority's allegations.</p>
<p>Question 2: Have you ever surrendered a credential like those listed in number 1, in connection with, or to avoid action by a public or private local, state, federal, tribal, religious, or foreign authority?</p>	<p>Followup Question 2: For each surrender, provide date of surrender, credential surrendered, name and location of the agency, basis for the agency's action, and your response to the agency's allegations.</p>
<p>Question 3: Have you ever resigned to avoid discipline, been suspended, or been terminated from a volunteer or employment position?</p>	<p>Followup Question 3: For each occurrence, provide date of action, type of action, position you held, name and location of the employer, basis of the employer's action, and your response to the employer's allegation.</p>
<p>Question 4: Have you ever been required to participate in a behavioral modification or assistance program in lieu of suspension or termination from a volunteer or employment position?</p>	<p>Followup Question 4: For each occurrence, provide date of action, type of action, position you held, name and location of the employer, basis of the employer's action, and your response to the employer's allegations.</p>
<p>Question 5: Have you ever withdrawn an application for any professional license?</p>	<p>Followup Question 4: For each withdrawal, provide date of withdrawal, license type affected, name of agency, location of agency, and your detailed explanation of circumstances leading to the withdrawal.</p>
<p>Question 6: As of the date of this application, are you aware of any pending complaint, investigation, or disciplinary action related to any professional license you hold?</p>	<p>Followup Question 6: For any pending matter, provide docket number, name and location of agency, and a summary of the allegations, your response, and the anticipated date of resolution.</p>
<p>Question 7: Are you under a current order that remains unsatisfied (e.g. fines unpaid, probation not concluded, conditions unmet)?</p>	<p>Followup Question 7: For each order, provide docket number, name and location of agency issuing the order, a summary of the unsatisfied conditions, and the reason why the condition is unmet.</p>
<p>Question 8: Do you currently (within the last 6 months) use one or more chemical substances in any way that impairs or limits your ability to practice your profession or occupation with reasonable skill and safety? <i>"Chemical substances" include alcohol, drugs, or medications, whether taken legally or illegally.</i></p>	<p>Followup Question 8: Please describe your use of chemical substances, the impact on the profession, and how you plan to manage or mitigate your use of chemical substances on your practice.</p>
<p>Question 9: Do you have any medical, physiological, mental, or psychological condition that in any way currently (within the last 6 months) impairs or limits your ability to practice your profession or occupation with reasonable skill and safety?</p>	<p>Followup Question 9: Please describe your medical, physiological, mental, or psychological condition. [If applicable ... and whether you have contacted the medical assistance program for the board.]</p>

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

<p>Question 10: A criminal conviction does not automatically bar you from receiving a license. For more information about how a criminal conviction may impact your application, consult the board or program website.</p> <p>Have you ever been convicted, entered a plea of guilty, no contest, or a similar plea, or had prosecution or sentence deferred or suspended in any state, federal, tribal, or foreign jurisdiction?</p> <ul style="list-style-type: none"> • You are not required to report arrests that did not result in the above outcomes. • You are not required to report convictions you received when you were under 18, unless you were treated as an adult when convicted. • You are not required to report misdemeanor driving violations, including driving under the influence, if you were sentenced more than five years before the submission date of this application. 	<p>Followup Question 10: See Conviction Supplement Letter Template</p>
<p>Question 11: Are you now subject to criminal prosecution or pending criminal charges?</p>	<p>Followup Question 11: For each, provide the docket number, name and location of the court, and your detailed description of the circumstances leading to the events that form the basis of the charges or the prosecution.</p>
<p>Question 12: Have you ever been disciplined, censured, expelled, denied membership or asked to resign from a professional society or organization?</p>	<p>Followup Question 12: For each instance, provide the date, type of action, name and location of entity, basis of the entity's action and your response to the entity's allegation.</p>
<p>Question 13: Have you ever had a civil judgment entered against you in a lawsuit for incompetence, negligence, or malpractice in practicing any profession?</p>	<p>Followup Question 13: For each instance, describe whether the judgment against you has been satisfied and what, if any, remedial actions you have taken in your practice to prevent future, similar actions or omissions from occurring.</p>
<p>Question 14: Have you ever been disqualified from working with children, elderly persons, mentally ill persons, or other vulnerable persons?</p>	<p>Followup Question 14: For each occurrence, provide the date of the disqualification, the name and location of agency, name and location of facility or entity for which you worked at the time of your disqualification, basis of the agency's action, and your response to the agency's allegations.</p>
Questions for health and veterinary boards	
<p>Question 15: Have you ever been placed on probation, restricted, reprimanded, suspended, revoked, resigned in lieu of action against you, or had other action taken against you by any hospital, clinic, health care facility, group medical practice, health maintenance organization, or third-party insurance provider, including Medicare and Medicaid?</p>	<p>Followup Question 15: For each occurrence, provide the date, type of action, position you held at the time of the action, the name and location of the entity taking action against you, the basis of the entity's action against you, and your response to the entity's allegations.</p>
<p>Question 16: Are you currently on an exclusion list by the Office of Inspector General (OIG) for the U.S. Department of Health and Human</p>	<p>Followup Question 16: Provide the name and location of the facility or entity for which you worked at the time you were placed on the list, the reason for placing you on the list, and your response to the allegations.</p>

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Services prohibiting you from working in a facility receiving federal funding?	
Question 17: Has your authority to prescribe, dispense, or administer drugs, including controlled substances, ever been denied, restricted, suspended, or revoked?	Followup Question 17: For each occurrence, provide the date, the action taken, the name, city, and state of the entity taking the action, the basis for taking the action, and your response to the allegations.
Question 18: Have you ever voluntarily surrendered or had your U.S. Drug Enforcement Administration registration placed on probation, restricted, suspended or revoked?	Followup Question 18: For each occurrence, provide the date, the action taken, the name of the facility or entity for which you worked at the time of the DEA action, the basis for taking the action, and your response to the allegations.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 3B: Dept of Labor & Industry Summary of Licensing of Those with Criminal Convictions



TO: Economic Affairs Interim Committee

FROM: Todd Younkin, Division Administrator
Colleen White, Legal Counsel

RE: SJ18, L. 2019

DATE: August 12, 2020

We respectfully submit this summary of information previously submitted and impacting the Division's licensure of applicants with criminal convictions.

1. Over a recent five-year period, less than one percent rate ($20/5807 = \%0.34$) of applicants are denied licenses based on prior criminal convictions.
2. There is no evidence that the current licensing processes of the Division negatively impact enrollment of convicted persons in education or training opportunities.
3. Pre-application review (aka predetermination process) requires resources to answer hypothetical questions and may have unintended consequences of discouraging persons before they have gained the rehabilitative effects of attending education or training. There appears to be little to no evidence of the benefit of such processes in other states. A Legislative Audit Division audit recommended discontinuation of a predetermination process once applied by the Board of Realty Regulation.
4. Boards must continue to have the discretion to review an applicant's conduct underlying criminal convictions and decide if that conduct adversely impacts public health, welfare, and safety.
5. Without exception, including broad exclusion language in a few practice acts, the Division already applies principles recommended for adoption in other jurisdictions by criminal justice advocates as follows:
 - Cannot deny because of a criminal record unless the conviction relates to the occupation (relevancy), § 37-1-203, MCA;
 - Must consider evidence of rehabilitation, § 37-1-203, MCA; and
 - Requires an explanation of denial of the license and an opportunity for hearing. § 37-1-307, MCA.
6. Listing disqualifying convictions is a "blanket ban" based on the status of a conviction and is contrary to the case-by-case, individual circumstances approach in current law and advocated by criminal justice advocates. Costly to research and implement, this approach could create a "safe harbor" if a properly disqualifying crime were inadvertently omitted.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

7. To ensure consistency and provide notice to the public of the Division's informal processes and create new processes for efficiency, the Division proposes rulemaking as follows: (see attached, Proposed Rule and Diagram - Appendices 3C and 3D:
- Define "relevancy" and "rehabilitation" criteria applied in the past and currently by the Division,
 - Formalize the Division's past and current practice that does not request disclosure of arrests that do not result in conviction or youth adjudications unless tried as an adult, and
 - Grant specific authority to division staff to process licenses based on time and type limitations on the relevancy of a conviction except in cases where staff identify egregious conduct implicating risks to public safety.

Page 2 of 2 EAIC Summary Memo August 12, 2020

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 3C: Department of Labor and Industry Proposed Rule for Criminal Conviction Reviews

The Department proposes to present the following rule draft to boards and file as a proposed notice of rulemaking with the Secretary of State.

PROPOSED NEW RULE – APPLICANTS WITH CRIMINAL CONVICTIONS

(1) The following criteria shall apply to determine whether an applicant's criminal conviction is related to the public health, welfare, and safety as it applies to the occupation:

- (a) whether the occupation would offer the opportunity for the commission of the offense or similar offense,
- (b) the vulnerability of the population served by the occupation to become victims of the offense or similar offense,
- (c) the facts and circumstances of the conduct surrounding the offense, or
- (d) other reasonable demonstration of relatedness.

(2) The following criteria shall apply to determine if the applicant, even while serving supervised release, is insufficiently rehabilitated to warrant the public trust:

- (a) commission of multiple offenses;
- (b) revocation or correctional intervention of the applicant's probation, parole, or conditional release;
- (c) unsatisfied court-ordered conditions;
- (d) lack of candor, misrepresentation, or omission in disclosing the offense or circumstances of the offense;
- (e) statements that demonstrate lack of remorse or accountability for the conduct;
- (f) unless good cause exists, failure to maintain education, training, or employment on at least a part time basis; or
- (g) other credible evidence of insufficient rehabilitation.

(3) The board shall, unless the conviction is exempt from board review as provided by this rule, determine whether enough time has passed since the applicant's conviction, release from incarceration, or discharge of sentence to evaluate rehabilitation given the nature and circumstances of the offense.

(4) An applicant will not be required to report:

- (a) arrests that did not result in the above outcomes,
 - (b) convictions (juvenile adjudications) you received when you were under 18, unless convicted as an adult,
- or

(c) misdemeanor driving violations, including driving under the influence, if sentenced more than five years before the submission date of the application.

(5) Unless board rule provides otherwise, authorized staff may determine there is no evidence of lack of rehabilitation and issue a license to an otherwise qualified applicant who meets the following criteria:

(a) Nonviolent misdemeanor convictions if the conviction date is more than two years before the application date, unless the applicant is still in custody due to the conviction.

(b) Nonviolent felony convictions if the conviction date is more than five years before the application date, unless the applicant is still in custody due to the conviction.

(6) Unless board rule provides otherwise, all violent misdemeanor or felony convictions and any nonviolent misdemeanor and nonviolent felony convictions not included in section (5) must be reviewed by the board as nonroutine applications.

(7) Notwithstanding the screening criteria in subsection (5)(a) and (b), staff may require board review of applicants who engaged in egregious conduct implicating risks to public safety.

AUTH: 2-4-201

IMP: 37-1-101, 37-1-104, 37-1-203, 37-1-205, 37-1-316

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

NOTE: Recently, some states have passed legislation prohibiting “blanket bans” on criminal convictions and imposing relevancy and rehabilitation criteria for professional licensing agencies to apply to applicants with criminal convictions. Legislative reform is not necessary in Montana because Mont. Const. Art. II, Sec. 28 Criminal Justice Policy – Rights of the Convicted and Title 37, Ch. 1, part 2, MCA regarding the Licensure of Criminal Offenders already prohibits blanket bans on criminal convictions and requires boards to apply relevancy and rehabilitation to their licensing decisions.

The rule is necessary to formalize in writing informal processes currently followed by the division and boards that will uniformly and consistently inform potential applicants, the public, and future board members and staff.

The rule will also limit the reporting of driving violations of a certain age because while driving may be incidental to the practice of a profession, driving is not within the statutorily defined scope of practice of any profession regulated within the department. The Montana Department of Justice, Division of Motor Vehicles, prosecuting offices and courts have jurisdiction over the competent operation of motor vehicles through the issuance or limitation of driving privileges. Only recent driving violations are potentially relevant to exclude current mental or chemical dependency impairment that may adversely impact an applicant’s ability to practice safely. The Department proposes to adopt a five-year period to account for potential relapse cycles but reduce the time and cost to process driving violations older than 5 years.

The proposed rule will also create a standard formula for boards, if they choose to adopt the division rule by reference, to adopt and exclude consideration of convictions that are older and less serious where the applicant appears to be rehabilitated. Where boards have adopted rules to limit the type or age of conviction required for board review, unintentional variations in approaches negatively impact uniform standards for license processing staff to apply. For example, some use the date of sentence discharge to measure an elapse of time and others, the date of conviction.

The rule authorizes and guides staff to issue licenses where there is no evidence contradicting the applicant’s rehabilitation, but still provide staff with the ability to identify egregious cases that should have board review. While boards retain the discretion to adopt different time elapse limitations than stated in this rule or give more scrutiny to specific convictions of concern to the board (drugs for pharmacists, fraud and theft for fiduciary license types, fish and game for outfitters, etc.), the division-wide rule will provide a consistent framework and terminology to standardize and increase efficiency in division operations, reduce costs, and have faster processing time of applications that should be considered to be routine.

**SAMPLE BOARD RULE to be considered for adoption by all boards
(New board rule “applicants with criminal convictions” or amendment to existing nonroutine rule.)**

ARM 24.NN.NNN (*the following sections are optional*)

(N1) For applicants with criminal convictions, the board incorporates ARM 24.101.NNN by reference with [no modifications. / OR / the following modifications:]

(N2) In section (5) (a), nonviolent misdemeanor convictions involving [*specify unique type of conviction*] are routine if the conviction date is more than [*substitute “two” to “four” to extend the period of scrutiny over convictions that may be of greater concern to the board – see note to staff advising boards below*] years before the application date unless the applicant is still in custody due to the conviction and

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

(N3) In section (5)(b), nonviolent felony convictions involving [*specify unique type of conviction*] are routine if the conviction date is more than [*substitute "five" for up to "ten"?*] years before the application date, unless the applicant is still in custody due to the conviction.

(N4) In section (6), violent misdemeanor or felony convictions are routine if the conviction date is more than [*10 years is commonly stated in rules*] before the application date, unless the applicant is still in custody due to the conviction.

NOTE TO STAFF AND BOARD MEMBERS:

- Recommend boards to select N1 **without modification. Any modification in N2 or N3 must have some evidence based in statistical research or have an articulated legitimate and reasonable nexus to the profession as may be viewed by a court and be understood to create exceptions for license processing staff to manage.**

- o Modifications may be driven by convictions unique to the profession, e.g., drug convictions for pharmacists; deceit, fraud, or theft for real estate appraisers, real estate sales persons, or public accountants; and fish and game convictions for outfitters.

- Recommend boards to select N4. Some boards (nursing, barbers and cosmetologists, electricians, outfitters, realty regulation, etc.) have already adopted limits on scrutinizing felony conduct in recognition of rehabilitation principles and low recidivism risk after a certain passage of time.

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 3D: Proposed Department of Labor and Industry Conviction Evaluation Diagram



SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

Appendix 4: Proposals from Stakeholders: PFR and AFP

Missoula Partners for Reintegration (PFR)

Missoula Partners for Reintegration (PFR) fully supports the recommendation in the Report “Sorting Out Fear and Fact“ to remove the vague and undefined phrases “Good moral character” and “moral turpitude” from state law and regulations, and the recommendations to clarify what offenses must be reported. We would add a recommendation that denials of licensure by Boards include specific information about what steps are needed to reapply. These recommendations and the forthcoming DLI report are important first steps in developing a more transparent, accessible pathway for those with felony records to the training and licensure increasingly required for skilled occupations and professions.

We remain concerned that in Montana, barriers to licensed occupations are occurring at the training, apprenticeship, and internship levels, where applicants may not be encouraged to apply for training that requires licensure, and may still be told not to bother, as they ‘will not get licensed.’ We ask that the Department of Labor and Industry be required to make information about training opportunities, and the evidence that meet the criteria of ‘rehabilitation’ public and available to Montana’s workforce, and especially to those returning from jail or prison.

Missoula Partners for Reintegration www.pfrmt.org, is a community reentry coalition of providers, agencies, returning citizens and community members working to make reentry into the community from incarceration successful and remove barriers resulting from community policies, practices, misperception and stigma.

Statement to the Economic Affairs Interim Committee

August 12, 2020

Jana Staton

Missoula Partners for Reintegration (PFR)

Americans for Prosperity-Coordinated Suggestions*

CHECK-LIST FOR DESIGNING EXPUNGEMENT/RECORD SEALING BILLS

Purpose:

This document identifies key concepts and questions one should ask when designing a record sealing or expungement bill to ensure it effectively balances extending second chances with public safety and implementation considerations. It should be noted that due to the wide variances of definitions, processes, and court-system make-ups, these are simply basic guidelines rather than hard and fast rules. For purposes of this document, the term “expunged” will mean a destruction of the record while “seal” will mean hidden from public consumption.

What Questions to Ask When Designing a Sealing/Expungement Bill:

1. What is the Process for How Someone Gets Relief Under the Bill
 - a. Is it automatic or does the person need to file a petition?
 - b. If a petition, does the prosecutor get notice?

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

- c. If automatic, what are the criteria for which a person gets relief? Is there a clear mechanism for how these criteria are verified?
- d. **AFPs Stance-** We are supportive of records being expunged or sealed automatically for arrests that did not lead to a conviction or that were pardoned/set-aside. We generally would like to see a copy hidden from all entities for at least set-asides, depending on the severity of the offense. Generally, we are not supportive of expungement and/or automatic mechanisms for convictions, unless they are for lower-level, non-violent/non-sexual offenses with clearly defined criteria of the automation process that requires full completion of sentence and a crime-free waiting period.

2. What Types of Instant Offenses Will be Eligible?

- a. Does it include violent/sexual/domestic violence offenses?
- b. Does it include felonies, misdemeanors, or only non-convictions?
- c. Does it include arrests and/or convictions?
- d. **AFPs Stance-** We are against sex offenses from being eligible for expungement or sealing, and against expungement of violent offenses in almost every scenario. Certain assaultive crimes and certain felonies could be considered for sealing/possible expungement depending on other requirements in the bill.

3. What Type of Criminal History is Ok to Still be Eligible?

- a. Could someone be convicted of violent/sexual/felonies in the past and still be eligible?
- b. Is there a limit to how many offenses can be expunged/sealed?
- c. Is there a limit to the amount of criminal history, regardless of severity that would render an otherwise eligible petitioner to become ineligible?
 - i. If a limit, is each conviction considered a separate offense or does the bill consider all convictions arising out of the same occurrence one offense for eligibility purposes?
- d. **AFPs Stance-** Sex offenses and many violent offenses and some other felonies at any stage should render someone ineligible for any future sealing/expungement. Limits on how many offenses can be eligible/render someone ineligible will depend on the totality of the bill and its other components.

4. Are there “Cleansing Periods” Where Someone Must Stay Crime Free and/or Completed Their Sentence Prior to Petition/Be Eligible?

- a. Is “completion of sentence” clearly defined (i.e. includes restitution paid)?
- b. Is there a clear verification process to “completion of sentence” and remaining crime-free during the waiting periods?
- c. **AFPs Stance-** Generally, for convictions a waiting period should be used so the individual can show they are becoming a productive citizen. How long will depend on severity of offense. Completion of sentence should include completion of any terms of supervision and include full payment of restitution. Fines and fees should normally not need to be fully paid to be eligible. There should be clear guidance on how these are verified.

5. If a Seal/Expungement is Granted, what is the Process Afterwards?

- a. Is it clearly defined who must seal/expunge the records?
- b. Is it clearly defined that each agency who may have records must send confirmation of completion of seal/expungement on their end to Department of Public Safety or some other governing agency?
- c. Are there clear timelines given to have these records sealed/expunged?
- d. Is the term “record” clearly defined to include information regarding the arrest, charges, conviction, etc. to ensure that each and every piece of the record is sealed/expunged?

SORTING OUT FEAR AND FACTS

UNDERLYING MONTANA'S OCCUPATIONAL LICENSING OF THOSE WITH CRIMINAL CONVICTIONS

- e. **AFPs Stance-** This process should be clearly defined and ensure all records are properly sealed and expunged so as to not undermine the goals of the reform.

6. What Does it Mean to Have Your Record Sealed/Expunged?

- a. Is the term “seal” or “expunge” clearly defined?
- b. If there is a destruction of the record, is there a non-public copy kept and can that be used for law enforcement purposes later?
- c. Is it clearly defined in what circumstances an individual can legally say they were not convicted of the offense?
 - i. During a job interview? Does it depend on the job?
 - ii. During a criminal investigation when questioned by law enforcement?
 - iii. During a criminal, civil, or family law trial?
- d. **AFPs Stance-** Some sort of record should generally be retained for all convictions, particularly for higher level offenses. Generally, AFP prefers non-disclosure for an individual but understand certain exceptions for law enforcement purposes may be necessary. Be mindful of language that holds individuals accountable criminally and/or civilly for not disclosing the record in certain circumstances. This type of language should be extremely narrow so as to not “entrap” an individual.

7. Who Can Look at the Record and for What Purpose?

- a. Can it be used for subsequent criminal proceedings and/or sentencing enhancements?
- b. Can certain sensitive employers or agencies that deal with education, health care, banking, national security, etc. look at the record for employment purposes?
- c. **AFPs Stance-** Similar to above: exceptions should be as narrow in scope as possible but certain are generally necessary, especially for national security positions and other jobs where federal background checks are required.

*Received by email 7/23/2020

ENDNOTES

ⁱ The Federation of State Medical Boards lists Montana as requiring fingerprinting for physicians who want to be part of the Interstate Licensure Compact. Among the states that do not require fingerprinting are Alaska, Connecticut, Hawaii, Missouri, and New York. Some states have more than one type of medical board. See <https://www.fsmb.org/siteassets/advocacy/key-issues/criminal-background-checks-by-state2.pdf>.

ⁱⁱ "The Evolving State of Occupational Licensing," 11/12/2019. National Conference of State Legislatures, <https://www.ncsl.org/research/labor-and-employment/the-evolving-state-of-occupational-licensing.aspx>

ⁱⁱⁱ Email chain related to LC3070, with language proposed from a senior fellow at the Foundation for Government Accountability. Dated 2/15/2019.

^{iv} Find the Indian regulations at <https://www.in.gov/pla/files/2019%20SBCBE%20Statutes%20and%20Rules.pdf>