

# PRIMER ON OCCUPATIONAL LICENSING OF APPLICANTS WITH “CRIME HISTORY”

## STUDY RESOLUTION ISSUES

Under the SJ 18 study of occupational licensing of applicants with criminal convictions, the resolution noted that as many as 1 in 3 Americans has a criminal record and that employment of a person with a criminal record is seen as a way of avoiding recidivism as well as restoring rights to them, as provided by the state’s constitution.

Also noted were that finding and retaining employment after being released from prison can be difficult whether from a lack of relevant skills or a stigma regarding criminal records. Further, if someone applies for a professional or occupational license, the review process is seen as a barrier, whether that barrier is a perception or a reality. However, obtaining a professional or occupational license helps to provide access to usually higher-paying employment.

The state – through its licensing board members extending a license -- also has a role in determining that licensees pose no threat to those seeking a licensee’s services. This puts the state in a position of balancing licensing practices and public safety as well as ensuring that those who have paid their debt to society are able to find a job.

## STUDY RESOLUTION REQUESTS

The SJ18 study resolution asked the appropriate interim committee – in this case, the Economic Affairs Interim Committee – to undertake the following activities:

- Review:
  - The Montana Constitution regarding restoration of rights after a criminal conviction, and related statutes, for licensing boards and for crimes monitored after the convicted individual has paid a debt to society. Review case law, if any.
  - Montana legislative efforts regarding criminal convictions and employment;
  - Licensing boards’ use of sex-offender registries or other information not on license applications to determine if applicants have criminal records;
  - Other states’ actions to handle applications from those with a criminal conviction for professional licensing and federal requirements to comply with re-entry provisions.
- Request data for all professional and occupational licensing boards as to:
  - Applicants with criminal records compared with those who receive licenses; and

- The number of licensees with criminal records who have had licenses revoked because of new crimes.
- Compile practices of licensing boards for considering an applicant with a criminal history, including use of criminal background reports and reasons for denying licenses.

## POSSIBLE ADD-ONS TO SJ 18 STUDY

In addition, the Economic Affairs Interim Committee might want to consider recommending to the full Legislature:

- Uniform guidelines that licensing boards can use to ensure that each licensing board exercises a consideration of applications from those with criminal histories that is appropriate to the crime, the occupation or profession, and other situations such as time and opportunity to repeat.

## BACKGROUND INFORMATION

Since 1975, Montana has had laws that recognize the importance of rehabilitation of those with a criminal history. The table shows that 1,164 applicants out of 12,386 applicants for professional and occupational licenses across all boards self-identified in FY2018 as having a criminal history. The laws relating to applicants with a criminal history, enacted within Title 37, chapter 1, part 2, include the following guidance:

**37-1-203. Conviction not a sole basis for denial.**

*Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.*

Number of Applications with Self-Identified Criminal History, FY 2018	1,164
Of which:	
Licenses denied	2
Licenses issued with conditions	12
Applications still pending	5
Licenses timed out (unresponsive)	134
Information from the Department of Labor and Industry, Business Standards	

The laws mesh with Article II, section 28, of the Montana Constitution voted on in 1972, which states:

**“Criminal justice policy – rights of the convicted:**

- (1) Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.
- (2) Full rights are restored by termination of state supervision for any offense against the state.”

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