

2019-2020 Study Options

SJ 18 – Study of Occupational and Professional Licensing for those with Criminal Convictions

SJ 18 Review Options

Basic Question:

Can any license be denied under Montana's Constitution if a "debt to society has been paid"?

Article II, Section 28. 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.

SJ18 Review Options

Broad

Review all licensing statutes to determine whether any directly tie denial of a license to having a criminal conviction and, if so, whether to revise:

- Alcohol
- Insurance
- Securities
- Gambling
- Occupations (except for attorneys – regulated by the MT Supreme Court)

Narrow

Review only Title 37 occupational and professional licensing statutes (except attorney statutes) to determine:

- Should subjective licensing criteria like “good moral character” be removed? (49 references in state law).
- Should those licensing boards that do not require a criminal background check be allowed to ask criminal history backgrounds (to avoid different criteria being used)?

Examples of Statutory Restrictions For Employment Based on Criminal Conviction

- **National Guard Youth Challenge**

- eligible participants must be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense (10-1-1402, MCA)

- **Candidate**

- Under 13-35-106, MCA: In addition to all other penalties prescribed by law: (1) a candidate who is convicted of violating any provision of this title [Title 13], except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until final discharge from state supervision; (sub 9 refers to petition signing situations)

- **Liquor License**

- Only for a license for off-premises consumption, criteria state the applicant, if convicted of a felony must have had “rights...restored”, whether the applicant is an individual, an owner of 10% or more of a public corporation’s stock, or for a privately held corporation 51% of owners of stock. (16-4-401)

Further Examples of Statutory Restrictions For Employment Based on Criminal Conviction

- **Securities**

- No safe harbor allowed for issuer of forward-looking statements if the issuer in the 3 years prior to making the statement was convicted of a felony or misdemeanor under Securities Exchange Act provisions or state law. (30-10-319(3))

- **Fireworks Wholesaler**

- Applicant must be of good moral character and not have been convicted of a crime involving use, possession, or sale of fireworks. (50-37-104)

- **Mortgage Broker/Lender/Servicer**

- An applicant may not have been convicted of or pled guilty or nolo contendere to a felony related to fraud, breach of trust, money laundering or dishonesty in the 7 years preceding application.

- **Seller of Limited-Lines Travel Insurance**

- A travel retailer regulated by 33-17-1402, MCA. may not have been convicted by violating false statements involving interstate commerce under 18 USC 1033.

SJ 18 Review Options

- Review options in other states as to factors in granting a license to someone who has a criminal conviction. Do states grant discretion to a licensing board, allow case-by-case reviews?
- Consider whether any time a state grants a privilege should there be a consideration of a criminal record? (Driver's License, other?)
- Is there a reason to extend the review to the private sector (for example, do insurers use convictions in credit scores to deny or reprice insurance)? (see 33-18-612 regarding expungement related to ID theft)

SJ 18 Guideline Options

- An existing statute, 37-1-203, MCA, says criminal convictions may not operate as an automatic bar to being licensed....
 - However, if the crime relates to health, welfare, and safety in the realm of the license, the licensing board may investigate and deny a licensed based on lack of rehabilitation.
- SB 347 (2019) sought to provide general guidelines, including prohibitions on:
 - Considering an arrest that did not lead to conviction;
 - Requiring inclusion of a juvenile adjudication;
 - Requiring listing of an expunged conviction; and
 - Denying a license if certain convictions took place more than 5 years earlier prior to application if rights have been restored.

SJ 18 Guideline Options

- What type of criteria, if any, might be exercised if the convicted person is still under a type of state supervision?
 - Relationship of crime to job
 - Period of latency between conviction and application
 - Type of crime: nonviolent, property crime vs. violent or sexual predation type of crime
 - Other?

SJ18 Guideline Options

Broad

- Develop guidance for all occupations regarding hiring of those convicted of certain crimes (e.g. relation between crime and job)
- Revise license applications to make clear that reports are not required for juvenile offenses, nontraffic minor offenses, expunged crimes, or arrests without convictions?

Narrow

- Review current guidelines for occupational and professional licenses and determine whether SB 347-type guidelines or other guidance is needed for licensing boards to use in deciding on licensure.
- Determine if distinction is needed for licenses for which a criminal background record is requested.