

Notes for a Study of the Collateral Consequences of Incarceration

Criminal Justice reform includes reforming the laws, policies and practices that prevent individuals with felony or misdemeanor records from becoming successful and productive citizens and workers in a modern economy after completing their sentences. Increasingly, a record of ‘justice-involvement’ has become a barrier, often for a lifetime, to gainful employment. One quarter of American workers require a state license (including registration, licensing and certification) to practice their occupation, and state regulation has grown five-fold since the 1950’s. Legal barriers or restrictions based on criminal justice records or involvement (including misdemeanors, arrests, etc.) have become a new focus of criminal justice reform, in order to ensure that incarceration is not a lifetime sentence to minimum wage jobs, poverty and return to prison.

In Montana, ensuring that employment opportunities are available for people with records who have completed sentencing and are rehabilitated will reduce recidivism and improve economic stability in Montana’s communities. This is particularly true for our state’s Native American citizens who suffer from the consequences of mass incarceration. Three national organizations, the Council on State Governments-Justice Center (CSG-JC, already providing technical assistance to Montana for Justice Reinvestment), the National Employment Law Project (NELP), and the American Bar Association are all actively working to aid states to reform laws and practices that limit opportunities and prevent second chances for those with felony records.

The first step in removing the unnecessary consequences of incarceration, particularly for those with felony records, could be to ask for an Interim Session study of Montana’s current laws restricting occupational and professional licenses. The Council on State Governments-Justice Center, has published a state-by-state inventory of laws that include some kind of restriction. It shows that as of 2016 there were 579 laws in the Montana Code Annotated with varying restrictions. This inventory would form the basis for study and analysis.

The National Employment Law Project in its report, [Unlicensed and Untapped](#), 2016, has set forth 4 criteria for reform of state licensing and occupational laws:

- Prohibition of blanket rejection of applicants with conviction histories?
- Incorporation of “EEOC factors,” including consideration of whether a conviction is occupation-related and how much time has passed since the conviction?
- Limitations on the scope of record inquiry and limits on types of information considered (i.e., arrests, misdemeanors).
- Consideration of evidence of rehabilitation

Using these criteria, the NELP gives Montana high marks for a law prohibiting a blanket ban on occupational licenses (MCA 37-1-203 to 205) and a decent grade for including consideration of rehabilitation in some laws. But the state is evaluated as “minimally satisfactory” for overly broad language (offenses relating to “health, welfare and safety”) in the prohibition statute and many laws, and for lack of limitations on the scope of record inquiry. Montana laws appear to vary widely in the types of offenses that are identified as barriers (specific felonies, “any” felony, misdemeanors, or “crimes of moral turpitude”); in the consequences (“mandatory/automatic,” “discretionary,” “background check”), and the length of term and relief available (specific length applicable, often completion of sentence), permanent, unspecified, and evidence of rehabilitation.

Montana

While Montana’s law includes one of the clearest blanket ban prohibitions, it is severely undermined. A licensing board may deny a license if it finds both that a conviction “relates to the public health, welfare, and safety as it applies to the occupation” and “that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust.” The statute also allows for broad discretion when determining whether an applicant has been rehabilitated. While completion of parole or probation supervision “is evidence of rehabilitation,” this is weakened by allowing the facts that led to the correctional supervision to be considered.

Montana Overall Grade: Minimal Mont. Code Ann. §§ 37-1-203 to -205			
CRITERIA	GRADE	BEST FEATURES OF LAW	HOW TO INCREASE OPPORTUNITY
Blanket Ban Prohibition	Minimal	<ul style="list-style-type: none"> Prohibits blanket bans in some instances. 	<ul style="list-style-type: none"> Remove overbroad “relates to . . . health, welfare, and safety” language.
EEOC Factors	Minimal	<ul style="list-style-type: none"> Includes a vague occupation-related standard (i.e., offense “relates to . . . health, welfare, and safety”). 	<ul style="list-style-type: none"> Add explicit prohibition on denying license based on unrelated conviction. Strengthen occupation-relatedness standard. Require consideration of the time elapsed since conviction.
Limit Scope of Record Inquiry	Unsatisfactory		<ul style="list-style-type: none"> Prohibit consideration of certain record information (e.g., arrests, lesser offenses, dismissed convictions, older offenses).
Rehabilitation	Needs Improvement	<ul style="list-style-type: none"> Includes rehabilitation component. Lists specific rehabilitation factors. 	<ul style="list-style-type: none"> Add explicit prohibition on denying license if applicant is rehabilitated.

Page 57 from the National Employment Law Project (NELP) report *Unlicensed and Untapped*, 2016. <https://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>

Study Goals

- Determine if restrictions in specific laws are barriers to licensing and employment the Montana despite Montana’s blanket ban on prohibition of licensure because of felony records.
- Determine how often Montana applicants denied licensure because of prior, even old felony records, even with evidence of rehabilitation?
- Evaluate occupational and professional training programs leading to licensure to determine if they 1) accept otherwise qualified applicants who have felony records, and 2) support their applications for licensure.
- Develop standards for occupational licensing that are fair, transparent, and justified in promoting both community safety and access to employment.
- Ensure that regulations and application processes for similar offenses are consistent.
- Develop standard policies and practices that are not burdensome to state boards or individuals.
- Consider provisions for a model law that systematically reforms licensing and occupational restrictions, as suggested by the National Employment Law Project.

The outcome of such reform would be to increase the number of Montana workers available and able to meet the needs of specific occupations, especially skilled trades and licensed professions, for which Montana currently lacks sufficient workers.

The Council on State Governments Justice Center has created an inventory of all 579 Montana laws (current as of 2016, may not include 2017 bills) with restrictions on occupational licensing. [Here's](#) the direct link to the inventory for Montana. Below is a screen shot of the inventory, showing the format. For each law there's a link on the website to a detailed page with more information.

National Inventory of Collateral Consequences of Conviction ("NICCC")

<https://niccc.csgjusticecenter.org/search/?jurisdiction=29>

Citation	Title	Triggering Offense Category	Consequence Type	Duration Category
85-8-307, MCA	Ineligible to fill vacancy on drainage district board of commissioners	Any felony	Mandatory/Automatic	Specific Term
87-4-306, MCA	Revoke hunting/fishing /trapping license (violating fur dealer's rules) (fish/game)	Other	Discretionary	Permanent/Unspecified
MONT. ADMIN. R. 38.3.406	Deny motor carrier certificate of compliance (transportation)	Any felony; Any misdemeanor	Discretionary	Permanent/Unspecified
MONT. ADMIN. R. 6.6.3717	Ineligible to acquire/merge with domestic insurer (convictions of applicant/owner/director /officer) (background check/disclosure /insurance)	N/A (background check, general relief)	Background Check	N/A (background check, general relief)
1-5-621, MCA	Deny/suspend/revoke notary public commission	Any felony; Crimes involving fraud, dishonesty, misrepresentation or money-laundering	Discretionary	Permanent/Unspecified
10-1-1402, MCA	Ineligible to participate in National Guard youth challenge program	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
10-1-205, MCA	Remove from commission/warrant of officer	Any felony; Any misdemeanor	Mandatory/Automatic	Permanent/Unspecified
10-3-112, MCA	Ineligible for employment in disaster and emergency services organization	Other	Mandatory/Automatic	Permanent/Unspecified
10-3-114, MCA	Ineligible for emergency/disaster protection from weapons confiscation	Other	Mandatory/Automatic	Permanent/Unspecified
13-1-111, MCA	Ineligible to vote	Any felony	Mandatory/Automatic	Specific Term