

OTHER STATES' ALTERNATIVE LICENSURE OPTIONS

LAW AND JUSTICE INTERIM COMMITTEE
LAURA SHERLEY - JANUARY 2024

BACKGROUND AND PURPOSE

As the National Conference of Bar Examiners (NCBE) develops the NextGen Bar Exam, the new testing standard will debut in nine jurisdictions: Maryland, Missouri, and Oregon in July 2026, and Arizona, Iowa, Kentucky, Nebraska, Wyoming, and Vermont in July 2027.¹ The NextGen bar exam is partially a result of growing conversation around testing accessibility and best practices in legal regulation. Though the NextGen may be a national response to the conversation, other states have chosen to adopt or are pursuing tailored alternative attorney licensing options for practice within their jurisdiction.

Under the 2023-2024 Law and Justice Interim Committee assigned [Senate Joint Resolution 31 Interim Study of Attorney Regulation and the State Bar](#)², this report provides an overview of alternative licensure options other states have established or are exploring.

STATES WITH ESTABLISHED ALTERNATIVE LICENSURE OPTIONS

NEW HAMPSHIRE

The Daniel Webster Scholar Honors Program is located at the University of New Hampshire School of Law in Concord. Established in 2006³, it was the first-of-its-kind program in the country that allowed law students to apply for the bar accreditation without the need to take the traditional bar exam.

The program was part of a two-year independent study by the Educating Tomorrow's Lawyers Initiative of the Institute for the Advancement of the American Legal System at the University of Denver. The study found that graduates of the program outperformed their colleagues who had been licensed to practice law for up to two years.⁴ In addition, the program received the American Bar Association's 2015 E. Smythe Gambrell Professionalism Award.⁵ This award honors "the nation's exemplary, innovative, and on-going professionalism programs established by law schools, bar associations, courts and other not-for-profit legal organizations that help ensure the maintenance of the highest principles of integrity and dedication to the legal profession and the public."⁶

¹ NCBE NextGen Bar Exam: <https://www.ncbex.org/exams/nextgen>

² Montana Legislature Law and Justice Interim Committee, Senate Joint Resolution 31 Study Page: <https://leg.mt.gov/committees/interim/ljic/sj-31/>

³ The Bar Examiner Vol. 84, No. 3: <https://thebarexaminer.ncbex.org/article/september-2015/new-hampshires-daniel-webster-scholar-honors-program-placing-law-school-graduates-ahead-of-the-curve/>

⁴ University of New Hampshire Daniel Webster Scholar Honors Program: <https://law.unh.edu/academics/daniel-webster-scholar-honors-program>

⁵ ABA E. Smythe Gambrell Professionalism Archive Award Recipients:

https://www.americanbar.org/groups/professional_responsibility/initiatives_awards/awards/gambrellaward/archiveawardrecipients/

⁶ ABA E. Smythe Gambrell Professionalism Award:

https://www.americanbar.org/groups/professional_responsibility/initiatives_awards/awards/gambrellaward/

Law school students are accepted into the program prior to their second year where they are immersed in both simulated and real-life settings of day-to-day job practices. These include but are not limited to: counseling clients, working with practicing lawyers, taking depositions, appearing before judges, negotiating, mediating, and drafting business documents. Every semester bar examiners assess a portfolio of the student’s coursework.

Program graduates are eligible for the New Hampshire bar under [New Hampshire Supreme Court Rule 42\(XII\)](#)⁷, but graduates must apply for admission within one year of completing the program.⁸ They must successfully complete the Multistate Professional responsibility Examination and submit three forms (a questionnaire, application, and checklist) along with \$750.00 to the State of New Hampshire.

WISCONSIN

In Wisconsin, under *Diploma Privilege*⁹, graduates from the University of Wisconsin Law School and Marquette University Law School are admitted to the practice of law by complying with the terms of [Wisconsin Supreme Court Rule Chapter 40](#).¹⁰

Under *Diploma Privilege*, the participating law school certifies their legal competence through coursework such as supplemental workshops, one-on-one counseling, and mock exams.¹¹ The Wisconsin Board of Bar Examiners also certifies law school graduates character and fitness for the practice of law.

OREGON

In January 2022, the Oregon Supreme Court adopted the concept of two new examination models for Oregon State Bar admission. The Licensure Pathways Development Committee (LPDC) has been developing the framework for the two models:

- The Supervised Practice Portfolio Examination (SPPE) allows applicants to work in supervised apprenticeship settings following law school graduation. The Oregon State Board of Bar Examiners review work portfolio submissions for state bar admission. The Oregon Supreme Court approved the framework for the SPPE in November 2023 and the program will open for applications beginning May 15, 2024.¹²
- The Oregon Experiential Portfolio Pathway creates a rigorous experiential curriculum for students at Oregon’s three law schools in their second and third years. The curriculum would be followed by a portfolio submission examined by the Oregon State Board of Bar Examiners for state bar admission. The LPDC will invite public comment on draft rules for this program model prior to submitting to the Oregon Supreme Court for approval.

Though the Oregon State Bar still offers the Oregon Bar Exam and allows applicants to receive a portable Uniform Bar Exam score, the state of Oregon also plans to offer the NextGen Bar Exam in July 2026.

⁷ New Hampshire Supreme Court Rule 42: <https://www.courts.nh.gov/rules-supreme-court-state-new-hampshire/rule-42-admission-bar-board-bar-examiners-character-and>

⁸ New Hampshire Judicial Branch: <https://www.courts.nh.gov/lawyers/nh-bar-admissions/admission-successful-completion-dws-program>

⁹ Wisconsin Court System Services for Attorneys: <https://www.wicourts.gov/services/attorney/bar.htm>

¹⁰ <https://www.wicourts.gov/sc/rules/chap40.pdf>

¹¹ Marquette University Law School Diploma Privilege: <https://law.marquette.edu/prospective-students/diploma-privilege>

¹² Oregon State Bar Licensure Pathway Development Committee: <https://lpdc.osbar.org/>

STATES STUDYING ALTERNATIVE LICENSURE OPTIONS

CALIFORNIA

The State Bar of California created the California Attorney Practice Analysis (CAPA) Working Group in 2018 to study and encompass the knowledge, abilities, and skills to successfully start-up entry-level attorneys to practice law ethically and competently. This study compared the content of the California Bar Examination and what current legal practice looked like in the state. The CAPA working group concluded its study by recommending that bar exam test eight legal topics and six skills. To evaluate these recommendations, the California Supreme Court and Board of Trustees established the joint Blue Ribbon Commission on the Future of the California Bar Exam.

The Blue Ribbon Commission delivered its [final report](#)¹³ to the State Bar Board of Trustees in May 2023. Its summarized recommendations were:

“..the full Commission recommended continued use of a bar exam to assess minimum competence, and recommended that California develop its own exam, and not rely on the NCBE’s NextGen Exam. While some motions include the term “California-specific” exam, the commission clarified that the term does not indicate that federal law will not be covered on the exam, rather, that the exam will be developed in California and not rely on any nationally developed content.”

In November 2023, in response to the Blue Ribbon Commission’s recommendations the State Bar Board of Trustees approved and forwarded a [Portfolio Bar Examination pilot program](#) submitted by the Alternative Pathway to Licensure Working Group to the California Supreme Court. This examination would assess a candidate’s minimum competence to practice law¹⁴ and the pilot program would be offered to approximately 100 applicants who are currently licensed under the Provisional Licensure Program, which is due to sunset on December 31, 2025. Program participants would complete an additional 700-1,000 hours of legal work under the supervision of a licensed attorney in California. Portfolios would be evaluated by independent graders appointed by the California State Bar. Those with portfolios that meet minimum requirements could achieve licensure without taking the traditional bar exam.

A recommendation letter submitted by the State Bar of California on December 15, 2023, to the Supreme Court of California supported the Pilot Portfolio Bar Examination program.¹⁵ The court has not responded by the time of this publication.

MINNESOTA

The Minnesota Board of Law Examiners (MBLE) undertook a 2-year study of the bar examination from June 2021 – June 2023. This study included public meetings, board stakeholder input, and three working groups. These working groups provided reports on their assigned study area to the Bar Admissions Advisory Council, which used

¹³ Blue Ribbon Commission: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000030806.pdf#page=6>

¹⁴ The State Bar of California – News Release: <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-of-california-board-of-trustees-approves-plan-to-pilot-alternative-pathway-to-licensure>

¹⁵ The State Bar of California – Recommendation Letter: <https://www.calbar.ca.gov/Portals/0/documents/admissions/Letter-Regarding-Recommendation-For-Approval-of-Pilot-Portfolio-Exam.pdf>

the information to further study and make recommendations to the Court. The MBLÉ submitted its [final report](#)¹⁶ to the Court on June 1, 2023. Their detailed recommendations are summarized into four statements:

1. Minnesota should adopt the NextGen exam. Details related to implementation remain to be determined.
2. The Board will file a Petition to propose modest changes to the Supervised Practice Rules.
3. Create an Implementation Committee to further explore and develop a curricular-based pathway for assessment.
4. Table the proposal to create a supervised practice based pathway for assessment, and revisit that proposal following further study and experience with the curricular-based pathway for assessment.

After the submission of the final report, the Minnesota Supreme Court issued an [Order](#)¹⁷ to establish a public comment period until September 11, 2023, and scheduled a public hearing on October 25, 2023.¹⁸ At this time, there is no further development information found via the MBLÉ or the Minnesota Supreme Court.

WASHINGTON

In November 2020, the Washington Supreme Court created the Washington Bar Licensure Task Force to assess the efficacy of the Washington state bar exam and related requirements for licensing. The Task Force is charged with examining bar examination methods, exam passage rates, and alternative licensure methods.¹⁹

On October 11, 2023, the Task Force submitted a [proposal](#)²⁰ to the Washington Supreme Court for an alternative licensing program that offers several options for bar admission without taking the traditional exam. The executive summary provides seven statements that encompass the recommendations of the proposal:

1. Maintain the bar exam in its current form for those who choose to take it while advancing the cause of improvement to the bar exam;
2. Create an experiential pathway to practice for law school graduates;
3. Create an experiential pathway to practice for law school students;
4. Create an experiential pathway to practice for APR 6 clerks;
5. Recommend that WSBA research, with the goal of implementation, assessments that identify strengths and growth areas for lawyers and specific training programs that can be implemented throughout the course of a lawyer's career;
6. Reduce the time requirement for admission by motion to one year; and
7. Lower the cut score for bar exam passage back to 266.

The work of the task force is ongoing and its meeting schedule and publications can be found on its [webpage](#) via the Washington Courts website.

¹⁶ Minnesota Board of Law Examiners Comprehensive Competence Study Report: <https://www.ble.mn.gov/wp-content/uploads/2023/06/Board-of-Law-Examiners-Report-to-Court-Comprehensive-Competency-Evaluation-June-1-2023.pdf>

¹⁷ Minnesota Supreme Court Order: <https://www.ble.mn.gov/wp-content/uploads/2023/07/Order-Establishing-Public-Comment-Period-and-Hearing-on-Minnesota-Board-of-Law-Examiners-Report-and-Recommendations.pdf>

¹⁸ Minnesota State Board of Law Examiners – News Release: <https://www.ble.mn.gov/minnesota-supreme-court-establishes-comment-period-and-hearing-on-board-of-law-examiners-report-and-recommendations/>

¹⁹ Washington Bar Licensure Task Force: https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce

²⁰ Washington Bar Licensure Task Force presentation: <https://tvw.org/video/washington-state-supreme-court-bar-licensure-task-force-2023101112/?eventID=2023101112>