

## Vermont: Improvements to Fair Chance Licensing (Revised April 6, 2021)

The Council of State Governments Justice Center is assisting states with equitable economic recovery through “Fair Chance Licensing” best practices that:

- **Boost employment** in good-paying, licensed professions.
- **Support businesses** in hiring & promoting qualified workers in high-demand fields.
- **Enhance public safety & save state dollars** through reduced recidivism.

### Best Practices in Current Vermont Law

1. **Pre-application** assessments may be requested to determine whether a criminal record is disqualifying before pursuing the training and education needed for a professional license.

### Additional Best Practices to Consider:

*\*See attached memo for details*

1. **Limit consideration of certain offenses & records.** Such as non-violent misdemeanors, juvenile records & arrests that did not result in convictions.
2. **Limit consideration of old records** after a certain number of crime-free years.
3. **Require denials to be based on a direct relationship** between the offense and duties of an occupation.
4. **Provide specific factors** for assessing criminal records in the context of the whole individual, such as:
  - Nature & seriousness of the crime & mitigating circumstances.
  - Age at the time of the crime.
  - Time elapsed since the crime.
  - Evidence of rehabilitation.
5. **Provide a detailed explanation of conviction-based denial** that addresses why an applicant’s particular record is disqualifying, with reference to specific statutory factors that must be evaluated.
6. **Provide applicants with clear information** on how their criminal records will be assessed in decision-making.
7. **Collect data** on justice-impacted applicants who are denied/granted licenses.



## Memo on Vermont Fair Chance Licensing: *Best Practices for Consideration*

The following provides an overview of best practices related to consideration of criminal history in licensing determinations that are *not* currently reflected in Vermont statute. These best practices are based on emerging trends from the more than thirty states that have enacted robust “fair chance” licensing laws in recent years. Such laws aim to protect public safety while also expanding access to occupational licensure by increasing fairness, transparency, and consistency in the licensing process. The specific implementation of each of these best practices varies by state and the specific statutory examples noted below do not necessarily represent the “best” approach to implementation for any given state.

### **1. Limitations on categories of offenses/dispositions considered**

Many states explicitly prohibit licensing bodies from considering arrests not followed by conviction since they are generally not probative of guilt. The same provisions will often explicitly exclude consideration of non-conviction dispositions that are specifically designed to allow a person to avoid the long-term consequences of a conviction, such as juvenile adjudications, diversions, and deferred adjudications.

Limitations on consideration of lower-level offenses are increasingly common as well. Several states have imposed broad limits on the consideration of non-violent misdemeanors due to a policy determination that such offenses will never be sufficiently related to any occupation or profession to warrant denial. Exceptions often apply for certain offenses.

**Vermont law currently places no limits on the types of convictions or dispositions that may be considered.**

#### Sample language (Arkansas - A.C.A. § 17-1-103):

*(b)(2) The following criminal records shall not be used, distributed, or disseminated in connection with an application for a registration, license, or certificate:*

*(A) Records of arrest not followed by a valid felony conviction by the courts;*

*(B) Convictions that have been annulled or expunged or pardoned by the Governor; and*

*(C) Misdemeanor convictions, except misdemeanor sex offenses and misdemeanors involving violence.*

Sample language (juvenile adjudications) (Pennsylvania - 63 Pa.C.S. § 3114):

*Notwithstanding any provision of law to the contrary, when determining whether an applicant is qualified to be issued a license, registration, certificate or permit, a licensing board or licensing commission may not consider the applicant's juvenile adjudications.*

## **2. Limitations based on time since conviction**

Research suggests that the risk of a person with a prior conviction re-offending rapidly approaches that of a person who has never been convicted of a crime after just a few crime-free years. Several states acknowledge this by imposing limits on the age of convictions that may be considered. These time-based limitations often apply only to less serious offenses and are generally measured in years since conviction or release from incarceration.

**Vermont law currently places no limits on the age of convictions that may be considered.**

Sample language (Indiana - Burns Ind. Code Ann. § 25-1-1.1-6):

*(f) If an individual has a conviction of concern, the period of disqualification may not exceed five (5) years after the date of the conviction, unless the individual:*

*(1) was convicted of a crime of violence (as defined by IC 35-50-1-2(a));*

*(2) was convicted of an offense relating to a criminal sexual act (as defined by IC 35-31.5-2-216); or*

*(3) is convicted of a second or subsequent crime during the disqualification period.*

## **3. Direct relationship requirements**

The foundational principle of fair chance licensing policies is that a person's conviction should not be disqualifying unless it is directly related to the specific duties and responsibilities of the licensed activity. ("Substantial" relationship requirements are also common, and several variations on the standard exist across the states). Generally, states require licensing bodies to assess whether there is a direct relationship on a case-



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by-case basis. However, a growing number of states now require each licensing body to develop a list of offenses that are deemed to be directly related to each license and *may* be basis for disqualification (to the exclusion of all other unlisted offenses) after an individualized assessment (see below).

**Vermont law currently law grants licensing bodies broad authority to deny licensure due to convictions “related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.” 3 V.S.A. § 129a(10). State law does not explicitly *prohibit* denial based on convictions not directly related to the licensed activity.**

Sample language (Minnesota - Minn. Stat. § 364.03):

*Subdivision 1. No disqualification from licensed occupations. — Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.*

*Subd. 2. ... — In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider [a variety of specific individualized factors]....*

Sample language (public safety nexus) (Iowa - ORC Ann. 9.79):

*Notwithstanding any other provision of law to the contrary, except for chapter 272, a person’s conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession ....*

Sample language (listed offenses) (Ohio - ORC Ann. 9.79):

*(B)(1) Notwithstanding any provision of the Revised Code to the contrary, for each type of license issued or conferred by a licensing authority, the licensing authority shall establish within one hundred eighty days after the effective date of this section a list of specific criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining an initial license. The licensing authority shall make the list available to the public*

*on the licensing authority's web site pursuant to division (C) of section 9.78 of the Revised Code. The licensing authority, in adopting the list, shall do both of the following:*

*(a) Identify each disqualifying offense by name or by the Revised Code section number that creates the offense;*

*(b) Include in the list only criminal offenses that are directly related to the duties and responsibilities of the licensed occupation.*

#### **4. Individualized consideration & specific guidance**

The majority of the states that require a direct relationship between an offense and the licensed activity also require decisionmakers to give applicants individualized consideration guided by an assessment of a number of statutory factors. These factors generally track those laid out in the EEOC's 2012 Guidance on the consideration of criminal history,<sup>1</sup> and often include the nature of the offense; the time since conviction/release; age at the time of offense; and evidence of rehabilitation.

**13 V.S.A. § 8008 provides: "In deciding whether to impose a discretionary disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual." However, neither § 8008 nor the state's general licensing laws provide actionable standards or factors to guide the individualized consideration that must be undertaken.**

##### Sample language (Minnesota - Minn. Stat. § 364.03)

*(3)(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:*

*(1) the nature and seriousness of the crime or crimes for which convicted;*

*(2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;*

*(3) the age of the person at the time the crime or crimes were committed;*

*(4) the length of time elapsed since the crime or crimes were committed;*  
*and*

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<sup>1</sup> U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq., (April 2012), available at [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).



*(5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.*

## **5. Written explanation of specific reasons for denial**

As standards for consideration of criminal history have been expanded, so has the need for transparency and accountability in the decision-making process. Many states have encouraged this by requiring decisionmakers to provide each applicant denied licensure due to criminal history with a written explanation of why the applicant's particular criminal history was disqualifying. These provisions are most effective when they require the explanation to incorporate findings related to each of the statutory factors for individualized consideration (see above).

**Vermont law does not explicitly require licensing bodies to issue detailed explanations of the reasons for criminal history-based denials.**

### Sample language (Iowa - Iowa Code § 272C.15)

6.

*a. A licensing board, agency, or department that denies an applicant a license solely or partly because of the applicant's prior conviction of a crime shall notify the applicant in writing of all of the following:*

*(1) The grounds for the denial or disqualification.*

*(2) That the applicant has the right to a hearing to challenge the licensing authority's decision.*

*(3) The earliest date the applicant may submit a new application.*

*(4) That evidence of rehabilitation of the applicant may be considered upon reapplication.*

*b. A determination by a licensing board, agency, or department that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in subsection 4 sufficient for a review by a court.*

*c. In any administrative or civil hearing authorized by this section or chapter 17A, a licensing board, agency, or department shall carry the burden of proof on the question of whether the applicant's criminal*

*offense directly relates to the duties and responsibilities of the profession for which the license is sought.*

## **6. Publishing accessible information for applicants**

In order to make informed decisions about career pathways, prospective licensees with criminal histories should have as much information as possible about how their history will be considered by licensing bodies. A handful of states have recently enacted statutory provisions requiring that information about how criminal history is considered be developed and published online by licensing bodies.

**Vermont law does not require the development or publication of such information.**

### Sample language (Pennsylvania - 63 Pa.C.S. § 3116)

*(a) Development of guide. Within 180 days of the effective date of this subsection, the Department of State shall, in collaboration with the licensing boards and licensing commissions, develop a guide of best practices for an applicant with a criminal conviction to use when seeking a license, certificate, registration or permit. The following apply:*

- (1) The guide shall be published in both English and Spanish.*
- (2) The guide shall include, at a minimum, a summary of the provisions of the following:
  - (i) Section 3112 (relating to restricted licenses for barbers and cosmetologists).*
  - (ii) Section 3112.1 (relating to restricted licenses for other occupations).*
  - (iii) Section 3113 (relating to consideration of criminal convictions).*
  - (iv) Section 3114 (relating to juvenile adjudications).*
  - (v) Section 3115 (relating to preliminary determinations by licensing boards and licensing commissions).*
  - (vi) Section 3117 (relating to list of criminal offenses).**

*(b) Publication and distribution. Within 180 days of the effective date of this subsection, the Department of State shall publish the guide under subsection (a) on its publicly accessible Internet website and shall provide a written copy upon request. The written copy of the guide shall be provided without cost to the person requesting the guide.*

## **7. Data Collection & Reporting (Denials for Criminal History and Reasons)**

States commonly require licensing bodies to track the number of applicants denied due to criminal history and the specific offenses that resulted in denial. Those bodies are often required to report this data to the legislature at regular intervals. This allows



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lawmakers and agencies to assess the impact of criminal record-based barriers over time and provides a valuable dataset for further analysis of the issues.

**Vermont law does not require collection and reporting of detailed information related to criminal history-based grants/denials.**

Sample language (New Hampshire - RSA 332-G:14):

*XIII. The office of professional licensure and certification shall establish an annual reporting requirement of the (a) number of applicants petitioning each board or commission, (b) the numbers of each board's or commission's approvals and denials, (c) the type of offenses for which each board or commission approved or denied the petitions, and (d) other data the office determines. The office will compile and publish annually a report on a searchable public website.*