
SAFER FOUNDATION

**COUNCIL OF ADVISORS TO REDUCE
RECIDIVISM THROUGH
EMPLOYMENT
(C.A.R.R.E.)**

**A REVIEW OF THE STATE OF ILLINOIS
PROFESSIONAL AND OCCUPATIONAL
LICENSURE POLICIES AS RELATED
TO EMPLOYMENT FOR
EX-OFFENDERS**

POLICY PAPER #4

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SAFER FOUNDATION



Preface

This research paper is the fourth in a series of policy papers being produced as part of an advocacy strategy of the Council of Advisors to Reduce Recidivism through Employment (C.A.R.R.E.). The Council was organized in June of 2001 by the Safer Foundation to address barriers to employment for ex-offenders as a central component of the agency's new Public Policy and Advocacy Initiative that began in March of that same year.

This particular document focuses on the issue of access to professional and occupational licensure in the state of Illinois for individuals with criminal backgrounds. In July of 1995, the Illinois General Assembly passed a law entitled "Health Care Worker Background Check Act." This new law required ex-offenders seeking and/or already employed in the health care professions to submit to a criminal background check and apply for a waiver to be employed. As a result of its enforcement, some individuals who were ex-offenders and currently employed in the health care field were given one month to apply for such waivers in order to have an opportunity to retain their employment although employers were not obligated to provide retention even if the waiver was granted. Several of the ex-offenders who found themselves in this position came to the Safer Foundation for assistance in completing the then new waiver process. As a result, agency staff began discussions regarding the potential impact of this new policy on employment opportunities for ex-offenders.

During these discussions the question arose whether or not there were other professions and occupations requiring state licensure that also had certain special requirements or restrictions pertaining to former offenders. This issue was of paramount interest to the Safer Foundation for several reasons: 1) The importance of access to livable wage employment with benefits and potential for advancement to reducing recidivism; 2) the potential for employability and good wage levels when an individual attains professional training and licensure; 3) the role of government as an exemplar to private industry in regards to enforcement of anti-discrimination and fair employment policies; and 4) the lack of information regarding such an important area of employment policy being readily available to employment service providers working with ex-offenders.

Seeking an answer to this query lead to discussions with staff of the De Paul University Egan Urban Center who were also concerned about ex-offender employment and recidivism. Based on this concern and the lack of information regarding the State's policies in this area, a request was forwarded to the De Paul University Legal Clinic to conduct research on the Illinois Professional/Occupational Licensure Statutes as they pertained to ex-offender eligibility. The research conducted produced two separate reports. The first was submitted in June of 2000, and the second in April of 2001. The reviews indicated that at that time there were 98 statutes governing licensure in Illinois, and that of these 57 had stipulations regarding ex-offenders who had committed offenses ranging from misdemeanors to felonies that impacted 65 various professions and occupations.

A summary of these findings was presented to the C.A.R.R.E. in July of 2001. Upon review and discussion, it was decided that more research was warranted specifically on the 57 statutes with the restrictive language in order to: 1) gain an understanding of the restrictions and their potential systemic impact on ex-offender employment; and 2) determine if advocacy to promote ex-offender access to professional and occupational licensure was indeed warranted.

A request for a third more focused study was then made and accepted by the DePaul University Legal Clinic. The third request not only included a review of the 57 statutes but also of their subsequent regulations and concomitant application forms. Due to limitations of time and research personnel, the third study reviewed the statutes, regulations, and application forms of only twenty-two (22) of the 65 designated professions and occupations. The selection of these twenty-two (22) was based on a comparative analysis of professions and occupations with data from the following sources:

- A survey of Pace participants (a Safer Foundation adult education program for inmates at the Cook County Correction Institution) regarding which professions/careers were of most interest in 2001.
- Most frequent areas of employment placements for graduates of the bachelor degree programs conducted by Roosevelt University for inmates of the Illinois Department of Corrections.
- Professions selected for the vocational education programs conducted by the Illinois Department of Corrections
- Occupations with the best outlook for growth, employment and wages for 2002 in Illinois as reported by the Illinois Department of Employment Security and the Department of Labor.

The following report, findings and subsequent recommendations are a result of this analysis by C.A.R.R.E. participants and the research conducted by the De Paul Legal Clinic. It is hoped that this document will provide more information and insight into the State of Illinois Professional and Occupational Licensure policies for employment services providers and others in position to provide assistance to ex-offenders seeking licensure.

This document was primarily produced through the work and collaborative efforts of the DePaul University Legal Clinic and the Safer Foundation's Public Policy Director Sharron D. Matthews, Program Evaluation Coordinator Ray Auclair, and Public Policy Assistant /Intern Amanda Casarjian.

Note that the summary of findings and subsequent recommendations on the whole do not necessarily represent the official views of C.A.R.R.E., the Safer Foundation or of the DePaul University Legal Clinic.

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Introduction

In Illinois there are over 47,000 men, women and youth who are under the supervision of the Illinois Department of Corrections (IDOC) through incarceration, probation or parole with another 20,000 involved with the Cook County Correctional system. Illinois has the ninth largest state correctional system in America. In 2001, over 27,000 of these individuals were released by IDOC to return home. As many as 48 %, however, are expected to return to prison, to recidivate, within 12 to 36 months.

Although overall crime rates are decreasing, recidivism rates are not. It has been recently projected by the U.S. Bureau of Justice Statistics that the committing and recommitting of crimes and the violation of parole will result in 1 in 20 Americans becoming involved with the criminal justice system with more than 65% of ex-offenders returning to prison. Currently there are almost eight million individuals “caught up” in this system. To stem this ebb and flow of human capital potential stymied by the commission of criminal offenses, access to legal livable wage employment on an *en masse* level needs to be available. The access to gainful employment has proven to be one of the most important factors in reducing the re-commission of crime.

Possessing training and licensure in a recognized profession or occupation tremendously increases one’s “employability quotient.” Among the professions/occupations requiring state licensure there are many which are labor intensive, don’t require long years of training, pay well, have career advancement potential, and can offer the prospect of self – employment as a viable option.

Many ex-offenders have thrived well as laborers and trades men and women within the construction industry, which has fewer of such licensure restrictions. This is also true of the health care field, which has a separate waiver process for individuals with criminal records. However, even though the possession of state licensure is heavy laden with potential for better employment opportunities, not enough is known about the restrictions now inherent in this process for ex-offenders by many who are assisting them in seeking employment. To learn more about the State’s professional and occupational licensure policies, in 2000 the Safer Foundation solicited the assistance of the DePaul University Eagan Urban Center and its Legal Clinic to conduct a review and analysis of the statutes governing this process. Upon review of the initial study, in 2001 a second was requested that focused on three specific professional areas and provided additional information concerning the statutes discussed in the first. As a result of the review of the second study submitted that Spring, it was determined that further analysis beyond that of the statutes was warranted in order to have a fuller perspective of the impact on access to professional/occupational licensure for ex-offenders in Illinois. In the Fall of that same year, as part of its new Public Policy and Advocacy Initiative, the then new director of Public Policy and Advocacy, on behalf of C.A.R.R.E., requested a third review focused on: 1) state regulations for implementing the statutes; 2) licensure application forms; and 3) case law pertaining to ex-offenders applying for licensure.

What follows are the results of these research collaboratives with recommendations based on the findings that can, hopefully if considered, provide more access to state licensure for former offenders seeking employment opportunities which can help them more fully utilize and manifest their potential as employees, providers for themselves and their families, and as contributing members of society.

The First Two Reviews (Submitted June 2000 and April 2001)

Due to the number and complexity of the statutes related to state licensure, two reviews and analyses were required. The initial review and the follow up study indicated that the State of Illinois had, at that time, 98 professional and occupational statutes governing licensure. Note that by the time of the issuance of this report, however, the number had been increased by 1 for a current total of 99 of such statutes. What follows is a listing of the current statutes.

Illinois Compiled Statutes CHAPTER 225: Professions and Occupations

Health

- 225 ILCS 2/ Acupuncture Practice Act.
- 225 ILCS 5/ Illinois Athletic Trainers Practice Act.
- 225 ILCS 7/ Board and Care Home Registration Act.
- 225 ILCS 10/ Child Care Act of 1969.
- 225 ILCS 15/ Clinical Psychologist Licensing Act.
- 225 ILCS 20/ Clinical Social Work and Social Work Practice Act.
- 225 ILCS 25/ Illinois Dental Practice Act.
- 225 ILCS 30/ Dietetic and Nutrition Services Practice Act.
- 225 ILCS 35/ Embalming Fluid Act.
- 225 ILCS 37/ Environmental Health Practitioner Licensing Act.
- 225 ILCS 41/ Funeral Directors and Embalmers Licensing Code.
- 225 ILCS 45/ Illinois Funeral or Burial Funds Act.
- 225 ILCS 46/ Health Care Worker Background Check Act.
- 225 ILCS 47/ Health Care Worker Self-Referral Act.
- 225 ILCS 50/ Hearing Instrument Consumer Protection Act.
- 225 ILCS 51/ Home Medical Equipment and Services Provider License Act.
- 225 ILCS 52/ Industrial Hygienists Licensure Act.
- 225 ILCS 55/ Marriage and Family Therapy Licensing Act.
- 225 ILCS 60/ Medical Practice Act of 1987.
- 225 ILCS 62/ Osteopathic and Allopathic Healthcare Discrimination Act.
- 225 ILCS 63/ Naprapathic Practice Act.
- 225 ILCS 65/ Nursing and Advanced Practice Nursing Act.
- 225 ILCS 70/ Nursing Home Administrators Licensing and Disciplinary Act.
- 225 ILCS 75/ Illinois Occupational Therapy Practice Act.

- 225 ILCS 80/ Illinois Optometric Practice Act of 1987.
- 225 ILCS 83/ Mail Order Contact Lens Act.
- 225 ILCS 84/ Orthotics, Prosthetics, and Pedorthics Practice Act.
- 225 ILCS 85/ Pharmacy Practice Act of 1987.
- 225 ILCS 90/ Illinois Physical Therapy Act.
- 225 ILCS 95/ Physician Assistant Practice Act of 1987.
- 225 ILCS 100/ Podiatric Medical Practice Act of 1987.
- 225 ILCS 105/ Professional Boxing Act.
- 225 ILCS 106/ Respiratory Care Practice Act.
- 225 ILCS 107/ Professional Counselor and Clinical Professional Counselor Licensing Act.
- 225 ILCS 110/ Illinois Speech-Language Pathology and Audiology Practice Act.
- 225 ILCS 115/ Veterinary Medicine and Surgery Practice Act of 1994.
- 225 ILCS 120/ Wholesale Drug Distribution Licensing Act.
- 225 ILCS 125/ Perfusionist Practice Act.

Safety and Environment

- 225 ILCS 203/ Boiler and Pressure Vessel Repairer Regulation Act.
- 225 ILCS 205/ Carnival Regulation Act.
- 225 ILCS 207/ Commercial and Public Building Asbestos Abatement Act.
- 225 ILCS 210/ Illinois Explosives Act.
- 225 ILCS 216/ Fire Equipment Distributor and Employee Regulation Act of 2000.
- 225 ILCS 220/ Hazardous Waste Crane and Hoisting Equipment Operators Licensing Act.
- 225 ILCS 221/ Hazardous Waste Laborers Licensing Act.
- 225 ILCS 225/ Private Sewage Disposal Licensing Act.
- 225 ILCS 230/ Solid Waste Site Operator Certification Law.
- 225 ILCS 235/ Structural Pest Control Act.

Design and Construction

- 225 ILCS 305/ Illinois Architecture Practice Act of 1989.
- 225 ILCS 310/ Interior Design Title Act.
- 225 ILCS 315/ Illinois Landscape Architecture Act of 1989.
- 225 ILCS 320/ Illinois Plumbing License Law.
- 225 ILCS 325/ Professional Engineering Practice Act of 1989.
- 225 ILCS 330/ Illinois Professional Land Surveyor Act of 1989.
- 225 ILCS 335/ Illinois Roofing Industry Licensing Act.
- 225 ILCS 340/ Structural Engineering Practice Act of 1989.
- 225 ILCS 345/ Water Well and Pump Installation Contractor's License Act.

Services and Sales

- 225 ILCS 405/ Art Auction House Act.
- 225 ILCS 407/ Auction License Act.
- 225 ILCS 410/ Barber, Cosmetology, Esthetics, and Nail Technology Act of 1985.
- 225 ILCS 415/ Illinois Certified Shorthand Reporters Act of 1984.
- 225 ILCS 420/ Child Protective Investigator and Child Welfare Specialist Certification Act of 1987.
- 225 ILCS 425/ Collection Agency Act.
- 225 ILCS 430/ Detection of Deception Examiners Act.
- 225 ILCS 435/ Ferries Act.

225 ILCS 440/ Highway Advertising Control Act of 1971.
225 ILCS 441/ Home Inspector License Act.
225 ILCS 442/ Interpreters for the Deaf Act.
225 ILCS 446/ Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993.
225 ILCS 450/ Illinois Public Accounting Act.
225 ILCS 454/ Real Estate License Act of 2000.
225 ILCS 456/ Real Estate Regulation Transfer Act.
225 ILCS 457/ Real Estate Appraiser Licensing Act.
225 ILCS 458/ Real Estate Appraiser Licensing Act of 2002.
225 ILCS 460/ Solicitation for Charity Act.
225 ILCS 465/ Transient Merchant Act of 1987.
225 ILCS 470/ Weights and Measures Act.

Employment

225 ILCS 505/ Illinois Farm Labor Contractor Certification Act.
225 ILCS 510/ Nurse Agency Licensing Act.
225 ILCS 515/ Private Employment Agency Act.

Food and Agriculture

225 ILCS 605/ Animal Welfare Act.
225 ILCS 610/ Illinois Dead Animal Disposal Act.
225 ILCS 620/ Illinois Feeder Swine Dealer Licensing Act.
225 ILCS 635/ Illinois Horse Meat Act.
225 ILCS 640/ Livestock Auction Market Law.
225 ILCS 645/ Illinois Livestock Dealer Licensing Act.
225 ILCS 650/ Meat and Poultry Inspection Act.
225 ILCS 655/ Slaughter Livestock Buyers Act.
225 ILCS 660/ Specialty Farm Product Buyers Act.

Natural Resources

225 ILCS 705/ Coal Mining Act.
225 ILCS 710/ Fluorspar and Underground Limestone Mines Act.
225 ILCS 715/ Surface-Mined Land Conservation and Reclamation Act.
225 ILCS 720/ Surface Coal Mining Land Conservation and Reclamation Act.
225 ILCS 725/ Illinois Oil and Gas Act.
225 ILCS 728/ Illinois Petroleum Education and Marketing Act.
225 ILCS 730/ Well Abandonment Act.
225 ILCS 735/ Timber Buyers Licensing Act.
225 ILCS 740/ Forest Products Transportation Act.
225 ILCS 745/ Professional Geologist Licensing Act.

Upon review it was found that of the 98 policies, 57 contained additional stipulations for the granting of licensure if the applicant had a criminal history ranging from misdemeanors to felonies. The researchers reported that language used in several of the statutes for these particular categories of professions and occupations call for restrictions that can result in **an absolute bar effect from licensure based on the nature and level of the criminal offense**. Based on their review, there were three categories of evaluation criteria under which, given the stipulations, the concomitant professions and occupations could be placed. The subsequent listing of professions/ occupations was developed given the following definitions for the three evaluation criteria distinctions.

- Absolute Barrier- These Acts include a provision for an absolute bar to employment for individuals convicted of certain crimes that are felonies or misdemeanors, which have essential elements of dishonesty or crimes that are directly related to the practice of the profession.
- Ex-Offender- These Acts allow the Department to refuse to issue or renew a license where an applicant has been convicted of a felony or a misdemeanor which includes an essential element of dishonesty, or any crime that is directly related to the practice of the profession.
- Good Moral Character- These Acts require an applicant to be of good moral character. In determining good moral character under this section the Department may take into consideration any felony conviction of the applicant, but such conviction shall not act as a complete bar to licensure.

What follows is a listing of the 65 professions and occupations for which, at the time of the first review, the categories of above –mentioned criteria could impact access for licensure by former offenders.

ABSOLUTE BARRIER CRITERIA

- Business w/the State (Applies to contractor /business owner, not employees)
- Child Care Provider
- Doctor (medical practice)
- Driver’s License (Religious Organization or Senior Citizen)
- Employment Counseling
- Foster Parent/Home Operator
- Funeral Director and Embalmer
- Hazardous Waste Crane and Hoisting Equipment Operator
- Horsemeat Dealer

- Illinois Clinical Psychologist
- Nursing Home Administrator
- Optometric Practice
- Pharmacist
- Private Detective, Alarm Security and Locksmith
- Professional Counselor
- Professional Geologist
- Respiratory Care Practice
- River Boat Gaming
- Safety Deposit Box
- School Bus Driver
- Speech – Language Pathology and Audiology
- Wholesale Drug Distribution

EX-OFFENDER CRITERIA

- Acupuncture Practice
- Animal Welfare
- Athletic Trainers Practice
- Barber, Cosmetologist, Esthetics, Nail Technologist
- Boiler and Pressure Vessel Repair
- Child Protection and Child Welfare
- Clinical Social Worker
- Consumer Protection
- Dead Animal Disposal
- Dentist
- Dietetic and Nutrition Service Practice
- Engineering Practice
- Environmental Health Practitioner
- Farm Labor Contractor
- Feeder Swine Dealer

- Fire Equipment Distributor
- Hearing Instrument
- Horse Racing
- Interior Design
- Landscape Architecture Practice
- Liquor
- Livestock Dealer
- Marriage and Family Therapist
- Naprapathic Practice
- Nursing
- Occupational Therapist
- Physical Therapist
- Public Accountant
- Real Estate
- Roofing
- Slaughter Livestock Buyer
- Veterinary Medicine and Surgery Practice
- Water Well and Pump Installation

GOOD MORAL CHARACTER CRITERIA

- Architecture Practice
- Attorney
- Certified Shorthand Reporter
- Detection of Deception Examiners
- Explosives
- Industrial Hygienist
- Podiatric Medical Practice
- Professional Boxing and Wrestling
- Professional Land Surveyor
- Structural Engineering

The Third Review

(Submitted June 2002)

The third review focused specifically on 22 of the 65 professions and occupations regulated by statutes with restrictive language related to individuals with criminal backgrounds. In addition, the scope of the research was broadened to include a review of: 1) concomitant regulations and application forms; and 2) any case law related to an ex-offender appealing the denial of licensure. The following is the text of the report submitted based on the request for research.

I. DEFINITIONS

The following terms will appear throughout the review and mean:

- 1) "Act" means the legislation created by the Illinois legislature.
- 2) "IDPR" means the Illinois Department of Professional Regulation.
- 3) "Director" means the Director of Professional Regulation.
- 4) "Felony" means any crime that is punishable by death or a term of imprisonment in a penitentiary for one year or more. 720 ILCS 5/2-7.
- 5) "Misdemeanor" means any offense that is punishable by a term of imprisonment in other than a penitentiary for less than one year. 720 ILCS 5/2-11.
- 6) "Rules" means the regulations that implement the Act. Such rules are found in the Illinois Administrative Code.

II. EXPLANATION OF ILLINOIS'S MECHANISMS TO REGULATE LICENSING

All of the licenses discussed in the review have been deemed by the State of Illinois to affect public health and welfare. The legislature has regulated and controlled these occupations via legislation ("Acts") for each occupational category. For 15 of these Acts, the IDPR or its Director has the duty to issue licenses and oversee the implementation of the Act. The legislature has also allowed the IDPR to prescribe specific Rules to assist with the implementation of the Act. In many of the Acts regulated by the IDPR, the legislature has created Boards/Committees that will assist in the licensure regulation. Board/Committee members are from the regulated occupation and are appointed by the Director.

The seven other Acts are regulated by another governmental entity other than the IDPR. Please refer to Section VI and its chart for further details.

III. CATEGORIES OF LICENSES THAT ARE REGULATED BY THE IDPR

Because much of the language that appears in the 15 IDPR-regulated licensed occupations is standardized, we have determined that there are 3 categories regarding the relationship between licensure and ex-offender status. The 15 licenses were categorized based on certain common elements:

- 1) IDPR **MAY** refuse to issue a license if applicant has a (1) felony conviction or (2) misdemeanor conviction, which includes an essential element of dishonesty or (3) any crime that is directly related to the profession.
- 2) IDPR **MAY** refuse to issue a license if applicant has a (1) felony conviction or (2) misdemeanor conviction and (3) after investigation, the Department decides that the applicant has not been “sufficiently rehabilitated.”
- 3) IDPR **MAY** refuse at issue a license to an applicant who is without good moral character.

The 3 categories are described in the chart below. Although categorization is utilized, there may be certain variations and additions within the occupations’ Acts and Rules. A column has been reserved to explain. Because many of the Acts feature Rules with identical language regarding licensure requirements, such Rules language is not repeated in the last column. However, if there is anything we find noteworthy in the Rules, we have included it.

IV. RELEVANT LANGUAGE OF ACTS AND RULES REGULATED BY IDPR

COMMON ELEMENTS	LICENSE	IN ADDITION TO THE COMMON ELEMENTS, ACT ALSO STATES	RULES
<p>1) IDPR MAY refuse to issue a license if applicant has a: (1) felony conviction or (2) misdemeanor conviction, which includes an essential element of dishonesty or (3) any crime that is directly related to the profession.</p>	<p>ACUPUNCTURE PRACTICE Practice includes the evaluation or treatment of people by method of stimulation of a certain point or points on or immediately below the surface of the body . . . 225 ILCS 2/10.</p>	<p>Act includes: “...Habitual intoxication or addiction to the use of drugs...” 225 ILCS 2/110.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1140.</p>
	<p>ATHLETIC TRAINER -Defined as “a person licensed to practice athletic training as defined in [the] Act ...” -Duties include coordination with a team physician to assist on all matters pertaining to the health and well being of athletes. 225 ILCS 5/3.</p>		<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1160.</p>

	<p>BARBER, COSMETOLOGY, ESTHETICS, AND NAIL TECHNOLOGY Act and Rules apply to barbers, cosmetologists, esthetologists, and nail technologists. Also applies the teachers of these professions who work at licensed schools. 225 ILCS 410/1-7.</p>	<p>Any crime that is directly related to the profession: 1)Practicing the profession without a proper license, 2) Attempting to obtain a license or money or any other thing of value by fraudulent misrepresentation. 3) Practicing in the profession or an attempt to practice by fraudulent misrepresentation. 4) Willfully making any false oath or affirmation whenever an oath or affirmation is required by this Act. 5) The violation of any of the provisions of this Act. 225 ILCS 410/4-20.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1175.</p>
	<p>DIETETIC Means the integration and application of principles derived from the sciences of food and nutrition to provide nutrition services and medical nutrition. 225 ILCS 30/10.</p>	<p>Act includes: “... Habitual intoxication or addiction to the use of drugs...” 225 ILCS 30/95.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1245.</p>
	<p>LANDSCAPE ARCHITECTURE Means the art and science of arranging land, together with the spaces and objects upon it for purposes of human use and enjoyment. 225 ILCS 315/3.</p>	<p>Act includes: “...Habitual intoxication or addiction to the use of drugs” 225 ILCS 315/18.1.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1275.</p>
	<p>MARRIAGE AND FAMILY THERAPIST Defined as the evaluation and treatment of mental and emotional problems within the context of human relationships 225 ILCS 55/10.</p>	<p>Act includes: “... Habitual intoxication or addiction to the use of drugs...” 225 ILCS 55/85.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1283.</p>

	<p>NURSING -Act applies to practical nurses, registered nurses, and advanced practical nurses. To become an advanced practical nurse, one must first be licensed as a registered nurse. -“Practical nurse” defined as person who has completed an approved nursing education program and is working under the direction of a registered nurse. 225 ILCS 65/5-5.</p>	<p>Act includes: “(4) A pattern of practice or other behavior which demonstrates incapacity or incompetency to practice under this Act... (8) Unlawful sale, distribution [or conversion] of any drug, narcotic, or prescription device... (9) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug which results in a nurse’s inability to practice with reasonable judgment, skill, or safety... (12) Being named as a perpetrator in an indicated report by [DCFS] pursuant to the Abused and Neglected Child Reporting Act, and upon proof by clear and convincing evidence that the registrant has caused a child to be an abused child or neglected child as defined in the Abused and Neglected Child Act.” 225 ILCS 65/10-45. -All applicants are required to submit to a criminal background check. (See Health Care Worker Background Check Act, 225 ILCS 46/1 et seq.)</p>	<p>Rules state that the IDPR may refuse to issue if applicant has been: “(1) Engaging in conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established. ... (5) Demonstrating actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.” 68 Ill. Adm. Code 1300.65.</p>
	<p>PHARMACY PRACTICE Defined as “a currently licensed pharmacist or registered assistant pharmacist.” 68 Ill. Adm. Code 1330.05.</p>	<p>Act includes: “habitual or excessive use or addiction to alcohol, narcotics, stimulants or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill or safety” 225 ILCS 85/30.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1330.</p>

	<p>PROFESSIONAL COUNSELOR Act includes social, emotional, educational, and career testing and evaluation in definition of practitioner. 225 ILCS 107/10.</p>	<p>Act includes: “habitual or excessive use or addiction to alcohol, narcotics, stimulants or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill or safety” 225 ILCS 107/80.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1375.</p>
	<p>RESPIRATORY CARE PRACTICE Act defines a respiratory care practitioner as one able to function in situations of <i>unsupervised</i> patient contact requiring great individual judgment. 225 ILCS 106/10.</p>	<p>Act includes: “habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that results in an inability to practice with reasonable skill, judgment, or safety”. 225 ILCS 106/95.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1456.</p>
<p>2) IDPR MAY refuse to issue a license if applicant has a (1) felony conviction or (2) misdemeanor conviction and (3) after investigation, the Department decides that the applicant has not been “sufficiently rehabilitated.”</p>	<p>INTERIOR DESIGNER -Profession of interior design defined as “persons qualified by education, experience, and examination, who administer contracts of fabrication, procurement, or installation in the implementation of designs, drawings, and specifications for any interior design project and offer to furnish services ... in connection with the location of lighting fixtures, lamps and specifications of ceiling finishes ... but excluding mechanical and electrical systems, except for specifications of fixtures and their location within interior spaces.” 225 ILCS 310/3.</p>	<p>-IDPR may also refuse licensure if “habitual intoxication or addiction to the use of drugs” and “being named as a perpetrator in an indicated report by [DCFS] pursuant to the Abused and Neglected Child Reporting Act, and upon proof by clear and convincing evidence that the registrant has caused a child to be an abused child or neglected child as defined in the Abused and Neglected Child Act.” 225 ILCS 310/13.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1255.</p>

	<p>PHYSICAL THERAPY</p> <p>-Act and Rules apply to physical therapists, physical therapist assistants, and physical therapist aides.</p> <p>-“Physical Therapist Assistant” defined as a licensed person who assists a physical therapist and who has met all requirements under Act and who works under the supervision of a licensed physical therapist.</p>	<p>-Act includes: “The [IDPR] may refuse to issue [if]: ... (C)... [C]onviction, as used in this paragraph, shall include a finding or verdict of guilty, an admission of guilt or a plea of nolo contendere [no contest]; (E) A pattern of practice or other behavior which demonstrates incapacity or incompetency to practice under this Act; ... (I) Unlawful distribution of any narcotic, or unlawful conversion of any drug or narcotic not belonging to the person for such person’s own use or benefit or for other than medically accepted therapeutic purposes;... (J) Habitual or excessive use of addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug which results in a physical therapist’s or physical therapist assistant’s inability to practice with reasonable judgment, skill, or safety; ... (W) “Being named as a perpetrator in an indicated report by [DCFS] pursuant to the Abused and Neglected Child Reporting Act, and upon proof by clear and convincing evidence that the registrant has caused a child to be an abused child or neglected child as defined in the Abused and Neglected Child Act;...” 225 ILCS 90/17(1). -Nolo contendere only appears in, and seemingly applies to, this occupation.</p>	<p>The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1340.</p>
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	<p>ROOFING INDUSTRY -Act and Rules apply to Roofing Contractors which is defined as: “one whose services are unlimited in the roofing trade and who has experience, knowledge and skill to construct, reconstruct, alter, maintain and repair roofs and use materials and items used in the [above-mentioned services.]” 225 ILCS 335/2(e).</p>	<p>Act includes: “conviction by any court of competent jurisdiction ... of any violation of any law governing the practice of roofing contracting, if the IDPR determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust.” 225 ILCS 335/9.1(m).</p>	<p>Rules do not contain a Granting Variances Section. 68 Ill. Adm. Code 1460.</p>
<p>3) IDPR MAY refuse to issue a license to an applicant who is without good moral character.</p>	<p>BOXING -Occupations covered under Act: professional boxer, boxing and wrestling promoter, trainer, referee, judge, matchmaker, timekeeper, second 225 ILCS 105/1.</p>	<p>-“In determining good moral character, the [IDPR] may take into consideration any violation of any of the provisions of Section 16 of this Act and any felony conviction of the applicant, but such a conviction shall not operate as a bar to licensure.” 225 ILCS 105/11. -Section 16 includes: “engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public, or which is detrimental to honestly conducted athletic events.” 225 ILCS 105/16.</p>	<p>-“Proof of good moral character, which includes notification of any felony conviction that might have a direct relationship to duties of [applicant’s position] or any discipline in another jurisdiction in which the applicant is licensed.” -Applies only to boxing and wrestling promoters, seconds, referees, judges, matchmakers, and timekeepers; NOT BOXERS 68 Ill. Adm. Code 1370.15.</p>
	<p>LAND SURVEYOR -Act applies to Professional Land Surveyors and Land Surveyors-In-Training.</p>	<p>“In determining moral character under this Section, the [IDPR] may take into consideration whether the applicant has engaged in conduct or actions that would constitute grounds for discipline under this Act.” 225 ILCS 330/12.</p>	<p>Appears in Standards of Professional Conduct section: “Conviction of a crime shall be deemed incompetent practice if the acts that resulted in a conviction have a direct bearing on whether the applicant should be entrusted to serve the public as a licensed land surveyor.” 68 Ill. Adm. Code 1270.57(t).</p>

V. RELEVANT LANGUAGE OF ACTS AND RULES NOT REGULATED BY IDPR

LICENSE	ACT	RULE
<p>ANIMAL WELFARE -“No person shall engage in business as a pet shop operator, dog dealer, kennel operator, cattery operator, or operate a guard dog service, an animal control facility or animal shelter or any combination thereof... without a license.” (225 ILCS 605/3)</p>	<p>-Actual language of Act is: (e) Conviction of a violation of any law of Illinois except minor violations such as traffic violations and violations not related to the disposition of dogs, cats and other animals or any rule or regulation of the Department relating to dogs or cats and sale thereof; ... (j) Proof that the licensee is guilty of gross negligence, incompetency, or cruelty, with regard to animals. 225 ILCS 605/10.</p>	<p>-Act is overseen by the Department of Agriculture. -The language of the Rules follows the language of the Act. 8 Ill. Adm. Code 25.</p>
<p>BOILER AND PRESSURE VESSEL REPAIR -Defined as any person “that performs welded repairs to the pressure retaining boundaries of boilers or pressure vessels.” 225 ILCS 203/5.</p>	<p>Department MAY refuse to issue a license if applicant has a: (1) felony conviction or (2) misdemeanor conviction, which includes an essential element of dishonesty or (3) any crime that is directly related to the profession. Specific language: “Licensee are subject to disciplinary sanctions enumerated in this Act if the State Fire Marshall finds that a licensee is guilty of... (4) Conviction of any crime... that has a substantial element of which is misstatement, fraud, dishonesty, or conviction in this or another state of any crime that is a felony under the laws of Illinois or conviction of a felony in a federal court, unless such licensee demonstrates that he or she has been sufficiently rehabilitated to warrant the public trust... (6) Habitual drunkenness or habitual addition to the use of morphine, cocaine, controlled substances, or other habit-forming drugs.” 225 ILCS 203/65. - “Sanctions” include refusal to renew, issue, or restore license, 225 ILCS 203/80.</p>	<p>The Act is overseen by the State Fire Marshall; the language of the Rules follows the language of the Act.</p>

<p>DRIVER -Religious organization bus driver -Senior citizen transportation driver 625 ILCS 5/6-106.2; 625 ILCS 5/6-106.3.</p>	<p>Act <i>only</i> bars licensing of individuals: -Convicted of: 1) leaving the scene of a traffic accident involving death or personal injury, 2) DUI, 3) reckless driving, 4) drag racing, 5) manslaughter or reckless homicide or 6) reckless conduct arising from the use of a motor vehicle within 3 years of the date of application; -Within 3 years of the date of application 625 ILCS 5/6-106.2; 625 ILCS 5/6-106.3.</p>	<p>-The Rules are overseen by the Secretary of State of Illinois. 92 Ill. Adm. Code 1030. -The language of the Rules follows the language of the Act.</p>
<p>FARM LABOR CONTRACTOR Defined as 1) any person who for a fee “recruits, supplies or hires, or transports in connection therewith, into or within the State, any farmworker ... under the supervision or control of, a third person” OR 2) any person who for a fee “recruits, supplies or hires, or transports into or within the State, any farmworker ... and who directs, supervises or controls all or any part of the work of such farmworkers or who disburses wages to such farmworkers.” -Farm labor contractor does not include “full-time regular employees of food processing companies when such employees are engaged in recruiting for such companies, provided such employees are not compensated according to the number of farmworkers they recruit.” 225 ILCS 505/2.</p>	<p>Department of Labor MAY refuse to issue a license if applicant has convicted of any State or federal law. 225 ILCS 505/2.</p>	<p>-Act overseen by the Department of Labor.</p>

<p>FOSTER CARE Foster family home defined as: a facility for child care in residences of families who receive children for the purpose of providing family care and training 225 ILCS 10/20.17</p>	<p>The Act operates to bar licensing of individuals& adult household members convicted of these, and other, offenses: -Murder; sex crimes; kidnappings; child abductions; hate crimes; assaults; burglaries; drug crimes; etc. 225 ILCS 10/4.2. Act operates to allow licensing of individuals convicted of certain crimes listed in the Act, provided 6 criteria are met. Most noteworthy: a) the relevant offense must have occurred more than 10 years prior to date of application; b) the applicant previously disclosed the conviction; and c) the applicant has a history of providing a safe, stable home environment and appears able to continue doing so 225 ILCS 10/4.2.</p>	<p>-The Rules are overseen by the Department of Children and Family Services (DCFS). 89 Ill. Adm. Code 301. -The language of the Rules follows the language of the Act. -Additionally, a waiver may be obtained from the Director of the DCFS. 89 Ill. Adm. Code 301/5 (b).</p>
<p>PRIVATE EMPLOYMENT COUNSELING Defined as the employees of any employment agency who interview, counsel, or advise applicants on employment 225 ILCS 515/11.</p>	<p>“The applicant shall furnish to the Department [of Labor] an affidavit stating that he has never been a party to any fraud, has no jail or prison record, belongs to no subversive societies, is of good moral character, has business integrity and is financially responsible. In determining moral character and qualifications for licensing, the Department may take into consideration any criminal conviction of the applicant, but such a conviction shall not operate as a bar to licensing.” 225 ILCS 515/1.</p>	<p>-The Act is overseen by the Department of Labor. -The language of the Rules follows the language of the Act.</p>
<p>REAL ESTATE -Act and Rules apply to real estate brokers, real estate salespersons, and leasing agents. 225 ILCS 454/1-10.</p>	<p>Department MAY refuse to issue a license if applicant has a: (1) felony conviction or (2) misdemeanor conviction, which includes an essential element of dishonesty or (3) any crime that is directly related to the profession -Language of statute: “When the licensee has been convicted of any crime, an essential element of which is dishonesty or fraud or larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game...” 225 ILCS 454/20-20. -The Office of Banks and Real Estate (OBRE), with the advice of OBRE’s Real Estate Administration and Disciplinary Board, provides for the licensing of applicants. 225 ILCS 454/5-5(c).</p>	<p>-Office of Banks and Real Estate (OBRE) oversees licensing under the Act. -The language of the Rules follows the language of the Act. 68 Ill. Adm. Code 1450.</p>

Please note the following: There is no license (from the list of 22 given by Safer) that falls within the category of an absolute bar to licensure because of a criminal record. No license's Act or Rules absolutely bar an applicant for having a felony or misdemeanor conviction; however, **the type of felony or misdemeanor can bar an applicant from licensure**. Also, the discretion of the Department is a large factor in gaining licensure. (See Section VIII, Granting Variances.)

VI. RELEVANT LANGUAGE OF ACTS AND RULES

Notice the somewhat narrow effect of the statutory language contained within the first group of common elements. The effect of such language would seemingly bar from licensure *only* those applicants convicted of: **(i) any crime** (felony or misdemeanor), **containing an essential element of dishonesty** **OR** **(ii) any crime directly related to the practice of the profession**.

The second group of common statutory elements has a more broad and sweeping effect upon applicants' bar to licensure by potentially barring those applicants convicted of: **(i) any felony** (irrespective of whether it has an essential element of dishonesty) **OR** **(ii) any misdemeanor containing an essential element of dishonesty** **OR** **(iii) any crime directly related to the practice of the profession**.

The third group of common statutory elements has the more lenient effect upon an applicant's bar to licensure. This category bars **ONLY** those applicants who are **NOT found to be of good moral character**.

The second chart reflects the occupations that do not share common elements in their statutory language, nor are they overseen by the IDPR. The statutory language found within the occupations listed in this chart generally operates as a narrow bar upon licensure. The language is typically tailored to bar those applicants convicted of crimes that most directly relate to the particular occupations. For example: Real Estate qualifies the terminology of *essential elements of dishonesty* by listing seemingly obvious crimes: larceny, embezzlement, etc.

However, when the statutes in the above-mentioned charts and categories are interpreted with their respective administrative regulations, the *granting variances* section effectively creates a loophole for every category. This is because the granting variance allows for IDPR discretion in making exceptions for those applicants whose conduct raises suspicion. Also quite interesting: *the provision from which the variance is granted is not statutorily mandated*. Furthermore, all the statutes grant **broad discretion** in deciding whether to issue licenses, regardless of the qualifying crimes and circumstances. Technically, one may opine that there are no statutory categories containing **Absolute Bar Criteria**. This is true, however, only to the extent that we have not found case law interpretations of the language contained **in these statutes**.

VII. RELEVANT LANGUAGE OF LICENSE APPLICATIONS

IDPR's licensing applications ask for different information for each of the occupations, but the language for the "Personal History" section is standardized. There are two questions in this section that are central to our research:

1. Have you been **convicted of any criminal offense in any state or in federal court** (other than minor traffic violations)? If yes, attach a certified copy of the court records regarding your conviction, the nature of the offense and date of discharge, *if applicable, as well as a statement from the probation or parole officer*.

2. **Have you had or do you now have** any disease or condition that interferes with your ability to perform the essential functions of your profession, including any disease or condition generally regarded as chronic by the medical community, i.e. (1) mental or emotional disease or condition; (2) **alcohol or other substance abuse**; (3) physical disease or condition, that presently interferes with your ability to practice your profession? *If yes, attach a detailed statement, including an explanation whether or not you are currently under treatment.*

VIII. “GRANTING VARIANCES”

A. Standardized Language in the Rules

Of the 15 licenses that are regulated by the IDPR, 14 have an option for the Director to grant variances to certain licensing candidates. The Rules for the Illinois Roofing Industry Act does not have the “granting variances” section. This language can be found in the last section of the Rules.

The same standardized language appears in all sections:

a) The Director may grant variances from these rules in individual cases where he or she finds that:

- 1) The provision from which the variance is granted is not statutorily mandated;*
- 2) No party will be injured by the granting of the variance; and*
- 3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.*

b) The Director shall notify the Committee of the granting of the variance, and the reasons therefore, at the next meeting of the Committee.

This quoted Section is from the Rules for the Administration of the IL Physical Therapy Act. 68 Ill. Adm. Code 1340.70. “Committee” refers to the Physical Therapy Examining Committee, the overseeing body that the Director creates. All the “granting variances” sections refer to this procedure.

In the Rules, there is no standard for an appeal after a variance has not been granted. Additionally, there is no criteria discussed on getting selected for a variance. It appears the IDPR has complete discretion on this matter.

B. The Procedure Used by IDPR

From a conversation with an office coordinator at the IDPR office in Springfield, IL, the procedure in granting a variance is as follows:

- 1) Applicant files the necessary application.
- 2) An Investigation Board examines the application.
- 3) If Investigation Board believes that the applicant should be granted a variance (this depends on whether conviction was a while ago, applicant has been sufficiently rehabilitated, the type of crime committed, etc.), application then goes to the appropriate Licensing Board/Committee with a recommendation for granting a variance.
- 4) Licensing Board/Committee then forwards applications to Director and he or she has the discretion to approve it.

- 5) If Director grants variance, then he or she must explain reasons for the decision, as required in subsection (b).

Thus, it appears that an applicant cannot request a variance; in a sense, an applicant who may not comply with the licensing requirements must file an application to make certain that he will be refused a license.

IDPR does not keep public records as to the number of variances granted.

IX. ILLINOIS CASES

After an extensive literature review, we were unable to find any Illinois cases that deal with these specific licenses and their ex-offender barriers.

However, the courts have interpreted how to demonstrate “of good moral character.” In *Abrahamson v. Illinois Department of Professional Regulation*, the plaintiff, a medical school graduate, was denied a license to practice medicine because of a lack of good moral and ethical judgment. The licensing statute specified that an applicant must be of “good moral character.” IDPR based their decision on the fact that the plaintiff made misstatements regarding his education and denials for a license from other states. The Illinois Supreme Court affirmed the IDPR decision. The Court stated, “the applicant bears the burden of establishing him or her good moral character with the other statutory requirements, from the time of his or her application to the granting of the license.” 153 Ill.2d. 76, 92 (1992).

In another case involving a physician, “good moral character” was deemed violated when the physician defaulted on his student loans. The court stated: “... The [Medical Practice] Act requires that applicants for a license be of good moral character. ... Many of these grounds are not directly related to medical competency. These grounds include conviction of a felony and engaging in dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public. ... It is reasonable for the State to not renew a medical license when the licensee culpably defaults on an educational loan and the loan has enabled the licensee to pay for the education that is a prerequisite for the license. If the licensee culpably does not repay the loan, this calls his moral character into question and could constitute conduct which defrauds or harms the public.” *People v. Cully*, 286 Ill.App.3d 155, 162 (2nd Dist. 1997).

In a case involving an attorney who made false and conflicting statements during a contract negotiation and was suspended for three years, the Illinois Supreme Court stated: “Good moral character in attorneys includes honesty and the practice of good morals in all their dealings. Fraud consists of anything calculated to deceive, whether it be the suppression of truth or the suggestion of what is false, and whether it be by direct falsehood or by innuendo, by speech, or by silence.” *In re Benjamin Alschuler*, 388 Ill. 492 (1944).

Although these cases do not apply to the 22 specific licenses, they provide a baseline in defining the scope of “good moral character.”

Summary of Findings

(Note that the following findings were concluded from not only the reviews conducted but also from other related materials, meetings, and discussions with administrators from the IDPR, employment service agencies and higher education institutions working with ex-offenders in Illinois.)

- At the time of the initial review, the Illinois Compiled Statutes contained ninety-eight (98) statutes regulating licensure within certain employment areas, of these, fifty-seven (57) place some stipulation on issuance of licensure, and thereby subsequent employment, based upon criminal conviction status.
- There are certain professions /occupations with absolute bars to licensure for particular types of crimes and/or resultant levels of convictions ranging from misdemeanors to felonies.
- Of the twenty- two (22) categories of Illinois professional and occupational licensing requirements reviewed, 15 are regulated directly by the IDPR. The seven (7) remaining categories are regulated by the Department of Children and Family Services, the Secretary of State of Illinois, the Department of Agriculture, the Office of Banks and Real Estate, the State Fire Marshall, and the Department of Labor.
- Eleven (11) of the twenty –two (22) categories include a restriction prohibiting the “habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug...”
- Of the fifteen (15) professional /occupational licenses regulated by IDPR, eleven (11) fall under the current classification category “may refuse,” two (2) include the additional condition referring to “sufficiently rehabilitated,” and the remaining two (2) consider an applicant in terms of “moral character.”
- Of the fifteen (15) licenses that are regulated by the IDPR, fourteen (14) have an option for the Director to grant variances to certain candidates.
- The Rules for the Illinois Roofing Industry Act do not include a “granting variance” provision.
- The provision from which variance is granted is not statutorily mandated.
- There are no standardized criteria or guidelines for the “granting of variance.”
- An applicant cannot request a “granting of variance.”
- There is no standard of appeal for denial of the “granting of variance.”

- IDPR does not keep public records as to the number of variances granted.
- There is a separate waiver process that has been instituted by the State for selected professions/occupations in the health care field. Although the “granting of variance” by the director of the agency issuing the particular licensure gives the possibility of a waiver provision option, the Illinois General Assembly enacted a separate waiver provision for the health care field which to date cites a “less than 50%” granting of waiver rate to applicants as part of the information provided on the application form.
- No case law regarding appeals to denial of issuance of licensure to an ex-offender was discovered prior to the issuance of this report.
- Currently, the section of the IDPR responsible for the recording of data pertaining to ex-offender applicants and the subsequent determinations regarding the issuance of licensure does not have a computerized system for the purposes of information and data collection, tracking, analysis, and/or evaluation.
- Employment service providers and adult education/career counselors do not have access to an on-going mechanism for becoming knowledgeable or keeping abreast of the statutes, regulations, or application processes involved in the obtaining of such licenses as specifically related to ex-offenders.

Recommendations

- A waiver application process similar to that mandated within the health care field should be instituted across the board for all the other professions and occupations that contain stipulations for ex-offenders in the issuance of licensure.
- Criteria for the “granting of variance” should be established for all categories.
- Information regarding restrictions, the “granting of variance” and criteria, and the appeals process should be included in the licensure application package.
- Establishment of a means for applicants to apply for a waiver immediately upon or soon after submission of their application for licensure as is currently done for designated professions and occupations within the health care field.
- Provide technical assistance to individuals in completing the application and a “granting of variance” and/or waiver processes.
- Develop informational materials and conduct workshops for employment service providers and adult education career counselors working with ex-offenders

regarding licensure policies, regulations, “granting of variance” and waiver processes, and application forms.

- Development of a computerized management information system to track, document and report all appropriate data and information regarding application by ex-offenders for licensure and the subsequent results.
- Research, analyze and report on the number of licenses granted and denied to individuals with criminal records by profession and by type of crime to determine which are the most easy and difficult for ex-offenders to gain licensing in and why.
- Establish a means of tracking and reporting on the number of individuals who are granted variances after appealing a denial for licensure and research why they were successful.
- Conduct a review of the remaining professional and occupational statutes with restrictions for ex-offenders and publish findings with recommendations.

Appendix I

Health Care Worker Background Check Act [225 ILCS 46]

<http://www.legis.state.il.us/ilcs/ch225/ch225act46.htm>

Section 40 is titled “Waiver” and states the following:

(225 ILCS 46/40)

Sec. 40. Waiver.

(a) An applicant, employee, or nurse aide may request a waiver of the prohibition against employment by submitting the following information to the entity responsible for inspecting, licensing, certifying, or registering the health care employer within 5 working days after the receipt of the criminal records report:

(1) Information necessary to initiate a fingerprint-based UCIA criminal records check in a form and manner prescribed by the Department of State Police; and

The fee for a fingerprint-based UCIA criminal records check, which shall not exceed the actual cost of the record check (a-5). The entity responsible for inspecting, licensing, certifying, or registering the health care employer may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by paragraphs (1) and (2) of subsection (a).

(b) The entity responsible for inspecting, licensing, certifying, or registering the health care employer may grant a waiver based upon any mitigating circumstances, which may include, but need not be limited to:

- (1) The age of the individual at which the crime was committed;
- (2) The circumstances surrounding the crime;
- (3) The length of time since the conviction;
- (4) The applicant or employee's criminal history since the conviction;
- (5) The applicant or employee's work history;
- (6) The applicant or employee's current employment references;
- (7) The applicant or employee's character references;
- (8) Nurse aide registry records; and
- (9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, patients, or clients.

(c) The entity responsible for inspecting, licensing, certifying, or registering a health care employer must inform the health care employer if a waiver is being sought and must act

upon the waiver request within 30 days of receipt of all necessary information, as defined by rule.

(d) An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with Section 35.

(e) The entity responsible for inspecting, licensing, certifying, or registering the health care employer shall be immune from liability for any waivers granted under this Section.

(f) A health care employer is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver under this Section.

