Licensed to Work
A Policy Brief on Illinois’ Use of Probation and Reprimand Against New Licensees with Arrest and Conviction Records

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I. Background

Around 29 percent of the American workforce is licensed, up from 5 percent in the 1950s. Now, a quarter of Illinois’ workforce is licensed and 5 percent is certified. Meanwhile, it is estimated that 70 million people — or 1 in 3 adults in the US — have arrest or conviction records. By one estimate this is true of 42 percent of Illinois’ working age adults.

These facts of the American workforce converge when a person with a conviction record applies for an occupational license. Employment restrictions account for 65 percent of the statutory and regulatory disqualifications arising from a prior felony conviction. In at least 118 Illinois occupations, a license may or must be denied due to a prior conviction.

In some cases, regulatory agencies can issue a license on probation or reprimand (LPR) instead of an outright denial because of any past conduct for which an adverse regulatory action is authorized. This type of license allows people with an arrest or conviction record the possibility of working in a licensed profession while giving regulators a tool to enforce their executive mandate.

The Illinois Department of Financial and Professional Regulation (IDFPR), responsible for over 200 professional licensure categories, can issue LPRs for several professions. Other agencies that may do the same include the Office of the State Fire Marshal when granting pyrotechnic distributor licenses, the Illinois Deaf and Hard of Hearing Commission when granting interpreter licenses, and the Illinois Commerce Commission when granting permits and licenses to individuals and entities engaged in the business of collateral recovery.

IDFPR publishes monthly enforcement reports that contain a list of enforcement action against new or current licensees, corresponding license numbers and a summary of the underlying conduct. These reports reveal that from 2011 to 2015, IDFPR issued 862 LPRs based in part or in whole on prior criminal history. During this period, IDFPR issued these licenses in a variety of professions with the majority under the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 and the Private Detective, Private Alarm, Private Security, Fingerprint Vendor and Locksmith Act of 2004 (Chart 1).

II. The Problem

As currently implemented by IDFPR, an LPR has some undesirable consequences for a new licensee.

1. **Permanent disciplinary mark**

   IDFPR maintains a publicly accessible database of licensees that outputs a licensee’s name and license status and indicates whether or not the licensee has a disciplinary history. When a person receives an LPR due to a prior conviction, a permanent record of disciplinary action is made on the licensee’s professional summary. Such information is misleading, as it fails to relay adequately that the conviction predated licensure. As a result, prospective employers and customers may incorrectly conclude that the licensee engaged in job-related misconduct while licensed.

2. **Multiplication of arrest and conviction history information**

   For a decade, state lawmakers have passed a series of laws that recognize rehabilitation to be as important a function of the criminal justice system as deterrence and incapacitation. A person can have his criminal record sealed or expunged or conceal his record using a number of other tools.
However, these are rendered ineffectual by parallel recordkeeping. If a licensee were to have his only conviction sealed after obtaining an LPR, a record of that conviction would still appear on his professional record.

Applicants with criminal records already endure a longer licensing process and receiving an LPR with restrictions at the end of it can be discouraging, especially because not all employers employ or retain a person with an LPR.

3. **Work restrictions**

A license on probation may be issued with or without monitoring requirements. Some cases reasonably require these. However, left to the discretion of state agencies, the duration of probationary status and reporting requirements can last years. Depending on the profession, it can even restrict an individual’s professional practice.

III. **Recommendations**

1. **Issue LPRs for a limited amount of time**

State agencies should set a time cap beyond which an LPR automatically upgrades to an ordinary, unencumbered license. In such a scenario, an otherwise qualified applicant who has a relevant conviction history would be given an LPR to last a maximum of 6 months or 3 months after employment. Using time-limited LPRs would make it easier for new licensees to find and retain employment. Moreover, an analysis of IDFPR’s...
enforcement records makes apparent a low incidence of recorded post-licensure disciplinary action\(^\text{11}\). In 2011 and 2015, a total of 366 LPRs were issued in whole or in part on the basis of prior criminal history (Chart 2).

As of October 2017, 91.8 percent of these license holders had no record of subsequent violation. Of those, 3.6 percent were subsequently disciplined due to delinquency in child support payments, 1.4 percent had a probation or consent order violation that was not related to arrest or conviction record, and 1.9 percent were disciplined either for an old or new charge or conviction, or improper disclosure of criminal history at the time of renewal\(^\text{12}\).

2. **Adopt guidelines for issuing LPRs**

   At least 11 Illinois agencies and entities share the responsibility of licensing. Yet until recently, only a few licenses had codified guidelines for conviction review, whether through administrative rules or statute\(^\text{13}\). Public Act 100-286 (SB 1688; Sen. Kwame Raoul, Rep. Elgie Sims Jr.)\(^\text{14}\), which was enacted recently, creates shared guidelines for conviction reviews. Similar reviews should be considered for LPRs to prevent their being overprescribed. That LPRs are not always issued with monitoring requirements suggests that specific factors determine the addition of monitoring in some cases. Whatever constitutes the calculus

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* Chart 2. Post-Licensure Disciplinary Action

This chart reflects, as of October 2017, how many of the licensees who received LPRs in 2011 or 2015 were subsequently disciplined by IDFPR, classified by the cause of action.

- Child support payment delinquency
- Unlicensed Practice* 
- Probation or consent order violations not citing criminal record
- Failure to file and/or pay Illinois state income taxes
- Disciplinary action after licensure based on criminal record+
- No information
- No recorded disciplinary action after licensure

* One case of the kind
+ Includes new convictions, IDFPR’s probation order violations citing old or new convictions, and improper disclosure of arrest or conviction

Source: Illinois Department of Financial and Professional Regulation monthly enforcement reports, 2011 and 2015

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of state agencies should be formalized to ensure judicious use of LPRs.

3. Reporting

Not all records of disciplinary action specify that the cause preceded licensure. As a result prospective employers and customers who do not match the date of issuance to that of the imposed disciplinary action may incorrectly conclude that the licensee engaged in professional misconduct. Public professional records should accurately reflect that the enforcement action was due to a conviction antedating licensure.

4. Confidentiality protections

An LPR interferes with employment and retention and can be issued for several reasons of which an applicant’s criminal history is one. It was only in 2014 that state lawmakers provided some recourse to licensees against the copious menu of punishable conduct. A section was added to the Department of Professional Regulation Law allowing disciplinary history related to a small set of professional infractions to be classified as confidential on a licensee’s request. Those infractions include failure to pay taxes or student loans, continuing education, failure to renew a license on time, failure to obtain or renew a certificate of registration or ancillary licenses, advertising and any grounds for discipline removed from the licensing act. Effective January 1, 2018, Public Act 100-286 expands these confidentiality protections to probation-status licenses issued on the basis of prior convictions. Prospective and current licensees should be informed of its availability, scope and effect, particularly for renewal and out-of-state license applications.

IV. Conclusion

Public safety and employment opportunities are mutually reinforcing. Yet, in Illinois a professional license may be denied for a variety of reasons including child support debt, unpaid taxes or student loans and past convictions. LPRs represent a compromise and for qualified professionals with job-related convictions, a second chance. However, their issuance must be better guided so that a professional license, whether or not unencumbered, is a license to work and not simply the culmination of a bureaucratic exercise. Using data from IDFPR’s enforcement reports and stakeholder interviews, this policy brief argues for judicious use of LPRs coupled with accurate recordkeeping and greater confidentiality protections.
Endnotes


4 The National Employment Law Project arrived at the estimate using the following methodology: “A Bureau of Justice Statistics 2012 survey documents the number of people with records in each of the state criminal history databases. See Table 2, which shows there are 6,164,800 people in Illinois. These include adults with arrest and conviction records. This is the only database that collects the state totals. Unfortunately, the state data doesn’t take into account that some people have records in multiple states and that some people have died but are still in the state systems. To account for these factors, our methodology conservatively reduces the total number by one-third. So, by our estimate, there are 4,105,757 adults in Illinois with an arrest or conviction record. And there are 9,876,476 adults in the total state according to the latest census. That means 42% of Illinois adults have an arrest or conviction records.”

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5 Caroline Coatney, Jennifer Le, David R. Miller, “Appendix: Licenses That Can Be Denied for a Felony Record,” in “Kinds of Licenses Denied to Felons” (2012), Legislative Research Unit. Available at http://icjia.state.il.us/IERTF/pdf/LegislativeResearchUnitDocuments/Licensing%20restrictions.pdf.


10 The sum 862 comprises of licenses that were issued based on criminal convictions, charges or arrests alone, improper criminal history disclosure, prior discipline in other states explicitly citing a licensee’s criminal history, convictions and improper disclosure, or a conviction coupled with unprofessional conduct. Some had other or old licenses in the same or a different field. Out of the 366 LPRs issued in 2011 and 2015 based in part or in whole on arrest or conviction records, 14 were to applicants who had other professional licenses at the time not including training certifications like the Original Firearms Training Certification and the Real Estate Leasing Agent Student License. Drawn from IDFPR Consolidated Reports, Illinois Department of Financial and Professional Regulation. Available at http://www.idfpr.com/News/Disciplines/DiscReports.asp.

11 Any infractions that did not result in a formal enforcement action would not be captured in the enforcement reports.

12 The professional records of individuals who received an LPR in 2011 or 2015 were checked using IDFPR’s License Look-Up feature. As of October 2017, records of disciplinary action for these cohorts remained ineligible to be considered expunged under Section 2105-207 of the Department of Professional Regulation Law. The wait period for relief under this section was changed from 7 years to 3 years by Public Act 100-0286, effective January 1, 2018.


15 Interviews with affected individuals and employment lawyers.


17 According to debate transcripts, licensees with a disciplinary record even pertaining to unpaid taxes and educational loans faced higher premiums or had difficulty getting insurance.
