



February 22, 2023

Testimony Regarding SB-517 (Consideration of criminal history in occupational licensing)

Submitted by Joshua Gaines, Project Manager, Economic Mobility, Council of State Governments Justice Center

The Council of State Governments Justice Center is a national nonprofit nonpartisan organization representing state officials in all three branches of government. The Center's Fair Chance Licensing Project seeks to strengthen economies, promote employment, and reduce recidivism by supporting the adoption of national best practices that expand occupational and professional licensing opportunities for qualified workers with criminal histories. In recent years, we have worked with policy makers and stakeholders in over a dozen states to help them achieve those goals.

In 2021 the Justice Center helped facilitate a bi-partisan working group of state policymakers, state agencies, regulators, and other stakeholders to develop recommendations that serve as the foundation of SB-517. Those recommendations were based on the proven best practices represented in the laws of the 40+ states that have enacted robust occupational and professional licensing policies designed to lower barriers to work while continuing to protect public safety.¹ Three basic principles inform those best practices:

- 1) Licensing bodies should have the authority to deny applicants with past convictions that directly relate to the tasks and duties of a licensed activity such that licensure would create an appreciable risk to public safety.
- 2) Workers should not be barred from occupational licensure solely due to a past conviction; instead, they should be given individualized consideration that accounts for their past and current circumstances and the unique nature of their criminal conduct.
- 3) Licensing policies and practices involving determinations about the criminal history of applicants should be transparent and consistently applied.

Currently, Oregon's licensing law lags far behind most of the states (including neighbors Idaho, Washington, and California) when it comes to embracing these key principles.² SB-517 would transform Oregon's law from a national anomaly into one of many national models for promoting opportunity and protecting public safety.

Best practices incorporated into the bill include the following:

- Requiring **individualized consideration of applicants and their convictions guided by a consistent factor-based analysis** that includes an assessment of the nature and severity of the offense, the age of the

¹ For information about state-by-state adoption of these policies, visit Fair Chance Licensing Project: States Expand Access to In-Demand Jobs, CSG Justice Center, <https://csgjusticecenter.org/projects/fair-chance-licensing/>.

² The Institute for Justice, a national free market-oriented law firm and advocacy group, graded Oregon's fair chance licensing law a D- in a 2021 national assessment, placing it among the bottom 7 states in the country. See Institute for Justice, Barred from Working, <https://ij.org/report/barred-from-working/state-grades/>. (Since then, 2 of those 7 states – Delaware and Louisiana -- have enacted laws that would significantly improve their standing and leave Oregon in the bottom 5.)



offense, evidence of rehabilitation, and the specific duties and responsibilities of the licensed activity. 31 states have implemented similar policies: AZ, CA, CO, CT, DE, GA, IA, ID, IL, IN, KY, LA, MD, MN, MO, MS, NC, ND, NJ, NY, OH, PA, RI, TN, TX, UT, VA, VT, WA, WI & WV

- Creating a **prequalification process** so that workers can learn whether their criminal history is disqualifying *before* making significant investments in required education and training. (A decision that criminal history is *not* disqualifying would be valid only if there are no subsequent changes in criminal history.) 26 states: AZ, AR, CT, DE, ID, IN, IA, KS, LA, MS, MO, NE, NH, NC, NV, OH, OK, PA, TN, TX, UT, VT, WA, WV, WI & WY.
- Providing **robust procedural protections** for applicants, including the right to written notice of the reasons a particular conviction is disqualifying and the right to submit additional mitigating evidence/information before a final denial is issued. 33 states (written notice): AR, AZ, CA, CO, CT, DE, IA, IL, IN, KY, LA, ME, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, TN, TX, UT, VA, VT & WI; 19 states (right to submit additional information): CO, DE, HI, IA, KY, LA, MI, MO, NC, NH, NJ, OH, OK, RI, TN, TX, UT, VT & WI.
- Explicitly limiting consideration of certain **non-conviction dispositions** (e.g., arrests not followed by convictions & juvenile adjudications) that are either not probative of guilt or are specifically designed to mitigate the impact of collateral consequences like licensing barriers. (Exceptions apply for certain serious juvenile offenses.) 19 states: AZ, CA, CO, CT, DE, IL, IN, IA, KS, MI, MN, NM, OH, OK, PA, RI, TX, UT & WA.

Please note that the **SB-517 does not require licensing bodies to turn a blind eye** to the conviction of any applicant. It simply creates standards for how convictions must be weighed. Note too that **carveouts limit the bill's applicability to certain licenses** involving the care or supervision of vulnerable persons.

SB-517 closely tracks the approaches taken by the many states that have recently endeavored to make the licensing process more fair, consistent, and transparent. Those states are proving that targeted policies can significantly expand employment opportunities without jeopardizing public safety. The enactment of SB-517 would bring Oregon significantly closer to fully realizing those goals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua Gaines', with a stylized flourish at the end.

Joshua Gaines
Project Manager, Economic Mobility
Council of State Governments Justice Center