Background: Automatic Expungement of Conviction History

One in three American adults have a criminal conviction on their record and face barriers to participating in the workforce, despite having completed their sentence. [1] Some barriers are structural, such as when convictions of certain crimes or the severity level of the offense automatically disqualifies an applicant for a license, certification, or employment. The stigma of having a criminal conviction also often serves as a barrier to workforce participation.

"Clean slate" legislation aims to address these barriers by setting up a structure of automatic, non-discretionary expungement or sealing of convictions that meet certain criteria (*e.g.* non-violent crimes and most misdemeanors), typically with exceptions for violent crime or sexual offenses. These laws authorize an individual who has had their criminal record automatically expunged to state that they have no prior criminal convictions when asked on an application. While the laws often include narrow exceptions permitting access to the expunged conviction record, such as for law enforcement in prosecuting a similar offense by the individual, licensing agencies and certification organizations have not been included in these exceptions to date.

The PCC's Position on Clean Slate Legislation

The PCC supports the goals of clean slate legislation to expand opportunities of gainful employment for returning citizens who have not reoffended. This worthy objective, however, must be balanced against the need for state licensing boards and private certification organizations to have information about conduct that (1) is relevant to an individual's ability to practice a profession safely and competently, and (2) has been established beyond a reasonable doubt, with due process to the individual, so that there can be an individualized evaluation of whether it serves the public interest to confer on that individual the endorsement of the state or the certification organization. With this balance in mind, the PCC has adopted the following position on clean slate legislation:

- ***The conduct underlying a conviction is critical to determining an individual's fitness to practice a profession.*** Classification of offenses (*i.e.* as misdemeanor or felony), time passed since an offense was committed, and whether the crime was violent or not, are relevant but not determinative of an individual's fitness to practice an occupation. For example, misdemeanors are often the result of accepting a plea bargain, even though the underlying conduct would otherwise be classified as a felony. Further, numerous non-violent crimes merit continuing disqualification from certain professions, regardless of the time passed since the offense was committed (*e.g.*, a home health nurse convicted of identity theft or embezzlement, a physician performing unnecessary procedures in furtherance of Medicaid fraud).

- ***The public must be able to trust the endorsement inherent in licenses and certifications.*** Licensing boards and private certification organizations provide an affirmative, public seal of approval to the applicants they accept. While the PCC believes an individual should not be permanently stigmatized or automatically disqualified for having a

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[1] NATIONAL CONFERENCE OF STATE LEGISLATURES, *Criminal Records and Reentry Toolkit*, https://www.ncsl.org/civil-and-criminal-justice/criminal-records-and-reentry-toolkit (last visited Dec. 16, 2024)

criminal record, licensing boards and certification organizations must be able to consider an individual's relevant past conduct as part of an individualized and profession-specific review before endorsing them.

- ***Certification organizations rely on state licensing agencies to act as front-line protection for the public.*** Many certification organizations and professional societies rely on the decisions of state licensing agencies in issuing credentials. If state licensing agencies and certification organizations are unable to consider the conduct underlying an individual's conviction when determining whether to grant or deny licensure, the public may seek to hold private certification organizations responsible for harm committed by a credentialed professional.

The PCC's Recommendations for Clean Slate Legislation

The PCC is committed to working with legislators to craft language that balances the admirable objective of clean slate legislation and the need to uphold established professional standards that protect the public from harm. The PCC recommends:

- Excluding crimes of fraud from automatic expungement.
- Using the date an individual completes their sentence, not the date of conviction, to calculate eligibility for expungement.
- If an individual has pending criminal charges, delaying automatic expungement until such charges are resolved.
- Requiring disclosure to certification and licensing authorities, if asked about conviction history, of expunged convictions that relate to conduct that would violate disciplinary policies.
- Prohibiting the denial of a license or certification to an individual on the basis of an expunged conviction unless the underlying conduct, if committed by a current practitioner, would likely result in revocation of the license or credential.

About the Professional Certification Coalition

The Professional Certification Coalition (PCC) is a nonprofit association established to address legislation that affects private professional certification organizations, the professionals they credential, and the public and other stakeholders who rely on those credentials. The PCC has approximately 100 organizational members, including professional certification organizations, professional societies, and service providers. The PCC's members collectively represent or certify millions of professionals across the country in a broad spectrum of fields, including construction, education, food safety, healthcare, hospitality, engineering, financial services, transportation, and information technology services, among many others. For more information, please visit https://www.profcertcoalition.org.