



WHITE PAPER ON “CLEAN SLATE” LEGISLATION

I. Background: Automatic Expungement of Conviction History

Approximately 77 million Americans – or one in three – 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 a certain conviction type or severity (e.g., felony) automatically disqualifies an applicant for a license, certification, or employment. Other barriers to workforce participation arise from the stigma associated with having a criminal conviction record, especially in the employment context. For that reason, many states and localities have enacted “Ban the Box” laws that prohibit employers from obtaining, inquiring about, or considering an applicant’s criminal conviction history until after a conditional job offer is extended. Other laws restrict the kind of criminal history information that employers can consider, such as by excluding criminal convictions of a certain age or requiring that employers conduct an individualized assessment to determine whether the conviction is sufficiently related to the offered employment.

Likewise, in the licensing context, many states have enacted laws requiring licensing agencies to consider multiple factors prior to disqualifying a candidate from a license, such as time since conviction, rehabilitation efforts, the nature of the offense and its relation to the licensed profession, etc. Other laws restrict licensing agencies from even considering certain conviction history information, reasoning that even an individualized weighing of factors is equivalent to automatic disqualification. The Professional Certification Coalition² (PCC) refers to legislation addressing licensing decisions relating to applicants with criminal conviction histories as “returning citizens” legislation.

Typically, neither “Ban the Box” laws nor returning citizens legislation apply directly to private certification organizations. Certification organizations, however, are directly impacted by so-called “clean slate” laws that numerous jurisdictions have enacted. Although most states currently have a process whereby individuals with conviction records for certain offenses can apply to expunge or seal those records after a specified length of time has passed without recidivism, many eligible individuals are either unaware of the process or lack the resources to navigate it, especially if they require the assistance of legal counsel.

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)

² The Professional Certification Coalition 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>.

As its name suggests, “clean slate” legislation aims to solve this problem by setting up a structure of automatic, non-discretionary expungement or sealing of arrest records and convictions that meet certain criteria (e.g. non-violent crimes, most misdemeanors), typically with exceptions for crimes of violence or sexual offenses. These laws specify that an individual who has had their criminal record automatically expunged can lawfully state that they have no prior criminal convictions when asked on an application and often include very narrow exceptions permitting access to the expunged conviction record, such as for law enforcement in prosecuting a similar offense by the individual. To date, licensing agencies and certification organizations have not been included in these narrow exceptions.

Clean slate legislation has gained traction across the U.S. in recent years, and the PCC has monitored an increasing number of bills introduced in state legislatures. As of December 2024, twelve states have enacted clean slate laws.³

II. The PCC’s Position on Clean Slate Legislation

The PCC supports the impetus for clean slate legislation: reducing barriers to participation in the workforce for individuals with a criminal conviction who have served their sentence and refrained from reoffending. Expanded professional opportunities for these individuals advances the important goal of reducing recidivism and is a key component of national efforts to reform the criminal justice system. It benefits both society and individuals who have conviction histories to support their rehabilitation and ability to become contributing members of society able to work to their full potential.

This worthy objective, however, must be balanced against the need for state licensing boards and private certification organizations to evaluate 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.

Licensing agencies and certification organizations confer credentials on which the public relies. These credentials are an endorsement by the state or by the certification program that an individual is qualified and meets minimum standards for conduct or trustworthiness established for the profession. Accordingly, licensing agencies and certification organizations must have access to facts about an individual’s past conduct to make informed, individualized decisions when conferring credentials that endorse the individual as trustworthy.

A. The Conduct Underlying a Conviction is Critical to Determining an Individual’s Fitness to Safely Practice a Profession

As each state’s criminal code varies widely, the classification of an offense (*i.e.* as either a misdemeanor or felony) and, for some offenses, the time elapsed since it was committed, are insufficient indicators of what convictions should be considered prior to authorizing an individual to practice a profession with the endorsement of a state licensing board or a private certification organization.

³ CLEAN SLATE INITIATIVE, *Clean Slate in the States*, <https://www.cleanslateinitiative.org/states#states> (last visited Dec. 16, 2024).

Many criminal convictions stem from a plea bargain, where an individual agrees to plead guilty to the lesser offense of a misdemeanor, even though the *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. This is especially true for professions that place practitioners in a position of trust or give them access to vulnerable individuals. For example, if a home health nurse has engaged in identity theft or embezzlement, a licensing board or certification organization should be permitted to consider whether that individual would pose an unreasonable risk to their vulnerable clients. Fraud is also a non-violent crime that is relevant to many professions, but typically is not an exception to the automatic expungement provisions of clean slate legislation.

B. The Public Must be Able to Trust the Endorsement Inherent in Licenses and Certifications

Clean slate bills, by their nature, place blinders on employers, landlords, and others who interact with individuals with criminal conviction histories. Clean slate bills prevent them from learning about past conduct that may otherwise influence their decisions about employment, housing, or other matters, in order to remove obstacles to successful community reentry.

Unlike other areas in society where individuals with criminal conviction histories face barriers, licensing boards and private certification organizations provide an affirmative, public seal of approval to the applicants they accept. A license or professional certification reflects more than a demonstration of technical skills: it promotes transparency and acts as an assurance to the public that an individual is qualified to practice competently and safely. These credentials also signal to the public that the individual abides by the code of conduct for that profession.

Preventing licensing agencies and certification organizations from considering certain relevant conduct by applicants or current practitioners will devalue and undermine the public's trust in credentials – especially if harm is committed by an individual with an expunged record. Permitting licensing agencies and certification organizations to inquire into other background information but blocking them from any knowledge about relevant criminal conviction information undermines the role that these credentialing organizations hold in our society.

While the PCC believes that an individual should not be permanently stigmatized or automatically disqualified simply for having a criminal record, it is critical that licensing boards and certification organizations be able to consider an individual's relevant past conduct as part of an individualized and profession specific review before endorsing.

C. Certification Organizations Rely on State Licensing Agencies to Act as Front-Line Protection for the Public

Many certification organizations and professional societies, whether the credentials they issue are wholly voluntary or required for entry into a regulated profession, rely on the decisions of state licensing agencies. Such organizations lack the resources or legal authority to conduct full investigations and disciplinary procedures and typically do not require applicants to undergo

background checks, unlike some licensing agencies. Certification organizations often look to decisions by licensing agencies in considering applications for credentials.

If licensing agencies and certification organizations are unable to consider the conduct underlying an individual's conviction – because it has been expunged – 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. Further, depending on the criteria set for automatic expungement, this could also create loopholes in licensure regulations.

III. The PCC's Recommendations for Clean Slate Legislation

The PCC is committed to working with legislators to craft language that balances the need to ensure individuals who have completed their sentence without reoffending have the ability to earn a living and the need to uphold established professional standards that protect the public from harm.

To achieve this balance, the PCC recommends:

- Excluding crimes of fraud from automatic expungement.
- Using the date an individual completes their sentence, not the date of a conviction, to calculate the time necessary to be eligible for automatic expungement.
- If an individual has pending criminal charges, delaying automatic expungement until such charges are resolved.
- Expanding the exceptions to access to expunged records to allow licensing boards to consider conduct that would violate standards of conduct if committed by a current practitioner.
- Requiring that individuals with expunged convictions relating to conduct that would violate disciplinary policies if committed by a current practitioner disclose the expunged conviction to certification programs and licensing authorities if asked about conviction history.
- Prohibiting licensing agencies and certification organizations from denying 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.