

Criminal Justice Research Study

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Introduction

In June 2019, the Institute for Credentialing Excellence (ICE) initiated a research project to explore how private certification organizations use information about an individual's criminal history in making credentialing decisions.

The project was initiated due to an increase in legislative initiatives across the states seeking to limit the ability of state professional and occupational licensing agencies to consider a candidate's criminal history in making licensing decisions or to require individualized review of criminal conviction history, rather than categorical disqualification. These proposed reforms stem from efforts in many states to make it easier for former offenders to reenter the workforce after they have completed the course of correction imposed by the court. ICE has been working with the [Professional Certification Coalition \(PCC\)](#), a group formed to monitor and respond to legislation affecting private certification organizations. The PCC supports voluntary self-regulations by private certification organizations and adoption of eligibility and conduct standards that are appropriate to scope and significance of the organization's certification. The PCC is also concerned that some legislative efforts have also expressly sought to restrict the right of private certification organizations to define and enforce their own eligibility standards and conduct rules. In order to provide informed guidance to the certification community on current practices and recommendations on how to improve those practices, ICE undertook this project.

The ICE determined that it would be prudent to gain a better understanding of how private certification organizations are currently handling reviews of candidates' and certificants' criminal history. This would allow the ICE to inform its member organizations about current practices as well as provide the PCC with data that may help it respond to legislation that might seek to introduce an unreasonable level of government control over the activities of private certification boards.

Project Definition and Research Methods

The ICE convened a joint task force consisting of five volunteers from the ICE Government Affairs and Research and Development committees. The task force met by telephone monthly between June and December 2019.

The task force began its work by developing a charter for the research project that identified the following remit:

Investigate the current policies and procedures of credentialing organizations related to the use of criminal background, or conduct related to ethics and moral character, when considering certification-related decisions such as eligibility criteria or status of certified individuals who commit an infraction.

Task force members developed a 36-question survey that was distributed using online survey technology to members of the ICE and the American Society of Association Executives (ASAE). The task force also developed an interview protocol to use in a series of telephone interviews that were conducted following the conclusion of the survey with volunteers solicited from among the respondents to the online survey. Participants were assured that all responses would be kept confidential and would not be associated with their organizations.

A survey invitation was sent via email to all ICE member organizations offering credentialing programs (approximately 550 organizations); multiple invitations were sent to all individuals in these organizations for whom the ICE had email addresses on August 20, 2019. The invitation requested that recipients forward the invitation to the person within their organization who was most qualified to respond to questions about the criminal background policies and procedures of the organization. In addition, the ASAE disseminated the survey via a mass email to a select group of member associations offering credentialing programs. The survey was open until September 15, 2019.

In addition to completing the survey, respondents were asked whether they would be willing to participate in a telephone interview to answer a series of more detailed questions. Thirty-two individuals agreed to be contacted for a follow-up interview. Again, interviewees were assured that their feedback would be kept confidential and would not be associated with their organization.

Each task force member was assigned approximately six potential interviewees to contact. Interview invitees were given the option of participating in a telephone interview or answering the interview questions in writing. Task force members received interview responses from 17 organizations, either by telephone or email, in September and October 2019.

Results: Survey of Organizations

Characteristics of Respondent Organizations

Eighty-nine individuals provided responses to the online survey, representing a wide range of ICE member organizations and possibly non-ICE members. While the ability to remain anonymous prevented the tabulation of exact numbers of respondents from each sample source, 80 responses were identified as ICE members based on the survey responses provided. Nine were anonymous responses from an unknown source; these may have been either ICE members or ASAE respondents. Respondent organizations offered credentialing programs in a variety of industries and professions, with a number of organizations sponsoring multiple offerings in a range of professions or roles. As shown in Figure 1, more than half (56%) of the credentialing programs offered by respondents were related to healthcare, while 36% were non-healthcare-related credentials; 8% did not respond to this question.

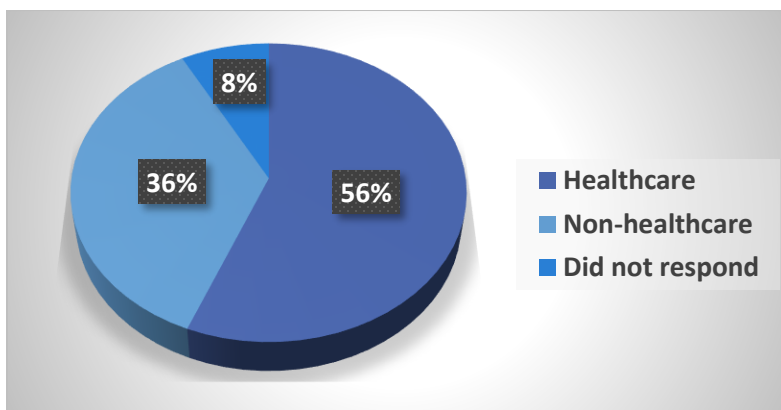


Figure 1. Type of profession or industry.

Of the respondents offering healthcare credentials, the largest representation was from nursing (16% of all respondents), followed by medical assistant/medical technician (14%), therapy (8%), and dental (6%). There was a wide range of respondents from non-healthcare-related professions or industries, with the largest representation from construction (7%), followed by fitness/wellness (6%) and financial (5%).

Organizations offered various types of credentialing programs, and a number of respondents offered multiple types of credentials. As Figure 2 shows, 90% of organizations offered certification programs, 24% offered assessment-based certificates, 12% offered certificate programs that did not include an assessment, and 10% indicated that they offered some other kind of program (e.g., endorsement, qualification, registration, or specialty).

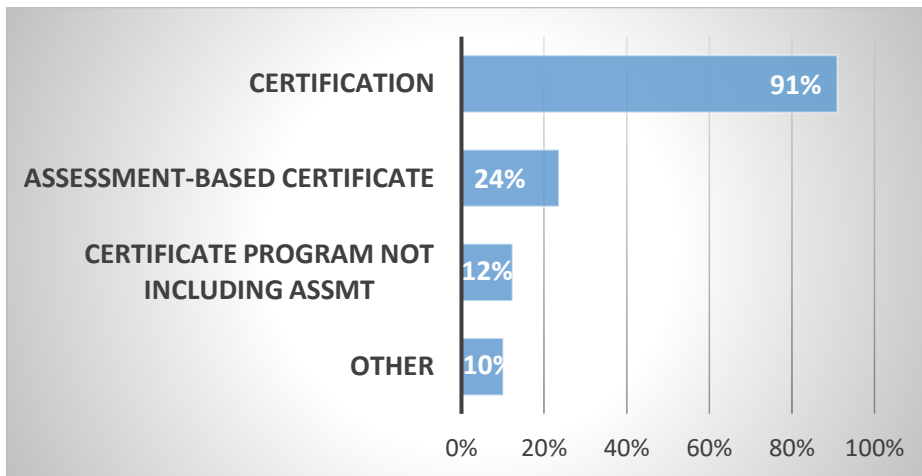


Figure 2. Types of credential(s) offered. Note: Multiple responses permitted.

The largest percentage of respondents (38%) offered two to five credentialing programs, with 29% offering one program and the remainder offering six or more programs; 5% did not respond.

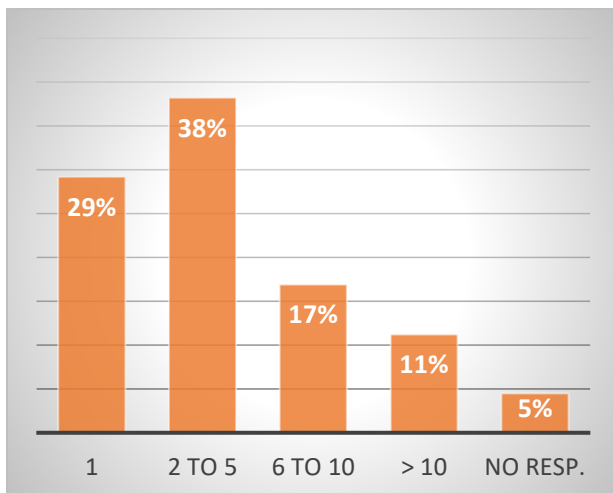


Figure 3. Number of credentialing programs offered.

About one-fourth of respondents were small-volume organizations, with 1 to 500 applicants annually over the past 3 years, and another 10% had 501 to 1,000 applicants annually, on average, over the past 3 years. At the other end of the spectrum, 18% of respondents had more than 20,000 applicants annually, on average, over the past 3 years (see Figure 4).

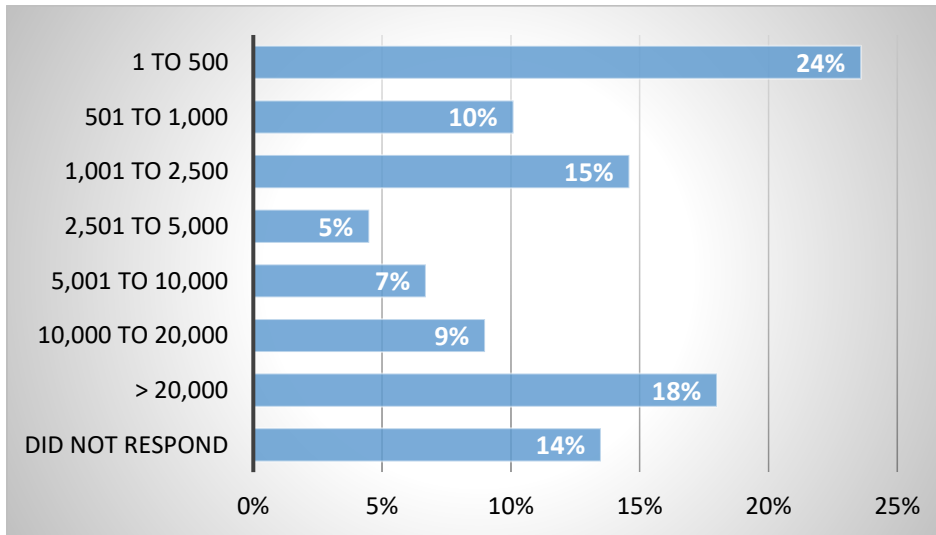


Figure 4. Average number of annual applicants.

The individuals completing the survey held a variety of roles within their organizations. Thirty-seven percent had a “director” title (including, among others, director of certification, credentialing, or credentialing programs). An additional 26% of surveys were completed by the executive director, and 18% of surveys were completed by those in a management role (including credentialing and certification managers).

The range of organizations responding to the survey represents a cross-section of ICE members offering credentialing programs. Results of this survey may be used to draw some preliminary conclusions about how organizations are handling issues related to the criminal background histories of applicants and current credential holders.

Results of Questions Related to Criminal Background History

The survey posed an introductory question asking whether respondents’ organizations took any actions based on applicant or current certificant criminal background history. About two-thirds of respondents reported that they do so, as Figure 5 shows. Based on the responses to subsequent questions, many of the one-third of respondents who indicate that they do not take actions based on criminal background history do, in fact, have policies and procedures in place, either formal or informal, to deal with a criminal background, often on a case-by-case basis. Their negative response to this question may therefore indicate that they have not implemented their existing procedures because applicants or certificants have not presented with criminal issues. In contrast, some respondents who indicated that they did not take actions did not have policies or procedures; therefore, they did not respond to some of the subsequent questions. Thus, they represent most of the “did not respond” data.

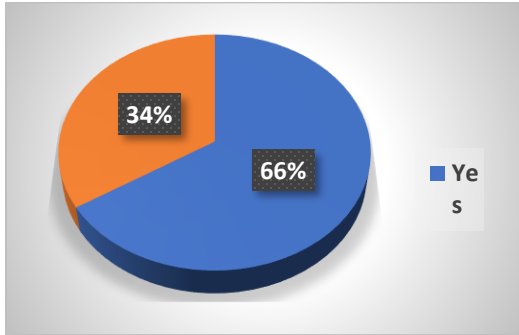


Figure 5. Organization takes action based on criminal history.

As Figure 6 reveals, respondent organizations consulted with a range of individuals and groups to develop their policies and procedures related to criminal history, often relying on multiple sources of input. The most commonly cited source was legal counsel (52%), followed by the board of directors as a whole (40%) and staff members (38%). Of those indicating that staff members were involved, the most frequently mentioned were directors or managers of certification or credentialing or compliance directors. Those selecting “other” indicated that a board, legal counsel, staff, or a combination of those groups develop the policies and procedures related to criminal background and history. A few selecting “other” indicated that they had no such policies or had a third party develop the policies.

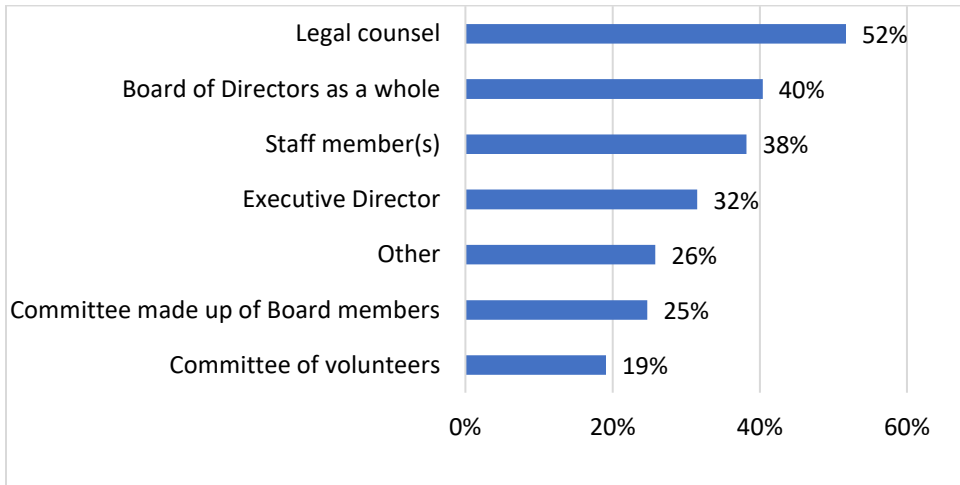


Figure 6. Who developed policies and procedures related to criminal background and history. Note: Multiple responses permitted.

About one-third of organizations (33%) updated their policies and procedures related to criminal history annually, 7% did so every 3 years, and 18% did so every 3 to 5 years. Thirty-six percent indicated that they updated such policies and procedures “as needed” and described how they determined that need, with the most common impetuses being the emergence of a situation for which no policy exists or changes in the environment and professional landscape, such as updates to accreditation standards.

As Figure 7 shows, more than half of respondents indicated that criminal infractions subject to review or action did not need to relate directly to the role or profession being credentialed, 39% indicated that they did need to relate to the role or profession, and 10% did not respond.

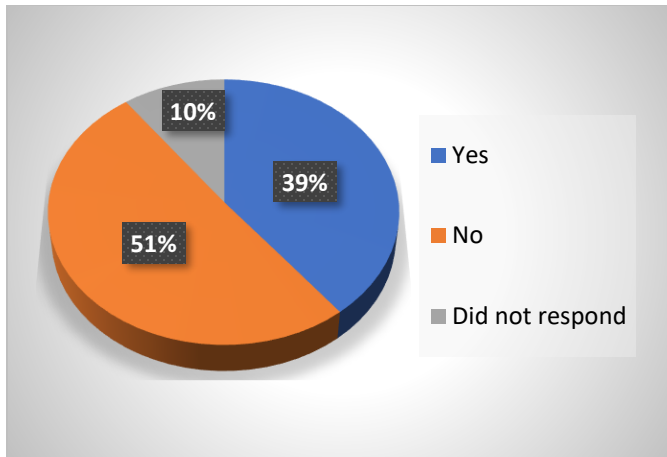


Figure 7. Whether infractions need to relate directly to the role or profession.

Only 36% of respondents indicated that disqualifying offenses were listed explicitly in the organization's policies. Organizations therefore rely on a wide range of opinions to determine whether a criminal infraction relates to the role or profession. Many of those responding indicated that more than one individual or group is consulted, as Figure 8 shows. Forty percent rely on staff members, especially for an initial determination, most typically the certification or credentialing director or manager. Of those indicating "other," responses included specific committees such as ethics or policies and procedures or state boards.

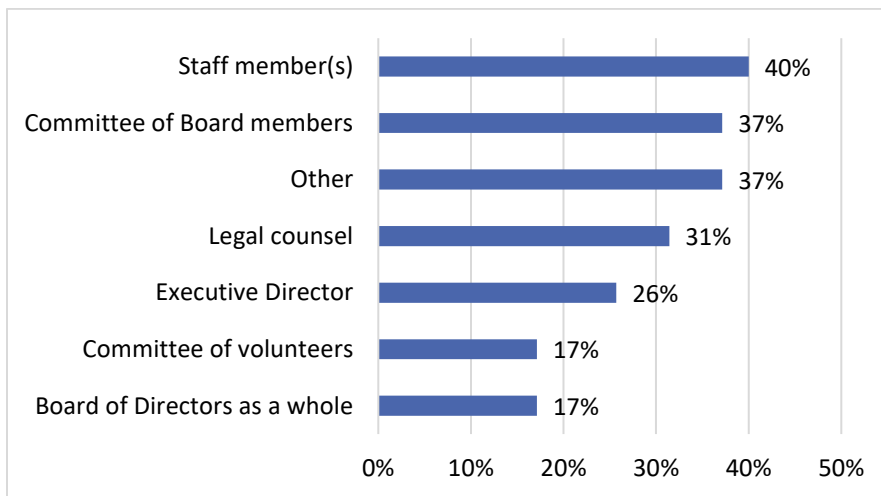


Figure 8. Who determines whether infraction relates to role or profession. Note: Multiple responses permitted; based on *n* of 35.

For many organizations, a wide range of situations trigger an automatic review of a candidate’s application, as Table 1 details, with the most common being a felony conviction or a guilty plea and a misdemeanor conviction or a guilty plea (56% and 35%, respectively). Close to one-third (32%) of respondents did not have any automatic review triggers in place. Arrest history and incidents where records were expunged were also triggers for some organizations. Almost one-quarter of organizations indicated that they had other triggers, most commonly the issuance of disciplinary action or ethics violations by a regulatory or licensing body or another credentialing organization.

Table 1

Situations That Trigger an Automatic Review of a Candidate’s Application

	N	%
Felony conviction or guilty plea	50	56.2%
Misdemeanor conviction or guilty plea	31	34.8%
Pleading no contest	21	23.6%
Any arrests	20	22.5%
Arrests pending adjudication	16	18.0%
Currently on probation	16	18.0%
Currently on parole	16	18.0%
Record expunged	7	7.9%
Pretrial diversion	13	14.6%
Other	21	23.6%
None: No automatic review for any of these situations	28	31.5%
Did not respond	6	6.7%

Note. Multiple responses permitted.

Sixty-two percent of organizations had clauses in their policies and procedures allowing them to take action based on “moral turpitude” or breaches of “good conduct.” These concepts were explored further during in-depth interviews with a variety of organizations following the survey; results of the interviews are described below. About 30% of organizations had mechanisms in place for prequalifying applicants for exam eligibility if they had a previous criminal history (e.g., submitting documents for review to determine whether the candidate would be eligible for certification before the candidate attends an education or training program).

Organizations rely on a variety of mechanisms for obtaining reports of criminal infractions, including self-report or self-disclosure (69%), complaints from others (66%), the organization’s own investigative processes (32%), formal criminal background checks (14%), or some other mechanism (18%). Among the “other” mechanisms, write-in responses included state regulatory boards, a clearinghouse, and a third party, such as LexisNexis.

Organizations ask both applicants and current certificants to disclose a range of criminal background information as part of either their application process, codes of ethics, or recertification requirements (see Figure 9). More than half require disclosure by both applicants and current credential holders of felony convictions or guilty pleas, and just over 40% require disclosure by both applicants and current credential

holders of misdemeanor convictions or guilty pleas. Between 10% and 40% of organizations require disclosure by both applicants and current certificants of a range of other background information. Those requiring disclosure of some other information related to criminal background were most likely to mention state disciplinary action, a civil lawsuit, negligence, malpractice, or a military court-martial.

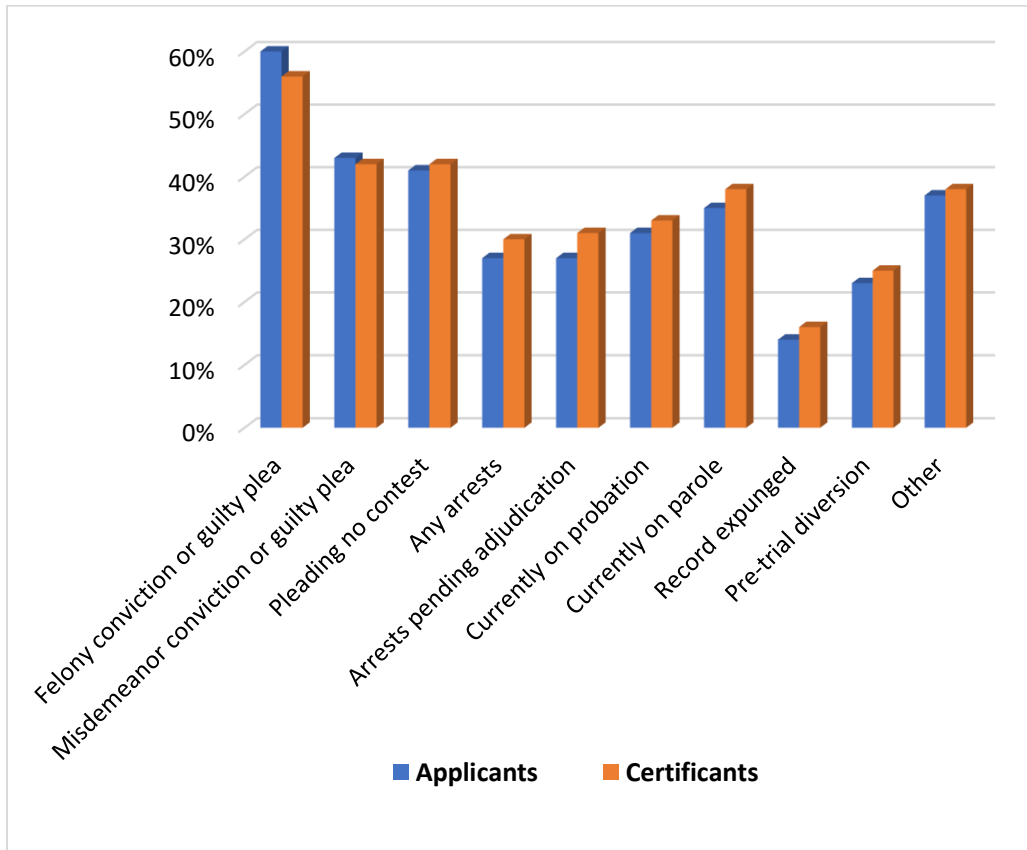


Figure 9. Disclosures required from applicants and current certificants.

Respondents indicated a range of criminal infractions or situations for which their organization took actions, as Figure 10 shows. For virtually all situations, a higher percentage of respondents indicated that they took actions than indicated that they required applicants or current certificants to disclose these situations. Additionally, for all the situations listed, a somewhat higher percentage of respondents took actions for current certificants than did so for applicants. With reference to the listed situations, the greatest percentage of respondents took actions in response to felony convictions or guilty pleas, followed by misdemeanor convictions or guilty pleas and pleading no contest. About half of respondents took actions related to some other situations for current certificants, and a slightly lower percentage took actions related to some other situation for applicants. A review of write-in responses found that other situations for which organizations took action included complaints filed related to ethical violations, civil lawsuits, negligence or malpractice, state disciplinary action, and even expunged cases.

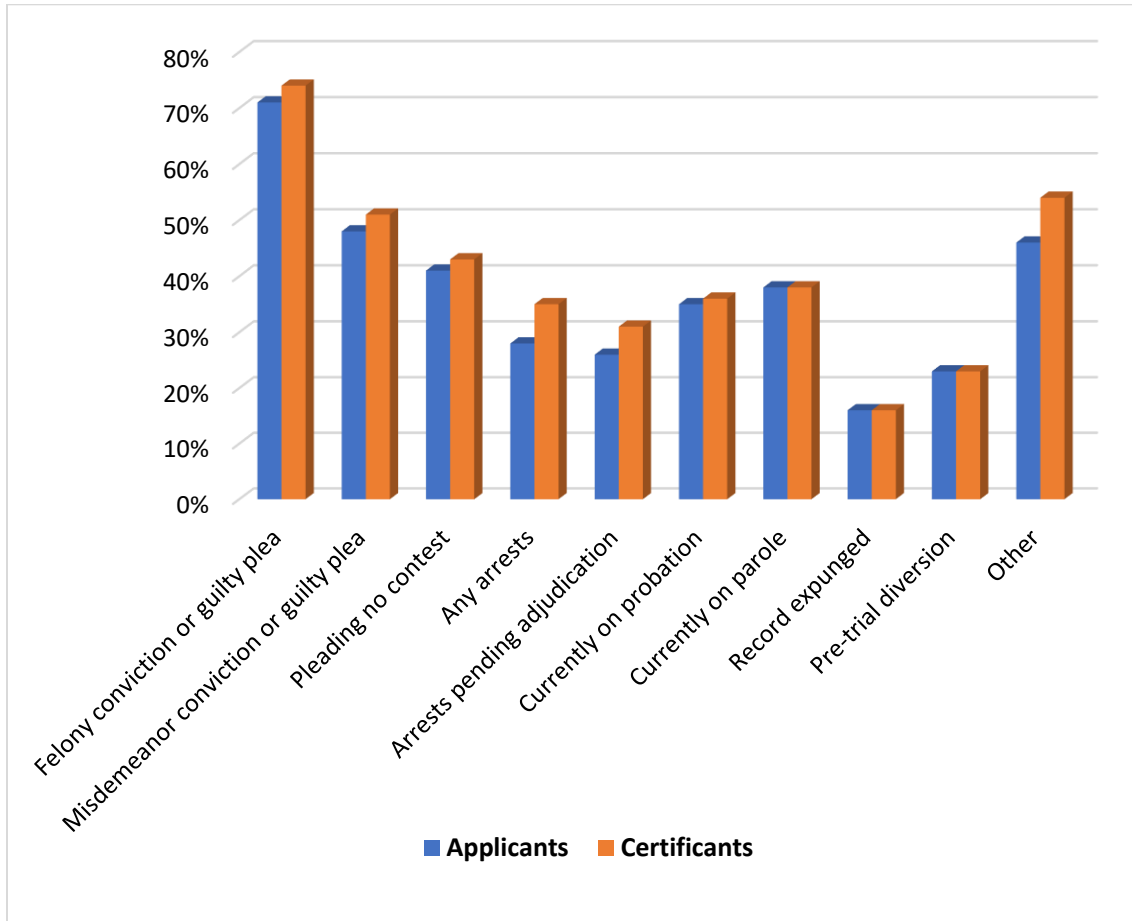


Figure 10. Infractions for which organization takes actions for applicants and current certificants.

Thirty-nine of the 89 respondents answered a question related to whether their organization had a time limit on the consideration of criminal background or *history*. Of these respondents, 41% indicated a time limit of more than 10 years, 31% indicated a time limit ranging from 1 to 5 years, 21% indicated a time limit from the period beginning when the applicant started training or education for the profession, and 8% indicated a time limit ranging from 6 to 10 years.

The survey posed a series of specific questions about the policies and procedures related to criminal background for applicants for credentialing programs and exams. As described earlier, the respondents ranged from small organizations with up to 500 applications annually to larger organizations with more than 20,000 applications annually, on average, over the past 3 years. Respondents then provided data on the number of applicants who had been subject to organizational review annually, on average, over the past 3 years due to considerations related to criminal background or history. Based on organization size and the number of applicants that had been subject to review, we calculated the annual average percentage of applicants subject to review based on criminal background history. As shown in Figure 11, only a very small percentage of applicants across respondent organizations were subject to such review: 37% of respondents reported that they had no applicants subject to review, 27% had up to 0.09% of

applicants subject to review, 16% had 0.1% to 1% of applicants subject to review, and only 1% had 1.1% to 5% of applicants subject to review.

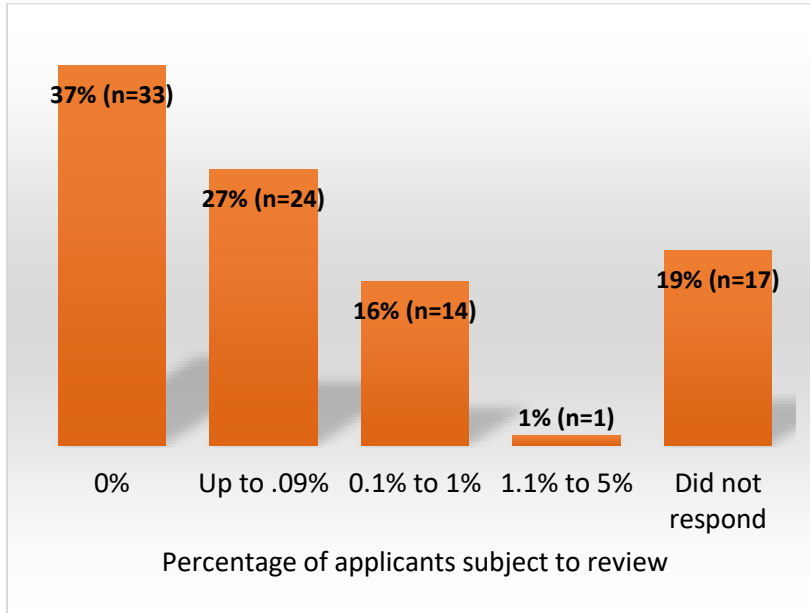


Figure 11. Percentage of applicants subject to review related to criminal history.

While the percentage of candidates and certificants subject to review based on criminal background and history was very small overall, the organizations conducting reviews did report a number of potential or possible outcomes that could result from such reviews. Respondents could select multiple possible outcomes, depending on what their organization's policies and procedures permitted. These possible outcomes included the following:

- permanent denial of eligibility (54%),
- temporary denial of eligibility (42%),
- probationary status of application (26%), and
- other outcome (20%).

Twenty-seven percent of respondents did not answer this question. Organizations permitting the temporary denial of eligibility described the waiting period and rationales for moving to full eligibility, with the following responses represented: 1 to 5 years, after probation completion, completion of sentence including jail time and fines, and no defined waiting period. Most rationales for a temporary denial of eligibility were based on the circumstances of the case. Organizations with probationary status were able to describe the process and conditions for applicants to move to full eligibility, including satisfying the terms and conditions of probation, undergoing annual reviews, using a conditional status, and checking criminal records. Finally, those with "other" possible outcomes described the range of responses, including an annual review, conditional status, variance from case to case, and criminal record checks.

Organizations took very few of these actions in actuality, as Table 2 illustrates. Across all size organizations, over the past 3 years (in total), on average, less than one applicant was permanently

denied eligibility, while less than five were temporarily denied eligibility, and just over one applicant was put on a probationary status. Respondents also indicated that they imposed some outcomes other than those listed on an average of just under four individuals. Organizations provided write-in responses describing these actions, which included reprimand, censure, and denial of eligibility based on encumbered underlying license. While means are provided across all respondents, the number of applicants facing these actions varied somewhat by size of organization, as Table 2 details.

Table 2

Mean Number of Actions Taken Over the Past 3 Years for Applicants by Number of Applicants Annually

	1 to 500 (n=21)	501 to 1,000 (n=9)	1001 to 5,000 (n=17)	5001 to 20,000 (n=14)	> 20,000 (n=16)	No info on org. size (n=12)	All respondents (n=89)
Permanent denial of eligibility	0.48	1.11	1.18	0.36	1.31	0.00	0.74
Temporary denial of eligibility	1.14	0.22	1.76	11.21	9.00	4.58	4.63
Probationary status by organization	0.10	0.00	2.65	2.00	3.06	0.00	1.39
Other	0.00	0.22	14.76	4.50	0.56	2.08	3.93

The survey then posed a series of specific questions about the policies and procedures related to criminal infractions by current certificants. A number of potential actions that organizations could take in response to criminal infractions by credentialed individuals were provided, and respondents could select multiple possible outcomes, depending on what their organization’s policies and procedures permitted. Respondents indicated that they could impose revocation (70%), temporary suspension of the credential (52%), probationary status (30%), or remediation (25%). Twenty-six percent of respondents also indicated that they had some other outcome available. Organizations permitting revocation described specific infractions that could trigger this outcome, with the following responses represented:

- drug or alcohol abuse,
- negligence,
- malpractice,
- felony or misdemeanor directly related to education,
- training or employment of the applicant or certificant,
- failure to adhere to the code of conduct or ethics,
- employment termination involving the use of the credential,
- exam cheating,
- financial misconduct, and
- incarceration.

Many indicated that no infraction can lead to automatic revocation. For organizations that impose temporary suspension, the length of the suspension ranged from 3 months to 10 years, and the rationale for the length was typically determined on a case-by-case basis, usually involving a criminal conviction or a violation that was deemed an immediate risk to consumers. For organizations with probationary status,

the processes and conditions for applicants to move to full eligibility included the certificant being required to comply with all terms of the probationary period or case-by-case determinations. For those offering remediation, a variety of requirements were outlined: 1) corrective education or training, 2) letters of recommendation, 3) substance abuse treatment, 4) audit or annual reporting of continuing education, 5) censures, and 6) written agreements. Finally, those with “other” possible outcomes described a range of responses, including private and public censures, temporary revocation, voluntary surrender, denial of credential or eligibility for recertification, advisory letters, and legal action.

Organizations took relatively few of these actions over the past 3 years, as Table 3 shows. The number of actions taken varied widely, due primarily to the fact that larger organizations (as approximated by the number of annual applicants) took more actions—which is not surprising, since they have more current credential holders. While the annual number of applicants is an imperfect measure of the number of actual certificants (because it cannot account for the length of time the credential program has been available, the pass rate for the exam, or the recertification rate), results are presented by organization size for comparison. In general, “other” actions rather than those offered in the response options were imposed more frequently than those listed and included exam ineligibility, public or private censures or reprimands, admonishment, administrative revocation, voluntary surrender, and being cleared or authorized to test after review. Of the listed actions, revocation was the most frequent, followed by temporary suspension, remediation, and probationary status.

Table 3

Mean Number of Actions Taken Over the Past 3 Years for Current Certificants by Number of Applicants Annually

	1 to 500 (n=21)	501 to 1,000 (n=9)	1,001 to 5,000 (n=17)	5,001 to 20,000 (n=14)	> 20,000 (n=16)	No info on org. size (n=12)	All respondents (n=89)
Revocation	0.48	1.00	0.88	1.93	35.00	0.17	7.00
Temporary suspension of credential	0.25	0.67	7.65	8.07	4.25	0.33	3.70
Remediation	1.48	4.78	1.44	3.00	0.19	0.00	1.61
Probationary status	0.05	1.11	2.65	1.07	2.81	0.00	1.30
Other outcomes	0.00	11.11	6.00	16.36	16.31	0.00	7.78

Slightly less than half the respondents (47%) stated that they have a policy related to when a current certificant must disclose new criminal infractions or convictions. Of those with such policies, the most common requirement was immediate reporting of the reportable occurrence, such as an arrest or conviction (38%), followed closely by the requirement to report within some specified period after the reportable occurrence (36%) or at recertification (26%). The organizations with a specified period typically mentioned 30 to 90 days, and one indicated 14 days.

While most respondent organizations have policies and procedures in place for taking actions based on applicant or current certificant criminal background or infractions, actions were imposed sparingly. As Table 4 shows, across all respondents, a total of 132 actions were taken over the past 3 years for applicants, and a total of 145 actions were taken over the past 3 years for current certificants. The



situations most frequently leading to actions being taken were felony convictions or guilty pleas, misdemeanor convictions or guilty pleas, pleas of no contest, and current probation or parole status. Except in the case of expunged records, slightly more actions were taken for current certificants than for applicants. In a few instances, some other situations led to actions being taken, including the certificant being sued by a patient, a violation of ethical codes, fraud, or actions taken against an underlying license.

Table 4

Total Counts of Situations Where Respondents Took Actions Over the Past 3 Years

	Applicants	Current certificants
Felony conviction or guilty plea	33	36
Misdemeanor conviction or guilty plea	19	23
Pleading no contest	15	16
Currently on probation	15	15
Currently on parole	12	13
Arrests pending adjudication	9	12
Pretrial diversion	9	9
Other	8	9
Any arrests	6	8
Record expunged	6	4
Total	132	145

Organizations relied on a range of individuals or groups to determine the outcomes of investigations (see Figure 12). The greatest percentage indicated that these determinations are made by a committee of volunteers (19%), followed by someone other than one of the listed choices (19%), a committee made up of board members (15%), or staff members (12%); smaller percentages of respondents selected the other choices. Of those indicating that staff members made the determination, write-in responses indicated a range of titles for the responsible person, including credentialing manager, credentialing director, chief certification officer, and executive director. Of those selecting “other,” write-in responses included commission for credentialing, a committee (executive or professional practices), director of certification, legal counsel, director of professional conduct, board, compliance manager, and staff.

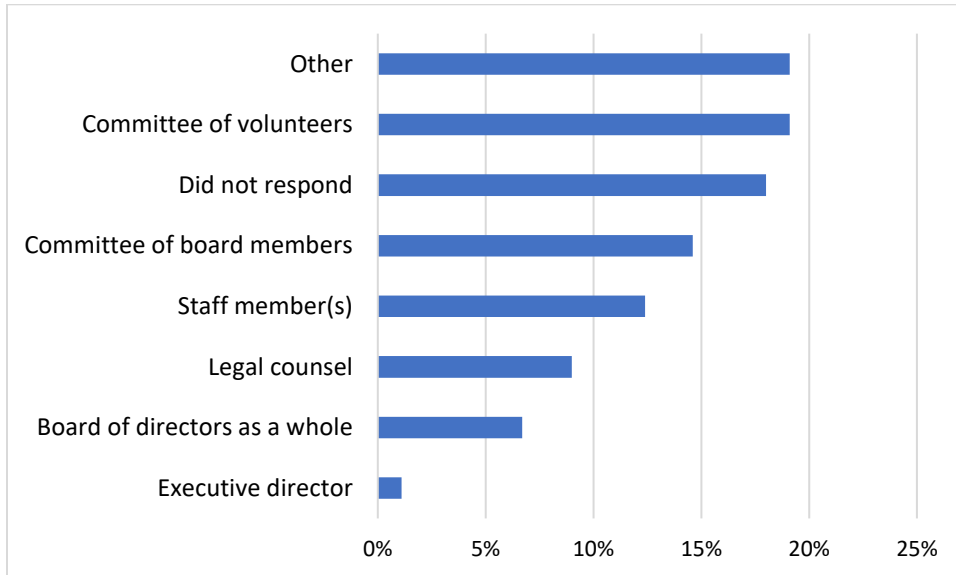


Figure 12. Who determines the outcomes of investigations.

Forty-three percent of respondents indicated that their organization has an appeals process, while 49% indicated that their organization does not have an appeals process, with 8% not responding. Very few organizations have faced legal challenges to their determinations. In only one case did the plaintiff prevail (that is, the organization's decision was reversed by a court). In three cases, the claimant did not prevail (that is, the organization's decision was upheld). One claim was dismissed.

Thirty-nine percent of respondents indicated that one or more of their organization's certification exams were required by one or more states, 53% said none of their exams were required, and 8% did not respond. One respondent indicated that a state had refused to recognize its certification or exam because the organization asks questions related to criminal history.

Respondents relied on actions or decisions taken by a licensure body or regulatory board (if applicable) about twice as often if they offered healthcare-related credentials as compared to those offering non-healthcare-related credentials. About four times the proportion of organizations that offer healthcare credentials said that they reported actions taken to licensing bodies than the proportion of non-healthcare credentialers who did so. See Table 5.

Table 5

Organizations' Actions Relative to Licensure Bodies by Healthcare or Non-Healthcare Focus

	Organization relies on actions or decisions of a licensure body or regulatory board (if applicable) when reviewing cases				Organization reports actions taken (e.g., denial of application, discipline of current certificant) to relevant licensing body or regulatory board, if applicable			
	Healthcare		Non-healthcare		Healthcare		Non-healthcare	
	N	%	N	%	N	%	N	%
Yes	31	63.3%	10	32.3%	26	55.3%	5	16.1%
No	7	14.3%	8	25.8%	9	19.1%	12	38.7%
Not applicable	11	22.4%	13	41.9%	12	25.5%	14	45.2%

Three-quarters of organizations offering healthcare-related credentials indicated that their certification programs were recognized by one or more states, while half of organizations offering non-healthcare-related credentials indicated that their certification programs are recognized by one or more states, as shown in Table 6. Just under half of respondents with healthcare-related certification programs indicated that their credentials or exams were required by one or more states, while this was the case for one-third of respondents with non-healthcare-related credentials.

Table 6

State Recognition or Requirement of Certification Programs by Healthcare or Non-Healthcare Focus

	Are any certification programs or exams offered by organization <u>recognized</u> by one or more states (e.g., by state regulatory board or by statute)?				Are any certification programs or exams offered by organization <u>required</u> by one or more states (e.g., by state regulatory board or by statute)?			
	Healthcare		Non-healthcare		Healthcare		Non-healthcare	
	N	%	N	%	N	%	N	%
Yes	37	75.5%	15	50.0%	24	49.0%	10	33.3%
No	12	24.5%	15	50.0%	25	51.0%	20	66.7%

Results: Follow-Up Interviews

Sample

To obtain further qualitative background information and more in-depth feedback related to specific topics, the task force asked organizations to respond to a structured interview through either a telephone call or email. A total of 16 organizations participated, representing several professional certification fields. Eleven of the organizations from which interviewees came were in the healthcare field, three were from fitness and personal well-being, and two were from the construction industry. The professionals who responded to the interviews represented a wide range of positions in their organizations and included

executive directors, directors of certification, assessment managers, and those in government relations, compliance and quality assurance, and the government registrar's office. One organization was from Canada, and the remaining 15 were American certification organizations.

Interview Protocol

The interview protocol was a standard set of 15 questions about the organization's policies and procedures related to criminal background and convictions. The questions included a range of topics, such as who in the organization is responsible for developing policies and procedures related to the handling of criminal history and infractions, how criminal records are obtained, what criminal infractions the organization takes action on, what types of actions are taken on these violations, whether there are time limits when considering criminal backgrounds or history, how the appeals or review process works, what the potential outcomes of these reviews are, and what, if any, legal challenges the organization has encountered. Interviewers also inquired about how this ICE research might be beneficial to organizations and about other areas they would like the ICE to consider in relation to the consideration of criminal history.

Importance of Criminal Background History

Overall, most organizations indicated that criminal background was somewhat of a concern and important to consider. This was especially true for healthcare organizations that work with vulnerable populations. Several organizations reported their organization itself was responsible for conducting and verifying the background checks. One such organization used services that sometimes even involved physical courthouse visits because their local jurisdictions do not centrally report infractions. For another organization, the responsibility fell to them after the training programs stopped doing background checks. Employers expected background checks to occur before certification, which caused problems for certificants at the time of employment and thus obligated the certifying organization to fill in the gap.

Only two organizations did not feel that criminal background checks were a big concern but still wanted to make sure that they had good policies and processes in place. One organization considers criminal background the responsibility of a licensor, because a certifying organization is more focused on assessing candidate experience and knowledge, skills, and abilities. Another stated that they were only aware of criminal background history if it affected licensure, and one organization was less concerned with criminal history of applicants prior to being certified but expected its certificants to adhere to a code of ethics.

Development of Policies and Procedures

Criminal background policies and procedures were largely developed by the organizations' boards with some assistance from legal counsel. One organization said that its policies and procedures related to criminal history were developed by staff and the office of general counsel and approved by their external governing body, particularly for organizations for which decisions may impact licensure. The office of the general counsel recommended the creation of a complaint review committee, which responds to reported or discovered disciplinary matters. The organization from Canada stated that its policies and procedures were developed by the registrar as designated by the Health Professions Act.

Relevance to the Job Role

Organizations generally had clearly outlined, rigorous policies for determining whether complaints or infractions warranted investigation. Staff, compliance officers, and disciplinary committees were usually the first steps in the process. A number of organizations reported that legal counsel was consulted during the initial evaluation. Most organizations agreed that the infraction did not need to be directly related to the certifying job role, though some organizations did report that relevance to the profession was the driving force when considering infractions. However, several of these respondents indicated that, in situations involving a severe infraction (e.g., felony) where the reputation of the profession would be harmed, or if a grievance was submitted, relevance would be overlooked.

Moral Turpitude or Good Conduct Clauses

Overall, most organizations did have clauses in their policies and procedures that allow them to act based on terms such as “moral turpitude” or “good conduct.” Some interviewees expressed the view that when an organization has an obligation to protect the public, evidence of good character, however that is defined, is important to consider. Language in their codes of conduct or professional responsibility such as “inappropriate conduct,” “unprofessional conduct,” “unethical behavior,” “incompetence,” conduct that would “bring [the organization, other designees, or the certification council] into disrepute,” or “the integrity of the profession” provide broad leeway to take action for infractions that are not specifically named. Examples of such behavior included unauthorized disclosure or alteration of information; unlawful use of drugs or alcohol; assault, battery, or abuse of a patient; sexual contact with a patient; gross or repeated malpractice or negligence; or improper professional financial dealings. Sanctions that organizations may impose against any individual who violates these clauses included cancellation of examination scores and temporary or permanent denial or revocation of examination eligibility, organizational certification, or organizational recertification. Individuals who engage in such improper behavior could also be subject to legal action.

A number of organizations did not have their own code of ethics but instead stated that certificants must comply with the code of ethics of a partner organization. One organization did have a code of ethics; however, the code did not specifically reference either moral turpitude or good conduct. That organization’s code of ethics specified the need to engage in sound moral discernment for all actions that could lead to unintended consequences with implications for human rights.

Obtaining Criminal Reports

Mechanisms for obtaining reports included self-reporting, self-disclosure, complaints from the public or certificants, information of encumbered state licenses, court documentation, and third-party background checks. Information was verified through online state license records, various types of documentary evidence, online or social media searches, peer review, and patient chart review. Some organizations also required professional letters of reference and written statements from the candidate for any declared criminal infractions.

A few organizations stated that they rely on accuracy and accountability from licensing boards, which have the ultimate responsibility for public safety. Their expressed concern was typically that they are not an investigative body and do not have the resources to perform as such. They require full disclosure from any complainant against a certificant, applicant, or candidate and do not allow anonymity before further evaluation. Most organizations also allowed action for an applicant or candidate’s failure to report or for

providing false information, including revocation of certification or denial of exam eligibility. Improper behavior could also be subject to legal action.

Types of Actions Taken on Infractions

Decisions as to which infractions are considered for action tended to be based on how severe the offense was, how often the offense(s) occurred, how much time had passed since the offense, whether the offense related to the purpose of the certification, whether a patient reported the infraction, whether the state authorities were investigating the infraction, and whether there was evidence that the certificant lied about the infraction. Felony convictions or guilty pleas tended to be the infractions most commonly acted upon. One organization stated that a felony conviction seemed to be a good indication of moral insufficiency, which was also the case for individuals pleading no contest, currently on probation, or currently on parole for a felony offense. One organization stopped asking about misdemeanors because it universally resulted in no action and thus was not a good use of resources. For one Canadian organization, the end result of the action (incarceration or probation, etc.) was not considered as significant as the nature of the charge itself. Another organization stated that it only acts on criminal infractions if they affect a member's licensure. For this organization, the board certification is used primarily by the regulatory bodies as a requirement for licensure: it is not itself a license to practice. For this organization, it is the state—in its ability to protect the public—that has the authority and responsibility to respond to criminal infractions.

Time Frame for Considering Criminal Backgrounds

For the most part, organizations indicated that there was no time limit on the consideration of criminal background or history. They would investigate no matter how long ago the offense occurred, depending on the nature of the charge. One organization stated that it generally will not supersede any decision or action imposed by a state licensing board. For example, if the state allows a certificant to maintain their license (even with conditions), the organization may require the member to provide proof and evidence of compliance to orders imposed by a state board. If they remain in compliance, the organization would not restrain their ability to practice by revoking their certification. One organization required disclosure of felonies within the last 5 years or any conviction for which the individual is still serving a sentence or term of probation. Another organization indicated that it required compliance from the time the individual became a member or certificant.

Potential Outcomes of Reviews of Applicants' Criminal History or Infractions

Most organizations used both permanent and temporary denial of eligibility, as well as probationary status, as potential outcomes to a candidate's criminal history or infractions. Permanent ineligibility for applicants, where used, was usually based on severity of the offense (e.g., drug-related convictions). Rationales for length of temporary ineligibility, where that was an option, were based on licensure disciplinary decisions, the time needed before final judgment in the justice system, and completion of any requirements within the justice system. Probationary status depended on the submission of evidence documenting successful remediation. Organizations listed the following as "other" possible actions that may be deemed appropriate in particular circumstances (typically at the discretion of a disciplinary or complaint review board or committee): retaking the certification examination; invalidating the examination score(s); refusing, whether temporarily or permanently, to release a score report and/or certificate;

imposing a specified waiting period before reapplying to take the examination; issuing a reprimand (private letter); or censuring the candidate (public letter).

One organization did state a caveat to the permanent denial of eligibility. While all decisions are written with the intent of a permanent denial, they cannot prevent someone from reapplying. Therefore, someone can reapply, and depending on the actions they have taken for rehabilitation since the last decision, the results will be considered. In contrast, another organization does not look at exam applicants' criminal history; it is only concerned with certificants who commit an infraction.

Potential Outcomes of Reviews of Current Certificants' Criminal History or Infractions

All organizations indicated that revocation, temporary suspension of the credential, remediation, and probationary status were all appropriate and possible outcomes of a certificant's criminal infraction. Permanent suspension of certification was usually due to the severity of the offense, the relatedness of the offense to the job role, or the failure to complete remediation. Temporary suspension or probationary status was usually the result of a discretionary disciplinary body decision. Remediation was in the purview of the disciplinary committee or applied by a licensing board, and submission of evidence documenting successful remediation was necessary to restoring full status. For one organization, probation was concluded by following the recertification process. One organization only responded to complaints from patients about their care, excluding any criminal infractions (which they relied upon the licensing body to address). Other outcomes used by the organizations included a mandatory audit of continuing education for a period of time, publishing of findings and sanctions on the organization's website, legal action against the respondent, issuance of a nonreportable advisory letter, public or private censure, or a disciplinary fine.

Who Determines the Outcomes?

For the most part, decisions and outcomes relating to criminal infractions are determined by some type of disciplinary review board or committee or by legal counsel. A few organizations indicated that the outcome of an investigation is determined by staff, such as a compliance officer, the CEO/executive director, the director of certification, or the deputy registrar. One organization only acts on criminal infractions if it affects a member's license, and another only considered patient care complaints. In this particular case, the peer review committee would make recommendations to the board of directors, who would then render a decision.

Every organization indicated that some type of formal or informal appeals process was in place, and most indicated that an individual wishing to appeal had to submit a written statement within a specified period of receipt of the adverse decision (e.g., two weeks or 30 days). However, there was variation among the organizations' appeals policies and processes. These included components such as whether formal hearings are held, whether the parties are expected to be present (either by phone or in person), whether they could or should be represented by counsel or could consult counsel, whether additional documents are submitted, how long the appeals process takes, how many appeals are allowed before the decision is rendered final, and how many parties are involved in the appeals review and decision (e.g., disciplinary committee, appeals committee, staff, board of directors, peers, or ethics counsel).

Legal Challenges

None of the organizations interviewed had faced any legal challenges or had been sued based on actions taken or decisions related to applicants' or certificants' criminal history.

Rely on Actions of the Licensure Board?

For most of the responding healthcare certification organizations, a licensing issue would trigger an investigation of certification. Their policies and procedures generally stated that they had the right to review and may act on actions taken by a licensure body. Some organizations were directly notified by the boards of licensing issues that arose for their certificants, but others independently conducted internal reviews by searching for encumbered licenses in an online system prevalent in their profession or accessing individual state board results through a verification portal. In some instances, the certification organizations would follow suit with the licensing discipline: that is, suspending an individual for the same number of months. A few organizations stated that they had not had to rely on the actions or decisions of a licensure body. Another stated that it would await the conclusion of any licensing proceeding to initiate its own investigation.

Has Any State Refused to Recognize Certification?

Most of the organizations had not had any state refuse to recognize a certification or certification exam offered by their organization because of questions relating to criminal history on their application. Nor had these organizations had their certification rejected by a licensing agency as the result of their policies. One organization involved in certification in a healthcare field indicated that it had to publish an equivalent state-specific exam to accommodate a state in which the statute did not allow the licensing agency to consider moral character in making a licensing decision. However, this law has since been changed, and the publication of the equivalent state-specific exam is no longer necessary. Additionally, from a different but related angle, one organization did face a ban of its certifications in two states because a few individuals who had or claimed to have such certifications were engaged in bad conduct.

How Might the ICE's Research Benefit Organizations?

The interviews concluded with a question about how this research might benefit the respondent's organization, and by extension, the greater credentialing field. In general, interviewees indicated that they were looking for industry consensus on best practices or a standardization for the credentialing industry as well as data that would help them benchmark their own organization's policies and procedures against those of other credentialing bodies. Among the topics that interviewees mentioned as being of particular interest were the following:

- how their own organization's disciplinary practices and processes compared with those of other organizations: specifically, they wanted to evaluate whether their own process should be modified or refined or whether they should bear any additional considerations in mind when developing, reviewing, or updating their policies and procedures;
- what the most common rationales behind various disciplinary actions are and whether discipline is aligned with the infraction committed;
- how organizations consider issues related to character or moral turpitude;
- whether other certifying organizations ask about arrests or only convictions;

- whether there is a need to conduct formal background checks and the appropriate level of investment in those checks;
- whether jurisdictions (including regulatory and licensure boards and bodies) might improve their recordkeeping to facilitate the quality of decisions by certifying boards;
- what types of court challenges certifying organizations have faced;
- whether the tendency not to ask about criminal background at all is growing; and
- why states had implemented criminal background-related legislation.

Finally, there was a suggestion that the results of this research be a future conference or webinar topic to highlight organizations' current practices related to the topic of criminal history as it relates to credentialing decisions as well as to provide any relevant legal updates.

Summary and Discussion

The results of the 2019 ICE Criminal Justice Research survey provide an important grounding in data for the burgeoning topic of criminal justice reform as it overlaps with professional certification. The levels of incarceration in the United States, estimated at approximately 2 million as of 2016 (Sawyer & Wagner, 2019), have created a need to evaluate whether unnecessary impediments are preventing individuals with criminal histories from re-entering society. However, well-meaning efforts at reform have sometimes conflated certification with licensure, exaggerated the numbers of individuals whose efforts at certification are hurt by their criminal background, or given insufficient attention to the missions of credentialing organizations to protect the public. The data from this survey can help to show where assumptions may differ from reality.

The need for data to inform criminal justice reform legislation that properly accounts for the public protection role of private certification is matched by credentialing organizations' desire for access to benchmarking information. Organizations, frequently with modest resources, have formulated policies that try to balance law and standards of fairness with protection of the public and maintaining the value of their credentials. As the legal landscape starts to change, an important means of mitigating risk for these organizations is to ensure that their policies are positioned within some reasonable standards of practice that can be identified in the credentialing industry or some relevant subset thereof. The data from this survey provide grounds for some cautious generalizations as to the range of practices existing in credentialing today with respect to the treatment of criminal history.

First, it is significant that about two-thirds of the organizations surveyed here responded that they took some action with respect to applicants or certificants based on criminal history and that responses to later survey questions by the remaining third indicate that this proportion is actually even greater. A large majority of respondents appear to believe that attention to criminal history of their applicants and certificants is a necessary element in fulfilling their organization's purposes as socially beneficial nonprofits or in supporting the value of the credential that they provide.

Responses concerning how organizations developed their policies on criminal history tend to indicate a thoughtful, representative process influenced by expert input, with 40% indicating the involvement of their boards of directors and 52% acknowledging consulting legal counsel. Periodic review of these policies, once developed, also appears to be a common practice, with 57% of respondents stating that they reviewed policies routinely at least every 5 years. Such periodic review lends itself well to adaptation to legal change in different jurisdictions and provides a strong argument that policies are not arbitrary.

Since criminal justice reform legislation often addresses the relatedness of criminal offenses to the job, role, or profession that is certified, it is significant that 39% of respondents stated that infractions did need to be related to affect an application or certification. The 51% of respondents who answered that offenses did not need to be related to the job or profession nonetheless tended to have review processes that were characterized by thoughtfulness, case-by-base consideration, and opportunities for the individual under review to participate meaningfully in the review. In some professions, it may be difficult to imagine any offense that would not relate to the trust invested in the practitioner. And, in fact, the large proportion of respondents in the high-trust, high-impact field of healthcare may have shaped these results. Whatever the profession, however, documenting the rationale regarding relatedness could be a valuable exercise and in keeping with National Commission for Certifying Agencies (NCCA) standards.

More than half of organizations (57%) also responded that they did not explicitly list in their policies which offenses would disqualify an applicant or certificant from certification, and 62% acknowledged that their policies permitted action on the basis of generalized violations of “good conduct” or “moral turpitude.” It may be impractical for most credentialing organizations to list all the potentially actionable offenses affecting their certificants, and organizations may understandably be reluctant to exclude any offense potentially relevant to safety or the integrity of their certification. However, organizations should be aware that broad latitude to deem offenses grounds for action has been a key target of criminal justice reform legislation as it relates to government credentialing (i.e., registration and licensure), and if reform efforts begin to affect private certification, the same concerns may be raised.

If organizations tend to preserve their options to take action regarding unspecified infractions, responses indicated that their policies and actions mainly focus on felony and misdemeanor convictions and guilty pleas. Automatic reviews of applications, for organizations that had them, were acknowledged as being triggered for felonies and misdemeanors in much larger proportions than for other scenarios. Requirements to disclose criminal incidents, both for applicants and certificants, also were endorsed by the largest proportions of respondents for felony and misdemeanor convictions and guilty pleas and for pleas of no contest. Requirements to disclose arrests, expunged records, or pretrial diversion were notably less common responses. And in terms of the issues about which they actually take action, again felony convictions and guilty pleas were endorsed by more than 70% of respondents, along with misdemeanor convictions and guilty pleas and pleas of no contest, both in the 40 to 50% range for both applicants and certificants. Somewhat surprisingly, however, arrests and expunged records were also selected as reasons for action by substantial proportions of respondents, despite the lesser seriousness of arrests or expunged records in the legal system itself.

Some criminal justice reform legislation has been founded on objections to the potential for very old offenses to affect credentialing. More than half of respondents (56%) did not answer the question regarding time limits for consideration of offenses in their organization’s policies. Given that the options did not include a “no,” this might point to the lack of explicit time limits for most of those surveyed. For organizations with limits, however, periods of 3, 5, 10, and greater than 10 years were most commonly referenced and may offer benchmarks for organizations considering whether to introduce time limits.

To contextualize the policies of credentialing organizations regarding criminal history, it is critical to know the scale of the problem. For certification applications, the responses regarding the percentages reviewed in the past 3 years are very instructive, with 80% of respondents reviewing less than 1% of applications and almost half that number reviewing none at all. In terms of mean and maximum numbers of actions taken with respect to applicants, the numbers for temporary denials of eligibility or probation are higher (means of 4.6 and 1.4 and maximums of 128 and 45, respectively) than numbers for permanent ineligibility (mean of 0.7 and maximum of 14). This relationship would tend to indicate the moderation of

organizations' approach to applicants with criminal backgrounds. Also of interest in this regard is the availability to applicants of "prequalification" input into their history's effect on eligibility with 30% of credentialing organizations. This prequalification practice could encourage persons with less serious infractions in their backgrounds to continue pursuing credentialing.

For current certificants, the numbers and percentages of individuals affected by criminal history issues are also quite low, especially when one considers that the number of certificants in a field can exceed the number of applicants per year by a factor of 10 or more. Even just to look at counts of actions taken as a percentage of applications, for organizations of more than 20,000 applicants per year (18% of this sample), the mean number of revocations in 3 years (35) over the minimum of 60,000 applicants in that period would be only 0.058%. For organizations with only 0 to 500 applicants per year, divided by 750 applicants over 3 years, revocations would only be 0.064% of applicants. For most viable certifications, then, the percentages of overall certificants holding the credential affected by criminal history policies would be miniscule. And, as with applicant actions, less severe actions such as temporary suspension, remediation, and probationary measures were more common, on average, than more severe actions such as revocation. This again demonstrates that moderation in applying policies, even with respect to these small numbers, is very much the rule.

When organizations do take action based on criminal history, the survey results show that those outcomes usually result from a process that involves representatives from the credentialed profession, even at the individual level after policies have been set. Responses indicating determinations being made by the board of directors, a committee including board members, or a separate committee of volunteers totaled 40%, even with 18% nonresponding. After initial determinations, 43% said that they had a process for appeal. With 49% explicitly stating that they did not have such a process, this could be an area for improvement for many organizations concerned to demonstrate provision of due process for candidates and certificants, another common concern in legislation.

Involvement of organizations in finding out about infractions is, probably unsurprisingly given limited resources, mostly reliant on self-report and third-party complaints (endorsed by 69% and 66%, respectively). Independent investigation and background checks took a marked back seat to these methods, with only 32% and 14%, respectively, stating that they carried out such actions. Some of this disparity could be due to the large percentage of healthcare credentialing organizations (63%) that rely on a licensure body's decisions in reviewing cases and that probably rely on those bodies to do some portion of the fact-finding. However, evidence for investigatory overreach by certifying organizations seems absent, with only 47% even acknowledging policies mandating disclosure by certificants of any new convictions.

It is hoped that these results will give useful guidance to legislators and credentialing organizations alike. Organizations should always be guided by the law of their jurisdictions in their policies regarding criminal history. While most criminal justice reform legislation has focused on licensing bodies, the distinction between licensure and certification is not clear to much of the public, or to many legislators, and is in some cases blurred by the fact that sometimes private certifications are a prerequisite to licensure. The 2018 judgment in *Setarehshenas v. National Commission on Certification of Physician Assistants* has set a precedent that laws limiting the exclusion of individuals from licensure based on criminal history cannot be applied to professional certification organizations. This federal district court ruling is one piece of a legal puzzle that will be assembled in coming years, and credentialing organizations will need the help of legal counsel to understand these developments.

The NCCA Standards, as well, provide general guidelines that bear on decisions pertaining to criminal history. Standard 1, for instance, mandates, “The certification program must provide the rationale for the appropriateness of its requirements.” Standard 7 states, “The certification program must not unreasonably limit access to certification.” Both guidelines should prompt reconsideration of any policies that could be perceived as insufficiently justified by the mission of the credentialing organization to protect the public (honored in Standard 2: “The certification program must document how the public interest is routinely represented and protected.”)

Although the numbers of individuals affected by criminal history restrictions are tiny, there is an argument that they create a chilling effect that could prevent some individuals with minor infractions in their histories from pursuing certification. The perception of the public regarding these policies is also a consideration, particularly as the awareness of the disproportionate effect of incarceration on specific communities grows. The credentialing industry has often acted, and presented itself, as a bulwark of meritocracy, which makes it even more important for credentialing organizations to learn from each other to develop and improve policies to appropriately address a history of criminal infraction. Organizations have obligations both to advance the public safety and to offer a tool for advancement to worthy and ethical individuals. It can be hoped that with information and dialogue, these aims will not prove mutually exclusive.

References

Sawyer, W. and Wagner, P. (March 19, 2019). Prison Policy Initiative. Retrieved from <https://www.prisonpolicy.org/reports/pie2019.html>.

Professional Certification Coalition (2019). White Paper on the Consideration of Criminal Conviction History by Private Professional Certification Organizations. Washington, DC: Professional Certification Coalition.

Appendix

Criminal Background Survey Questions

1. Does your organization take actions based on candidate or certificant criminal history or criminal convictions? (Y/N)
2. Who developed your organization's policies and procedures related to criminal history in applications or disciplinary matters? *Select all that apply.*
 - Board of Directors as a whole
 - Committee made up of Board members
 - Executive Director
 - Staff member(s). If so, what is their title(s)?
 - Committee of volunteers
 - Legal counsel
 - Other (*Specify*)
3. How often are these policies and procedures reviewed?
 - Annually
 - Every 2 years
 - Every 3 to 5 years
 - More than 5 years
 - Some other specified time frame (*Specify*)
 - "As needed" (*Specify triggering event/describe how is "as needed" is determined*)
4. Do infractions subject to review or action need to relate directly to the job, role, or the profession being certified? (Y/N)
5. If yes: Who determines if the infraction is relevant to the job, role, or profession? *Select all that apply.*
 - Board of Directors as a whole
 - Committee made up of Board members
 - Executive Director
 - Staff member(s). If so, what is their title?
 - Committee of volunteers
 - Legal counsel
 - Other (*Specify*)
6. Are disqualifying offenses listed explicitly in your organization's policies? (Y/N)

7. Which of the following situations trigger an automatic review a candidate’s certification application?
- Felony conviction or guilty plea
 - Misdemeanor conviction or guilty plea
 - Pleading no contest
 - Any arrests
 - Arrests pending adjudication
 - Currently on probation
 - Currently on parole
 - Record expunged
8. Pre-trial diversion Does your organization have clauses in its policies and procedures that allow you to take action based on terms such as “moral turpitude” or “good conduct”? (Y/N)
9. Does your organization offer a mechanism for pre-qualifying for exam eligibility if a conviction exists (e.g., submitting documents for review to determine if candidate would be eligible for certification *before* candidate attends education or training program)? (Y/N)
10. What are the mechanisms your organization uses for obtaining reports of criminal infractions? *Select all that apply.*
- Self-report or self-disclosure
 - Complaints from others (e.g., members of the public, other certificants)
 - Organization’s own investigative processes
 - Formal criminal background checks
 - Other (*Specify*)
11. Which of the following must applicants or current certificants disclose? *Select all that apply.*

Applicants	Current certificants
Felony conviction or guilty plea	Felony conviction or guilty plea
Misdemeanor conviction or guilty plea	Misdemeanor conviction or guilty plea
Pleading no contest	Pleading no contest
Any arrests	Any arrests
Arrests pending adjudication	Arrests pending adjudication
Currently on probation	Currently on probation
Currently on parole	Currently on parole
Record expunged	Record expunged
Pre-trial diversion	Pre-trial diversion

12. For which of the following does your organization take action(s). *Select all that apply for new applicants, and then select all that apply for current certificants.*

Applicants	Current certificants
Felony conviction or guilty plea	Felony conviction or guilty plea
Misdemeanor conviction or guilty plea	Misdemeanor conviction or guilty plea
Pleading no contest	Pleading no contest
Any arrests	Any arrests
Arrests pending adjudication	Arrests pending adjudication
Currently on probation	Currently on probation
Currently on parole	Currently on parole
Record expunged	Record expunged
Pre-trial diversion	Pre-trial diversion

13. Is there a time limit on the consideration of criminal background or history? That is, does the offense have to have been within a certain time frame to be investigated or acted upon?

- Drop down list with 1 through 10 years; more than 10 years
And....
- From time period beginning when applicant started training or education for profession

[The following four questions refer to applicants for your organization's credentialing program\(s\) and exam\(s\)](#)

14. How many applicants have all your certification program(s) received per year, on average, over the past three years?

15. How many applicants have been subject to review related to their criminal history per year, on average, over the past three years?

16. What are potential outcomes of reviews of applicants' criminal history or infractions? That is, what actions are possible?

- Denial of eligibility—permanent
- Denial of eligibility—temporary. If temporary, what is the waiting period, and what is the rationale for this (*Specify*)
- Probationary status by organization—if so, what is the process and/or conditions for moving to full eligibility
- Other (*Specify*)

17. Of the total number of applicants you have reviewed over the past three years, how many have had the following actions taken?

- Denial of eligibility—permanent
- Denial of eligibility—temporary
- Probationary status by organization



The following two questions refer to current certificants

18. What are potential outcomes of reviews of current certificants when information related to a criminal infraction is obtained? What actions are possible?

- Revocation – if so, are there specific infractions leading to automatic revocation? (*Specify*)
- Temporary suspension of credential—if so, what are the time limits and rationale? (*Specify*)
- Remediation—if so, what are remediation requirements? (*Specify*)
- Probationary status—if so, what is the process for moving back to full status? (*Specify*)
- Other potential outcomes or actions. (*Specify*)

19. Of the total number of current certificants you have reviewed over the past three years, how many have had the following actions taken?

- Revocation
- Temporary suspension of credential
- Remediation
- Probationary status
- Other outcomes or actions. (*Specify*)

The following questions refer to both applicants and current certificants

20. For what types of situations have actions been taken for applicants and/or current certificants over the past three years? (*Select all that apply*)

	Applicants	Current certificants
Felony conviction or guilty plea		
Misdemeanor conviction or guilty plea		
Pleading no contest		
Any arrests		
Arrests pending adjudication		
Currently on probation		
Currently on parole		
Record expunged		
Pre-trial diversion		

21. Does your organization have a policy related to when current certificants must disclose new criminal infractions or convictions?

If yes, When do they need to disclose?

- Immediately
- Within some specified time period of the behavior they are required to disclose (e.g., arrest, conviction) (*Specify time period*)
- At the time of recertification

22. Who determines the outcome of investigations of applicants' or certificants' criminal history?

- Board of Directors as a whole
- Committee made up of Board members
- Executive Director
- Staff member(s). If so, what is their title(s)?
- Committee of volunteers
- Legal counsel
- Other (*Specify*)

23. Does your organization have an appeals process specifically for decisions related to criminal history?

24. Apart from your appeals process, have there been any legal challenges to actions your organization has taken or decisions it has made related to applicants' or certificants' criminal history?

25. If yes, what were the outcomes of those challenges?

- Claimant prevailed (that is, the organization's decision was reversed)
- Claimant did not prevail (that is, the organization's decision was upheld)
- Claim dismissed
- Appeal currently in process
- Claim settled (*Specify nature of settlement*)
- Other (*Specify*)

26. Does your organization rely on the actions or decisions of a licensure body (if applicable for your profession) when reviewing cases? That is, if an applicant or certificant is disciplined by a regulatory board, does this trigger an investigation of their certification by your organization?

27. Does your organization report actions taken (e.g., denial of application, discipline of current certificant) to a relevant licensing body or regulatory board, if applicable? (Y/N/Not applicable)

28. Are any certification programs or exams offered by your organization recognized by one or more states (e.g., by state regulatory board or by statute)?

29. Are any certification programs or exams offered by your organization required by one or more states (e.g., by state regulatory board or by statute)?

30. Has any state refused to recognize a certification or certification exam offered by your organization because you have questions relating to criminal history on your application?

31. How many certification programs does your organization offer?

- 1
- 2 to 5
- 6 to 10
- More than 10

32. What types of credential(s) does your organization offer? *Select all that apply.*

- Certification
- Assessment-based certificate
- Certificate program not including an assessment (e.g., certificate of completion)
- Other (*Specify*)

33. What is your role in the organization?

- Executive Director
- Board of Directors member
- Director (*Specify title*)
- Management (*Specify title*)
- Staff (*Specify title*)
- Other (*Specify*)

34. Are any of your programs accredited by any of the following third-party accreditation bodies? *Select all that apply.*

- ABMS
- ABSNC
- ABVS
- Buros Center for Testing
- CESB
- ISO 17024 through ANSI
- ISO 17024 through IAS (in partnership with ICE)
- ISO 17024 through some other accrediting body (*Specify*)
- NCCA
- Other (*Specify*)
- None

35. In what profession or industry does your organization offer certifications?

Healthcare

- Chiropractic
- Counseling Services
- Dental
- Diet/Nutrition
- EMT
- Medical Assistant/Technician
- Nursing
- Orthotics
- Personal Care
- Pharmaceutical
- Respiratory Care
- Therapy

Non-Healthcare

- Administration/Management
- Animal care
- Arts
- Construction
- Culinary
- Education
- Environmental
- Events/Meetings
- Financial
- Fitness/Wellness
- Government
- Information Services/Technology
- Language/Speech
- Legal
- Leisure/Hospitality
- Manufacturing
- Safety
- Social assistance
- Trades
- Transportation
- Other (*Specify*)

36. Would you be willing to speak to us in more detail about your policies and procedures related to the consideration of criminal background in a telephone interview? **All feedback from the interview will be kept completely confidential, and results will be anonymized.** If yes, please provide the following information.

- Name
- Title
- Organization
- Email address
- Telephone number