



PROFESSIONAL
CERTIFICATION
COALITION

May 10, 2021

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Re: S.B. 1019

Dear Senator Osten, Representative Walker, Representative Dathan, and Senator Hartley:

The Professional Certification Coalition (PCC) writes to share our views regarding S.B. 1019. We appreciate that this bill aims to advance the important goal of making it easier for an ex-offender to earn a living in certain occupations upon reentry. Unfortunately, **in its current form, S.B. 1019 intrudes on the right of private associations and organizations to enforce their ethics codes or eligibility requirements and weakens important protections for the public in licensure decisions.** We respectfully request that S.B. 1019 be amended to address these issues.

The PCC is a nonprofit association formed to address legislation that affects professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification. The PCC's organizational members include non-governmental professional certification organizations, professional societies, and service providers. The PCC's members reflect a wide spectrum of professions, including health care, engineering, financial services, and information technology, among many others. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – govern the PCC.

We support S.B. 1019's worthy objectives, which are largely consistent with national efforts to reform the criminal justice system and to ensure pathways to opportunity for ex-offenders. The bill's provisions are more aggressive than most ex-offender reentry bills, however. Moreover, as reflected in the attached [statement of principles](#), provisions to expand job access for ex-offenders must be balanced against the need to protect the public and the ability of both state licensing boards and private organizations to consider relevant conduct for which individuals have been provided full due process.

Of direct concern to the PCC, S.B. 1019 seeks to bar private organizations from denying membership on the basis of erased criminal history record information. In contrast to "ban the box" laws applicable to employment decisions, **this interference with the membership decisions of associations and credentialing organizations violates the First Amendment rights of those private organizations.** As the U.S. Supreme Court explained in *Roberts v. United States Jaycees*:

There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate.

Although the Supreme Court held that states may have a compelling interest in barring discrimination on the basis of race or gender, an adult's commission of criminal offenses – as established by criminal convictions that have not been expunged or pardoned – is not entitled to the same legal protections and does not outweigh the constitutional rights of private organizations. Some criminal offenses may be antithetical to a credentialing or membership organization's purposes and values. For example, a professional society of financial advisors may legitimately screen applicants for embezzlement or fraud convictions, and an association of health care professionals may appropriately exclude applicants with records of misusing prescription privileges to engage in opioid trafficking. To avoid this unconstitutional interference with associations' eligibility decisions and enforcement of their ethics codes, **the PCC urges that that the bill be amended to delete Section 17.**


In the alternative, the PCC proposes that the following safe harbor provision be added to the bill: **“Nothing in this chapter shall be construed to require a private association, board, or other organization to grant or deny private credentials or membership to any individual based on past conduct of the individual that is relevant to whether the individual meets the eligibility standards or conduct requirements of that private organization.”**

Further, in its current form, S.B. 1019 provides insufficient protections to the public. In particular, Section 3(e) provides for automatic erasure of criminal convictions that have not been expunged based simply on the passage of time, with exceptions only for family violence crimes and sexual offenses. For example, the bill calls for erasure of criminal conviction history for felonies that carry a ten-year prison sentence once fifteen years have elapsed after individual's most recent conviction date. This could be **less than five years after the person was released from prison** for serious offenses, if there was a substantial period between conviction and sentencing, and there is no requirement in the bill that the individual show any evidence of rehabilitation. **Indeed, as the bill is currently drafted, an offender's criminal conviction would be automatically erased on the designated anniversary date even if the individual is then facing current charges for reoffending.**

The PCC recommends amending S.B. 1019 to instead adopt a structure similar to [63 Pa. C.S. §§ 3113-3117](#) (attached), which was enacted into law in 2020. That law expressly endorses the role of licensing authorities in protecting public health, welfare, and public safety, and does not prohibit such authorities from considering any information that is relevant to a licensure decision. Unlike S.B. 1019, it does not mandate that licensing boards turn a blind eye to aspects of an applicant's history. Instead, it creates a presumption that an applicant convicted of a crime directly related to the licensed occupation poses a substantial risk to the public and should be denied a license, unless the individual rebuts the presumption with evidence of rehabilitation. And for applicants with criminal conviction histories unrelated to the licensed occupation, the Act mandates that the licensing board “conduct an individualized assessment of the individual with respect to criminal convictions and rehabilitation.” In this way, no applicant is automatically denied licensure opportunities by the mere fact of having a criminal record, and the public can also be assured of careful decision-making and protections. Ex-offenders get a fair opportunity to show they should be granted a license based on the individual circumstances of the facts underlying their offenses and their subsequent rehabilitation, but they are not entitled to have their personal history erased from consideration.

Thank you for your consideration of these amendments. If you have any questions regarding this letter, please feel free to reach out to us using the contact information identified below.

Sincerely,



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Current Members of the PCC

ABRET Neurodiagnostic Credentialing & Accreditation (ABRET)	American Translators Association (ATA)	Dental Assisting National Board (DANB)
ABSA International: the Association for Biosafety and Biosecurity (ABSA)	American Veterinary Medical Association (AVMA)	Design-Build Institute of America (DBIA)
Academy of Nutrition and Dietetics (AND)	APICS (formerly the American Production and Inventory Control Society)	Diving Equipment and Marketing Association (DEMA)
Academy for Certification of Vision Rehabilitation & Education Professionals (ACVREP)	Association for Financial Counseling & Planning Education (AFCPE)	Entertainment Services and Technology Association (ESTA)
Alliance of Hazardous Materials Professionals	Association for Financial Professionals (AFP)	ETA International (ETA)
American Association of Post-Acute Care Nurses (AAPACN)	Association of Surgical Technologists (AST)	Events Industry Council (EIC)
American Association of Critical-Care Nurses (AACN)	Behavior Analyst Certification Board (BACB)	Financial Planning Association (FPA)
American Association of Neuromuscular & Electrodiagnostic Medicine (AANEM)	Building Industry Consulting Service International (BICSI)	Hearth, Patio, & Barbecue Education Foundation
American Association of Professional Landmen	Board of Certification/Accreditation (BOC)	Heuristic Solutions
American Board for Certification in Orthotics, Prosthetics and Pedorthics (ABCOP)	Board of Certified Safety Professionals (BCSP)	Hospice and Palliative Credentialing Center (HPCC)
American Board of Certification for Gastroenterology Nurses (ABCGN)	Board of Pharmacy Specialties (BPS)	Institute for Credentialing Excellence (ICE)
American Board of Neuroscience Nursing (ABNN)	Building Commissioning Certification Board (BCCB)	Institute of Certified Management Accountants (ICMA)
American Board of Post-Acute and Long-Term Care Medicine (ABPLM)	CCIM Institute (issues the Certified Commercial Investment Member designation)	Institute of Hazardous Materials Management (IHMM)
American Board of Foot and Ankle Surgery (ABFAS)	CFA Institute	Institute of Internal Auditors (IIA)
American Board of Wound Management (ABWM)	Certification Board for Music Therapists (CBMT)	Inteleos (includes the American Registry for Diagnostic Medical Sonography (ARDMS) and the Alliance for Physician Certification & Advancement (APCA))
American Industrial Hygiene Association (AIHA)	Certification Board of Infection Control and Epidemiology (CBIC)	Irrigation Association
American Medical Certification Association (AMCA)	Certification Council for Professional Dog Trainers	International Association of Healthcare Central Service Materiel Management (IAHCSMM)
American Nurses Credentialing Center (ANCC)	Certified Financial Planner Board of Standards (CFP)	International Association of Lighting Designers (IALD)
American Payroll Association (APA)	Certified Fund Raising Executive International (CFRE)	International Certification & Reciprocity Consortium (IC&RC)
American Road & Transportation Builders Association Foundation (ARTBA)	Commercial Real Estate Certification Institute	International Coach Federation (ICF)
American Society of Association Executives (ASAE)	Commission for Case Manager Certification (CCMC)	International Foundation for Retirement Education (InFRE)
American Society of Civil Engineers (ASCE)	Commission on Nurse Certification (CNC)	International Society of Automation (ISA)
American Speech-Language-Hearing Association (ASHA)	CompTIA	Institute of Real Estate Management (IREM)
American Traffic Safety Services Association (ATSSA)	Community Association Institute (CAI)	International Information System Security Certification Consortium (ISC ²)
	Construction Management Association of America (CMAA)	IT Certification Council (ITCC)
	Council of Engineering and Scientific Specialty Boards (CESB)	Laborers' International Union of North America Training & Education Fund (LIUNA)

Medical-Surgical Nursing Certification Board (MSNCB)

National Association of Legal Assistants, Inc. (NALA)

National Association of Insurance and Financial Advisors (NAIFA)

National Association of Personal Financial Advisors (NAPFA)

National Athletic Trainers' Association Board of Certification, Inc. (NATA)

National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)

National Board of Certification in Hearing Instrument Sciences (NBC-HIS)

National Kitchen and Bath Association (NKBA)

National Board of Certification in Occupational Therapy (NBCOT)

National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)

National Certification Board for Diabetes Educators (NCBDE)

National Certification Corporation (NCC)

National Commission on Certification of Physician Assistants (NCCPA)

National Commission for Health Education Credentialing

National Council on Family Relations (NCFR)

National Recreation and Park Association (NRPA)

National Restaurant Association (NRA)

National Roofing Contractors Association (NRCA)

National Society of Professional Engineers (NSPE)

Nephrology Nursing Certification Commission

Oncology Nursing Certification Corporation

Professional Association of Therapeutic Horsemanship International (PATH)

Pediatric Nursing Certification Board (PNCB)

Pharmacy Technician Certification Board (PTCB)

PSI Services

Pearson Vue

QualityPro

School Nutrition Association (SNA)

SeaCrest Consulting

Security Industry Association

Society of Broadcast Engineers (SBE)

Specialty Pharmacy Certification Board (SPCB)

Spray Polyurethane Foam Alliance (SPFA)

Towing and Recovery Association of America, Inc. (TRA)



Principles for Legislation Restricting Consideration of Criminal Conviction History

Legislation at the state and federal level would restrict consideration of criminal conviction history by occupational licensing boards and, under some legislation, also by private certification organizations. The Professional Certification Coalition supports expanded opportunities for ex-offenders to earn a living, which advances the important goal of reducing recidivism. This is a worthy objective and an important next step in national efforts to reform the criminal justice system.

This objective must be balanced against the need to protect the public and the ability of both state licensing boards and private certification organizations to consider relevant conduct for which individuals have been provided full due process. Therefore, the PCC opposes legislative language that:

- *Restricts the right of private certification organizations to adopt or enforce ethics codes or eligibility requirements in which criminal conviction history is a factor, either by prohibiting consideration of a criminal conviction or by mandating the procedures used for disqualification of an individual with a criminal conviction, or*
- *Prevents licensing boards from requiring current professional certification as a condition of licensure or consistently enforcing such requirements, if the reason an individual does not hold current certification relates to a criminal conviction.*

The PCC's position is grounded on core legal principles, practical considerations, and policy views:

- *Private certification organizations and professional societies have a Constitutional right to establish and enforce ethics codes and codes of conduct for their credential-holders and members. The Supreme Court has held that it violates the First Amendment rights of private organizations for the government to “intrude into the internal structure or affairs of an association [through] a regulation that forces the group to accept members it does not desire,” unless the requirements of the law are supported by “compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”¹*
- *Private certifications convey to the public that the credential-holder meets all of the eligibility, qualification, competence, and conduct requirements of that organization's standards and policies. Consumers, employers, and other members of the public legitimately rely on certification standards in selecting which professionals to entrust with their business. Unless the state government has decided that no individual without the private credential may hold a license to practice an occupation, private certifications are voluntary enhancements to an individual's credentials. Individuals are free to practice those professions without the private certification and are not entitled to the endorsement of the certification organization unless they meet that organization's standards and comply with that organization's rules.*
- *To protect the public from unacceptable risks, some criminal convictions permanently and automatically disqualify offenders from holding certain professional certifications, even if the conviction was for a non-violent charge or a number of years have elapsed since the conviction. For example, an organization that certifies individuals who work alone with children may appropriately withhold its professional “seal of approval” from an individual convicted of a crime of child exploitation (sexual abuse, child pornography, etc.). Likewise, an organization that certifies individuals*

¹ *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

who are provided access to their clients' or employers' financial accounts may appropriately withhold its endorsement from an individual with a record of fraud or embezzlement. In such situations, the desire of ex-offenders to obtain a credential that would advance them in their preferred career does not outweigh the risk of significant and lasting harm to members of the public if the ex-offender engages in similar misconduct again. A contrary rule, prohibiting consideration of that individual's conviction record, would make certification organizations complicit in persuading individuals to place their trust in individuals who have previously violated that trust.

- *Conduct requirements for conforming with the high standards established for private professional certifications often overlap with legal requirements that carry criminal penalties.* Because a criminal conviction necessarily provides the defendant with substantial due process and carries a high burden of proof, private certification organizations should be able to rely on those factual determinations about an individual's conduct.
- *Private certification organizations lack both the legal authority and the resources to engage in a full-fledged independent investigation and fact-finding hearings about violations of ethics and conduct rules.* Unlike licensing boards or criminal and civil courts, private certification organizations cannot compel witnesses to testify or subpoena documents for their internal disciplinary or eligibility reviews. Moreover, most private certification organizations are nonprofit organizations; many operate with few employees and rely heavily on volunteers, including for disciplinary reviews. Requiring individualized review of the context and circumstances of every applicant's criminal conviction history, rather than automatic disqualification for certain convictions, would be an impossible requirement for those organizations to meet.
- *Restricting consideration of criminal convictions based on whether they are felonies or misdemeanors is unwarranted, because the underlying conduct may be the same.* Facts that support a felony charge may be pled down to a misdemeanor conviction, despite the gravity of the underlying conduct. Indeed, the vast majority of convictions are the result of plea bargains.² Moreover, the definitions of felonies and misdemeanors vary across jurisdictions; an offense that carries a nine-month sentence may be classed as a felony in one state and as a misdemeanor in another state.
- *Where private certification is a condition of licensure, that requirement reflects the considered judgment of the legislature or the licensure agency that the standards established by the recognized credentialing organization for the profession are necessary to protect the public.* There is no basis to treat ex-offenders more favorably than any other applicant who fails to hold a certification required under licensure laws.

The PCC supports private certification organizations engaging in self-regulation and careful review of their eligibility standards, ethics codes, and enforcement procedures. The PCC encourages certification organizations to target disciplinary rules at conduct that is demonstrably relevant to the individual's suitability to hold the credential. In addition, the PCC encourages adoption of enforcement procedures that, where appropriate, provide for individualized review of a certificant's circumstances before imposing disqualifying sanctions. Courts recognize that those holding private certifications have basic common law due process rights, so no legislation is needed to confer those rights on certificants. In addition, the standards for accreditation of private certification programs call for the programs to establish and publish policies for taking disciplinary actions, including allowing reconsideration or appeal of adverse certification decisions under procedures that are appropriate and that promote fairness to the applicant, candidate, or certificants.³ Whether a certification program is accredited or not, the PCC supports adoption of these best practices.

² See *Missouri v. Frye*, 566 U.S. 134 (2012) (noting that 94% of state convictions are the result of guilty pleas).

³ See, e.g., the National Commission of Certifying Agency's *Standards for the Accreditation of Certification Programs*.

§ 3113. Consideration of criminal convictions.

(a) Applicability.--This section shall apply to licensing boards and licensing commissions notwithstanding the following:

(1) Any other statutory provision to the contrary regarding the consideration of good moral character, crimes of moral turpitude or ethical or honest practice with respect to disqualification of licensure due to criminal conviction.

(2) 18 Pa.C.S. § 9124(c) (relating to use of records by licensing agencies).

(3) Any other statutory provision that disqualifies an individual from holding a license, certificate, registration or permit due to the individual's criminal conviction.

(a.1) Consideration.--A licensing board or licensing commission may not consider the provisions specified under subsection (a) in determining whether an individual qualifies for a license, certificate, registration or permit but instead shall determine the individual's qualification for a license, certificate, registration or permit in accordance with the procedures specified under this section.

(b) Analysis of criminal convictions.--Except as provided in subsections (d), (e) and (f), a licensing board or a licensing commission shall engage in a two-stage analysis of the criminal convictions of the applicant. The following shall apply:

(1) The first stage of the analysis shall determine whether the criminal conviction directly relates to the occupation, trade or profession for which the individual seeks licensure by reviewing the schedule of offenses in section 3117 (relating to list of criminal offenses). If the offense is found on the list of offenses that are directly related to the occupation, trade or profession, the licensing board or licensing commission shall then determine whether licensure of the individual would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions by conducting the individualized assessment specified in subsection (c). There shall be a rebuttable presumption that licensure of the individual with a criminal conviction that directly relates to the occupation, trade or profession would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions. The individual may rebut the presumption by showing evidence of rehabilitation, as specified in the factors in subsection (c).

(2) If, after reviewing the schedule of offenses in section 3117, the criminal conviction is determined not to be directly related to the occupation, trade or profession, the licensing board or licensing commission shall proceed to the second stage of the analysis of the criminal conviction. During the second stage of the analysis, the licensing board or licensing commission shall determine whether, due to the nature of the criminal conviction, licensure of the individual would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions. If so, the licensing board or licensing commission shall conduct the individualized assessment specified in subsection (c). The individual may rebut the determination by showing evidence of rehabilitation, as specified in the factors in subsection (c).

(c) Individualized assessment.--A licensing board or licensing commission shall conduct an individualized assessment of the individual with respect to criminal convictions and rehabilitation. The licensing board or licensing commission shall only consider the following factors in order to determine whether the individual meets the requirements for issuance of a license,

certificate, registration or permit under subsection (b)(1) or (b)(2):

(1) Whether the criminal conduct for which the individual was convicted involved an act or threat of harm against the individual. For purposes of this paragraph, the term "harm" includes harm to the victim, the personal property of the victim or reputation of the victim.

(2) The facts and circumstances surrounding the criminal conviction.

(3) The number of criminal convictions.

(4) Increase in age or maturity of the individual since the date of the criminal conviction.

(5) The individual's criminal history or lack of criminal history after the date of conviction.

(6) Successful completion of education and training activities, including those in a county correctional facility or the Department of Corrections.

(7) References from employers or others, including personnel of the county correctional facility or the Department of Corrections.

(8) Progress in personal rehabilitation since the conviction.

(9) Whether the individual meets all other licensing qualifications of the applicable practice act, including any examination requirements.

(10) The individual's criminal history, or lack of criminal history, after the date of the criminal conviction while engaged in the same or similar profession or occupation.

(11) Any other factor deemed relevant to the licensing board or licensing commission regarding the fitness of the individual for licensure.

(d) Sexual offenses.--When determining eligibility for licensure as a health care practitioner, a licensing board or licensing commission may not issue a license, registration, certificate or permit or otherwise allow an individual to practice as a health care practitioner if the individual has been convicted of a sexual offense.

(e) Crimes of violence.--An individual convicted of a crime of violence as defined in 42 Pa.C.S. § 9714 (relating to sentences for second and subsequent offenses) may be granted a license, registration, certificate or permit by a licensing board or licensing commission if all of the following apply:

(1) If the individual was incarcerated, at least three years have elapsed since release from incarceration. The period of three years shall be tolled for a violation of parole.

(2) If the individual is serving a sentence other than a period of confinement in a State or county correctional facility, at least three years have elapsed since imposition of sentence.

(3) The individual has remained conviction-free during the periods specified in paragraph (1) or (2).

(4) The individual demonstrates significant rehabilitation since the criminal conviction.

(5) The licensing board or licensing commission determines, by using the factors in subsection (c), except for subsection (c)(8), that licensure of the individual does not pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions.

(f) Drug trafficking.--Notwithstanding any provision of law to the contrary, the provisions of the respective practice acts relating to felony drug convictions under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or a conviction for an offense under the laws of another jurisdiction which, if committed in this

Commonwealth, would be a felony under the Controlled Substance, Drug, Device and Cosmetic Act, shall only apply to an individual who has been convicted of a drug trafficking offense. The licensing board or licensing commission may show, by a preponderance of the evidence, that the amount or weight of the controlled substance involved in a conviction meets the requirements for a drug trafficking offense.

(g) Construction.--Nothing in this section shall be construed to restrict any of the other powers and duties of a licensing board or licensing commission in disciplinary or licensure matters.

(h) Public information.--Except for name, address and other identifying information, a determination under this section shall be public information.

(i) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Drug trafficking offense." A violation of section 13(a)(14), (30) or (37) of The Controlled Substance, Drug, Device and Cosmetic Act, if the controlled substance or a mixture containing it is:

(1) Marijuana, if the amount of marijuana involved is at least 50 pounds or at least 51 live plants.

(2) A narcotic drug classified in Schedule I or Schedule II under section 4 of The Controlled Substance, Drug, Device and Cosmetic Act, if the aggregate weight of the compound or mixture containing the substance involved is at least 100 grams.

(3) Any of the following, if the aggregate weight of the compound or mixture of the substance involved is at least 100 grams:

(i) Coca leaves.

(ii) A salt, compound, derivative or preparation of coca leaves.

(iii) A salt, compound, derivative or preparation which is chemically equivalent or identical with any of the substances under subparagraphs (i) and (ii).

(iv) A mixture containing any of the substances under subparagraphs (i) and (ii), except decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(4) Any of the following, if the aggregate weight of the compound or mixture of the substance involved is at least 100 grams:

(i) Methamphetamine.

(ii) Phencyclidine.

(iii) A salt, isomer or salt of an isomer of methamphetamine or phencyclidine.

(iv) A mixture containing:

(A) Methamphetamine or phencyclidine.

(B) A salt of methamphetamine or phencyclidine.

(C) An isomer of methamphetamine or phencyclidine.

(D) A salt of an isomer of methamphetamine or phencyclidine.

(5) Heroin or a mixture containing heroin, if the aggregate weight of the compound or mixture containing the heroin is 50 grams or greater.

(6) A mixture containing 3,4-methylenedioxyamphetamine (MDA); 3,4-methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4-methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine when the aggregate weight of the compound or mixture containing the substance involved is at least 1,000 tablets, capsules, caplets or other dosage units or 300 grams.

(7) Fentanyl or a mixture containing fentanyl, if the aggregate weight of the compound or mixture containing the fentanyl is 10 grams or more.

(8) Carfentanil or a mixture containing carfentanil, if the aggregate weight of the compound or mixture containing the carfentanil is one gram or more.

"Healing arts." The science and skill of diagnosis or treatment in any manner whatsoever of disease or any ailment of the human body.

"Health care practitioner." An individual who is authorized to practice some component of the healing arts by a license, certificate, registration or permit issued by a licensing board or licensing commission.

"Sexual offense." An act, conspiracy or solicitation to commit any of the following offenses or an equivalent crime in another jurisdiction:

(1) 18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).

(2) Any of the offenses enumerated in 18 Pa.C.S. Ch. 30 (relating to human trafficking) if the offense involved sexual servitude.

(3) Any of the offenses enumerated in 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

(4) 18 Pa.C.S. § 4302 (relating to incest).

(5) 18 Pa.C.S. § 4304(a)(1) (relating to endangering welfare of children) if the offense involved sexual contact with the victim.

(6) 18 Pa.C.S. § 5901 (relating to open lewdness) if the offense involved a minor under 18 years of age.

(7) 18 Pa.C.S. § 5902(b) or (b.1) (relating to prostitution and related offenses).

(8) 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances) if the offense involved a minor under 18 years of age.

(9) 18 Pa.C.S. § 6301(a)(1)(i) (relating to corruption of minors) if the offense involved sexual contact with the victim.

(10) 18 Pa.C.S. § 6301(a)(1)(ii).

(11) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(12) 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(13) 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(14) 18 Pa.C.S. § 7507.1 (relating to invasion of privacy).

Effective Date. Section 6(1) of Act 53 of 2020 provided that section 3113 shall take effect in 180 days.

Special Provisions in Appendix. See section 5 of Act 53 of 2020 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3113 is referred to in sections 3115, 3116, 3117, 3118 of this title; section 9124 of Title 18 (Crimes and Offenses).

§ 3114. Juvenile adjudications.

Notwithstanding any provision of law to the contrary, when determining whether an applicant is qualified to be issued a license, registration, certificate or permit, a licensing board or licensing commission may not consider the applicant's juvenile adjudications.

Effective Date. Section 6(1) of Act 53 of 2020 provided that section 3114 shall take effect in 180 days.

Special Provisions in Appendix. See section 5 of Act 53 of 2020 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3114 is referred to in sections 3116, 3118 of this title; section 9124 of Title 18 (Crimes and Offenses).

§ 3115. Preliminary determinations by licensing boards and licensing commissions.

An applicant with a criminal history who, based on a review of the best practices guide published under section 3116 (relating to best practices guide), is unable to determine whether the applicant's criminal record would preclude the issuance of a license, certificate, registration or permit may file a petition for preliminary review with the licensing board or licensing commission under the bureau seeking a preliminary decision on whether the applicant's criminal history would disqualify the applicant from receiving a license, certificate, registration or permit, subject to the following:

(1) If the petition is filed separately from a formal application for a license, certificate, registration or permit, the licensing board or licensing commission shall issue a preliminary decision within 45 days. The preliminary decision shall be limited to a declaration of whether a conviction on the petitioner's criminal history record falls within the set of convictions that the licensing board or licensing commission has previously determined may be directly related to the profession or occupation over which the licensing board or licensing commission has authority.

(2) If the licensing board or licensing commission determines that a conviction on the petitioner's criminal history record is directly related to the occupation, trade or profession, the notice of the preliminary decision shall inform the petitioner that the determination is not final or binding as to whether the petitioner qualifies for a license, certificate, registration or permit, and that the petitioner has the opportunity to present evidence of the factors specified in section 3113(c) (relating to consideration of criminal convictions) in connection with any subsequent formal application for a license, certificate, registration or permit. Where appropriate, the notice may also inform the petitioner that a sexual offense, crime of violence or drug trafficking offense may prevent licensure in accordance with section 3113(d), (e) and (f).

(3) The licensing board or licensing commission may charge a filing fee, which shall not exceed \$45, to be paid for each petition for preliminary review filed on or after January 1, 2022. The licensing board or licensing commission may establish by regulation reasonable fees which may not exceed an amount sufficient to reimburse the licensing board or licensing commission for the administrative costs associated with processing the petition for preliminary review. The licensing board or licensing commission shall make available forms for petitioners to request in forma pauperis status in connection with a petition. The licensing board or licensing commission may not unreasonably deny in forma pauperis status. A petitioner granted in forma pauperis status shall be permitted to file a petition and receive a preliminary decision without payment of the filing fee.

(4) The determination by the licensing board or licensing commission shall be binding, subject to:

(i) A review of criminal history record information submitted during the application process.

(ii) Section 3113.

Effective Date. Section 6(1) of Act 53 of 2020 provided that section 3115 shall take effect in 180 days.

Special Provisions in Appendix. See section 5 of Act 53 of 2020 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3115 is referred to in sections 3116, 3117, 3118 of this title; section 9124 of Title 18 (Crimes and Offenses).

§ 3116. Best practices guide.

(a) Development of guide.--Within 180 days of the effective date of this subsection, the Department of State shall, in collaboration with the licensing boards and licensing commissions, develop a guide of best practices for an applicant with a criminal conviction to use when seeking a license, certificate, registration or permit. The following apply:

(1) The guide shall be published in both English and Spanish.

(2) The guide shall include, at a minimum, a summary of the provisions of the following:

(i) Section 3112 (relating to restricted licenses for barbers and cosmetologists).

(ii) Section 3112.1 (relating to restricted licenses for other occupations).

(iii) Section 3113 (relating to consideration of criminal convictions).

(iv) Section 3114 (relating to juvenile adjudications).

(v) Section 3115 (relating to preliminary determinations by licensing boards and licensing commissions).

(vi) Section 3117 (relating to list of criminal offenses).

(b) Publication and distribution.--Within 180 days of the effective date of this subsection, the Department of State shall publish the guide under subsection (a) on its publicly accessible Internet website and shall provide a written copy upon request. The written copy of the guide shall be provided without cost to the person requesting the guide.

Special Provisions in Appendix. See section 5 of Act 53 of 2020 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3116 is referred to in sections 3115, 3117, 3118 of this title; section 9124 of Title 18 (Crimes and Offenses).

§ 3117. List of criminal offenses.

(a) Duty of commissioner.--After consultation with the licensing boards, licensing commissions and representatives of the business community with knowledge of the respective professions, the commissioner shall have the power and duty to publish a schedule of criminal convictions that may constitute grounds to refuse to issue, suspend or revoke a license, certificate, registration or permit for each occupation or profession under the respective practice acts. The following shall apply:

(1) The schedule shall indicate which offenses are those that the licensing board or licensing commission deems as directly relating to the occupation, trade or profession.

(2) The schedule shall indicate the licensing board and licensing commission responsible for licensure of each occupation or profession.

(3) Within 180 days of the effective date of this subsection, the commissioner shall transmit notice of the completion of the schedule to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(4) Within two years of the publication under paragraph (3), the commissioner shall transmit notice of a regulation to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. The regulation shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(5) The commissioner shall submit a regulation to update the schedule of criminal convictions as often as the commissioner deems appropriate to reflect new statutory enactments of the General Assembly affecting the schedule.

(b) Public comment period.--Within 120 days of the publication of the schedule in the Pennsylvania Bulletin under subsection (a), the commissioner shall submit initial proposed regulations to the Independent Regulatory Review Commission under section 5 of the Regulatory Review Act.

(c) Dissemination.--Within 180 days of the effective date of this subsection, the schedule of offenses in subsection (a) shall be provided in writing to each applicant for a license, certificate, registration or permit issued by a licensing board or licensing commission as part of the application and shall be made part of the best practices guide under section 3116 (relating to best practices guide). The following shall apply:

(1) Within 180 days of the effective date of this subsection, the schedule shall be published on the publicly accessible Internet website of the Department of State.

(2) The schedule of criminal convictions shall be published in both English and Spanish.

(3) Notice that the list of criminal offenses will change based upon new enactments by the General Assembly shall be provided on the publicly accessible Internet website of the Department of State, in writing as part of the application and in the best practices guide.

(d) Application.--The schedule shall be used by the licensing boards and licensing commissions when:

(1) preparing preliminary determinations under section 3115 (relating to preliminary determinations by licensing boards and licensing commissions);

(2) determining which criminal convictions may result in discipline of a licensee; and

(3) determining whether a criminal conviction may result in refusing to issue a license, certificate, registration or permit under section 3113 (relating to consideration of criminal convictions).

Special Provisions in Appendix. See section 5 of Act 53 of 2020 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3117 is referred to in sections 3113, 3116, 3118 of this title; section 9124 of Title 18 (Crimes and Offenses).