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# Occupational Licensing & Criminal Records in Georgia

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WADE ASKEW, POLICY MANAGER

GEORGIA JUSTICE PROJECT

GA WORKS LICENSING COMMISSION 8/8/23



transforming our  
community for over **35 years**

**Reduce the number of Georgians who are under correctional control**

**Reduce reentry barriers for the formerly incarcerated and justice-involved**

# GEORGIA JUSTICE PROJECT'S INTERVENTION

## HOLISTIC CRIMINAL DEFENSE

- Legal representation with social services
- Long-term support for clients

## POLICY/21 LAWS CHANGED

- Expanded expungement – impacts 1.5 million Georgians
- Early probation termination – impacts up to 48K Georgians

## PRISON SUPPORT/REENTRY

- Reentry lawyering – Metro Reentry Facility (MRF)
- Fines & fees reform
- Probation termination

## RECORD RESTRICTION/EXPUNGEMENT

- Legal representation
- Restriction summits
- Expungement help desks





## & Occupational Licensing

Representing clients with criminal records in licensing matters

**Since 1986**

- Full-time legal staff dedicated to occupational licensing cases and licensing policy research
- Community and stakeholder education on licensing issues

**2020-2023**

**2016**

Criminal Justice Reform Council & successful licensing reform bill



## & Occupational Licensing

# External Engagement

- **Industry, workforce, and trade association groups**  
TCSG, GA Health Care Association, GA Center for Nursing Excellence, GA Chamber of Commerce, Metro Chamber of Commerce, Association of General Contractors, Mechanical Contractors Association of GA/Mechanical Trades Institute, CareerRise, Small Business Majority, Construction Ready, WorkSource Atlanta/Invest Atlanta, Fulton WorkSource/Select Fulton, Life University, GA Early Education Alliance for Ready Students, ATL Regional Commission, APTMetrics, GA Childcare Association, Microsoft, Atlanta Community Food Bank
- **State boards and agencies**  
Department of Insurance, Secretary of State
- **Partner organizations**  
Georgia Center for Opportunity, Americans for Prosperity, Institute for Justice, Faith & Freedom, Center for Victims of Torture/Business and Immigration Partnership, Arnold Ventures
- **Out-of-state partners**  
Council of State Governments, Missouri Chamber, Empower Mississippi, Arkansas Red Tape Reduction Working Group, Safer Foundation (Illinois)
- **Conferences**  
National Conference of State Legislators 2022 National Occupational Licensing Meeting  
WorkSource Georgia Academy Conference 2022

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# Criminal Records in Georgia

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# 4.5 million with Georgia criminal record

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**50%**

were only arrested once.

Only **14%**

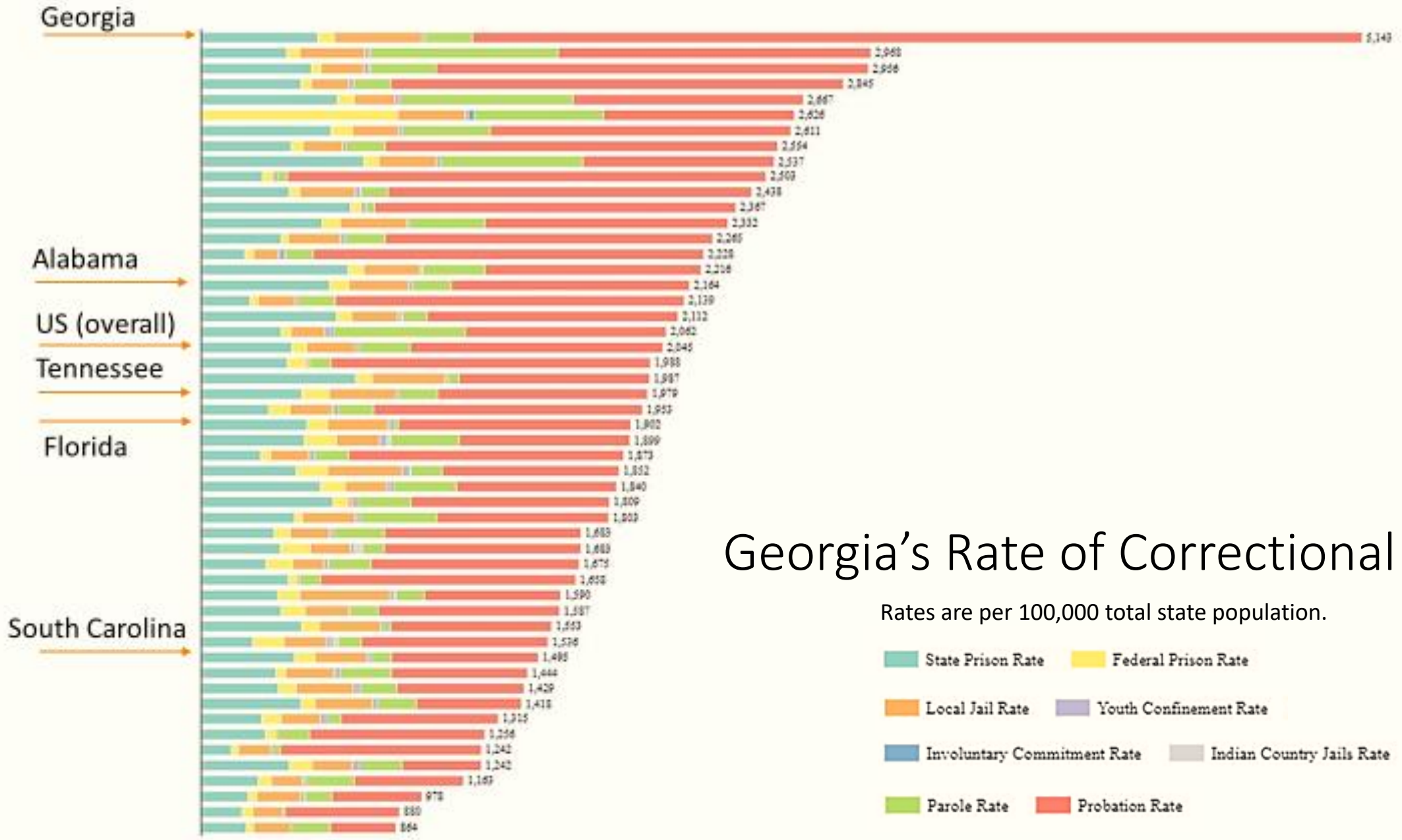
have a felony conviction.

Over **60%**

of those with a felony conviction were not sentenced to prison.

**< 2%**

were convicted of a serious violent or sexual offense.



# Georgia's Rate of Correctional Control

Rates are per 100,000 total state population.

- State Prison Rate
- Federal Prison Rate
- Local Jail Rate
- Youth Confinement Rate
- Involuntary Commitment Rate
- Indian Country Jails Rate
- Parole Rate
- Probation Rate



## Desistance Research:

The Effect of Time  
With No New  
Arrests

### Rearrest or Recidivism:

Most occurs within 3 years of  
an initial charge

Virtually all occurs within 5  
years

5 years after initial arrest, if no other arrests:

Risk of arrest is the same as the general public

Have a Job?

2 times as likely to avoid rearrest

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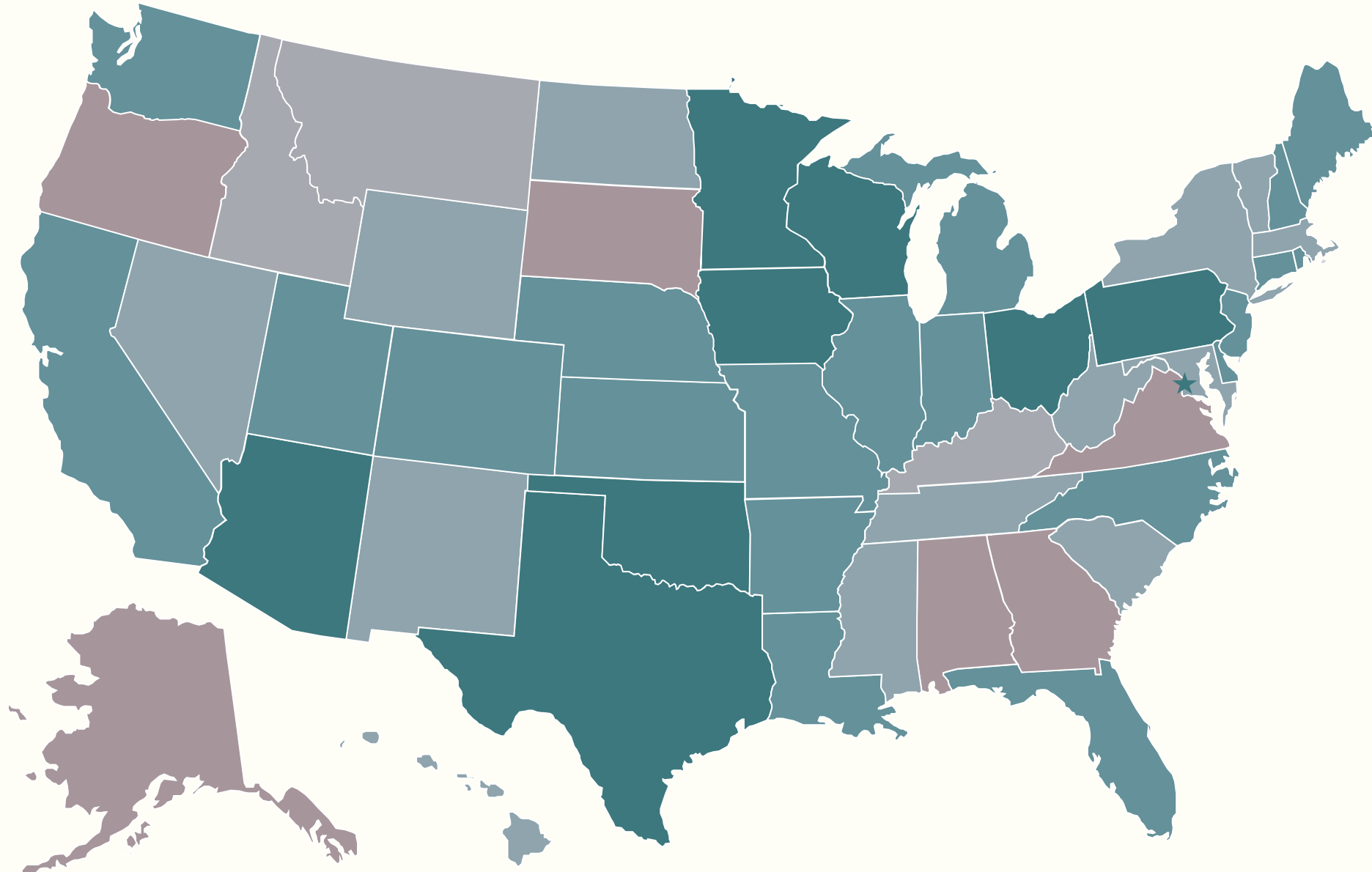
# Licensing Reform Nationwide

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# 80%

of states have increased access to licensing for workers with criminal records since 2015.

Number of proposed licensing reforms passed by each state:



# Licensing Reform and the Economy

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1 in 6 jobs in Georgia requires an occupational license

Institute for Justice, *Occupational Licensing in Georgia*: <https://ij.org/issues/economic-liberty/occupational-licensing/georgia/>

1 in 4 of Georgia's high-demand careers require a license

WorkSource Metro ATL, Demand Occupations: <https://atlworks.org/find-career-training/demand-occupations/>.

65,000 licensed jobs are unfilled in Georgia's healthcare, childcare, eldercare, transportation, and finance industries; soon this will grow to 162,871 missing workers

- Figures provided by the Georgia Chamber of Commerce

# Licensing Reform Means Less Recidivism

States with the heaviest occupational licensing burdens on people with criminal records had average 10-year increase in recidivism rate of over 9%. States with the lowest licensing burdens on people with criminal records saw an average 2.5% decline in recidivism in the same period.

*Turning shackles into bootstraps: Why occupational licensing reform is the missing piece of criminal justice reform.* Stephen Slivinski for the Center for the Study of Economic Liberty (2016).

Higher rearrest rates occur in states with more strictly regulated occupational licensure, even after controlling for other economic and educational factors.

*Bridging the Divide: Licensing and Recidivism.* Vittorio Nastasi and Samuel R. Staley for the James Madison Institute (2019).

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# Georgia Barriers and Solutions

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# Real GJP Client: Alvin's Story

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Alvin has a conviction record from over 20 years ago and wants to be a used car dealer.

To apply for his dealer's license, Alvin must take a training course, establish a place of business, and pay a fee, but he is not sure if he will get a license with his criminal record.

Alvin decides it's not worth the risk and doesn't apply.

# Criminal Record Pre-Petition Process

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## Problem

People with records don't know whether to invest in education/training – chilling effect

## Solution

Applicants can receive binding licensing eligibility predetermination before investing in education and training

## Effect

Identify a new pool of qualified workers and empower them to pursue education/training



# Criminal Record Pre-Petition Process

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Mississippi  
(2019)

Arkansas  
(2019)

Missouri  
(2020)

Louisiana  
(2022)

North Carolina  
(2019)

Indiana  
(2018)

Oklahoma  
(2022)

Florida  
(2019)

Tennessee  
(2018)

Texas  
(2009)

Kansas  
(2018)

West Virginia  
(2019)

# Criminal Record Pre-Petition Process

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By far the most popular idea with stakeholders in licensed industries, workforce development, and education/training roles

Post-reform report from Arkansas: 83% of licensing boards and agencies reported no additional administrative burdens from pre-clearance petition reform.

The Georgia Real Estate Commission has used a pre-petition process for years and reports enhanced efficiency.

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## Real GJP Client: Candace's Story

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Candace is ready to apply for her funeral director license and has a criminal record.

She visits the board's website to understand how to handle her record in the application process. She cannot find any information about how to disclose and explain her record, how to obtain the required documents from the court, or how the board will consider her record with her application.

Candace's license will be delayed or even denied if she misunderstands how to address her record.

# Transparency and Data Reporting

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## Problem

Lack of guidance for licensing applicants with criminal records

Lack of data about how boards are considering criminal records in licensure decisions

## Solution

Provide online guidance for applicants with records

Collect reports from licensing boards and agencies on handling of criminal records

## Effect

Applicants better meet licensing boards' requirements for criminal records

Greater clarity on how licensing reforms are working

# Transparency and Data Reporting

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Louisiana  
(2021/22)

- data report

North Carolina  
(2019)

- data report

Illinois  
(2016/17)

- data report

Oklahoma  
(2022)

- data report

Florida  
(2019)

- data report & public guidance

Texas  
(2019)

- public guidance

Kansas  
(2018)

- public guidance

Ohio  
(2021)

- public guidance

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## Real GJP Client: Whitney's Story

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Whitney had a criminal record because she survived an abusive relationship. A judge has restricted and sealed (expunged) her record.

To apply for her cosmetology license, Whitney still must disclose expunged records and explain their circumstances in detail.

Whitney worries about reliving this time in her life and being judged on her criminal record by the cosmetology board.

# Streamlined Consideration of Convictions

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## Problem

Consideration of stale records adds time and effort for boards and applicants  
Can lead to unnecessary denials that do not enhance public safety

## Solution

Only consider non-expunged, non-pardoned convictions that are relevant and recent

## Effect

Boards more efficiently consider criminal records, while ensuring safety, by relying on expungement and pardon process and applying evidence-based principles

# Streamlined Consideration of Convictions

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<u>Arkansas</u> (2019)	expunged offenses and arrests excluded, time limit of 5 years except sexual/violent offenses
<u>Missouri</u> (2020)	time limit of 4 years except sexual/violent offenses
<u>Oklahoma</u> (2022)	time limit of 5 years except sexual, violent and DV offenses; expunged convictions and arrest records excluded
<u>Florida</u> (2019)	time limit of 5 years for some licensed professions, except for sexual and violent offenses
<u>West Virginia</u>	expunged offenses excluded
<u>South Carolina</u>	pardoned offenses excluded
<u>Indiana</u> (2018)	time limit of 5 years except sexual/violent offenses, expunged offenses and arrests excluded
<u>Illinois</u> (2017)	expunged/sealed offenses and arrests excluded



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# Real GJP Client: Sonya's Story

Sonya finished nursing school, applied for her RN license, and disclosed her criminal record.

The board investigates her record but does not allow witnesses explaining Sonya's rehabilitation. They go on to deny Sonya a license without saying why her record is disqualifying or how she can become eligible.

Sonya does not understand how to appeal or how to become qualified and loses the opportunity to be a nurse.

# Thorough Process to Consider Eligibility

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## Problem:

Lack of due process for licensing applicants with records

## Solutions:

Defined burden of proof on licensing board  
Right to bring witnesses and present evidence  
Right to a written explanation  
Permit appeal to the Office of State Administrative Hearings

## Effects:

More guidance for licensing boards & better licensing decisions  
Licensing applicants understand how the law applies to their record and/or what they need to change before reapplying

# Thorough Process to Consider Eligibility

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## Louisiana (2022)

- written decision

## Mississippi (2019)

- burden of proof
- right to hearing
- written decision

## North Carolina (2019)

- right to hearing
- written decision
- accessible appeal

## Missouri (2020)

- burden of proof
- right to hearing
- written decision
- accessible appeal

## Iowa (2020)

- burden of proof
- right to hearing
- written decision
- accessible appeal

## Kentucky (2017)

- burden of proof on state, except sex offenses & serious felonies
- right to hearing
- accessible appeal

## Oklahoma (2022)

- written decision
- accessible appeal

## Texas (2022)

- written decision
- accessible appeal

## South Carolina (2023)

- right to hearing
- written decision
- accessible appeal



# The Policy Partners Behind These Solutions

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transforming our  
community for over 35 years

## Questions and Conversation

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