

MODEL MEMORANDUM OF UNDERSTANDING BETWEEN CORRECTIONS AGENCIES AND LICENSING BODIES TO SUPPORT OCCUPATIONAL LICENSING OPPORTUNITIES FOR INDIVIDUALS WITH CRIMINAL CONVICTIONS

DOCUMENT DESCRIPTION

This model Memorandum of Understanding (MOU) provides a basic framework for cooperation between corrections agencies and licensing bodies to support occupational and professional licensing opportunities for eligible individuals with criminal histories.

Correctional facilities are increasingly providing job-readiness training as evidence continues to demonstrate that stable employment is an important factor in the successful reentry and reintegration of individuals leaving corrections institutions.* Even though such programming is often effective in fostering rehabilitation and preparing individuals to join the workforce, complex legal and policy regimes limit occupational and professional licensing opportunities for individuals with criminal histories.

In 2018, the National Inventory of Collateral Consequences of Conviction identified nearly 14,000 provisions in laws of all 50 states and the federal government that restrict occupational and professional licensing opportunities for people with criminal histories. Nearly 6,000 of these licensing restrictions are mandatory, meaning that licensing agencies have no discretion to grant a license or waive a license impairment (e.g., limited or probationary license requirements, suspensions, etc.) if an individual has been convicted of certain offenses. The remaining restrictions are imposed at the discretion of licensing bodies that are authorized, but not required, to deny or impair licenses for individuals convicted of some or all offenses, further limiting the job prospects of a person with a criminal record.

Officials developing employment programming at correctional facilities should take careful consideration of these licensing restrictions, as successful programming that works with the policies of licensing bodies is critical to encouraging successful outcomes for participants in these programs. This programming should take into account the licensing procedures in the jurisdictions their participants are returning home to that may impact which occupations and professions are attainable for people with criminal records. The programming should prepare them to best meet the requirements or conditions imposed by licensing bodies given discretion to deny individuals with certain criminal histories. Unfortunately, such information can be difficult to come by due to the complexity and ambiguity of licensing laws as well as the varied and, sometimes, opaque policies and practices of licensing bodies. Collaboration and information-sharing between corrections agencies and licensing bodies is therefore critical to ensure that programming produces clear pathways to employment for participants receiving training in licensed fields.

* See, e.g., Graffam et al, *Variables affecting successful reintegration as perceived by offenders and professionals* (2004); Visher et al, *Employment after prison: A longitudinal study of releases in three states* (2008); Sampson et al, *Crime in the making: Pathways and turning points through life* (1995).

Interagency collaboration and information-sharing also provides significant benefits to licensing bodies tasked with evaluating the eligibility and qualifications of applicants with criminal histories. Programming that is responsive to the requirements of licensing bodies and the laws that govern their authority helps to produce applicants that are more likely to successfully participate in relevant fields, while also giving licensing bodies the tools to vet and qualify applicants with criminal histories more confidently.

This MOU promotes information sharing and collaboration between correctional agencies and licensing bodies to increase access to licensing opportunities for eligible individuals with criminal histories and help ensure that they are appropriately qualified and prepared for licensure in their field. As it is a model, correctional programs and licensing bodies, are encouraged to refine the terms of the agreement to meet their own specific needs. Parties should consider available resources, applicable law, the scope of programming, and any other factors that may affect the successful implementation of a workable framework for cooperation.

This MOU also includes commentary on the purpose underlying each term of agreement, tips, questions, and/or considerations to guide entities entering into this partnership.

This document was developed by members of the Council of State Governments Justice Center staff. The statements made reflect the views of the authors, and should not be considered the official position of the Justice Center or the members of the Council of State Governments.

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
[CORRECTIONS AGENCY]
AND
[LICENSING BODY]
TO
SUPPORT OCCUPATIONAL LICENSING OPPORTUNITIES FOR QUALIFIED INDIVIDUALS
WITH CRIMINAL CONVICTIONS**

1. PURPOSE: This Memorandum of Understanding (“MOU”) represents a non-binding agreement between CORRECTIONS AGENCY and LICENSING BODY (the “Parties”) on a framework for interagency cooperation to improve access to occupational licenses for qualified individuals with criminal conviction histories. In furtherance of that goal, this agreement is meant to support the success of corrections programming relevant to licensed occupations and professions by ensuring that program participants are eligible and appropriately qualified for necessary occupational and professional licenses upon return to the community. The Parties agree in good faith to establish and support such framework within the terms of this agreement.

2. BACKGROUND: Job-readiness training has become an important part of corrections programming as evidence continues to point to the fact that meaningful employment is a key indicator of the likelihood that people convicted of crimes will successfully reintegrate in their community. But while such programming makes substantial contributions to rehabilitating participants and equipping them with the skills necessary to practice a chosen occupation or profession, the criminal history of its participants often limits their ability to obtain the licensure necessary to practice their trade. These limitations take two forms: mandatory licensing restrictions (including ineligibility, as well as impairments like limited or probationary license requirements) explicitly imposed by state or federal law against individuals with certain criminal histories, and discretionary licensing restrictions imposed by individual licensing bodies authorized (but not required) by statute or rule to take adverse licensing actions based on criminal conviction. Ensuring that corrections institutions’ job training programming is responsive to these licensing restrictions, both from a legal and practical perspective, is essential to encouraging successful outcomes for program participants. At the same time, licensing bodies should be able to give appropriate and informed consideration to the rehabilitative programming and job-readiness training received by otherwise-qualified applicants with criminal histories so that they may ensure that such applicants are fairly evaluated.

Commentary

This model background language provides a brief national overview of relevant issues. Depending on the jurisdiction, agencies, and licenses involved, the specific issues will vary. Specific issues should be clearly outlined here. Where appropriate, particular attention should be paid to the following factors:

- *Education-level of the reentering work-force*
- *Market demand for particular skills and workers*
- *Corrections programming currently being offered, and relevant characteristics*
- *Current rates of employment and earning capacity of the reentering work-force*

3. TERMS OF AGREEMENT: Consistent with the purpose of this MOU, the Parties shall work together to:

- a) Ensure that CORRECTIONS AGENCY is aware of the licensing restrictions in relevant fields that impact individuals with criminal convictions, including those caused by administrative rules in addition to state and federal statutes, and by the policies and practices of LICENSING BODY. CORRECTIONS AGENCY should also be aware of any available relief from such restrictions. This information should be frequently updated as LICENSING BODY becomes aware of relevant changes in law, policy, or practice. The parties will share relevant information at predetermined intervals to ensure that the information remains current and complete.

Commentary

This term is meant to ensure that corrections agencies understand what the law provides with respect to licensing restrictions in their jurisdiction and how a person's criminal history factors into the decision-making process of said licensing body in practice. This is of special importance when laws or rules authorize discretionary restrictions but fail to provide well-defined standards to guide the exercise of that discretion. In the absence of such standards, the formal and informal policies and practices of licensing bodies— which may be well-defined and clearly articulated internally, but not widely understood or shared externally—will often determine whether a license is granted or denied.

Implementation

Licensing bodies should provide, if available, corrections agencies with the following information regarding their state's laws and their organization's policies and practices:

- *Convictions (or types of convictions) that will trigger a mandatory licensing restriction;*
- *Convictions (or types of convictions) that may trigger a discretionary licensing restriction;*
- *Factors the body considers in determining whether to impose a discretionary licensing restriction.*
- *Any relief from mandatory or discretionary restrictions provided under law or under board policies. Such relief may include criminal history and/or fitness waivers, sealing and expungement, certificates of relief, executive pardon or restoration of rights, and any other mechanism for mitigating the effect of a criminal record in licensing determinations. Civil legal aid providers and other organizations working in the entry space can be valuable partners when it comes to identifying and understanding these mechanisms. Licensing bodies and corrections agencies are encouraged to partner with such organizations to compile and maintain this information. Corrections agencies are also encouraged to partner with these organizations to provide information sessions and other relevant direct services to program participants.*

b) Ensure that selection criteria for participants in job-readiness and/or rehabilitative programming provided by CORRECTIONS AGENCY accounts for relevant legal restrictions to licensure and relief from those restrictions, and that program content takes account of the specific concerns of LICENSING BODY with respect to the licensing of eligible individuals with criminal convictions.

Commentary

This term is meant to serve two purposes: (1) Ensure that participants are not placed into job training programs in fields where licensure will ultimately be unattainable due to mandatory licensing restrictions; and (2) ensure that individuals subject to discretionary restrictions are well-positioned to overcome those restrictions when applying for licensure. These goals serve the interests of both corrections agencies and licensing bodies by conserving programming and vetting resources spent on participants and applicants whose convictions will render them unable to obtain necessary licensure.

Note: A mandatory restriction does not necessarily mean that licensure will be unobtainable. Mechanisms for relief from mandatory restrictions may exist and should be considered where appropriate.

Implementation

Corrections agencies should:

- Consider which convictions (or categories of convictions) will result in mandatory licensing restrictions when vetting individuals for program participation. Agencies may wish to limit program participation only to participants not subject to such restrictions, particularly if relief from such restrictions is unavailable or significantly limited.
- Ensure programming prepares individuals to meet general licensing requirements as well as any requirements specific to applicants with criminal histories, such as requirements that applicants provide evidence of rehabilitation.

c) Develop and distribute materials for current and prospective program participants that clearly describe relevant licensing restrictions that may be triggered by criminal conviction. Materials will identify, with specificity, the types of offenses for which a conviction will trigger a mandatory licensing restriction, and those which may trigger a restriction subject to the discretion of LICENSING BODY. Any standards and policies in place that guide LICENSING BODY's discretionary decision making, with respect to criminal conviction, will be clearly described. If they are available, procedures for obtaining relevant waivers, initiating appeals, or obtaining other relief from criminal conviction-based licensing restrictions will be identified and

Commentary

This term is meant to ensure that reentering individuals seeking licensure are adequately informed about their chance of successfully obtaining licensure. Pursuing occupational and professional licensure can require a significant investment of time and money due to training requirements and associated fees—resources that are often unavailable to people reentering their community. Individuals wishing to obtain work in a licensed field should have all the information necessary to make an informed decision about how their resources will be spent, particularly when a criminal conviction may pose a significant barrier to licensure.

described. Copies of all relevant official forms and materials—including application materials, criminal history disqualification waiver applications, and criminal background check authorization forms—will be provided along with these materials.

Implementation

Points to consider:

- *Materials should be drafted by corrections agencies, with the assistance of licensing bodies, in a manner that is easy for justice-involved individuals to understand, and may take the form of pamphlets, booklets, fact-sheets, or any other convenient format.*
- *Materials should be revised as necessary to account for changes in the law and licensing policies and practices.*
- *Corrections agencies should distribute materials to prospective and current program participants.*
- *Licensing bodies should make the materials publicly available to ensure access to justice-involved individuals*
- *As previously noted, civil legal aid providers and other organizations working in the entry space can be valuable partners when it comes to identifying and understanding mechanisms that provide relief from barriers triggered by convictions. Licensing bodies and corrections agencies are encouraged to partner with such organizations to compile and maintain this information*

d) Develop a credentialing process whereby participants who successfully complete relevant corrections programming may be certified as having received training and/or rehabilitative services that substantially contribute to qualification for licensure and preparedness to practice relevant occupations/professions. Such credentials shall be given appropriate weight by LICENSING BODY when making discretionary licensing determinations.

Commentary

This term is meant to ensure both that corrections programming is responsive to the policies, practices, and concerns of licensing bodies, and to permit licensing bodies to appropriately consider individuals who have successfully completed relevant programming.

Implementation

Points to consider:

- *Credentialing may take the form of a certificate of program completion, qualification for employment/licensure, or other documentation or status conferred to successful participants.*
- *Effective credentialing targeted at specific licenses may require licensing bodies to “accredit” corrections programs, either formally or informally. As such, licensing bodies should work with corrections agencies to understand the scope of programming provided, and how that programming contributes to participants’ preparedness for licensure and/or rehabilitation.*
- *The degree to which credentials may be weighed in favor of an applicant will depend on the degree*

of discretionary authority granted to the licensing body. Credentials may be considered alongside other relevant factors, such as the age of conviction, the nature of the underlying conduct, and its relationship to the licensed activity.

- e) Establish procedures for license eligibility pre-qualification for individuals who complete relevant programming. The pre-qualification process will provide program participants with a non-binding initial statement from LICENSING BODY as to whether a participant's particular criminal history may result in license denial or impairment due to discretionary restrictions.

Commentary

This term of the agreement is meant to give participants who may be subject to discretionary restrictions a chance to determine whether their particular conviction will impact their ability to obtain full licensure. This will permit program participants to determine whether a continued investment in training, application fees, etc. is in their interest.

Note: *This agreement contemplates that individuals subject to mandatory restriction will already be informed of their status, and thus will not benefit from a pre-qualification determination.*

Implementation

Points to consider:

- *Pre-qualification is largely a function of licensing bodies. However, corrections agencies should work with those bodies to initiate the process on behalf of individuals who complete relevant programming. Corrections agencies should also work with licensing bodies to ensure that program participants understand the process and its purpose.*
- *Pre-qualification need not involve complex vetting or background checking. Prequalification may rely on limited information such as the crime of conviction and program completion.*
- *Pre-qualification should not be considered a formal part of the license application process, although licensing bodies may wish to consider the results of a pre-qualification determination when making an official licensing determination. Licensing bodies should take care not to rely solely upon pre-qualification determinations when making final license determinations since official applicants will presumably be subject to a more thorough vetting process.*
- *Insofar as pre-qualification requires fees or the submission of information from participants, they should be kept to a minimum consistent with the purpose of relieving applicants from the burdens that may accompany the pursuit of licensure.*

f) Regularly collect and share information on program participation and licensing outcomes for the purpose of evaluating the effectiveness of programming. CORRECTIONS AGENCY will maintain and share information regarding the number of individuals participating in, and successfully completing, relevant programming. LICENSING BODY will maintain and share information regarding: (1) grant/denial rates for individuals who have successfully completed relevant programming; (2) whether denial was due to a mandatory criminal conviction-based ineligibility; and (3) whether criminal history was a factor in any discretionary denial.

Commentary

This term is meant to ensure that both parties can evaluate the effectiveness of their efforts in furtherance of this agreement.

Implementation

Questions for consideration:

- How often will information be collected and shared?
- Which individuals within the party entities will be responsible for maintenance and dissemination of information?
- How will information be tracked over time, and how can past data be used to set future benchmarks?

g) Identify officials from each Party to meet regularly to evaluate the strengths and weaknesses of corrections programming and licensing practices as it relates to supporting licensing opportunities for individuals with criminal histories, and to develop and refine strategies for furthering the purpose of this MOU.

Commentary

As this agreement represents a collaborative effort, it is critical that the parties remain in frequent communication. Although this term is meant to ensure that the parties are able to formally evaluate their efforts under this agreement, the parties should keep informal lines of communication open at all times.

Implementation

Question for consideration:

- How often should formal meetings take place? (E.g., weekly, monthly)
- Which officials will be accountable for participating in regular formal meetings?
- What information will be reviewed during formal meetings, and who will compile it?

4. ADDITIONAL TERMS: The agreement set forth in this MOU shall take effect on __/__/____. The terms of this MOU may be modified at any time with the mutual consent of both Parties. The agreement set forth in this MOU may be terminated by either Party upon 90 days' notice provided to the other Party.

Signature of authorized representative of
[CORRECTIONS AGENCY]
[PRINTED NAME]
[TITLE]

Date

Signature of authorized representative of
[LICENSING BODY]
[PRINTED NAME]
[TITLE]

Date