

ACJC Workgroup on Barriers to Reentry
Staff Notes and Member Assignments, January 8,
Denali Commission, 510 L St., Anchorage

Commissioners attending: Jeff Jessee, Ron Taylor (joined 10:35 AM)

Staff present: Mary Geddes, Susie Dosik

Participating: Kaci Schroeder (DOL delegate), Steve Williams (AMHTA), Natasha Pineda (AMHTA), Deborah Periman (UAA), Barbara Armstrong (UAA), Nancy Meade (ACS)

Future meetings:	Friday, January 23	3:00 -4:30 PM	Juneau location TBD
	Tuesday, February 24	10:30 AM – 12:00 PM	Juneau location TBD
	Tuesday, March 31	3:00-4:30 PM	Location TBD

INFORMATION

Deb Periman delivered a handout including North Dakota legislation regarding limits to occupational barriers due to misdemeanor offenses, and Vermont legislation regarding the interpretation of ambiguity in administrative regulations. [See attachments.](#)

DISCUSSION

Lifetime Exclusion for TANF/SNAP for drug felonies

Mary Geddes discussed a White Paper on this topic that was prepared for a former group that was researching issues of collateral consequences. ([see attachment](#)). Alaska has not “opted out” of federal legislation that prevents drug felons from applying for and receiving TANF and SNAP benefits. The ability to “opt out” of the federal legislation is a tool that is consistently identified as helpful to reentry by groups concerned with collateral consequences of felony convictions. The White Paper focuses on SNAP because it is almost entirely federally funded and would not require additional funding from the state. Ms. Geddes noted that in 2014, Rep. Tarr sponsored legislation that proposed a modified opt-out, in which benefits would be made available if the applicant could demonstrate rehabilitation. The legislation did not advance.

Meeting attendees discussed the relative merits of recommending a pure “opt out” or a modified “opt out” that would impose conditions, as some states have done. Meeting attendees also discussed the consequences of the ban, specifically noting that the ban has a negative impact on families because any benefits a family received needed to be stretched to cover the ineligible family member, and because the ineligible family member’s income is included in eligibility and amount allocations. Meeting attendees agreed that a complete removal of the ban would promote and facilitate re-entry better and with less administrative burden on the state, especially when many

conditions that are imposed by other states are currently monitored by other agencies (e.g. probation and parole). It was noted that Commissioner of Health and Social Services Valerie Davidson, and Director Division of Behavioral Health Al Wall would be present at the January 23 meeting to discuss potential impacts on the department. Commissioner Jessee stated that he would forward the recommendation to opt out of the ban to other Commissioners assigned to the workgroup for their input before deciding whether to forward it to the full Commission.

Collateral Consequences of Misdemeanors

Deborah Periman and Steve Williams reported on the progress of the subgroup working on these issues. The group concurred that it needed more information from Department of Health and Social Services (DHHS) and Department of Labor and Workforce Development (DLWD) about a workable process for those agencies. The group also needed more information about the work that Teri Carns and Susie Dosik have done on this issue. The group is researching a possible time limit on occupational disqualifications for misdemeanors and has identified legislation from other states that impose such limits. Legislation from North Dakota (three-year limit) and New Mexico (five-year limit) was discussed, which is not limited to misdemeanors. The Uniform Collateral Consequences Act, which has been adopted by Vermont, was also discussed. The group's next steps are to schedule informational meetings with representatives of DLWD and DHSS, and with Teri Carns and Susie Dosik.

Commissioner Jessee noted that the Recidivism Reduction Plan (in draft status) addresses collateral consequences but it focuses on policy and does not recommend specifics of implementation.

Access to Court records and related issues

The workgroup discussed the legislation (SB 108) that was passed but vetoed in the 2014 session. Senator Dyson noted that the bill will be pre-filed for the upcoming session by a different legislator. Ms. Meade discussed court rule changes in Rule 40 regarding access to records on Courtview that the court made in response to some of the concerns raised during the hearings on SB 108 in 2014. The rule directs the court to remove cases involving dismissed charges and ex parte petitions for protective orders from public view on Courtview but does not make the files confidential. The rule has retroactive application. Ms. Meade noted that the court took administrative action only. A policy change to public records, such as what was proposed by SB 108, is seen as a legislative function. She explained that records designated as "confidential" are available for viewing only by the parties, their attorneys, the judge, and court staff for processing. The court has not received negative feedback regarding the rule change.

Ms. Geddes noted that the Alaska Association of Criminal Defense Attorneys had sent in a proposal to the commission regarding the issue of expungement. She noted that Barbara Armstrong was researching and writing an article on expungement. She queried whether the commissioners were interested in forming a subgroup on the topic. Meeting attendees agreed that legislation regarding access to court records could resolve many of the issues relating to expungement, and that expungement is not a simple issue because records exist in many places that are easily accessible.

Title 28

Ms. Geddes stated that she has begun work on informational papers including an overview of Title 28, Ignition Interlock Devices, and Limited Licenses. She has not yet scheduled any webinars, although she has identified two topics: Ignition Interlock Devices, and Vehicle Sanctions (such as are imposed in Minnesota). Ms. Geddes noted that she has been told that there will be legislation in the 2015 session regarding limited licenses but she had not yet seen a draft.

Other Topics

The workgroup discussed various ways the commission might respond to legislation that arose during the session. One way would be to act as a resource to the legislature. Another would be to work towards the commission's own goals without responding to specific legislation. It was noted that many commission members already provide testimony regarding bills in their other professional capacities. It was also noted that the full commission will likely wish to discuss how to approach this issue.

ASSIGNMENTS

Commissioners:

Review any forthcoming papers.

Commissioner Stanfill will work with staff to arrange meetings as noted with representatives from DHHS and DLWD.

Commissioner Jessee stated that he would circulate among other Commissioners on the Workgroup the proposal for an opt out of the SNAP ban, and they would decide what to recommend before finalizing any recommendation to the full Commission.

Staff:

Ms. Geddes will continue work on the Title 28 informational papers and webinars.

Susie Dosik will arrange with Teri Carns to discuss their prior work with the Misdemeanor subgroup.

Susie Dosik

TO: Barriers to Entry Workgroup
FROM: Mary Geddes
DATE: January 12, 2015

Members of the Barriers to Reentry Workgroup may recommend that Alaska enact a legislative 'opt-out' from a federal law requiring a lifetime exclusion on eligibility only for persons convicted of drug felonies. Alaska is at present one of only ten states which have maintained the lifetime ban. Food Stamps are a food assistance benefit funded entirely by the federal government.

Q: What's wrong with Alaska maintaining a lifetime ban on food stamp eligibility for persons convicted of felony drug crimes?

A: There are multiple reasons why the ban on otherwise-eligible people is counter-productive.

- Its a double and permanent punishment, persisting long, long after a sentence is completed.
- Its unfair, providing a special punishment for persons convicted for drug felonies. Persons with crimes of violence before 2013 are still eligible. Persons who are convicted for any other kind of non-violent crime are always eligible.
- Ex-offenders are often completely impoverished when they get out of jail. They almost always need forms of temporary assistance to help them reintegrate back into the community, seek work and search for permanent housing. Convicted felons face great obstacles in obtaining stable, long-time employment and may need Food Stamps for the short periods of time (usually 3 months) permitted.
- Their families are punished for re-uniting with them! A person convicted of a drug felony cannot receive food stamps, even when the remainder of their household is eligible. Even though the ex-offender may not be "counted" as a member of an otherwise eligible household, any income he earns will nevertheless be "counted" as a family asset. The practical result is a decreased food assistance benefit for more people.

Q: What's the cost to Alaska?

A: Food Stamps are a fully funded federal benefit. The feds will split 50-50 the relatively minor administrative costs. The US Department of Agriculture estimates the State will realize an economic benefit of \$1.79 for every dollar of federal food assistance received by an Alaskan.

Q: Why were drug felons targeted in the first place?

A: During the War on Drugs, there were concerns that food stamps were being traded by addicts for drugs, hence the penalty. "Food stamps" now comes in the form of a electronic debit card carrying a photo ID which has made the benefit hard if not nearly impossible to traffic.

Q: Why shouldn't Alaska impose a modified ban rather than 'opt-out' of all restrictions on Food Stamps?

A. Modified bans create additional administrative burdens on the state and ex-offender and accomplish little. The predicates or conditions imposed by some states such as 'the satisfactory completion of probation' or 'participate in treatment,' are often entirely redundant of conditions and 'proof' already imposed and monitored by a state court or agency; and counter-productive when the state's rules deny food assistance while the person is still in treatment. Many states with modified bans allow Food Stamps eligibility for persons convicted of possession but not distribution. While drug distribution is a more serious offense than drug possession, it is less serious than many other crimes which are not punished by the withholding of the Food Stamp benefit.

**ALASKA'S LIFETIME BAN ON FOOD STAMPS
FOR PERSONS CONVICTED OF DRUG FELONIES:
SHOULD IT BE MAINTAINED?¹**

The specific question presented in this paper is whether the State should exercise an 'opt out'² of the federal law³ which otherwise imposes a permanent, lifetime ban on federal food assistance benefits to persons convicted of drug felonies.

Alaska is one of only eleven States that maintain the lifetime ban. Since the provision's enactment in 1996, all other States have acted to either completely eliminate or modify the exclusion. If a State chooses to opt out - thereby allowing convicted drug felons to receive food assistance -- there are no negative consequences for the State.

Indeed, allowing the benefit to a larger number of food-insecure Alaskans would seem a plus, not a minus, for the Alaskan economy. The USDA says that every federal dollar spent on food assistance creates a \$1.79 boost in economic activity, in mostly local markets.

Since food assistance (known as Food Stamps in Alaska) is fully (100%) federally funded, a state legislative 'opt-out' increases federal funding to the State because the pool of eligible recipients is thereby increased. Any additional administrative cost experienced by the State in this expansion is shared 50-50 with the federal government.

A specific enactment would be required to either opt out and/or modify the ban on SNAP benefits for this class of Alaskans.

Most States have opted out of the blanket lifetime federal exclusion of drug felons from eligibility for SNAP.

The Existing Ban on Federal Food Assistance for Drug Felons and the State Opt-Out

Food assistance for eligible, low-income persons and households is fully (100%) funded through the federal Supplemental Nutrition Assistance Program (SNAP). All States participate in SNAP. The States do administer the benefit, but the federal government covers 50% of the State's administrative costs.

¹ Mary Geddes wrote this paper more than a year ago, and later updated it in reference to then HB 347, which died in committee last year.

² Section 842a(d) of title 21, United States Code, specifies the means by which legislators can either opt out or modify the ban. "A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a) of this section...[or] may limit the period for which subsection (a) of this section shall apply to any or all individuals domiciled in the State."

³ 21 USC Section 862a(a)(2).

SNAP Overview and Its Importance for Alaskans

SNAP is the nation's most important anti-hunger program.⁴ After unemployment insurance, SNAP is the most responsive federal program providing additional assistance during economic downturns. In December 2012, it helped 47.8 million low-income Americans to afford a nutritionally adequate diet in a typical month.⁵

The program provides necessary nutritional support in particular to low-wage working families with children, to low-income seniors, and to people with disabilities who have fixed income. Nearly 76% of SNAP households included a child, an elderly person, or a disabled person.⁶ These vulnerable households receive 83% of all SNAP benefits. Notably, unemployed childless adults are limited to three months of SNAP benefits every three years, though this time limit has been temporarily waived in some states because of high unemployment.

SNAP eligibility is limited in any event to households with gross income of no more than 130% of the federal poverty guideline, but the majority of households have income well below the maximum.⁷ 61% of SNAP households have gross income at or below 75% of the poverty guideline.

The amount an eligible household receives each month depends on the household's location, countable assets, countable income and the number of people in the household. Eligible households use electronic debit cards to buy approved food products from authorized stores statewide. SNAP benefits cannot pay for non-food items, nor can recipients use the benefit to pay for restaurant food or ready-to-eat hot foods.

To receive SNAP benefits, most able-bodied people between 16 and 59 years old must register for work, participate in the Employment & Training Program if offered, accept offers of employment, and cannot quit a job.⁸

SNAP is also Alaska's most important anti-hunger program. In Alaska, SNAP is known as the Food Stamp Program. In 2012, the State determined that 11.9% of all Alaska households received some amount of Food Stamps benefits from the federal government. The average monthly SNAP benefit is about \$414 per household.⁹

Background Regarding the Original Federal Exclusion and the States' Opt-Out Provision

In 1996, Congress enacted the Personal Responsibility and Work Opportunity

⁴ SNAP is funded through the Farm Bill. The new Farm Bill was signed into law in February 2014. It reauthorized the Food and Nutrition Act of 2008 (7 U.S.C. 2015) with amendments. The States' ability to opt out of the ban on the eligibility of drug felons was unaffected by the new bill.

⁵ See Program Information Report, Summary FY2012-2013, Food and Nutrition Service, U.S. Department of Agriculture. Updated 3/28/13. http://www.fns.usda.gov/sites/default/files/datastatistics/Keydata%20December%202012%20%283-8-2013%29_0.pdf. See also Center of Budget and Policy Priorities, Policy Basics: Introduction to the Supplemental Nutrition Assistance Program (SNAP), updated 3/28/2013. <http://www.cbpp.org/cms/index.cfm?fa=view&id=2226>,

⁶ http://feedingamerica.org/how-we-fight-hunger/programs-and-services/public-assistance-programs/supplemental-nutrition-assistance-program/snap-myths-realities.aspx#_edn1, citing U.S. Department of Agriculture, Food and Nutrition Service. Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2011. Table A.14. November 2012. <http://www.fns.usda.gov/ora/menu/Published/snap/SNAPPartHH.htm>.

⁷ U.S. Department of Agriculture, Food and Nutrition Service. Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2011. Table 3.1. November 2012. <http://www.fns.usda.gov/sites/default/files/2011Characteristics.pdf>

⁸ For more information, see A Quick Guide to SNAP Eligibility and Benefit Rules, <http://www.cbpp.org/cms/index.cfm?fa=view&id=1269>

⁹ DPA Office Profile SFY 2012, <http://dpaweb.hss.state.ak.us/files/reports/Statewide200xProfile.pdf>.

Reconciliation Act (PRWORA). While the focus of PRWORA was to fundamentally restructure cash public assistance to make it short term and work-conditioned, it also included provisions intended to prevent the use of public benefits for drug use. Section 115 of PRWORA permanently barred convicted drug felons from eligibility for SNAP benefits.¹⁰

A drug felon, for this purpose, is defined as a person committing a crime after August 22, 1996, for either a federal or a state felony conviction for possession, use or distribution of a controlled substance.

As previously stated, States are permitted to opt out of this lifetime ban and extend benefits to this class of felons.

Alaska is one of only ten States that maintain the lifetime ban.¹¹

Since the provision's enactment in 1996, all other States have acted to either completely eliminate or modify the exclusion. Twenty-one States and the District of Columbia have eliminated the ban entirely.¹² Nineteen States have approved a modified ban, sometimes permitting an individual to regain eligibility in time or by completing drug treatment.¹³

Why States Opt-Out of the Drug Felon Ban

The assumption in 1996 that drug addicts were more likely than others to abuse public assistance, e.g. trading what were food stamp coupons for drugs, is on the wane. That perception is now increasingly viewed as an insufficient justification for a presumptive lifetime exclusion of all convicted drug felons from food assistance. Indeed, since 1996, most States have concluded that the drug felon exclusion from SNAP benefits is counter-productive in several significant ways.

¹⁰ 9 Until February 2014, only two classes of persons were permanently excluded from the receipt of SNAP benefits: convicted drug felons and some of the persons who obtained or tried to obtain SNAP benefits unlawfully. See 7 USC 2015(b)(1)(B)(iii). The new Farm Bill extends the ban to also include violent felons if they were convicted after its enactment.

¹¹ As of 2012, the following states maintained the lifetime ban: Alabama, Alaska, Arizona, Arkansas, Georgia, Mississippi, Missouri North Dakota, South Carolina, Texas and West Virginia. USDA Supplemental Nutrition Program State Options Report, Tenth Edition, August 2012. Missouri got dropped from this list in 2014.

¹² The following states have opted out and provide benefits to otherwise eligible convicted drug felons: Delaware, DC, Illinois, Iowa, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington and Wyoming. Source: USDA Supplemental Nutrition Assistance Program, State Options Report, Tenth Edition, August 2012.

¹³ The following states have opted out, modifying the federal exclusion as follows: California (as long as compliance with probation and parole); Colorado (ban if SNAP benefits involved in drug felony); Connecticut (no details); Florida (ban only for drug trafficking); Hawaii (eligible if completed or complying with drug treatment); Idaho (eligible if complying with conditions of probation or parole); Indiana (individuals in approved correction programs are eligible for benefits for up to 1 year); Kentucky (eligible if completed or complying with drug treatment); Louisiana (ban limited to 1 year); Maryland (drug testing required for receipt of benefits; custodial parents convicted of manufacturing or selling drugs are ineligible for one year); Michigan (lifetime ban only after 2nd conviction); Missouri (some classes of drug felons allowed eligibility after completion of drug program); Minnesota (drug testing required for receipt of benefits; lifetime ban if drug test failed more than once); Montana (regain eligibility if complying with conditions of probation or parole), Nebraska (lifetime ban upon 3 convictions for possession or use or any convictions or other drug related charge), Nevada (regain eligibility if completed or complying with drug treatment, demonstrates good character or is pregnant), North Carolina (ineligible for 6 months; must comply with drug treatment if referred), Tennessee (regain eligibility if completed or complying with drug treatment), Virginia (no lifetime ban for possession for personal use convictions) and Wisconsin (drug testing required for 5 years; ineligible for 1 year for each time drug test is failed). Source: USDA Supplemental Nutrition Assistance Program, State Options Report, Tenth Edition, August 2012.

First, the lifetime exclusion of all drug felons from food assistance benefits appears unduly punitive. The lifetime exclusion applies no matter how old the offense, how short the sentence, or how well rehabilitated the ex-offender.

Second, the disqualification works a double penalty as it persists even after an offender has served his or her sentence and completed any probation and/or parole requirements.

Third, the lifetime exclusion of all drug felons – as opposed to other felons - appears unwarranted. The use of electronic debit cards (showing the recipient's photo) have significantly reduced any risk that food benefits might be bartered for the purchase of drugs. And persons who still manage to engage in food-drug trafficking are still subject to a lifetime exclusion from benefits under a separate provision of federal law.

Fourth, ex-offenders who have completed their sentences usually require some form of public assistance in the short term as they reintegrate back into community life, reunite with their families, look for legitimate work, and seek to establish economic stability. Convicted felons have difficulty getting jobs in even good economic times, so public assistance and food stamps may be critical during this transition.

Fifth, the specific exclusion of convicted drug offenders from food assistance upon their release from prison creates a problem, rather than solves one. Many felons exit prison facilities with chronic conditions. The circumstances of convicted drug offenders, having been denied food assistance, are particularly perilous. This population has a high prevalence of HIV and AIDS, due to a history of intravenous drug use. Individuals with such conditions need adequate nutrition to adhere to complex drug regimens and to combat opportunistic infections such as tuberculosis and the development of drug resistant strains of HIV. Furthermore, some former felons may engage in dangerous and sexually risky behaviors such as prostitution simply in order to obtain food.¹⁴ Thus denying food stamps to former drug felons this undermines the general public health.

Sixth, the lifetime ban may hurt victims of domestic violence. There is a growing recognition and evidence of a connection between drugs, sexual assault and domestic violence. Individuals are often forced into criminal activities by their abusers. Victims of domestic violence and sexual abuse often develop addictions to deal with their pain. Denying public assistance benefits to former drug felons may make it more likely that these individuals may return to situations of sexual exploitation and domestic violence out of financial necessity.

Seventh, the lifetime ban disproportionately affects women and children who are by far the largest proportion of food-assistance recipients. Although the children of felons remain eligible to receive food stamps, the addition of a convicted drug felon to a household operates to decrease the amount of food assistance received by his or her family. The felon will not be "counted" as a member of the household, but his or her income and any assets must be considered. Section 862a(b)(2) of Title 21, United States Code. Thus, the ban undercuts the family, not supports it. Parents denied benefits may be unable to sufficiently feed and house their children on a reduced budget and may lose them to the foster care system, resulting in an increased cost to the State and an immeasurable cost to the children.

Last but certainly not least, financially strapped States have realized there is a direct economic benefit to the opt-out. Food Stamps are fully federally funded, and any additional administrative cost incurred with expanded eligibility is not significant. Moreover, the infusion of more federal dollars into a State provides local vendors and generally a State's economy with an economic boost. The USDA says that every dollar spent on food stamps results in \$1.79 in economic activity.

¹⁴ See Yale News, March 25, 2013, reporting on "A Pilot Study Examining Food Insecurity and HIV Risk Behaviors Among Individuals Recently Released From Prison," published in journal AIDS Education and Prevention.

Why An Opt-Out Makes More Sense than a Modified Ban

States enacting modified bans have taken different tacks. Some have limited the length of the ban. Some have limited the ban to drug sellers, rather than drug possessors. Some have conditioned food assistance benefits on drug testing requirements. Some have conditioned benefits on compliance with probation and parole conditions.

Most States have simply opted out of the lifetime federal exclusion rather than imposing pre-conditions. Administratively and financially, this is the easiest route. The simple opt-out avoids new programming requirements and any increase in administrative costs.

The modifications which have been imposed by some States are often duplicative and costly. The vast majority of convicted drug offenders will be released on parole and probation conditions after completing incarceration, and most of their sentences will require treatment and drug monitoring as conditions of probation. Ex drug felons will have to comply with those conditions or go back to jail.

Most crucially, denying benefits to persons who are presently participating in drug treatment and/or drug testing programs may be counter-productive. As stated above, many States have determined that the specific exclusion of convicted drug offenders from food assistance upon their release from prison creates a problem, rather than solves one.

Proposed Statutory Language

Here is language for a simple opt out:

A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 USC sections 2011-2036 may not be denied assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105.¹⁵

However, if this legislature chooses to impose a modified ban, then it could consider the following:

A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 USC sections 2011-2036 may not be denied assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105, as long as such person has completed a sentence imposed by a court. A person shall also be eligible for said benefits if such person is satisfactorily serving a period of probation or is in the process of completing or serving or has completed mandatory participation in a drug or alcohol treatment program, or if the person has taken action toward rehabilitation, such as, but not limited to, participation in a drug or alcohol treatment program.¹⁶

This kind of language would allow for the various, alternative ways a drug felon might provide evidence of rehabilitation or sufficient progress in rehabilitation: the completion of a sentence, including probation; ongoing participation in drug treatment and/or drug screening; completion of drug treatment or drug screening requirements; or, maintaining a satisfactory performance while on probation.

¹⁵ This language was used by the Maine State Legislature. Maine Revised Statutes, Annotated, Title 22, section 3104 (14).

¹⁶ Sources: Connecticut General Statutes Annotated, section 17b-112d. and Colorado Revised Statutes Annotated section 26-2-706(3)

NM Bill (2010)

West's New Mexico Statutes Annotated Currentness

Chapter 28. Human Rights

→ Article 2. Criminal Offender Employment Act (Refs & Annos)

→ § 28-2-1. Short title

Sections 1 through 6 of this act may be cited as the "Criminal Offender Employment Act".

→ § 28-2-2. Purpose of act

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

→ § 28-2-3. Employment eligibility determination

A. Subject to the provisions of Subsection B of this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration a conviction, but the conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession. A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

(1) records of arrest not followed by a valid conviction; and

(2) misdemeanor convictions not involving moral turpitude.

→ § 28-2-4. Power to refuse, renew, suspend or revoke public employment or license

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession;

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or

(3) where the applicant, employee or licensee has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

→ **§ 28-2-5. Nonapplicability to law enforcement agencies**

The Criminal Offender Employment Act is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

→ **§ 28-2-6. Applicability**

The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

END OF DOCUMENT

Automatic v Discretionary disqual
ND creates presumption of 5 yr rehab
NM creates 3 yr rehab

relates to
all crimes
felony +
misd.

§ 12.1-33-02.1. Prior conviction of a crime not bar to state licensures--Exceptions

1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.

2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:

- a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
- b. Information pertaining to the degree of rehabilitation of the convicted person.
- c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

3. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.

4. A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with chapter 28-32, except for attorneys disbarred or suspended under chapter 27-14.