

Stanford Law School
Stanford Center on the
Legal Profession

Stanford Law School
Stanford Criminal
Justice Center

UNLOCKING THE BAR:

Expanding Access to the Legal
Profession for People with Criminal
Records in California

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Founded in 2005, the Stanford Criminal Justice Center serves as a research and policy institute on issues related to the criminal justice system. Its efforts are geared toward both generating policy research for the public sector, as well as providing pedagogical opportunities to Stanford Law School students with academic or career interests in criminal law and crime policy. The Stanford Criminal Justice Center is led by Faculty Co-Directors David Sklansky and Robert Weisberg and Executive Director Debbie A. Mukamal.

The Stanford Center on the Legal Profession, founded in 2008, supports research, teaching, programs, and public policy initiatives on crucial issues facing the bar. The Center focuses on issues of professional responsibility and the structure of legal practice. Central concerns include how to enhance access to justice, sustain ethical values, improve bar regulatory structures, and effectively respond to the changing dynamics of legal workplaces. The Center is led by Faculty Director Deborah Rhode and Executive Director Jason Solomon.

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Executive Summary

This Report identifies and examines the barriers to joining the California State Bar for individuals with criminal records, and provides recommendations for expanding access for qualified applicants. Law school admissions offices and the California Committee of Bar Examiners function as the California State Bar's successive gatekeepers, assessing, among other criteria, whether applicants possess the requisite "moral character and fitness" to be allowed entry into the ranks of California's lawyers. Each takes into account an applicant's earlier involvement with the criminal justice system when making the decision whether to admit or deny.

Protection of the public is the primary justification for the inquiry into applicants' criminal records, and while this is an important and laudable goal, our Report finds that the ways in which applicants' criminal records are asked about and evaluated is not likely to further it. Instead, the standards and practices surrounding criminal record assessment are likely shrinking the pool of qualified California State Bar candidates. Moreover, whether intentional or not, these questions undoubtedly have a disparate, negative impact on applicants and potential applicants of color.

The issue of expanding access to the legal profession for individuals with criminal records has received greater popular attention in recent years. But in-depth policy analysis and academic treatment of this topic remains lacking. We begin to fill that gap, and aim to instigate further research, discussion, and reform. For various reasons outlined in the Report, our focus is on California. However, the Report draws on the experiences and forms of regulation we see elsewhere in the nation, and our findings and recommendations will often be relevant to other jurisdictions.

Methodology: To study this topic, we surveyed relevant secondary literature and conducted novel research. The original research includes:

- A survey of 88 individuals with criminal records that asked questions about access to the legal profession;
- An analysis of the moral character disclosure statements of all 20 American Bar Association (ABA)-accredited law schools in California;
- Interviews with admissions officers from 10 of those law schools;
- Interviews with student services officers from seven of those law schools;
- A review of moral character requirements in all 50 states;
- Interviews with current and former California State Bar officials and California CBE members;
- Interviews with California law school graduates with a criminal record, some of whom were admitted and some of whom were denied admission to the California State Bar;
- Interviews with California lawyers who advise on California State Bar moral character determinations; and

- A 2018 Roundtable discussion whose participants included a range of current and former California State Bar, National Conference of Bar Examiners (NCBE), and ABA officials; individuals who attended law school and were admitted to a state bar after being incarcerated; California law school admissions and student services officers; and academics.

Historical and Current Context: The moral character requirement has sordid origins. Its rise was motivated in part by nativist, ethnic, and anti-Semitic biases, and it has been used as a means of restricting the admission of black, Jewish, and immigrant applicants. As late as the mid-1980s, it was being used by some states' bar examiners to deny admission based on applicants' peaceful protest activities and sexual orientations.

Today, because applicants are screened based on their criminal records, the moral character review process will likely reflect the racial disparities that plague the U.S. criminal justice system as a whole. In turn, such screening is likely to perpetuate the underrepresentation of racial minorities in an already exceptionally non-diverse profession. Moreover, given current societal conditions, admissions policies that consider an applicant's criminal record are likely to affect a significant number of people. Massive numbers of individuals in the United States have criminal records today—more specifically, over 70 million individuals in the United States, or over one-fifth of the U.S. population. Moreover, given the recent, large-scale expansion of college education opportunities for individuals with criminal records, particularly in California, increasing numbers of people with criminal records will have the educational qualifications to pursue legal professions. Accordingly, more qualified candidates than ever before may be prevented from realizing legal careers by admissions policies that screen based on criminal records.

While protection of the public is the primary justification for retaining such policies, evidence suggests that reviewing applicants' criminal records at the time of bar admission is not a good predictor of subsequent misconduct. Moreover, research shows that there is a certain period of time after which an individual who commits a crime will be no more likely to commit another crime than someone who has never committed a crime in her life. And a growing body of empirical and survey research demonstrates that, in the workplace, individuals with a criminal record perform equally to or better than their counterparts with no criminal records. In the legal field, in particular, the presence of many lawyers who entered law school with a criminal record and went on to become an asset to the profession embody the value of giving such individuals a second chance.

In recognition of this evidence—as well as out of a sense of mercy and fairness—California state and local governments have adopted a number of measures that greatly restrict (non-legal) employers' abilities to consider job applicants' criminal records.

Findings: Based on the original research we conducted, our Report makes the following principal findings:

Pre-law school pipeline: Our survey of 88 individuals with criminal records suggests that concerns about satisfying moral character requirements deters interested individuals from applying to law school.

Admission to law school: Our examination of California law school admissions policies reveals several additional barriers to law school admission for individuals with criminal records. First, applicants must answer different questions about their criminal records for each law school they apply to, thereby preventing them from crafting one single, polished statement (as applicants may do for their personal statements required by almost all law schools).

Second, the criminal record information that law schools ask applicants to disclose differs from the criminal record information that the California State Bar asks applicants to disclose. In many cases, law schools ask applicants for more information than the Bar asks for. Several law schools, for example, ask applicants about their arrests even if those arrests did not lead to convictions, and several ask applicants to disclose charges of which they were acquitted; the California State Bar does not. With respect to other categories of criminal history, law schools also ask applicants for *less* information than the Bar asks for. These discrepancies exist even though the majority of admissions officers interviewed stated that their schools considered the California State Bar’s moral character requirements when crafting their own disclosure requirements, and that they consider whether the applicant will be admitted to the California State Bar when making admissions decisions.

Finally, admissions officers lack access to information and training relevant to making informed moral character determinations. Admissions officers estimated that as low as one percent and as high as twenty-five percent of the applicant pool to their respective schools disclose criminal record issues each year. Half of the admissions officers we interviewed stated they have no policy for reviewing applications with criminal record disclosures.

Experience while in law school: Our research also revealed several challenges that individuals with criminal records face during law school, as well as difficulties faced by law school staff seeking to assist them. First, law schools differ in terms of the level of communication that takes place between admissions officers and student services officers regarding admitted students with criminal records. Student services officers with more information reported being better able to proactively engage and aid those students who may need individual assistance.

We also found that most law schools discuss the state bars’ moral character requirements with law students at some point during the students’ first year of school. But there is considerable variety in how student services officers counsel students about and assist them with their applications.

Finally, certain unique issues arise for law students with criminal records in addition to those posed by applying for state bar admission. In particular, students with criminal records encounter unique challenges in seeking employment, and they may experience learning about and discussing criminal law topics differently than do their peers with less direct experience with the criminal justice system.

Admission to the California State Bar: We examined the California State Bar’s moral character review process on its own terms and in relation to the policies of other states. One of our key findings is that the California State Bar asks applicants’ law schools different questions about their criminal records than it does of the applicants themselves. For example, the California State Bar asks law schools—but not law students—to provide them with records related to students’ arrests, even if the arrest did not lead to a conviction. And the Bar asks law students—but not law schools—to provide information related to their expunged convictions.

Second, some of the criminal record information that the California State Bar asks for is legally imprecise. For example, the Bar asks law schools whether a student was “charged informally” with a violation of the law, even though “informal charge” is a legally meaningless category. Next, while a criminal record does not categorically preclude an applicant from being admitted to the California State Bar, applicants who have been convicted of violent felonies, felonies involving moral turpitude, and crimes involving a breach of fiduciary duty are presumed not to be of good moral character in the absence of a pardon or a showing of “overwhelming reform and rehabilitation.” These terms also carry imprecision. “Violent” is a moral and descriptive term, not by itself

a formal legal term. Moreover, where the term “violent felony” appears in federal and state statutes, it can have widely variant criteria depending on the legal context. This is also true of “crimes of moral turpitude.” Not only does this vagueness lead to confusion for applicants, it may also lead to inconsistent decisions by California State Bar staff.

We also consider the primacy that the California State Bar places on applicants’ candor. In the course of our research, various stakeholders raised concerns about the “candor traps” into which applicants can and sometimes do fall. In other words, the potential exists for applicants to inadvertently fail to disclose required information about their criminal history, and this inadvertent disclosure may be perceived by California State Bar officials as an intentional omission indicative of the applicant’s lack of candor.

Next we examine the composition of the California State Bar’s Committee of Bar Examiners and its Moral Character Subcommittee. In California, unlike at least one other state, there are no requirements that any members of the committee have special training or expertise in substance abuse, mental health, financial management, or another substantive area of value to the committee.

And we explore the California State Bar’s data collection and transparency policies. The California State Bar seals its admissions decisions and does not collect or share data on moral character determinations. It also does not publicly provide—on its website or otherwise—examples of the kinds of criminal convictions they see among applicants that have and have not been granted admission, nor do they provide concrete examples of the quantity and character of evidence that successful applicants produce to prove their rehabilitation. As a result, prospective law students and lawyers, law school student services officers, and other relevant actors lack access to useful information about the moral character review process.

Finally, California’s processes and standards for attorney discipline differ from its processes and standards for attorney admission. A number of differences stand out, including those between the standards of evidence and burdens of proof imposed on each process, the types of activity that engender scrutiny, the possible consequences of an adverse finding, and the level of transparency involved in each.

Analysis and Recommendations: Based on our review of secondary literature and our own research, which included conferring with a range of stakeholders, we make a number of recommendations to address what we perceive as unfair or inefficient barriers to the legal profession for qualified candidates with criminal records. Our recommendations are organized chronologically, aimed at addressing issues we identified at each stage of a prospective lawyer’s path to the profession. They are as follows:

Pre-Law School Admissions Pipeline:

1. Conduct greater outreach to formerly incarcerated college students and those with criminal records to share information about law school and state bar admissions processes and dispel myths about how criminal records affect admission.
2. Collect and disseminate profiles of successful lawyers who were incarcerated prior to seeking state bar admission.

Law School Admissions Policies and Practices:

3. Provide professional development on desistance, implicit bias, and other relevant factors to California law schools' admissions staff and others making admissions decisions, and institute admissions policies for applicants with criminal records that are evidence-based and applied consistently across applicants.
4. Consider standardizing criminal history disclosure questions and requirements on California law school applications.

Student Services to Support Law Students with Criminal Records:

5. Develop best practices to ensure that students who were formerly incarcerated or have criminal records are adequately supported while enrolled in law school, including:
 - i. While protecting students' confidentiality, promoting greater communication between law schools' admissions offices and student services offices regarding incoming students who have moral character issues;
 - ii. Informing students about the moral character review process early in their studies so they have adequate time to compile a strong application; and
 - iii. Providing individualized counseling to these students on how and when to disclose their criminal records to potential employers and on how to navigate state bar moral character processes.
6. Provide professional development to faculty and staff to ensure they are equipped to sensitively and more effectively respond to the particular needs of students with criminal records.

Advocates to Assist Formerly Incarcerated Law Students Applying for State Bar Admission:

7. Develop networks to connect State Bar applicants who have criminal records to pro bono lawyers who can assist them in their applications.
8. Develop training for pro bono lawyers willing to assist State Bar applicants with criminal records.

California State Bar Admissions Policies and Practices:

9. Ensure parity between applicant and law school disclosure requirements related to applicants' criminal records.
10. Eliminate from the moral character review process consideration of:
 - i. Convictions for which the applicant has received a certificate of rehabilitation, and
 - ii. Arrests that did not lead to a conviction.
11. Ensure that the California State Bar's moral character decisions are grounded in and driven by relevant research, and mitigate any discriminatory effects the moral character review process may have, including by:
 - i. Requiring that at least some members of the California CBE have a background in psychology, substance abuse, mental health, or other areas of value to the committee; and
 - ii. Providing professional development to California State Bar staff and the California CBE that includes training on desistance and other relevant topics.

12. Enhance the clarity, transparency, and accessibility of the California State Bar’s moral character standards and processes, including by:
 - i. Ensuring that the California State Bar website provides more and clearer guidance that is comprehensible to lawyers and non-lawyers alike; and
 - ii. Collecting and disseminating yearly statistics on applicants with criminal records and their admission rates.

Finally, we suggest various ideas and possible reforms that may be worth adopting in the future, in whole or in revised form, but that require further analysis and deliberation.

Introduction and Methodology

This Report examines barriers to joining the California State legal bar for individuals with criminal records.¹ Law school admissions offices and the California Committee of Bar Examiners (California CBE) function as the California State Bar’s successive gatekeepers, assessing, among other criteria, whether applicants possess the requisite “moral character and fitness” to be allowed entry into the ranks of California’s lawyers. Each takes into account an applicant’s earlier involvement with the criminal justice system when making the decision whether to admit or deny.

While moral character requirements have long operated within the American legal profession,² they have received little scholarly attention.³ Nevertheless in the specific context of formerly incarcerated persons, these requirements have begun to enter public consciousness in recent years, and the chief general reason for the change is clear: Social awareness of, and national concern over, the harms caused by American mass incarceration. Our overall incarceration rate more than quintupled between 1970 and 2007.⁴ As both the federal government and the states have manifested a kind of buyer’s remorse about the policies that led to mass incarceration, the imprisonment rate has leveled and slightly subsided. We now face decades in which vast numbers of people will be leaving incarceration and seeking productive paths to reentry; indeed almost 700,000 Americans leave prison each year.⁵ Yet most of those former prisoners will face major employment barriers because of their records. Mass incarceration has left over seventy million Americans (over twenty-one percent of the U.S. population) with criminal records⁶ and almost nine percent of the adult population with felony convictions.⁷ As part of grappling with the legacy of mass incarceration, policymakers and others are working to reduce the barriers to employment that face individuals with criminal records, through “ban the box” laws and other measures.

For reasons we explore below, a notable number of individuals with criminal records see the legal profession as an attractive profession, and of those with such aspirations an increasing number have reasonable prospects of meeting the academic requirements for entry to the bar. Nationally, but in California in particular, a growing fraction of people leaving prison and jail have completed college coursework and contemplate graduate educations and professional careers.⁸ Indeed, more than any other state in the nation, California’s public higher education system is now reaching men and women who have been adversely impacted by mass incarceration, whether they are in prison, jail, or on our college campuses.⁹ As of 2018, 34 of California’s 35 state prisons offer face-to-face, full-credit degree-building college course.¹⁰ Almost 4,500 unique students are enrolled in these

face-to-face college pathways each semester—or about the same size as MIT’s undergraduate class—and they consistently outperform students on campus.¹¹ In addition, as of March 2018, one-third of California’s 114 community colleges and nine of its 23 California State University campuses had a formal or informal support program for formerly incarcerated students, with that number continuing to grow.¹²

Nevertheless, the costs and benefits of the barriers that individuals with criminal records face in becoming lawyers remain an under-analyzed issue. Therefore, this Report seeks to advance further discussion and evaluation of the processes currently in place for evaluating candidates’ moral character and fitness. It focuses on California for a few reasons. First, given California’s status, discussed above, as the national leader in providing college education opportunities to individuals who are currently or were formerly incarcerated, California is likely to have increasing numbers of residents who aspire to legal careers but who may be deterred or prevented from pursuing this goal due to their criminal records.¹³ Second, the authors of this Report had access to higher quality and a greater quantity of data specific to California. And finally, time and resource constraints meant that providing an in-depth analysis of the policies of all 50 states was unfeasible. Yet, while our focus is on California, the Report draws on the experiences and forms of regulation we see elsewhere in the nation, and our findings and recommendations will often be relevant to other jurisdictions.

More specifically, this Report examines the methods by which California law schools and the California CBE ask about and make admissions decisions based on applicants’ criminal history. It assesses the shortcomings and costs of these screening methods, including the ways in which these processes and policies often miss and may even undermine their purported aims. It also suggests the ways they are in tension with other important societal objectives and norms, such as encouraging rehabilitation and successful reentry of formerly incarcerated persons, recognizing redemption when it has occurred, and promoting diversity in the legal profession.

To do so, the Report presents considerable original research, including a survey of 88 individuals with criminal records that asked questions about interest in and access to the legal profession; an analysis of the moral character disclosure statements of all 20 American Bar Association (ABA)-accredited law schools in California; interviews with admissions officers¹⁴ from ten of those law schools;¹⁵ interviews with student services officers¹⁶ from seven of those law schools;¹⁷ a review of moral character requirements in all 50 states; interviews with current and former California State Bar officials and California CBE members; interviews with California law school graduates, some of whom were admitted and some of whom were denied admission to the California State Bar with a criminal record; interviews with California lawyers who advise on California State Bar moral character determinations; and a 2018 Roundtable discussion whose participants included a range of current and former California State Bar, National Conference of Bar Examiners (NCBE) and ABA officials, individuals who attended law school and were admitted to a state bar after being incarcerated, California law school admissions and student services officers, and academics in relevant fields. The Report also draws on secondary literature in our analysis.

We ultimately conclude in this Report that current moral character standards and processes often impose unnecessary and arbitrary obstacles on individuals with criminal records who are seeking admission to the California State Bar. We should clarify from the start, however, that the justification for and value of our conclusions rest on some key policy rationales:

- First, the legal profession is essential to a functioning democracy, and the public benefits when people who are qualified for and committed to entering the legal profession have a fair chance to serve as lawyers.
- Second, it is unquestionably legitimate and important to protect the public from the risk of lawyers who, even if intellectually qualified, may disserve their clients and the legal system through fraudulent or deceptive conduct. In its efforts to protect the public, however, the legal profession should ensure that the screening criteria and processes it uses are tailored to this goal and that it does not erect barriers that are arbitrary, discriminatory, or empirically ill-grounded.
- A second chance at a wide range of careers is a critical part of the goal of rehabilitation that the American justice system subscribes to. Over-exclusion of individuals with criminal records who are otherwise qualified to be attorneys would hinder the goals of rehabilitation and reintegration into society.

This Report proceeds as follows. In the following section, we provide a brief history of the moral character requirement and an overview of the current context in which it operates (section II). We then present the findings of our original research (section III). Based on our findings, relevant contextual considerations, and the above policy rationales, we suggest several recommendations for reform as well as areas where additional research, study, and deliberation is needed (section IV). We briefly conclude (section V).

ENDNOTES

- 1 The term “criminal record” has been used to describe various levels of involvement with the criminal justice system. In this Report, it is used to encompass interactions with the criminal justice system that applicants are asked about by California law schools or by the California Bar Exam (CBE), including sealed juvenile offenses, arrests that did not lead to charges, charges of which the applicant was acquitted, and expunged convictions.
- 2 See Deborah L. Rhode, *Moral Character as Professional Credential*, 94 Yale L. J. 491, 493-96 (1985); See also Rhode, *Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation, and Immigration Proceedings*, 43 Law & Social Inquiry, Summer 2018, at 1027, 1036, 1044-50 (recounting the historical background of the legal profession’s moral character requirement, including its origins in fourth century Rome and its presence in the American legal profession dating to colonial times).
- 3 The greatest exception is the pioneering work of Professor Deborah Rhode, whose 1985 article *Moral Character as Professional Credential* (*supra* note 2) served as the first comprehensive treatment of the American bar’s character requirements, providing both an historical overview as well as an analysis of the content, implementation, and underlying premises of the requirement as it existed at that time. The topic has received greater attention in recent years, both in academia and in the media. *New York Times* publications, for example, have published at least three articles grappling with this issue just since 2018. See Reginald Dwayne Betts, *Could an Ex-Convict Become an Attorney? I Intended to Find Out*, N.Y. TIMES MAG., Oct. 16, 2018, <https://www.nytimes.com/2018/10/16/magazine/felon-attorney-crime-yale-law.html>; Elizabeth Olson, *Are Felons Fit to Be Lawyers? Increasingly, the Answer is Yes*, N.Y. TIMES (Jan. 19, 2018) <https://www.nytimes.com/2018/01/19/business/are-felons-fit-to-be-lawyers.html>; Noam Scheiber, *He Committed Murder. Then He Graduated From an Elite Law School. Would You Hire Him as Your Attorney?*, N.Y. TIMES (Feb. 2, 2019) <https://www.nytimes.com/2019/02/02/business/bruce-reilly-murder-conviction-lawyer.html>. Several scholarly works have been published in recent years, as well, much of which is discussed or at least referenced throughout this Report. Still, much more research and analysis remains to be done, particularly in relation to the policy aspects of this issue. This Report begins to fill that gap.
- 4 NAT’L RESEARCH COUNCIL COMM. ON LAW AND JUSTICE, DIV. OF BEHAVIORAL AND SOCIAL SCIS. AND EDUC., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 33-69 (Jeremy Travis, Bruce Western & Steven Redburn, eds., The National Academies Press 2014) <https://www.nap.edu/read/18613/chapter/4>.
- 5 Rhode, *Virtue and the Law*, *supra* note 2, at 1033 (internal citations omitted).
- 6 The FBI maintains a database called the “Interstate Identification Index (III),” which contains the records of all persons who are arrested and fingerprinted by a local, state, or federal law enforcement agency, if those records are forwarded to the FBI. As of June 2017, about 73.5 million individuals had records indexed by the III, about 29.5% of the adult population. The FBI considers anyone who has been arrested on a felony or serious misdemeanor charge to have a criminal record, even if the arrest did not lead to a conviction. Lower level misdemeanors are not reported. See Privacy Impact Assessment for the Fingerprint Identification Records System (FIRS) Integrated Automated Fingerprint Identification System (IAFIS) Outsourcing for Noncriminal Justice Purposes: Channeling, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/firs-iafis>; See also National Crime Information Center, Federal Bureau of Investigation, <https://fas.org/irp/agency/doj/fbi/is/ncic.htm>. As will be explained in the Report, given that many law schools ask for information about low-level misdemeanor arrests, the number of individuals who are potentially impacted by law schools’ questions about applicants’ moral character may be even higher than the FBI’s figure of individuals with criminal records.
- 7 Rhode, *Virtue and the Law*, *supra* note 2, at 1033 (internal citations omitted).
- 8 Alice Perez, Education Services and Support Division Policy Guidance on California Community Colleges Fair Chance Hiring Best Practices (Office of the Chancellor of California Community Colleges, Memorandum, Jan. 29, 2018), http://extranet.cccco.edu/Portals/1/AA/PrisonEd/2019/2019-29-1_Policy_Guidance_Letter_re_Criminal_History_in_Hiring.pdf.
- 9 Debbie Mukamal & Rebecca Silbert, *Don’t Stop Now: California leads the nation in using public higher education to address mass incarceration. Will we continue?*, CORRECTIONS TO COLLEGE CALIFORNIA, Mar. 2018, at 7, <https://correctionstocollegeca.org/assets/general/dont-stop-now-report.pdf>.
- 10 *Id.* at 3.
- 11 *Id.*
- 12 *Id.* at 7.
- 13 While of course these individuals could decide to apply to law schools in any state, and could thereafter apply for admission to the state bar of any state, California residents are more likely to apply to California law schools than to those of any other state, and most individuals who apply for admission to the California State Bar have attended California law schools. See, e.g., STATE BAR OF CALIFORNIA, CALIFORNIA BAR EXAMINATION STATISTICS, <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Exam-Statistics>. Assuming that taking the California State Bar exam is a good proxy for applying for admission to the California State Bar, the most recent exam statistics show that over three times as many exam takers had attended California ABA-approved law schools (3099) than had attended out-of-state ABA-approved law schools (924).

- 14 The term “admissions officers” subsumes a variety of formal titles; however, at each law school, we aimed to interview the most senior staff member involved in admissions. To encourage candor, we offered interviewees anonymity; throughout the Report, therefore, admissions officers are identified only by the date on which they were interviewed. (Admissions officers who participated in the 2018 Roundtable discussion and who agreed to be identified, however, are identified by name.)
- 15 The ten schools chosen represent both public and private law schools and a diversity of placements in the traditional law school rankings. Law schools are commonly broken down into “tiers” based on the annual law school rankings created by the U.S. News & World Report. These rankings include the top approximately 200 law schools in the country. Tier One is comprised of the top fifty schools in the country, Tier Two the next fifty, and so on. For a list of the ten schools and their abbreviations as used in this Report, See Appendix A.
- 16 The term “student services officers,” like the term “admissions officers” (*See supra* note 14), embraces a variety of formal titles; however, at each law school, we aimed to speak with the most senior staff member involved in student services. The majority of subjects interviewed were deans of student life. One person was in a role that focused specifically on state bar preparation and passage. As with our interviews with admissions officers, we offered anonymity to encourage candor; throughout the Report, therefore, student services officers are identified only by the date on which they were interviewed.
- 17 The seven schools chosen are a subset of the ten law schools whose admissions officers were interviewed. *See supra* note 15.

Historical and Current Context

This section provides important context for this Report’s subsequent discussion of the moral character requirement as currently deployed by California law schools and the California CBE. It begins with a discussion of the requirement’s historical origins, continues with a summary of four developments in the field of social science that have particular relevance to the moral character requirement, proceeds to a review of related legal and policy developments, next discusses recent trends in educational institutions’ approaches to applicants with criminal records, and ends with an overview of the social context in which the moral character requirement now operates.

The Moral Character Requirement of Today Stems in Part from Historical Prejudices, and Has Been Applied in Inconsistent and Idiosyncratic Ways Throughout Its History

In the United States, the moral character requirement for lawyers dates back centuries.¹ As Law Professor Deborah Rhode explains, this requirement remained relatively informal until the late 19th century, when the profession began to grow and diversify.² Between 1800 and 1930, the majority of states began to formalize their character review processes, including centralizing authority in boards of bar examiners and requiring applicants to undergo interviews and complete questionnaires.³

This intensification of the moral character review process was motivated in part by nativist, ethnic, and anti-Semitic biases, as well as by the profession’s desire to limit competition from newcomers more generally.⁴ Professors Leslie C. Levin, Christine Zozula, and Peter Siegelman have summarized the literature on this point: the “more formal and rigorous character inquiry was instituted in the early twentieth century, in part to restrict admission of immigrants. . . . Black applicants were also disproportionately excluded on character and fitness grounds.”⁵

The standards for disqualification during this period were decidedly vague, and at least one county board in 1929 was rejecting candidates based on such qualities as being “subnormal,” “unprepossessing,” “shifty,”

“smooth,” “keen,” “shrewd,” “arrogant,” or “surly.”⁶ Examiners claimed they could discern from interviews whether candidates lacked “moral . . . stamina” or a “proper sense of right and wrong.”⁷ After the 1930s, character certification continued to grow more rigorous. The denial rate was usually less than one percent; the deterrent effect, however, has not and likely cannot be measured.⁸

Throughout the remainder of the 20th century, bar examiners screened applicants for their political activism. Conscientious objectors and student radicals were scrutinized and occasionally denied admission.⁹ For example, during the Cold War, candidates were asked whether they had read *Das Kapital* or were affiliated with “pinkish” organizations, and refusing on principle to answer such questions was grounds for exclusion.¹⁰

In the 1950s the California CBE denied admission on moral character grounds to a candidate who had been a member of the Communist Party and who had been critical of racial discrimination, U.S. participation in the Korean War, and other U.S. political activities.¹¹ The California Supreme Court denied the applicant’s appeal, but the U.S. Supreme Court reversed.¹² In the opinion, the Court acknowledged that the legal profession’s moral character requirements are “unusually ambiguous” and that any definition will “necessarily reflect the attitudes, experiences, and prejudices of the definer.”¹³

In the mid-1980s, empirical research conducted by Professor Rhode showed that even after this Supreme Court ruling, eighty percent of state bars reported that they would or might investigate candidates who had participated in sit-ins resulting in misdemeanors or who were members of radical political organizations.¹⁴ Her research also showed that bar examiners had “inconsistent and idiosyncratic views” regarding the circumstances that warranted dismissal.¹⁵ Decisions concerning drug offenses were particularly inconsistent, she found, with “much depend[ing] on whether the examiners had, as one [examiner] put it, grown more ‘mellow’ towards ‘kids smoking pot.’”¹⁶ And she found that other issues engendered similar idiosyncrasy, such as examiners’ responses to evidence of financial mismanagement, applicants’ misdemeanors resulting from protest activity, and applicants’ sexual conduct, orientation, or “lifestyle.”¹⁷

In her more recent work in this area, Professor Rhode has found that contemporary bar examiners continue to divide over the conduct that qualifies as grounds for denial of state bar admission. Several states outright ban “felons” from practicing law, for example, while others consider a wide range of factors that make it difficult for individuals to predict how their case might be decided.¹⁸

Emerging Social Science Research Undermines the Justification for the Moral Character Requirement

Research Suggests that Criminal Conduct is a Weak Predictor of Future Bar Discipline

Protection of the public is the primary justification for state bars’ moral character requirement.¹⁹ However, as discussed below, there is virtually no evidence supporting the notion that the moral character review process in fact screens out individuals likely to present a danger to future clients or to the administration of justice. And in fact, psychological research suggests several reasons to believe that the moral character review process is *not* an effective tool for accomplishing this goal.

First, there is very little data on moral character review determinations in general, and even fewer empirical studies on the topic. In California, data is nearly nonexistent because, as is discussed in more depth on pages 52-53, the California CBE's admissions decisions are sealed, and the committee does not collect and release this data.

Only one study has scientifically examined whether the factors reviewed at the bar admission stage predict subsequent misconduct.²⁰ This study, published in 2012 by Professors Levin, Zozula, and Siegelman, reviewed the admissions records of over 1,300 applicants admitted to the Connecticut State Bar and their subsequent disciplinary records.²¹ Levin et al.'s study was necessarily limited: it reviewed applicants in only one state, and because it used subsequent bar discipline as its metric, it could not capture data from any applicants who were denied entry to the bar, or who were deterred from applying in the first place. However, given the dearth of data and research in this area, it offers some of the only empirical insight we have into the moral character review process and its effectiveness at screening out individuals likely to present a danger to future clients or to the administration of justice.

While the Levin et al. study found that some factors increased the likelihood of future discipline to a statistically significant degree—such as the applicant's amount of student loan debt²² and whether or not the applicant had previously been party to a civil suit (excluding divorce)—even these factors, according to the study's authors, were “very poor predictors of subsequent discipline.”²³ The variables related to an applicant's interactions with the criminal justice system were similarly found to be poor predictors. The study examined three such variables: “criminal convictions,” “driver's license suspensions,” and “traffic violations.”²⁴ Of these, only traffic violations were found to be correlated with a higher risk of subsequent discipline, to a statistically significant degree.²⁵ Having a criminal conviction or having one's driver's license suspended was not even weakly significant.²⁶ More generally, the authors concluded that, when examining the disciplined lawyers as a single group, it was “quite clear that there is no significant group of high-risk applicants who stand out from the rest of their peers.”²⁷

After examining the disciplined lawyers as a single group, the researchers broke them into two categories: those who had received “severe” discipline and those who had received “less severe” discipline by the state bar.²⁸ The researchers again found that certain variables increased the risk of future discipline, to a statistically significant degree. Receiving negative feedback on the dean's certificate submitted to the bar, for example, raised the likelihood of an applicant's receiving less severe discipline, with a high degree of statistical significance ($p < .001$).²⁹ (Interestingly, though, negative feedback on the dean's certificate *decreased* the risk of receiving severe discipline, with the same degree of statistical significance.³⁰) Student loan debt also raised the likelihood of both less severe and more severe discipline, to a statistically significant degree ($p < .001$ and $p < .005$, respectively).³¹ And several other variables were also positively correlated with future less and/or severe discipline to a statistically significant degree.³²

With respect to the variables related to an applicant's interactions with the criminal justice system, however, the research showed only weakly statistically significant correlations ($p < .01$) with future discipline, at best. Traffic violations were weakly correlated with a higher risk of less severe discipline, and did not change the likelihood of receiving severe discipline.³³ Criminal convictions and driver's license suspensions were both weakly associated with a higher risk of severe discipline, and did not change the probability of receiving less severe discipline.³⁴ Overall, the authors concluded that their findings “cast serious doubt on the usefulness of the character and fitness inquiry as a predictor of lawyer misconduct.”³⁵

In short, data in this area is scant, and empirical research even scarcer. Moreover, the authors of the single scientifically rigorous study that does exist on this topic concluded that their research “casts serious doubt” on the usefulness of the moral character review process as a predictor of future professional conduct.³⁶ If anything, a large body of psychological research generally supports the conclusion that if the goal of the moral character requirement is to screen out future unethical lawyers, it is likely an ineffective tool.

First, substantial research shows that even trained psychiatrists and psychologists are “notably unsuccessful in predicting future dishonesty or other misconduct on the basis of prior acts.”³⁷ Non-psychologists are likely to fare even worse. Indeed, social psychology research shows that lay people tend to erroneously ascribe individuals’ behavior to robust, situation-invariant character traits, and they systematically underweight the important role of situational factors in shaping behavior.³⁸

Second, as Levin and her colleagues point out in their study, the questions asked during the moral character inquiry are untethered from any psychological foundation: “The questions are not derived from—nor have they ever been validated using—psychological assessment tools and it is unclear what they actually measure. . . . Indeed, ‘character’ is an idea rooted in the virtue ethics of philosophy—and has been rejected by behavioral psychologists.”³⁹

Furthermore, scholars have pointed out that most discipline is imposed on lawyers later in their careers, when they are experiencing hardships and stressors that were not present at the time of their moral character reviews.⁴⁰ Therefore, they argue, the moral character assessment cannot be expected to screen for this future misconduct.⁴¹

Finally, it remains unclear whether the California CBE officials charged with making these moral character determinations are aware of, or attempt to account for, any of the limitations or pitfalls described above. It is equally unclear whether California CBE officials take into account other several recent developments in social science, discussed in the sections below, that would be relevant to its task. Such developments include advancements in our understanding of the likelihood that an individual who has committed a crime will commit another (see pages 18-20), studies on employees who have criminal records (see page 20), and research on the benefits of having formerly incarcerated individuals working in roles assisting other formerly and currently incarcerated individuals (see pages 20-21).

Desistance Research Establishes that There is a Certain Period of Time After Which an Individual Who Has Committed a Crime Will Have the Same Likelihood of Committing Another Crime As Someone Who Has Never Committed a Crime in Her Life

Research shows that after a certain period of time, an individual who has committed a crime will be no more likely to reoffend than someone of the same age who has never committed a crime in her⁴² life.⁴³ (Even individuals with no criminal history have at least a slight potential for offending.) This concept is known in the criminology field as “desistance from crime,”⁴⁴ and researchers use the term “redemption time” to refer to the amount of time that an individual must be crime-free before her risk of committing a new crime is the same as that of someone her same age with no prior record.

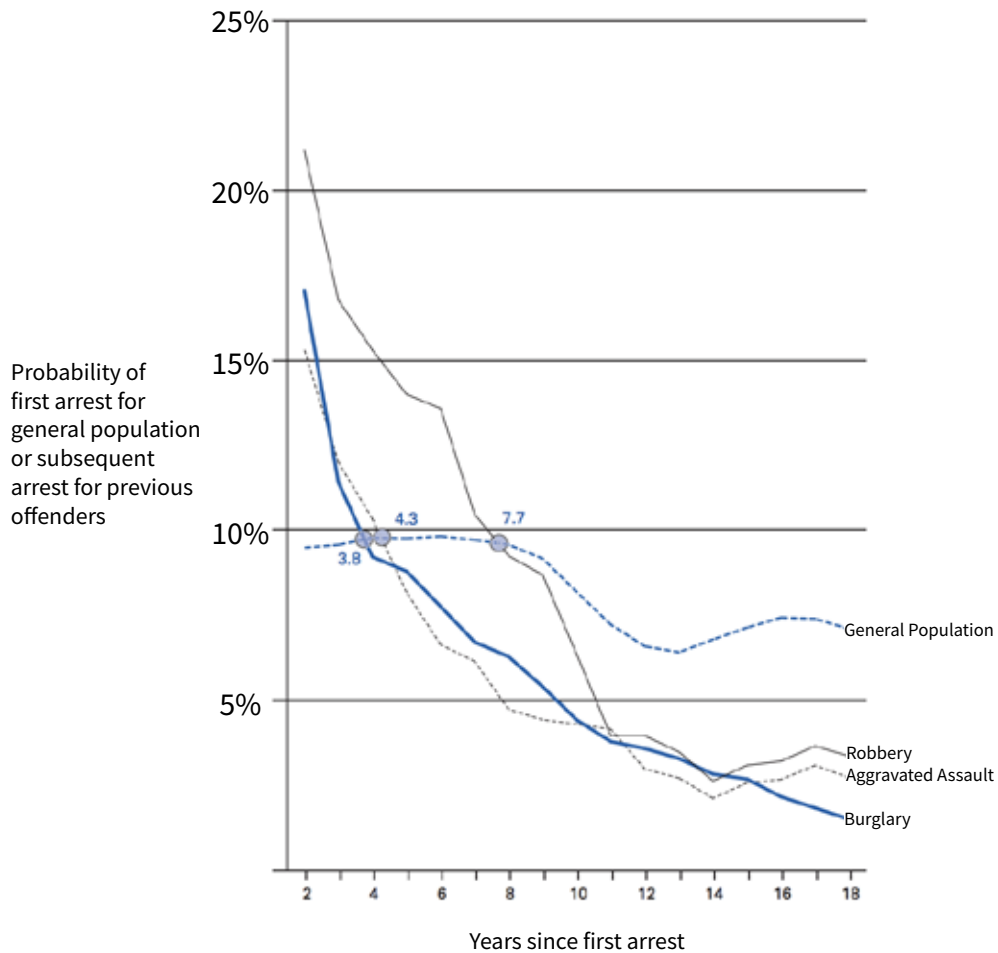
Several factors play a role in determining redemption time. Age, for example, plays an important role. For individuals convicted of a crime for the first time between the ages of twelve to twenty-six, it takes about ten years to “look like” their never-convicted counterparts, whereas older individuals begin to “look like” those

without criminal convictions after just two to six years.⁴⁵ As the following graph demonstrates, redemption time also varies depending on crime type. Among eighteen-year-olds convicted for the first time, those convicted of burglary have the shortest redemption time, 3.8 years. Those with aggravated assault convictions have a redemption time of 4.3 years, and those with robbery convictions have a redemption time of 7.7 years.

FIGURE 1: Hazard Rate for 18-Year-Olds: First-Time Offenders Compared to General Population (2012 study)⁴⁶

Hazard Rate for 18-Year-Olds: First-Time Offenders Compared to General Population

The probability of new arrests for offenders declines over the years and eventually becomes as low as the general population.



Across all crime types, however, the risk of re-arrest for any crime is very low after an individual has spent 10 years crime-free,⁴⁷ though individuals with three or more prior offenses may not reach the same risk levels as those with no prior records.⁴⁸

Studies on Workers with Criminal Records Indicate that They Perform As Well As or Better Than Their Counterparts with No Criminal Records

A growing body of empirical and survey research demonstrates the favorable experience of employers who have hired individuals with a criminal record. A recent study surveyed managers and human resources professionals and found that they rated the quality of their workers with criminal records as equal to or better than the quality of those without a record.⁴⁹ More specifically, the survey found that eighty-two percent of managers and sixty-seven percent of human resources professionals ranked the “quality of hire” of their workers with a criminal record as being the same, better, or much better than their workers with no record. Research has also shown that employees with a criminal record are less likely to leave the job voluntarily, more likely to have a longer tenure, and no more likely than people without records to be terminated involuntarily.⁵⁰

Social Science Evidence Suggests the Benefits of Having Formerly Incarcerated Individuals in Roles Helping Other Justice-Involved Individuals

Considerable work has also been done showing the benefits of having formerly incarcerated people work in roles assisting other justice-involved individuals. Anecdotal evidence suggests that many of the staff members working for prisoner reentry programs are formerly incarcerated persons,⁵¹ and it appears that a large number of former prisoners reentering society choose positions such as youth worker, community volunteer, paraprofessional, lay therapist, or counselor to criminal-justice-involved individuals⁵²—namely, positions in which they feel their life experiences are both valuable to and valued by others.⁵³ Moreover, many current and former prisoners express a desire for mentorship from formerly incarcerated people who have successfully reintegrated into society.⁵⁴ Their shared experiences is thought to enhance the ability to establish rapport and trust.⁵⁵

Substantial research also supports the notion that formerly incarcerated individuals who partake in these roles helping others less far along in the recovery/reintegration process themselves receive significant benefits from doing so.⁵⁶ Researchers began studying this concept in the 1990s and termed these former prisoners (and recovering addicts) “wounded healers.”⁵⁷ Several studies have since documented the benefits that helping others confers on formerly incarcerated and recovering persons, including reduced recidivism, sustained sobriety, and enhanced self-efficacy and self-esteem.⁵⁸ Criminologist Thomas P. LeBel empirically measured these benefits in a 2007 study involving a sample of 228 formerly incarcerated people. His study found that adopting the helper/wounded healer orientation had a significant and positive correlation with the psychological well-being (self-esteem and life satisfaction) of the formerly incarcerated helper him- or herself, and had a negative correlation with criminal attitudes.⁵⁹

Finally, prominent examples of formerly incarcerated individuals who went on to become successful lawyers also help demonstrate the contributions that formerly justice-involved individuals can make to the profession in general, and to assisting other justice-involved or otherwise vulnerable individuals, in particular. Tarra Simmons, to take one example, spent years in prison and jail as a result of convictions stemming from addiction.⁶⁰ After her release, and after receiving treatment for her addiction and trauma, she graduated from law school and

thereafter overturned, at the Washington Supreme Court, an adverse moral character finding by the Washington State Bar Association’s Character and Fitness Board.⁶¹ She was awarded a Skadden Fellowship and now practices law at the Public Defender Association in Seattle, Washington.⁶²

Shon Hopwood is a second conspicuous example. He spent years in federal prison for several bank robberies but after release went on to become a member of the Washington State Bar and then a professor at Georgetown Law School.⁶³ He now draws on his experiences to advance reforms to the criminal justice system, as well as advocates on behalf of other formerly incarcerated individuals seeking admission to the bar.⁶⁴

Francis (Frankie) Guzman is a third. He was sentenced to California’s prison for youth multiple times—including for stealing a car and robbing a liquor store—before he went on to graduate from UCLA School of Law and join the California State Bar.⁶⁵ In 2012, he was awarded a Soros Justice Fellowship to join the National Center for Youth Law; he has remained there since as an attorney, advocating on behalf of at-risk youth and for reform to the juvenile justice system he had experienced firsthand as a teenager.⁶⁶ These are but three examples of many successful formerly incarcerated people who subsequently gained admission to the bar and adopted a “helper/wounded healer” orientation as lawyers.

California State and Local Governments Have Enacted Measures to Restrict Employers’ Ability to Consider Various Aspects of Prospective Employees’ Criminal Records

In recognition of this growing body of evidence—as well as out of a sense of mercy and fairness—California state and local governments have adopted a number of measures that restrict employers’ ability to consider convictions, including if they occurred over a certain number of years ago, typically seven years. These seven-year “washout” periods are supported by the aforementioned desistance research and employer studies. Indeed, one law’s legislative findings even refer to research showing that individuals with conviction records have lower rates of turnover and higher rates of promotion on the job.⁶⁷

In particular, San Francisco’s Fair Chance Ordinance, which took effect in 2014, prevents covered employers from considering convictions older than seven years (except for positions involving minors or dependent adults), starting the seven-year clock at the time of sentencing.⁶⁸ Similarly, California law forbids commercial background check companies from reporting convictions that date back more than seven years from the date of the request.⁶⁹ The California Fair Chance Act, enacted in 2018, prohibits all employers with five or more employees from considering: (1) any arrest that did not lead to a conviction (unless it was an unresolved arrest); (2) convictions that have been dismissed, sealed, expunged, or statutorily eradicated; or (3) the fact of an applicant’s referral to or participation in a pretrial or post-trial diversion program.⁷⁰

California’s “ban-the-box” approach is part of a wave of similar legislation enacted by cities and states across the country,⁷¹ and promoted at the federal level,⁷² all responding to the same problem: a vast increase in the number of individuals with criminal records and the harm that the consideration of their records causes

to their employment prospects, and in turn, to society. Indeed, California state and city governments have acknowledged that employers' consideration of overly old and irrelevant criminal justice history is not only *not* justified by a concern for public safety, but it in fact undermines that very aim: it contributes to increased recidivism and thereby jeopardizes public safety.⁷³

Finally, the U.S. Equal Employment Opportunity Commission (EEOC) has recognized that criminal record exclusions in the context of employment have a disparate impact based on candidates' race and national origin.⁷⁴ Thus, diversity and equity goals may also be served by policies that restrict employers' consideration of criminal record information.

California's Colleges Have Embraced Students with Criminal Records

The "ban-the-box" movement has extended not only to the employment sphere but to educational institutions, as well. Recent efforts to ban criminal records disclosure requirements in undergraduate admissions evince a growing belief that institutions of higher learning should remove this barrier to entry.⁷⁵ As of 2010, over one-quarter of colleges in the United States (28.7%) were not collecting any criminal record information about their applicants.⁷⁶ Since then, other colleges have chosen to follow suit—including, in September 2016, the entire State University of New York (SUNY) system.⁷⁷ Significantly, it was not just the undergraduate SUNY schools that removed criminal records questions from their applications, but the SUNY system's only law school—the University at Buffalo School of Law—as well.

California's colleges, for their part, have also opened their doors not just to students with criminal records, but to students who were previously incarcerated. As of January 2018, an on-campus support program for formerly incarcerated California State University (CSU) students, called Project Rebound, had expanded to nine CSU campuses, with enrollment continuing to grow each semester.⁷⁸ Moreover, as of that same time, a third of California's 114 community colleges had a student group or an on-campus program to support their formerly incarcerated students, and more community colleges are in the process of building their own programs.⁷⁹

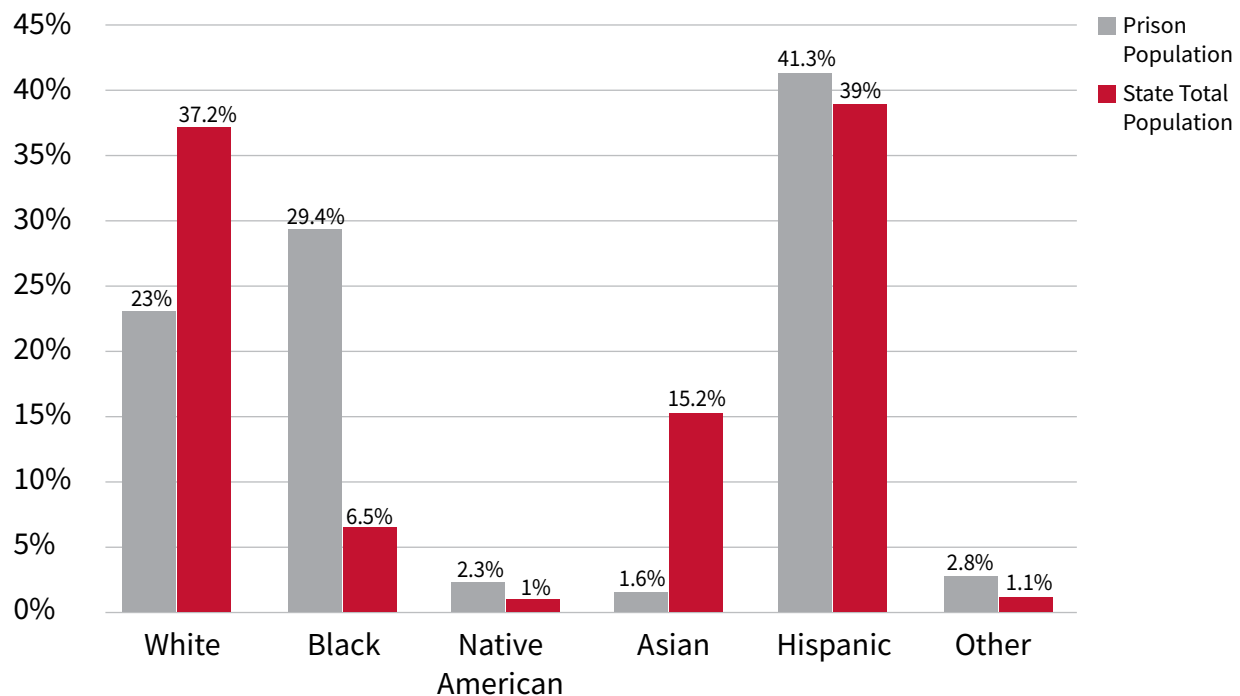
Moreover, as in the employment context, the costs of criminal record disclosure in the college admissions context are disproportionately borne by students of color.⁸⁰ Thus, requiring applicants to disclose criminal record information may compromise educational institutions' goals of promoting equal access to educational opportunity for people of color and promoting campus diversity.⁸¹

Finally, a report published in 2010 on the use of criminal record information in the context of undergraduate college admissions points out that there is no empirical evidence showing that students with criminal records pose a safety risk on campus.⁸² To the contrary, this report explains, "serious crimes on campus . . . are most often committed by students without criminal records"; therefore, it concludes, "excluding people with records from attending college will only serve to create a false sense of security."⁸³

Increasing Numbers of Individuals Impacted by Policies that Exclude Those with Criminal Records, with a Disproportionate Impact on People of Color

Today, law schools and state bars in California and across the country screen applicants based on their earlier interactions with the criminal justice system. As several commentators have pointed out, such screening may well perpetuate the racial and class disparities that plague the criminal justice system at every stage, from policing to sentencing.⁸⁴ (Figure 2, below, shows the disproportionate representation of certain racial minorities in California’s state prisons.)

FIGURE 2: Disproportionate Racial Effects of Incarceration in California (2017)⁸⁵



This screening is likely to perpetuate, in turn, the underrepresentation of racial minorities in an already exceptionally non-diverse profession.⁸⁶ Moreover, while precise denial rates on moral character grounds are unknown in California, there is reason to believe that the number of individuals affected by these policies is more broadly significant,⁸⁷ and that the number of those affected will only continue to rise in the immediate future.

Indeed, the United States’ mass incarceration anomaly is well documented. Today, over 70 million individuals in the United States—over one-fifth of the U.S. population—has a criminal record.⁸⁸ In California, roughly one in three adults has an arrest or conviction record.⁸⁹ And people of color are disproportionately represented in these statistics.⁹⁰ Mass incarceration is slowly beginning to unwind, however, and many Americans with criminal records are trying to reintegrate themselves into society.⁹¹

Moreover, opportunities for higher education for individuals who are currently or were formerly incarcerated have grown in recent years. In particular, California’s community colleges have greatly increased their presence within California’s prisons and jails. As of January 2018, almost 4,500 incarcerated students in California were enrolled in face-to-face community college courses, another 7,000 incarcerated college students in California were enrolled in distance education.⁹² And, as mentioned in the previous section, one-third of California’s community colleges have built programs for formerly incarcerated students on campus.⁹³

Given this combination of circumstances—namely, higher numbers of individuals with criminal records and increasing numbers of these individuals pursuing college degrees—more qualified candidates than ever before may be prevented from realizing legal careers in California. And, as aforementioned, any exclusionary policies linked to interactions with the U.S. criminal justice system are likely to have a disproportionate impact on people of color, thereby compromising the important public and institutional goals of promoting equality of opportunity and diversity in the legal profession.

ENDNOTES

- 1 Rhode, *Virtue and the Law*, *supra* note 2, at 1044.
- 2 *Id.* at 1035. For a more comprehensive history of the legal profession's moral character requirement, and a historical discussion of U.S. occupational requirements more generally, See Rhode, *Moral Character*, *supra* note 2, at 494-503. This section of the Report draws heavily on Professor Rhode's two articles.
- 3 Rhode, *Virtue and the Law*, *supra* note 2, at 1035 (internal citations omitted).
- 4 *Id.*
- 5 Leslie C. Levin, Christine Zozula & Peter Siegelman, *The Questionable Character of the Bar's Character and Fitness Inquiry*, 40 LAW & SOCIAL INQUIRY, Winter 2015, at 51, 54 (internal citations omitted).
- 6 Rhode, *Virtue and the Law*, *supra* note 2, at 1035 (internal citations and quotations omitted).
- 7 *Id.* (internal citations and quotations omitted).
- 8 *Id.* at 1035-36 (internal citations omitted).
- 9 *Id.* at 1036 (internal citations omitted).
- 10 *Id.* (internal citations omitted).
- 11 See *Konigsberg v. State Bar of Cal.*, 353 U.S. 252, 273-74 (1957).
- 12 *Id.*
- 13 *Id.* at 263.
- 14 Rhode, *Virtue and the Law*, *supra* note 2, at 1036 (internal citations omitted).
- 15 *Id.* at 1037.
- 16 *Id.* (internal citations omitted).
- 17 *Id.* (internal quotations and citations omitted). Rhode recounts that "[o]ne official expressed relief that cohabitation rarely arose: 'Thank God we don't have much of that [in Missouri].'" *Id.*
- 18 *Id.*
- 19 NAT'L CONFERENCE OF BAR EXAMINERS & ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, at vii (2019) <http://www.ncbex.org/assets/BarAdmissionGuide/NCBE-CompGuide-2019.pdf>.
- 20 Before the Levin et al., study discussed in this section, there had been no studies that systematically examined whether the information revealed during the state bar application process can be used to predict the likelihood that an applicant will be disciplined later in her legal career. Levin, *supra* note 22, at 52. Only one previous study sought to explore whether there was a relationship between factors reviewed during the state bar admission process and the subsequent imposition of discipline, and that was a 1992 study whose author admitted it was "not conducted scientifically and involved a very small sample." Levin, *supra* note 22, at 52 (citing Carl Baer & Peg Corneille, *Character & Fitness Inquiry: From Bar Admission to Professional Discipline*, 61 BAR EXAMINER, Nov. 1992, at 5, and Margaret Fuller Corneille, *Bar Admissions: New Opportunities to Enhance Professionalism*, 52 S.C. L. REV. 609 (2001)). In 2008, Professor Keith Swisher published an article that presented his research on a related topic: he examined published opinions on moral character determinations, when criminal conduct was at issue in the character review, from 1931 to 2006. Keith Swisher, *The Troubling Rise of the Legal Profession's Good Moral Character*, 82 ST. JOHN'S L. REV. 1037 (2008). His research showed a rise in reported cases of character screening in response to applicants' criminal records, and a rise in reported denials of admission. *Id.* While the findings of Professor Swisher's research certainly add impetus to the subject of this Report, they are less relevant to the question of whether the moral character review process is an effective tool for screening out individuals likely to present a danger to future clients or to the administration of justice. Thus, his research is not discussed in this section.
- 21 Levin et al., *supra* note 22, at 52. The researchers used logistic regression analysis to assess the effects of the independent or explanatory variables—such as whether the individual had a criminal conviction, with each variable being measured at the time a lawyer is admitted to the bar—on the probability that she would subsequently be disciplined, controlling for all other independent variables included in the regression. *Id.* at 63.
- 22 More specifically, the authors found that each additional \$1,000 of student debt raised the probability of discipline by .04 percentage points, and this result was "highly significant" (i.e., it had a *p*-value of under .01). *Id.* at 66.
- 23 *Id.* at 52 ("[E]ven if some variable (e.g. having defaulted on a student loan) doubles the likelihood of subsequent disciplinary action—a very strong effect—the probability of subsequent discipline for an applicant with a student loan default is still only 5 percent.").
- 24 See *Id.* at 85 (descriptions of all of the variables examined in the study). The variable "litigation alleging fraud" is defined to include only conduct in which the applicant was a defendant in a *civil* proceeding, so it is not included in the present discussion. "Substance abuse" was also not defined to include interaction with the criminal justice system, so it is not addressed in this discussion.

- 25 *Id.* at 66 (“Traffic violations are associated with a [statistically significant] higher discipline risk, with each additional violation adding about 0.4 percentage points to the likelihood of discipline.”).
- 26 *Id.* at 64-66. Weakly statistically significant is defined as having a *p*-value of less than 0.1.
- 27 *Id.* at 69.
- 28 Levin et al. defined “severe” and “less severe” discipline as follows: “‘Severely disciplined’ lawyers were those who, after admission to the Connecticut bar, were suspended for two or more years, disbarred, or resigned and waived the right to reapply in response to charges of serious misconduct. This group also includes (1) lawyers whose misconduct resulted in interim suspensions of indeterminate length due to serious misconduct that probably would have resulted in severe discipline and (2) lawyers who were placed on inactive/disability status after engaging in serious misconduct that otherwise probably would have resulted in severe discipline. ‘Less severely disciplined’ lawyers received lower-level sanctions, including shorter suspensions, reprimands, and conditions such as probation.” *Id.* at 61.
- 29 *Id.* at 73.
- 30 *Id.*
- 31 *Id.*
- 32 *Id.* at 73-74.
- 33 *Id.* at 73.
- 34 *Id.* at 73-74.
- 35 *Id.* at 79.
- 36 *Id.*
- 37 Rhode, *Virtue and the Law*, *supra* note 2, at 1039 (internal citations omitted).
- 38 This misguided tendency is known in the social psychology field as the “fundamental attribution error.” See Levin, *supra* note 22, at 75 n.30 (internal citations omitted); See also Rhode, *Virtue and the Law*, *supra* note 2, at 1029-30 (discussing the fundamental attribution error as well as “interactionism,” the idea that character traits and situation factors are intricately related, in the context of the moral character requirement).
- 39 Levin, *supra* note 22, at 52-53 (internal citations omitted). For further exploration of how character is used—and misused—as a screening device in a variety of occupations and other social contexts, See generally Deborah L. Rhode, *Character: WHAT IT MEANS AND WHY IT MATTERS* (forthcoming 2019).
- 40 Levin, *supra* note 22, at 55 (internal citations omitted).
- 41 *Id.*
- 42 “Her” and “she” are used throughout this Report as shorthand to refer to any individual, regardless of gender identity.
- 43 Alfred Blumstein & Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences* (final report submitted to Nat’l Inst. of Just., Grant Award 2009-IJCX-0008) (Oct. 2012).
- 44 According to the National Institute of Justice, the research and development agency of the U.S. Department of Justice, desistance “refers to a process by which a person arrives at a permanent state of nonoffending.” *Recidivism*, NAT’L INST. OF JUST., <https://www.nij.gov/topics/corrections/recidivism/pages/core-concern.aspx> (last modified May 21, 2019). Recidivism can be defined broadly as a return to criminal behavior after contact with, and intervention by, the criminal justice system (e.g., an arrest, conviction, or incarceration). See Kiminori Nakamura & Kristofer Bret Bucklen, *Recidivism, Redemption, and Desistance: Understanding Continuity and Change in Criminal Offending and Implications for Interventions*, 8 SOC. COMPASS 384, 385 (2014). This Report focuses on desistance because a desistance framework “allows for degrees of success even if there are occasional setbacks”; conversely, recidivism is a “binary frame: People either succeed or they fail.” See Jeffrey A. Butts & Vincent Schiraldi, *Recidivism Reconsidered: Preserving the Community Justice Mission of Community Corrections*, Program in Criminal Justice Policy and Management, Harvard Kennedy School 9 (Mar. 2018).
- 45 Shawn D. Bushway et al., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?* 49 CRIMINOLOGY 27, 52 (2011).
- 46 Alfred Blumstein & Kiminori Nakamura, ‘Redemption’ in an Era of Widespread Criminal Background Checks, 263 NAT’L INST. OF JUST. JOURNAL 13 (June 2009). Note that “hazard rate” refers to the probability of new arrests.
- 47 Bushway, *supra* note 62, at 33-34 (“[W]e find that youthful, first-time offenders ‘look like’ their nonoffending counterparts after approximately 10 years and that older first-time offenders take even less time to converge with their nonoffender counterparts.”).
- 48 *Id.* at 47 (explaining that most individuals with three or more prior convictions do not reach the same risk level of those with no prior convictions over twenty five years of follow up).
- 49 Soc’y for Hum. Resources Mgmt. & Charles Koch Inst., *Workers with Criminal Records: A Survey by the Society for Human Resources Management and the Charles Koch Institute* (2018).

- 50 Dylan Minor, Nicola Persico, & Deborah M. Weiss, *Criminal Background and Job Performance* 12-14 (May 1, 2017) <http://bit.ly/2vJT5jR>. Consistent with these findings, a comprehensive study of people with a felony record who served in the U.S. military has also found that they were promoted more quickly and to higher ranks than others, and were no more likely than people without records to be discharged for negative reasons. See Jennifer Lundquist, Devah Pager, & Eiko Strader, *Does a Criminal Past Predict Worker Performance? Evidence from American's Largest Employer*, 96 Soc. FORCES, Mar. 2018, at 1039.
- 51 Thomas P. LeBel, Matt Richie, & Shadd Maruna, *Helping Others as Response to Reconcile a Criminal Past: The Role of the Wounded Healer in Prisoner Reentry Programs*, 42 CRIM. JUST. & BEHAV. 108, 108 (2015).
- 52 Thomas P. LeBel, *An Examination of the Impact of Formerly Incarcerated Persons Helping Others*, 46 J. OFFENDER REHABILITATION 1, 3, 5 (2007) (internal citations omitted).
- 53 LeBel et al., *Wounded Healer*, *supra* note 68, at 110 (internal citations omitted).
- 54 *Id.* at 109 (internal citations omitted); See also LeBel, *Examination*, *supra* note 69, at 4 (“Many prisoners and former prisoners express a desire to receive mentoring from formerly incarcerated persons who are ‘making it’ in conventional society (e.g., Erickson et al., 1973; Irwin, 2005; McAnany et al., 1974; Richie, 2001; Sowards, O’Boyle, & Weissman, 2006).”).
- 55 LeBel, *Examination*, *supra* note 69, at 4 (internal citations omitted).
- 56 LeBel et al., *Wounded Healer*, *supra* note 68, at 109 (internal citations omitted); See also LeBel, *Examination*, *supra* note 69, at 3 (citing previous studies and literature on “the extent of, and possible benefits of, help-giving in populations of prisoners and former prisoners,” and specifically citing Maruna, LeBel, & Lanier, 2003; Bazemore & Karp, 2004).
- 57 Gretchen Heidemann et al., *Wounded Healers: How Formerly Incarcerated Women Help Themselves by Helping Others*, 18 PUNISHMENT & Soc’y 1, 4 (2016) (internal citations omitted).
- 58 *Id.* at 5-6 (internal citations omitted).
- 59 LeBel, *Examination*, *supra* note 69.
- 60 *In re* Bar Application of Tarra Denelle Simmons, 414 P.3d 1111, 1113 (Wash. 2018).
- 61 *Id.* at 1113-14, 1123.
- 62 *Id.* at 1113, 1120; *Tarra Simmons*, PUBLIC DEFENDER ASS’N, <http://www.defender.org/content/tarra-simmons> (last updated 2018).
- 63 See *Simmons*, 414 P.3d at 1122 (discussing Hopwood’s bank robbery charges and prison sentence); *Shon Hopwood*, GEORGETOWN LAW, <https://www.law.georgetown.edu/faculty/shon-hopwood/> (last visited May 27, 2019).
- 64 In addition to serving as a law professor at Georgetown, Hopwood is a co-founder of “Prison Professors,” a team of advocates who “help people prepare for best outcomes after they’ve been charged with a crime.” *Co-Founders of Prison Professors: Shon Hopwood*, PRISON PROFESSORS, <https://prisonprofessors.com/prison-professors/> (last visited May 27, 2019). He advocated on behalf of the recently passed First Step Act, including attending an event at the White House in support of the Act. See, e.g., Shon Hopwood, *Why I Support the First Step Act*, PRISON PROFESSORS (May 22, 2018), <https://prisonprofessors.com/why-i-support-the-first-step-act/>. And he has written extensively on the topic of criminal justice reform. See, e.g., Shon Hopwood, *I Got a Second Chance After Robbing Banks-and Others Should, Too*, THE ATLANTIC (Dec. 21, 2012), <https://www.theatlantic.com/national/archive/2012/12/i-got-a-second-chance-after-robbing-banks-and-others-should-too/266567/>. See also *Simmons*, 414 P.3d at 1122 (written several years after Hopwood’s admission to the Washington State Bar and observing that “[h]is ethics and abilities as an attorney have never been questioned, and he is, by all accounts, a credit to the profession”).
- 65 Bryn Martyna, *Frankie Guzman’s Efforts to Restore the Spirit to the Juvenile Justice System*, NAT’L CTR FOR YOUTH L., <https://youthlaw.org/publication/frankie-guzmans-efforts-to-restore-the-spirit-of-the-juvenile-justice-system/> (last visited May 27, 2019).
- 66 *Id.*
- 67 A.B. 1008 § 1(h), 2017-18 Gen. Assemb., Reg. Sess. (Cal. 2017), available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1008.
- 68 S.F., Cal., Police Code Fair Chance Ordinance, art. 49, §§ 4901-4919, at § 4904(a)(5) (2014), available at [http://library.amlegal.com/nxt/gateway.dll/California/police/article49proceduresforconsideringarrests?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_Article49](http://library.amlegal.com/nxt/gateway.dll/California/police/article49proceduresforconsideringarrests?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Article49). The Fair Chance Ordinance was amended in April 2018 to expand the scope of the ordinance to cover all employers with five or more employees (under the 2014 version of the ordinance, only employers with twenty or more employees were covered). The legislation took effect on October 1, 2018. *Fair Chance Ordinance*, CITY AND CTY. OF S.F., OFFICE OF LABOR STANDARDS ENF’T, <https://sfgov.org/olse/fair-chance-ordinance-fco> (last visited June 1, 2019).
- 69 Cal. Civ. Code § 1786.18(a)(7) (West 2019).
- 70 A.B. 1008, *supra* note 84, at § 2(a)(3). San Francisco law goes even further, banning consideration not only of these aspects of one’s criminal record but also of (1) a conviction, determination, or adjudication in the juvenile justice system, and (2) an offense other than a felony or misdemeanor, such as an infraction San Francisco Fair Chance Ordinance, § 4904(a)(5).

- 71 See Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT'L EMP. L. PROJECT (Apr. 1, 2017), <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>. See also, AB 1008, *supra* note 89, at §§ (c), (d), (f) (“Nationwide, 29 states and over 150 cities and counties have adopted a ‘Ban the Box’ law, and over 300 companies have signed the White House Fair Chance hiring pledge. Nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair chance hiring laws that cover both public and private sector employers. Over 20 percent of the United States population now lives in a state or locality that prohibits private employers from inquiring into an applicant’s record at the start of the hiring process. . . . Roughly seven million Californians, or nearly one in three adults, have an arrest or conviction record that can significantly undermine their efforts to obtain gainful employment.”).
- 72 See AB 1008, *supra* note 84, at § 1(b) (“In 2015, President Obama directed all federal agencies to ‘Ban the Box’ and refrain from asking applicants about their convictions on the initial job application.”). Individualized assessment is also a key feature of the model policies endorsed by the U.S. Equal Employment Opportunity Commission (EEOC). Interpreting Title VII of the Civil Rights Act of 1964, in 2012, the EEOC issued a detailed guidance regulating the use of arrest and convictions information in employment decisions, which also set forth best practices for employers to follow. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, 915.002, ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Apr. 25, 2012).
- 73 See, e.g., S.F., Cal., Fair Chance Ordinance, *supra* note 85 (“[T]he health, safety, and well-being of San Francisco’s communities depend on increasing access to employment and housing opportunities for people with arrest or conviction records in order for them to effectively reintegrate into the community and provide for their families and themselves. Barriers to these opportunities for people with arrest or conviction records increase recidivism and thereby jeopardize the safety of the public, disrupt the financial and overall stability of affected families and of our communities, and impede the City’s achieving its maximum potential of economic growth. . . .”), and A.B. 1008, *supra* note 84, at § 1(g) (“Experts have found that employment is essential to helping formerly incarcerated people support themselves and their families, that a job develops prosocial behavior, strengthens community ties, enhances self-esteem, and improves mental health, all of which reduce recidivism. . . .”); See also L.A. Fair Chance Initiative for Hiring, L.A. Municipal Code ch. XVIII, art. 9, § 189.00 (2017) (“Automatic exclusion of persons with prior criminal convictions from consideration of employment prevents otherwise qualified applicants from obtaining employment and may result in employers hiring less qualified candidates, increases the risk of recidivism of persons so excluded from consideration and disparately impacts persons of certain races and national origin.”).
- 74 ENFORCEMENT GUIDANCE, *supra* note 89, at 1 (“National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.”).
- 75 See, e.g., A.B. A1792, 202nd Gen. Assemb., Reg. Sess. (N.Y. 2017) (prohibiting colleges from ever inquiring into arrests that did not result in a criminal conviction and criminal convictions that have been sealed, as well as from inquiring into an applicant’s criminal history before reaching an admissions decisions, and only thereafter for the purpose of offering supporting counseling services and making decisions about participation in campus activities).
- 76 Marsha Weissman et al., THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS: RECONSIDERED 8 (Nov. 2010), *available at* <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>.
- 77 Eli Rosenberg, *SUNY to Stop Asking Applicants About Felony Convictions*, N.Y. TIMES (Sep. 14, 2016) <https://www.nytimes.com/2016/09/15/nyregion/suny-to-stop-asking-applicants-about-felony-convictions.html>.
- 78 Mukamal & Silbert, *supra* note 9, at 7.
- 79 *Id.*
- 80 See Alan Rosenthal et al., BOXED OUT: CRIMINAL HISTORY SCREENING AND COLLEGE APPLICATION ATTRITION 14 (2013) (finding that at five of six studied SUNY schools, the proportion of African American applicants who check the felony box is two to three times higher than their proportion in the general applicant population).
- 81 See Weissman et al., *supra* note 93, at 37 (encouraging colleges to perform an assessment and multi-factor analysis to determine whether a past criminal offense justifies rejection, including considering whether a negative decision would undermine institutional policies such as “promoting equal access to educational opportunity and preventing the exclusion of people of color who are disproportionately represented in the criminal justice population because of racial profiling and other discriminatory practices” and “promoting campus diversity”).
- 82 *Id.* at 3. The authors of this Report are aware of no empirical research published on this issue in the years since this CCA report was published.

83 *Id.* at 42.

84 See Levin et al., *supra* note 22, at 54 (“The focus on past criminal conduct may perpetuate racial and class biases, as people of color and the poor are subjected to differential treatment in the criminal justice system.” (citations omitted)); Rhode, *Virtue and the Law*, *supra* note 2, at 1027 (“In an era of mass incarceration, and widespread racial bias in the criminal justice system, such character exclusions [based on criminal records] should be a matter of substantial public concern.”). See also, Weissman et al., *supra* note 93, at 25 (discussing screening for criminal records in the context of undergraduate admission: “Indeed, it has now been well-documented that racial disparities infect the entire criminal justice system, from policing to sentencing. Such disparities have been documented in the processing of every type of crime, from juvenile delinquency to low-level misdemeanors to the imposition of the death penalty. Because racial bias, whether deliberate or inadvertent, occurs at every stage of the criminal justice system, screening for criminal records cannot be a race-neutral practice.” (citations omitted)).

85 CAL. DEP’T OF CORR. AND REHAB., OFFICE OF RESEARCH, DIV. OF INTERNAL OVERSIGHT AND RESEARCH, OFFENDER DATA POINTS 10 (Dec. 2017), available at <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/07/Offender-Data-Points-as-of-December-31-2017-1.pdf> (documenting the California state prison population); Quick Facts: California, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/CA/PST045218> (last visited May 27, 2019) (documenting California’s total population as of July 1, 2018).

86 Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren’t Doing Enough to Change That.*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that> (noting that eighty-eight percent of lawyers are white and that “[in major law firms, only 3 percent of associates and less than 2 percent of partners are African Americans”).

87 As is laid out in greater detail throughout this Report, the California State Bar does not collect and release data on moral character denials, but even if this denial rate is relatively low, there is reason to believe that many more candidates are being rejected at the law school admissions phase, or are deterred from applying to law school in the first place.

88 See *supra*, note 6.

89 Beth Avery, Maurice Emsellem & Phil Hernandez, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions*, NAT’L EMP. L. PROJECT 28 (Oct. 2017), available at <https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v3-2018.pdf>.

90 African Americans in California represent six percent of the population but account for 18.5% of all felony arrests in the state, 15.3% of all misdemeanor arrests, and 28.9% of all those incarcerated in the State. In 2013 alone, nearly 60,000 more African Americans were arrested for felonies than would have been arrested if they were arrested at the same rate as non-Latino whites. See Perez Memorandum, *supra* note 8 (citing Letter from Bendick & Egan, Economic Consultants, to the California Fair Employment & Housing Council, in Support of the Proposed Criminal Background Check Regulations (Mar. 25, 2016)).

91 Almost 700,000 individuals leave U.S. prisons each year. Rhode, *Virtue and the Law*, *supra* note 2, at 1033.

92 Perez Memorandum, *supra* note 8; Mukamal & Silbert, *supra* note 9, at 7. At the national level, support has also grown for promoting higher education in correctional facilities. For example, the Second Chance Act, which Congress enacted on April 9, 2008, includes provisions that improve access to higher education for people during their incarceration. See Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657.

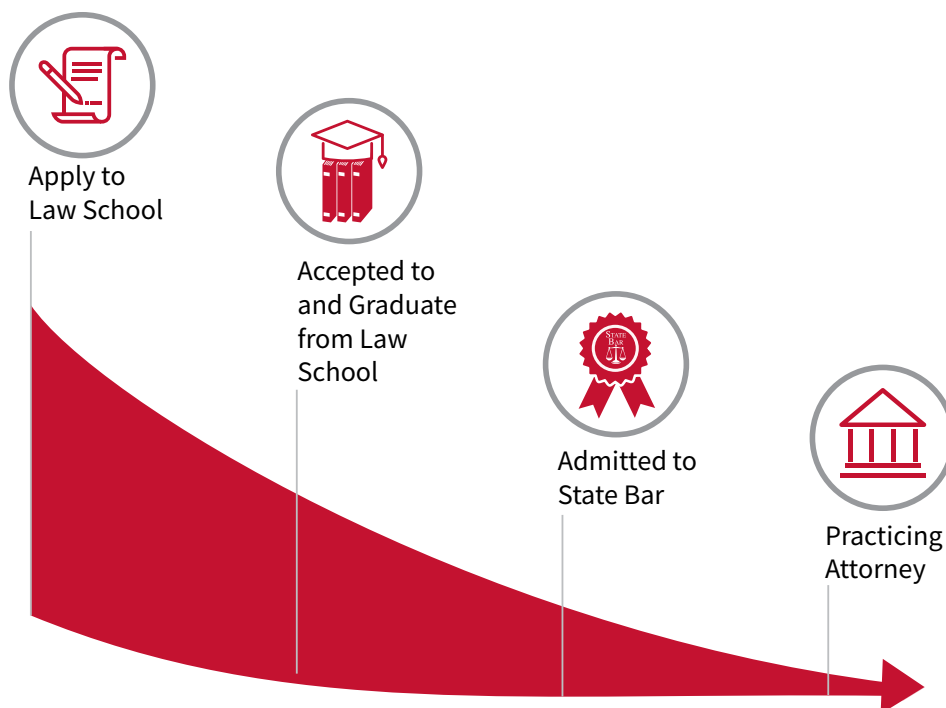
93 Mukamal & Silbert, *supra* note 9, at 7.

Findings

The following section presents original findings on the deterrence of individuals with criminal records from applying to law school, the role of California law schools in the moral character review process, and the role of the California CBE in this process. (Figure 3 below illustrates how these successive barriers shrink the pool of qualified individuals ultimately granted admission to the California State Bar.)

As discussed in the Introduction to this Report, this original research involved a survey of individuals with criminal records who were asked questions about access to the legal profession; an analysis of the moral character disclosure statements of all twenty American Bar Association (ABA)-accredited law schools in California; interviews with admissions officers¹ from ten of those law schools, representing both public and private schools and a diversity of tiers;² interviews with student services officers from seven of those schools;³ a review of moral character requirements in all 50 states; and a Spring 2018 Roundtable discussion whose participants included a range of current and former California State Bar and ABA officials, individuals who attended law school and were admitted to a state bar after being incarcerated, California law school admissions and student services officers, and academics in relevant fields.

FIGURE 3: *Successive Barriers to California State Bar Admission for Qualified Candidates with Criminal Records*





Individuals with Criminal Records Are Deterred from Applying to Law School

Our research found that many individuals with criminal records are deterred from applying to law school in the first place. Of our 88 survey respondents – all with criminal records – 47 indicated they were “considering applying to law school.” When asked the question, “Why have you not yet applied for law school”⁴ over half cited concern about passing the moral character component as one of the top three reasons. One individual wrote, in the space provided for comments: “I thought because I had a felony there was no chance[,] so I never tried.”



Law Schools Are the California State Bar’s First Gatekeepers

Law school admissions offices stand as the first gatekeepers to the practice of law in California.⁵ While the Committee of Bar Examiners is the final arbiter of admissibility, law schools play an equal, if not more important, role in the process of screening out otherwise qualified applicants.⁶ For this reason, we examined the law school application and admissions process as it relates to applicants with criminal records.

In particular, we: (1) assessed the types and frequencies of criminal disclosures among applicants to California law schools (sections III.B.1 and III.B.2); (2) reviewed California law schools’ disclosure requirements as they compare to the California State Bar’s disclosure requirements and as they compare to one another (sections III.B.3 and III.B.4); (3) investigated law schools’ rationales for their respective disclosure requirements (section III.B.5); (4) evaluated law school decision-makers’ training and expertise with respect to evaluating applicants with criminal records (section III.B.6); and (5) assessed law schools’ approaches to informing students about, and assisting them with, the moral character application and determination process, as well as their approaches to assisting students with other difficulties they may encounter related to their criminal records (section III.B.7).

Admissions Officers’ Estimates of the Frequency of Criminal Record Disclosures Among Their Respective Schools’ Applicant Pools Varied Widely

Each California law school requires applicants to respond to several moral character questions, including questions related to their previous interactions with the criminal justice system. In interviews with admissions officers from ten ABA-accredited California law schools,⁷ officers estimated that as few as one percent and as many as twenty-five percent of applications to their respective schools include criminal record-related disclosures each year.⁸ Disclosures of felonies were estimated as rare across the board. Table 1 below summarizes these results.

TABLE 1: California Law School Admissions Officers' Estimates of Frequencies of Criminal Record Disclosures Among Their Respective Schools' Total Applicant Pool Each Year (Estimates Made in Spring 2018)

LAW SCHOOL ⁹	CRIMINAL DISCLOSURE	FELONY DISCLOSURE
Law School 1	"couple misdemeanors every year" ¹⁰	"Very rare; maybe 2% in 20 years"
Law School 2	1-1.5%	"maybe 1 per year"
Law School 3	4-4.5%	"Don't see a lot of them"
Law School 4	5%	"Very rare"
Law School 5	8%	"Not frequently": 1-2%
Law School 6	Less than 10%	"Pretty rare"
Law School 7	10%	"Very few"
Law School 8	10-15%	"Pretty rare": 5%
Law School 9	15%	"Very few": less than 5%
Law School 10	25%	"Half dozen" per year

The Most Common Criminal Disclosures Are Substance-Related Offenses

Of criminal record-related disclosures, admissions officers most frequently encounter substance-related offenses involving alcohol and/or drugs, such as driving under the influence, public intoxication, and possession offenses. Driving under the influence was mentioned by all but one of the 10 admissions officers; minor-in-possession disclosures were mentioned by six.

Table 2 below summarizes these results. Because the table presents these offenses as described by admissions officers during our informal interviews with them, the terminology used is often colloquial and does not necessarily correspond to the way these offenses are described in criminal codes.

TABLE 2: California Law School Admissions Officers' Estimates of Most Frequent Criminal Disclosures Among Their Respective Schools' Total Applicant Pool Each Year (Estimates Made in Spring 2018)

LAW SCHOOL	MOST FREQUENT CRIMINAL DISCLOSURES	KEY
Law School 1	DUI, Fake ID, PI	<ul style="list-style-type: none"> • DUI: Driving Under the Influence of a Controlled Substance • MIP: Minor in Possession (typically used to describe a minor in possession of alcohol) • PI: Public Intoxication • DWI: Driving While Intoxicated
Law School 2	DUI, Possession, Shoplifting	
Law School 3	DUI, MIP, Substance-Abuse-Related Crimes (burglary, theft, possession, possession with intent to distribute)	
Law School 4	DUI, MIP, Pot	
Law School 5	DUI, MIP, Motor Vehicle Violations	
Law School 6	DUI, Misdemeanors	
Law School 7	MIP, Shoplifting	
Law School 8	DUI, PI, Disturbing the Peace	
Law School 9	DUI, MIP	
Law School 10	DUI, DWI, MIP, PI, Drunk and Disorderly, Drug Paraphernalia, Pot Possession	

Significant Incongruities Exist Between Law Schools' Disclosure Requirements and the California State Bar's Disclosure Requirements

An analysis of all twenty ABA-accredited California law schools' disclosure requirements revealed sizeable disparities between the criminal record-related questions they ask applicants to answer and the criminal record-related questions that the California State Bar requires applicants to answer. More specifically, law schools require applicants both to disclose certain information about their records that the California State Bar does *not* require them to disclose, and law schools do *not* require applicants to provide certain information that the California State Bar *does* require them to disclose.

For example, while the California State Bar does *not* require applicants to disclose charges of which they were acquitted, seventy-five percent of law schools *do* demand this information of applicants. And while the California State Bar *does* require applicants to disclose past convictions even if those convictions did not result in a court-imposed sentence, seventy-five percent of law schools do *not* require applicants to disclose this information.

The distinctions between the categories are often subtle, or even obtuse. One of the distinctions—and one that is often beyond the understanding of lay persons—is that between an arrest and a charge.¹¹ The California State Bar does not require applicants to parse this distinction. Rather, because the California State Bar requires applicants to provide information about a past arrest only if that arrest led to a *conviction*,¹² applicants do not need to provide information about arrests that either (1) did not lead to charges; or (2) led to charges, but those charges did not lead to a conviction—e.g., the charges were dismissed, or the applicant was acquitted of them at trial. (The complete list of questions that the California State Bar requires applicants to answer, regarding their criminal records, is reproduced as Appendix F.) But this distinction between arrests and charges *is* one that several California law schools require applicants to decipher, in the moral character sections of their law school applications.

Significant Differences Also Exist Among Law Schools With Respect to Their Disclosure Requirements

In addition to the large disparities in criminal record information required by California law schools as compared to those required by the California State Bar, discussed in section III.B.3, above, California law schools also differ greatly from one another on this score. For example, half of California's ABA-accredited law schools require applicants to disclose past arrests even if those arrests did not lead to charges, and the other half do not. Similarly, while three of the twenty law schools explicitly do not require applicants to disclose expunged convictions, about one-third of law schools do, and the rest are unclear about whether expunged convictions must be disclosed or not. As a result, an applicant may be in the position of disclosing different information about her criminal record depending on the particular requirements of each school to which she is applying.

Moreover, in many cases it is not clear what criminal-record information a particular law school requires the applicant to disclose. For example, in our analysis of the 20 ABA-accredited California law schools' moral character disclosure questions, we were unable to determine for at least half of the schools whether they wanted applicants to disclose juvenile offenses, sealed offenses, or dismissed offenses.

Finally, it should be noted that each of California's 20 ABA-accredited law schools asks applicants at least some questions about their criminal record. As far as we are aware, all of California's non-ABA accredited law schools ask about applicants' criminal records, as well. Not all law schools throughout the country do so, however. We are aware of at least one law school that does not: the University at Buffalo School of Law (SUNY at Buffalo Law). After the State University of New York (SUNY) system ended its practice of asking undergraduate applicants about their criminal records in September 2016,¹³ SUNY at Buffalo Law, the SUNY system's only law school, removed its criminal records question(s), as well.

Law School Admissions Officers Cite Concerns About the Bar's Moral Character Requirement as a Reason for Asking Applicants About Their Criminal Records

Interviews revealed that one of the chief reasons law schools include moral character questions on their applications is that they are hoping to mirror state bars' moral character requirements, and they are anticipating the particular information requests that state bar officials will make. Seven of ten law school admissions officers stated that their school considered the California State Bar's moral character requirement when crafting their own disclosure requirements. And eight in ten consider whether an applicant would pass a state bar's moral character component when making admissions decisions.¹⁴ In fact, one admissions officer explicitly referred to ABA Standard 501(b)—which requires that law school admissions officers deny applicants “who do[] not appear capable of . . . being admitted to the bar”—as one reason for taking the state bar's moral character component into consideration. Several others referenced a similar implicit responsibility. As one such officer explained: “One of the primary functions of a law school is to prepare individuals to be members of the bar, so to ignore moral character misses the point of what a law school is supposed to do.”¹⁵

In addition to wanting to conform to the ABA standard, at least some law schools are motivated in their moral character questioning by a desire to alert prospective law students to the state bars' requirements. Some students do not plan to seek bar admission—instead aiming for careers in politics, academia, policy, or the like, which a law degree facilitates but which do not require admission to a state bar. But it is perceived that for those prospective students who do plan to seek bar admission, being alerted to this hurdle—and potential roadblock—at the application stage rather than at the bar-admission stage allows them to make an informed decision about whether to pursue a law degree before they spend several years and up to hundreds of thousands of dollars on this pursuit.

In a similar vein, law schools may wish to make themselves aware of students' criminal histories with an eye toward helping those students prepare for state bars' moral character components. As one admissions officer put it, her law school asks for applicants' criminal history “because we have a moral duty to help our students get through the bar so that they don't waste three or four years and \$180,000.¹⁶ [We] would not consider admitting first and then asking later.”¹⁷

In addition to anticipating state bars' moral character requirements, admissions officers cited safety, liability concerns, and a desire to assess applicants' judgment as reasons for asking about applicants' criminal records. As explained by one admissions officer whose school requires disclosure of all instances in which an applicant was investigated or arrested for violation of any law:

[We ask for arrests because] sometimes [there can] be circumstances where they were released from custody because there wasn't proof of something, but that doesn't mean the situation they placed themselves in they exercised good judgment. We want to know the full picture . . . what happened, what transpired, etc.¹⁸

In response to a question about whether liability is a concern, another admissions officer noted that her school's general counsel is reviewing the law school's moral character questions.¹⁹ Still another remarked that admissions officers are "concerned about issues on campus, including domestic violence. They are concerned about the safety of students, staff, and faculty."²⁰

Admissions Officers and Other Decision-Makers Lack Access to Information and Training Relevant to Making Informed Moral Character Determinations

Law schools question applicants about their criminal records in part to anticipate state bars' moral character inquiry. However, given the highly discretionary nature of moral character determinations,²¹ at least with respect to the California CBE's determinations, admissions officers noted the difficulty of accurately predicting how this body would decide with respect to any individual applicant. As one admissions officer explained:

[The bar] has its own policies and procedures. We don't want to preemptively make a determination. . . I have to resist the urge to make preemptive decisions about what the bar might do because I have to manage my own biases at the moment, so the last thing I need to do is guess [the CBEs' biases].²²

Admission officers also lack access to certain relevant information. First, they lack access to aggregated prior decisions and annual denial rates: the California CBE's admissions decisions are sealed, and the committee does not collect or release any data on moral character determinations.²³

Second, law schools lack or choose not to commit the resources necessary to conduct in-depth character investigations like those conducted by the California CBE. The California CBE employs investigators to gather information on applicants, including via conducting interviews with outside sources, collecting information from the California Justice Department and the Federal Bureau of Investigation, and holding conferences with the applicants themselves.²⁴ While most law school admissions officers indicated that they follow up with applicants from whom they need more information or context to reach a decision, only two indicated that they request court documents (and even those two do so only rarely), none conducts a criminal background check, and none offers in-person interviews to applicants with conduct issues. Indeed, at least two admissions officers stated that they consider it a "negative" to need to follow up with applicants for more information. While the CBE's investigatory power might most obviously be useful in uncovering additional adverse information an applicant fails to disclose, it may also, particularly in the case of in-person conferences and interviews with

outside sources, assist the CBE in uncovering mitigating information about the circumstances surrounding an applicant's criminal record and efforts toward rehabilitation.

Third, law schools often deploy a variety of rotating and uninformed actors in their admissions processes. Many schools, for example, include rotating students and faculty members on their admissions committees, who often are not provided with substantive training on how to evaluate applicants with criminal conduct disclosures. More than one admissions officer expressed concern that rotating decision-makers often lack perspective and understanding of moral character standards. For example, one officer observed:

We're not the Bar, so I don't want to presume that what I think is going to be a problem, is sufficient to reject an otherwise-strong candidate. . . . [But] faculty has a different perspective than [admissions officers] do. . . . [They're] more conservative, more risk-averse, maybe tied up into what they feel is an appropriate background for a potential lawyer, [and think] maybe we shouldn't accept a student who can't pass the Bar because of the expense [of law school]. [But] we see more issues than faculty who rotate in[, so we're generally less conservative].²⁵

Finally, admissions officers themselves appeared to lack relevant professional development and processes for evaluating candidates with criminal disclosures. Half of the 10 admissions officers interviewed stated that their schools have no policy for reviewing applications with conduct disclosures, and only one admissions officer mentioned a specific reviewer designated for criminal conduct disclosures. It was unclear whether this reviewer had any particular training in this area. Moreover, when asked about what factors they consider when evaluating applications with criminal disclosures, none mentioned recent developments in social science, such as research on desistance,²⁶ as factoring into their determinations, even though this information would seem highly relevant to making judgments on whether a student who has committed a crime in fact poses a higher liability risk or a greater threat to the campus community than any other admitted student.

Once Students Matriculate, There Is Considerable Variability Among California Law Schools in Their Approaches to Informing Students About, and Assisting Them with, the Bar's Moral Character Review Process and Other Difficulties They May Encounter Related to Their Criminal Records

Student services officers are generally responsible for informing (or reminding) students about moral character requirements for state bar admission, counseling and answering students' questions, and managing the law school's response to any inquiries from the state bars. We interviewed student services officers from seven ABA-accredited California law schools²⁷ about their approaches to informing students with criminal records about state bars' moral character requirements, and assisting them with the process. These interviews revealed a variety of policies and procedures, discussed in sections (a)-(c) below. Finally, individuals who attended law school after being incarcerated discussed with the authors of this Report other challenges that confront law students with criminal records—issues which were not raised in our interviews with student services officers. These challenges are discussed in section (d) below.

Communication Between Admissions Officers and Student Services Officers About Incoming Students' Moral Character Issues Ranges from Nonexistent to Comprehensive

With respect to communication between admissions officers and student services officers about the potential moral character issues of incoming students, schools' policies differ considerably. At one end of the spectrum, some schools' student services officers are told nothing about incoming students from the admissions offices. Conversely, other officers are part of the expanded admissions committee which reviews applicants with challenging issues, or the admissions deans will reach out on particular applications that present questions. And at one school, the registrar flags all files for students who have disclosed any potential moral character issues.²⁸

Law Schools' Approaches to Informing Students About the State Bar's Moral Character Requirement Also Vary

Schools' policies also differ with how and when they inform students about the impending moral character requirement, as they are required to do under the ABA's Standard 504(b) that governs law schools.²⁹ Most student services officers we interviewed said they speak about the moral character requirement during students' first-year (known as their 1L year) orientation, although the extensiveness of this presentation ranges from an in-depth discussion to simply a mention of the requirement during a longer presentation on professionalism. One school recently moved its moral character workshop up from the end of 1L year to the beginning because the student services officer felt that there was a sector of the student population that needed to start thinking about it "right up front."³⁰ This school's student services office also sends an email to the student body at the start of each quarter reminding them that they have a continuing duty to disclose.³¹ Officers noted, however, the challenge of alerting incoming law students to the issue without unnecessarily "freaking them out."³²

One officer out of the seven reported that her school offers an "amnesty week" to 1Ls: during orientation, a workshop with the 1Ls "highlights that they have opened their lives to us and they need to disclose certain things."³³ If students did not disclose aspects of their criminal history when applying to law school, this "amnesty week" affords them the opportunity to make these additional disclosures, without fear of disciplinary repercussions from the law school.³⁴

The student services officers generally reported that they conduct a more in-depth moral character presentation for students in the fall of their third (3L) year. And they generally agreed that a relatively small portion of students comes to speak about this issue after 1L orientation presentations and that the bulk of students with potential moral character issues reach out during their 3L year. These presentations tend to be mandatory for 3Ls and are sometimes combined with more general presentations about the bar.³⁵

A few of the officers reported that they invite presenters from outside the student services office to assist with these presentations to the 3Ls. For example, one school invited one of its faculty members who specializes in the subject of Professional Responsibility—and who regularly consults with bar examiners in this area—to conduct a question-and-answer session with the 3Ls.³⁶ Other schools have invited bar representatives themselves to speak to 3Ls about the moral character requirement; however, one school stopped doing so after finding that it was not helpful.³⁷

Law Schools Diverge in Their Approaches to Counseling Students through the Moral Character Process, as Well

Law schools vary greatly in terms of how proactive their respective student services offices are in engaging and assisting students with the moral character review process itself. Some schools' student service officers wait for students with potential moral character issues to self-identify and reach out for help. Once contacted for help, however, these officers review the student's issue and application and advise him or her on how to proceed during the subsequent stages of review by the state bar.³⁸ Other schools' student services officers stated that they are more proactive. For example, two officers noted that they identify students who may run into moral character issues and counsel them to apply for bar admission in their 2L year, if not earlier.³⁹ These officers tend to be more engaged from the beginning of students' 1L year, tend to know more about the backgrounds of the students (through communications with the admissions office), and are more engaged with helping students put together their applications and navigate the process. One officer reported that the cases she gets most involved in are those in which a criminal conviction occurs during law school.⁴⁰

All of the student services officers interviewed explained that in counseling students with potential moral character issues, they advise the students to err on the side of full disclosure. As one reported, "I counsel them to lean into disclosure and always recommend that they be completely honest."⁴¹ Another stated, "I make sure that they are always very candid about what happened, but I [also] always make sure they know the bar wants rehabilitation and contrition."⁴²

Several student services officers also reported offering other types of relevant counseling. One officer, for example, encourages students whose records indicate potential substance abuse issues to engage in sobriety treatment, and encourages students to participate in pro bono and other projects that may assist with their moral character review process.⁴³ And three officers mentioned referring students out to lawyers specializing in moral character or bar disciplinary matters.⁴⁴ (Another officer, however, intentionally does *not* refer students to outside attorneys, because the one time she is aware of one of her students retaining one, the attorney advised the student to spin her issue and not take responsibility.⁴⁵) In addition to referring students to outside lawyers, one officer mentioned the importance of making available to her current students other students who have already gone through the process successfully.⁴⁶ She noted that talking to these former students helps her current students on both a practical and emotional level.⁴⁷

As in the context of admissions, however, law school services officers lack access to a great deal of information relevant (if not critical) to performing their jobs effectively. Specifically, nearly all of the student services officers interviewed articulated a need for greater transparency regarding the state bars' moral character review standards and processes, stating that it frustrated their ability to counsel students in this area. The topic of transparency is taken up in greater detail in section III.C.10.

Law Students with Criminal Records Confront Other Difficulties Related to Their Records

Individuals who attended law school after being incarcerated discussed with the authors of this Report several additional challenges that they experienced firsthand while in law school; other law students with criminal records are likely to confront similar issues.

Specifically, one individual who was incarcerated prior to attending law school reported that she frequently felt uncomfortable when her professors lectured on or led discussions about criminal law matters.⁴⁸ She found that the discussions about defendants and the criminal justice system were often unnuanced, and as a result she felt insecure about contributing her perspective. She wished that her professors demonstrated more sensitivity to the fact that formerly incarcerated law students, like herself, and other students with prior involvement with the criminal justice system might be present in the classroom.

Another challenge faced by law students with criminal records relates to seeking employment. Law students seeking public- as well as private-sector employment may desire guidance on how to discuss their record with prospective employers. Different issues arise in each sector, however. Specifically, whereas public-sector employment requires law students to undergo criminal background checks—including for securing internships and externships—private-sector employment often does not. Law students who seek to work at private-sector law firms after graduation, therefore, must also decide *when* to disclose their criminal records to their prospective employers. One student who attended a private law school in California shared that he did not disclose his criminal record when he interviewed for an internship with a law firm, nor once he received an offer to work at that law firm after graduation. He was unsure if he should inform the law firm about his criminal record before undergoing his moral character review investigation by the California State Bar, and if so, when and how to discuss this sensitive topic with them. He was disappointed to find that no one at his law school could advise him on the issue.



The California State Bar Is the Final Gatekeeper

After law school admissions officers decide that applicants possess the requisite “moral character and fitness” to attend their respective schools, individuals who wish to practice law in California must also be deemed morally fit by the California State Bar. The application requires candidates to submit: (1) recommendations and references from their present and past employers, (2) a copy of their fingerprints, (3) information related to their criminal conviction history, (4) information related to their substance abuse history, (5) debt information, and (6) information related to violations of schools’ honor codes.⁴⁹ Applicants convicted of certain crimes must also submit evidence demonstrating their “overwhelming reform and rehabilitation.”

California State Bar staff review each applicant’s application, and those with “serious issues” are referred to the California CBE for further review⁵⁰ A number of factors are then considered to determine whether the applicant is of satisfactory moral character to merit eligibility for admission to practice law in California.

Moral character standards and processes vary widely from state to state. This section highlights California’s practice and discusses it in the context of other states’ practices, with a particular focus on standards related to an applicant’s prior involvement with the criminal justice system.⁵¹ Specifically, this section reviews:

- Differences between the disclosure questions that the California State Bar asks law Schools than it asks students directly;
- The definition of moral character;
- The presumption and burden of proof applied in moral character determinations;
- Standards for showing rehabilitation, when an individual has a record of past criminal conduct;
- Early application policies for the moral character review process;
- Policies regarding deferred and conditional admission to the California State Bar;
- The emphasis on candor during the moral character review process;
- The composition of moral character committees;
- The appeals process for adverse moral character findings;
- Policies regarding collecting and disclosing information about the moral character review process and its outcomes; and
- Differences between the California State Bar’s policies regarding attorney admission and attorney discipline.

The California State Bar Asks Law Schools to Provide Different Criminal-Record Information about Their Students Than it Asks the Students Themselves to Provide, and the Information Asked for Is Legally Imprecise

As part of its moral character investigation, the California CBE requires each law school to submit a declaration related to each of their students who has applied for admission to the California State Bar. A redacted copy of this declaration is attached to this Report as Appendix G. As discussed throughout this Report, the California CBE also requires law students to submit a moral character declaration, which includes questions related to their criminal records, as a requirement for State Bar admission. A copy of these questions is attached to this Report as *Appendix F*.

These two sets of questions vary greatly both in form and in content. For example, the student declaration contains a page’s worth of instructions, including citations to dozens of California legal code sections.⁵² The declaration sent to the law school cites no code sections and provides only a few sentence’s worth of instructions. These instructions bear little to no resemblance to those provided to the law students.

More significantly, the criminal-record information that the California State Bar asks for from each source differs. For example, while the California State Bar does *not* ask law students to report arrests for which they were not convicted, it *does* ask the law schools to provide this information about its students. More specifically, the California State Bar instructs student applicants that they are “excluded from answering” questions about “arrests that did not result in a conviction,” unless the student is “awaiting final adjudication of the matter.” By contrast, the law school declaration asks whether the student applicant “*has been . . . arrested or otherwise charged formally or informally with a violation of the law.*”⁵³

A second discrepancy relates to expungements. While the California State Bar explicitly instructs law schools *not* to provide information about “criminal proceedings” that it “believe[s] to have been . . . expunged,”⁵⁴ it explicitly *does* require law students to disclose any expunged convictions.⁵⁵

Stated more succinctly, the California State Bar asks law schools—but *not law students*—to provide any records related to students’ arrests, even if the arrest did not lead to a conviction. And the California State Bar asks law students—but *not law schools*—to provide any information related to the students’ expunged convictions. Multiple law school stakeholders raised concerns about these discrepancies. Specifically, these discrepancies foster confusion and may heighten the risk that law students will appear to be withholding information (and lacking candor) when in fact they were simply asked to disclose different information to the California State Bar than their law schools were asked to disclose about them.⁵⁶

In addition to the discrepancies between the criminal-record questions asked of law students versus asked of law schools, the information asked for legally imprecise. Specifically, law schools are asked “Do the records in your office reflect that the applicant has been: . . . [■] arrested or otherwise charged formally or informally with a violation of the law?” The term “informally charged” is a legally meaningless category. Some may believe an arrest is an “informal charge” but, as noted earlier in this Report,⁵⁷ “arrest” and “charge” are discrete legal events, and as a constitutional matter there are formal criteria for when someone is “charged.” It is unclear what kind of information the California State Bar seeks in asking this question, and its vagueness risks both over- and under-inclusive responses from perfectly honest applicants.

California Defines “Good Moral Character” for Purposes of State Bar Admission, and Past Criminal Conduct Does Not Categorically Disqualify Applicants

California

Rule 4.40(B) of the Admission Rules states that:

“Good moral character” includes but is not limited to qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.

Most states define “moral character” vaguely; and in fact, many states use the term without defining its meaning. Oklahoma, for example, simply states that the applicant “shall have good moral character, due respect for the law, and fitness to practice law.”⁵⁸ Nine other states have similarly opaque standards.⁵⁹ In the states that have defined moral character the definition is often a list of character traits that provides insufficient guidance to the applicant. California’s definition, the non-exhaustive list of character traits shown in Rule 4.40(B) above, is typical of that of many other states.

A few states' rules explicitly specify that certain types of criminal history will either be an absolute bar to admission or may constitute grounds for recommending denial. In Mississippi, for example, felonies and certain other convictions are an absolute bar to the practice of law.⁶⁰ Alabama prevents an applicant from admission unless she has received a full pardon for her crime(s) and the full restoration of her civil rights; Georgia requires applicants to have received one or the other.⁶¹ In Idaho, a conviction of a "serious crime" constitutes "criteria for disqualification of an applicant on character and fitness grounds,"⁶² and "serious crime" is defined as "any felony" as well as "any lesser crime that reflects adversely on the Lawyer's honesty, trustworthiness or fitness as a lawyer."⁶³ Similarly, in New Hampshire, "criminal acts, whether or not the conduct results in a prosecution and conviction and even though the arrest and/or conviction for the conduct have been annulled, may be grounds for the Committee to recommend denial of admission for lack of character or fitness."⁶⁴

In many states, California among them, a criminal history that includes certain kinds of crimes will create a rebuttable presumption that the applicant lacks good moral character. Criminal conduct does not, however, categorically prohibit individuals from being admitted to the California State Bar. Presumptions and burdens of proof, particularly as they relate to considerations of applicants' past criminal conduct, are discussed in the section below.

For Applicants Convicted of Certain Types of Crimes, California Applies a Rebuttable Presumption that the Applicant Is Not of Good Moral Character

California

An applicant must be of good moral character as determined by the Committee. The applicant has the burden of establishing that she is of good moral character.

Persons who have been convicted of violent felonies, felonies involving moral turpitude and crimes involving a breach of fiduciary duty are presumed not to be of good moral character in the absence of a pardon or a showing of overwhelming reform and rehabilitation.

In every state, applicants bear the burden of proving their moral character, although the precise standard by which they must do so differs. A common standard is "clear and convincing evidence," which at least fourteen states use.⁶⁵ At least four states use a "preponderance of the evidence" standard.⁶⁶ At least four states require that the applicant prove their moral character by producing evidence "satisfactory" to the board, with no further elaboration.⁶⁷ And at least 14 states seem to state only that the applicant bears the burden, without providing further guidance as to the standard of evidence required to meet that burden.⁶⁸

California, for its part, provides in its admission rules simply that "[a]n applicant must be of good moral character as determined by the Committee" and that "[t]he applicant has the burden of establishing that she is of good moral character."⁶⁹ The standard for meeting that burden is slightly elaborated through caselaw, which provides that an applicant must present evidence "sufficient to establish a prima facie case of his or her good moral character" to the California State Bar.⁷⁰

In several states, applicants with certain kinds of criminal records must meet a still higher standard of proof to establish their moral character, such as rebutting the state bar's presumption of *lack* of good character.⁷¹ California is one such state. Specifically, in California, "persons who have been convicted of violent felonies,

felonies involving moral turpitude[,] and crimes involving a breach of fiduciary duty are presumed not to be of good moral character in the absence of a pardon or a showing of overwhelming reform and rehabilitation.”⁷²

We note that one particular and serious problem with this rule is its reliance on the term “violent” in categorizing certain felonies. “Violent” is a moral and descriptive term, not by itself a formal legal term.⁷³ Moreover, where the term “violent felony” appears in federal and state statutes, it can have widely variant criteria depending on the legal context (this is also true of “crimes of moral turpitude”).⁷⁴ “Violent” also sometimes gets blurred with such terms as “serious” or “dangerous.”⁷⁵ The actual classifications of felonies under California law is complex, varied, and often arguably arbitrary.⁷⁶

Like California, several other states require applicants with criminal records to provide evidence of their rehabilitation in order to rebut this presumption, a requirement that is discussed in the following section.

The California State Bar Considers a Number of Factors When Evaluating Whether or Not a Candidate Who Has Committed a Crime Has Met the Showing of “Overwhelming Reform and Rehabilitation” Necessary for Admission

California

When evaluating rehabilitation, California considers the following factors, among others:

- The nature of the misconduct, including whether it involved moral turpitude, whether there were aggravating or mitigating circumstances, and whether the activity was an isolated event or part of a pattern.
- The age and education of the applicant at the time of the act of misconduct and the age and education of the applicant at the present time.
- The length of time that has passed between the act of misconduct and the present, absent any involvement in any further acts of misconduct. The amount of time and the extent of rehabilitation will be dependent upon the nature and seriousness of the act of misconduct under consideration.
- Whether applicant has made amends to any person or entity who suffered harm as a result of applicant’s misconduct, including whether restitution has been made to any person or entity who suffered monetary losses as a result of applicant’s misconduct.
- The expungement of a conviction or receipt of a pardon.
- Successful completion or early discharge from probation or parole.
- Reinstatement of a professional license, reinstatement into a profession or satisfaction of the terms of discipline, where an applicant has been disciplined in another profession.
- Abstinence from the use of controlled substances or alcohol for not less than two years if the misconduct was attributable in part to the use of a controlled substance or alcohol. Abstinence may be demonstrated by, but is not necessarily limited to, enrolling in and complying with a self-help or professional treatment program.
- Evidence of remission for not less than two years if the specific act of misconduct was attributable in part to a medically recognized mental disease, disorder or illness. Evidence of remission may include, but is not limited to, seeking professional assistance and complying with the treatment program prescribed by the professional and submission of letters from the psychiatrist/psychologist verifying that the medically recognized mental disease, disorder or illness is in remission.
- Payment of a fine imposed in connection with any criminal conviction.
- Correction of behavior responsible in some degree for the act of misconduct.
- Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- Significant involvement in and service to community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems.
- Change in attitude from that which existed at the time of the act of misconduct in question as evidenced by any or all of the following:
 - Statements of the applicant.
 - Statements from family members, friends or other persons familiar with the applicant’s previous conduct and with subsequent attitudes and behavioral patterns.
 - Statements from probation or parole officers or law enforcement officials as to the applicant’s social adjustments.
 - Statements from persons competent to testify with regard to neuropsychiatric or emotional disturbances.

Many states require applicants with criminal histories to provide evidence demonstrating their rehabilitation.⁷⁷ Several of these states offer no set definition or elaboration of their rehabilitation requirement. Instead, applicants must rely on caselaw as a guide to the criteria of the moral character committee, to the extent that caselaw exists in the state.

Other states, like California, do elaborate in their rules on the criteria they use to evaluate rehabilitation. It is useful to establish three rough categories when discussing how states do so. There are (1) states that use the ABA model language, (2) states that use the “Colorado” model language (see below), and (3) states with no codified standard of rehabilitation. These categories are a very loose fit—indeed, many states use a mix of approaches—but they are useful for understanding the various ways in which rehabilitation is defined.

First, the ABA model language establishes the following nine factors for use in evaluating whether an individual has sufficiently rehabilitated her character for the bar:⁷⁸

- The applicant’s age at the time of the conduct or condition;
- The recency of the conduct or condition;
- The reliability of the information concerning the conduct or condition;
- The seriousness of the conduct or condition;
- The cumulative effect of conduct, condition or information;
- The evidence of stabilization or rehabilitation;
- The applicant’s positive social contribution since the conduct or condition;
- The applicant’s truthfulness in the admissions process; and
- The materiality of any omissions or misrepresentations.

This model language is used by nearly 20 states, though many states modify the language to add or omit certain factors.⁷⁹ The ABA approach is slightly different from the language used by Colorado (the “Colorado model language”):⁸⁰

- Evidence that the applicant has acknowledged the conduct was wrong and has accepted responsibility for the conduct;
- Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative, or other proceedings against the applicant;
- Evidence of cooperation with the Office of Attorney Admissions investigation;
- Evidence that the applicant intends to conform future conduct to the standards of character and fitness necessary to practice law in Colorado;
- Evidence of restitution of funds or property, where applicable;

- Evidence of positive social contributions through employment, community service, or civic service.
- Evidence that the applicant is not currently engaging in misconduct;
- Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law in Colorado and justifies the trust of clients, adversaries, courts and the public;
- Evidence that the applicant has changed in ways that will reduce the likelihood of future misconduct; or
- Other evidence that supports an assertion of rehabilitation, including medical or psychological testimony or opinion.

The Colorado model language is not used by as many states as have adopted the ABA model language, but several states have modified it or combined it with the ABA language as part of their requirements.⁸¹

California incorporates facets of the ABA model language (such as the age of the applicant at the time of the misconduct) as well as of the Colorado model language (such as whether restitution has been paid). California also includes factors that are not found in either the ABA or the Colorado model language, such as the applicant’s education at the time of the misconduct and at the time of applying. California also specifies that the amount of evidence of rehabilitation required to justify admission depends on the seriousness of the applicant’s misconduct; in other words, the more serious the misconduct, the more evidence that will be required to show rehabilitation.⁸²

Even though many states define rehabilitation in a similar way, there are notable differences and points of emphasis across state law; two of these differences are reviewed below.

California Considers an Applicant’s Age at the Time of Committing the Crime and the Crime’s Recency When Evaluating Whether the Applicant Has Rehabilitated

Of the states with codified standards, at least 20, including California, consider the age of the applicant at the time of the crime.⁸³ At least 29 states, including California,⁸⁴ also consider how recently the crime occurred.

Some states, though not California, have explicitly correlated the time required for rehabilitation with the level of seriousness of the crime. New Hampshire’s statute, for example, states that the “amount of time and the extent of rehabilitation will be dependent upon the nature and seriousness of the act of misconduct under consideration.”⁸⁵ And three states have statutory time bars. In Kansas and Texas, those convicted of a felony are ineligible to apply for admission until five years after the date of successful completion of their sentence or probation.⁸⁶ Similarly, in Missouri, applicants convicted of a felony—whether by guilty or nolo contendere plea, or by verdict—must have completed their sentence or probation at least five years before applying for the bar.⁸⁷

To Demonstrate Rehabilitation, an Applicant May Be Required to Produce Evidence Demonstrating a “Substantial Period of Exemplary Conduct” Following Her Misconduct

At least half of states require applicants to submit evidence of “positive social contributions” in order to demonstrate their rehabilitation.⁸⁸ California, for its part, lists “significant involvement in and service to community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems” as one of the 14 factors it considers when determining whether an applicant has rehabilitated.

California has also suggested through case law that merely refraining from committing new crimes may be insufficient to demonstrate rehabilitation; rather, a period of “exemplary conduct” may be required.⁸⁹ And in cases involving “very serious acts of moral turpitude,” the California Supreme Court has held that moral fitness will be found “only if [the applicant] has since behaved in exemplary fashion over a meaningful period of time.”⁹⁰ The California Supreme Court has clarified that “‘truly exemplary’ conduct ordinarily includes service to the community.”⁹¹

The California State Bar’s website elaborates further, stating that for applicants who have been convicted of “violent felonies, felonies involving moral turpitude[,] and crimes involving a breach of fiduciary duty,” the California CBE will exercise its discretion to determine whether these individuals have produced “overwhelming proof of reform and rehabilitation, including at a minimum, a lengthy period of not only unblemished, but exemplary conduct.”⁹² The website goes on to describe what constitutes—and significantly, what does *not* constitute—“truly exemplary conduct”:

Truly exemplary conduct typically includes service to the community. Rehabilitation often includes making appropriate amends to any person or entity harmed by the misconduct of the applicant. It should be noted that the testimony of character witnesses alone will not adequately show rehabilitation nor will the applicant’s statements of remorse. It should also be noted that behavior such as holding a steady job, abiding by the law, getting married and starting a family constitutes ordinary conduct rather than the exemplary behavior expected of a person who has committed misconduct and is trying to demonstrate rehabilitation. Likewise, pro bono work is not truly exemplary for attorneys, but rather is expected of them.⁹³

The California State Bar Allows Individuals to Apply for a Moral Character Review Once They Have Matriculated to Law School, But Not Before Then

While law students generally file their moral character applications during or shortly after their final year of law school, some states allow—or even require—prospective lawyers to file these applications earlier. The New York State Bar provides students with the earliest opportunity for a moral character review. It allows individuals who have felony or misdemeanor convictions to petition for an advance ruling as to whether their convictions would disqualify them from admission to the bar, and individuals can do so as soon as they have applied for admission to law school.⁹⁴

However, according to interviews with New York State Supreme Court employees, applicants rarely petition for these advance rulings.⁹⁵ In the First and Fourth Appellate Departments, the employees could not recall a single instance of such a petition being filed, and in the Third Department, an employee estimated that these petitions are filed less than once per decade. In fact, the New York State Bar discourages applicants from using this procedure because New York courts prefer basing their rulings on more fulsome applications individuals complete after years in law school.

Like New York, South Dakota also allows law school applicants and enrolled students to register with the Board of Bar Examiners, which will then “identify any character and fitness issues that may hinder or preclude later admission.”⁹⁶ Unlike New York, however, these findings “are both preliminary and nonbinding in nature.”⁹⁷

Other states allow individuals to apply for a moral character review by the state bar once they have enrolled in law school, but not before then. California is one such state.⁹⁸ A positive moral character finding by the California State Bar is valid for only thirty-six months,⁹⁹ and an applicant must pass the moral character evaluation within five years of taking the California State Bar.¹⁰⁰ Most law students complete law school in three years (i.e., thirty-six months). Thus, for traditional law students, applying for a moral character determination within their first year of law school would pose no issue. However, for less traditional law students who are not likely to complete law school in three years—for example, students earning a joint degree, attending law school part-time, or who may take a leave of absence—applying for a moral character determination in their first year could cause them to have to repeat the process later on, as their determination may expire.

In Ohio and Texas, students are *required* to begin the moral character review process before their third year of law school. In Ohio, students must register as candidates for admission to the State Bar in their second year of law school, thereby triggering a moral character investigation. Texas requires students to do so in the first semester of their first year.

California Offers Applicants Deferred, But Not Conditional, Admission

As of 2019, California is one of three states with a structured program for deferring applicants' State Bar admission if their applications indicate certain moral character issues.¹⁰¹ More specifically, the California CBE may determine, during the course of its moral character evaluation, that the nature of an applicant's history of misconduct indicates that she might benefit from participating in the Lawyer Assistance Program ("the LAP"), a program which is also utilized by barred attorneys in California.¹⁰² The LAP is intended to further the applicant's recovery from personal problems that contributed to her misconduct¹⁰³— such as substance abuse or mental health issues¹⁰⁴— and may include participation in support group sessions and referrals to external resources or treatment providers.¹⁰⁵ The California CBE holds the applicant's application in abeyance while she participates in the LAP.¹⁰⁶

During the abeyance period, the LAP assesses the applicants' recovery progress, recommends any additional activities, and reports the applicants' compliance with their LAP "Participation Plan" to the California CBE.¹⁰⁷ If the applicant successfully completes the program, she will likely receive a positive moral character determination without further moral character hearings.¹⁰⁸

Importantly, California's abeyance program *defers* possible admission. This policy contrasts with those of the 26 states and U.S. territories that instead offer *conditional* admission to applicants with certain moral character issues.¹⁰⁹ As the name suggests, such programs allow State Bar applicants to join the bar on a temporarily conditional basis, who may have previously been excluded from admission due to mental, emotional, or substance abuse problems. Texas, for example, allows for probationary licensing of applicants who have chemical dependency or other conditions or circumstances that the Texas Board of Law Examiners determines warrant temporary monitoring, for purposes of protection of the public.¹¹⁰ The admission becomes unconditional¹¹¹ if the lawyer passes through the trial period with no recurrence of problems. In addition to the aforementioned 26 U.S. states and territories, the ABA has also adopted a model rule on conditional admission.¹¹²

In California, Applicants’ “Candor” is of Great Importance in the Moral Character Review Process, But Potentially Unfair “Candor Traps” Abound

Throughout the moral character review process, the applicant’s candor is considered an important factor in determining whether she is morally fit. In California, as in many other states, “candor” is incorporated into its definition of moral character. Even in states with no explicit honesty or candor requirement, these qualities are often featured in the relevant case law.¹¹³ The ABA model also considers the materiality of any omissions or misrepresentations.

California, in addition to including both “honesty” and “candor” in its definition of moral character, identifies these qualities when providing applicants with instructions for completing the moral character application: “It’s important to be honest on the application. The [California] Committee of Bar Examiners considers candor to be a significant factor in determining whether an applicant has the good moral character required for admission to practice law.”¹¹⁴ The California State Bar’s website provides further that “[l]ack of candor in and of itself as it relates to moral character may be enough to deny certification on moral character grounds.”¹¹⁵

Candor is thus considered of great, even paramount, importance by the California CBE, as it is by other states’ bars. However, various actors have pointed to the problem of potential “candor traps” with respect to applicants’ required disclosures of their criminal history. In other words, several factors create the potential that applicants may inadvertently fail to disclose required information about their criminal history, and that this inadvertent disclosure may be perceived by the California CBE as an intentional omission indicative of the applicant’s lack of candor, thereby delaying or preventing their admission to the California State Bar. As one California law school admissions officer put it:

Candidates are really unclear on what they need to disclose, so the candor trap is real. . . . And there is prohibitive cost: It’s expensive to hire a lawyer or to [otherwise] search all of [one’s] records.”¹¹⁶

A clinical instructor at another California law school noted a number of reasons why students fall into this “trap,” in addition to being unable to afford lawyers to conduct a thorough search of their records. First, while students can check their California record and their FBI record, there is no mechanism to check their FBI record as it will be reported on their California record, which is different and, she has found, prone to error¹¹⁷

Second, students are misinformed about their records being “clean” when they in fact are not.¹¹⁸ For example, a student with an expunged conviction may trust a lawyer who reviews her criminal record and tells her that she has no convictions to disclose to the California State Bar; however, this advice would be inaccurate.

And third, the California State Bar’s standards are confusing as to which convictions require disclosure.¹¹⁹ In particular, students and law school staff find the standards around expunged convictions—particularly expungements from other states—to be confusing and difficult to comply with.¹²⁰ (See pages 40-41 for a more detailed discussion of the questions asked of applicants and of law schools by the California State Bar.)

In addition, as was raised by a clinical instructor from still another California law school, the fact that state penal codes are highly inconsistent with one another (for example, states’ laws differ regarding whether the same offense is categorized as a felony, a misdemeanor, or an infraction) and are continually evolving adds further complexity and difficulty to the disclosure process, thereby creating a larger candor trap into which students can fall.¹²¹

Finally, criminal records themselves are often inaccurate and confusing. In a report published by the federal Bureau of Justice Statistics (BJS) in 2001, BJS observed that “data quality . . . has emerged as one of the most important and timely issues confronting the criminal justice community.”¹²² As outlined in its report, BJS audited states’ repositories—a term which refers to the state agency responsible for collecting and maintaining official criminal records—and identified errors such as missing, inaccurate, and incomplete information contained in these records.¹²³ It deemed the error rates of multiple states’ repositories “unacceptable.”¹²⁴ The report also warned that “[m]any of the criminal history records currently circulated by the repositories are difficult to decipher, particularly by noncriminal justice users and out-of-State users.”¹²⁵

The California State Bar Has a Committee of Bar Examiners and a Moral Character Subcommittee; Their Compositions are Similar to Those of Most Other States

California

The California Committee of Bar Examiners includes a total of 19 members.

The California Supreme Court is responsible for appointing 10 examiners to the California CBE, at least one of whom must be a judicial officer, and the majority of whom must be California licensed attorneys. The California CBE also contains nine public members appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly.

Terms are four years.

The California CBE’s duties include exercising oversight over the moral character determination process and recommending qualified applicants to the California Supreme Court for admission to practice law in California.

The California CBE includes a Moral Character Subcommittee. As of 2018, eight members served on this subcommittee.

Moral character committees vary in their composition. In many states, including California, the moral character committee is distinct from the board of law examiners,¹²⁶ but several states have no separate committee for reviewing moral character.¹²⁷ Boards of law examiners and moral character committees vary in size and term length. The most common size of boards of law examiners is eleven.¹²⁸ The California CBE has nineteen members.¹²⁹ Moral character committees—when they exist apart from the boards of law examiners—are usually smaller, with about five standing members.¹³⁰ As of 2018, eight members served on California’s Moral Character Subcommittee, whose purpose (discussed further in the next section) is to evaluate applicants for whom “serious moral character questions” arise, and to recommend their admission or denial to the California State Bar.

In almost all states, members serve for a term of three years, but there are outliers. Members of the committee in Kansas, for example, have flexible terms of between one and five years;¹³¹ and Missouri requires a nine-year term.¹³² In California, terms are four years.¹³³

Not all moral character committees are comprised entirely of lawyers; many states use a mix of attorney and non-attorney members.¹³⁴ In California, the State Supreme Court is responsible for appointing 10 examiners to the California CBE, at least one of whom must be a judicial officer, and the balance of whom must be California licensed attorneys.¹³⁵ The remainder of the committee is comprised of nine public members appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly.¹³⁶ There are usually no listed qualifications for the non-attorney members. In Wyoming, however, the committee is comprised of four members, one of whom is a non-lawyer with special training in substance abuse, mental health, financial management, or another area of value to the committee.¹³⁷ In California, no similar requirements exist.

When Applications are Perceived to Raise “Serious Moral Character Questions,” California State Bar Applicants Are Entitled to an Informal Conference with the Moral Character Subcommittee; the Appeals Process for Adverse Moral Character Determinations Includes the Opportunity for a Hearing Before the State Bar Court, and an Appeal to the California Supreme Court

California

The Subcommittee on Moral Character evaluates each applicant.

If “serious moral character questions” arise, applicants are entitled to an informal conference with the subcommittee. During the informal conference, attorneys are allowed to be present but may not speak, and applicants are not entitled to see the information collected by the subcommittee during their investigation.

If the committee determines that an applicant has not established good moral character, the applicant has the right to appeal and may request a hearing before the State Bar Court. The State Bar Court’s decision may be appealed to the California Supreme Court.

In California, as in other states, the first step in the moral character review process is the review of applications by the relevant committee. According to the California State Bar’s website, “[i]n the vast majority of cases, an applicant’s good moral character is established with ease and the applicant may expect to be admitted to practice promptly after satisfying the other requirements for admission set forth in the Rules.”¹³⁸

In those cases when applications are perceived to raise “serious moral character questions,” however, applicants are entitled to an informal conference with the Moral Character Subcommittee.¹³⁹ The California State Bar describes this conference as an opportunity to “resolve the issues of concern,” and states that it is “intended to be non-adversarial and non-confrontational.”¹⁴⁰ Meetings typically last about forty-five minutes to an hour.¹⁴¹ Applicants are advised of the date and time of the conference, the specific areas of concern to be discussed (including discussion of any rehabilitative activities), that they may retain counsel who can be present at the conference, that the informal conference will be recorded, and that participation is not required and the Committee will draw no inference if the applicant chooses to decline the invitation.¹⁴²

An applicant’s attorney is allowed to be present at the informal conference but may not speak, and applicants are not entitled to see the information collected by the subcommittee during their investigation. Next, if the Moral Character Subcommittee recommends denial of the applicant on moral character grounds, the applicant may request a hearing before California’s State Bar Court.

In other states, the body that presides over such a conference or hearing usually consists of members of the state bar's moral character committee, though some states have a separate review committee for this purpose.¹⁴³ The rules that apply at the hearing—the presence of attorneys, the ability to present hearsay evidence, and the ability to present mitigating evidence not previously disclosed in the record—vary widely and are almost always court-created rather than the product of statute.

Finally, in California as in many other states,¹⁴⁴ an adverse decision after the hearing can be appealed directly to the State Supreme Court. In some states, however, applicants apply first to a lower court and then to the state supreme court.¹⁴⁵

An attorney who assists California State Bar applicants who have criminal records with the moral character process told the authors of this Report that he typically advises his clients to send a personal statement and extensive evidence of rehabilitation (depending on the case) to the California CBE along with their *initial* moral character applications.¹⁴⁶ He does not have his clients wait until the hearing in front of the California State Bar's Court, or even until the informal conference, to submit this information.¹⁴⁷

One academic has summarized the moral character review process, as it is generally experienced by applicants, as follows:

The character review process undertaken by bar examiners is labor intensive and expensive (requiring review of application materials for completeness and content, follow-up inquiries, etc.). The effort to amass the required information—often spanning a ten-year time period—is time consuming for applicants. Applicants who are required to participate in hearings find the process exceedingly stressful and (if they hire counsel) expensive. The process can cause embarrassment, interfere with work opportunities, and delay employment.¹⁴⁸

The California CBE Seals its Admissions Decisions and Does Not Collect (or Share) Data on Moral Character Determinations

The California CBE's admissions decisions are sealed, and when the authors of this Report requested data on its moral character determinations, the California CBE responded that it does not track, and therefore could not share, this data.¹⁴⁹ The California State Bar also does not publicly provide—on its website or otherwise—examples of the kinds of criminal convictions they see among applicants that have and have not led to adverse moral findings, nor do they provide concrete examples of the quantity and character of evidence successful applicants produce to demonstrate rehabilitation. As a result, prospective law students, law school admissions and student services officers, and others lack access to aggregated prior decisions, annual denial rates based on adverse moral character findings, and other helpful information about the moral character review process.

This opacity leads to difficulties for individuals with criminal records deciding whether or not to apply to law school, for law students attempting to navigate the moral character review process, and for law school staff and others attempting to assist them. Indeed, when student services officers were asked what would help their students navigate state bars' moral character review processes, and what would help them better assist their students in doing so, these officers most frequently articulated a need for transparency. As one officer put it:

I think all of us who are [student services officers] work in the dark. We don't have that much information from the bar, we don't know what they do, and we don't know what their standards are, aside from any public statements. We don't really know what are issues and what are not issues to help guide our students.¹⁵⁰

Another expressed a similar sentiment: "Students always ask me, 'What is going to happen in my situation?' Sometimes I can answer but often I don't know. Nothing is published and we just don't have a good sense of outcomes."¹⁵¹ Finally, a third officer expressed a desire for more data from specifically on what sorts of criminal convictions they see among applicants and what kinds of evidence successful applicants produce regarding the various factors the California State Bar considers when evaluating an applicant's rehabilitation.¹⁵²

California's Processes and Standards for Attorney Discipline Differ from its Processes and Standards for Attorney Admission

A number of differences stand out when we compare the California State Bar's approach to admitting and its approach to disbaring attorneys from its ranks. One key point of difference involves the standard of evidence and burden of proof. With respect to admission, the burden is on the applicant to present evidence sufficient to establish a prima facie case that she is of good moral character. For discipline, on the other hand, the burden of proof is on the State Bar's Office of Chief Trial Counsel (OCTC) to present clear and convincing evidence (a more rigorous standard) of the applicant's misconduct.

Another key difference involves the types of activity that engender scrutiny. As legal ethics scholar Professor Rhode has put it, there is a "double standard of admission and discipline" in the sense that much of the conduct the California State Bar expends resources to investigate among applicants is almost never investigated among its practicing attorneys.¹⁵³ More specifically, she explains, "[m]uch of the conduct that triggers character investigation of applicants, such as financial mismanagement, psychiatric treatment, minor drug offenses, and political activity, almost never results in disciplinary investigations of practicing attorneys."¹⁵⁴

Yet another important difference lies in the possible outcomes for applicants as opposed to admitted attorneys facing discipline. Three outcomes are available for applicants to the California State Bar: the applicant can be admitted, denied, or, as discussed in section III.C.5 above, her application can be placed in abeyance. By contrast, a great number of outcomes are possible for licensed California attorneys who enter the disciplinary process, including private or public reproof, probation, immediate suspension, and disbarment. A variety of conditions may also be placed on sanctions, such as attaching as a condition to probation that the attorney undergo substance abuse treatment.¹⁵⁵

Finally, the two processes differ in transparency. As discussed in the previous section, the CBE does not publish individual moral character determinations or aggregate moral character determinations data; the only available outcome data comes in limited form from State Bar Court and California Supreme Court decisions, of which there are extremely few. For attorney discipline, on the other hand, the California State Bar publishes an Annual Discipline Report, as mandated by statute, which includes all discipline data. There is also a greater number of published State Bar Court and California Supreme Court decisions regarding attorney discipline.

A more thorough comparison of the California State Bar's admission and discipline policies is outlined in *Appendix E*.

ENDNOTES

- 1 As explained in the Introduction to this Report, the term “admissions officers” subsumes a variety of formal titles; however, at each law school, we aimed to speak with the most senior staff member involved in admissions.
- 2 As explained in the Introduction to this Report, the ten schools chosen represent both public and private law schools and a diversity of placements in the traditional law school rankings. Law schools are commonly broken down into “tiers” based off of the annual law school rankings created by the U.S. News & World Report. These rankings include the top approximately 200 law schools in the country. Tier 1 is comprised of the top fifty schools in the country, Tier 2 the next fifty, and so on. For a list of the ten schools and their abbreviations as used in this Report, see Appendix A.
- 3 As explained in the Introduction to this Report, the term “student services officers,” like the term “admissions officers,” embraces a variety of formal titles; however, at each law school, we aimed to speak with the most senior staff member involved in student services. The majority of subjects interviewed were deans of student life. One interviewee was in a role that focused specifically on bar preparation and passage. The seven law schools chosen are a subset of the ten whose admissions officers were interviewed. See *supra* notes 15, 111.
- 4 See Appendix B for the questions asked in this survey. The survey was distributed by JustLeadership USA, a national criminal justice reform organization that provides professional development to formerly incarcerated criminal justice leaders, to its alumni. It was also shared with the Anti-Recidivism Coalition and with several programs that work with formerly incarcerated college students in California, including Project Rebound and Underground Scholars; these organizations forwarded the survey to their affiliates.
- 5 To be eligible for admission to the California Bar, an applicant must, among other criteria, have either received a juris doctor or bachelor of laws degree from an ABA-accredited or CBE-accredited law school, studied for at least four years in an unaccredited or correspondence law school registered with the committee, or studied law in a law office or judge’s chambers in accordance with the applicable rules. CAL. RULES OF STATE BAR R. 4.26 (State Bar of California 2011). It is possible, therefore, to be admitted to the California bar without graduating from a law school, *id.* at r. 4.29; however, extremely few individuals are admitted via this route. See STATE BAR OF CALIFORNIA, CALIFORNIA BAR EXAMINATION STATISTICS (Feb. 2018), http://www.calbar.ca.gov/Portals/0/FEB2018_CBX_Statistics.pdf (showing that only twenty-six applicants who had not graduated from law school took the most recent California bar exam, and none of them passed). An ABA-approved law school is “a law school fully or provisionally approved by the American Bar Association and deemed accredited by the Committee.” CAL. RULES OF STATE BAR, *supra*, at R. 4.3(A). A California accredited law school is “a law school accredited by the [CBE] but not approved by the [ABA].” *Id.* at r. 4.3(D). An unaccredited law school “is a correspondence, distance-learning, or fixed-facility law school operating in California that the [CBE] registers but does not accredit.” *Id.* at r. 4.3(O). California currently has twenty ABA-accredited law schools, twenty-one CBE-accredited law schools (separately counting schools with multiple campuses), and twenty unaccredited, registered law schools (seven correspondence, five distance-learning, and eight fixed-facility). See Law Schools, State Bar of California, <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Law-Schools> (last visited May 27, 2019).
- 6 It is a reasonable assumption that more applicants are rejected on the basis of moral character concerns at the law school application phase than are rejected at the bar admission phase. See Rhode, *Moral Character*, *supra* note 2, at 516 (surveying bar admissions committees in all fifty states and finding that “in the forty-one states that could supply 1982 information, bar examiners declined to certify the character of approximately 0.2 percent of all eligible applicants, an estimated fifty-odd individuals”; twelve to fifteen of these individuals had applied for admission in California).
- 7 Law schools do not publish data on prospective students’ moral character disclosures. We therefore conducted interviews with admissions officers from ten ABA-accredited California law schools. See *supra*, note 15. See Appendix B for the complete list of questions asked during these interviews. As is true with all survey data, it is possible that the interviewees interpreted the questions asked differently from one another, and differently than we intended. In addition, some of the disparities among schools can perhaps be attributed to differences in what specifically they ask to be disclosed, as discussed below in section III.B.4.
- 8 The complete list of interview questions are found in Appendix B. The specific questions, the responses to which are the basis of Table 1, are as follows:

Have you received applications for law school from individuals with criminal records (arrests and/or convictions, including juvenile records)? If so, how often, or approximately what percentage of the annual applications your law school receives? If so, what types of criminal records have you seen? Which are most common?
- 9 To preserve the anonymity of the admissions officers we interviewed, we refer to their law schools by number instead of by name in Tables 1 and 2.
- 10 When discussing the estimated rates of criminal disclosures, this admissions officer mentioned that whether or not a particular act is a misdemeanor depends on how the crime is charged in a particular jurisdiction. For example, this officer noted that public intoxication may be a misdemeanor in one state but merely lead to a fine in another.
- 11 Many people equate the terms because in real life or in movies or on television they hear a police officer telling a person she is being arrested for a specific crime. In formal legal terms, these are discrete matters. A person is only “charged” when she is indicted by a grand jury, or when a prosecutor presents the charge at a court arraignment or files a formal information or complaint in court. This usually happens after an arrest—although it can also precede an arrest. In any event, arrests and charges are different events with different legal consequences.

- 12 The instructions page for the “Convictions” section of the California State Bar’s moral character application gives the following instruction: “YOU ARE EXCLUDED FROM ANSWERING QUESTIONS REGARDING THE FOLLOWING INCIDENTS: Arrests that did not result in a conviction, unless you are awaiting final adjudication of the matter.” (capitalization in original). The complete list of questions that the California State Bar requires applicants to answer, regarding their criminal records, is reproduced as Appendix F.
- 13 Rosenberg, *supra* note 94.
- 14 While eight admissions officers stated they consider whether an applicant would pass the state bar’s moral character requirement when making admissions decisions, three of those officers stated that this consideration was not “determinative.”
- 15 Interview with admissions officer (Jan. 16, 2018) (on file with author).
- 16 More expensive California law schools can cost students close to \$300,000 for tuition and fees plus living expenses. And among students nationwide who completed a law degree in 2015-16 and had student loans, the average student loan balance was \$145,500, according to a 2018 report published by the National Center for Education Statistics. NAT’L CENT. FOR EDUC. STATISTICS, *Trends in Student Loan Debt for Graduate School Completers*, CONDITION OF EDUC. 7 (2018), available at https://nces.ed.gov/programs/coe/pdf/coe_tub.pdf.
- 17 Tracy Simmons, Roundtable Comment, *Law School and California State Bar Admission for People with Criminal Records*, Roundtable Discussion at Stanford Law School (Apr. 26-27, 2018). Tracy Simmons is the Assistant Dean for Admissions and Financial Aid at University of the Pacific, McGeorge School of Law. Appendix I contains her more complete biography. All Roundtable Comments *infra* refer to the April Roundtable at Stanford Law.
- 18 Interview with admissions officer (Jan. 31, 2018) (on file with author).
- 19 Faye Deal, Roundtable Comment. Faye Deal is the Associate Dean for Admissions and Financial Aid at Stanford Law School. See Appendix I for her more complete biography.
- 20 Interview with admissions officer (Jan. 21, 2018) (on file with author).
- 21 See *Moral Character Statement*, ST. B. OF CAL., <http://www.calbar.ca.gov/Admissions/Moral-Character/Moral-Character-Statement> (last visited May 27, 2019) (“Each [moral character] case is considered individually. . . . The Committee will exercise its discretion to determine whether applicants convicted of violent felonies, felonies involving moral turpitude and crimes involving a breach of fiduciary duty have produced overwhelming proof of reform and rehabilitation. . . . An applicant’s record is reviewed as a whole to see if there appears to be a problem. . . . All moral character considerations and committee procedures are not addressed in this statement. The committee urges individuals who have specific questions regarding moral character to write the Office of Admissions in San Francisco. While guidance may be provided, the committee cannot make a moral character determination until an application for such a determination has been filed and a complete inquiry into the applicant’s background has been made.”); see also *Factors Regarding Moral Character Determination*, ST. B. OF CAL., <http://www.calbar.ca.gov/Admissions/Moral-Character/Factors> (last visited May 27, 2019) (“The [fourteen] factors enumerated below are guidelines that may be taken into consideration . . . [n]ot all factors listed below will be applicable to every single case nor will each factor necessarily be given equal weight in evaluating the rehabilitation of an applicant.”).
- 22 Interview with admissions officer (Feb. 7, 2018) (on file with author).
- 23 The lack of data collection and transparency by the California State Bar is discussed in more detail on pages 52-53
- 24 See *Moral Character Statement*, ST. B. OF CAL., *supra* note 131.
- 25 Interview with admissions officer (Jan. 25, 2018) (on file with author).
- 26 See pages 18-20.
- 27 As explained elsewhere in this Report, the term “student services officers,” like the term “admissions officers,” embraces a variety of formal titles; however, at each law school, we aimed to speak with the most senior staff member involved in student services. The majority of subjects interviewed were deans of student life. One person was in a role that focused specifically on bar preparation and passage. The seven schools chosen are a subset of the ten law schools whose admissions officers were interviewed. See *supra*, note 15.
- 28 Telephone Interview with student services officer (Jan. 25, 2018) (on file with author).
- 29 See AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Standard 504(b) (2018-2019) (“The law school shall, as soon after matriculation as is practicable, take additional steps to apprise entering students of the importance of determining the applicable character, fitness, and other requirements for admission to the bar in each jurisdiction in which they intend to seek admission to the bar.”).
- 30 Telephone Interview with student services officer (Jan. 25, 2018) (on file with author).
- 31 *Id.*
- 32 See Telephone Interview with student services officer (Mar. 8, 2018) (on file with author).
- 33 Telephone Interview with student services officer (Feb. 12, 2018) (on file with author).
- 34 *Id.*

- 35 See Telephone Interview with student services officer (Jan. 29, 2018) (on file with author).
- 36 Telephone Interview with student services officer (Feb. 28, 2018) (on file with author).
- 37 Telephone Interview with student services officer (Mar. 8, 2018) (on file with author); Telephone Interview with student services officer (Mar. 21, 2018) (on file with author).
- 38 Telephone Interview with student services officer (Jan. 29, 2018) (on file with author).
- 39 Telephone Interview with student services officer (Jan. 25, 2018) (on file with author). See *also* Telephone Interview with student services officer (Feb. 13, 2018) (on file with author) (“If it is something significant, I counsel them to start their application in the second year of law school.”).
- 40 Telephone Interview with student services officer (Feb. 12, 2018) (on file with author).
- 41 Telephone Interview with student services officer (Jan. 29, 2018) (on file with author).
- 42 Telephone Interview with student services officer (Feb. 13, 2018) (on file with author).
- 43 Telephone Interview with student services officer (Jan. 25, 2018) (on file with author).
- 44 Telephone Interview with student services officer (Feb. 12, 2018) (on file with author); Telephone Interview with student services officer (Mar. 8, 2018) (on file with author); Telephone Interview with student services officer (Mar. 21, 2018) (on file with author).
- 45 See Telephone Interview with student services officer (Jan. 29, 2018) (on file with author).
- 46 Telephone Interview with student services officer (Feb. 12, 2018) (on file with author).
- 47 *Id.*
- 48 Roundtable Comment, Tarra Simmons. Tara Simmons is a Skadden Fellow at the Public Defender Association in Seattle. Appendix I contains her more complete biography.
- 49 *Moral Character*, ST. B. OF CAL., <http://www.calbar.ca.gov/Admissions/Moral-Character> (last visited May 27, 2019).
- 50 *Id.*
- 51 We thank Shon Hopwood and Claire Cahill for conducting much of the research behind this section. Their careful analysis is bolstered by information we obtained from interviews with student services officers from seven ABA-accredited California law schools, insights from a 2018 roundtable discussion held at Stanford Law School, and an examination of case law.
- 52 Specifically, the form instructs applicants that they are “excluded from answering questions regarding the following incidents” and goes on to list, among other incidents:
- Any arrest, conviction or other proceeding the record of which has been ordered or is required to be sealed, obliterated, dismissed, or destroyed pursuant to Sections 851.7, 1203.4a*, 1203.45*, 1000 to 1000.11, 1001 to 1001.11, or 1001.20 to 1001.35 of Penal Code of the State of California, or Section 781 of the Welfare and Institutions Code of the State of California, or Section 11361.5 of the Health and Safety Code of the State of California, or pursuant to a similar statute of another jurisdiction which provides in substance and effect that upon entry of an order, such arrest, conviction, or other proceeding shall be deemed not to have occurred or that the person to whom the proceeding relates, in answering any related question, may state it did not occur.
- The form then goes on to explain, in a section associated with the asterisked code sections quoted above:
- The above-referenced sections of the Penal Code are Sections 1203.4a and 1203.45, not 1203.4. Section 1203.4 (expungement) REQUIRES disclosure of matters dismissed under that Section in response to a direct question contained in an application for licensure by a state agency.
- See Appendix F for the complete list of questions that the California State Bar asks applicants regarding their criminal records.
- 53 The exact question asked in Question 1(b) of the law school declaration is:
- Do the records in your office reflect that the applicant has been: . . . arrested or otherwise charged formally or informally with a violation of the law? (You should not provide information about any criminal proceeding which you believe to have been sealed or expunged.)
- 54 As shown in Appendix G, law schools are instructed, when filling out the declaration for the California State Bar: “You should not provide information about any criminal proceeding which you believe to have been sealed or expunged.”
- 55 As shown in Appendix H, law students are instructed by the California State Bar that “Section 1203.4 [of the Penal Code of the State of California] (expungement) REQUIRES disclosure of matters dismissed under that Section in response to a direct question contained in an application for licensure by a state agency.” (capitalization in the original).
- 56 Telephone Interview with student services officer (Mar. 21, 2018) (on file with author); see *also* Lucy Ricca, Roundtable Comment. Lucy Ricca is the Executive Director of the Stanford Center on the Legal Profession.
- 57 See footnote 121, *supra*, and corresponding text.

- 58 OKLA. SUP. CT., OKLA. BOARD OF BAR EXAMINERS, RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF OKLAHOMA R. 1 (Nov. 13, 2018), *available* at <http://www.okbbe.com/Resources/Docs/OKBBE-Rules-Governing-Admission.pdf>.
- 59 See MICH. SUP. CT., RULES CONCERNING THE STATE BAR OF MICHIGAN R. 15 (Jan. 1, 2019), *available* at <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Rules%20Concerning%20The%20State%20Bar%20of%20Michigan.pdf>; N.H. SUP. CT. R. 42; PA. BOARD OF L. EXAMINERS, *Pennsylvania Bar Admission Rules* R. 203(b) (Feb. 2019), *available* at <https://www.pabarexam.org/pdf/rules.pdf>; R.I. SUP. CT. R. 4; S.C. JUDICIAL BRANCH R. 402; RULES FOR ADMISSION TO THE PRACTICE OF LAW R. 5.0 (W. Va. Judiciary 2001).
- 60 MISS. CODE. ANN. § 73-3-41 (“Every person who has been or shall hereafter be convicted of a felony, in a court of this or any state or a court of the United States, manslaughter or a violation of the Internal Revenue Code excepted, shall be incapable of obtaining a license to practice law.”).
- 61 NAT’L CONFERENCE OF BAR EXAM’RS & AM BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 4-5 (Erica Moeser & Claire Huismann, eds.) (2015).
- 62 IDAHO RULES OF STATE BAR R. 201 (State Bar of *Id.* 2010).
- 63 *Id.* at R. 501.
- 64 N.H. SUP. CT. R. 42B.
- 65 REGULATIONS OF THE CONNECTICUT BAR EXAMINING COMMITTEE ART. VI-3 (CONN. JUDICIAL BRANCH 2016); KAN. SUP. CT. R. 707; MICH. SUP. CT., RULES, *supra* note 174, at R. 15; MINN. ST. BOARD OF L. EXAMINERS, *Rules for Admission to the Bar* R. 15 (Nov. 20, 2018), *available* at <https://www.ble.mn.gov/wp-content/uploads/2018/11/BLE-Rules-11-20-18.pdf>; NEV. SUP. CT. ADD. 1 at 31(C)(iii), *available* at https://www.leg.state.nv.us/CourtRules/SCR_Addenda.html; N.J. BOARD OF BAR EXAMINERS, *Regulations Governing the Committee on Character* R. 303:3 (Oct. 1, 2002), *available* at <https://www.njbarexams.org/committee-on-character-regulations>; OHIO SUP. CT., SUMMARY OF CHARACTER AND FITNESS PROCESS IN OHIO, *available* at <http://www.supremecourt.ohio.gov/Boards/characterFit/CFProcess.pdf>; OR. ST. BOARD OF BAR EXAMINERS, SUPREME COURT OF THE STATE OF OREGON RULES FOR ADMISSION OF ATTORNEYS § 9.45(6) (Nov. 1, 2018), *available* at https://www.osbar.org/_docs/rulesregs/admissions.pdf; R.I. SUP. CT. R. 4; S.D. CODIFIED LAWS § 16-16-2.2 (2018); UTAH STATE BAR, RULES GOVERNING BAR ADMISSION R. 14-708; VA. BOARD OF BAR EXAMINERS, RULES, *available* at <http://barexam.virginia.gov/pdf/VBBERules.pdf>; WASH. SUP. CT., ADMISSION AND PRACTICE RULES, APR 24.1.
- 66 *In Re Shannon*, 621 S.W.2d 853 (Ark. 1981); *Matter of Peterson*, 439 N.W.2d 165, 166 (Iowa 1989); TEX. BOARD OF L. EXAMINERS, RULES GOVERNING ADMISSION TO THE BAR OF TEXAS, R. 4(f); *Id.* Rules, *supra* note 172, at R. 224(d).
- 67 See DEL. SUP. CT. R. 52; FLA. SUP. CT., RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR R. 2, *available* at <https://www.floridabarexam.org/web/website.nsf/rule.xsp#2-10>; MISS. SUP. CT., RULES GOVERNING ADMISSION TO THE MISSISSIPPI BAR R. 8, § 7; WYO. SUP. CT., RULES AND PROCEDURES GOVERNING ADMISSION TO THE PRACTICE OF LAW R. 401.
- 68 See *In re Ascher*, 411 N.E.2d 1, 7 (Ill. 1980); ALA. STATE BAR, RULES GOVERNING ADMISSION TO THE ALABAMA STATE BAR R. V; HAW. SUP. CT. R. 1.3; RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATTORNEYS R. 12 (IND. JUDICIAL BRANCH 2019); KY. SUP. CT. R. 2.011; MD. CT. APP. R. 19-203; MO. SUP. CT. R. 8; *Character & Fitness Guidelines*, BD. OF LAW EXAM’RS OF THE STATE OF N.C., <https://ncble.org/character-fitness/> (last visited May 31, 2019); OKLA. SUP. CT., *Rules*, *supra* note 168 at R. 13; PA. BOARD OF L. EXAMINERS, *Bar Admission Rules*, *supra* note 169, at R. 213; VT. SUP. CT., OFFICE OF THE STATE COURT ADMINISTRATOR, BOARD OF BAR EXAMINERS, RULES OF ADMISSION TO THE BAR OF THE VERMONT SUPREME COURT R. 5 (Apr. 2019), *available* at https://www.vermontjudiciary.org/sites/default/files/documents/900-00014_4.pdf; W. Va. Judiciary, *Rules*, *supra* note 169, at R. 2.0.
- 69 CAL. RULES OF STATE BAR, *supra* note 115, at R. 4.40(a).
- 70 *In re Glass*, 316 P.3d 1199, 1212 (Cal. 2014); see also *In re Menna*, 905 P.2d 944 (Cal. 1995) (“In a moral character proceeding, the applicant must first establish a prima facie case that she possesses good moral character . . .”).
- 71 For states following the rebuttable presumption approach, see, for example, Ariz. Sup. Ct. R. 36 (“There is a presumption, rebuttable by clear and convincing evidence presented at a proceeding, that an applicant who has been convicted of a misdemeanor involving a serious crime or of any felony must be denied admission.”); CONN. JUDICIAL BRANCH, REGULATIONS, *supra* note 175, at art. VI-11; and UTAH STATE BAR, RULES, *supra* note 175, at R. 14-708(f)(3).
- 72 *Factors*, ST. B. OF CAL., *supra* note 131.
- 73 See Robert Weisberg, *The Wild West of Sentencing Reform: Lessons from California*, 48 CRIME & JUSTICE 2019, at 35-77.
- 74 *Id.*
- 75 In California, for example, whether a felony is denominated as violent or serious or dangerous can determine whether a individual gets incarcerated in a state prison or county jail under California’s 2011 Realignment law. See A.B. 109, 2011-12 Gen. Assemb., Reg. Sess. (Cal. 2011), *available* at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB109. Additionally, the “serious” or “violent” denomination can determine whether a life prisoner has an opportunity for early parole consideration under Proposition 57. See Cal. Const. art. 1, § 32.
- 76 See Weisberg, *Wild West*, *supra* note 183.
- 77 See, e.g., *In re Cason*, 294 S.E.2d 520 (Ga. 1982); N.M. SUP. CT., RULES GOVERNING ADMISSION TO THE BAR, R. 15-103, at (D).

- 78 CODE OF RECOMMENDED STANDARDS FOR BAR EXAM'RS § III, at ¶ 15 (Am. Bar Ass'n 2016).
- 79 ALA. STATE BAR, RULES, *supra* note 178, at R. V; RULES GOVERNING ADMISSION TO THE BAR, APP. § 8(2) (ARK. JUDICIARY 2018); ARIZ. SUP. CT. R. 36; LA. SUP. CT. R. 17, § 5(F); MONT. SUP. CT., RULES OF PROCEDURE OF THE COMMISSION ON CHARACTER AND FITNESS § 4 (2016); NEB. SUP. CT. RULES, APP. A, *available* at <https://supremecourt.nebraska.gov/sites/default/files/ch3art1appa.pdf>; NEV. SUP. CT. RULES, ADD. 1 § IV, *supra* note 175, at ¶ 23; N.C. GUIDELINES, *supra* note 178; N.D. ADMISSION TO PRACTICE RULES, R. 2 (STATE OF N.D. COURTS 2016); N.M. SUP. CT., RULES, *supra* note 187, at R. 15-103; OHIO SUP. CT., RULES FOR THE GOVERNMENT OF THE BAR OF OHIO R. 1; S.D. CODIFIED LAWS § 16-16-2.4 (2018); UTAH STATE BAR, RULES, *supra* note 175, at R. 14-708; VA. RULES, *supra* note 175; WA R ADMIS APR 21; WIS. SUP. CT. RULES, CH. 40, APP., AT BA 6.03; WYO. SUP. CT., RULES, *supra* note 177, at R. 401.
- 80 COLO. SUP. CT., RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN COLORADO, at R. 208.1.
- 81 *See, e.g.,* MINN. ST. BOARD, *Rules, supra* note 175, at R. 5; *N.C. Guidelines, supra* note 178.
- 82 *In re Menna*, 905 P.2d 944, 950 (Cal. 1995); *see also In re Glass, supra* note 180, at 1212 (“Of particular significance for the present case is the principle that ‘the more serious the misconduct and the bad character evidence, the stronger the applicant’s showing of rehabilitation must be.” (citations omitted)).
- 83 ALA. STATE BAR, RULES, *supra* note 178, at R. V; ALASKA RULES OF CT. R. 2; ARIZ. SUP. CT. R. 36; CONN. JUDICIAL BRANCH, REGULATIONS, *supra* note 175, at art. VI; LA. SUP. CT. R. 17; MONT. SUP. CT., RULES, *supra* note 189, at § 4; NEB. SUP. CT. RULES, *supra* note 189, at App. A; NEV. SUP. CT. ADD. 1, *supra* note 175; N.H. SUP. CT. R. 42; N.J. R. 303:3, *supra* note 175; N.M. SUP. CT., RULES, *supra* note 187, at R. 15-103; *N.C. Guidelines, supra* note 178; N.D. ADMISSION RULES, *supra* note 189, at R. 2; OHIO RULES, *supra* note 189, at R. 1; S.D. CODIFIED LAWS § 16-16-2.2 (2018); UTAH STATE BAR, RULES, SUPRA NOTE 175, AT R. 14-708; VA. RULES, SUPRA NOTE 175; WASH. SUP. CT., ADMISSION AND PRACTICE RULES, APR 21; W. VA. JUDICIARY, RULES, *supra* note 169, at R. 5.2; WIS. RULES, *supra* note 189, at BA 6.03; WYO. SUP. CT., RULES, *supra* note 177, at R. 401.
- 84 *See Factors*, ST. B. OF CAL., *supra* note 131 (listing as one factor “[t]he age . . . of the applicant at the time of the act of misconduct and . . . at the present time” and as another factor “[t]he length of time that has passed between the act of misconduct and the present.”).
- 85 N.H. SUP. CT. R. 42B at (XIII)(3), *available* at <https://www.courts.state.nh.us/rules/scr/scr-42b.htm>.
- 86 KAN. SUP. CT. R. 715; TEX. RULES GOVERNING ADMISSION, *supra* note 176, at R. 4.
- 87 Mo. SUP. CT. R. 8.04(a) (“Any person, whether sentence is imposed or not, who has pleaded guilty or nolo contendere to or been found guilty of any felony of the United States, this state, any other state or any United States territory is not eligible to apply for admission to the bar of this state until five years after the date of successful completion of any sentence or period of probation as a result of the conviction, plea, or finding of guilt.”).
- 88 *See, e.g.,* NEV. SUP. CT. ADD. 1, *supra* note 175 (specifying that in most cases involving misconduct “it is not enough that an applicant led a blameless life since the prior problems;” rather, “an applicant must show some positive contribution to society”); Fla. Sup. Ct., Rules, *supra* note 177, at R. 3-13 (echoing Nevada’s rules and providing that “[m]erely showing that an individual is now living as and doing those things she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society”). Georgia’s similar requirement is reflected in caselaw. *See* Application of Cason, 294 S.E.2d 520, 522–23 (Ga. 1982) (holding that “[m]erely showing that an individual” is now living without crime is insufficient to demonstrate rehabilitation and that positive social contributions “may be evidenced by such things as a person’s occupation, religion, or community service.”).
- 89 *In re Glass, supra* note 180, at 1212 (“Cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant’s misdeeds.” (internal citations, quotations, and italics omitted)).
- 90 *Id.* at 1214.
- 91 *Id.*
- 92 *Factors*, ST. B. OF CAL., *supra* note 131. The California Supreme Court has indicated that “little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.” *In re Gossage*, 23 Cal. 4th 1080, 1099 (2000).
- 93 *Id.*
- 94 N.Y. SUP. CT. APP. DIV. RULES, DEPT. 1, AT § 602.1; N.Y. SUP. CT. APP. DIV. RULES, DEPT. 2, AT § 690.19; N.Y. SUP. CT. APP. DIV. RULES, DEPT. 3, AT § 805.1; N.Y. SUP. CT. APP. DIV. RULES, DEPT. 4, AT § 1015.18.
- 95 Telephone Interview with Dorothy Beard, First Judicial Department (Mar. 29, 2018) (on file with author); Telephone Interview with Daniel Brennan, Third Judicial Department (Mar. 29, 2018) (on file with author); Telephone Interview with Lisa Sweet, Fourth Judicial Department (Mar. 29, 2018) (on file with author).
- 96 S.D. BOARD OF L. EXAMINERS, RULES AND REGULATIONS FOR ADMISSION TO PRACTICE LAW IN SOUTH DAKOTA, *available* at <https://ujs.sd.gov/uploads/barexaminers/RReg.pdf>.
- 97 *Id.*

- 98 *Moral Character*, ST. B. OF CAL., *supra* note 159 (“A review of whether an applicant is of good moral character is one of several parts of the process of establishing eligibility for admission to the practice of law in California. ¶] To initiate this background check, applicants must file an online application, which can be done at any time after registering as a law student or attorney applicant. Because it can take a minimum of six months to complete, law students should begin the application process no later than the beginning of their last year of law study.”). South Carolina provides students a similar opportunity. S.C. Judicial Branch R. 402(g) (2) (“A student enrolled in an ABA Approved Law School who has a character problem that might disqualify the student from being admitted to practice law may have the matter resolved by filing a provisional application. . . . The Committee on Character and Fitness may begin an immediate investigation of the individual’s character and shall promptly notify the individual of its determination. No adverse inference concerning an applicant’s character and fitness shall be drawn because the applicant filed a provisional application, nor does the filing of a provisional application relieve an applicant from fully complying with the normal application process.”).
- 99 CAL. RULES OF STATE BAR, *supra* note 115, at R. 4.51.
- 100 *Id.* at R. 4.45(A).
- 101 COMPREHENSIVE GUIDE, *supra* note 36, at 8. Arkansas and Minnesota are the other two states offering abeyance programs, though their terms differ considerably from those of California’s. *Id.*
- 102 STATE BAR OF CAL., 2014 ANNUAL REPORT OF THE LAWYER ASSISTANCE PROGRAM OF THE STATE BAR OF CALIFORNIA 5 (Mar. 1, 2015), available at <http://www.calbar.ca.gov/portals/0/documents/reports/2014LAPAnnualReport.pdf>. In 2014, there were sixty-four applicants to the California State Bar participating in the LAP. *Id.* In 2018, about sixty-one new intakes to the LAP were either California State Bar applicants whose moral character applications had been placed in abeyance, or were law students who had self-referred, perhaps with the expectation that their LAP participation would demonstrate their dedication to recovery when their moral character was later under consideration. See STATE BAR OF CAL., THE STATE BAR OF CALIFORNIA LAWYER ASSISTANCE PROGRAM 2018 ANNUAL REPORT 6 (Mar. 1, 2019), available at <http://www.calbar.ca.gov/Portals/0/documents/2018-Annual-LAP-Report.pdf> (citing 148 new participant intakes in 2018); *id.* at 8 (forty-one percent of these intakes were either California State Bar applicants whose moral character applications were placed in abeyance or law students who had self-referred).
- 103 2014 LAP Report at 5.
- 104 2019 LAP Report, *supra* note 212, at 9 (“[T]he large majority (73%) of participants present with a substance use disorder: 49% came to the LAP with solely a substance use disorder (SUD) and 24% have both a mental health (MH) and a substance use disorder. Only 23% of participants in the LAP are enrolled exclusively for mental health issues, while 4% did not identify an issue at intake.”).
- 105 *Id.* at 7.
- 106 2014 LAP Report at 5.
- 107 *Id.* Some applicants with a history of substance abuse also voluntarily join the LAP while waiting for their moral character application to be reviewed by the California CBE, in order to “document their recovery work and to further indicate to the Committee of Bar Examiners their commitment to recovery.” *Id.* See also 2019 LAP Report at 6-7.
- 108 Comprehensive Guide, *supra* note 36, at 8.
- 109 *Id.* at 5-6 (showing twenty-six U.S. states and territories that offer conditional admission).
- 110 *Id.* at 7.
- 111 “Unconditional,” of course, is meant only in the sense that no additional restrictions or requirements are placed on the attorneys beyond what is expected of all practicing attorneys.
- 112 *Policy Initiatives, Annual Meeting 2009, 108: Conditional Admission to Practice Law*, AM. BAR ASSOC., https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_policy_cjpol/ (last visited June 2, 2019).
- 113 *Shochet v. Ark. Bd. of Law Exam’rs*, 979 S.W.2d 888, 894 (Ark. 1998) (stating that an important aspect of rehabilitation is an applicant’s candor about the past); *Kosseff v. Bd. of Bar Exam’rs*, 475 A.2d 349, 353 (Del. 1984) (“[T]he most important attributes of good moral character are honesty and candor.”); *In re Brown*, 895 A.2d 1050, 1058 (Md. 2006) (“[A]bsolute candor is a requisite of admission to the Maryland Bar.”).
- 114 *Moral Character*, ST. B. OF CAL., *supra* note 159.
- 115 See *Moral Character Statement*, ST. B. OF CAL., *supra* note 131.
- 116 Tracy Simmons, Roundtable Comment. Tracy Simmons is the Assistant Dean for Admissions and Financial Aid at University of the Pacific, McGeorge School of Law. Appendix I contains her more complete biography.
- 117 Eliza Hersh, Roundtable Comment. Eliza Hersh is a Soros Justice Fellow, a Clinical Instructor, and a Visiting Scholar at Berkeley Law School’s Center for the Study of Law & Society. Appendix I contains her more complete biography.
- 118 *Id.*
- 119 *Id.*

- 120 Lucy Ricca, Roundtable Comment; see *also* Telephone Interview with student services officer (Mar. 21, 2018) (on file with author).
- 121 Robert Weisberg, Roundtable Comment. Robert Weisberg is the Edwin E. Huddleston, Jr. Professor of Law at Stanford Law School. Appendix I contains his more complete biography.
- 122 U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, USE AND MANAGEMENT OF CRIMINAL HISTORY RECORD INFORMATION 38 (2001).
- 123 *Id.* at 39.
- 124 *Id.*
- 125 *Id.* at 42.
- 126 *E.g.*, Ky. SUP. CT. R. 2.040.
- 127 *E.g.*, IOWA CT. RULES CH. 31, *available* at <https://www.legis.iowa.gov/docs/publications/ICRC/31.pdf>; KAN. SUP. CT. R. 701; WIS. RULES, *supra* note 189, at BA 6.03.
- 128 COLO. SUP. CT., RULES, *supra* note 190, at R. 202.3. In New Jersey, there is no predetermined size of the committee; it is a discretionary decision made by the Supreme Court. N.J. R. 303:3, *supra* note 175.
- 129 *Committee of Bar Examiners*, ST. B. OF CAL., <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees-Commissions/Committee-of-Bar-Examiners> (last visited June 1, 2019).
- 130 Ky. SUP. CT. R. 2.040. *But see, e.g.*, Colorado, where the moral character committee is comprised of eleven members. COLO. SUP. CT., RULES, *supra* note 190, at R. 202.3.
- 131 KAN. SUP. CT. R. 701.
- 132 Mo. SUP. CT. R. 8.01.
- 133 *Committee of Bar Examiners*, *supra* note 239.
- 134 GA. SUP. CT., RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW (2018), *available* at <https://www.gabaradmissions.org/rules-governing-admission>; *Id.* ho Rules, *supra* note 172; Iowa Ct. Rules Ch. 31, *supra* note 237.
- 135 *Committee of Bar Examiners*, *supra* note 239.
- 136 *Id.*
- 137 WYO. SUP. CT., RULES, *supra* note 177, at R. 102(a).
- 138 *Moral Character Statement*, ST. B. OF CAL., *supra* note 131.
- 139 *Id.*
- 140 *Id.*
- 141 Mark Torres-Gil, email to Debbie Mukamal (Apr. 29, 2019) (on file with author). Mark Torres-Gil is the Assistant Director at the California State Bar's Office of Admissions. Appendix I contains his more complete biography.
- 142 *Id.*
- 143 *E.g.*, KAN. SUP. CT. R. 721.
- 144 *See, e.g.*, *id.*
- 145 *See, e.g.*, BD. OF LAW EXAM'RS OF THE STATE OF N.C., RULES GOVERNING THE ADMISSION TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA R. 1414, *available* at <https://ncble.org/wp-content/uploads/Rules.pdf>.
- 146 James Binnall, email to Debbie Mukamal (Apr. 25, 2019) (on file with author). James Binnall is an Assistant Professor of Law, Criminology, and Criminal Justice at California State University, Long Beach. He also maintains a pro-bono law practice representing law students in the California State Bar moral character determination process. *See* Appendix I for Dr. Binnall's more complete biography.
- 147 *Id.*
- 148 Levin, *supra* note 22, at 55 (citing Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions, and the Americans with Disabilities Act*, 49 UCLA L. REV. 93 (2001)). Note, however, that this description was not about the experience of applying to the California State Bar, in particular.
- 149 Meeting with Report authors and California State Bar Admissions leadership (Sept. 26, 2017). The authors of this Report did not ask other states' bar examiners whether they collect or share data on their moral character determinations; we therefore do not discuss the California CBE's policies and practices in this regard in relation to other states' practices.
- 150 Telephone Interview with student services officer (Mar. 8, 2018) (on file with author).
- 151 Telephone Interview with student services officer (Feb. 28, 2018) (on file with author).
- 152 Telephone Interview with student services officer (Jan. 25, 2018) (on file with author).

153 Rhode, *Virtue and the Law*, *supra* note 2, at 1039-40.

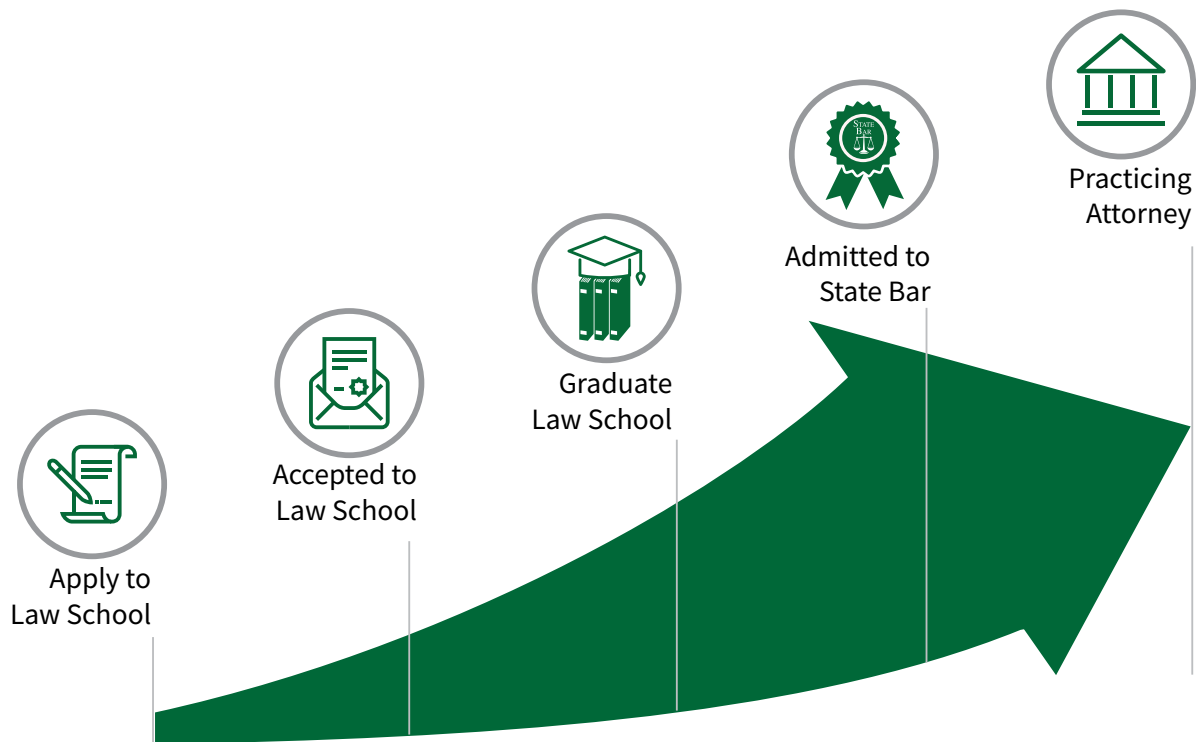
154 *Id.* at 1040.

155 See CAL. BUS. & PROF. CODE § 6093(a) (Deering 2019) (“Whenever probation is imposed by the State Bar Court or the Office of Trial Counsel with the agreement of the respondent, any conditions may be imposed which will reasonably serve the purposes of the probation.”).

Analysis and Recommendations

Based on our review of secondary literature and the insights that emerged from our own research, we draw the following principal conclusion: successive barriers impede access to California’s legal profession for qualified candidates with criminal records. These barriers exist at each stage of a prospective lawyer’s path to the profession—inadvertently or otherwise, they deter qualified candidates from applying to law school, prevent qualified applicants from being accepted to and succeeding in law school, and preclude qualified candidates from being admitted to the California State Bar.

FIGURE 4: Expanding Access to the California State Bar for Qualified Applicants with Criminal Records



The exclusion of otherwise qualified candidates with criminal records should be cause for concern for myriad reasons. Over-exclusion unnecessarily deprives individuals who aspire to become lawyers of the opportunity to realize this goal, and it deprives clients and the legal profession as a whole from the services of individuals who have uniquely beneficial perspectives to contribute. Moreover, the legal profession should be keen to ensure that the standards and processes it employs to screen applicants are designed and implemented in a way that comports with the profession’s goals of fostering rehabilitation, promoting fairness, and advancing diversity in the profession. Given the unsavory history of the moral character requirement and the dubious efficacy of its enforcement—compounded by the fact that any screening based on criminal records is likely to reflect the racial disparities of the U.S. criminal justice system and, in turn, to perpetuate the underrepresentation of racial minorities in an already non-diverse profession—a hard look at these processes is well warranted.

In this section, we propose a number of recommendations aimed at addressing what we identified as unfair or inefficient barriers to the legal profession for qualified candidates with criminal records. These recommendations are based on input from a range of experts and stakeholders, including current and former California State Bar, National Conference of Bar Examiners, and ABA officials; individuals who attended law school and were admitted to a state bar post-incarceration; California law school admissions and student services officers; and academics in relevant fields. *Figure 4* above illustrates the way in which adopting these recommendations could help expand access to the profession for qualified candidates. In this section we also identify various reforms that may be worth adopting in the future, in whole or in revised form, but that require further analysis and deliberation. In this section as noted in shaded text we also identify various reforms that may be worth adopting in the future, in whole or in revised form, but that require further analysis and deliberation.



Pre-Law School Admissions Pipeline

- **Conduct greater outreach to formerly incarcerated college students and those with criminal records to share information about law school and state bar admissions processes and dispel myths about how criminal records affect admission.**
- **Collect and disseminate profiles of successful lawyers who were incarcerated prior to seeking state bar admission.**

Suggested implementation responsibility: California law school admissions deans and staff, University of California, California State University and community college faculty and staff (particularly those involved in these colleges’ programs that support formerly incarcerated students)

This Report presented new research suggesting that state bars’ moral character requirements—and misinformation surrounding them—deter individuals from applying to law school. In particular, our research found that numerous individuals with criminal records reported apprehensions about whether they would pass the moral character component as one of the chief reasons they had not yet applied to law school.¹

Over-deterrence can impose harms on both the excluded individuals and on those who would benefit from the unique perspectives and insights these individuals would bring to law school classrooms and the legal profession. Thus, the benefit of these two proposals is that they could help mitigate over-deterrence and increase the number of qualified candidates applying to law school and subsequently joining the profession.

There may, however, be difficulties implementing the first proposal. More specifically, if California law school and college faculty and staff are to provide accurate information to prospective law students, and to dispel myths about how criminal records affect admission to the California State Bar, they themselves need to possess accurate information about these processes. The authors of this Report were repeatedly told that the moral character review process is confusing and opaque, unclear even to senior staff members of California law schools charged with assisting students in the process. Thus, greater clarity and transparency by the California State Bar about its processes and standards (discussed as a recommendation to the California State Bar, *infra*) are prerequisites to effective implementation of this proposal.

Of course addressing over-deterrence might risk encouraging individuals to apply to and attend law school who will subsequently be rejected by the state bar on moral character grounds. This concern might merit some weight, especially because many (though not all) students who attend law school plan to seek state bar admission, and many go into considerable debt to do so. Nevertheless, we think this risk is relatively low, considering the overall low rates of denial by state bars nationwide.



Law School Admissions Policies and Practices

- **Provide professional development on desistance, implicit bias, and other relevant factors to California law schools' admissions staff and others making admissions decisions, and institute admissions policies for applicants with criminal records that are evidence-based and applied consistently across applicants.**

Suggested implementation responsibility: California law school admissions deans and staff

As outlined in the Report, interviews with admissions officers from various California law schools revealed that they consider the following factors when evaluating an applicant's moral character in general, and an applicant's criminal record, in particular: (1) whether the applicant will satisfy state bars' moral character requirements, (2) safety and liability concerns in allowing the student to be part of the campus and community, and (3) a desire to assess the applicants' judgment. The interviews further suggested, however, that these admissions officers—and other decision-makers involved in the admissions process—lack relevant professional development training, and have under-developed processes for making these determinations.

More specifically, none of the interviewed admissions officers mentioned receiving training on issues such as desistance and reviewing criminal records, which would seem highly relevant to their decision making. Only one admissions officer mentioned a specific reviewer designated for reviewing criminal conduct disclosures, but it was unclear whether this reviewer had any special training in this area. In particular, awareness of desistance

research would help with making judgments on whether an applicant who has committed a crime in fact poses a danger or liability to the campus community—or, at least, more of a danger or liability than any other prospective student with no criminal record. In short, admissions officers, along with other actors brought into the admissions process (such as rotating students and faculty members) would benefit from substantive training on how to evaluate applicants with criminal conduct disclosures.

In addition to a lack of training, law schools also appear to have under-developed policies and procedures for making the moral character determinations they routinely make. Half of the 10 admissions officers interviewed stated that their schools have no policy for reviewing applications with criminal conduct disclosures. We recommend that law schools institute evidence-based policies for reviewing these applications. Doing so will help to ensure that admissions criteria in this area are applied consistently across applicants, and that otherwise qualified applicants are not denied admission to law school based on outdated or misguided views about how their criminal record is likely to influence their future conduct as a student or lawyer.

• Consider standardizing criminal history disclosure questions and requirements on California law school applications.

Suggested implementation responsibility: California law school admissions deans and staff, Law School Admissions Council

The moral character disclosure questions asked by California’s 20 ABA-accredited law schools vary both from one another and from those asked by the California State Bar. California law schools should consider standardizing their questions to match one another and to be in alignment with those questions posed by the California State Bar.

With respect to law schools’ divergence from one another, the likely result for applicants is a more confusing and burdensome application process. Rather than craft one single and polished statement (as applicants may do for their personal statements required by almost all law schools), an applicant with a criminal record must respond individually to each law school to which she applies. In addition, vague requirements may mean that she is still not sure whether to disclose a given offense. If the applicant wants to hire an attorney to ensure compliance with disclosure requirements, she would need to pay the attorney to review and advise her regarding each school’s requirements.

To alleviate this burden on applicants, California law schools should adopt model law school disclosure language and questions that clearly indicate what is being asked of applicants. In collaboration with law school deans of admissions and future, current, and former law students with criminal records, as well as by drawing on best practices uncovered during the course of our research, we developed the model disclosure statement language provided as *Appendix H*.

Second, given that a primary reason for requesting moral character information from applicants is anticipation of the moral character review process, it might also make sense for law schools’ disclosure requirements to track those of the California State Bar. (We acknowledge that not all students attending California law schools will apply for admission to the California State Bar; however, at the very least a plurality, if not necessarily the majority, likely will.²) Indeed, the model disclosure statement included in the Appendix tracks the current requirements of the California State Bar. To the extent that the California State Bar modifies its requirements—

and this Report recommends that it do so, in several ways, see pages 71-74—we would advise law schools to amend their own disclosure requirements accordingly.

Some law schools may object to adopting standardized language or questions. In particular, some law schools may defend their asking for disclosures beyond what the California State Bar asks for on the grounds that their school has standards different from or higher than those of the State Bar because a law school may have liability concerns that differ from those that animate Bar rules. In addition, some California law schools may be concerned about other state bars' requirements to which their students may apply, and may therefore wish to include questions found on those state bars' moral character applications.

Such concerns are not inherently unreasonable, but law schools should carefully weigh the benefits and costs of choosing not to adopt the proposed model language and questions. These costs may include placing a heavier burden on law students applying to multiple California law schools, for the reasons discussed above. More significantly, the costs may include increasing the likelihood of perpetuating racial and socioeconomic disparities in higher education and consequently in the legal profession. Law schools that choose to retain questions about arrests that did not lead to a conviction, for example—which many California law schools currently do, even though the California State Bar does not require such information—may end up disproportionately deterring or rejecting people of color from their schools.

For Further Consideration:

At least one ABA-accredited law school does not ask applicants for any criminal record information.

All twenty ABA-accredited California law schools ask applicants at least some questions about their criminal records and, as far as the authors of this Report are aware, so do the rest of California's law schools. Not all law schools throughout the country do so, however: the University at Buffalo School of Law (SUNY at Buffalo Law) does not.

Specifically, in September of 2016, the SUNY system categorically ended its practice of requiring applicants to its academic institutions to disclose criminal record information; accordingly, SUNY at Buffalo Law removed criminal records questions from its law school application, as well. Given that this change is relatively recent, its results remain to be seen. In the coming years, California's law schools can look to the experience of SUNY at Buffalo Law students and graduates to decide whether or not this is a practice worth imitating.



Student Services to Support Law Students with Criminal Records

- **Develop best practices to ensure that students who were formerly incarcerated or have criminal records are adequately supported while enrolled in law school, including:**
 - While protecting students' confidentiality, promoting greater communication between law schools' admissions offices and student services offices regarding incoming students who have moral character issues;
 - Informing students about the moral character review process early in their studies so they have adequate time to compile a strong application; and
 - Providing individualized counseling to these students on how and when to disclose their criminal records to potential employers and on how to navigate state bar moral character processes.

Suggested implementation responsibility: Law school admissions, student services, and career services deans and staff

This Report has outlined a number of practices that law schools' students services offices employ to support students with criminal records, and it has flagged several challenges that these students face during their time in law school. We hope that this Report will thereby precipitate a conversation in and among law schools' students services offices, to identify and further develop best practices in this area. As a starting point, we have identified a number of policies and practices that appear worth adopting by student services offices, to the extent they have not already done so.

First, greater communication between law schools' admissions officers and student services officers regarding incoming students with moral character issues should be encouraged. When admissions officers identify these students for student services officers, the latter are better positioned to seek out and assist those students who may need support. This increased communication, however, must be accompanied by a corresponding appreciation for the sensitivity of the information being shared. To respect students' privacy, the admissions and student services officers should ensure that students' criminal record information is shared only within their offices and, within that sphere, only with staff members who will be working directly with the students on issues related to their records.

Second, our Report has identified a range of approaches to informing law students about state bars' moral character requirements. Informing students about these requirements early on in their law school careers helps ensure that those with criminal records will have adequate time to prepare for their state bar's moral character review process, including gathering evidence of rehabilitation and drafting a personal statement that explains their criminal record. In addition, given that the California State Bar and other state bars allow law students to apply for a moral character evaluation as soon as they matriculate, informing students about the moral character requirement early on allows them to take advantage of this opportunity, if doing so would be

beneficial.³ Indeed, a couple of state bars even *require* that law students apply for a moral character review in their first or second year of law school. Thus, informing students about the moral character review process early, as several California law schools already do, is advisable.

Third, our Report has revealed a range of approaches taken by student services offices with respect to counseling and assisting students with the moral character review process. Best practices in this area include greater proactivity in identifying and reaching out to students with potential moral character issues, encouraging students to participate in activities that may assist them in demonstrating rehabilitation before the moral character committee, and connecting students with former students who have already successfully completed the moral character review process. The latter recommendation may help the student on both a practical and an emotional level.

Fourth, career services officers should provide individualized counseling on how and when to disclose criminal records to prospective employers. As discussed earlier in this Report, this issue raises different concerns for students seeking public versus private-sector employment. More specifically, the former may require the student to submit to background checks prior to interning or employment, while the latter may not require disclosure until later in the process. Law schools' career services officers should flag these issues during presentations to students on employment, and they should advise students to contact their office for individualized counseling on the issue.

To effectively counsel these students, career services officers may need to reach out to their professional contacts at various private-sector firms to determine the ideal course of action for the student. For example, a career services officer could ask her contacts at various law firms how prospective employees with criminal records have handled disclosure in the past, and how the law firm responded. (Of course, the career services officer will likely want to reach out to her contacts at law firms *other than* the one at which the student is interning or has an offer, in order to preserve the student's anonymity.)

As noted earlier, this section constitutes merely an initial cataloging of best practices, based on interviews with student services officers from a relatively small number of California law schools, and based on input from a few formerly justice-involved law students. Greater deliberation and information sharing on this topic both within and between law schools is encouraged.

- **Provide professional development to faculty and staff to ensure they are equipped to sensitively and more effectively respond to the particular needs of students with criminal records.**

Suggested implementation responsibility: Law school administration

Just as law school faculty and staff may receive cultural competency training to help ensure they interact sensitively and respectfully with diverse populations of students and co-workers, we recommend that law school administrators encourage faculty and staff to undergo training that specifically instructs them on how to interact with students who have had negative interactions with the criminal justice system. Indeed, as discussed earlier in this Report, the number of such students can be significant: an admissions officer at one California ABA-accredited law school estimated that as many as fifteen percent of applicants to the law school had disclosed criminal conduct, and an admissions officer from another California ABA-accredited law school

estimated this percentage at as high as twenty-five percent. This training would promote awareness among faculty and staff to the fact that some students whom they teach and advise have had interactions with the criminal justice system before law school.

Awareness of this population, and sensitivity to the concerns of these students, are particularly important for professors teaching criminal law subjects, because they routinely lecture on and lead class discussions about issues that could cause students to feel alienated or uncomfortable if the discussion is not conducted in a nuanced and thoughtful manner. Law professors should thus take care to teach criminal law subjects in a way that accounts for the fact that students in their classes may have had various distressing experiences with the criminal justice system. By way of analogy, some criminal law professors already take care to ensure that, before they begin a unit involving rape and sexual assault laws, they expressly address the sensitivity of the topic, and they frame the discussion in a manner that takes account of the fact that, statistically, many students in their classes are likely to have experienced such crimes.⁴

Law students with criminal records are likely to feel more comfortable in such a classroom environment, thereby facilitating their learning experiences and perhaps encouraging them to contribute more freely to class discussions. In turn, other students who may have less experience with the criminal justice system can benefit from the unique perspectives shared by their peers.

In addition to faculty, professional development is also particularly important for staff who work with students on issues directly related to their criminal records. Indeed, as discussed in Proposal 5 above, career services officers should be prepared to counsel students on how and when to disclose their criminal records with prospective employers, and student services officers should proactively advise students with criminal records on how to navigate the moral character process.

We do not suggest that these law school officers must—or even necessarily should—receive training that will enable them to manage all of these issues themselves. Rather, law school staff should receive training sufficient to enable them to identify and assist students with more routine issues that may arise related to their criminal records, and that will enable them to refer students to appropriate resources (whether internal or external) if the issues are more complex. Receiving professional development in this area would help ensure these staff members are able to do so effectively and respectfully.

For Further Consideration:

Offer an “Amnesty Week” to first-year students.

One student services officer we interviewed reported that her school offers an “amnesty week” to 1Ls. Specifically, during orientation, 1Ls are told that if they did not disclose certain aspects of their criminal history when applying to law school, they may make these disclosures during their orientation week, without fear of disciplinary repercussions from the law school. Other law schools might also be considering adopting this practice, or a variation thereof.



Advocates to Assist Formerly Incarcerated Law Students Applying for State Bar Admission

- **Develop networks to connect state bar applicants who have criminal records to pro bono lawyers who can assist them in their applications.**
- **Develop training for pro bono lawyers willing to assist state bar applicants with criminal records.**

Suggested implementation responsibility: law firms and lawyers

The moral character review process is difficult, time-consuming, and stressful for many applicants with criminal records. As discussed earlier in this Report, applicants risk falling into candor traps due to misunderstanding the law, misunderstanding their own criminal histories, misunderstanding what is being requested of them, or any combination of these factors. Having legal assistance can therefore ease applicants' burdens and increase the likelihood that they will complete the application correctly.

Legal assistance can be particularly helpful for those applicants whose criminal records are such that the California State Bar requires them to submit evidence demonstrating their “overwhelming reform and rehabilitation,” an arduous endeavor. Frankie Guzman,⁵ to take one example, submitted his moral character application to the California State Bar over a year before he graduated law school and had numerous individuals (including his former parole officer and the Director of Bay Area Legal Aid) submit letters of support on his behalf.⁶ But the Bar still delayed his application.⁷ It was only after the private law firm Morrison and Foerster put together a team of lawyers to represent him pro bono, and these lawyers submitted a brief to the California State Bar, that he was granted admission.⁸ Guzman was fortunate enough to secure pro bono representation. If an applicant cannot do so, however, hiring lawyers to assist with the process can be very costly. Indeed, lawyers typically charge upwards of \$20,000 to help prepare state bar candidates for their moral character proceedings.⁹

Expanding the network of lawyers available to assist applicants with these cases may also have the effect of producing more case law on moral character determinations in California. As it stands now, caselaw in California is limited to a very small handful of cases that provide very little guidance to practitioners and applicants.¹⁰ However, if more lawyers are available to assist California State Bar applicants with their cases, there may be a greater incidence of meritorious appeals. In turn, even if it is not the goal of the individual applicant's lawyer, these appeals would benefit future bar applicants by helping to refine the factors guiding admission decisions.

Accordingly, state bar applicants with criminal records could greatly benefit from the development of networks to connect them to pro bono lawyers and, relatedly, by the training of pro bono lawyers willing to assist applicants in the moral character review process. Training should include instructing lawyers on how to read a criminal record (also called a “rap sheet”), educating them on available caselaw, and advising them on how to help applicants assemble evidence of rehabilitation and draft personal statements, as well as on when they should advise their clients to submit these documents.



California State Bar Admissions Policies and Practices

- **Ensure parity between applicant and law school disclosure requirements related to applicants' criminal records.**

Suggested implementation responsibility: California State Bar leadership

One discrete issue that arose during the course of our research is that the California State Bar asks criminal record information that differs from the information elicited by law schools from the prospective students themselves. (This issue has arisen particularly in the context of expungements and arrests that did not result in convictions.) Specifically, the California State Bar asks law schools—but *not* law students—for any records related to students' arrests, even if those arrests did not lead to charges. And the California State Bar asks students—but *not* law schools—for any information related to the students' expunged convictions.

As discussed in Proposal 10, below, this Report recommends altogether eliminating consideration of arrests that do not lead to a conviction (which would include eliminating consideration of arrests that did not lead to charges). However, to the extent that it still considers either arrests or charges, the California State Bar should ensure that the information it requests from law schools and from applicants is equivalent. Failure to do so sows unnecessary confusion and can create unhealthy dynamics between law school administrators and the students they advise. These discrepancies may also heighten the risk that law students will appear to be withholding information from the California State Bar (and therefore lacking in candor) when in fact they were simply asked to disclose different information to the Bar than their law schools were asked to disclose about them.

• **Eliminate from the moral character review process consideration of:**

- Convictions for which the applicant has received a certificate of rehabilitation, and
- Arrests that did not lead to a conviction.

Suggested implementation responsibility: California State Bar leadership

We propose that the California State Bar eliminate consideration of several types of criminal offense history from its moral character review process.

First, arrests that did not lead to a conviction should be eliminated from the moral character review process. Currently, the California State Bar asks law schools for records relating to their students' arrests—even if the arrest did not lead to a conviction, but does not ask students to disclose arrests that did not lead to convictions. In addition to the problems generated by this discrepancy itself (discussed in Proposal x, above), we recommend that the California State Bar not ask law schools for this arrest information because they offer little, if any, probative value. Moreover, whatever meager information they may offer almost surely does not outweigh the disproportionate scrutiny of racial minorities their consideration almost certainly entails. In short, there is little reason to consider arrests that led to no charges, and ample reason not to.

Second, the California State Bar should eliminate its requirement that applicants disclose convictions for which they have received a certificate of rehabilitation. Given that the California State Bar’s standard when evaluating individuals who have “serious moral character issues” is to determine whether they have rehabilitated, requiring applicants to disclose convictions for which they have already proven rehabilitation seems duplicative and unnecessary.

• Ensure that the California State Bar’s moral character decisions are grounded in and driven by relevant research, and mitigate any discriminatory effects the moral character review process may have, including by:

- Requiring that at least some members of the California CBE have a background in psychology, substance abuse, mental health, or other areas of value to the committee; and
- Providing professional development to California State Bar staff and the California CBE that includes training on desistance and other relevant topics.

Suggested implementation responsibility: California State Bar leadership

The California State Bar’s moral character determinations are of great consequence. These decisions determine whether individuals who have spent considerable time, resources, and labor to graduate from law school will be subsequently denied the ability to practice law. As discussed throughout this Report, perceptions of the California State Bar’s standards and processes can have even greater upstream effects, influencing which individuals are denied admission to law school, and which individuals decide not to apply in the first instance. The combined effect, of course, is that the California State Bar’s moral character policies significantly shape the composition of the California legal profession.

Some discriminatory effect is perhaps inevitable in any system that screens applicants based on prior interactions with the U.S. criminal justice system, given the racial and class biases that plague that system. But the California State Bar should work to minimize these effects. Indeed, particularly in light of the sordid, discriminatory history of the modern moral character requirement, anyone concerned with the justice and legitimacy of the legal profession should be concerned with ensuring that its current execution is less, not more, plagued by such prejudices. This proposal outlines several suggestions that would help the California State Bar ensure that its moral character decisions are grounded in and driven by research, rather than by bias, and to help identify and mitigate any discriminatory effects the process may nonetheless be having.

First, the California State Bar should consider requiring that at least some members of the California CBE—or of any future decision-making body—have a background in psychology, substance abuse, mental health, or other areas of value to the committee. As currently composed, the CBE requires no such qualifications for any of its members (though some members at any given time may possess such backgrounds). Requiring such expertise to be possessed by at least some members of the body would undoubtedly help ensure that the committee’s decisions are informed by more accurate assessments of applicants’ future risk to clients or the legal profession, to the extent that such risk can be assessed at the application phase. While these requirements are not common among state bar committees, they constitute a best practice, and the California State Bar could provide valuable leadership by being an early adopter of such a proposal.

Second, California State Bar staff and California CBE members should receive training on desistance, implicit bias, and other relevant topics, to help ensure that their decisions are grounded in research and are less susceptible to any biases of the examiners. As it stands now, it is unclear whether the California CBE takes into account recent developments in social science that should be factored into its decision-making, such as advancements in our understanding of desistance, studies of employers who hire individuals with criminal records, and research on the benefits of having formerly incarcerated individuals working in roles assisting other formerly and currently incarcerated individuals.

• Enhance the clarity, transparency, and accessibility of the California State Bar’s moral character standards and processes, including by:

- Ensuring that the California State Bar website provides more and clearer guidance that is comprehensible to lawyers and non-lawyers alike; and
- Collecting and disseminating yearly statistics on applicants with criminal records and their admission rates.

Suggested implementation responsibility: California State Bar leadership, California Supreme Court

One issue that repeatedly arose in our research for this Report is the opacity of the California State Bar’s moral character review processes and standards. This issue takes a number of forms.

First, several stakeholders raised the point that the language used on the California State Bar website to describe California’s moral character standards is likely too difficult for non-lawyers to comprehend. The website relies heavily on language from California Supreme Court cases and incorporates much legalese—such as referring to “crimes of moral turpitude”—rendering it difficult to parse for individuals without legal training (and even for many individuals with such training).

The website also fails to provide data on applicants with criminal records and their admission rates, or to provide examples of the types of conduct that has and has not prevented individuals from being admitted to the California State Bar in the past. Indeed, as currently drafted, the website provides little meaningful guidance to individuals with criminal records who may be trying to decide whether or not they should apply to law school.

In addition, law students—and the law school staff charged with assisting these students—find the California State Bar’s moral character application itself difficult to understand and comply with. The source of at least some of this confusion lies in the legally imprecise terms used by the California State Bar, and the discrepancies between the criminal-record questions it asks of law students versus of law schools. As discussed in detail in this Report, this confusion can lead students to fall into “candor traps,” which can delay and even potentially block their admission to the California State Bar.

Greater transparency and clarity regarding the California State Bar’s moral character standards and processes would have a number of benefits. Principally, it would provide sorely needed guidance—to persons deciding whether or not to apply to law school, to law students with criminal records applying for admission to the California State Bar, to law school staff completing moral character declarations on behalf of these students, and to individuals (such as law school student services officers and attorneys) seeking to advise and assist students in this area. Second, greater transparency—especially with respect to collecting and publishing admissions

data—might also inspire greater public confidence in the moral character review process. Accordingly, we propose several recommendations for enhancing the clarity, transparency, and accessibility of the California State Bar’s moral character standards and processes.

Our first set of recommendations involves making substantial revisions and additions to the California State Bar website. The revisions should include redrafting the website language to ensure greater clarity and comprehensibility, such as by explaining or replacing with lay language legal terms like “moral turpitude.” As discussed below, this Report recommends considering more drastic reform to the California State Bar’s current use of “violent felonies, felonies involving moral turpitude[,] and crimes involving a breach of fiduciary duty” as the basis for its presumption of applicants’ lack of good moral character. However, to the extent that these categories are still used, the California State Bar should ensure that its website and other materials are clear about what conduct is meant by, and included in, these categories.

Changes to the website should also include providing concrete examples of types of misconduct, as well as examples of associated evidence of rehabilitation, that have and have not prevented applicants from being granted admission in the past. While privacy is an important countervailing concern, the California State Bar could seek permission from former applicants who are willing to have their information shared, or could take steps to anonymize the examples it provides.

In addition, the website should advise applicants that they may submit personal statements and evidence of their rehabilitation as early as the initial application phase. As discussed earlier in this Report, one California lawyer with whom the authors of this Report spoke told us that he typically advises his clients to submit these materials along with their *initial* moral character applications. The website is currently ambiguous on this point, and even at the informal conference phase, applicants are not necessarily informed that this is a practice followed by some (if not all) of their legally represented counterparts.

Finally, a simple but fundamental change we recommend making to the California State Bar website is that it should make publicly available the list of criminal-record questions that law schools and law student applicants will ultimately have to answer. (To gain access to these questions for purposes of drafting this Report, we contacted a California State Bar official and a law school administrator.)

In addition to making changes to its website, we recommend making changes to the moral character application itself to enhance clarity. Earlier in this Report, we noted several legally imprecise terms that the California State Bar uses as part of its moral character application. The California State Bar should replace these imprecise terms with precise ones that leave no room for ambiguity as to what law students and law schools are expected to disclose. (Additionally, as recommended in Proposal 9, above, the California State Bar should ensure that the questions it asks of each actor—namely, the law students and the law schools—match.)

Lastly, the California State Bar should collect and publish on its website annual statistics on applicants with criminal records. In particular, the California State Bar should provide data on the aggregate number of denials on moral character grounds and the aggregate number of denials that were based on applicants’ criminal records. As discussed earlier, privacy is an important countervailing concern; however, providing this data in the aggregate will help preserve privacy while doing much to advance transparency and the goals associated with it.

For Further Consideration:

Allow prospective law students to apply for an early, non-matriculated determination process.

California allows individuals to apply for a moral character review once they have matriculated to law school, but no procedures exist in California allowing them to apply for such a review *before* attending law school. As discussed earlier in this Report, New York and South Dakota both allow law school *applicants*, rather than simply matriculated law students, to apply for a moral character review. This is a policy we urge the California State Bar and California Supreme Court to consider adopting.

One benefit of such a policy is that it enables prospective law students with criminal records to make an informed decision about whether or not to attend law school. In particular, it could save individuals the considerable time and expense of pursuing a law school degree, only to find out that they will not be allowed to practice law. Indeed, as mentioned in footnote 126, *supra*, California law schools can cost students up to \$300,000 for tuition plus living expenses. Moreover, among individuals nationwide who completed a law degree in 2015-16 and had student loans, the average student loan balance was \$145,500. Thus, this early determination policy could save individuals from making a costly investment in law school, only to be denied a chief avenue for paying it off afterward.

A second benefit of this policy is the inverse of the first: namely, certain individuals with criminal records may be deterred from applying to law school out of fear that they would be denied admission to the bar on moral character grounds, when in fact they would be admitted. And indeed, our research has shown that individuals with criminal records are in fact deterred from applying to law school by such fears. If these prospective students could be assured before enrolling in law school that they would not be subsequently denied bar admission, perhaps more qualified individuals with criminal records would apply to law school and join the legal profession. A third, related benefit of an early application policy is that it might reduce the incidence of law school admissions staff denying otherwise qualified applicants based on an erroneous belief that they would not be able to pass the bar's moral character requirement.

One potential disadvantage of this proposal is that the California State Bar may need to expend additional resources in order to conduct these early reviews. It seems, however, that it would not in fact cost the Bar much by way of additional resources, but would rather simply shift the expending of resources to earlier in the process. The only way such a policy may impose additional costs on the Bar would be due to an increase in overall applications from individuals with criminal records. However, the benefits of increasing such individuals' representation among the ranks of the legal profession could be adjudged to outweigh any added costs.

A second concern is the possibility that a non-matriculated determination process could, somewhat counterintuitively, lead to *more* denials of otherwise qualified applicants. Specifically, California State Bar officials may be more willing to reject an applicant with a criminal record if she is merely at the stage of applying to law school than if she has already nearly earned her degree. This may be true for at least two reasons. First, the applicant would not have the benefit of having spent years in law school, which would presumably add to her showing of rehabilitation. And second, State Bar officials might have less qualms about rejecting her, considering she has not yet invested considerable time and resources toward earning

her degree. Indeed, the way the adoption of a non-matriculated determination policy in New York has played out supports the validity of this concern: as discussed earlier in this Report, the New York State Bar actually *discourages* applicants from using its non-matriculated moral character procedure because New York courts prefer basing their rulings on the more fulsome applications of individuals who have completed law school. Thus, if the California State Bar decides to adopt a non-matriculated determination policy, care must be taken to ensure that this policy is designed in a way that promotes admission of qualified applicants and avoids the real risks of unintentionally causing the opposite result. More deliberation is needed to determine the appropriate contours of such a policy.

Allow for conditional acceptance to the State Bar for individuals with criminal records.

The California State Bar currently has a program for deferring State Bar admission for applicants with certain moral character issues, but it does not allow for conditional admission of such applicants. We recommend that California join the 26 states and U.S. territories that do allow for conditional admission, whether in addition to or in lieu of its deferral policy. (The specifics of these policies are discussed in greater detail on page 48.) As it stands now, California is in the minority: it is one of just three states with a structured deferral program, and it is one of only two states that has a deferral program and does not also allow for conditional admission.

While California's deferral policy may help protect the public, it does so at the cost of forcing applicants to forgo using their law degrees for what may be an extended period of time. Such a policy can cause financial hardship to applicants, and may lead employers unwilling to wait out the abeyance period to retract their employment offers. A conditional admission policy, by contrast, allows for protection of the public without unnecessarily sacrificing these interests of the applicant.

A conditional admission policy may also *more* effectively serve the interests of public protection than does a deferral policy because it allows for monitoring potentially problematic candidates in a more relevant situational context—namely, when they are practicing as lawyers. As discussed earlier in this Report, social science research demonstrates that situational factors play a critical role in shaping individuals' conduct, with lawyers being no exception. Thus, monitoring individuals' behavior at the beginning of their legal careers may be more effective at weeding out problematic lawyers than monitoring their behavior during a period of abeyance, when they are not experiencing situations and stressors they are likely to encounter once they begin to practice law.

Furthermore, adopting a conditional admission policy would not require the California State Bar to radically change the program it already has in place. It could still refer applicants about whom it has rehabilitation concerns to its Lawyer Assistance Program (LAP), for monitoring and assistance during a specified period of time, and individuals who successfully meet the terms of the program would still be granted unconditional admission to the California State Bar. The only major change would be one of timing: instead of having this probationary period occur before admitting the applicant to the State Bar, the probationary period would begin after the applicant has been granted conditional admission.

Such a policy would also align with the California State Bar's openness to using conditional probation in the context of attorney discipline. Given that the California State Bar is willing to place barred attorneys on

probation when they have committed misconduct, it follows that it would be open to doing the same for State Bar applicants who have not yet committed misconduct as attorneys, but whom it fears might do so. The California State Bar could look to other states' rules, as well as to the ABA's model rule on conditional admission, for guidance in drafting a policy of its own.¹¹

We acknowledge that conditional admission has faced criticism on various grounds. First, it has been criticized for being imposed on applicants who would have otherwise been admitted unconditionally.¹² This critique, however, is not an argument against the adoption of a conditional admission policy. Rather, it is an admonition to impose it judiciously. As the Commentary to the ABA's Model Rule on Conditional Admission advises:

Conditional admission is not intended to apply to all applicants who have rehabilitated themselves from prior conduct or other matters of concern to bar admissions authorities, but only to those whose rehabilitation or treatment is sufficiently recent that protection of the public requires monitoring of the applicant for a specified period. . . . The Rule calls for conditional admission to the practice of law when an applicant demonstrates recent successful rehabilitation.¹³

A second criticism is leveled at the lack of evidence that conditional admission works to protect the public.¹⁴ Conditional admission periods typically last less than five years, and discipline is often first imposed more than ten years after the applicant's state bar admission.¹⁵ Yet accepting this critique requires striking at the foundations of the moral character evaluation process itself, as its value as a predictive and protective measure also does not enjoy empirical support.

Finally, conditional admission is criticized on the ground that it may unfairly burden applicants who would never become problematic lawyers.¹⁶ For example, applicants may have to bear sizeable costs of conditions, such as psychiatric evaluations and financial audits, during their probationary period.¹⁷ Nevertheless, in light of California's current deferral regime, this criticism carries little weight. At least with a conditional admission policy applicants would be able to use their law degrees to earn an income while they are satisfying (and paying for) these probationary conditions—in addition to paying for others costs of living and perhaps for law school debts.

Implement “washout periods” in which convictions that are a certain number of years old would no longer be requested or considered by the California CBE.

We recommend that the California State Bar, as a general policy, consider limiting its moral character inquiry to convictions that are less than seven years old. Such a “washout” policy would align with San Francisco's Fair Chance Ordinance, which prevents employers from considering convictions older than seven years old, except for positions involving minors or dependent adults. Indeed, California state and city governments have acknowledged that employers' consideration of overly old criminal justice history is not only *not* justified by a concern for public safety, but it in fact undermines that very aim: it contributes to increased recidivism and thereby jeopardizes public safety. Additionally, such a washout period mirrors the policy (1) adopted by the California State University system for its employees, (2) required under California law

regulating commercial background screen companies, and (3) recently recommended to the California Community College (CCC) system to be adopted for its employees by the CCC's Chancellor's Office.

We further recommend starting the clock, as do the above laws and policies, from the date of conviction or sentencing, rather than from the date of the individual's completion of sentence. Doing so supports consideration of in-prison behavior as part of the rehabilitative process and redemption period, consistent with the desistance research described earlier in this Report.

We acknowledge, however, that there may be situations where it is appropriate to begin the washout period on the date when the individual was released from incarceration. This is an approach that has been adopted in other employment contexts.¹⁸ In such cases, we recommend that California State Bar shorten the washout period to five or fewer years, rather than seven years. We also acknowledge that the California State Bar may wish to make exceptions from this washout period for certain types of crimes that have a direct and substantial relationship to legal practice. For example, the California State Bar might require applicants to disclose crimes that involve professional fraud or abuse of one's professional standing, regardless of how long ago the crime occurred. We recommend, however, that any exceptions to the washout period be highly limited and specific as to which offenses must be disclosed and which need not be.

Finally, we acknowledge that older California Supreme Court cases have indicated that little weight should be given to an applicant's good behavior while she is incarcerated or otherwise under the supervision of correctional authorities, suggesting that the clock for exemplary conduct begin only after the individual has been released from such supervision.¹⁹ To the extent that these precedents are inconsistent with implementation of a washout-period policy, even one that contains the above-mentioned exceptions, we believe that there would be merit to revisiting these precedents. These cases were decided before the recent proliferation of desistance literature and therefore do not reflect the evolved state of scientific knowledge regarding the nature of redemption and rehabilitation.²⁰

Replace the categories “violent felonies,” “felonies involving moral turpitude,” and “crimes involving a breach of fiduciary duty”—which currently serve as the basis for a presumption that an applicant lacks good moral character—with a list of discrete, well-defined offenses that have a direct and adverse relationship to the duties of a lawyer, or else simply eliminate this presumption.

The California State Bar currently bases its presumption of an applicant's lack of good moral character on whether the applicant has been convicted of “violent felonies, felonies involving moral turpitude[,] and crimes involving a breach of fiduciary duty.” There are multiple concerns with this presumption.

First, these categories are vague, confusing, and provide little meaningful guidance to an applicant who is determining what burden of proof she will face. Indeed, as we explained earlier (see page 43), the term “violent,” is a moral and descriptive term, not by itself a formal legal term. Moreover, where the term “violent felony” appears in statutes, it can have widely variant criteria depending on the legal context. This is also true of “crimes of moral turpitude.” “Violent” also sometimes gets blurred with such terms as “serious” or “dangerous.” Classifications of felonies under California law is complex, varied, and often arguably arbitrary.

The category of “crimes involving a breach of fiduciary duty” is also unclear, raising questions about which offenses qualify. Not only does this vagueness lead to confusion for applicants, but it may also lead to inconsistent application by California State Bar staff.

Second, these types of offenses are not necessarily those most directly and adversely related to the particular duties of a lawyer, which one would think should be the basis for having a presumption. For example, one might expect that offenses involving professional fraud or abuse of one’s professional standing would lead to such a presumption, but one would not expect this to be true of all the offenses that fall within the broad category that is “crimes of moral turpitude.”

If a rebuttable presumption standard is maintained, the list of offenses that lead to this adverse presumption should (1) be clearly defined and made publicly available, and (2) consist only of offenses that have a direct and adverse relationship to the duties of a lawyer. If creation of such a list is not possible, the adverse presumption should be eliminated in favor of purely individualized assessments.

Increase parity between standards governing member disbarment and new applicant admission, and consider devoting greater resources to the former.

As discussed in section III.C.11, above, the California State Bar applies different, and arguably more stringent, standards for admitting new attorneys than it does to disciplining current attorneys. For example, the burden is on the applicant to establish that she is of good moral character, whereas for discipline, the burden of proof is on the State Bar to show misconduct warranting discipline. Additionally, much of the conduct that triggers character investigations of State Bar applicants does not result in disciplinary investigations of practicing attorneys.²¹

Some justifications exist for a stricter standard being applied to applicants than to practicing lawyers. Perhaps chief among these is that barred attorneys have a property interest in their licenses to practice, protected by due process, whereas admission to the California State Bar is considered a privilege.²² However, given that law students invest substantial resources in their legal education and in passing the California State Bar,²³ and given the similar policy goals animating attorney admission and attorney discipline processes (namely, protection of the public and of the legal profession’s reputation), increasing parity between the two seems justified. At the very least, it merits further deliberation and consideration.

Indeed, several scholars and professionals have gone even further, suggesting that the California State Bar not should strive for parity, but rather that the level of stringency should be reversed. In other words, standards and policies for discipline should be *more* stringent than those for admission. As Professor Rhode has explained, a lawyer’s misconduct in the context of a professional relationship is of much greater concern to clients than what they do before becoming a lawyer; therefore, if the goal is public protection, the standards should be stricter for attorney discipline than they are for admission, not the reverse.²⁴ She provided related reasoning for this position in a recent article, published in the *Journal of the American Bar Foundation*:

From the standpoint of protecting the public, the misconduct of someone already practicing law is more predictive of future problems than the acts of someone not yet admitted. Yet the bar's administration of admission and disciplinary processes has operated on precisely the opposite assumption.²⁵

Judge Judy Johnson, the former Executive Director of the California State Bar, has expressed a similar view, remarking that intuitively, the standards for disciplining current members of the State Bar should be stricter than the standards for admitting new ones, not the reverse.²⁶

In a similar vein, scholars have argued that, if the goal is protecting the public, state bars would better effectuate this aim by devoting more resources to investigating and disciplining wrongdoing by licensed lawyers²⁷ than to conducting time- and resource-intensive moral character investigations of state bar applicants.

The authors of this Report believe that these arguments have merit, and that greater thought should be given to the present disparity in standards applied and resources allocated to the moral character investigations of prospective attorneys versus the disciplinary investigations of licensed attorneys.

ENDNOTES

- 1 Moreover, our survey reached only a relatively small number of individuals, and so is more suggestive than definitive as to the precise extent of the moral character requirement's deterrent effect.
- 2 We have not analyzed data on what proportion of California law school students apply for admission to the California State Bar; however, we do have evidence that the majority of the California State Bar is made up of lawyers who attended California law schools. *See supra* note 13.
- 3 As discussed earlier in this Report, a positive moral character finding in California is valid for only 36 months. CAL. RULES OF STATE BAR, *supra* note 122, at R. 4.51. An applicant must pass the moral character evaluation within five years of taking the California State Bar. *Id.* at R. 4.45(A). Most law students complete law school in three years (i.e., 36 months). Thus, for traditional law students, applying for a moral character determination as soon as they matriculate would pose no issue and may be prudent. For less traditional law students, however, who will not complete law school in three years—for example, students earning a joint degree, attending law school part-time, or who may take a leave of absence—applying for a moral character determination in their first year would not necessarily be wise. Their moral character determination may expire, causing them to have to go through the process again. Other states' bars have their own sets of rules governing moral character time limits. This variation underscores the importance of individualized counseling, discussed *infra*.
- 4 *E.g.*, according to the National Sexual Violence Resource Center (a nonprofit funded in connection with the Centers for Disease Control and Prevention's Division of Violence Prevention), one in four girls and one in six boys will be sexually abused before they turn *e.g.* teen years old. Get Statistics, Nat'l Sexual Violence Res. Ctr. <https://www.nsvrc.org/statistics> (last visited June 1, 2019).
- 5 Guzman is the lawyer discussed in Section II.B.4, *supra*, who was convicted of various crimes in his youth and went on to become a leading legal advocate for juvenile justice reform.
- 6 Martyna, *supra* note 82.
- 7 *Id.*
- 8 *Id.*
- 9 The authors of this Report spoke to multiple private-sector attorneys who represent applicants in moral character determinations. This \$20,000 figure was gleaned from those discussions.
- 10 *E.g.*, *In re Glass*, 316 P.3d 1199, *supra* note 180.
- 11 MODEL RULE ON CONDITIONAL ADMISSION, *supra* note 222.
- 12 Leslie C. Levin, The Folly of Expecting Evil: Reconsidering the Bar's Character and Fitness Requirement, 2014 BYU L. Rev. 775, 814 (2015) (internal citations omitted).
- 13 Model Rule on Conditional Admission, *supra* note 222.
- 14 Levin, *Folly*, *supra* note 277, at 814.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 For example, the federal law requiring FBI background checks of port workers directs the Transportation Security Agency to disqualify a worker from employment in a secured area of a maritime port based on felony convictions dating back seven years or when the individual "has been released from incarceration within the preceding 5-year period for committing a felony . . ." 46 U.S.C. § 70105(c)(1)(D)(ii) (LexisNexis 2019).
- 19 *See, e.g.*, *In re Gossage*, *supra* note 202, at 1099.
- 20 These cases similarly do not reflect more recent proliferation and recognition of the range of collateral consequences faced by individuals with criminal records, particularly during the years they are still under correctional supervision. Arguably, these collateral consequences make maintaining an "exemplary" record during these years more, not less, challenging. Accordingly, crediting these years toward a period of "exemplary conduct," or including them within a proposed washout period, is fair and sensible.
- 21 Two differences—*viz.*, (1) the lack of a conditional admission policy analogous to the conditional probation sanction, and (2) greater transparency in the disciplinary process than in the admissions process—are discussed in greater detail elsewhere in the recommendation section. Other differences between the two processes are outlined in Appendix E.
- 22 *See* Joseph Starr Babcock, Roundtable Comment. Mr. Babcock is a former California State Bar official. Appendix I contains his more complete biography.

- 23 See *supra* note 126 (discussing financial costs of attending law school, not including accounting for the opportunity costs of spending several years on a Juris Doctor degree); standard preparation classes for the California State Bar can also cost law students up to \$3,500.
- 24 Deborah Rhode, Roundtable Comment. Deborah Rhode is the Ernest W. McFarland Professor of Law, the director of the Center on the Legal Profession, and the director of the Program in Law and Social Entrepreneurship at Stanford University. See Appendix I for her more complete biography.
- 25 Rhode, *Virtue and the Law*, *supra* note 2, at 1039-40.
- 26 Judge Judy Johnson, Roundtable Comment. Judge Johnson is a Superior Court Judge in Contra Costa County (Pittsburg), and was the Executive Director of the State Bar of California from 2000 to 2011. See Appendix I for her more complete biography.
- 27 Rhode, *Moral Character*, *supra* note 2 at 584-89.

Conclusion

This Report assembles relevant secondary research, and presents considerable new data, on barriers to joining the California State Bar for individuals with criminal records. It also provides recommendations for expanding access for qualified applicants, and identifies several areas in which further research and deliberation may be fruitful. In publishing this Report, we aim to instigate further discussion about this important topic, and we hope to prompt reforms that will reduce or eliminate unfair and inefficient barriers to the legal profession for qualified applicants with criminal records .

Appendices

Appendix A: Ten ABA-Accredited California Law Schools Whose Admissions Officers Were Interviewed as Part of Our Study

Abbreviation	Law School
Berkeley	University of California, Berkeley School of Law
Cal Western	California Western School of Law
Chapman	Chapman University School of Law
Golden Gate	Golden Gate University School of Law
McGeorge, Pacific	University of the Pacific, McGeorge School of Law
Southwestern	Southwestern Law School
UC Davis	University of California, Davis School of Law
UC Irvine	University of California, Irvine School of Law
UCLA	University of California, Los Angeles School of Law
USC	University of Southern California, Gould School of Law

Appendix B: Questions Asked in Interviews with Admissions Officers of 10 ABA-Accredited California Law Schools, in January – February 2018

- 1. Name, Title, Affiliation, Length in Role**
 - 2. Have you received applications for law school from individuals with criminal records (arrests and/or convictions, including juvenile records)?**
 - a. If so, how often, or approximately what percentage of the annual applications your law school receives?
 - b. If so, what types of criminal records have you seen? Which are most common?
 - 3. Who created this disclosure requirement? (Dean of Admissions, Dean of Law School, Faculty Committee, University GC)**
 - c. What sources did s/he consult in creating the requirement? (ABA, university-wide policy, CA Bar)
 - 4. Is there a policy that either you or the law school has for evaluating such applications?**
 - d. Please describe?
 - i. Note: In answering this question, they may answer the following questions – if not, please ask the following questions.
 - e. Who evaluates applications from individuals with criminal records?
 - i. Are they ever marked for special review by, for example, a faculty or alumni committee?
 - f. What questions do you, or the admissions team, ask yourself when evaluating such an application?
 - i. What are the issues that most concern you with such applications?
 - ii. What are mitigating signs or factors you might consider?
 - 5. Do you contact the applicants? (Always, never, sometimes?)**
 - 6. Do you consider the CA Bar's policy of moral character and fitness and disclosure requirements when evaluating an applicant with a criminal record?**
 - 7. Do you advise applicants with criminal records of the CA Bar's (or other state bar's) moral character and fitness policies?**
 - g. Why or why not?
 - 8. Do you know how many applicants with criminal records you have had enrolled in your law school in the past 10 years?**
-

9. Have you admitted individuals with criminal records to your law school in the past 10 years?

h. How many have you admitted?

i. How many have graduated?

j. How many have been admitted to the Bar?

10. Do you communicate with / coordinate with your undergraduate institution in preparing students with criminal records for the law school and bar admission process?

11. Do you offer any preparation or counseling services to your students or alumni with criminal records as they prepare for Bar admission?

k. What kinds of offerings?

l. What might be helpful to you?

Appendix C: Questions Asked in Interviews with Student Services Officers of Seven ABA-Accredited California Law Schools, in January – March 2018

- 1. Name, Title, Affiliation, Length in Role**
- 2. Do you know how many applicants with criminal records you have had enrolled in your law school in the past 10 years?**
- 3. Have you admitted individuals with criminal records to your law school in the past 10 years?**
 - a. How many have you admitted?
 - b. How many have graduated?
 - c. How many have been admitted to the Bar?
- 4. Do you communicate with / coordinate with your undergraduate institution in preparing students with criminal records for the law school and bar admission process?**
- 5. Do you offer any preparation or counseling services to your students or alumni with criminal records as they prepare for Bar admission?**
 - d. What kinds of offerings?
 - e. What might be helpful to you?

Appendix D: Questions Asked in Survey Responded to by 88 Individuals with Criminal Records, Regarding Access to the Legal Profession, in August – September 2017

Character and Fitness Survey

Block: Demographic Information (20 Questions)

Standard: Character and Fitness Opinion (5 Questions)

Standard: Character and Fitness History (39 Questions)

Standard: Contact Info (3 Questions)

Demographic Information

Q58 Thank you for agreeing to take part in this important survey for Stanford Law School’s Lawyers with Conviction Policy Lab. We are gathering information on barriers to entering the legal profession for persons with criminal records. The survey should take 5 - 15 minutes. You may complete the survey anonymously, and all responses will be kept confidential.

Q62 Demographic Questions

Q1 Age

18-25 (1)

26-29 (2)

30-39 (3)

40-49 (4)

50+ (5)

Q2 Gender

Male (1)

Female (2)

Transgender (3)

Other: (4) _____

Q51 Are you of Hispanic, Latino or Spanish origin?

Yes (1)

No (2)

Q50 How would you describe yourself? Select all that apply.

Black or African-American (1)

White (2)

American Indian or Alaska Native (3)

Asian (4)

Native Hawaiian or Other Pacific Islander (5)

Other: (6) _____

Q4 How did you receive this survey? Select all that apply.

Just Leadership USA Fellow (present or past) (1)

Underground Scholar (past or present) (4)

Project Rebound Student (past or present) (7)

ARC Member (past or present) (8)

Link from one of the above (5)

Other (3) _____

Q63 Criminal History

Q3 Have you ever been arrested (regardless of outcome)?

Yes. (1)

No. (5)

Q57 What was the outcome of your arrest(s)? Select all that apply.

Dismissal (1)

Acquittal (2)

Diversion to Substance Abuse Treatment Program (3)

Deferral (4)

Infraction (5)

Misdemeanor conviction (6)

Felony conviction (7)

Unknown (8)

Other: (9) _____

Q56 How would you describe the crimes with which you've been charged and/or convicted? Select all that apply.

Non-violent (1)

Violent (2)

Involving deceit or dishonesty (e.g., perjury, forgery, obstruction, fraud, etc.) (3)

Display This Question:

If Q57 = Dismissal

Or Q57 = Acquittal

Q54 How much time has passed since your most recent arrest?

Less than one year (1)

1-2 years (2)

2-3 years (3)

3-5 years (4)

5-10 years (5)

10+ years (6)

Display This Question:

If Q57 != Dismissal

And Q57 != Acquittal

Q55 How much time has passed since you were last in count/state/federal custody (including mandated substance abuse treatment program, court monitoring, and parole/probation)?

Less than one year (1)

1-2 years (2)

2-3 years (3)

3-5 years (4)

5-10 years (5)

10+ years (6)

N/A (7)

Q72 Were you ever incarcerated (jail or prison)?

Yes (1)

No (2)

Skip To: End of Block If Q72 = No (2)

Q78 How long have you been incarcerated (total in your life)?

0-1 years (1)

1-2 years (2)

2-3 years (3)

3-5 years (4)

5-10 years (5)

10-15 years (6)

15-20 years (7)

20+ years (8)

**Q76 Evaluate the following statement as it applies to your experience with incarceration:
“I completed my term of incarceration more informed about the law than when I began.”**

Strongly agree (1)

Agree (2)

Somewhat agree (3)

Neither agree nor disagree (4)

Somewhat disagree (5)

Disagree (6)

Strongly disagree (7)

**Q77 Evaluate the following statement as it applies to your experience with incarceration:
“I believe I learned enough about the law during my period of incarceration to help other inmates with their legal problems.”**

Strongly agree (1)

Agree (2)

Somewhat agree (3)

Neither agree nor disagree (4)

Somewhat disagree (5)

Disagree (6)

Strongly disagree (7)

Q73 While incarcerated, did you ever visit the prison/jail’s law library?

Yes (1)

No (2)

Q74 While incarcerated, did you ever seek legal help from a fellow inmate?

Yes (1)

No (2)

Q75 Was the inmate’s legal advice helpful?

Very helpful (1)

Helpful (2)

Somewhat helpful (3)

Neither helpful nor unhelpful (4)

Somewhat unhelpful (5)

Unhelpful (6)

Very unhelpful (7)

Character and Fitness Opinion

Q64 Character and Fitness Test

Q49 Persons with criminal records bring important perspectives and life experiences to the legal profession.

Strongly agree (1)

Agree (2)

Somewhat agree (3)

Neither agree nor disagree (4)

Somewhat disagree (5)

Disagree (6)

Strongly disagree (7)

Q6 In every state, aspiring lawyers must pass a Character and Fitness Test (also known as the Moral Character Determination). Which of the following approaches do you think is the fairest way to determine who may practice law?

Persons with any prior criminal records may not practice law. (1)

Persons with felony, misdemeanor, and juvenile convictions may not practice law. Others must disclose prior records, but they may present evidence to convince a review board of their rehabilitation. (2)

Persons with felony and misdemeanor convictions may not practice law. Others must disclose prior records, but they may present evidence to convince a review board of their rehabilitation. (3)

Persons with felony convictions may not practice law. Others must disclose prior records, but they may present evidence to convince a review board of their rehabilitation. (4)

No one is categorically excluded from practicing law. All persons must disclose prior records, but they may present evidence to convince a review board of their rehabilitation. (5)

All persons may practice law (eliminate Character and Fitness Test). (6)

Skip To: End of Block If Q6 = All persons may practice law (eliminate Character and Fitness Test). (6)

Q7 Which of the following prior criminal acts do you believe should be considered in allowing people to be attorneys? Select all that apply.

Felony convictions (all) (1)

Felony convictions (violent crimes) (2)

Felony convictions (crimes involving deceit or dishonesty) (3)

Misdemeanor convictions (all) (4)

Misdemeanor convictions (violent crimes) (5)

Misdemeanor convictions (crimes involving deceit or dishonesty) (6)

Infractions, including moving vehicle violations (7)

Infractions, not including moving vehicle violations (8)

Arrests that did not lead to a conviction (dismissed) (9)

Arrests that did not lead to a conviction (acquitted) (10)

Arrests that did not lead to a conviction (successful completion of diversion program) (11)

Expunged or sealed records (12)

Juvenile records (13)

Other: (14) _____

Q8 When deciding whether to admit applicants to the bar (to become lawyers), the Bar Association should consider applicants' prior criminal records as far back as ___ years.

1 (1)

5 (2)

10 (3)

15 (4)

20 (5)

No limit (must consider entire record) (6)

Character and Fitness History

Q65 Personal Experience with the Character and Fitness Test: Background

Q9 Please select the option that best describes you:

Currently an attorney, admitted to practice law in at least one jurisdiction in the United States. (1)

Currently a law school graduate, not yet admitted to practice law in any jurisdiction in the United States. (2)

Currently a law student at a law school in the United States. (3)

Considering applying to law school. (4)

Not considering applying to law school. (5)

Skip To: Q34 If Q9 = Considering applying to law school. (4)

Skip To: Q36 If Q9 = Not considering applying to law school. (5)

Display This Question:

If Q9 = Currently a law student at a law school in the United States.

Q22 What year are you in law school?

1L (1)

2L (2)

3L (3)

Q14 What type of law do you (plan to) practice?

Criminal Prosecution (1)

Criminal Defense (2)

Other Government Law (3)

Family Law (4)

Public Interest (5)

Corporate Law/Transactional (6)

Corporate Law/Litigation (7)

Academia (8)

Other: (9) _____

Q67 Personal Experience with the Character and Fitness Test: Law School

Q48 Do you believe law schools should ask applicants about their prior criminal records? Select all that apply.

Yes. Law schools have a duty to warn students about the Character and Fitness Test before students assume large amounts of debt. (1)

Yes. Law schools have a duty to protect the legal profession. They should consider an applicants' prior criminal history when deciding whether to provide that applicant with a pathway to the legal profession. (2)

No. Not all JDs practice law, so the question is not relevant. (3)

No. Law school admissions deans should leave that determination to the Bar Examiners. (4)

No. Applicants should be permitted to independently take the risk of not passing the Character and Fitness Test. (5)

Unsure. (6)

Q17 Did any law school applications ask whether you had a prior criminal record?

All schools to which I applied. (1)

Most schools to which I applied. (2)

A few of the schools to which I applied. (3)

None of the schools to which I applied. (4)

Q18 Did you not apply to any schools because of the way they asked about your prior criminal history?

Yes. (1)

No. (2)

Q19 Did any law schools admissions deans follow up with you regarding your prior criminal history before making an admissions decision?

Yes - requested more information via email. (1)

Yes - requested more information via phone call. (2)

Yes - requested more information during interview. (3)

No. (4)

Q20 Did your law school follow up with you after matriculation to assist you in preparing for the Character and Fitness Test? If so, when?

Yes, during 1L year. (1)

Yes, during 2L year. (2)

Yes, during 3L year. (3)

No. (4)

N/A (not yet matriculated) (5)

Q68 Personal Experience with the Character and Fitness Test: Preparation

Q15 How long after your release from custody (including probation/parole) did/will you first apply for admission to the bar?

Years after release: (1)

Q16 How concerned are/were you about the Character and Fitness Test:

Prior to applying to law school (1)

While awaiting law school admissions decisions (2)

During law school (3)

When applying for admission to the bar (4)

When changing jurisdictions (5)

Q21 What rehabilitative activities did/will you undertake prior to your Character and Fitness Application? Select all that apply.

Volunteer prior to law school (1)

Volunteer (non-legal) during law school (2)

Pro bono at law school (3)

Certificate of Rehabilitation (4)

Expungement or sealing of criminal record (5)

Substance Abuse Treatment Program - one time (6)

Substance Abuse Treatment Program - ongoing (e.g., Alcoholics Anonymous) (7)

Restitution to victims (monetary) (8)

Other: (9) _____

Q23 Whose assistance did/will you seek in preparing your Character and Fitness Application? Select all that apply.

Hired attorney (1)

Pro bono attorney/organization: (2) _____

Law school professor (3)

Other law school personnel (4)

Mentor/lawyer (5)

Mentor/non-lawyer (6)

Family friend/lawyer (7)

Family friend/non-lawyer (8)

Other: (9) _____

Display This Question:

If Q23 = Pro bono attorney/organization:

Q24 How did you hear about this person/organization?

Internet Search (1)

Referral from Professor (2)

Referral from Mentor (3)

Referral from Law School Admissions Dean (4)

Other: (5) _____

Q25 What additional help would be/have been useful in preparing your Character and Fitness Application?

Q71 Personal Experience with the Character and Fitness Test: Application

Q13 Have you ever been denied admission to the bar of any state on Character and Fitness grounds? If so, which state(s)?

Yes, eventually admitted: (1) _____

Yes, not yet admitted: (2) _____

No. Admitted first time. (3)

No. Never applied. (4)

Skip To: Q70 If Q13 = No. Admitted first time. (3)

Skip To: Q70 If Q13 = No. Never applied. (4)

Q44 How many times have you been denied admission to the bar on Character and Fitness grounds (all states combined)?

- 1 (1)
- 2 (2)
- 3 (3)
- 4 (4)
- 5+ (5)

Q43 How did/do you support yourself while awaiting admission to the bar?

- Corporate Legal work (e.g., paralegal or legal assistant) (1)
- Public Interest Legal work (e.g., paralegal or legal assistant) (2)
- Government Legal Work (e.g., paralegal or legal assistant) (3)
- Non-profit Non-legal work (4)
- Private non-legal work (5)
- Other: (6) _____

Q69 Personal Experience with the Character and Fitness Test: Appeals

Q26 Did you ever *appeal* an adverse Character and Fitness determination?

- Yes. (1)
- No. (2)

Skip To: Q70 If Q26 = No. (2)

Q45 Was your appeal successful?

- Yes. (1)
- No. (2)

Q27 Whose assistance did you seek in appealing your adverse Character and Fitness determination? Select all that apply.

- Hired attorney (1)
- Pro Bono Attorney (2)
- Law School Professor (3)
- Other Law School Personnel: (4) _____
- Mentor/Lawyer (5)
- Mentor/Non-Lawyer (6)
- Family Friend/Lawyer (7)
- Family Friend/Non-Lawyer (8)
- Other: (9) _____

Q28 How many hours do you estimate you've spent on the appeals process?

- 0-10 (1)
- 10-20 (2)
- 20-50 (3)
- 50+ (4)

Q29 To whom did you appeal the adverse determination? Select all that apply.

- Administrative Review Body (1)
- State Bar Court (2)
- State Supreme Court (3)
- Other: (4)

Q30 What factors did the reviewing body consider in reaching its decision? Rank in order of perceived importance.

- _____ Rehabilitation (1)
- _____ Nature of crime underlying conviction (2)
- _____ Time since Underlying Crime (3)
- _____ Time Since Release from Custody (4)
- _____ Letters of Support from Non-Lawyers (5)
- _____ Letters of Support from Law School Professors (6)
- _____ Letters of Support from Lawyers (7)
- _____ Certificate of Rehabilitation (8)
- _____ Expungement of Underlying Conviction (9)
- _____ Past Participation in Substance Abuse Program (10)
- _____ Completion of Substance Abuse Program (11)
- _____ Ongoing Participation in Substance Abuse Program (12)
- _____ Volunteer Work (Non-Legal) (13)
- _____ Volunteer Work (Legal) (14)
- _____ Law School Performance (15)
- _____ Other: (16)

Q31 Did you receive a written explanation of the reviewing body's decision?

- Yes (1)
- No (2)

Skip To: Q70 If Q31 = No (2)

Q41 Did the explanation provide you with clear information on how to prepare a future successful application?

Yes. (1)

No. (2)

Q42 (Optional) Explain:

Q70 Personal Experience with the Character and Fitness Test: Advice

Q32 (Optional) What advice would you give to persons with criminal histories who are considering applying to law school and are concerned about the Character and Fitness Test?

Display This Question:

If Q9 = Considering applying to law school.

Q34 Why have you not yet applied for law school? Rank in order of importance.

_____ Need to complete undergraduate degree (1)

_____ Don't believe grades/ LSAT score high enough (2)

_____ Concern about time commitment (3)

_____ Concern about expense of law degree (4)

_____ Concern about passing Character and Fitness Test (5)

_____ Concern about employment prospects because of criminal history (i.e., legal employers won't hire, even if admitted to the Bar) (6)

_____ Other: (7)

Display This Question:

If Q9 = Considering applying to law school.

Q37 How concerned are you about passing the Character and Fitness Test to practice law?

Concern (1)

Display This Question:

If Q9 = Considering applying to law school.

Q38 What rehabilitative activities are you undertaking that you believe will help you overcome the Character and Fitness Test?

Volunteer prior to law school (1)

Volunteer (non-legal) during law school (2)

Pro bono at law school (3)

Certificate of Rehabilitation (4)

Expungement (5)

Substance Abuse Recovery Program - one time (6)

Substance Abuse Recovery Program - ongoing (e.g., Alcoholics Anonymous) (7)

Restitution to victims (monetary) (8)

Other: (9) _____

None (10)

Display This Question:

If Q9 = Considering applying to law school.

Q46 If you could pass the Character and Fitness Test before applying to law school, how much more likely would you be to apply to law school?

Likelihood of applying (1)

Display This Question:

If Q9 = Not considering applying to law school.

Q36 Why are you not considering becoming a lawyer? Rank in order of importance.

_____ Not interested in the law. (1)

_____ Don't believe grades/ LSAT score high enough (2)

_____ Concern about time commitment (3)

_____ Concern about expense of law degree (4)

_____ Concern about passing Character and Fitness Test (5)

_____ Concern about employment prospects because of criminal history (i.e., legal employers won't hire, even if admitted to the Bar) (6)

_____ Other: (7)

Display This Question:

If Q9 = Not considering applying to law school.

Q47 If you could pass the Character and Fitness Test before applying to law school, how much more likely would you be to apply to law school?

Likelihood of Applying (1)

Contact Info

Q66 Conclusion

Q59 (Optional) Please add any additional comments you have related to persons with criminal records entering the legal profession.

Q39 Thank you for your participation in this survey. As stated at the beginning, your answers will be kept confidential. However, if you choose, you may provide your contact information for our continued research. May we contact you about your responses?

No. (1)

Yes. My email is: (2) _____

Appendix E: Comparison of California’s Standards and Processes for State Bar Admission Standards and for Attorney Discipline, as of March 2018

ADMISSION	DISCIPLINE
<p>Initiating MC Determination</p> <ul style="list-style-type: none"> Applicant must submit moral character application to be admitted to California Bar 	<p>Initiating Discipline</p> <ul style="list-style-type: none"> State Bar receives complaint from complaining witness; convictions must automatically be reported
<p>Decision-makers</p> <ul style="list-style-type: none"> Committee of Bar Examiners (CBE) Subcommittee on Moral Character (Committee) makes determination State Bar judges in Hearing Department may review negative Committee determination California Supreme Court may review State Bar Court decision 	<p>Decision-makers</p> <ul style="list-style-type: none"> State Bar’s Office of Chief Trial Counsel (OCTC) decides whether to close,¹ settle, or formally prosecute in State Bar Court State Bar Hearing Department (five judges) determines whether violation occurred and recommends sanction² Review Department (three-judge panel) conducts <i>de novo</i> review California Supreme Court reviews and imposes discipline
<p>Process</p> <ul style="list-style-type: none"> Committee decides whether good moral character is established or whether moral character is at issue If moral character questions arise, voluntary conference is scheduled between Committee and applicant If Committee makes adverse determination, applicant will not be admitted to bar Applicant has right to appeal and may request hearing before State Bar Court State Bar Court’s decision is binding on the Committee Committee has right to appeal to Supreme Court of California 	<p>Process</p> <ul style="list-style-type: none"> If complaint sufficiently alleges misconduct, OCTC investigators determines whether to bring disciplinary proceedings Before filing formal charges, OCTC provides respondent opportunity to settle in confidential Early Neutral Evaluation Conference If case settles, agreement reviewed by State Bar Court and Supreme Court, Supreme Court orders discipline If parties cannot reach resolution or respondent does not respond, OCTC files charges in State Bar Court After filing, respondents with substance abuse and/or mental health concerns may participate in Alternative Discipline Program, if appropriate, with stipulated discipline If State Bar Court finds basis for discipline, discipline recommendation sent to Supreme Court which reviews and orders discipline

1 OCTC may decide to close the case even if their investigation reveals low-level or aberrational violations; OCTC may decide on an alternative to discipline (e.g., an agreement, resource letter, or warning letter) and then close the case. STATE BAR OF CAL., ANNUAL DISCIPLINE REPORT 4 (2017), *available* at http://www.calbar.ca.gov/Portals/0/documents/reports/2016_AnnualDisciplineReport.pdf?ver=2017-05-19-134141-270.

2 Suspension and disbarment proposals must be reviewed by Supreme Court; reproof may be imposed by State Bar Court without review. *Id.* at 1-3.

<p>Standard & Burden</p> <ul style="list-style-type: none"> • Evidence sufficient to establish a prima facie case • The applicant has the burden of establishing that she is of good moral character; applicants who have been convicted of violent felonies, felonies involving moral turpitude, and crimes involving a breach of fiduciary duty are presumed not to be of good moral character but may rebut this presumption via a pardon or a showing of overwhelming reform and rehabilitation • “Good moral character” includes but is not limited to qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process. 	<p>Standard & Burden</p> <ul style="list-style-type: none"> • Clear and convincing evidence • Burden is on OCTC to prove misconduct; but if an attorney is convicted of a felony or misdemeanor involving moral turpitude, the record of conviction will be conclusive evidence of guilt of that crime • Sanction is determined by balancing all relevant factors, including mitigating and aggravating circumstances
<p>Available Outcomes</p> <ul style="list-style-type: none"> • Admit or Deny Bar Admission • Offer to place application in abeyance for specified time while applicant meets conditions 	<p>Available Outcomes/Sanctions</p> <ul style="list-style-type: none"> • Complaint closed, no sanction • Private reproof • Public reproof • Stayed suspension • Suspension • Disbarment (reinstatement possible) • Attaching other remedies or conditions to sanctions (e.g. restitution, taking and passing the MPRE, undergoing treatment, Alternative Discipline Program, educational or rehabilitative work, completing probation, giving notice to affected parties, and any other conditions consistent with the primary purposes of discipline)
<p>After Denial</p> <ul style="list-style-type: none"> • Applicant may appeal decision • Applicant may re-apply for admission 	<p>After Disbarment</p> <ul style="list-style-type: none"> • Disbarred attorney may apply for reinstatement
<p>Transparency</p> <ul style="list-style-type: none"> • CBE does not publish individual moral character determinations or aggregate moral character determinations data • Limited published State Bar Court and California Supreme Court decisions 	<p>Transparency</p> <ul style="list-style-type: none"> • Annual Discipline Report, mandated by statute, publishes all discipline data • Select published State Bar Court and Supreme Court decisions

Appendix F: California State Bar Moral Character Questions Posed to Applicants Regarding Their Criminal Records, as of April 2019

CONVICTIONS

The applicant has a continuing duty to inform the State Bar's Office of Admissions *in writing* (email or digital message acceptable) regarding updates for responses to questions under the moral character section of the application whenever there is an addition to or change in information previously furnished (Rule 4.42 of the Admissions Rules).

IN ANSWERING THE FOLLOWING QUESTIONS, YOU MUST INCLUDE ALL SUCH INCIDENTS AND CONVICTIONS, NO MATTER HOW MINOR THE INCIDENT. **Traffic violations which must be reported under this question include Failure to Appear, Driving without a License, Driving with a Suspended License, and Reckless Driving, as well as traffic violations that resulted in a misdemeanor or felony conviction.**

YOU ARE EXCLUDED FROM ANSWERING QUESTIONS REGARDING THE FOLLOWING INCIDENTS:

- Arrests that did not result in a conviction, unless you are awaiting final adjudication of the matter.
- Any arrest, conviction or other proceeding the record of which has been ordered or is required to be sealed, obliterated, dismissed, or destroyed pursuant to Sections 851.7, 1203.4a*, 1203.45*, 1000 to 1000.11, 1001 to 1001.11, or 1001.20 to 1001.35 of Penal Code of the State of California, or Section 781 of the Welfare and Institutions Code of the State of California, or Section 11361.5 of the Health and Safety Code of the State of California, or pursuant to a similar statute of another jurisdiction which provides in substance and effect that upon entry of an order, such arrest, conviction, or other proceeding shall be deemed not to have occurred or that the person to whom the proceeding relates, in answering any related question, may state it did not occur.
- Any arrest, conviction or other proceeding, the record of which has been ordered or is required to be sealed, obliterated, dismissed, or destroyed pursuant to the statute of another jurisdiction, which statute provides in substance and effect that upon entry of an order, such arrest, conviction or other proceeding shall be deemed not to have occurred or that the person to whom the proceeding relates, in answering any related question, may state it did not occur. If you believe you come within this exclusion, you **MUST** include with your application a digital copy of the applicable statute and any supporting annotations and answer YES to question 48 below.

If you respond "Yes" to questions 41, 42, 43, 44, 45, 46, 47, or 48 below, then you are required to complete and submit **Form 2 - Record of Criminal Cases**. Please also attach a copy of the police report, docket sheet, minutes, register of actions, complaint, indictment, trial disposition, sentence, appeal, probation report, and certified copy of conviction, if applicable.

NOTE

*The above-referenced sections of the Penal Code are Sections 1203.4a and 1203.45, **not** 1203.4. Section 1203.4 (expungement) **REQUIRES** disclosure of matters dismissed under that Section in response to a direct question contained in an application for licensure by a state agency.*

Appendix G: California State Bar's Law School Declaration Form



Moral Character - Law School Declaration

Please enter your full name:*

Applicant Name:

The person indicated above has filed an Application for Determination of Moral Character and is currently under investigation by the Committee of Bar Examiners (Committee) of the State Bar of California as required by statute. The Committee requests your cooperation in providing the following information from this applicant's record. The applicant has executed a declaration as part of the moral character application.

A copy of the declaration will be furnished upon request. Please complete this entire form and click Submit within 15 days.

If the institution does not have any record of the above named applicant, please indicate by checking the following box.



1. Do the records in your office reflect that the applicant has been:

a. denied admission to practice law in any other state?*

Yes No

b. arrested or otherwise charged formally or informally with a violation of the law? (You should not provide information about any criminal proceeding which you believe to have been sealed or expunged.)*

Yes No

c. accused of a violation of a trust?*

Yes No

d. knowingly delinquent regarding any financial obligation?*

Yes No

e. disciplined by any educational institution?*

Yes No

f. disciplined by any licensing authority?*

Yes No

g. diagnosed or treated for a chemical dependency that would currently interfere with his/her ability to practice law?*

Yes No

Appendix H: California Model Law School Disclosure Statement

Instructions:

In addition to a bar examination, there are character, fitness, and other qualifications for admission to the bar in every jurisdiction. Applicants are encouraged to determine the requirements for any jurisdiction in which they intend to seek admission by contacting the jurisdiction. Addresses for all relevant agencies are available through the National Conference of Bar Examiners.

Character & Fitness Page:

Please be aware that the Admissions Committee will evaluate your answers to these questions in the context of your entire application. An affirmative answer will not necessarily prejudice your admission to [] School of Law. Your answer will be reviewed on an individual basis in relation to all aspects of your experience, academic achievement, and potential. If your answer to any of the following questions becomes affirmative after you submit your application, you are required to notify the Admissions Office in writing.

If you answer “yes” to any of the following questions below, you are required to provide an additional statement which includes the date(s) of occurrence, a detailed explanation of the relevant circumstances, and how the matter was resolved. Further, describe any rehabilitative activities in which you have engaged since the incident(s) (e.g., community service, substance abuse recovery program, abstinence from substances, paid restitution or fines, and successful completion of probation or parole), and explain whether the experience influenced your decision to apply to [] School of Law. Failure to provide truthful and complete answers, or failure to notify the Admissions Office of any changes in answers, may result in revocation of admission or disciplinary action by the law school, or denial of permission to practice law in the state in which you seek admission.

Please note that the State Bar requires each applicant to answer these and similar questions in order to be admitted to the Bar. Admission to XX School of Law does not guarantee that you will meet the character and fitness requirements of the state bar(s) to which you may seek admission. You are encouraged to review the admission requirements of the states in which you intend to apply for bar membership, either by consulting the individual state bar websites or by consulting the National Conference of Bar Examiners at www.ncbex.org.

After graduating, the State Bar will contact the law school to request a copy of your application. Information contained in your law school application MUST match the information you report on your application, as well as information the bar discovers upon conducting a criminal, civil, and academic background check. Due diligence may require you to contact a number of agencies to verify the information you provide, including but not limited to the Department of Motor Vehicles, as well as state and local courts.

If you have any questions or are uncertain about how to answer, you are strongly encouraged to consult the Office of Admissions and/or the Committee of Bar Examiners in the state in which you intend to practice law.

Have you ever been convicted of a misdemeanor or felony (or the equivalent in juvenile court)?

- As used herein, a conviction includes a plea of guilty or nolo contendere (no contest), or a verdict or finding of guilt, regardless of whether sentence is imposed by the court.
- Include:
 - all incidents for which the record has been expunged;
 - all traffic violations that resulted in a misdemeanor or felony conviction, including Failure to Appear, Driving Without a License, Driving with a Suspended License, and Reckless Driving.
- Do not include:
 - juvenile convictions for which the record has been ordered sealed by a court;
 - minor traffic violations unrelated to the use of intoxicants;
 - any arrest that did not result in a conviction, unless the charges are still pending (see Question 2).

Are you awaiting final adjudication of any investigation or arrest?

Have you ever been held in contempt of court?

Have you ever been granted immunity in lieu of criminal prosecution?

If you answered “yes” to any of the questions above, please attach an explanatory statement to your electronic application. Your statement should include the date of occurrence, name and nature of the offense, name and locality of the court, a detailed explanation of the relevant circumstances, how the matter was resolved, and a personal reflection on the incident.

Appendix I: Roundtable Discussion on “Law School and California State Bar Admission for People with Criminal Records,” Held at Stanford Law School on April 26-27, 2018

Joseph Starr Babcock retired in 2014 after working for 39 years as an attorney, the last 25 of those years in public service at the State Bar of California and the Administrative Office of the Courts and Judicial Council of California. At the State Bar, he served as staff and legal advisor to the Committee of Bar Examiners and later as a member of the Committee of Bar Examiners and as Chair of the Subcommittee on Moral Character. He completed his career at the State Bar in 2014, as the General Counsel. From 2007-2014 he served as pro bono mediator and Special Assistant to Senior United State District Judge Thelton E. Henderson on a case regarding the constitutional provision of health care in California prisons.

James Binnall is an Assistant Professor of Law, Criminology, and Criminal Justice at California State University, Long Beach. His scholarship focuses on the civic marginalization of formerly incarcerated people, parole and post-release restrictions, and conditions of confinement. His current research, funded by the National Science Foundation and the American Bar Association, examines the exclusion of individuals convicted of felonies from the jury process. A leading scholar on felon juror exclusion, Dr. Binnall has testified to the U.S. Commission on Civil Rights and presented his research to the American Bar Association Jury Commission. He is the author of numerous articles published in both law reviews and social science journals, and since 2008, has maintained a pro-bono law practice representing law students in the California State Bar Moral Character and Fitness Determination process. To date, he has advised or formally represented roughly 18 formerly incarcerated individuals in their quest for admission to the State Bar of California.

Justin Cruz earned his BS in Industrial and Systems Engineering with Honor from the Georgia Institute of Technology in Atlanta, Georgia and his JD from Washington University School of Law in St. Louis, Missouri. While in law school, Dean Cruz was Managing Editor of the Washington University Law Review and received the CALI Excellence Award for his work in the Intellectual Property and Business Formation Clinic. After graduating from Washington University, Dean Cruz worked in the area of intellectual property law as in-house counsel for a Fortune 500 company. Prior to joining Chapman, he served as Associate Dean of Student Affairs at Barry University School of Law in Orlando, Florida, and as Assistant Director of Admission at Thomas Jefferson School of Law (TJSL) in San Diego, California. In addition, Dean Cruz was an adjunct professor at TJSL where he taught in the Intellectual Property Law Practicum course.

Faye Deal is currently the Associate Dean for Admissions and Financial Aid at Stanford Law School. She received her A.B. with distinction in psychology from Occidental College in 1982. She has spent her career at Stanford Law involved in the student services area beginning in 1985 as Associate Registrar at the Law School. She then made the transition to admissions work in 1989 as Assistant Director of Admissions. Beginning in 1992, she served as Director of Admissions and Financial Aid and in 1999 became Associate Dean. Dean Deal has served on the Law School Admission Council (LSAC) Board of Trustees and various LSAC committees and has participated in numerous conferences, panels and workshops. She currently serves as a member of the Truman Scholarship Finalist Selection Committee.

Megan Denver is an assistant professor in the College of Criminology & Criminal Justice at Florida State University. She received her Ph.D. in Criminal Justice from the University at Albany, and previously worked as a Research Associate in the Justice Policy Center at the Urban Institute. Her research interests include criminal record stigma, employment and recidivism, and desistance from crime. Megan’s recent research examines how decision makers in New York State assess and use evidence of rehabilitation, a key component of federal employment guidance and state law (Article 23-A, NYS Correction Law), that individuals with criminal records can provide during the employment decision process. She has studied these decision processes in two state-mandated criminal background check contexts: administrative law judges making unarmed security guard licensing decisions, and attorneys assessing individuals who have been provisionally hired to work in unlicensed healthcare positions that involve direct access to patients and residents.

Francis (“Frankie”) V. Guzman is a juvenile justice attorney at the National Center for Youth Law. He is working to eliminate the practice of prosecuting children in California’s criminal justice system, reduce youth involvement with the juvenile justice system, and increase community-based services for at-risk and system-involved youth. Raised in a poor and mostly immigrant community plagued by crime and drugs, Guzman experienced his parents’ divorce and his family’s subsequent homelessness at age 3, the life-imprisonment of his 16-year-old brother at age 5, and lost numerous friends to violence. At age 15, he was arrested for armed robbery and, on his first offense, was sentenced to serve 15 years in the California Youth Authority. Released on parole after six years, Frankie attended law school and became an expert in juvenile law and policy with a focus on ending the prosecution of youth as adults.

Through partnerships with community organizations and advocacy groups, Guzman has helped lead the effort to reduce the number of youth prosecuted as adults and serving time in adult prisons. Recent successes include California SB 260 (2013) and SB 261 (2015) Youth Offender Parole Hearings, SB 382 (2015) Judicial Guidance in Juvenile Transfer Hearings. Even more recently, Guzman played a significant role in developing the youth justice portion of the Public Safety and Rehabilitation Act of 2016 in partnership with the Office of California Governor Jerry Brown.

Theresa (“Terri”) Gronkiewicz is Senior Counsel at the American Bar Association Center for Professional Responsibility where she currently serves as Counsel to the ABA Standing Committee on Professionalism, the Center’s CLE Committee and the Center’s Diversity Committee. She also served as Deputy Regulation Counsel to the ABA Standing Committee on Professional Discipline. Ms. Gronkiewicz has devoted her entire legal career in the field of ethics and professional responsibility. She began her career with the Illinois Attorney Registration and Disciplinary Commission (ARDC) where she investigated and prosecuted lawyer disciplinary matters through all stages of the process, including appearances before the Illinois Supreme Court. Ms. Gronkiewicz then went into private practice for 24 years with a Chicago law firm focusing on ethics, professional responsibility and legal malpractice matters. Ms. Gronkiewicz has represented judges, lawyers and law students in disciplinary proceedings, character and fitness matters, and judicial complaints before the various Boards of the ARDC, the Illinois Character and Fitness Committees, the Illinois Judicial Inquiry Board and the Illinois Courts Commission. Ms. Gronkiewicz co-authored Chapter 13 “Disciplinary Liability,” ILLINOIS ATTORNEYS’ LEGAL LIABILITY (ICLE, 2014), which details the lawyer disciplinary process in Illinois. She also authored the article, “Twelve Tips to Help You Avoid Disciplinary Proceedings” published on the Center’s webpage and co-wrote the inaugural edition of the ABA Annotated Standards for Imposing Lawyer Sanctions (2015).

Eliza Hersh is a Soros Justice Fellow and Visiting Scholar at Berkeley Law School's Center for the Study of Law & Society. Her project focuses on sex offense law and policy reform. From 2006 to 2016, Eliza was a clinical instructor and directed the Clean Slate Reentry Legal Services Practice at the East Bay Community Law Center, which is a teaching clinic of Berkeley Law School. The Clean Slate Practice developed innovative strategies in criminal, consumer rights, and administrative law, as well as policy advocacy and impact litigation that empowered people to overcome barriers to employment, education, housing, and civic engagement following contact with law enforcement.

Judge Judy Johnson graduated from Stanford University and UC Davis School of Law. While an Oakland Legal Aid attorney, Judge Johnson helped indigent citizens and joined other women lawyers to sue the Oakland Police Department for failing to respond to the calls of battered women seeking police protection and intervention. In 1977, Judge Johnson was appointed Assistant District Attorney for the City and County of San Francisco, where she specialized in complex civil and criminal prosecution of major frauds, white collar crime, and violations of California's consumer protection laws. She served as the first woman president of the Charles Houston Bar Association. In 1990 she was the first woman of color elected to serve on the governing board of the State Bar of California. In 1994, Judge Johnson was also the first woman and attorney of color to be chosen as the State Bar's chief ethics prosecutor and the only person to date twice nominated and confirmed by the State Senate of California to serve in that position. She became the Executive Director of the State Bar of California in 2000, becoming the first woman and lawyer of color to serve in that capacity. With a tenure of 11 years, Judge Johnson is to date the longest serving State Bar Executive Director in California history. Judge Johnson came out of retirement to accept an appointment by California Governor Jerry Brown to the Contra Costa County Superior Court. She assumed office on June 4, 2012. Her current assignment is in Pittsburg.

Caleb Martinez was born on the Pascua Yaqui Reservation. He is currently a student at UC Berkeley completing his Political Science major and subsequently will begin a joint graduate degree in Public Policy and Law. He was raised in neighborhoods that were rife with crime, directly experienced social injustice, and spent much of his adolescence and early adulthood trapped in the cycle of incarceration. Today, Martinez is a single father to a 12-year-old daughter. He has served as president for the Student Parent Association for Recruitment. He currently works with the Underground Scholars Initiative, providing services to formerly incarcerated students. In his work with the community, Caleb focuses on increasing the presence of Native Americans, student parents, and formerly incarcerated people in higher education. He envisions becoming a legislator to provide representation to marginalized communities and become a voice for the voiceless.

Erica Moeser recently retired as the president of the National Conference of Bar Examiners, a position she held for 23 years. She is a former chairperson of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, and has served as a law school site evaluator, as a member of the Section's Accreditation and Standards Review Committees, and as the co-chairperson of the Section's Bar Admissions Committee. She served as the director of the Board of Bar Examiners of the Supreme Court of Wisconsin from 1978 until joining the Conference. Ms. Moeser holds a BA from Tulane University and MS and JD from the University of Wisconsin. Ms. Moeser has taught Professional Responsibility as an adjunct at the University of Wisconsin Law School. She was elected to membership in the American Law Institute in 1992. In 2013 Ms. Moeser received the Kutak Award, honoring "an individual who has made significant contributions to the collaboration of the academy, the bench, and the bar," from the ABA Section of Legal Education and Admissions to the Bar.

Debbie Mukamal is the Executive Director of the Stanford Criminal Justice Center at Stanford Law School. Her portfolio of work includes co-directing Renewing Communities (www.correctionstocollegeca.org), a statewide initiative to expand college opportunities for currently and formerly incarcerated students in California (in partnership with Rebecca Silbert at The Opportunity Institute). From 2005 to 2010, she served as the founding Director of the Prisoner Reentry Institute at John Jay College of Criminal Justice. Debbie oversaw all of the Institute's projects, including the design and implementation of the NYC Justice Corps, an innovative neighborhood-based reentry service initiative, and the development of research in the areas of entrepreneurship, correctional education, long-term incarceration, and reentry from local jails. Before joining John Jay College, she served as the founding director of the National H.I.R.E. Network and a staff attorney at the Legal Action Center, where her work focused on the collateral consequences of criminal records. Debbie earned a JD from New York University School of Law and BA from the University of California at Berkeley.

Gayle Murphy served as the senior director for the California State Bar's Admissions program since 2005 through her retirement in December 2017. In that capacity she worked closely with the Committee of Bar Examiners and had oversight responsibilities for the Committee's moral character determination, examination and accreditation functions. Prior to becoming the director, she worked in several different positions within the Admissions program after joining the State Bar staff in 1980. Throughout her career in Admissions she has been involved with various aspects of administering the moral character determination function, including the development of policies and procedures, sitting in on moral character informal conferences and drafting associated rules. She served as the Chair of the national Council of Bar Admission Administrators and has participated as a member on many different national educational panels that presented and discussed admissions-related topics, including character and fitness.

Deborah L. Rhode is the Ernest W. McFarland Professor of Law, the director of the Center on the Legal Profession, and the director of the Program in Law and Social Entrepreneurship at Stanford University. She graduated Phi Beta Kappa and summa cum laude from Yale College, and received her JD from Yale Law School. She clerked for United States Supreme Court Justice Thurgood Marshall before joining the Stanford Law School faculty in 1979. She is the founding chair of the Section on Leadership of the Association of American Law Schools and was the founding president of the International Association of Legal Ethics, the former president of the Association of American Law Schools, the former chair of the American Bar Association's Commission on Women in the Profession, the former founding director of Stanford's Center on Ethics, and a former trustee of Yale University.

She is the nation's most frequently cited scholar on legal ethics. She is the author of 30 books in the fields of professional responsibility, leadership, and gender, law and public policy. She has received the American Bar Association's Michael Franck award for contributions to the field of professional responsibility; the American Bar Foundation's W. M. Keck Foundation Award for distinguished scholarship on legal ethics, the American Foundation's Distinguished Scholar award, the American Bar Association's Pro Bono Publico Award for her work on expanding public service opportunities in law schools, and the White House's Champion of Change award for a lifetime's work in increasing access to justice.

Lucy Ricca is the Executive Director of the Stanford Center on the Legal Profession. In this role, she coordinates all aspects of the Center's activities, including developing the direction and goals for the Center and overseeing operations, publications, programs, research, and other inter-disciplinary projects. Lucy is a Lecturer at the law school and has written on the regulation of the profession, the changing practice of law, and diversity in the profession. She joined Stanford Law School in June 2013, after clerking for Judge James P. Jones of the United States District Court for the Western District of Virginia. Before clerking, Lucy practiced white collar criminal defense, securities, antitrust, and complex commercial litigation as an associate at Orrick, Herrington & Sutcliffe. Ricca received her BA cum laude in History from Dartmouth College and her JD from the University of Virginia School of Law.

Elizabeth Schroeder is the Assistant Dean for Student Services, UC Irvine School of Law. Prior to joining UCI, Liz spent 15 years as the Associate Director of the ACLU of Southern California. She clerked for judges in New York and New Jersey, and served as a public defender for five years in the Bronx office of The Legal Aid Society, Criminal Defense Division. Liz began her public service career right out of college as a staff assistant for House Judiciary Committee Member Elizabeth Holtzman during Nixon's impeachment proceedings. She is a graduate of Oberlin College with Honors in Government, and NYU School of Law.

Tarra Simmons struggled with intergenerational poverty and incarceration, childhood trauma, and substance use disorder which led to criminal justice system involvement. Despite these obstacles, she worked for many years as a Registered Nurse. After serving her prison sentence, Tarra decided to attend law school to reduce recidivism by helping others overcome barriers to reentry. She interned with various public interest legal organizations, became involved in legislative advocacy, and co-founded Civil Survival, a grassroots advocacy organization led and staffed by currently and formerly justice-involved individuals. She graduated from Seattle University Law School, *magna cum laude*, in 2017, and is the first directly impacted person to receive the Skadden Fellowship. She was initially denied admission to take the bar exam and appealed to the Washington State Supreme Court. In November 2017, she received a unanimous order granting her the right to take the bar exam. Today, Tarra works as a Skadden Fellow for the Public Defender Association in Seattle where she represents individuals on the collateral consequences of a conviction, expands diversion programs, and advocates for local and state level justice system reform. She is also the Executive Director of Civil Survival, and was appointed by Governor Jay Inslee to the Public Defense Advisory Board and the Statewide Reentry Council where she serves as co-chair.

Tracy Simmons is the Assistant Dean for Admissions and Financial Aid at University of the Pacific, McGeorge School of Law. She received her JD from Golden Gate University School of Law and her MA in Education from San Diego State University. Tracy has worked in law school admissions, financial aid and diversity initiatives for over 19 years. Tracy has been active with the Law School Admission Council on a variety of committees. She is currently serving on the Board of Trustees. Additionally, Tracy serves as a consultant for the Council on Legal Education Opportunity (CLEO) Achieving Success in the Application Process program for over nine years. She is a member of Association of American Law Schools (AALS), recently completed her second term as Chair of the Pre-Legal Education and Admissions to Law School Section and is Chair Elect for the Part Time Section.

Kristin Theis-Alvarez is the Assistant Dean of Admissions and Financial Aid at the University of California, Berkeley, School of Law. She graduated with high honors from UC Berkeley with BA in Rhetoric and Native American Studies and went on to earn her JD from Stanford Law School. Prior to serving in her current role, Dean Alvarez was the Director of Admissions for Outreach and Recruitment at Berkeley Law for ten years. She has held numerous national law admissions leadership roles, including service as a member of the LSAC Board of Trustees, chair of the Services and Programs Committee, and chair of the Annual Meeting and Educational Conference Planning Work Group. Dean Alvarez also volunteers in a number of other capacities outside of law school admissions and is a member of the Board of Directors for Disability Rights Education and Defense Fund. She lives in the East Bay with her partner and their three children.

Mark Torres-Gil has been an employee of the State Bar of California for over 25 years. Ten months ago he joined the Office of Admissions as the Program Manager, Moral Character Determinations. Prior to this posting, he was an Assistant General Counsel in the Office of General Counsel. He is a graduate of UC Berkeley School of Law and received his undergraduate degree from Pomona College.

Adrian Vasquez is a 2018 JustLeadershipUSA Fellow, college student, activist and Intake Specialist/Job Developer at the Anti-Recidivism Coalition (ARC) where he has been employed since his release from prison in 2014. Adrian was born and raised in South Central Los Angeles.

At the age of 19 Adrian was sentenced to 16 years to life and was released in February 2014, after serving 20 years in a California State Prison. Since his release, he became employed by ARC, where he assists those impacted by the criminal justice system through support, housing, employment, mentoring, and counseling. Adrian is currently a senior at California State University, Long Beach (CSULB) majoring in Sociology. Adrian has taken a leadership role at CSULB in the co-founding of Rising Scholars, a student organization for those impacted by mass incarceration or detainment of any kind. Adrian also serves as a board member for Clothes the Deal, an organization that assists those striving for financial independence by providing support and professional attire to secure employment.

Robert Weisberg is the Edwin E. Huddleston, Jr. Professor of Law at Stanford Law School. He works primarily in the field of criminal justice, writing and teaching in the areas of criminal law, criminal procedure, white collar crime, and sentencing policy. He also founded and now serves as faculty co-director of the Stanford Criminal Justice Center, which promotes and coordinates research and public policy programs on criminal law and the criminal justice system, including institutional examination of the police and correctional systems. In 1979, Professor Weisberg received his JD from Stanford Law School, where he served as President of the *Stanford Law Review*. He then served as a law clerk to Chief Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia Circuit and Justice Potter Stewart of the U.S. Supreme Court. After joining the Stanford law faculty, he served as a consulting attorney for the NAACP Legal Defense Fund and the California Appellate Project on death penalty cases, and he continues to consult on criminal appeals in the state and federal courts.

Patti White practiced labor and employment law for 39 years with Littler Mendelson. A past president of the Santa Clara County Bar Association, she served on the California State Bar Board of Trustees from 2007-2010, during which time she was a liaison to the Committee of Bar Examiners. Ms. White served on the Committee of Bar Examiners from 2011-2015, chairing the Committee in 2014-15. She served on the Moral Character subcommittee throughout her tenure on the CBE. Patti received her BA from Stanford in 1961 and her JD from University of Santa Clara in 1978.