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## Evaluation of Pennsylvania Bureau of Professional and Occupational Affairs Boards' Proposed "Directly Related" Crimes Lists under Act 53 of 2020

Toni S. Locklear, Ph.D.

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I was retained by Community Legal Services of Philadelphia ("CLS") to review and evaluate the preliminary steps Pennsylvania's state occupational licensing boards and commissions have taken to comply with the provisions of Act 53, a new licensing reform law enacted in 2020 (63 Pa. C.S. §§3112-3118). The new law applies to the criminal history screening of workers licensed by state boards and commissions<sup>1</sup> under the purview of the Bureau of Professional and Occupational Affairs ("BPOA"). Act 53 sets forth a new method for considering the criminal history of prospective licensees and requires that boards identify and publish a list of disqualifying criminal offenses "directly related" to the occupations for which they provide licenses, certifications, registrations, or permits.<sup>2</sup> I have been asked to review and comment on the published "directly related" lists, discuss the factors that should be considered when identifying job-related exclusionary crimes, and identify the methodology that should have been used to create the lists. In addition, I was asked to conduct a demonstration exercise with nurses to illustrate the steps state boards should have taken to ensure the list of criminal offenses identified was "directly related" to the target occupation(s).

In evaluating the boards' "directly related" lists I found problems to indicate they deviated from the type of systematic, evidence-based approach I recommend for identifying job-related crimes. The lists I reviewed had a number of deficiencies relative to job-relatedness, including "directly related" crimes unrelated to the Department of Labor's occupation profiles, a disregard of court rulings that deemed particular crimes non-job-related, different "directly related" crime lists for similar occupations, and reliance on crime lists published by other state boards. The lists also failed to consider recidivism research relative to the recency and severity of criminal offenses and did not set appropriate exclusionary time frames on that basis.

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<sup>1</sup> While Act 53 applies to BPOA boards and commissions, this report will refer to both entities as "boards" for the sake of brevity.

<sup>2</sup> The licenses, registrations, certifications, and permits issued by BPOA boards and commissions will be referred to generically as "licenses" throughout this report.

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## EXECUTIVE SUMMARY

At issue here are the “directly related” lists issued by the BPOA boards to meet the requirements of Act 53 of 2020. The new legislation mandates that the boards identify and publish a list of crimes to be used for screening the criminal history of licensee applicants. Applicants with a criminal offense that matches one of the “directly related” crimes are presumed – pending an individualized assessment – to be a “substantial risk” to the health and safety of others; and at “substantial risk” of re-offending.

Due to my expertise in establishing the job-relatedness of criminal history screening criteria, I have been asked to review and evaluate the published “directly related” crimes lists and discuss my approach to identifying job-related crimes for employers. To be considered job-related in the context of occupational licensure, crimes must 1) have a direct relationship with common work activities, common work settings, and shared job characteristics (such as level of supervision and work site security measures), and 2) be committed recently enough to predict the likelihood of re-offense.

The job-crime relationship can be demonstrated using a systematic, evidenced-based approach I have used with clients to identify job-related criminal history screening criteria. My approach uses subject matter experts with in-depth knowledge of the occupation and leverages multi-disciplinary experts such as criminologists, criminal attorneys or law enforcement personnel, and Industrial-Organizational psychologists, like myself, to assist as needed.

In this approach, subject matter experts work with the organization, and its experts, to:

- 1) define important and critical job responsibilities performed with reasonable frequency across various jobs, employers, and work settings;
- 2) identify risk factors that would allow a licensee to exhibit criminal behavior on the job and result in substantial risk to co-workers, patients, customers, or the general public;
- 3) identify crimes that relate directly to the presence of those risk factors on the job; and
- 4) leverage the recidivism research to estimate how long post-offense a crime should be considered “directly related.”

The recidivism research provides insight into how long after conviction or release a person with a criminal record is at risk of re-offending. Research has shown that six to seven years after an individual commits a crime, the risk of re-offending is significantly reduced and almost equivalent to the risk posed by individuals without a criminal record.

In evaluating the boards’ “directly related” lists I found problems to indicate they deviated from the type of systematic, evidence-based approach I recommend for identifying job-related crimes. The lists I reviewed had a number of deficiencies relative to job-relatedness, including “directly related” crimes unrelated to the Department of Labor’s occupation profiles, a disregard of court rulings that deemed particular crimes non-job-related, different “directly related” crime lists for similar occupations, and reliance on crime lists published by other state boards.

The lists also failed to consider recidivism research relative to the recency and severity of criminal offenses and did not set appropriate exclusionary time frames on that basis. Since crimes’ ability to predict re-offense decreases as time passes, setting exclusionary time frames is necessary to ensure job-relatedness. A crime that fails to predict re-offense within a given time period can no longer be considered “directly related.”

To illustrate the application of my evidence-based methodology to the BPOA occupations, I was asked to conduct a demonstration exercise for the nursing occupation. The objective was to identify job-related crimes and establish exclusionary time frames for a subset of criminal offenses. Nursing professionals were recruited as subject matter experts to participate in a series of focus groups. The initial focus groups were used to identify common work activities, work settings, and risk factors, while a final focus group was used to identify job-related crimes. For the final focus group, the subject matter experts were joined by a public defender to ensure the participants understood the nature of each crime before judging its relationship to the risk factors of the job.

Focus group participants reviewed the job-relatedness of 18 crimes included on the Board of Nursing's "directly related" list. Only 6 of the board's 18 "directly related" crimes were linked to one or more risk factors and judged to be of substantial risk. After identifying the six job-related crimes, the focus group participants used the recidivism research to determine how long the crimes should be considered "directly related." The results of this demonstration exercise illustrate the need for boards to use an evidence-based approach to ensure a narrowly tailored, job-related list of "directly related" crimes with associated exclusionary time frames.

The decision whether to license an applicant is high stakes for both the individual and the profession. Overbroad "directly related" lists will unfairly exclude otherwise qualified applicants from the profession. Moreover, due to minorities' overrepresentation in the population of people with criminal records, Blacks and Hispanics are most likely to be disadvantaged by overbroad lists. Appropriately developed lists of "directly related" crimes will allow fair and equitable access to the profession such that only crimes linked directly to the risk factors of the job are used to flag applicants as a substantial risk.

## **BACKGROUND & RELEVANT EXPERIENCE**

I am an Industrial-Organizational Psychologist currently employed as the Chief Technical Officer and Litigation Practice Leader for *APTMetrics*, working in the firm's Atlanta, Georgia office. I am a graduate of Auburn University, where I earned a Ph.D. in Industrial and Organizational Psychology in 1992. The field of Industrial and Organizational (I-O) psychology involves the application of psychological theory and scientific research methods to the study of human behavior in the workplace. As the branch of psychology that focuses on the workplace, Industrial-Organizational or I-O psychologists use scientific methods to analyze jobs, identify related job requirements, and create selection procedures – such as criminal background checks – tied to job requirements. As a result of their expertise, I-O psychologists are called upon to comment on the validity, fairness and/or adequacy of criminal history screening practices.

My work experience over the past 25 plus years has been in the fields of I-O psychology and Human Resources Management focusing primarily on the analysis of job content and requirements, the development and validation of employee selection procedures, and the design of related human resource processes. The analysis of job content and requirements is critical to identifying the job-related crimes appropriate for use in criminal history screening. I have served as an expert witness and consultant to counsel in employment discrimination cases, including cases related to criminal history screening. I am currently serving as a settlement expert, approved by both defendants and plaintiffs, to help carry out the provisions of consent decrees in matters involving criminal history screening at three large employers: a retail industry leader, a global leader in transportation services, and a top rental car company. My role in these settlements has included reviewing and modifying the companies' approach to criminal history screening to ensure fair and equitable screening practices that focus on job-related crimes. My qualifications are set forth in my vita which is attached to this report as Attachment A.



My firm was among the first to develop and use evidence-based methodologies for establishing the job-relatedness of criminal background checks. This evidence-based approach has been used in the matters referenced above, as well as several high-profile class action settlements involving criminal history screening. Below I discuss the application of this evidence-based approach to development of the “directly related” crimes lists required by Act 53.

The professional and scientific literature and the other documents I reviewed to form my opinions in this matter are listed in Attachments B and C, respectively. I reviewed Act 53 and the BPOA boards’ “directly related” crimes lists, as well as information relevant to the history of Act 53. I also reviewed documents opposing the list of crimes proposed by various state boards (including a letter from several professional nursing associations to the State Board of Nursing).

## **THE JOB-RELATEDNESS OF CRIMINAL HISTORY SCREENING UNDER ACT 53**

Act 53 of 2020 requires the licensing boards within the BPOA to take a new, job-related approach to the screening of criminal records. The new screening requirements dictate that each of the 29 BPOA boards and commissions identify and publish a list of criminal offenses “directly related” to the occupation; that is, job- or occupation-related. According to Act 53, an offense is “directly related” if:

“The nature of the criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the professional, trade or occupation for which the individual seeks licensure.”

Where an applicant’s criminal offense matches the “directly related” list there is a presumption of risk and the board must conduct an individualized assessment to determine if the individual truly poses a “substantial risk” to the health and safety of patients, clients, or the general public, and a “substantial risk” of re-offending given factors such as post-conviction rehabilitation, age at the time of conviction, and references.<sup>3</sup>

Act 53’s focus on the job-relatedness of criminal history screening criteria to ensure fairness is consistent with the federal *Uniform Guidelines on Employee Selection Procedures* (Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, & Department of Justice, 1978) guidance on establishing the job-relatedness of screening and selection procedures (e.g., test, interviews) under Title VII of the Civil Rights Act.<sup>4</sup> The *Uniform Guidelines* were published to aid organizations in complying with federal laws prohibiting discriminatory employment practices. As discussed above, my 25 plus years of experience have

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<sup>3</sup> If an applicant’s criminal history reveals an offense not on the list of directly related crimes, there is no automatic presumption of risk by the board. However, Act 53 allows the board to conduct an individualized assessment to evaluate the individual’s potential risk and determine if it is “substantial.”

<sup>4</sup> According to the *Uniform Guidelines*, selection procedures must be “validated” if they have adverse impact when used as a basis for any employment decision (§1607.3). Validation is an empirical process for establishing job-relatedness; that is, whether a selection procedure provides meaningful information for predicting future job performance.

been focused on the use of scientific methods to analyze jobs, identify related job requirements, and create job-related selection procedures consistent with federal and state laws including Title VII of the Civil Rights Act.

## CRITERIA FOR IDENTIFYING “DIRECTLY RELATED” OFFENSES

As part of my settlement and consulting work, I have provided guidance to help companies develop criminal background check screening criteria using a reasonable, job-related process consistent with the *Uniform Guidelines* and the Equal Employment Opportunity Commission’s guidance on the *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (“EEOC Guidance;” EEOC, 2012).

The EEOC *Guidance* stresses the importance of taking a job-related, evidence-based approach to identifying criminal history screening criteria. Most organizations seeking to establish the job-relatedness of criminal conduct rely on three factors articulated in the EEOC’s guidance on targeted screens. These three factors – referred to as the Green factors<sup>5</sup> – can be used to identify specific crimes of relevance to a given job and define the duration of the criminal conduct exclusions (i.e., exclusionary timeframes).

1. Nature and Gravity of the Crime: indicated by the harm caused (e.g., property loss), the legal elements of the crime (e.g., knowledge, purpose), and/or classification as a felony or misdemeanor;
2. Time Elapsed: the time that has passed since the offense and/or completion of the sentence; and
3. Nature of the Job: job title, duties and essential functions, circumstances under which job is performed (e.g., level of supervision, direct contact with vulnerable populations), and environment in which duties are performed (e.g., office setting, private home).

The EEOC *Guidance* (2012) indicates that targeted screens be tailored to “the particular criminal conduct and the jobs involved, taking into consideration fact-based evidence, legal requirements, and/or relevant and available studies.” For example, when determining the appropriate length of time that should be considered when excluding individuals on the basis of a criminal conviction, widely accepted recidivism research findings are available to inform the appropriate exclusionary period. That research has found that people with criminal records are generally no more likely than a member of the general public to commit a crime approximately six to seven years after their offense (e.g., Kurlycheck, Brame & Bushway, 2006; 2007). My recommended methodology relies on past behavior as a predictor of future behavior and leverages this literature on the risk of re-offending and the factors that influence it.

An example of the targeted screens developed by my firm for a large online retailer is provided below. Job-related crimes and exclusionary time frames are shown for Warehouse Workers,

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<sup>5</sup> The three factors are known as the “Green factors” because they were first identified by the Eighth Circuit in *Green v. Missouri Pacific Railroad* (1977).

Delivery Drivers, and Customer Service Phone Representatives who work from home. This example illustrates criminal history screening criteria narrowly tailored to the specific jobs and work settings in question. For instance, at this retailer Fraud was deemed relevant for Delivery Drivers handling merchandise without supervision and Customer Service Phone Representatives with access to sensitive financial information, but not for Warehouse Workers handling merchandise in a work setting with close supervision and security measures to mitigate theft.

Crime	<i>Warehouse Worker</i>	<i>Delivery Driver</i>	<i>Customer Service Phone Representative</i>
Assault & Battery	7 years	7 years	N/A
Disorderly Conduct	N/A	N/A	N/A
DUI	N/A	N/A	N/A
Fraud	N/A	4 Years	7 years
Vehicular Assault	NA	4 years	N/A

N/A = Not Applicable

## AN EVIDENCE-BASED APPROACH TO IDENTIFYING “DIRECTLY RELATED” CRIMES

In view of the “directly related” crimes lists’ impact on applicants’ livelihood, the BPOA boards should have used a robust, evidence-based process to distinguish job-related crimes. My recommended approach links specific criminal conduct to the risks inherent in job responsibilities and applies recidivism research to determine how long a crime should be considered “directly related.” This approach to identifying job-related crimes is consistent with Act 53’s guidance that a “directly related” conviction “must have a direct bearing on the fitness or ability to perform one or more of the duties or job responsibilities necessarily related” to the occupation. While my work for employers has focused on jobs, the methodology I propose is equally appropriate for occupations with minor adjustments. Specifically, the process for identifying “directly related” crimes must contemplate common circumstances representative of the broader occupation rather than focusing on circumstances unique to particular employers and work settings.

Below I describe how my approach to identifying job-related crimes could be applied to the identification of “directly related” crimes under Act 53.

1. **Specify Job Duties.** Using this approach, the boards would first compile a list of important and critical job duties performed with reasonable frequency by members of the occupation across various jobs, employers, and work settings. Trivial job duties and duties specific to a given employer or work setting would be excluded.
2. **Identify Risk Factors.** Next, board members would think through and compile a tentative list of risk factors associated with the duties outlined in Step 1. In developing risk factors, the boards would consider occupational job duties, work environment, and job characteristics that would allow an individual to exhibit criminal or illegal behavior and result in a substantial risk to the health and/or safety of patients, clients, co-workers, or the general public. Risk factors would be restricted to those common across the majority of individuals working in the occupation; characteristics specific to a given employer or work setting would be excluded. Since the majority of employers conduct criminal history screening as part of the hiring process, companies could be expected to screen for offenses related to company-specific risk factors.

In identifying risk factors, the boards would consider questions such as the following; specifically, do members of the occupation...

- Handle merchandise or property? If so, is access to the merchandise or property supervised or unsupervised?
- Handle cash, credit cards or checks? If so, is access supervised or unsupervised?
- Have access to sensitive or confidential information? If so, is access monitored or supervised?
- Have access to controlled substances? If so, is access monitored?
- Have access to keys or key codes? If so, is access supervised or unsupervised?
- Have access to vulnerable populations such as children or the elderly? If so, is access supervised or unsupervised?
- Drive company vehicles? Operate equipment or machinery?

3. **Identify Related Crimes.** After identifying risk factors for the profession, board members would identify crimes associated with those risk factors by contemplating the extent to which each risk factor provides an employee with the opportunity to engage in criminal or illegal behavior that poses a substantial risk to clients, co-workers, or the general public. Before linking crimes to risk factors, the board should review the crime definitions and, if necessary, consult with law enforcement professionals or criminal attorneys to ensure their understanding. Furthermore, where board members lack comprehensive knowledge of the occupation, members of the profession should be recruited to serve as subject matter experts when identifying job-related crimes.

As part of the linkage activity, consideration should be given to how frequently an individual will experience a risk factor in the course of their occupation (hourly, daily, monthly). If a member of the profession will experience a risk factor infrequently, it most

likely should not be considered when identifying “directly related” offenses. In addition, subject matter experts should consider if individuals are supervised or unsupervised when they experience a risk factor and if policies or procedures exist to prevent criminal or illegal behavior when the risk factor is present. For example, if a risk factor such as handling cash exists, but there is little opportunity for criminal behavior to occur due to supervision, then crimes related to that risk factor (e.g., theft) should not be identified as “directly related.”

4. **Determine Suitable Exclusionary Time Frames.** As a final step, the boards would leverage the recidivism research to set suitable time frames for the crimes identified as “directly related.” Only crimes that have occurred within that period would be considered job-related. In identifying their lists of “directly related” crimes, the BPOA boards would consider the importance of recency of the offense. According to the recidivism research, the time period since a crime was committed is an important determinant of its ability to predict the likelihood of re-offending. A robust finding in the criminology research literature is that an individual’s risk of re-offense or re-arrest peaks shortly after the initial arrest and then declines with time (Beck & Shipley, 1997; Kurlychek, Bushway, & Brame, 2012; Maltz, 1984). The highest probability of re-arrest is within the first three years after arrest or release, with the majority of re-arrests occurring within one year (Beck & Shipley, 1997). Furthermore, studies have demonstrated that the risk of re-arrest eventually approximates that of a person in the general population or a person without a criminal record (Blumstein & Nakamura, 2009; Kurlychek, Brame, & Bushway, 2007). In other words, there is a point in time – generally six to seven years since an individual’s offense – at which they pose no greater risk than those without criminal records (Alpner, Durose, & Markham, 2018; Blumstein & Nakamura, 2009; Kurlychek, Brame, & Bushway, 2006, 2007). Where board members find the recidivism research difficult to interpret and apply, they should consult with a criminologist to ensure appropriate time frames.

The crimes and associated exclusionary time frames identified using this methodology would comprise the board’s “directly related” lists. Crimes related to the risk factors but beyond the exclusionary time frame would be subject to individualized assessment under Act 53 but would not be included as part of the “directly related” list where the crime is presumed to pose a substantial risk.

## **CONCERNS RE: THE BOARDS’ LISTS OF “DIRECTLY RELATED” CRIMES UNDER ACT 53**

My review of the boards’ lists of “directly related” offenses revealed a number of issues, which are discussed in detail below. The problems I found relate to the job-relatedness of crimes on the “directly related” lists, including the lack of exclusionary time frames.

### ***Job-Relatedness of the “Directly Related” Crimes***

While I was unable to evaluate the “directly related” lists of all 29 BPOA boards comprehensively, the lists I did evaluate included offenses that appear not to be job-related. ‘Directly related’ lists contained crimes unconnected to the duties and responsibilities of the occupation including crimes judged irrelevant in court rulings.

#### **Failure to Consider Occupation Specific Duties & Responsibilities**

The “directly related” lists identified crimes unrelated to the job duties of the occupation, the circumstances under which the job is typically performed, and the usual work settings. Some examples of crimes unrelated to the common job duties of the profession are provided below.

- DUI on the Board of Barber Examiners list when barbers do not drive as part of their job duties.
- Bad checks on the Board of Landscape Architects list when landscape architects do not typically handle cash or have other money management responsibilities.
- Theft by failure to make required disposition of funds<sup>6</sup> on the Board of Engineers, Land Surveyors, & Geologists list for professions without accounting or finance-related job duties.

A review of the U.S. Department of Labor’s Occupational Information Network (“O\*NET”)<sup>7</sup> occupation profiles reveals that in none of these examples does the offense have an obvious bearing on the duties or responsibilities of the occupation.

The above illustrate the boards’ failure to think carefully about job responsibilities (or the lack thereof) when identifying crimes. Had the boards consciously considered common job responsibilities and risk factors, as recommended in the methodology I outlined above, crimes unrelated to the profession are unlikely to have been identified and included on the lists of “directly related” crimes.

It is important to note that circumstances unique to specific employers or work environments that are not representative of the broader profession should **not** be used to screen out licensees. Such nuanced screening is best left to the companies that hire members of a profession. Where a specific employer’s jobs include tasks not commonly performed at other companies, the employer can screen criminal history relative to the responsibilities and risk factors unique to those jobs.

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<sup>6</sup> Under Pennsylvania law, theft by failure to make required disposition of funds is when an individual enters into a legal agreement with another individual and agrees to make payments in exchange for some type of property. The individual then fails to make the agreed-upon payments yet treats the property they received as if it were their own.

<sup>7</sup> The O\*NET database (<https://www.onetonline.org/>) contains occupation-specific job descriptions covering the entire U.S. economy, which are continually updated with input by a broad range of workers in each occupation.

### **Disregard of Relevant Court Rulings**

The problems with job-relatedness of the “directly related” lists are underscored by the State Board of Barber Examiners’ decision to include offenses that are inconsistent with court rulings regarding what is “directly related” to the profession. In *Fulton v. Commonwealth* (2017) the Pennsylvania state appellate court rejected the Board’s argument that drug dealing is “directly related” to the profession of Barbering and ruled that it could instead occur in any commercial establishment. Despite this ruling, the Board of Barber Examiners included drug-related offenses on its list of “directly related” crimes. Had the Board carefully identified only risk factors that would allow an individual to exhibit criminal or illegal behavior and result in a substantial risk to the health and/or safety of patients, clients, co-workers, or the general public – as outlined in my methodology -- they would not have identified the manufacture, delivery, or possession of a controlled substance as a “directly related” offense.

### **Different “Directly Related” Crime Lists for Similar Occupations**

The lack of similarity in the “directly related” lists of similar professions further underscores problems with the job-relatedness of the crimes identified. For example, the “directly related” lists for the Board of Barber Examiners and the Board of Cosmetology are different, as are the lists for the Board of Occupational Therapy and the Board of Physical Therapy. As an illustration, while the Board of Barber Examiners’ lists includes only two offenses in the crime category of ‘Forgery and Fraudulent Practices,’ the Board of Cosmetology includes a total of nine offenses in that category. Given the similarity in job duties, work settings, and other job characteristics, one would expect the “directly related” lists of these two professions to be very similar if not identical. The differences indicate the Board of Cosmetology and the Board of Barber Examiners failed to use an evidence-based approach to identifying “directly related” crimes that relied upon careful consideration of the job.

### **Reliance on Crime Lists of Boards in Other States**

My concern with the boards’ approach to identifying “directly related” lists is reinforced by the State Board of Nursing’s reliance on another state’s list of “directly related” crimes. In the rationale for its “directly related” list, the Board of Nursing indicates the “... Texas and Delaware boards of nursing have previously published similar lists of crimes “directly related” to the profession.”<sup>8</sup> A point-by-point comparison of the Texas Board of Nursing’s rationale statement<sup>9</sup> to the Pennsylvania Board of Nursing’s rationale reveals that the Pennsylvania Board

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<sup>8</sup><https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Documents/Board%20Documents/Act-53-List-Rationale.pdf>

<sup>9</sup>[https://www.bon.texas.gov/pdfs/law\\_rules\\_pdfs/rules\\_regulations\\_pdfs/March%202021%20Rules%20and%20Regulations%203%204%2021.pdf](https://www.bon.texas.gov/pdfs/law_rules_pdfs/rules_regulations_pdfs/March%202021%20Rules%20and%20Regulations%203%204%2021.pdf)

borrowed heavily from the Texas Board's document, including adopting the same "directly related" crime categories as well as the same language justifying adoption of those categories.<sup>10</sup>

The Pennsylvania Board of Nursing's "borrowing" of crime categories, and the corresponding rationale for adoption of those categories, from another state further supports my conclusion that the boards lacked a systematic, evidence-based process for identifying "directly related" crimes. While it is appropriate to look at the lists of other boards as part of an evidence-based process, the lists will only be as good as the methodologies used to generate them. There is no guarantee other states' boards are using job-related, evidence-based processes to identify their crime lists. Furthermore, the differences in crime definitions, and any state-specific differences in occupations, dictate an independent evaluation of crimes by the BPOA boards.

### ***Failure to Consider the Recidivism Research and Establish Exclusionary Timeframes***

In identifying their lists of "directly related" crimes, it seems the BPOA boards failed to consider the importance of recency and severity of the offense, as well as the recidivism research bearing on those factors.

#### **Recency of the Offense**

As discussed in detail above, according to the recidivism research, the time period since a crime was committed is an important determinant of its ability to predict the likelihood of re-offending. This research means that a crime, which is "directly related" one year after an offense is unlikely to be "directly related" six to seven years after the offense. A crime that no longer predicts re-offense cannot be considered job-related. Thus, the "directly related" lists should be designed to identify only those individuals at true risk of re-offending. To that end, boards should have leveraged the recidivism research to identify appropriate exclusionary time frames for groups of crimes with a similar risk of re-offense (e.g., four years for non-violent crimes and seven years for violent crimes). Using this approach, a crime committed outside of the exclusionary time frame would no longer be considered "directly related."

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<sup>10</sup> The Pennsylvania rationale statement identifies five categories of crimes as directly related to the profession: "crimes involving fraud or theft; crimes involving sexual misconduct; crimes involving lying, falsification or deception; crimes involving drugs or alcohol; and crimes involving violence or threatening behavior." According to Brendan Lynch, a senior attorney at Community Legal Services of Philadelphia, the crimes are grouped differently under Pennsylvania and Texas law, yet the Pennsylvania crime groupings, and the order in which they are detailed, are wholly consistent with the Texas rationale statement as is most of the language justifying adoption of the crime categories. For example, the Pennsylvania crimes code (Title 18 of Pa. Consolidated Statutes) does not group the offenses of "lying, falsification, and deception" as Texas does. Many of the deception-related offenses are grouped with "Forgery and Fraudulent Practices" in Chapter 41, which is part of Article C, while others are in Chapter 49, "Falsification and Intimidation," which is part of Article E.



### **Severity of the Offense**

The presence of minor crimes such as harassment, which is included on the Board of Nursing's "directly related" list, leads to further questions about the appropriateness of the "directly related" crimes lists. The severity of offenses should have been considered when determining what belonged on the "directly related" lists. Specifically, the boards should have weighted the criminal code's designation of crimes as "minor" (i.e., misdemeanor or summary),<sup>11</sup> together with the research related to the risk of re-offending when a crime is less severe. Non-violent crimes (drug and property offenses) carry a risk of recidivism for a shorter time period than violent crimes (Blumstein & Nakamura, 2009; 2012). For instance, the risk associated with property crimes flattens at about three years post-release (Rodriguez & Emsellem, 2011).

Where less severe crimes are judged to have a direct nexus to the duties of the profession, recidivism research suggests two options: 1) the crimes be paired with short exclusionary time frames to limit the number of years the offense is deemed 'directly related,' or 2) the crimes be excluded from the "directly related" lists and risk judged in the context of a broader individualized assessment of an individual's fitness for licensure. Factors such as age at time of conviction, post-conviction employment, and education have been found to significantly decrease the risk of recidivism (Brame, Mulvey., Schuber, & Piquero, 2016; Fabelo, 2002; Nally, Lockwood, Ho, & Knutson, 2014). Individualized assessment allows for the thoughtful consideration of these factors. Minor crimes should be evaluated as part of an individualized assessment so all factors relevant to recidivism can be assessed prior to making the high-stakes decision to presume risk and potentially exclude otherwise qualified applicants from licensure.

The exclusion of time frames from the "directly related" lists and the inclusion of minor crimes further illustrate the insufficiency of the state boards' approach. The boards failed to take advantage of recidivism research that is readily available online from credible sources such as the U.S. Bureau of Justice Statistics and the National Institute of Justice. Furthermore, the boards had the option of consulting with criminal justice experts at nearby colleges and universities, which they also failed to do. Several of the top researchers in the field of criminology are employed locally at the Pennsylvania State University.

### ***A Deficient Approach to Developing "Directly Related" Crimes Lists***

In conclusion, the boards' identification of non-job-related crimes, including minor crimes and crimes inconsistent with court rulings, as well as their failure to consider robust and widely accepted recidivism research findings, leads to serious questions regarding the

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<sup>11</sup> The Pennsylvania criminal code "grades" crimes by designating them as felony, misdemeanor, and summary. Summary offenses include crimes such as disorderly conduct, underage drinking, and traffic offenses. Misdemeanors include simple assault, low-dollar theft, driving under the influence offenses, and drug possession charges.

adequacy of the process used to create the “directly related” crimes lists. The shortcomings of the lists lead me to conclude that the boards’ methodologies were neither evidence-based nor methodical. Job-relatedness must be demonstrated, not just asserted. The boards’ subjective judgment that offenses have a “direct bearing on the fitness or ability to perform... responsibilities related to the profession” (63 Pa.C.S. §3102) is insufficient to establish their job relatedness. Instead, a direct relationship between the crime and job-related risk must be demonstrated explicitly for the occupation in question.

While the BPOA boards would not be expected to have expertise in developing job-related screening procedures, they had the opportunity to research appropriate methods and/or leverage experts who were appropriately qualified and competent to assist in their development. In the absence of internal capability, external experts such as I-O psychologists, criminologists, and/or criminal attorneys should have been consulted given the impact of “directly related” lists on licensee applicants’ future income and well-being.

## **JOB-RELATED METHODOLOGY IN ACTION – THE NURSING BOARD’S LIST**

To illustrate my recommended methodology for developing job-related lists of “directly related” crimes, I undertook a demonstration exercise for the nursing profession in partnership with Community Legal Services of Philadelphia and several professional associations whose nurses are licensed through the State Board of Nursing – specifically, the Pennsylvania State Nurses Association (“PSNA”), the Pennsylvania Coalition of Nurse Practitioners (“PCNP”), the Pennsylvania Association of Nurse Anesthetists (“PANA”), and the American College of Nurse-Midwives–Pennsylvania Affiliate (“ACNM-PA”). The goal of the study was to directly evaluate the job relatedness of a subset of crimes included on the State Board of Nursing’s “directly related” list and identify appropriate exclusionary time periods for the crimes deemed job-related. The methodology for this study used a panel of subject matter experts with extensive professional experience in the field of nursing.

Below I describe the methodology used to demonstrate the correct way to establish job-relatedness for purposes of developing “directly related” crime lists.

### ***Identification of Nursing Job Duties, Work Settings, and Risk Factors***

To allow for an evidence-based determination of job-relatedness, the first step was to develop a comprehensive understanding of nursing work activities and the common work settings in which those activities are performed. To that end, my team reviewed publicly available information on the job duties of nursing occupations licensed by the State Board of Nursing, as well as information (e.g., scope and standards of practice) provided by the professional associations. In particular, we leveraged the occupation profiles on O\*NET to develop preliminary lists of work activities for the three primary nursing roles licensed by the State Board: Registered Nurse (“RN”), Licensed Practical Nurse (“LPN”), and

Certified Registered Nurse Practitioner.<sup>12</sup> In addition, we used data from the U.S. Bureau of Labor Statistics data to identify the work settings where nurses are most commonly employed in the state of Pennsylvania.

As a next step, we used our understanding of the nursing job duties and common work settings to identify a preliminary set of risk factors that could allow a nurse to exhibit criminal or illegal behavior associated with substantial risk to the health and/or safety of patients, clients, co-workers, or the general public. In identifying those risk factors, we considered characteristics associated with the job and work setting such as access to sensitive or confidential information; access to keys or key codes; use of machinery or equipment; and handling of property or merchandise.

We next conducted focus groups with nursing subject matter experts to review, discuss, and finalize the preliminary work activities, work settings, and risk factors. The professional associations – ACNM-PA, PANA, PCNP, and PSNA – were asked to select subject matter experts who met the following qualifications:

1. Have extensive knowledge of the work performed in the targeted nursing roles;
2. Have sufficient experience and tenure working in, managing, and/or training nurses in those roles;
3. Have excellent communication skills and be able to clearly articulate and discuss their views on the jobs;
4. Adequately represent the nursing careers and specialties employing the largest numbers of nurses;
5. Adequately represent different work settings where nurses are employed; and
6. Be diverse with respect to race and gender, if feasible.

Two focus groups were conducted with a total of ten nurses serving as subject matter experts. During the focus groups, participants reviewed the preliminary list of work activities and identified the most important and frequently performed activities across common work settings. Participants then reviewed and updated the work settings to ensure the list included the settings where nurses in Pennsylvania are most commonly employed. As an example, the key work activities and work settings for Nurse Practitioner are provided below. Work activities and work settings for RN and LPN are provided in Attachment D.

<b>Certified Registered Nurse Practitioner Key Work Activities</b>
Administer non-intravenous medications and immunizations.
Advise patients on effects of health conditions or treatments and/or healthcare system processes.
Analyze quantitative data, test data or images to inform diagnosis or treatment and/or determine the effectiveness of Rx or therapies.

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<sup>12</sup> Clinical Nurse Specialist and Dietician-Nutritionist were excluded from the demonstration study due to the relatively small number of individuals licensed in those professions.

<b>Certified Registered Nurse Practitioner Key Work Activities</b>
Apply bandages, dressings, or splints.
Consult & collaborate with other healthcare professionals to plan or provide treatment.
Record patient medical histories
Communicate detailed medical information, medical procedures, test results, diagnoses, Rx plan, and/or care to patients & family members.
Develop medical treatment plans.
Diagnose medical conditions.
Order medical diagnostic or clinical tests.
Establish nursing policies or standards.
Follow protocols or regulations for healthcare activities.
Examine patients to assess general physical condition, functioning, capabilities, and/or health.
Maintain medical or professional knowledge, including maintaining licensure.
Monitor patient conditions during treatments, procedures, or activities.
Operate diagnostic or therapeutic medical instruments or equipment.
Prescribe treatments, assistive medical devices, and/or therapies
Prescribe medications.
Provide health and wellness advice to patients, program participants, or caregivers.
Record patient medical histories.
Refer patients to other healthcare practitioners, health resources, or specialists.
Schedule patient procedures or appointments.
Supervise patient care personnel (e.g., application of bandages, dressings, or splints).
Train patients, family members, and/or other non-medical personnel in caregiving, techniques for managing disabilities or illnesses, etc.
Treat acute illnesses, infections, or injuries.
Treat chronic diseases or disorders.
Treat medical emergencies, including responding to patient codes
Monitor medical facility activities to ensure adherence to standards or regulations.

<b>Certified Registered Nurse Practitioner Work Settings</b>
Hospitals (federal, state, local, and private)
Nursing Homes/Extended Care Facilities
Clinics (e.g., Urgent Care, Minute Clinics)
Physicians' Offices
Nurse Practitioner Offices
Home Healthcare Services
Schools
Private Homes
Prisons
Hospices
Ambulatory Surgical Centers
Telehealth
Insurance companies
Corporate Offices

Finally, the focus group participants reviewed, discussed, and finalized risk factors taking into consideration job characteristics that mitigate or heighten risk, for example, security measures and level of supervision. Throughout this exercise, the focus was on the occupation rather than individual jobs. In other words, subject matter experts were asked to focus on job duties, work environments, and job characteristics that cut across the occupation rather than being specific to a given employer or work setting. The objective was to identify a list of shared risk factors that would result in the identification of occupation-related crimes suitable for screening by the board rather than position-specific crimes more suitable for screening by a given employer at the time of hire. The risk factors identified for Nurse Practitioner, RN, and LPN are provided below.

Nursing Risk Factors	
Risk Factor	Definition
<b>Access to Personal Property</b>	Ability to access property belonging to coworkers, patients, and/or patients' families at any place in the hospital/facility, including patients' rooms, breakrooms, offices, lockers, etc.
<b>Access to Hospital/Facility Property</b>	Ability to access property belonging to hospital/facility including medical equipment and supplies (e.g., N-95 masks, PPE).
<b>Access to Sensitive Information/Medical Records</b>	Ability to review and record information of patients, coworkers, and other individuals, including personally identifiable information (e.g., date of birth, social security) and medical history available in medical records and regional & statewide electronic records.
<b>Access to Drugs</b>	Ability to access or divert prescription drugs, other forms of medication, and/or prescription pads.
<b>Access to Secured Areas</b>	Ability to access secure areas within the hospital/facility (including medicine storage cabinets, lock boxes, supply rooms, & offices), patient homes, or other work settings, and to provide access to someone not authorized to access those areas (e.g., badging family or friends into secure areas).
<b>Access to Patients</b>	Ability to interact verbally or physically with patients any place in the hospital/facility, including areas that may place them in vulnerable positions such as patient rooms, treatment rooms, restrooms, etc.
<b>Access to Vulnerable Populations</b>	Access to vulnerable populations such as children, the elderly, the disabled, cognitively impaired, and the sedated
<b>Access to Patients' Families, Vendors, and Coworkers</b>	Ability to interact verbally or physically with patients' families, vendors, or coworkers any place in the hospital/facility (including waiting rooms, lobbies, patient rooms, storerooms, offices, parking lot, restrooms, etc.), patients' homes, or other work settings.

### ***Identification of Job-Related Crimes and Exclusionary Time Frames***

After identifying risk factors for the occupation, our next step was to conduct a final focus group with nursing subject matter experts to identify the crimes associated with those risk factors and establish exclusionary time frames. Due to time constraints, we selected a subset of the crimes identified as “directly related” by the State Board; a total of 18 crimes were selected for evaluation. My team used the Pennsylvania criminal code to

draft clear and concise crime definitions appropriate for the layperson. To ensure their accuracy, the definitions were drafted in consultation with Katie Svoboda-Kindle of Community Legal Services of Philadelphia, an attorney formerly employed as a Public Defender.

In preparation for the focus groups, subject matter experts were provided with a pre-read packet, which included materials the participants were expected to review in advance of the session. The pre-read, included as Attachment D, was comprised of three documents: the key work activities, common work settings, and risk factors; a summary of the recidivism research findings relevant to setting exclusionary time frames; and definitions of the crimes to be reviewed during the focus group. In addition, for participants interested in more detailed information on the recidivism research, a fourth document was provided that summarized a few of the most important recidivism research studies.

Subject matter experts were selected to participate in the focus group using the same criteria used for the prior focus groups. In addition, a public defender employed by the Defender Association of Philadelphia as the Municipal Court Pretrial Unit Department Head was asked to participate in the session. As someone intimately familiar with the Pennsylvania criminal code and the nature of the criminal behavior typically associated with various charges, the public defender was able to educate the group and answer questions as each crime was discussed.

After an introductory discussion on the purpose of the focus group and the intent of Act 53, the participants reviewed key job responsibilities, work settings, and the risk factors and then transitioned to the job-relatedness exercise. The goal was to have participants evaluate the relationship between each crime and the occupational employment risk. Participants independently determined if a crime was related to one or more of the risk factors and then discussed the linkages as a group and came to consensus on the job-relatedness of the crime. All 18 crimes evaluated were included on the nursing board's "directly related" list. However, only 6 of those 18 crimes were judged to be "directly related" by the subject matter experts.

After completing the job-relatedness exercise, the research findings related to risk of re-offending were discussed and the subject matter experts identified appropriate exclusionary time frames for considering each crime during the licensure process. Participants were asked to independently estimate the time that must pass post-conviction before the crime no longer leads to a presumption of risk: Short (1-3 years), Medium (4-6 years), or Long (7-9 years). The participants then discussed their independent estimates, including the rationale for those estimates, and reached consensus on an appropriate timeframe. Of the crimes judged "directly related" by nursing subject matter experts: four crimes were judged to require Short exclusionary time frames (Drugs–Simple Possession, Drugs–Possession with Intent to Distribute, Felony Retail Theft, Felony Theft by Unlawful Taking or Disposition), one crime was judged

to require a Short to Medium exclusionary time frame (Stalking)<sup>13</sup>; and the remaining crime was judged to require a Medium exclusionary time frame (Identity Theft). The results of the focus group, including the exclusionary time frame estimates, are included in Attachment E.

## LICENSING AND RACIAL JUSTICE

Occupational licensing laws provide workers with government-sanctioned approval to work in a given occupation with the intention of ensuring service quality and protecting the public from unsafe or unskilled providers. With roughly 28.3% of all U.S. workers and 27.8% of all Pennsylvania workers requiring a license or certification to work in their chosen profession (Pennsylvania Department of State, 2018), occupational licensing restrictions have the potential for tremendous impact on people with criminal records across the United States. In addition to allowing licensing boards to enact costly and time-consuming education, experience, and examination requirements, many states permit “good character” requirements on the licensure of applicants with criminal offenses which give licensing boards the discretion to exclude anyone with a criminal offense, irrespective of its relationship to job responsibilities typical of the profession (U.S. Department of Treasury, 2015). Prior to Act 53, Pennsylvania was one of these states. In addition, the Pennsylvania criminal code included a statute that allowed licensing boards to deny a license for any felony regardless of severity, relationship to the occupation, or timeliness. Such laws significantly disadvantage minorities, underrepresented groups, the less educated, and those with lower incomes (Kleiner & Vorotnikov, 2018).

The impact of criminal background checks is compounded by the fact that Blacks and Hispanics are overrepresented among people with criminal records relative to their representation in the U.S. population, and much less likely to be hired than Whites with a criminal record. Over a quarter of the approximately 110 million people with criminal records in the U.S. are unemployed.<sup>14</sup> Minorities with a criminal record are disproportionately impacted; while the unemployment rate of people with criminal records is 27% overall, 43.6% of Black females and 35.2% of Black males are among the ranks of the unemployed. In comparison, the U.S. unemployment rate was 25% during the Great Depression.<sup>15</sup>

Given minorities’ overrepresentation among people with criminal records, even appropriately developed, job-related criminal background check criteria will negatively impact minority applicants. In its 2012 guidance on criminal history screening, the EEOC cited national statistics showing that racial minorities have substantially higher arrest rates than non-minorities, leading to a presumption of disparate impact in the use of criminal records screens. According to Bureau of Justice Statistics (“BJS”) data, in the 1980 to 2014 time period Blacks comprised only 13% of

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<sup>13</sup> The subject matter experts were unable to reach consensus on the crime of Stalking. One-half of the participants judged the crime to require a Short exclusionary time frame while the remaining participants judged the crime to require a Medium exclusionary time frame.

<sup>14</sup> Bureau of Justice Statistics, 2020; Prison Policy Initiative, 2018.

<sup>15</sup> Prison Policy Initiative, 2018.

the U.S. population but a full 28% of those arrested for crimes.<sup>16</sup> Recent BJS data supports the persistence of such racial differences in criminal histories over time. In 2019, Black males were imprisoned at a rate 5.7 times that of White males, and Hispanic males at a rate of 2.5 times that of White males.<sup>17</sup>

The net effect of long, overbroad “directly related” lists is the disproportionate exclusion of racial and ethnic minorities from occupational practice. Exclusions will impact both applicants and existing licensees since the new Act 53 rules apply to all board actions – refusal to issue a license, refusal to renew a license, suspensions, revocations, and limitations. The lists are also likely to have a chilling effect on people with criminal records interested in training for an occupation as well as those who already possess the necessary education and training but are not yet licensed. Individuals are unlikely to invest the time, money, and other resources required to be licensed if they have committed an offense on the “directly related” list. While Act 53 provides a path to preliminary determinations of licensure eligibility, many qualified applicants will be discouraged by overly inclusive lists and unwilling to believe that individualized assessment will yield a positive outcome. In its *Dothard v. Rawlinson* opinion the Supreme Court recognized the potential for alleged discriminatory policies to have a chilling effect that deters qualified applicants:

“[the] application process might itself not adequately reflect the actual potential applicant pool since otherwise qualified people might be discouraged from applying.”

Identifying only job-related crimes and using the recidivism research to establish appropriate exclusionary timeframes would be less adverse to minorities than the unrestrained use of crimes regardless of how long ago they were committed. Carefully curated lists of “directly related” crimes allow more qualified applicants to enter the profession while also serving the goal of racial justice.

## SUMMARY

The primary intention of criminal background checks is to identify unsuitable applicants from a safety or security perspective and eliminate those applicants from the licensing process (Society for Human Resource Management; SHRM, 2021). There is no reason to exclude people with criminal records who are otherwise qualified and do not present a substantial risk to the profession as defined by Act 53. The lists of “directly related” crimes I reviewed indicate the BPOA boards’ failure to take a systematic, evidence-based approach to identifying only those crimes that link to specific risks inherent in the job duties and work context associated with the occupation and are sufficiently recent to predict the likelihood of re-offending.

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<sup>16</sup> These statistics were generated using the Bureau of Justice Statistics Arrest Data Analysis Tool at [www.bjs.gov](http://www.bjs.gov). (7/20/2021). Snyder, H. N.; Cooper, A. D.; & Mulako-Wangota, J. Bureau of Justice Statistics. (1980-2014 US Arrest Estimates).

<sup>17</sup> Bureau of Justice Statistics, Federal Justice Statistics Program, 2019.



Given the impact of licensing decisions on applicants' lives and livelihood, the appropriate application of Act 53 is critical to identifying and excluding only those applicants who present a substantial risk to the profession. I suggest the boards revisit their lists with a focus on including only job-related crimes.

## ATTACHMENT A:

### TONI S. LOCKLEAR

*APTMetrics*  
150 East Ponce de Leon Ave, Suite 310  
Decatur, GA 30030-2497  
Phone: 404-370-0505

### EDUCATION

Ph.D.	Industrial/Organizational Psychology	Auburn University	1992
M.S.	Industrial/Organizational Psychology	Auburn University	1987
B.S.	Psychology	Kennesaw State University	1984

### PROFESSIONAL EXPERIENCE

2000 to Present

#### ***APTMETRICS***

2021 to Present

*Chief Technical Officer & Litigation Practice Leader.* As the firm's first Chief Technical Officer, responsible for maintaining APTMetrics' technical and legal expertise, and ensuring consultants' ability to deliver quality work. In this capacity responsible for establishing technical standards; employee technical & legal growth and development; providing technical and legal support to the firm's delivery teams; and further developing the firm's litigation support expertise,

Provides litigation support services, including supporting clients through OFCCP compliance audits; serving as an expert witness and consultant to counsel in employment discrimination, harassment, and wage-hour cases; acting as a settlement expert to help carry out the provisions of consent decrees in employment discrimination class actions; and conducting HR process audits to help organizations identify gaps between their current practice and industry best practices and mitigate the risk of litigation.

Consults with Fortune® 100 and public-sector clients on strategies and solutions to select, evaluate, develop, retain, and compensate their top talent and support a diverse workforce. Oversees consulting projects in job analysis, the design and validation of employee selection procedures, performance management, and compensation for clients across a broad range of industries.

2016 to 2021

*Vice President & Litigation Practice Leader.* Headed the Atlanta, GA office of APTMetrics and directed the firm's litigation practice. As Vice President, consulted with Fortune® 100 and public-sector clients on strategies and solutions to select, develop, retain, and compensate their top talent and support a diverse workforce. Oversaw consulting projects in job analysis, the design and validation of employee selection procedures, performance management, and organizational surveys for clients across a broad range of industries, including, manufacturing, consumer products, retail, hospitality, aerospace, and pharmaceuticals.

As Practice Leader, responsible for growing and managing the firm's Litigation Support consulting practice. In this capacity, accountable for practice area strategy and infrastructure, business development, and employee education on legal issues. Also provided litigation support services, including supporting clients through OFCCP compliance audits; serving as an expert witness and consultant to counsel in employment discrimination, harassment, and wage-hour cases; acting as a settlement expert to help carry out the provisions of consent decrees in employment discrimination class actions; and conducting HR process audits to help organizations identify gaps between their current practice and industry best practices and mitigate the risk of litigation.

2011 to 2016

*Managing Director & Litigation Practice Leader.* As Litigation Practice Leader, responsible for managing and building the firm's Litigation Support consulting practice, supporting clients through OFCCP compliance audits, and serving as an expert witness and consultant to counsel in employment discrimination, harassment, and wage-hour cases. Designed and implemented human resources processes to help organizations achieve key business objectives and ensure legal defensibility. Directed consulting projects in job analysis, the design and validation of employee selection procedures, performance management, and organizational surveys, and conducted HR process audits, for clients across a broad range of industries.

2008 to 2011

*Managing Director.* Designed and implemented human resources processes to help organizations achieve key business objectives and ensure legal defensibility. Directed consulting projects in job analysis, the design and validation of employee selection procedures, performance management, and the design and administration of 360-degree feedback and organizational surveys. Provided litigation support services, including supporting clients through OFCCP compliance audits and serving as an expert witness and consultant to counsel in employment discrimination and wage-hour cases. Conducted HR process audits to help organizations identify gaps between their current practice and industry best practices and mitigate the risk of litigation.

2000 to 2008	<i>Regional Director, Western Region.</i> Directed the Seattle, Washington office of APTMetrics.
1992 to 2000	<b>THE BOEING COMPANY</b>
1994 to 2000	<i>Manager, Assessment Services.</i> Assessment Services is a company-wide program responsible for the development, validation and implementation of pre-employment tests, the company's management Assessment Center, and other assessment tools. Principal activities included supervising employees and external consultants in job analysis, the development and validation of selection procedures such as written examinations, structured interviews, and video assessments; developing test administration and scoring procedures; and providing technical guidance to the company on job analysis, test development, employee selection, training needs assessment, and measurement issues. Also developed and implemented the company's 360-degree assessment process.
1992 to 1993	<i>Assessment Specialist.</i> Conducted job analysis and developed and validated written examinations for entry-level manufacturing jobs.
1986 to 1991	<b>CENTER FOR BUSINESS AND ECONOMIC DEVELOPMENT, AUBURN UNIVERSITY AT MONTGOMERY</b>
1990 to 1991	<i>Project Manager.</i> The Center is a university HR consulting firm whose principal activities include private and public-sector personnel administration, litigation support in EEO cases, organizational development, job analysis, and related research in industrial/organizational psychology and personnel management. Principal activities included project management; supervising and training professional support staff; developing selection procedures such as written examinations, structured interviews, and work sample exercises; conducting job analysis; developing hiring and transfer procedures; and developing training manuals.
1986 to 1989	<i>Research Associate.</i> Developed employee selection procedures, conducted job analysis, designed program evaluation studies, developed specifications for new job classifications, conducted training workshops, developed training manuals, and analyzed data.

## TEACHING EXPERIENCE

1984 to 1986

### **AUBURN UNIVERSITY**

*Teaching Instructor.* Taught introductory psychology and statistics to undergraduates

## PUBLICATIONS

Lundquist, K. K., Locklear, T. S., & Lippstreu, M. (2017). Using your data wisely: Proactive monitoring of employment disparities. In S. B. Morris & E. M. Dunleavy (Eds.), *Adverse Impact Analysis: Understanding Data, Statistics, and Risk*. New York: Psychology Press.

Keeney, J. & Locklear, T. S. (2014, November). Keeping background checks in check. *Talent Management*.

Lewis, R. E. & Locklear, T. S. (2014, August). Guarding against wage and hour litigation. *Talent Management*.

Keeney, J., Sacco, J. M, & Locklear, T. S. (2013, October 9). Legal defensibility of criminal background checks. *Corporate Counsel*. Retrieved from: <http://www.law.com/corporate-counsel/>.

Veres, J. G. III, Sims, R. R., Locklear, T. S., Jackson, K. A., & O'Leary, R. S. (2001). Job analysis: Yesterday, today, and tomorrow. In G. R. Ferris, M. R. Buckley & D. B. Fedor (Eds.), *Human Resource Management: Perspectives, Context, Functions and Outcomes* (4th Ed.). Englewood Cliffs, NJ: Prentice-Hall.

Veres, J. G. III, Locklear, T. S., Sims, R. R., & Prewett, A. J. (1996). Job analysis in human resource management practice. In G. R. Ferris & M. R. Buckley (Eds.), *Human Resource Management: Perspectives, Context, Functions and Outcomes* (3rd Ed.) (pp. 122-154). Englewood Cliffs, NJ: Prentice-Hall.

Locklear, T. S. (1992). *The exploration and evaluation of an index to detect inaccurate respondents to structured job analysis questionnaires*. Unpublished doctoral dissertation, Auburn University, Alabama. (UMI No. 9225363)

Veres, J. G., Sims, R. R., & Locklear, T. S. (1991). Improving the reliability of Kolb's revised Learning Style Inventory. *Educational and Psychological Measurement*, 51, 143-150.

Veres, J. G. III, Locklear, T. S., & Sims, R. R. (1990). Job analysis in practice: A brief review of the role of job analysis in human resource management. In G. R. Ferris, K. M. Rowland & M. R. Buckley (Eds.), *Human Resource Management: Perspectives and Issues* (2nd Ed.) (pp. 79-103). Boston: Allyn and Bacon.

Locklear, T. S., Granger, B. B., & Veres, J. G. III. (1989). Evaluation of a behaviorally based appraisal system. *Journal of Managerial Issues*, 1, 66-75.

Sims, R. R., Sims, S. J., Veres, J. G., & Locklear, T. S. (1989). A view from my side: Managing AIDS in the workplace. *Training and Management Development Methods*, 6, 137-144.

Sims, R. R., Veres, J. G., Locklear, T. S., & Wells, R. B. (1987). Training for public managers: The Alabama certified public manager program. *Journal of European Industrial Training*, 11(6), 11-13.

### **PROFESSIONAL AFFILIATIONS**

American Psychological Association (APA)

Society for Industrial and Organizational Psychology, Inc. (SIOP)

Georgia Association for Industrial and Organizational Psychology (GAIOP)

Society for Human Resource Management

### **PROFESSIONAL SERVICE**

SIOP Awards Subcommittee Chair, 2020-2021 & 2021-2022 Award Cycles: Zedeck-Jacobs Adverse Impact Reduction Research Initiative and Action Grant

SIOP Awards Subcommittee Member, 2019-2020 Award Cycle: Zedeck-Jacobs Adverse Impact Reduction Research Initiative and Action Grant

SIOP Task Force on Assessment Member, 2021-2022

## PRESENTATIONS

- 2021 Locklear, T. S. (Panelist). In B. Timko (Chair), *Notorious and Never Forgotten: RBG's Impact on I/O Psychology*. Panel Discussion conducted at the 36th annual conference of the Society for Industrial and Organizational Psychology, Virtual, April 2021.
- 2019 Locklear T. S. (Panelist). In S. Herschcovis & M. E. Schouten (Chairs), *Gender Equity at Work: Pay Inequity and Underrepresentation*. Professional Development Workshop conducted at the Academy of Management Conference, Boston. August 2019.
- 2018 Locklear, T. S. & Foster, K. E. *Employment Decisions--The Current Legal and Ethical Landscape*. Workshop conducted for the Georgia Association of Industrial and Organizational Psychology (GAIOP). November 2018.
- 2017 Locklear, T. S. (Panelist). In D. B. Kohrman (Moderator), *Tech Progress that Enables Age Bias: Discrimination in Hiring and Big Data's Potential to Limit Opportunities for Older Workers*. Panel conducted at the AARP Foundation's conference, ADEA at 50: Silver Anniversary or Midlife Crisis?, University of California, Berkeley, School of Law. November 2017.
- 2017 Locklear, T. S. *Validation Issues in the Use of Big Data*. In B. B. Elfvin (Chair), *Impact Analysis: When to Use It & the Statistics to Support It*. Panel conducted at the annual convention of the National Employment Lawyer's Association, San Antonio. June 2017.
- 2017 Locklear, T. S. & Caver, K. *The Intersection of Diversity and Defensibility*. Invited Friday Seminar conducted at the 32nd annual conference of the Society for Industrial and Organizational Psychology, Orlando. April 2017.
- 2016 Locklear, T. S. *Legal Update: Emerging Areas of Concern for I/Os*. Presentation to Dallas Area Industrial Organizational Psychologists (DAIOP). October 2016.
- 2016 Locklear, T. S. & Lundquist, K. K. *Prepare for the Future of Pay Equity*. A Society for Human Resource Management webcast. September 2016.
- 2016 Lowrie, J., Locklear T. S., Moss, S., & Rafuse, N. E. *Moneyball in the Workplace: Using People Analytics and Big Data as a Recruitment and Selection Device*. Polsinelli Labor, Employment and Benefits Conference, Denver. September 2016.

- 2016 Locklear, T. S. & Keeney, J. *Update on Legal Context for Employment*. Workshop conducted for the Georgia Association of Industrial and Organizational Psychology (GAIOP). August 2016.
- 2016 Keeney, J. & Locklear, T. S. *Criminal Background Checks: Practical Issues for Employers and EEOC Concerns*. In A. A. Ali & A. M. Ryan (Chairs), *Ex-Offenders Navigating the Hiring Process: Insights from Research and Practice*. Symposium conducted at the 31st annual conference of the Society for Industrial and Organizational Psychology, Anaheim. April 2016.
- 2016 Locklear, T. S. *Functional Job Architecture: Practical Solutions for Large-Scale Job Analysis*. Master Tutorial conducted at the 31st annual conference of the Society for Industrial and Organizational Psychology, Anaheim. April 2016.
- 2015 Locklear, T. S. (Panelist). In J. Keeney & T. S. Locklear (Chairs), *Conducting Criminal Background Checks... Without Breaking the Law*. Panel discussion conducted at the 30th annual conference of the Society for Industrial and Organizational Psychology, Philadelphia. April 2015.
- 2015 Goldstein, H., Klein, A., Locklear, T. S., & Lossia, D. *The Role of Experts at Class Certification and Beyond*. Panel conducted at the 13<sup>th</sup> annual Impact Fund Class Action Conference, Oakland. February 2015.
- 2013 Lundquist, K. K., Ashe, R. L., Jr., Locklear, T. S., & Barsness, P. *Assessing the Legal Risks of Your Assessments*. Workshop conducted at the 28th annual conference of the Society for Industrial and Organizational Psychology, Houston. April 2013.
- 2012 Locklear, T. S., & Lewis, R. E. *Analyzing Jobs to Determine Exemption Status Under Wage-Hour Law*. In R. E. Lewis & T. S. Locklear (Chairs), *You've Got a Problem? We've Got the Solution: Job Analysis!* Symposium conducted at the 27th annual conference of the Society for Industrial and Organizational Psychology, San Diego. April 2012.
- 2012 Lewis, R. E., & Locklear, T. S. (Chairs). *You've Got a Problem? We've Got the Solution: Job Analysis!* Symposium conducted at the 27th annual conference of the Society for Industrial and Organizational Psychology, San Diego. April 2012.
- 2012 Locklear, T. S. (Chair). *Applied Technology: The I-O Psychologist as Customer*. Symposium conducted at the 27th annual conference of the Society for Industrial and Organizational Psychology, San Diego. April 2012.



- 2011 Lewis, R. E., & Locklear, T. S. *Wage and Hour Law: Your Company's Not Exempt from Litigation*. Webinar presented by Talent Management magazine. September 2011.
- 2011 Lundquist, K. K., & Locklear, T. S. *What You Don't Know Can Hurt You: The Value of an HR Process Audit*. Webinar presented by the Connecticut Society for Human Resource Management. March 2011.
- 2003 Locklear, T. S., & Kamin, A. M. (Chairs). *Attorneys' Perspectives on the Role of Experts in Employment Litigation*. Symposium conducted at the 18th annual conference of the Society for Industrial and Organizational Psychology, Orlando. April 2003.
- 2002 Locklear, T. S., & Scott, J. C. (Chairs). *Linking 360-Degree Feedback to Measures of Individual and Organizational Behavior*. Symposium conducted at the 17<sup>th</sup> annual conference of the Society for Industrial and Organizational Psychology, Toronto. April 2002.
- 2001 Lammlein, S. E., Schneider, R. J., Bosshardt, M. J., & Locklear, T. S. *Content Validation of an Equipment Driver Work Sample*. Paper presented at the 15th annual conference of the Society for Industrial and Organizational Psychology, San Diego. April 2001.
- 1988 Sadowski, C. J., Locklear, T. S., & Grah, C. R. *Structural properties of ability conceptualizations in age and sex stereotypes*. Paper presented at the meeting of the American Psychological Association, Atlanta. (ERIC Reproduction Service No. ED 303 761). August 1988.
- 1988 Chaplin, W. F. & Locklear, T. S. *Construct similarity and the convergence between self and other personality ratings*. In K. Lanning (Chair), *New approaches to the study of personality*. Symposium conducted at the meeting of the American Psychological Association, Atlanta. August 1988.

## ATTACHMENT B: References

- Alper, M., Durose, M.R., Markman, J. (2018). *2018 update on prisoner recidivism: A 9-year follow-up period (2005-2014)*. Retrieved from <http://www.bjs.gov/> on June 30, 2018.
- Beck, A. J., & Shipley, B. E. (1997). *Recidivism of prisoners released in 1983*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47, 327-359.
- Blumstein, A., & Nakamura, K. (2012). *Extension of current estimates of redemption times: Robustness testing, out-of-state arrests, and racial differences*. U.S. Department of Justice, Document No 240100, Award Number 2009-IJ-CX-0008
- Brame, R., Mulvey, E.P., Schubert, C.A., & Piquero, A.R. (2016). Recidivism in a sample of serious adolescent offenders. *Journal of Quantitative Criminology*, 34(1), 167-187.
- Fabelo, T. (2002). The impact of prison education on community integration of inmates: The Texas case. *Journal of Correctional Education*, 53(3), 106-110.
- Kleiner, M.M. & Vorotnikov, E.S. (2018, November). *At what cost: State and National Estimates of the economic costs of occupational licensing*. Institute for Justice.
- Kurlychek, M.C., Brame, R. & Bushway, S.D. (2006). Scarlet letter and recidivism: Does an old criminal record predict future offending? *Criminology and Public Policy*, 5(3), 483-504
- Kurlychek, M.C., Brame, R., Bushway, S.D. (2007). Enduring risk? Old criminal records and predictions of future criminal involvement. *Crime and Delinquency*, 53 (1), 64-83.
- Kurlychek, M.G., Bushway, S.D., & Brame, R. (2012). Long-term crime desistance and recidivism patterns-evidence from the Essex County convicted felon study. *Criminology*, 50 (1), 71-103.
- Maltz, M. D. (1984). *Recidivism*. Orlando, FL: Academic Press.
- Nally, J. M., Lockwood, S. R., Ho, T., & Knutson, K. (2014). Post-release recidivism and employment among different types of offenders: A 5-year follow-up study in the United States. *International Journal of Criminal Justice Sciences*, 9(1), 16-34.
- Pennsylvania Department of State, Bureau of Professional and Occupational Affairs. (2018). *Review of state professional and occupational licensure board requirements and processes*. Executive Order 2017-03, Commonwealth of Pennsylvania.

Rodriguez, M. N., & Emsellem, M. (2011). 65 million 'need not apply': The case for reforming criminal background checks for employment. *The National Employment Law Project*.

Society for Human Resource Management. (2021). *SHRM Toolkit: Conducting background investigations and reference checks*. Retrieved from <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/conductingbackgroundinvestigations.aspx>.

U.S. Department of the Treasury. (2015). *Occupational licensing: A framework for policymakers*. Retrieved from: [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf)

U.S. Equal Employment Opportunity Commission, Civil Service Commission, Department of Justice, & Department of Labor (1978). Uniform guidelines on employee selection procedures. *Federal Register*, 43(166), 38290-38315.

U.S. Equal Employment Opportunity Commission. (2012). *Enforcement guidance on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq.

## ATTACHMENT C: Documents Reviewed

Act 53 of 2020. 63 Pa. C.S. § 3113.
Act 53 of 2020 Best Practices Guide. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/Pages/ACT-53-2020.aspx">https://www.dos.pa.gov/ProfessionalLicensing/Pages/ACT-53-2020.aspx</a>
BPOA Boards' Criminal Offense Lists Unnecessarily Exclude Qualified Workers. Prepared by Community Legal Services, February 1, 2021.
Certified Registered Nurse Practitioner Pennsylvania Licensure Requirements. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Certified-Registered-Nurse-Practitioner-Licensure-Requirements-Snapshot.aspx">https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Certified-Registered-Nurse-Practitioner-Licensure-Requirements-Snapshot.aspx</a>
Clinical Nurse Specialist Pennsylvania Licensure Requirements. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Clinical-Nurse-Specialist-Licensure-Requirements-Snapshot.aspx">https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Clinical-Nurse-Specialist-Licensure-Requirements-Snapshot.aspx</a>
Certified Registered Nurse Practitioner Pennsylvania Licensure Requirements. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Certified-Registered-Nurse-Practitioner-Licensure-Requirements-Snapshot.aspx">https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Certified-Registered-Nurse-Practitioner-Licensure-Requirements-Snapshot.aspx</a>
CLS Objections to Select Boards' Proposed "Directly Related Crimes" Lists. Prepared by Brendan Lynch & Katie Svoboda-Kindle, Community Legal Services, March 2021.
Discussion Paper: Scope of Practice for Nurse Practitioners. American Association of Nurse Practitioners, 2019.
Discussion Paper: Standards of Practice for Nurse Practitioners. American Association of Nurse Practitioners, 2019.
Letter, Dated November 20, 2020, to State Board of Nursing and Office of General Counsel, Pennsylvania Department of State from ACNM, PANA, PCNP, & PSNA re: Comment   Proposed Act 53 of 2020 List of Crimes Board of Nursing.
Licensed Practical Nurses Pennsylvania Licensure Requirements. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Licensed-Practical-Nurses-Licensure-Requirements-Snapshot.aspx">https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Licensed-Practical-Nurses-Licensure-Requirements-Snapshot.aspx</a>
Occupational Therapy Education and Licensure Board - Schedule of Criminal Convictions That May Constitute Grounds to Refuse to Issue, Suspend or Revoke a License, Certificate, Registration or Permit. Community Legal Services PowerPoint Presentation.
Pennsylvania Commission on Sentencing. Summary of Sentences by Offense Category, Statewide, 2018. Run Date: September 21, 2021.
Rationale for Crimes Directly Related to the Profession of Nursing and Dietetics-Nutrition. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Documents/Board%20Documents/Act-53-List-Rationale.pdf">https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Documents/Board%20Documents/Act-53-List-Rationale.pdf</a>

Registered Nurses Pennsylvania Licensure Requirements. Retrieved from <a href="https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Registered-Nurses-Licensure-Requirements-Snapshot.aspx">https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Nursing/Pages/Registered-Nurses-Licensure-Requirements-Snapshot.aspx</a>
Sharon M. Dietrich & Brendan P. Lynch. Reentry Initiatives for Individuals with Criminal Records: Pennsylvania Reforms Occupational Licensing, Expands Clean Slate. <i>Pennsylvania Bar Association Quarterly</i> , 92 (2021): 122-131.
SB 637 Will Remove Criminal Record Barriers to Occupational Licensing, Is a Bipartisan Workforce Development/Economic Recovery Bill. SB 637 Fact Sheet. Prepared by Community Legal Services.
State Board of Nursing - Schedule of Criminal Convictions That May Constitute Grounds to Refuse to Issue, Suspend or Revoke a License, Certificate, Registration or Permit
State Board of Physical Therapy - Schedule of Criminal Convictions That May Constitute Grounds to Refuse to Issue, Suspend or Revoke a License, Certificate, Registration or Permit
State Board of Landscape Architects - Schedule of Criminal Convictions That May Constitute Grounds to Refuse to Issue, Suspend or Revoke a License, Certificate, Registration or Permit
State Board of Medicine – Schedule of Criminal Convictions That May Constitute Grounds to Refuse to Issue, Suspend or Revoke a License, Certificate, Registration or Permit
State Registration Board for Professional Engineers, Land Surveyors and Geologists - Schedule of Criminal Convictions That May Constitute Grounds to Refuse to Issue, Suspend or Revoke a License, Certificate, Registration or Permit

## ATTACHMENT D: Overview of Nursing Occupations

The current study will be focused on three Nursing occupations licensed by the Pennsylvania State Board of Nursing:

- Certified Registered Nurse Practitioner
- Licensed Practical Nurses
- Registered Nurses (including Advanced Practice Registered Nurses such as Nurse Midwives & Nurse Anesthetists)

Each occupation will be described on the following pages. The descriptions include the following:

1. **“Key” Work Activities** developed using the Detailed Work Activities from O\*NET OnLine (<https://www.onetonline.org/>). The O\*NET Detailed Work Activities were reviewed and revised in focus groups with input from nursing professionals.

*“Key” Work Activities were defined as the most **important** and frequently **performed** job responsibilities for a given occupation across common work settings*

2. **Common Work Settings** developed using data from the U.S. Bureau of Labor Statistics (<https://www.bls.gov/>). The U.S. Bureau of Labor Statistics work settings were reviewed and updated in focus groups with input from nursing professionals.
3. **Risk Factors** developed by APTMetrics and reviewed and revised in focus groups with nursing professionals. Risk factors are characteristics of an occupation which give an individual with a criminal history the opportunity to repeat the criminal behavior on the job. Risk factors are influenced by both job responsibilities and work settings.

## Certified Registered Nurse Practitioner

Nurse Practitioners diagnose and treat acute, episodic, or chronic illness, independently or as part of a healthcare team. They may focus on health promotion and disease prevention. They may order, perform, or interpret diagnostic tests such as lab work and x rays. They may prescribe medication. Must be registered nurses who have specialized graduate education.

Key Work Activities are included in the table below.

<b>Certified Registered Nurse Practitioner Key Work Activities</b>
Administer non-intravenous medications and immunizations.
Advise patients on effects of health conditions or treatments and/or healthcare system processes.
Analyze quantitative data, test data or images to inform diagnosis or treatment and/or determine the effectiveness of Rx or therapies.
Apply bandages, dressings, or splints.
Consult & collaborate with other healthcare professionals to plan or provide treatment.
Record patient medical histories
Communicate detailed medical information, medical procedures, test results, diagnoses, Rx plan, and/or care to patients & family members.
Develop medical treatment plans.
Diagnose medical conditions.
Order medical diagnostic or clinical tests.
Establish nursing policies or standards.
Follow protocols or regulations for healthcare activities.
Examine patients to assess general physical condition, functioning, capabilities, and/or health.
Maintain medical or professional knowledge, including maintaining licensure.
Monitor patient conditions during treatments, procedures, or activities.
Operate diagnostic or therapeutic medical instruments or equipment.
Prescribe treatments, assistive medical devices, and/or therapies
Prescribe medications.
Provide health and wellness advice to patients, program participants, or caregivers.
Record patient medical histories.
Refer patients to other healthcare practitioners, health resources, or specialists.
Schedule patient procedures or appointments.
Supervise patient care personnel (e.g., application of bandages, dressings, or splints).
Train patients, family members, and/or other non-medical personnel in caregiving, techniques for managing disabilities or illnesses, etc.
Treat acute illnesses, infections, or injuries.
Treat chronic diseases or disorders.
Treat medical emergencies, including responding to patient codes
Monitor medical facility activities to ensure adherence to standards or regulations.

Common work settings are included in the table below

<b>Certified Registered Nurse Practitioner Work Settings</b>
Hospitals (federal, state, local, and private)
Nursing Homes/Extended Care Facilities
Clinics (e.g., Urgent Care, Minute Clinics)
Physicians' Offices
Nurse Practitioner Offices
Home Healthcare Services
Schools
Private Homes
Prisons
Hospices
Ambulatory Surgical Centers
Telehealth
Insurance companies
Corporate Offices



## Registered Nurse (including Advanced Practice Registered Nurses such as Nurse Midwives & Nurse Anesthetists)

Registered Nurses assess patient health problems and needs, develop, and implement nursing care plans, and maintain medical records. Administer nursing care to ill, injured, convalescent, or disabled patients. They may advise patients on health maintenance and disease prevention or provide case management. Licensing or registration required.

Nurse Midwives diagnose and coordinate all aspects of the birthing process, either independently or as part of a healthcare team. May provide well-woman gynecological care. Must have specialized, graduate nursing education.

Nurse Anesthetists administer anesthesia, monitor patient's vital signs, and oversee patient recovery from anesthesia. May assist anesthesiologists, surgeons, other physicians, or dentists. Must be registered nurses who have specialized graduate education.

Key work activities are included in the table below.

<b>Registered Nurse Key Work Activities</b>
Administer anesthetics or sedatives to control pain.
Administer basic health care or medical treatments.
Administer blood, other fluids, or medications intravenously.
Administer non-intravenous medications and immunizations.
Advise communities or institutions re: health or safety issues.
Advise or inform other medical personnel regarding healthcare issues, patient conditions, and care.
Advise patients on effects of health conditions or treatments, and/or healthcare system processes.
Advocate for patients' best interests.
Analyze patient data to determine patient needs or Rx goals.
Analyze quantitative data, test data or images to inform diagnosis or treatment and/or determine the effectiveness of Rx or therapies.
Apply bandages, dressings, or splints.
Assess patient work, living, or social environments.
Assist healthcare practitioners during examinations or treatments.
Assist patients with hygiene or daily living activities.
Care for women during pregnancy and childbirth.
Clean medical equipment or facilities.
Consult & collaborate with other healthcare professionals to plan or provide treatment.
Collect biological specimens from patients.
Collect medical information from patients, family members, or other medical professionals.
Record patient medical histories
Communicate detailed medical information, medical procedures, test results, diagnoses, Rx plan, and/or care to patients & family members.
Communicate health and wellness information to the general public.
Compile data or documentation.

<b>Registered Nurse Key Work Activities</b>
Conduct health or safety training programs.
Consult with others regarding safe or healthy equipment or facilities.
Design and/or develop public or employee health or education programs.
Develop procedures to evaluate organizational activities.
Diagnose medical conditions.
Order medical diagnostic or clinical tests.
Establish nursing policies or standards.
Evaluate data quality.
Follow protocols or regulations for healthcare activities.
Examine patients to assess general physical condition, functioning, capabilities, and/or health.
Evaluate patient outcomes to determine effectiveness of treatments.
Examine and maintain medical instruments or equipment to ensure proper operation.
Implement advanced life support techniques.
Interpret cultural or religious information for others.
Maintain medical facility records, inventories of medical supplies or equipment, etc.
Maintain medical or professional knowledge, including maintaining licensure.
Measure the physical or physiological attributes of patients.
Monitor patient conditions during treatments, procedures, or activities.
Operate diagnostic or therapeutic medical instruments or equipment.
Perform clerical work in medical settings, including ordering medical supplies/equipment.
Prepare medical supplies or equipment for use.
Sterilize medical equipment or instruments.
Prepare medications or medical solutions.
Prepare patients physically for medical procedures.
Prepare reports summarizing patient diagnostic or care activities.
Process healthcare paperwork.
Provide health and wellness advice to patients, program participants, or caregivers.
Record patient medical histories
Refer patients to other healthcare practitioners, health resources, or specialists.
Schedule patient procedures or appointments.
Select medical equipment for addressing patient needs.
Supervise medical support personnel.
Supervise patient care personnel (e.g., application of bandages, dressings, or splints).
Support the professional development of others, including educating or facilitating education of other nurses
Teach classes in area of specialization or medical procedures to healthcare personnel.
Test biological specimens to gather information about patient conditions.
Test patient nervous system functioning.
Train patients, family members, and/or other non-medical personnel in caregiving, techniques for managing disabilities or illnesses, etc.
Treat acute illnesses, infections, or injuries.
Treat chronic diseases or disorders.

<b>Registered Nurse Key Work Activities</b>
Treat medical emergencies, including responding to patient codes
Treat patients using physical therapy techniques. (e.g., range of motion)
Monitor medical facility activities to ensure adherence to standards or regulations.
Manage healthcare operations and/or direct healthcare delivery programs.
Assess patients, patients' families, etc. for potential violence and respond appropriately (e.g., notify security, call police or EMTs).
Develop medical treatment plans.
Prescribe medications.
Train medical providers.
Develop and implement anesthesia plan for patients.

Common work settings are included in the table below

<b>Registered Nurse Work Settings</b>
Hospitals (federal, state, local, and private)
Nursing Homes/Extended Care Facilities
Clinics (e.g., Urgent Care, Minute Clinics)
Physicians' Offices
Nurse Practitioner Offices
Home Healthcare Services
Schools
Private Homes
Prisons
Hospices
Ambulatory Surgical Centers
Telehealth
Insurance Companies
Corporate Offices
Birthing Centers

## Licensed Practical Nurse

Licensed Practical Nurses care for ill, injured, or convalescing patients or persons with disabilities in nursing homes, clinics, private homes, group homes, and similar institutions. They work under the supervision of a registered nurse. Licensing required.

Key work activities are included in the table below.

<b>Licensed Practical Nurse Key Work Activities</b>
Administer basic health care or medical treatments.
Administer blood, other fluids, or medications intravenously.
Analyze quantitative data to determine effectiveness of treatments or therapies.
Apply bandages, dressings, or splints.
Assist healthcare practitioners during examinations or treatments.
Assist patients with hygiene or daily living activities.
Clean medical equipment or facilities.
Consult & collaborate with other healthcare professionals to plan or provide treatment.
Collect biological specimens from patients.
Record patient medical histories
Communicate with patients and/or family members to explain medical procedures or test results, facilitate patient visits, and/or address questions or concerns during callbacks.
Maintain medical facility records, inventories of medical supplies or equipment, etc.
Maintain medical or professional knowledge, including maintaining licensure.
Manage preparation of special meals or diets.
Measure the physical or physiological attributes of patients.
Monitor patient conditions during treatments, procedures, or activities.
Operate diagnostic or therapeutic medical instruments or equipment.
Perform clerical work in medical settings, including ordering medical supplies/equipment.
Prepare medical supplies or equipment for use.
Sterilize medical equipment or instruments.
Prepare patients physically for medical procedures.
Record patient medical histories
Schedule patient procedures or appointments.
Supervise patient care personnel (e.g., application of bandages, dressings, or splints).
Test biological specimens to gather information about patient conditions.
Train patients, family members, and/or other non-medical personnel in caregiving, techniques for managing disabilities or illnesses, etc.
Treat patients using physical therapy techniques. (e.g., range of motion)

Common work settings are included in the table below

<b>Licensed Practical Nurse Work Settings</b>
Hospitals (federal, state, local, and private)
Nursing Homes/Extended Care Facilities
Clinics (e.g., Urgent Care, Minute Clinics)
Physician's Offices
Nurse Practitioner Offices
Home Healthcare Services
Schools
Private Homes
Prisons
Hospices

## Risk Factors

Risk factors were reviewed and edited in focus groups with nursing professionals. The focus group participants determined that the risk factors were common across Certified Registered Nurse Practitioner, Registered Nurse, and Licensed Nurse Practitioner roles.

Nursing Risk Factors	
Risk Factor	Definition
<b>Access to Personal Property</b>	Ability to access property belonging to coworkers, patients, and/or patients' families at any place in the hospital/facility, including patients' rooms, breakrooms, offices, lockers, etc.
<b>Access to Hospital/Facility Property</b>	Ability to access property belonging to hospital/facility including medical equipment and supplies (e.g., N-95 masks, PPE).
<b>Access to Sensitive Information/Medical Records</b>	Ability to review and record information of patients, coworkers, and other individuals, including personally identifiable information (e.g., date of birth, social security) and medical history available in medical records and regional & statewide electronic records.
<b>Access to Drugs</b>	Ability to access or divert prescription drugs, other forms of medication, and/or prescription pads.
<b>Access to Secured Areas</b>	Ability to access secure areas within the hospital/facility (including medicine storage cabinets, lock boxes, supply rooms, & offices), patient homes, or other work settings, and to provide access to someone not authorized to access those areas (e.g., badging family or friends into secure areas).
<b>Access to Patients</b>	Ability to interact verbally or physically with patients any place in the hospital/facility, including areas that may place them in vulnerable positions such as patient rooms, treatment rooms, restrooms etc.
<b>Access to Vulnerable Populations</b>	Access to vulnerable populations such as children, the elderly, the disabled, cognitively impaired, and the sedated
<b>Access to Patients' Families, Vendors, and Coworkers</b>	Ability to interact verbally or physically with patients' families, vendors, or coworkers any place in the hospital/facility (including waiting rooms, lobbies, patient rooms, storerooms, offices, parking lot, restrooms, etc.), patients' homes, or other work settings.

ATTACHMENT E: Nursing Demonstration Exercise Results

		Nursing Occupation to Crime Linkages								Directly Related Time Frame Years since conviction that the crime should be considered directly related	
		X = Risk factors that are the basis for Subject Matter Experts' linkages								Short (1-3), Medium (4-6); Long (7-9)	
		Linkage Yes/No	Access to Personal Property	Access to Hospital/ Facility Property	Access to Sensitive Information/ Medical Records	Access to Drugs	Access to Secured Areas	Access to Patients	Access to Vulnerable Populations	Access to Patients' Families, Vendors, and Coworkers	
	CRIMINAL CHARGE										
Forgery	CRIME DESCRIPTION Makes/issues/alters money, tokens, credit cards, badges, etc.; Forges signatures Creates/executes/issues documents such as wills, contracts, etc.	No									
Identity Theft	Possesses or uses the identifying information of another person (e.g., SSN, driver's license, electronic signature) for an unlawful purpose including financial identity theft.	Yes	X		X			X	X	X	Medium
Drugs - Possession with Intent to Distribute	Distributes/manufactures/ delivers drugs; dispenses without prescription; includes intent to distribute	Yes				X	X	X	X		Short
Drugs - Simple Possession	Possesses a controlled or counterfeit substance not obtained by a valid prescription or order of a healthcare practitioner; Exchanges a controlled or counterfeit substance	Yes	X	X		X	X	X	X	X	Short
DUI - Controlled Substances or Alcohol	Drives/operates a vehicle under the influence of controlled substances, or sufficient alcohol or drugs to impair an individual's ability to safely drive or operate the vehicle.	No									
Marijuana - Possession	Possesses a small amount of marijuana for personal use or distribution but not for sale.	No									

# ATTACHMENT E: Nursing Demonstration Exercise Results

		Nursing Occupation to Crime Linkages								Directly Related Time Frame Years since conviction that the crime should be considered directly related	
		X = Risk factors that are the basis for Subject Matter Experts' linkages									
		Linkage Yes/No	Access to Personal Property	Access to Hospital/ Facility Property	Access to Sensitive Information/ Medical Records	Access to Drugs	Access to Secured Areas	Access to Patients	Access to Vulnerable Populations	Access to Patients' Families, Vendors, and Coworkers	
	CRIMINAL CHARGE										Short (1-3), Medium (4-6); Long (7-9)
	Adulterated or Misbranded Drugs	No									
	Receiving Stolen Property	No									
	Retail Theft (Misdemeanor)	No									
	Retail Theft (Felony)	Yes	X	X		X	X	X	X	X	Short
	Theft by Unlawful Taking or Disposition (Misdemeanor)	No									
	Theft by Unlawful Taking or Disposition (Felony)	Yes	X	X		X	X	X	X	X	Short



ATTACHMENT E: Nursing Demonstration Exercise Results

		Nursing Occupation to Crime Linkages								Directly Related Time Frame Years since conviction that the crime should be considered directly related		
		X = Risk factors that are the basis for Subject Matter Experts' linkages										
	CRIMINAL CHARGE	CRIME DESCRIPTION	Linkage Yes/No	Access to Personal Property	Access to Hospital/ Facility Property	Access to Sensitive Information/ Medical Records	Access to Drugs to Drugs	Access to Secured Areas	Access to Patients	Access to Vulnerable Populations	Access to Patients' Families, Vendors, and Coworkers	
	Theft by Deception	Obtains or withholds an individual's property by deception (e.g., creates a false impression as to value or intentions; withholds information that would affect another's judgement regarding a transaction)	No									Short (1-3), Medium (4-6); Long (7-9)
	Simple Assault	Fights with another by mutual consent; Attempts to cause bodily injury to another person; Knowingly or recklessly causes bodily injury; Physically menaces another to cause fear of serious bodily injury.	No									
	Child Endangerment	As a parent, guardian, or person supervising a child, endangers the welfare of child under 18; In an official capacity, prevents/interferes with reporting of suspected child abuse.	Majority No <sup>*</sup>									
	Stalking	Repeatedly follows or communicates with a person without proper authority, with an intent to place the person in reasonable fear of injury or to cause emotional distress to the person.	Split Decision <sup>^</sup>						X	X	X	Short/Medium (3-4 years)

ATTACHMENT E: Nursing Demonstration Exercise Results

		Nursing Occupation to Crime Linkages X = Risk factors that are the basis for Subject Matter Experts' linkages								Directly Related Time Frame Years since conviction that the crime should be considered directly related	
		Linkage Yes/No	Access to Personal Property	Access to Hospital/ Facility Property	Access to Sensitive Information/ Medical Records	Access to Drugs	Access to Secured Areas	Access to Patients	Access to Vulnerable Populations	Access to Patients' Families, Vendors, and Coworkers	
CRIMINAL CHARGE	CRIME DESCRIPTION										Short (1-3), Medium (4-6); Long (7-9)
Harassment	Strikes, shoves, or kicks another person or threatens to inflict harm; Follows another person; Communicates in a lewd, lascivious, or threatening manner; Communicates repeatedly in an anonymous manner or at extremely inconvenient hours; Engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose.	No									
Terroristic Threats	Directly or indirectly communicates a threat to commit a crime of violence or causes the evacuation of a building or other facility; Causes serious public inconvenience.	No									

\*Majority No = Panel was unable to reach consensus; the majority of the SMEs judged the crime not to be directly related.

^Split Decision = Panel was unable to reach consensus; half of the SMEs judged the crime to be directly related and half did not.