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## The Exclusion of Public Legal Education from Mandatory and Aspirational State Pro Bono Service Requirements

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# THE EXCLUSION OF PUBLIC LEGAL EDUCATION FROM MANDATORY AND ASPIRATIONAL STATE PRO BONO SERVICE REQUIREMENTS

Amy L. Wallace<sup>1</sup>

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## INTRODUCTION

The idea of pro bono legal service can be found in the first written code of ethics for lawyers in the United States in 1887.<sup>2</sup> It is embedded in legal education and practice. Every year, lawyers and law students across the United States engage in countless hours of pro bono service. There are over 1.3 million lawyers in the country<sup>3</sup> and more than one hundred thousand law students enrolled in law school.<sup>4</sup> Lawyers perform an average of thirty-seven hours of pro bono work per year.<sup>5</sup> They reference several factors that motivate them to perform this work, but the desire to help people in need ranks highest.<sup>6</sup> Professional duty is also listed as an important factor for lawyers choosing to perform pro bono work.<sup>7</sup> The moral obligation to help those who do not have access to the legal profession is captured in the mandatory and aspirational pro bono requirements codified in virtually every state. States set independent expectations for attorneys and sometimes law students. The state standards all include the most essential direct legal services needed to address the urgent needs of those who cannot afford legal representation. The critical importance of direct pro bono legal representation cannot be overstated.

Many states also include other voluntary legal activities lawyers can perform to assist their communities. Public legal education projects are programs where law students and lawyers teach community members about the law. These programs inform non-lawyers about their legal

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<sup>2</sup> James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education*, 13 (1) MINN. J. OF L. & INEQUALITY 51, 55 (June 1995).

<sup>3</sup> American Bar Association, ABA National Lawyer Population Survey (2021) [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/2021-national-lawyer-population-survey.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf).

<sup>4</sup> American Bar Association, *New Data Confirm Boost in Law School Attendance*, <https://www.americanbar.org/news/abanews/aba-news-archives/2018/12/new-data-confirms-boost-law-school/> (accessed 12/24/2021).

<sup>5</sup> STANDING COMMITTEE ON PRO BONO & PUBLIC SERVICE AND THE CENTER FOR PRO BONO, SUPPORTING JUSTICE – A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 11 (April 2018).

<sup>6</sup> *Id.* at 23.

<sup>7</sup> *Id.*

rights and empower them to be more involved and civically engaged. Public legal education programs are designed to help people avoid potential legal problems in the future and show them where to access help should they need it. However, some states myopically exclude public legal education programs from the qualifying work law students and lawyers can do to satisfy pro bono service requirements. This paper includes: a description of public legal education; an examination of state preadmission pro bono requirements; a review of state pro bono requirements for practicing attorneys; and conclusions and recommendations. The pro bono service rules of a majority of states include PLE programs, but the rules in several states do not. In these states, lawyers and law students may be discouraged from participating in PLE because it does not meet the mandatory or aspirational standards in those states, thus depriving them and the community of valuable opportunities to improve the legal system. This article recommends that PLE programs be included as part of the qualifying work for the mandatory and aspirational pro bono service rules in every state.<sup>8</sup>

## **I. Public Legal Education**

The idea that every person should have a basic understanding of the law is not a new one – elements of public legal education can be found in the colonial period.<sup>9</sup> However, the modern concept of what is known as public legal education (PLE) began in the 1970s at Georgetown University Law Center. The civil rights and women’s rights movements led to the realization that “in order to get your constitutional rights you really had to know about them and claim them.”<sup>10</sup>

A group of law students and a faculty member at Georgetown partnered with two urban high

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<sup>8</sup> The author would like to thank research assistant Brianna-Marie Joerger with her help researching this paper and Professor Richard Marsico and Lee Arbetman for their thoughtful review of this draft.

<sup>9</sup> Mark C. Alexander, *Law-Related Education: Hope for Today’s Students*, 20 OHIO N. UNIV. L. REV. 57, 58 (1993).

<sup>10</sup> Richard Grimes, David McQuoid-Mason, Ed O’Brien, & Judy Zimmer, *Street Law and Social Justice Education*, in THE GLOBAL CLINICAL MOVEMENT – EDUCATION LAWYERS FOR SOCIAL JUSTICE 225, 226 (Frank S. Bloch ed., 2011).

schools in Washington, D.C. to teach practical law classes.<sup>11</sup> The lessons focused on criminal law, juvenile justice, consumer law, family law, housing law, and individual rights and freedoms.<sup>12</sup> What started at Georgetown has grown to include Street Law programs at almost one hundred law schools in the United States and an even greater number in over forty countries around the world.<sup>13</sup>

Public legal education programs are known by a variety of names, including Street Law, community legal education, law-related education, and living law (in some other countries). Because programs teach a wide variety of legal topics to equally diverse groups of community members, defining PLE is challenging. One definition reads as follows:

PLE provides people with awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills they need to deal with disputes and gain access to justice. Equally important, it helps people recognise when they may need support, what sort of advice is available, and how to go about getting it.<sup>14</sup>

Public legal education is much more than simply lecturing about the law to non-lawyers. It is helping people develop a sense of ownership over the law and the capacity to participate within a legal regime. Programs exist through law schools, bar associations, and non-profits around the country where legal professionals work with high school students, survivors of domestic violence, people who are incarcerated, residents of homeless shelters, and other community members to help them function within our world, which is often defined in legal terms.

Although the lawyers and law students teaching PLE lessons are not addressing a current legal issue with a specific client, they are helping people understand and ideally avoid a variety of legal problems.

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<sup>11</sup> Lee Arbetman, *Street Law, Inc.: Context, History and Future*, 2(1) INT'L J. OF PUB. LEGAL EDUC. 3, 4 (2018).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> THE REPORT OF THE PLEAS TASK FORCE, DEVELOPING CAPABLE CITIZENS: THE ROLE OF PUBLIC LEGAL EDUCATION (July 2007).

As with all pro bono legal activity, the benefits of participation are two-fold. Community members have access to informed and enthusiastic members of the profession who make the legal world more accessible. One expert noted after a group of students completed a PLE program, they remarked that the only way they wanted to end up in a courtroom was as a lawyer.<sup>15</sup> Public legal education has been proven to increase both substantive knowledge and critical thinking skills for community participants.<sup>16</sup> An earlier study from South Africa demonstrated that public legal education programs strengthened political knowledge and democratic values.<sup>17</sup>

Some PLE programs are also designed to increase the diversity of the legal profession.<sup>18</sup> Lawyers interact in meaningful ways with students from underrepresented groups in hopes that the students will be interested in the law and will feel a sense of support and belonging in the legal community.

In addition, through public legal education programs, law students and lawyers have the opportunity to practice professional skills. Street Law programs specifically were created to provide meaningful, substantive, hands-on experience for the law students.<sup>19</sup> A recent study of Street Law programs in the United States and abroad identified five professional practice benefits for the law student participants: (1) explaining legal concepts to nonlawyers, (2) public speaking, (3) building substantive legal content, (4) research and preparation, and (5) cultural

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<sup>15</sup> Richard Grimes, *Legal Literacy, Community Empowerment and Law Schools – Some Lessons from a Working Model in the UK*, 37 L. TEACHER 273 (2003).

<sup>16</sup> Sean Arthurs, *Street Law: Creating Tomorrow's Citizens Today*, 19 (4) LEWIS & CLARK L. REV. 925, 953-58 (2015).

<sup>17</sup> Steven E. Finkel & Howard R. Ernst, *Civic Education in Post-Apartheid South Africa: Alternative Paths to the Development of Political Knowledge and Democratic Values*, 26 (3) POL. PSYCHOL. 333, 350 (2005).

<sup>18</sup> STREET LAW, INC. LEGAL DIVERSITY PIPELINE PROGRAM, <https://www.streetlaw.org/programs/legal-diversity-pipeline-programs>.

<sup>19</sup> RICHARD ROE, *Law School-High School, in THE EDUCATION PIPELINE TO THE PROFESSIONS, PROGRAMS THAT WORK TO INCREASE DIVERSITY* 135, 138-40 (Sarah E. Redfield ed., 2012).

competency and community connections.<sup>20</sup> Many law schools are supportive of Street Law and public legal education programs.<sup>21</sup> Participating schools hire faculty to teach credit-bearing clinical/experiential courses, and support and encourage the development of student-led groups and pro bono projects. Some state governments have also encouraged public legal education programs by including law-related education in the qualifying work for aspirational pro bono service requirements.

## **II. Pre-Admission Pro Bono Requirements**

New York is currently the only state that requires mandatory preadmission pro bono public service. Four other states and the American Bar Association considered implementing similar measures, but all failed for a variety of reasons discussed below. Including public legal education in preadmission public service requirements is particularly important because of the value of law student instructors and mentors for underrepresented groups in the community. While New York state specifically excludes public legal education from its mandatory preadmission requirement, Montana includes community legal education in its voluntary rule, and the committee drafting the rule that ultimately failed in New Jersey also planned to include Street Law and PLE programs.

### **a. New York**

On May 1, 2012, Chief Judge Jonathan Lippman announced New York's groundbreaking new bar admission standard.<sup>22</sup> He advocated that each law student be required to complete fifty hours of compulsory pro bono service as a condition of admission to the New York State bar. As

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<sup>20</sup> Ben Perdue & Amy Wallace, *Preparing Lawyers for Practice: Developing Cultural Competency, Communication Skills and Content Knowledge through Street Law Programs*, 70 (2) J. OF LEGAL EDUC. 1,7 (forthcoming Winter 2020).

<sup>21</sup> RICHARD GRIMES, PUBLIC LEGAL EDUCATION – THE ROLE OF LAW SCHOOLS IN BUILDING A MORE LEGALLY LITERATE SOCIETY (2021).

<sup>22</sup> Chief Judge Jonathan Lippman, New York Law Day Speech (May 1, 2012).

part of his speech, he charged law students to answer three questions: (1) “[h]ow will you choose to benefit your fellow man and your community with your new skills?”, (2) “[w]ill you use your legal acumen to foster equal justice in our state?”, and (3) “[d]o you recognize that being a lawyer requires an understanding that access to justice must be available to all New Yorkers regardless of their station in life?”<sup>23</sup> He lauded the countless hours of pro bono service this new rule would contribute to the community and also identified the value of this practical experience for law students.

When discussing the benefits of the new rule for law students, Chief Judge Lippman stated, “we will also be helping prospective lawyers to build the valuable skills and acquire the hands-on experience so crucial to becoming a good lawyer.”<sup>24</sup> The dual benefit of public service is one reason many law schools have included mandatory pro bono service as a condition of graduation.

In September 2012, an Advisory Committee on New York State Pro Bono Bar Admission Requirements presented its report to the Chief Judge.<sup>25</sup> The Committee explained that they intentionally drafted the definition of qualifying law-related work broadly.<sup>26</sup> However, the rule specifically excludes public legal education. The rule is written in relevant part as follows:

“§520.16 Pro Bono Requirement for Bar Admission

(a) Fifty-hour pro bono requirement. Every applicant admitted to the New York State bar on or after January 1, 2015... shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission with the appropriate Appellate Division department of the Supreme Court.

(b) Pro bono service defined. For purposes of this section, pro bono service is supervised pre-admission law-related work that:

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> ADVISORY COMMITTEE ON THE NEW YORK STATE PRO BONO BAR ADMISSION REQUIREMENTS, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK AND THE PRESIDING JUSTICES OF THE FOUR APPELLATE DIVISION DEPARTMENTS (September 2012).

<sup>26</sup> *Id.* at 5.

- (1) assists in the provision of legal work without charge for:
  - (i) persons of limited means;
  - (ii) not-for-profit organizations; or
  - (iii) individuals, groups or organizations seeking to secure or promote access to justice, including but not limited to, the protection of civil rights, civil liberties or public rights;
- (2) assists in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity; or
- (3) provides legal services pursuant to subdivisions two and three of section 484 of the Judiciary Law<sup>27</sup>, or pursuant to equivalent legal authority in the jurisdiction where the services are performed.”<sup>28</sup>

The rule also requires all qualifying work be supervised by a professor, supervising attorney or judge.<sup>29</sup> Qualifying law-related work is not restricted to assisting New Yorkers of limited means, which contradicts the emphasis of Chief Judge Lippman’s Law Day speech.<sup>30</sup> Legal assistance for most government entities satisfies the rule. Public legal education programs are not included in the language of the rule itself and are specifically excluded by New York State in clarifying materials.<sup>31</sup> New York includes a substantial list of law-related work that satisfies the rule.<sup>32</sup> However, “participation as a mentor or organizer in a mock trial program for high school or college students” is noted as “beneficial” but does not “service the intent and purpose of the Pro Bono Requirement.”<sup>33</sup> Public legal education work comprises much more than mock trial coaching, but this guidance suggests all PLE is excluded from the rule. Public legal education programs are usually directed towards communities in need. They are designed to help people of limited means understand and engage with the law. Further, public legal

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<sup>27</sup> NY CLS Jud § 484 (2) and (3) (exempting supervised law students and recent graduates from the rule stating only licensed attorneys may practice law in New York).

<sup>28</sup> 22 NYCRR § 520.16.

<sup>29</sup> 22 NYCRR § 520.16 (c).

<sup>30</sup> Lippman, *supra* note 22.

<sup>31</sup> New York State Bar Admission: *Pro Bono Requirement FAQs* 14, [https://ww2.nycourts.gov/sites/default/files/document/files/2018-07/FAQsBarAdmission\\_0.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2018-07/FAQsBarAdmission_0.pdf) (accessed 10/19/21).

<sup>32</sup> *Id.* at 9-10.

<sup>33</sup> *Id.* at 14.

education programs provide law students with the hand-on experience of working directly with nonlawyers. Seven out of fifteen law schools in New York State have Street Law programs<sup>34</sup> where law students provide valuable pro bono services to their communities.

b. Montana

Shortly after Chief Judge Lippman's remarks, Montana initiated consideration of a mandatory preadmission pro bono service requirement.<sup>35</sup> The Supreme Court referred the matter to the state's Access to Justice Commission for consideration of a "proposal to establish a requirement that applicants to the Montana bar must complete fifty hours of pro bono service within three years before they are admitted to the bar."<sup>36</sup> The state ultimately opted for a voluntary pro bono statement that applicants can submit with their application to the bar.<sup>37</sup> Qualifying pro bono service mirrors the state's Rule of Professional Conduct 6.1: Pro Bono Public Service (see Section IV(a) below)<sup>38</sup> but also includes "similar volunteer law-related services that do not constitute the practice of law, provided that such services are designed primarily to address the legal needs of persons of limited means."<sup>39</sup> Montana lists examples, including "providing community legal education."<sup>40</sup> This rule properly emphasizes the importance of direct legal service to clients but also acknowledges the value of public legal education.

c. Connecticut

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<sup>34</sup> Brooklyn Law School, City University of New York School of Law, Columbia University School of Law, New York Law School, New York University School of Law, St. John's University School of Law, and Touro Law Center.

<sup>35</sup> IN RE THE ACCESS TO JUSTICE COMMISSION, SUPREME COURT OF MONTANA (October 9, 2012).

<sup>36</sup> *Id.*

<sup>37</sup> IN RE THE RECOMMENDATION FOR A VOLUNTARY PRO BONO REPORTING PROCESS BY APPLICANTS FOR ADMISSION TO THE MONTANA BAR, SUPREME COURT OF MONTANA (December 16, 2014).

<sup>38</sup> MT Prof. Conduct R. 6.1.

<sup>39</sup> VOLUNTARY LAW-RELATED PRO BONO ACTIVITY STATEMENT, MONTANA BAR ADMISSION (October 3, 2014).

<sup>40</sup> *Id.*

In discussing the overwhelming unserved needs of Connecticut residents, the state also considered mandatory preadmission pro bono service, among other options.<sup>41</sup> The Report to the Connecticut Judicial Branch Access to Justice Commission reviewed the New York State pro bono requirement and expressed concerns about overburdening law students and questioned the real effect the rule would have on the legal needs of the community.<sup>42</sup> The report recommended the Connecticut Judicial Branch convene a task force to consider a preadmission requirement, but the pro bono committee of the Connecticut Judicial Branch declined.<sup>43</sup>

d. New Jersey

New Jersey was also inspired by New York's innovative pro bono initiative. Chief Justice Stuart Rabber created a working group to consider a preadmission rule for New Jersey.<sup>44</sup> In 2013, the working group submitted a report summarizing their recommendations. The group recommended that bar applicants be required to complete fifty hours of pro bono service prior to admission.<sup>45</sup> The report listed the following suggestions as qualifying pro bono service: (1) legal assistance provided at law school clinics or supervised pro bono programs, (2) paid and unpaid legal clerkships and judicial externships, and (3) community legal education projects.<sup>46</sup> The report details that there was some dissent within the working group about whether PLE programs should be included, but the majority viewed these programs as valuable to both the community and the law students.<sup>47</sup> The report specifically identifies Street Law programs and emphasizes that these programs are found at all New Jersey law schools. The report also emphasizes that

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<sup>41</sup> MELANIE B. ABBOTT, LESLIE C. LEVIN, STEPHEN WIZNER, REPORT TO THE CONNECTICUT JUDICIAL BRANCH ACCESS TO JUSTICE COMMISSION (February 15, 2013).

<sup>42</sup> *Id.* at 15.

<sup>43</sup> *Id.* at 19.

<sup>44</sup> REPORT OF THE WORKING GROUP ON THE PROPOSED PREADMISSION PRO BONO REQUIREMENT, NEW JERSEY COURTS 1 (April 30, 2013).

<sup>45</sup> *Id.* at 6.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 11.

Street Law “serves to educate underprivileged and other at-risk youth about the positive benefits of the law to society.”<sup>48</sup> Unfortunately, New Jersey opted not to implement a preadmission requirement. The New Jersey State Bar Association strongly opposed the mandatory pro bono rule.<sup>49</sup>

e. California

As part of a larger evaluation of California preadmission competency skills, the state considered implementing mandatory preadmission/post-admission pro bono legal service.<sup>50</sup> California’s proposed rule required fifty hours of pro bono or modest means service which could be completed before admission or within the first year of licensure.<sup>51</sup> The proposed law defined pro bono legal service work as work without compensation for persons of limited means or modest means for the following purposes:

“(A) to secure or promote access to justice, including but not limited to, the protection of civil rights, civil liberties, or public rights. (B) to address the economic, health, and social needs of persons who are indigent or of modest means. (C) to further the purpose of a charitable, civic, community, governmental, or educational organization where payment of the market rate for legal fees would significantly deplete the organization’s resources or would otherwise be inappropriate.”<sup>52</sup>

Public legal education programs were not included in California’s proposed law. Governor Jerry Brown vetoed the law, citing concerns about the cost of law school tuition and the burden on law students.<sup>53</sup>

f. American Bar Association

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<sup>48</sup> *Id.*

<sup>49</sup> RESOLUTION, NEW JERSEY STATE BAR ASSOCIATION (February 15, 2013).

<sup>50</sup> STATE BAR OF CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION REFORM, PHASE 1 FINAL REPORT (June 11, 2013).

<sup>51</sup> *Id.* at 17.

<sup>52</sup> S. B. 1257, Section 6060.1.5 (c) (1) (A-C) (August 15, 2016).

<sup>53</sup> Debra Cassens Weiss, *California Governor Cites High Law School Costs in Vetoing Mandatory Pro Bono Bill*, THE ABA JOURNAL (August 31, 2016), [https://www.abajournal.com/news/article/california\\_governor\\_cites\\_high\\_law\\_school\\_costs\\_in\\_vetoing\\_mandatory\\_pro\\_bo](https://www.abajournal.com/news/article/california_governor_cites_high_law_school_costs_in_vetoing_mandatory_pro_bo) (accessed 10/19/21).

After New York unveiled its preadmission pro bono rule, the American Bar Association was encouraged by legal organizations and leaders to add a pro bono service requirement to law school accreditation standards.<sup>54</sup> The accreditation committee was reluctant to impose such a rule.<sup>55</sup>

In addition, shortly after New York passed §520.16, the American Bar Association Standing Committee on Pro Bono and Public Service issued a report examining the advantages and disadvantages of the New York preadmission rule.<sup>56</sup> The committee identified three main benefits of the requirement: (1) serving low-income clients and communities, (2) inculcating a service ethic among tomorrow's lawyers, and (3) providing hands-on practice experience for lawyers in training.<sup>57</sup> Each of the advantages identified by the committee of a preadmission rule can be found in community legal education programs. In fact, the committee identified its main concern with New York's requirement was the "inadvertent diluting of the definition of 'pro bono.'"<sup>58</sup> The committee was concerned that the New York rule permitted students to complete pro bono service at properly funded government agencies that do not serve people of limited means.<sup>59</sup> The committee expressed a preference for the language in ABA Model Rule 6.1 (discussed in Section IV(a) below), which prioritizes direct legal service for those of limited means and also includes public legal education.

### III. Pro Bono Requirements for Lawyers

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<sup>54</sup> Karen Sloan, *Law Student Pro Bono Requirement Gets Chilly Response from ABA*, NEW YORK LAW JOURNAL (Online) (November 29, 2012).

<sup>55</sup> *Id.*

<sup>56</sup> ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, NEW YORK'S 50-HOUR PREADMISSION PRO BONO RULE: WEIGHING THE POTENTIAL PROS AND CONS (October 2013).

<sup>57</sup> *Id.* at 5-6.

<sup>58</sup> *Id.* at 7.

<sup>59</sup> *Id.*

Almost every state has chosen to codify pro bono requirements for lawyers admitted to practice in the state (see Appendix A).<sup>60</sup> Some states require lawyers to report the number of pro bono hours completed during the regular annual or bi-annual registration period,<sup>61</sup> and some permit but do not require such reporting.<sup>62</sup> Pro bono participation is aspirational but not mandatory in all jurisdictions except New Jersey, where attorneys are required to take on pro bono cases assigned by the courts.<sup>63</sup> The majority of states have adopted a version of Model Rule 6.1, which the American Bar Association House of Delegates revised in February 1993.<sup>64</sup> The rule change was suggested by the ABA Standing Committee on Lawyers' Public Service Responsibility. Although the committee considered proposing mandatory public service, it opted to strengthen the existing rule while keeping the obligation voluntary.<sup>65</sup> Some states continue to use the earlier version of the model Pro Bono Public Service rule adopted by the ABA in 1983.<sup>66</sup> Both Model Rule 6.1 and the Pro Bono Public Service rule are discussed in detail below. Other states have adopted their own rules or have significantly amended either the Pro Bono Public Service rule or Model Rule 6.1. Those states are examined individually below. Most states either expressly or impliedly include public legal education programs in the requirements for pro bono services. Only California, Illinois, New York, Virginia, and Washington, D.C. have rules that exclude PLE programs.

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<sup>60</sup> The professional conduct rules of California, Illinois, Ohio, and Oregon do not contain a provision discussing pro bono public service: Cal. Rules of Prof. Conduct, Rule 6.1.; Ill. Sup. Ct. R. Prof. Conduct, R 6.1.; Ohio R. Prac. Law. Jud. 6.1.; ORPC 6.1.

<sup>61</sup> Florida, Hawaii, Illinois, Indiana, Maryland, Minnesota, Mississippi, Nevada, New Mexico, and New York require reporting, *Mandatory Pro Bono Reporting*, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/probono\\_public\\_service/policy/arguments/](https://www.americanbar.org/groups/probono_public_service/policy/arguments/) (Accessed 10/19/21).

<sup>62</sup> Arizona, Connecticut, Georgia, Kentucky, Louisiana, Montana, North Carolina, Ohio, Oregon, Tennessee, Texas, Virginia, and Washington have voluntary reporting. *Voluntary Pro Bono Reporting*, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/probono\\_public\\_service/policy/arguments/](https://www.americanbar.org/groups/probono_public_service/policy/arguments/) (Accessed 4/20/22).

<sup>63</sup> N.J. Court Rules, RPC 6.2.

<sup>64</sup> James L. Baillie and Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, the Profession and Legal Education*, 13(1) MINN. J. OF L. & EQUALITY 51, 58 (1995).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 57.

a. Model Rule 6.1

The ABA model rule is written as follows:

“Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, the legal system or the legal profession.”<sup>67</sup>

The ABA rule and commentary state that providing legal service to clients in subsections (a)(1) and (a)(2) should be the majority of each attorney’s pro bono commitment. Comment 5 explains that while all lawyers could fulfill the fifty-hour requirement with direct service to pro bono clients, if a lawyer has time remaining they can complete their pro bono service with activities outlined in subsection (b).<sup>68</sup> The comments also acknowledge that some government and public sector lawyers might be prohibited from providing the pro bono services identified in subsection (a) and those attorneys can focus all their pro bono efforts on activities outlined in subsection (b).

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<sup>67</sup> Model Rules of Professional Conduct Rule 6.1 (American Bar Ass’n, 1983).

<sup>68</sup> Model Rules of Professional Conduct Rule 6.1, Comment 5 (American Bar Ass’n, 1983)..

The comments specifically identify public legal education as an example of pro bono service detailed in subsection (b)(3), “activities for improving the law, the legal system or the legal profession.” Comment 8 lists “taking part in Law Day activities” as one of a “few examples of the many activities that fall within this paragraph.”<sup>69</sup> Law Day is celebrated on May 1 in many jurisdictions.<sup>70</sup> In support of Law Day, the ABA provides resources on their website to encourage lawyers to engage in public legal education programs in local schools and other public settings. Specifically identifying Law Day in Comment 8 demonstrates that the ABA, and the states that have adopted the rule, support PLE as a form of pro bono service.

Twenty-four states have adopted Model Rule 6.1 (see Appendix A).<sup>71</sup> While some states made changes to the model rule prior to adoption, no state except for South Dakota, Nebraska, and Montana made any changes to the provisions and commentary that include PLE. South Dakota maintains the language of the Pro Bono Public Service rule (see below) but includes Comment 8 from Model Rule 6.1. Therefore, PLE programs are included in the South Dakota rule.<sup>72</sup> Nebraska includes subsection (b)(3) but does not include Comment 8.<sup>73</sup> The Montana rule also includes subsection (b)(3) but contains no comments.<sup>74</sup> Subsection (b)(3) is broadly drafted and should include public legal education without the need for supporting commentary, but PLE programs are not specifically referenced in Nebraska and Montana.

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<sup>69</sup> Model Rules of Professional Conduct Rule 6.1, Comment 8 (American Bar Ass’n, 1983)..

<sup>70</sup> Law Day 2022, [https://www.americanbar.org/groups/public\\_education/law-day/](https://www.americanbar.org/groups/public_education/law-day/) (accessed 12/29/21).

<sup>71</sup> Alaska R. Prof. Conduct 6.1; Ark. R. Prof. Conduct Rule 6.1; Colo. RPC 6.1; Ga. R. & Regs. St. Bar 6.1; Haw. Rules of Prof. Conduct Rule 6.1; Idaho Rules of Prof. Conduct Rule 6.1; Iowa R. of Prof. Conduct 32:6.1; La. St. Bar Ass’n. Art. XVI § 6.1; Me. Rules of Prof. Conduct 6.1; Minn. Rules of Prof. Conduct 6.1; MT Prof. Conduct R. 6.1; Neb. Ct. R. of Prof. Cond. § 3-506.1; N.H. Rules of Prof. Conduct Rule 6.1; N.M. R. Prof. Cond. 16-601; N.C. R. Prof. Cond. Rule 6.1; R.I. Sup. Ct. Art. V, Rule 6.1; S.D. Codified Laws § 16-18-Appx., Rule 6.1; Tenn. Sup. Ct. R. 8, Rule 6.1; Utah Rules of Prof. Conduct Rule 6.1; Vt. Prof. Cond. Rule 6.1; Wash. RPC 6.1; W. Va. Prof. Cond., Rule 6.1; Wis. SCR 20:6.1; WY Prof. Conduct Rule 6.1.

<sup>72</sup> S.D. Codified Laws §16-18-Appx., Rule 6.1.

<sup>73</sup> Neb. Ct. R. of Prof. Cond. § 3-506.1.

<sup>74</sup> MT Prof. Conduct R. 6.1.

b. Pro Bono Public Service

The Pro Bono Public Service rule is written as follows:

“A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.”<sup>75</sup>

The comments to this rule are silent on the inclusion of public legal education in qualifying pro bono work that satisfies the requirement. However, the rule contains the phrase “by service in activities for improving the law, the legal system or the legal profession.” This inclusive phrase mirrors subsection (b)(3) of ABA Model Rule 6.1, therefore PLE programs should fit within this pro bono service requirement. Fourteen states use the Pro Bono Public Service rule (see Appendix A).<sup>76</sup> Maryland adopted a combination of Model Rule 6.1 and the Pro Bono Public Service rule but maintains the commentary from the latter.<sup>77</sup>

c. Other State Rules

The remaining thirteen states (see Appendix A) have either crafted their own rules of professional conduct with respect to pro bono public service or have reserved or deferred inclusion of Model Rule 6.1 and chosen other avenues for encouraging pro bono work.

(i) *Arizona*

The Arizona rule for public service contains standard provisions for pro bono service but also includes “providing services at no fee or at a substantially reduced fee in connection with

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<sup>75</sup> Ann. Model of Professional Conduct Rule 6.1.

<sup>76</sup> Ala. Rules of Prof. Conduct Rule 6.1; Conn. Rules of Prof. Conduct 6.1; Del. Rules of Prof. Conduct 6.1; Ind. Rules of Prof. Conduct 6.1; KRPC 6.1; Ky. SCR Rule 6.1; Md. Rule 19-306.1; MRPC 6.1; Mo. Sup. Ct. R. 4-6.1; N.J. Court Rules, RPC 6.1.; N.D.R. Prof. Conduct Rule 6.1; 5 Okl. St. Chap. 1, Appx. 3-A, Rule 6.1; Pa. RPC 6.1; Rule 6.1, RPC, Rule 407, SCACR.

<sup>77</sup> Md. Rule 19-306.1.

law-related education sponsored by the Arizona Foundation for Legal Services & Education or activities for improving the law, the legal system or the legal profession”<sup>78</sup> as an option. The commentary to the rule further cements Arizona’s commitment to public legal education. Comment 4 explains that the rule was designed to give lawyers flexibility in meeting the aspirational obligation and it lists a number of qualifying activities including, “participation in law-related education programs.”<sup>79</sup> Comment 5 provides examples of pro bono services that fulfill the requirement, including “activities in law-related education, both to the public and in training other lawyers; law enforcement personnel, or law-related personnel.”<sup>80</sup> The Arizona rule recognizes that PLE programs are designed to assist many different groups in their understanding of and engagement with the law.

(ii) *California*

California reserved a place for Rule 6.1 in their adoption of the Rules of Professional Conduct but did not adopt the aspirational rule.<sup>81</sup> The Board of Governors of the State Bar of California passed a resolution encouraging all attorneys to provide or enable fifty hours of direct delivery of legal services to indigent individuals or nonprofits that serve those individuals.<sup>82</sup> The resolution’s focus on the provision of direct legal services excludes public legal education.

(iii) *Florida*

Florida adopted its own rule for pro bono public service.<sup>83</sup> The rule requires mandatory reporting of pro bono activity and encourages attorneys to complete twenty hours of pro bono legal service or donate \$350 to a legal aid organization.<sup>84</sup> Florida limits qualifying activities as

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<sup>78</sup> Ariz. Rules of Prof. Conduct R. 6.1(a)(2).

<sup>79</sup> Ariz. Rules of Prof. Conduct R. 6.1, Comment 4.

<sup>80</sup> Ariz. Rules of Prof. Conduct R. 6.1, Comment 5.

<sup>81</sup> Cal. Rules of Prof. Conduct, R. 6.1.

<sup>82</sup> PRO BONO RESOLUTION, BOARD OF GOVERNORS OF THE STATE BAR OF CALIFORNIA (June 22, 2002).

<sup>83</sup> Fla. Bar Reg. R. 4-6.1.

<sup>84</sup> Fla. Bar Reg. R. 4-6.1(b) (1-2).

follows: “(1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor.”<sup>85</sup> The inclusion of “pro bono service activities” in subsection (a)(2) includes work other than direct legal services and therefore should include public legal education. The comments to the rule provide no additional clarity on this point.

(iv) *Illinois*

Illinois also opted to reserve space for rule 6.1 in its Rules of Professional Conduct but did not adopt the rule.<sup>86</sup> The Illinois Supreme Court Pro Bono Reporting Rule requires all attorneys to report pro bono activity.<sup>87</sup> The rule defines pro bono activity as pro bono legal services without fee or expectation of a fee to persons of limited means, organizations who serve persons of limited means, certain charitable organizations, or pro bono training to benefit legal services organizations or lawyers who provide pro bono legal services.<sup>88</sup> This definition does not include public legal education.

(v) *Massachusetts*

Massachusetts adopted its own version of Model Rule 6.1.<sup>89</sup> The rule details that a lawyer should provide at least twenty-five hours of pro bono legal services for the benefit of persons of limited means.<sup>90</sup> The first sentence of subsection (a) states that all or most of the twenty-five hours should be dedicated to legal service for persons of limited means.<sup>91</sup> The second sentence states that any remaining hours may be fulfilled by “participating in activities for improving the law, the legal system or the legal profession that are primarily intended to benefit persons of

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<sup>85</sup> Fla. Bar Reg. R. 4-6.1(a) (1-2).

<sup>86</sup> Ill. Sup. Ct. R. Prof. Conduct, R 6.1.

<sup>87</sup> Ill. Sup. Ct., R 756 (f).

<sup>88</sup> *Id.*

<sup>89</sup> ALM Sup. Jud. Ct. R. 3:07, R.P.C. Public Service, R. 6.1.

<sup>90</sup> *Id.*

<sup>91</sup> ALM Sup. Jud. Ct. R. 3:07, R.P.C. Public Service, R. 6.1(a)

limited means.”<sup>92</sup> This sentence includes a variety of other services lawyers can perform including public legal education.

Comments 3 and 8 to the rule demonstrate Massachusetts’ commitment to public legal education. In perhaps the strongest endorsement of PLE, Comment 3 defines pro bono publico legal services by stating “such legal services include a full range of activities on behalf of persons of limited means including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, community legal education, and the provision of free training or mentoring to those who represent persons of limited means.”<sup>93</sup> The inclusion of community legal education in the definition of legal services demonstrates the value of PLE programs for the communities they serve. In addition, Comment 8 mirrors Comment 8 of Model Rule 6.1, listing “taking part in Law Day activities” as one example of the many activities that satisfy “improving the law, the legal system or the legal profession.”<sup>94</sup>

(vi) *Mississippi*

Mississippi’s Rule 6.1 for Voluntary Pro Bono Public Service asks each member to complete twenty hours of pro bono legal services to the poor or make an annual contribution of at least \$200 to the Mississippi Bar which will be used to support legal aid organizations.<sup>95</sup> The rule itself does not appear to include PLE. However, Comment 2 acknowledges that some attorneys are prohibited from providing pro bono legal services outside of their office. Comment 2 suggests those attorneys should participate in activities that “promote the public understanding of the legal system” and provides a list of possible activities including “public information and

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<sup>92</sup> *Id.*

<sup>93</sup> ALM Sup. Jud. Ct. R. 3:07, R.P.C. Public Service, R. 6.1, Comment 3.

<sup>94</sup> ALM Sup. Jud. Ct. R. 3:07, R.P.C. Public Service, R. 6.1, Comment 8.

<sup>95</sup> Miss. RPC. R. 6.1.

education programs such as Law Day programs, high school moot court programs...”<sup>96</sup> Although PLE programs are not included in the pro bono service requirement for most attorneys in Mississippi, the state reinforces the value of these programs by including them as activities for attorneys prohibited from providing direct pro bono legal representation.

(vii) *Nevada*

Nevada adopted Model Rule 6.1 with some significant amendments.<sup>97</sup> The rule asks attorneys to devote a substantial majority of the twenty hours of pro bono activity to legal services to persons of limited means or the organizations designed to address the needs of persons of limited means.<sup>98</sup> Like Model Rule 6.1, subsection 2 of the Nevada rule lists additional services that attorneys can provide, including “[p]articipation in activities for improving the law, the legal system or the legal profession.”<sup>99</sup> In contrast to Model Rule 6.1, Nevada also specifically includes “delivery of services in connection with law-related education sponsored by the State Bar of Nevada, the Nevada Bar Foundation, a county bar association, or a court located in Nevada.”<sup>100</sup> Nevada recognizes the importance of public legal education programs for communities in the state.

(viii) *New York*

New York passed its own rule for Voluntary Pro Bono Service.<sup>101</sup> The rule states that lawyers are strongly encouraged to provide fifty hours of pro bono legal services to benefit poor persons each year.<sup>102</sup> Subsection (b) of the rule details the legal services that fulfill the fifty-hour

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<sup>96</sup> Miss. RPC. R. 6.1, Comment 2.

<sup>97</sup> Nev. Rules of Prof. Conduct 6.1.

<sup>98</sup> Nev. Rules of Prof. Conduct 6.1 (a)(1)(i-ii).

<sup>99</sup> Nev. Rules of Prof. Conduct 6.1 (a)(2)(ii).

<sup>100</sup> Nev. Rules of Prof. Conduct 6.1 (a)(2)(iii).

<sup>101</sup> NY CLS Rules Prof. Conduct R 6.1.

<sup>102</sup> *Id.*

goal.<sup>103</sup> Legal services included in the New York rule are: professional services in civil matters and qualifying criminal matters; activities related to improving the administration of justice by simplifying the legal process for ...poor persons; and professional services for certain non-profit organizations.<sup>104</sup> An argument could be made that PLE programs simplify the legal process for community members and therefore are included in New York's pro bono service rule, but because the rule is limited to "legal services," it is likely that the rule intends to cover only direct client services.

(ix) *Ohio*

Ohio deferred consideration of Model Rule 6.1.<sup>105</sup> The code explains this is because of the recommendations of the "Supreme Court Task Force on Pro Se and Indigent Representation and recommendations from the Ohio Access to Justice Foundation."<sup>106</sup> One of the task force's recommendations was the adoption of Model Rule 6.1 either as part of the Ohio Code of Professional Responsibility or the Ohio Rules for the Government of the Bar.<sup>107</sup> Model Rule 6.1 is not found in either statute.

(x) *Oregon*

Oregon opted to reserve space for Rule 6.1 in its adoption of the Oregon Rules of Professional Conduct but did not codify the model pro bono rule.<sup>108</sup> The Oregon State Bar Pro Bono Committee has adopted the OSB Pro Bono Aspirational Standard in OSB Bylaw 13.1: Pro Bono Publico,<sup>109</sup> which suggests that all attorneys should provide eighty hours of uncompensated

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<sup>103</sup> NY CLS Rules Prof. Conduct R 6.1 (b)(1-3).

<sup>104</sup> NY CLS Rules Prof. Conduct R 6.1 (b).

<sup>105</sup> Ohio Rules of Prof. Conduct 6.1.

<sup>106</sup> *Id.*

<sup>107</sup> SUP. CT. OF OHIO, REPORT AND RECOMMENDATIONS OF THE SUPREME COURT TASK FORCE ON PRO SE AND INDIGENT LITIGANTS(April 2006).

<sup>108</sup> ORPC 6.1.

<sup>109</sup> OR. STATE BAR BYLAWS 13.1.

services by lawyers for the public good. Services can include civic, charitable and public service activities; as well as activities that “improve the law, the legal system and the legal profession.”<sup>110</sup> The Oregon standard includes most community service activities like cleaning up litter and coaching a sports team.<sup>111</sup> Because the Oregon rule is broadly drafted to include all community service, public legal education programs are included in this comprehensive standard. In addition, the bylaw states that twenty to forty hours should be dedicated to direct legal services to the poor.<sup>112</sup>

(xi) *Texas*

The Texas Disciplinary Rules of Professional Conduct do not contain a rule on pro bono legal service. In the comments to rule 6.01 – Accepting Appointments by a Tribunal, Comment 3 outlines that “each lawyer engaged in the practice of law should render public interest legal service.”<sup>113</sup> The State Bar of Texas Board of Directors passed a resolution which outlines that attorneys should render fifty hours of legal services to the poor each year.<sup>114</sup> The resolution lists the direct provision of legal services; services for simplifying the legal process; legal services for certain nonprofits; legislative, administrative or systems advocacy; and involuntary appointment as fulfilling the pro bono policy.<sup>115</sup> In providing additional details on the policy, the State Bar lists a number of qualifying pro bono activities, including “participation in a legal clinic or free legal seminar for the public, such as a legal awareness for the elderly clinic... so long as the

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<sup>110</sup> OREGON STATE BAR MODEL POL’Y WORKSHEET HANDBOOK (2005), <https://www.osbar.org/docs/probono/policy/ProBonoPolicyHandbook.pdf>.

<sup>111</sup> Or. State Bar, PRO BONO REPORTING (2017), <https://www.osbar.org/probono/reporting.html>.

<sup>112</sup> OREGON STATE BAR MODEL POL’Y WORKSHEET HANDBOOK, *supra* note 111.

<sup>113</sup> Tex. R. Prof. Conduct 6.01, Comment 3.

<sup>114</sup> STATE BAR OF TEXAS RESOLUTION, STATE BAR OF TEXAS BOARD OF DIRECTORS (September 22, 2000).

<sup>115</sup> *Id.*

audience is primarily poor.”<sup>116</sup> Most public legal education programs are directed towards underserved communities and would therefore qualify under this policy.

(xii) *Virginia*

Virginia adopted its own rule for Voluntary Pro Bono Publico Service.<sup>117</sup> The rule suggests that attorneys devote two percent of their professional time to pro bono services, which include “poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.”<sup>118</sup> The comments provide greater detail on what activities qualify under this pro bono service rule. Public legal education programs are not included in the Virginia rule.

(xiii) *Washington, D.C.*

Washington, D.C. uses its own Rule 6.1 – Pro Bono Public Service to govern the pro bono requirements of its attorneys.<sup>119</sup> Lawyers may fulfill this rule by providing direct legal services to those persons or groups who are unable to pay or by contributing to an organization that provides legal representation.<sup>120</sup> Public legal education is not included in the Washington, D.C. rule.

### **Conclusions and Recommendations**

Direct pro bono legal representation of people of limited means is critical in ensuring access to justice for many. These activities are rightly prioritized in all pro bono public service rules. Many states, through their pro bono service requirements, have also acknowledged the merit of public legal education programs. Community legal education is valuable for both the

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<sup>116</sup> PRO BONO POLICY, STATE BAR OF TEXAS, Question 14 (2014).

<sup>117</sup> Va. Sup. Ct. R. pt. 6, § II, 6.1.

<sup>118</sup> Va. Sup. Ct. R. pt. 6, § II, 6.1. (a).

<sup>119</sup> D.C. Bar Appx. A, Rule 6.1.

<sup>120</sup> D.C. Bar Appx. A, Rule 6.1.

groups served and the lawyers and law students who teach them. States that currently exclude PLE programs should consider including them as supplemental pro bono service activities that satisfy state requirements. Pro bono service rules for practicing lawyers are aspirational in every state except New Jersey. Therefore, lawyers and law firms can choose the pro bono activities they want without fear of failing to satisfy a mandatory requirement for good standing. Law students applying to the New York State bar, however, must strictly adhere to the preadmission pro bono service standard in order to be admitted. Public legal education programs satisfy the goals Chief Judge Lippman set forth in his Law Day speech<sup>121</sup> announcing the innovative preadmission pro bono rule and therefore the great work of the law students who perform this public service should be credited towards their bar admission.

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<sup>121</sup> Lippman, *supra* note 22.

### Appendix A – State Pro Bono Legal Service Requirements

State	Model Rule 6.1	Pro Bono Public Service	Other
Alabama		√	
Alaska	√		
Arizona			√
Arkansas	√		
California			reserved
Colorado	√		
Connecticut		√	
Delaware		√	
Florida			√
Georgia	√		
Hawaii	√		
Idaho	√		
Illinois			reserved
Indiana		√	
Iowa	√		
Kansas		√	
Kentucky		√	
Louisiana	√		
Maine	√		
Maryland		√	
Massachusetts			√
Michigan		√	
Minnesota	√		
Mississippi			√
Missouri		√	
Montana	√		
Nebraska	√		
Nevada			√
New Hampshire	√		
New Jersey		√	
New Mexico	√		
New York			√
North Carolina	√		
North Dakota		√	
Ohio			deferred
Oklahoma		√	
Oregon			reserved
Pennsylvania		√	

Rhode Island	√		
South Carolina		√	
South Dakota	√		
Tennessee	√		
Texas			√
Utah	√		
Vermont	√		
Virginia			√
Washington	√		
Washington, D.C.			√
West Virginia	√		
Wisconsin	√		
Wyoming	√		