The Consideration of Criminal Records in Occupational Licensing

A variety of professions, from trucking to barbering to positions in the health care field, require that individuals obtain licenses to practice in the United States. These occupational licenses are regulated at the state level, and in many cases, people who have been trained to or are seeking work in certain fields are ultimately prohibited from receiving the licensing they need because of their criminal records.

Nearly 10 million adults return to the community from jails and federal and state prisons each year in the United States, and they face significant challenges related to employment.[1] Numerous studies have found that people require a combination of family support, community assistance, and economic opportunity to stay out of the criminal justice system.[2] Access to employment is a critical component of this web of support, as a steady job provides financial resources and prosocial connections that build motivation.

As the field develops more knowledge about what works to reduce recidivism and promote job readiness, the National Reentry Resource Center, a project of The Council of State Governments (CSG) Justice Center, will continue to work with expert partners to provide education, training, and resources to policymakers who seek to implement effective legislation and policies.

What are Collateral Consequences?

When returning to the community after incarceration, people often face severe, unanticipated penalties beyond the court's sentence, which are commonly referred to as "collateral consequences." Nationally, more than 45,000 collateral consequences restrict all aspects of civic life, including the right to vote and access to government benefits, housing, and student loans; the vast majority of these collateral consequences are employment-related.[3] For example, in an effort to advance public safety and ensure high-quality services, states require licenses for particular businesses or occupations, such as for health care professionals, transportation specialists, and cosmetologists.[4] Restrictions specific to these occupational licenses are one significant type of barrier to employment opportunities for people with criminal records.

NEW MEXICO'S LEGISLATURE enacted the Criminal Offender Employment Act, which finds that the public is "best protected" when people with conviction records are "given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible."[5]

A Look at the Numbers

- More than one-quarter of U.S. workers require a state license for their occupation, with the sectors in health care, legal, and education requiring the most licensure.[6]
- The American Bar Association National Inventory of Collateral Consequences of Conviction has documented an estimated 32,000 laws specific to occupational licensing and business licenses that include provisions regarding the consideration of criminal records.[7]
- More than one-third of those documented occupational and business license laws include automatic exclusions,[8] such as blanket bans on applicants with any type of a felony conviction.[9]

Limited Access to Occupational Licensing

License applicants may be barred from their chosen profession no matter how long ago their conviction occurred or whether the offense has a demonstrable relationship to successful performance of the duties of the occupation. Studies that have examined recidivism have found that most repeat arrests occur within three years of the first conviction, and that after four to seven years, the risk of recidivism is greatly reduced.[10]

As explained in the U.S. Equal Employment Opportunity Commission (EEOC) guidance on the use of conviction records in employment decisions, an automatic blanket exclusion from employment because of one's criminal record may have a disparate racial impact, which violates federal civil rights law.[11] Therefore, the EEOC recommends a job-related analysis of an applicant's offense and an individualized assessment prior to any disqualification.[12]

A nationwide survey of collateral consequences by the National Association of Criminal Defense Lawyers indicated that dozens of states have adopted laws generally limiting the consideration of criminal records by occupational licensing

authorities.[13] Although these laws do not fully eliminate the barriers to occupational licensing in those jurisdictions, they provide a starting point upon which advocates can build.

Some features of these laws include:

- Prohibiting the denial of a license based solely on an applicant's criminal record unless there is a conviction that directly relates to occupation;[14]
- Prohibiting the consideration of certain criminal record information;[15]
- Requiring a licensing board to consider factors such as whether the offense is relevant to the occupation, the amount of time that has passed since the offense was committed, and evidence of rehabilitation;[16] and
- Requiring a licensing agency to supply an applicant with an explanation of denial and allow for an appeal process.[17]

Impact of Policies to Reduce Barriers to Licensing

Estimates reflect that occupational restrictions can result in 2.85 million fewer people employed nationwide and raise consumer expenses by more than $200 billion.[18] Although these statistics demonstrate the impact of licensing restrictions generally, they provide a glimpse into the potential benefit to the economy and labor market if criminal record licensing restrictions were more narrowly tailored.

Lessening these barriers could also help eliminate worker shortages faced by high-growth job sectors, such as health care.[19] One-third of all jobs created between 2012 and 2022 are expected to be health care and social assistance positions.[20] A personal care aide, a position that typically requires a criminal background check,[21] is expected to be the second-fastest growing occupation in the nation during that period.[22]

Some states have concluded that the costs associated with reducing occupational licensing barriers can be minimal. For example, legislation recently passed in New Hampshire was expected to have a fiscal impact of less than $10,000 per year,[23] while similar bills in Florida and Ohio estimated net gains in state revenue due to increases in application and training fees.[24]

Implementation Considerations

The successful implementation of any reforms to criminal record restrictions on occupational licensing depends on the application of the laws by state licensing authorities—in some states, there may be dozens of independent boards. Given the number of decision-making bodies potentially involved, it is essential that the laws enacted promote clarity and consistency.

Lessons Learned from Louisiana and Ohio

Several states have passed laws aimed at creating a more uniform policy on the consideration of a criminal record across different occupational licensing boards.[25] With similar standards in place across occupations, greater efficiencies in the implementation of the laws can be expected. In Louisiana, House Bill 295 (2012) prohibited licensing boards from denying a license based solely on an applicant's criminal record. In Ohio, Senate Bill 337 (2012) allowed people to apply for a certificate of qualification for employment that lifts the automatic ban on obtaining a professional license and limits the extent to which a criminal record can be considered in licensing decisions.

Data collection is important for monitoring compliance and measuring outcomes. For example, for a law that prohibits blanket disqualifications and specifies certain criteria for considering a past record, the board should be required to report, at minimum, the following: the number of applicants with criminal records; the number of people denied licenses based on their records; and the type of record that was the basis for the denial. Florida requires each licensing board to file a report every four years detailing the criminal records-based restrictions on occupational licenses.[26] Other states have enacted similar requirements for individual licensing boards.[27] Collecting this information may require additional expenditures, depending on the type of data-collecting infrastructure that already exists. Absent such information, however, policymakers would lack the ability to gauge the success and outcomes of the new law.

1. The count of total prison releases in 2014 was 641,961 as generated using the Corrections Statistical Analysis Tool, U.S. Bureau of Justice Statistics; meanwhile approximately 9 million people are released annually from local jails, according to Beck, A.J., "The Importance of Successful Reentry to Jail Population Growth," presented at the Urban Institute's Jail Reentry Roundtable, June 27, 2006.
2. NELP, "Research Supports Fair Chance Policies" (April 2015).
3. Testimony of Mathias H. Heck, Jr., American Bar Association, Hearing on Collateral Consequences of Criminal Convictions and the Problem of Over-Criminalization of Federal Law before the Committee on the Judiciary.
4. Task Force on Over-Criminalization of the U.S. House of Representatives (June 26, 2014) at p. 8. Because the majority of occupational licensing laws are state-regulated, this paper does not contemplate local laws.
5. N.M. Stat. § 28-2-2.
6. White House, "Occupational Licensing: A Framework for Policymakers" (July 2015) at p. 3.
7. American Bar Association (ABA) Criminal Justice Section, ABA National Inventory of the Collateral Consequences of Conviction (visited Nov. 14, 2015).
8. Id. (visited Nov. 14, 2015).
9. Id. (visited Nov. 15, 2015).
10. Albert Blumstein, Transcript of Testimony before the U.S. Comm'n on Civil Rights at Briefing on "The Impact of Criminal Background Checks and the Equal Employment Opportunity Commission's (EEOC) Conviction Records Policy on the Employment of Black and Latino Workers," (Dec. 7, 2012), at p. 29, lines 6-12 (describing his research in comparing recidivism in a number of states). Research is continuing in this field.
11. See EEOC "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." (Apr. 25, 2012).
12. Id.
13. See Margaret Colgate Love, Nat'l Ass'n of Criminal Def. Lawyers "Consideration of Criminal Record in Licensing and Employment" (Oct. 2015).
14. See, e.g., S.C. Code Ann. § 40-1-140.
15. See, e.g., 18 Pa. Cons. Stat. Ann. § 9124.
16. See, e.g., Minn. Stat. Ann. § 364.03.
17. See, e.g., Mich. Comp. Laws Ann. §§ 338.42, 338.45-46.
18. See Morris M. Kleiner, The Hamilton Project, "Reforming Occupational Licensing Policies," Discussion Paper 2015-01 (Jan. 2015) at p. 6.
19. Institute of Medicine, "Retooling for an Aging America: Building the Health Care Workforce" (2008), at pp. 4–6, 199–200.
20. U.S. Bureau of Labor Statistics (BLS), "News Release: Employment Projections—2012-2022" (Dec. 19, 2013) at p. 2.
21. Office of Inspector General, U.S. Dep't of Health & Human Servs., "Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement" (Nov. 2012) at p. 4.
22. BLS, supra note 20, table 4.
23. "Fiscal Note," H.B. 1368, 2014 Sess. (N.H. 2014). H.B. 1368 prohibits denying a professional license based solely on an applicant's criminal record and requires licensing boards to consider how a conviction relates to the specific occupation.
24. S.B. 146 (Fla. 2011) requires disqualifying convictions to be directly related to the occupation for which licensure is sought. Fla. Senate, "S.B. 146 Bill Analysis and Fiscal Impact Statement" (Jan. 2011). Similarly, S.B. 337 (Ohio 2012) limits how various licensing boards can consider criminal records when deciding whether to grant an occupational license. Ohio Legislative Serv. Comm'n, "S.B. 337 Fiscal Note & Local Impact Statement" (Jun. 2012).
25. Since 2012, La., N.H., N.C., Ohio, and Tex. have all passed such laws. H.B 295 (La. 2012) (prohibiting boards from denying a license based solely on an applicant's record); H.B. 1368 (N.H. 2014) (same); S.B. 33 (N.C. 2013) (same); S.B. 337 (Ohio 2012) (allowing people to apply for a certificate of qualification for employment that lifts the automatic bar on obtaining a license and limiting the extent to which criminal records can be considered in licensing decisions); H.B. 1659 & H.B. 798 (Tex. 2013) (restricting the use of certain misdemeanors and felonies in licensing decisions).
26. Fla. Stat. Ann. § 112.0111(2).
27. See, e.g., Ohio Rev. Code Ann. § 3772.10(H) ; A.B. 861 (Cal. 2006).

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