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California's Occupational Licensing Laws Shouldn't Kick People When They're Down



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It's become somewhat of a banality to say that occupational licensing has run amok. As studies pile up showing that licensure has virtually no effect on quality---yet drives prices up, stifles innovation, and keeps people out jobs---a bi-partisan coalition has emerged in favor of rolling back licensure and restoring economic opportunity. But one thing that's often lost in these discussions is the especially pernicious effect occupational licensing laws have on people with criminal records. Even after releasing people from jail, states often continue to punish former prisoners for life by enforcing licensure policies that deny them the opportunity to earn an honest living. Given that

these people have served their time, the situation is deeply unfair, and it's a travesty to a society that cares about economic opportunity, preventing recidivism, and offering second chances.

Employment greatly reduces the likelihood that a person with a criminal record will return to crime, yet licensure stands as a significant barrier to employment. The problem is not just the sheer number of professions that require an occupational license---California is the most broadly licensed state in the nation figure----it's the utter difficulty of getting a license to work in even a relatively safe, entry-level profession. California requires a license for more low-income jobs than almost any other states. Locksmiths, travel agents, make-up artists, tree trimmers, and court reporters are just some of the occupations that require a license, and on average it takes 827 days of education and experience, \$486, and passage of two exams to get it. .

But even where those with criminal records can afford the time, training, and costs necessary to get a license, the state sometimes makes automatic disqualifications from licensure based on criminal histories. One of the starkest examples is the way California treated prisoners after they helped fight the state's wildfires in 2018. Despite asking prisoners to risk their lives for just over \$1 an hour in order to save people's homes from destruction, the state actually prevented those same prisoners from becoming firefighters once released from jail. Most counties require an EMT license to serve as a firefighter, but they also make virtually anyone with a criminal record ineligible for that license. The result is that the state was spending significant resources to train prisoners to firefight while in jail, only to deny them the opportunity to enter that profession once the prisoners were released. (The legislature recently addressed this particular example by passing a law that allows CAL-FIRE to certify former prison firefighters as "emergency medical responders," which they may then use to qualify for certain firefighter jobs.)

The fact that 1 in 3 adults in California have a criminal history, combined with the fact that nearly 30% of California jobs require licensure, may help explain why California has one of the highest recidivism rates in the nation. The overall unemployment rate for people with criminal records is over 27%, which is higher than the Great Depression. If we want people who have left jail to find work and avoid repeat offenses, we must reduce barriers to their entry.

Fortunately, important reforms are going into effect this year. As of July, 2020, licensing boards will no longer be able to deny a license solely due to a conviction unless the crime was committed in the previous seven years and is “substantially related” to the qualifications, functions, or duties of the job in question (though some felonies and other serious crimes are excluded from the seven year limitation). Boards also must promulgate and publish criteria for determining whether a crime is substantially related to the job, and consider “rehabilitation” evidence.

That’s an important reform, but there’s more California can do. Compared to other states, this change was modest. Many other states allow prospective applicants to seek a preliminary determination of whether their criminal record is disqualifying before spending time and money on the potentially futile application process. Others have a “wash out” period that’s shorter than 7 years. Still others require the licensing body to demonstrate an even closer connection between the crime, the job, and protecting the public before denying an applicant a license.

Most obviously, California could also cut out the red tape that keeps *all* people from getting a job and cut down the number of jobs that require an occupational license---which is the most onerous form of regulation. In many cases, the public would be adequately protected by mandatory certification or a mere bond requirement rather than full blown licensure. There’s simply no way, for example, to justify requiring 1,500 hours of training and passage of two exams to get a license to wash someone’s hair except as a handout to the cosmetology

industry, which enjoys decreased competition. Such burdensome requirements lock people with fewer resources and skills from employment without any benefit to public health or safety.

California should endeavor to be the land of first *and* second economic chances. Occupational licensure stands as a barrier to both, needlessly keeping economic opportunity from people who need it.



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