

NO BARS: UNLOCKING THE ECONOMIC POWER
OF THE FORMERLY INCARCERATED

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INTRODUCTION

One in three Americans has a criminal record. Given the significant size of this population, the ability for these individuals to attain economic success after they leave prison has tremendous implications for our economy and economic mobility. But formerly incarcerated individuals face substantial obstacles to employment when they leave prison, from discrimination in hiring to occupational licensing requirements that exclude those with criminal records from specific professions. This paper summarizes recent research on the employment of formerly incarcerated individuals, focusing in particular on the disproportionate effect of occupational licensing requirements. The paper concludes with suggestions for policy changes that would reduce the friction this population experiences in the labor market. These policies would help these individuals become more economically independent and have a positive impact on the economy as a whole.

ONE IN THREE AMERICANS

Nearly seven million Americans are currently involved in the criminal justice system, including more than 2.2 million people in prison or jail and an additional 4.7 million people who are on probation or parole.¹ One in three adults has been arrested by the age of twenty-three years old,² and it is estimated that as many as 100 million Americans have criminal records.³ The U.S. incarceration rate is one of the highest in the world, with more prisoners per capita than either Russia or China.⁴ A recent report from the National Research Council concludes, “the current U.S. rate of incarceration is unprecedented by both historical and comparative standards.”⁵

These high rates of incarceration affect people of color disproportionately. Compared to white men, black men are six times more likely to be incarcerated, and Hispanic men are 2.5 times more likely to be incarcerated.⁶ According to the Justice Department,

¹ Porter, Nicole D. “The State of Sentencing 2015: Developments in Policy and Practice.” The Sentencing Project. <http://sentencingproject.org/wp-content/uploads/2016/02/State-of-Sentencing-2015.pdf>.

² The Sentencing Project. “Americans with Criminal Records.” <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

³ The Sentencing Project. “Americans with Criminal Records.” <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

⁴ Coates, Ta-Nehisi. “The Black Family in the Age of Mass Incarceration.” *The Atlantic*. <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.

⁵ Travis, Jeremy, Bruce Western, and Steve Redburn, Editors. 2014. “The Growth of Incarceration in the United States.” National Research Council of the National Academies.

<http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

⁶ The Sentencing Project. “Americans with Criminal Records.” <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

“a third of black men and nearly a fifth of Latino men born in 2001 will go to prison in their lifetime.”⁷ In fact, the numbers are so high that prison has become commonplace among some populations. Harvard sociologist Devah Pager explains, “prison is no longer a rare or extreme event among our nation’s most marginalized groups...rather it has now become a normal and anticipated marker in the transition to adulthood.”⁸

Men make up the predominant share of the incarcerated, with women only comprising 7 percent of the prison population.⁹ But incarceration does not simply affect those who are imprisoned; it also has a significant impact on their families, especially children. In 2007, 54 percent of incarcerated Americans were parents of minor children.¹⁰ Prison time deprives these children of both their parents’ presence in their homes and the income they would have brought to the family. In addition to the emotional toll incarceration brings to families, there are economic consequences. With more than two-thirds of those incarcerated employed before arrest, their incarceration can have large economic implications for their families.¹¹ Incarceration diminishes potential earnings for the incarcerated person, as well as the savings of his or her family members, leading to the lack of capital that can impact generations.¹²

WORK AND RECIDIVISM

The challenges faced by the individual and the family during incarceration do not end when the individual leaves prison. Every year, more than 600,000 Americans are released from federal and state prisons¹³ and face the challenging task of re-integrating into society. Securing good employment, in particular, is very difficult for the formerly incarcerated, as they have been out of the labor force for the period of their incarceration and, perhaps more importantly, have criminal records that may make them ineligible for some jobs and expose them to discrimination in hiring for others.

⁷ Alexander, Michelle. 2010. “The New Jim Crow: Mass Incarceration in the Age of Colorblindness.” The New Press: New York.

⁸ Coates, Ta-Nehisi. “The Black Family in the Age of Mass Incarceration.” *The Atlantic*. <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.

⁹ Shoag, Daniel, and Stan Veuger. “No Woman, No Crime: Ban the Box, Employment and Upskilling.” American Enterprise Institute for Public Policy Research. <https://www.aei.org/wp-content/uploads/2016/04/No-Woman-No-Crime-Working-Paper-1a.pdf>.

¹⁰ The Sentencing Project. “Americans with Criminal Records.” <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

¹¹ Braman, Donald. 2004. “Doing Time on the Outside: Incarceration and Family Life in Urban America.” The University of Michigan Press: Ann Arbor.

¹² Braman, Donald. 2004. “Doing Time on the Outside: Incarceration and Family Life in Urban America.” The University of Michigan Press: Ann Arbor.

¹³ Vallas, Rebecca, and Sharon Dietrich. “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.” Center for American Progress. <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

The barriers to their successful employment are clear in the summary statistics: one year following release, between 60 percent and 75 percent of formerly incarcerated people are still unemployed.¹⁴ In fact, the formerly incarcerated represent a significant proportion of the overall unemployed. Among unemployed men between the ages of twenty-five and fifty-four, more than one-third (34 percent) have been convicted of crimes.¹⁵ A 2008 study by The Center for Economic Policy and Research¹⁶ found, “the population of people with felony convictions lowered the official employment rate among all men by as much as 1.7 percentage points.”¹⁷ Furthermore, the same study concluded that the United States “lost as many as 1.7 million workers due to employment barriers for people with criminal records [for example, limitations on government employment and professional licensing]—resulting in a staggering 0.9 percentage point reduction in the nation’s employment rate.”¹⁸

Formerly incarcerated individuals who do secure jobs make less money than those without criminal records. Previously incarcerated individuals’ hourly wages are, on average, 11 percent lower, and they realize “40 percent off annual earnings.”¹⁹ This impact of a criminal record on employment is compounded by racial bias for black job applicants, in particular. Research indicates that only 5 percent of black job applicants with criminal records receive callbacks – significantly less than the 17 percent of white job applicants with criminal records (and the 14 percent of black applicants *without* a criminal record).²⁰

BAN THE BOX

Criminal records often surface as part of a background check, a common hiring practice that puts the formerly incarcerated at a significant disadvantage in the search for employment. An overwhelming majority of employers (between 87 percent and 92 percent, depending on the source)^{21, 22} conduct these checks, and the formerly

¹⁴ U.S. Department of Justice. “Research on Reentry and Employment.” National Institute of Justice. <http://www.nij.gov/topics/corrections/reentry/pages/employment.aspx#convictionstatus>.

¹⁵ Emsellem, Maurice, and Michelle Natividad Rodriguez. “Advancing a Federal Fair Chance Hiring Agenda: Background Check Reforms in Over 100 Cities, Counties, & States Pave the Way for Presidential Action.” National Employment Law Project.

<http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf>.

¹⁶ Schmitt, John, and Kris Warner. “Ex-offenders and the Labor Market.” Center for Economic and Policy Research. <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

¹⁷ Wright, Kai. “Boxed In: How a Criminal Record Keeps You Unemployed For Life.” *The Nation*.

<http://www.thenation.com/article/boxed-how-criminal-record-keeps-you-unemployed-life/>.

¹⁸ Vallas, Rebecca, and Sharon Dietrich. “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.” Center for American Progress. <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

¹⁹ Wright, Kai. “Boxed In: How a Criminal Record Keeps You Unemployed For Life.” *The Nation*.

<http://www.thenation.com/article/boxed-how-criminal-record-keeps-you-unemployed-life/>.

²⁰ Pager, Devah. 2003. “The Mark of a Criminal Record.” *American Journal of Sociology* 108(5): 937–975. http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf.

²¹ The Sentencing Project. “Americans with Criminal Records.” <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

²² Wright, Kai. “Boxed In: How a Criminal Record Keeps You Unemployed For Life.” *The Nation*.

<http://www.thenation.com/article/boxed-how-criminal-record-keeps-you-unemployed-life/>.

incarcerated are less likely to be hired once a criminal record is uncovered. Recognizing that criminal histories are irrelevant to some jobs and are standing in the way of employment, many states have adopted “Ban the Box” statutes that prohibit public employers from seeking information about criminal records in job applications. As of 2015, seventeen states had adopted such statutes, and six of those states (Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, and Rhode Island) bar private employers from inquiring about criminal histories, as well.²³

These efforts to reduce or remove employment barriers for the formerly incarcerated have been positive. A study from the American Enterprise Institute found that Ban the Box campaigns overall have resulted in as much as a 4 percent increase in employment of residents in high-crime neighborhoods, with even higher increases in public-sector employment.²⁴ Studies in specific cities and states that have enacted Ban the Box policies also have found increases in the employment of individuals with criminal records. In Atlanta, Georgia, for example, “a fair-chance hiring policy led to people with criminal records making up fully 10 percent of all city hires between March and October 2013.”²⁵ And, in Durham, North Carolina, where a Ban the Box statute was enacted in 2011, the employment rate of those with criminal records increased from 2 percent to 15 percent by 2014.²⁶ Finally, a study in Minneapolis, Minnesota, found “more than half of job seekers with criminal records being hired.”²⁷ Hawaii’s Ban the Box law was found to reduce recidivism, with results showing a “criminal defendant prosecuted in Honolulu for a felony crime was 57 percent less likely to have a prior criminal conviction after the implementation of Hawaii’s ban the box law.”²⁸ Many businesses have followed suit, changing their hiring practices to eliminate the focus on criminal histories. Home Depot, Koch Industries, Target, and Walmart, among others, recently have stopped asking questions regarding criminal histories during hiring.²⁹ Some companies, like Target,

²³ Beitsch, Rebecca. “States Try to Remove Barriers for Ex-Offenders.” *The Pew Charitable Trusts*. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/6/18/states-try-to-remove-barriers-for-ex-offenders>.

²⁴ Shoag, Daniel, and Stan Veuger. “No Woman, No Crime: Ban the Box, Employment and Upskilling.” American Enterprise Institute for Public Policy Research. <https://www.aei.org/wp-content/uploads/2016/04/No-Woman-No-Crime-Working-Paper-1a.pdf>.

²⁵ Vallas, Rebecca, and Sharon Dietrich. “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.” *Center for American Progress*. <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

²⁶ The Southern Coalition for Social Justice. “The Benefits of Ban the Box: A Case Study of Durham, NC.” http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper.pdf.

²⁷ Vallas, Rebecca, and Sharon Dietrich. “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.” Center for American Progress. <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

²⁸ D’Alessio, Stewart J., Lisa Stolzenberg, and Jamie L. Flexon. 2015. “The Effect of Hawaii’s Ban the Box Law on Repeat Offending.” *American Journal of Criminal Justice* 40: 336–352. https://www.researchgate.net/publication/264158021_The_Effect_of_Hawaii%27s_Ban_The_Box_Law_on_Repeat_Offending.

²⁹ Shoag, Daniel, and Stan Veuger. “No Woman, No Crime: Ban the Box, Employment and Upskilling.” American Enterprise Institute for Public Policy Research. <https://www.aei.org/wp-content/uploads/2016/04/No-Woman-No-Crime-Working-Paper-1a.pdf>.

which is based in Minnesota, changed their policies in part to comply with new Minnesota legislation.³⁰

OCCUPATIONAL LICENSING

While a reduced focus on criminal histories represents a significant step forward in efforts to increase employment among the formerly incarcerated, other barriers remain. Occupational licensing, where a government mandates an individual secure a license to work in certain professions,³¹ stands as a primary obstacle to employment and opportunity for these formerly incarcerated individuals, as well as other low-income or vulnerable populations. Occupational licenses typically require a specific application process, a prescribed amount of educational training, and fees. While the costs of training and fees are challenges for the formerly incarcerated with limited incomes, all individuals with criminal records may be banned from receiving licenses based on their criminal histories alone, regardless of the relevancy of their conviction to the job.³²

These restrictions are widespread. According to the American Bar Association, there are more than 45,000 laws that restrict people with criminal records.³³ Each state has, on average, fifty-six occupational licensing laws with mandatory restrictions for those with felony convictions.³⁴ Some states have significantly more restrictive laws than others, with approximately 300 in Vermont compared to more than 1,800 in California.³⁵ In Illinois, for example, “the state restricts anyone with a criminal record from obtaining at least 118 different occupational and business licenses.”³⁶ Jobs subjected to these restrictions include both low-skill (nail technician and barber) and high-skill jobs (architect and geologist).³⁷ In 2014, in Texas, legislative committees found that

³⁰ Moore, Janet. “Target to ban criminal history box on job applications.” *Star Tribune*.

<http://www.startribune.com/target-to-ban-criminal-history-box-on-job-applications/229310141/>.

³¹ Wiens, Jason, and Chris Jackson. “Occupational Licensing: A Barrier to Entrepreneurship.” Ewing Marion Kauffman Foundation. <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/occupational-licensing-a-barrier-to-entrepreneurship>.

³² United States. Senate. Committee on the Judiciary. *License to Compete: Occupational Licensing and the State Action Doctrine*. Hearings, February 2, 2016. 114th Congress.

<https://www.judiciary.senate.gov/imo/media/doc/02-02-16%20Furman%20Testimony.pdf>.

³³ Beitsch, Rebecca. “States Try to Remove Barriers for Ex-Offenders.” The Pew Charitable Trusts. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/6/18/states-try-to-remove-barriers-for-ex-offenders>.

³⁴ Natividad Rodriguez, Michelle, and Beth Avery. “Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records.” National Employment Law Project.

<http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

³⁵ Beitsch, Rebecca. “States Try to Remove Barriers for Ex-Offenders.” The Pew Charitable Trusts. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/6/18/states-try-to-remove-barriers-for-ex-offenders>.

³⁶ Jackson-Green, Bryant. “Illinois’ Occupational Licensing Laws Undermine Ex-Offender Rehabilitation.” Illinois Policy. <https://www.illinoispolicy.org/illinois-occupational-licensing-laws-undermine-ex-offender-rehabilitation/>.

³⁷ Jackson-Green, Bryant. “How Occupational Licensing Blocks Path to Success for Ex-Offenders.” Illinois Policy. <https://www.illinoispolicy.org/how-occupational-licensing-blocks-path-to-success-for-ex-offenders/>.

“thousands of applicants annually are denied state licenses for well over 100 occupations because they have criminal records for a variety of offenses, ranging from manslaughter and armed robbery to drunken-driving and minor assaults.”³⁸

While twenty-one states require a “direct” relationship between “the license sought and the applicant’s criminal history to justify the agency’s denial of license,”³⁹ the remaining twenty-nine states have “no standards governing the relevance of conviction records of applicants for occupational licenses.”⁴⁰ This lack of standards allows occupational licensing agencies to “deny licenses based on any criminal conviction, regardless of history, circumstance, or business necessity”⁴¹ and creates an unpredictability that serves as a significant obstacle to the formerly incarcerated. They take on a substantial risk when they invest time and money in training and education for a particular occupation for which they may be barred in the licensing process. The National Employment Law Project points to these “additional challenges presented by a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions.”⁴² The figure below illustrates the significant number of states that have relevance standards in place as of February 2016.

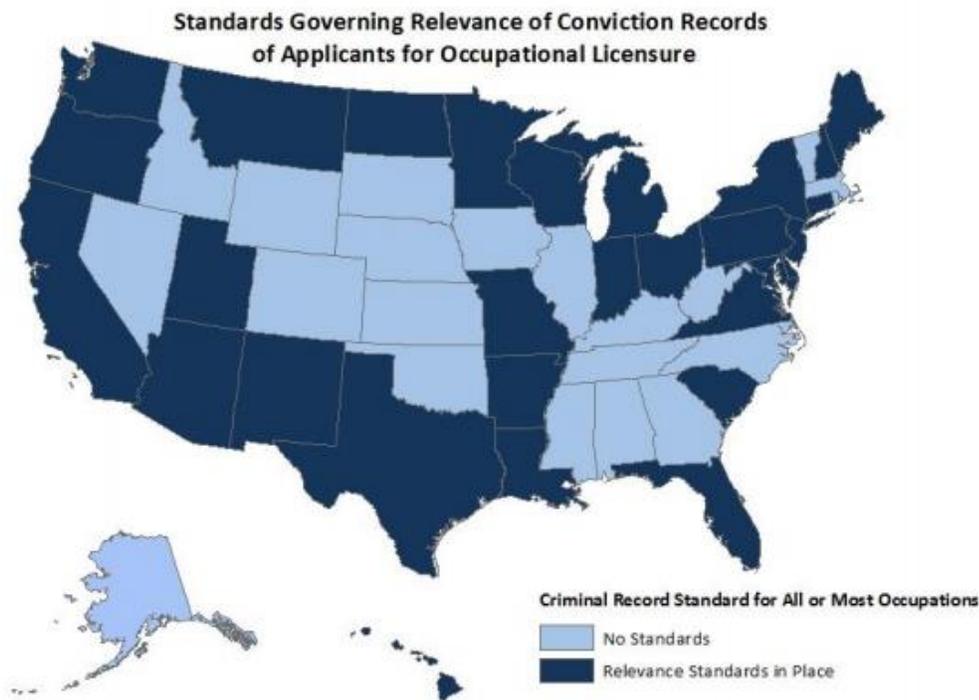
³⁸ Ward, Mike. “Texas leaders look at lifting restrictions on felons after release.” *San Antonio Express-News*. <http://www.expressnews.com/news/local/article/Texas-leaders-look-at-lifting-restrictions-on-5980306.php>.

³⁹ Legal Action Center. “After Prison: Roadblocks to Reentry.” http://lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

⁴⁰ Legal Action Center. “After Prison: Roadblocks to Reentry.” http://lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

⁴¹ Legal Action Center. “After Prison: Roadblocks to Reentry.” http://lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

⁴² Natividad Rodriguez, Michelle, and Beth Avery. “Unlicensed & Uptapped: Removing Barriers to State Occupational Licenses for People with Records.” National Employment Law Project. <http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.



*Graphic from United States. Senate. Committee on the Judiciary.
License to Compete: Occupational Licensing and the State Action Doctrine.
Hearings, February 2, 2016. 114th Congress.⁴³*

The lack of a license not only prohibits the formerly incarcerated from finding employment in a licensed field, but also makes it impossible for them to start their own businesses in the same field. This process, then, effectively closes the door to entrepreneurship in a licensed field, often an avenue to self-sufficiency for those who face barriers to employment. In Illinois, for example, barbers, cosmetologists, and nail technicians with criminal records may be denied licenses, making them unable to work at salons and also unable to open their own hair salons or manicure shops.⁴⁴

IMPACT OF OCCUPATIONAL LICENSING RESTRICTIONS

Occupational licensing restrictions' negative impact on employment among the formerly incarcerated has significant repercussions for both ex-offenders' rehabilitation and public safety. First and foremost, unemployment makes an already-vulnerable population even more so. The individuals and their families experience loss of income

⁴³ United States. Senate. Committee on the Judiciary. *License to Compete: Occupational Licensing and the State Action Doctrine*. Hearings, February 2, 2016. 114th Congress.

<https://www.judiciary.senate.gov/imo/media/doc/02-02-16%20Furman%20Testimony.pdf>.

⁴⁴ Jackson-Green, Bryant. "How Occupational Licensing Blocks Path to Success for Ex-Offenders." Illinois Policy. <https://www.illinoispolicy.org/how-occupational-licensing-blocks-path-to-success-for-ex-offenders/>.

during the incarceration period; this situation is compounded by ex-offenders' lack of income to support themselves after their release. The high rates of homelessness among this population attest to their struggle. In Los Angeles and San Francisco, for example, between 30 percent and 50 percent of all parolees are homeless.⁴⁵ While not all homeless people are unemployed, the high rates of homelessness among this community highlight their income volatility. This hardship only perpetuates the cycle of poverty and incarceration, as the lack of income makes it very difficult for these individuals to support their children and leaves their children in poverty, where they themselves are more likely to be incarcerated as adults.⁴⁶

Research also indicates that employment plays an important role in encouraging rehabilitation and reducing recidivism.⁴⁷ A study in Illinois found that formerly incarcerated people “who are employed a year after release can have a recidivism rate as low as 16 percent”⁴⁸—compared to the 48 percent of all formerly incarcerated people who return to prison within three years. The high rate of unemployment among this population, then, “places public safety at risk—and pushes the cost of incarceration and crime onto the public.”⁴⁹ Occupational licensing is promoted as a means to enhance public safety. However, if unemployment leads to recidivism, then barriers to employment for formerly incarcerated people also can be seen as a risk to public safety. Denying licenses to those with criminal records to protect the public might actually lead to an increase in crime.

On a larger scale, better employment for the formerly incarcerated would have a substantial positive impact on the economy. When this population is employed and earning money, its members pay taxes and purchase goods. Economic benefits would include “increased earnings, higher taxpayer revenues from employment, and avoided costs in reduced recidivism.”⁵⁰ A 2011 Pew Charitable Trust study found that states could save at least \$635 million in one year alone if they could lower recidivism rates by

⁴⁵ Coates, Ta-Nehisi. “The Black Family in the Age of Mass Incarceration.” *The Atlantic*. <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.

⁴⁶ Zaw, Khaing, Darrick Hamilton, and William Darity, Jr. 2016. “Race, Wealth and Incarceration: Results from the National Longitudinal Survey of Youth.” *Race and Social Problems* 8(1): 103–115. <http://link.springer.com/article/10.1007/s12552-016-9164-y>.

⁴⁷ Center for Law and Social Policy. “Barred from Jobs: Ex-Offenders Thwarted in Attempts to Earn a Living: Every Door Closed Fact Sheet Series. No. 2 of 8. <http://www.clasp.org/resources-and-publications/archive/0139.pdf>.

⁴⁸ Jackson-Green, Bryant. “Ex-offenders need to work to stay out of the system-but Illinois’ occupational-licensing rules keep many out of careers.” Illinois Policy. <https://www.illinoispolicy.org/ex-offenders-need-to-work-to-stay-out-of-the-system-but-illinois-occupational-licensing-rules-keep-many-out-of-careers/>.

⁴⁹ Jackson-Green, Bryant. “Ex-offenders need to work to stay out of the system—but Illinois’ occupational-licensing rules keep many out of careers.” Illinois Policy. <https://www.illinoispolicy.org/ex-offenders-need-to-work-to-stay-out-of-the-system-but-illinois-occupational-licensing-rules-keep-many-out-of-careers/>.

⁵⁰ Vallas, Rebecca, and Sharon Dietrich. “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.” Center for American Progress. <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

10 percent.⁵¹ A 2011 study by the Economy League of Greater Philadelphia quantified this impact: “securing employment for 100 formerly incarcerated people would increase their combined lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, while saving more than \$2 million annually by keeping them out of the criminal justice system.”⁵² And the Center for Economic Policy and Research study mentioned above found that the United States lost at least \$57 billion in GDP because of the lower levels of male workers due to incarceration.⁵³

OTHER POPULATIONS AFFECTED

While the formerly incarcerated population is hit especially hard by occupational licensing requirements, these policies affect other vulnerable groups, as well. The additional training and fees required for licensing serve as barriers to employment for all those who cannot access the additional hours of training or afford the fees, and the application process delays employment for those who can. Immigrants, for example, can face language barriers in addition to the financial costs and are unable to do the same work they were trained to do in their home countries without undergoing these training and application processes for their licenses. Even individuals who simply move to new states within the United States must apply for new licenses before they can work in a licensed profession, delaying employment and increasing its costs. Military spouses, who frequently move across state lines, may require licenses in multiple states during the course of their careers. And occupational licensing restrictions negatively impact potential entrepreneurs in licensed occupations, as well, particularly low-income entrepreneurs.⁵⁴ For example, makeup artists are licensed in thirty-six states. According to the Institute for Justice, the average cost is \$116 in fees, in addition to between three and nine months of education and experience, and two exams.⁵⁵ These barriers to economic independence waste talented labor and decrease productivity for the nation as a whole.

At a broader level, these barriers posed by occupational licensing protect incumbents and can increase economic inequality. Jason Furman, now the chairman of the White House Council of Economic Advisors, explains that these licenses shift wealth even further away from low-income individuals. Not only is this population less able to access

⁵¹ The Pew Charitable Trusts. 2011. “State of Recidivism: The Revolving Door of America’s Prisons.” <http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/state-of-recidivism>.

⁵² Emsellem, Maurice, and Michelle Natividad Rodriguez. “Advancing a Federal Fair Chance Hiring Agenda: Background Check Reforms in Over 100 Cities, Counties, & States Pave the Way for Presidential Action.” National Employment Law Project. <http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf>.

⁵³ Schmitt, John, and Kris Warner. “Ex-offenders and the Labor Market.” Center for Economic and Policy Research. <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁵⁴ Slivinski, Stephen. “Bootstraps Tangled in Red Tape: How State Occupational Licensing Hinders Low-Income Entrepreneurs.” Goldwater Institute. <http://www.goldwaterinstitute.org/en/work/topics/free-enterprise/entrepreneurship/bootstraps-tangled-in-red-tape/>.

⁵⁵ Institute for Justice. “Makeup Artist.” <http://licensetowork.ij.org/50>.

licenses in order to obtain higher-paying jobs, but also they face higher prices from those who do have licenses. Unlicensed workers, Furman finds, earn between 10 percent and 15 percent lower wages than do licensed workers with similar levels of education, training, and experience. Furman describes the increase in inequality that results from “shifting resources to those who obtained licensed jobs and away from those who cannot and reallocating rents from often lower-income consumers to producers.”⁵⁶ Ultimately, occupational licensing contributes to the decrease in economic mobility the United States has experienced and the pessimism it drives.⁵⁷

POLICY SOLUTIONS

Occupational licensing expansion over the past several decades increasingly has affected more occupations and workers. While about 10 percent of those who were employed had licenses in the 1970s, this portion grew to 25.5 percent by 2015.⁵⁸ The figure below presents the percent of the workforce that is licensed in each state, illustrating the significant number of states in which at least 20 percent of the workforce now carries some type of license.

⁵⁶ Furman, Jason. “Occupational Licensing and Economic Rents.” The Brookings Institution. https://www.whitehouse.gov/sites/default/files/page/files/20151102_occupational_licensing_and_economic_rents.pdf.

⁵⁷ For example, according to the Pew Research Center, nearly two-thirds (62 percent) of Americans believe their children will be worse off than they are. Pew Research Center. “Economies of Emerging Markets Better Rates During Difficult Times.” <http://www.pewglobal.org/files/2013/05/Pew-Global-Attitudes-Economic-Report-FINAL-May-23-20131.pdf>.

⁵⁸ Bureau of Labor Statistics. “Why This Counts: New Timely Data on Professional Certifications and Licenses.” <http://beta.bls.gov/labs/blogs/2016/04/15/why-this-counts-new-timely-data-on-professional-certifications-and-licenses/>.

Make It Relevant

Occupational licensing must be directly related to the protection of health and public safety. Furman argues, “Policymakers should refrain from categorically excluding individuals with criminal records, and instead should only exclude those individuals whose convictions are recent, relevant, and pose a threat to public safety.”⁶¹ For example, a DUI conviction may be relevant for a licensed occupation that involves driving, but not relevant for other licensed professions.⁶² About half of all states “specify that there must be a ‘direct,’ ‘rational,’ or ‘reasonable’ relationship between the criminal conviction and the license sought in order for a denial of licensure.”⁶³ New Jersey, for example, “allows licensing boards to disqualify an applicant only ‘if a conviction for a crime relates adversely to the occupation’ and requires the board to explain this adverse relationship in writing.”⁶⁴

Similarly, in Oklahoma, House Bill 2168 addressed occupational license restrictions. Before the law changed, “any felony conviction might affect licensure, registration, or certification.” Now, the measure “limits license denials or revocations to instances of persons convicted of a felony offense within the previous five years and where the conviction substantially relates to the occupation or the individual is determined to be a risk to public safety.”⁶⁵ More states should follow these examples and ensure that there is a direct connection between conviction and license denial.

Along the same lines, many occupational licensing standards include vague terms, such as a requirement of “good moral character.”⁶⁶ These terms should be removed from licensing requirements, as they are not detailed enough to be relevant and are subject to interpretation that may be vague or discriminatory.

⁶¹ United States. Senate. Committee on the Judiciary. *License to Compete: Occupational Licensing and the State Action Doctrine*. Hearings, February 2, 2016. 114th Congress.

<https://www.judiciary.senate.gov/imo/media/doc/02-02-16%20Furman%20Testimony.pdf>.

⁶² Legal Action Center. “Best Practice Standards: The Proper Use of Criminal Records in Hiring.”

[http://lac.org/wp-content/uploads/2014/12/Best_Practices_Standards_-](http://lac.org/wp-content/uploads/2014/12/Best_Practices_Standards_-_The_Proper_Use_of_Criminal_Records_in_Hiring.pdf)

[_The_Proper_Use_of_Criminal_Records_in_Hiring.pdf](http://lac.org/wp-content/uploads/2014/12/Best_Practices_Standards_-_The_Proper_Use_of_Criminal_Records_in_Hiring.pdf).

⁶³ Center for the Study for Social Policy. “Remove Barriers to Employment for Ex-Offenders.”

<http://www.policyforresults.org/poverty-economic/promote-workforce-strategies-for-reintegrating-ex-offenders/strategies/remove-barriers-to-employment-for-exoffenders>.

⁶⁴ Natividad Rodriguez, Michelle, and Beth Avery. “Unlicensed & Uptapped: Removing Barriers to State Occupational Licenses for People with Records.” National Employment Law Project.

<http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

⁶⁵ Porter, Nicole D. “The State of Sentencing 2015: Developments in Policy and Practice.” The Sentencing Project. <http://sentencingproject.org/wp-content/uploads/2016/02/State-of-Sentencing-2015.pdf>.

⁶⁶ Natividad Rodriguez, Michelle, and Beth Avery. “Unlicensed & Uptapped: Removing Barriers to State Occupational Licenses for People with Records.” National Employment Law Project.

<http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

Offer Restoration Opportunity

Nine states provide an opportunity for the formerly incarcerated to secure certificates of rehabilitation. These states currently “offer restoration of civil rights and/or certificates of rehabilitation for the purposes of employment and/or occupational licensure.”⁶⁷ Since “employers in a growing number of professions are barred by state licensing agencies from hiring people with a wide range of criminal convictions, even convictions which are unrelated to the job or license sought,”⁶⁸ more states should consider offering certificates of restoration or rehabilitation to give people the opportunity to receive occupational licenses.

Limit to Convictions

Most states (thirty-seven) allow occupational licensing agencies to inquire about arrests, even if the individual was never convicted of a crime.⁶⁹ Only ten states “prevent occupational licensing agencies and employers from considering arrests that did not lead to convictions in hiring decisions,” and “an additional three states—Arkansas, New Hampshire and New Mexico—prohibit this consideration for selected employers only.”⁷⁰ People who have been arrested for but not convicted of crimes should not be disqualified from jobs. Relevance is, again, key. If “a person is being prosecuted for an offense that is relevant to a job for which they have applied, an employer may consider it.”⁷¹

Conduct Further Research

Further research is needed to better understand how occupational licensing currently hinders economic growth. There is currently a dearth of data on occupational license applications that are rejected because of convictions. The National Law Employment Project suggests:

“Policymakers should begin by requesting information, such as the number of license applicants, applicants with records, and rejections based on records, as well as the type of records that disqualify applicants. Collecting applicant demographic data can also help identify who is excluded from licensed work. A more limited inquiry could focus on high-growth occupational sectors. At least

⁶⁷ Center for the Study of Social Policy. “Remove Barriers to Employment for Ex-Offenders.” <http://www.policyforresults.org/poverty-economic/promote-workforce-strategies-for-reintegrating-ex-offenders/strategies/remove-barriers-to-employment-for-exoffenders>.

⁶⁸ Legal Action Center. “After Prison: Roadblocks to Reentry.” http://lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

⁶⁹ Legal Action Center. “After Prison: Roadblocks to Reentry.” http://lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

⁷⁰ Center for the Study of Social Policy. “Remove Barriers to Employment for Ex-Offenders.” <http://www.policyforresults.org/poverty-economic/promote-workforce-strategies-for-reintegrating-ex-offenders/strategies/remove-barriers-to-employment-for-exoffenders>.

⁷¹ Legal Action Center. “Best Practice Standards: The Proper Use of Criminal Records in Hiring.” http://lac.org/wp-content/uploads/2014/12/Best_Practices_Standards_-_The_Proper_Use_of_Criminal_Records_in_Hiring.pdf.

two states, Florida and Illinois, have passed laws requiring such data collection.”⁷²

Consider Broad Changes

At a broader level, there also must be attention to the impact of these restrictions on the general population and on entrepreneurial endeavors specifically. Policymakers considering a restructure of occupational licensing policy instead should question its need in the first place. As the Kauffman Foundation has previously argued, licensing can be replaced with another form of regulation, such as certification, when public health is not under threat.^{73, 74} Other forms of regulation have less restriction to entry for the individual, while still providing an opportunity to receive recognition for industry knowledge.

Other changes to the licensing system may limit its negative effects. State licensing board composition, for example, has an impact on the implementation of its policies, and these boards often are comprised of licensed members who may seek to protect other incumbent members by limiting the number of new licenses. Including non-licensed practitioners on these boards would ensure a diversity of backgrounds and goals, as well as help prevent policies geared to protect incumbents. The simple decision by states to recognize other state licenses also would ease burdens for workers and entrepreneurs and improve worker mobility.

CONCLUSION

Occupational licensing can create unnecessary barriers to employment for many U.S. workers, particularly for certain populations like immigrants, military spouses, and low-income people. However, the additional restrictions for those with involvement in the criminal justice system can deter them from seeking training and employment. With research showing the importance of employment as a means to counter recidivism, policy needs to ensure that occupational licensing enables productivity and mobility, rather than acts as a punitive measure.

⁷² Natividad Rodriguez, Michelle, and Beth Avery. “Unlicensed & Uptapped: Removing Barriers to State Occupational Licenses for People with Records.” National Employment Law Project. <http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

⁷³ Wiens, Jason, and Chris Jackson. “Occupational Licensing: A Barrier to Entrepreneurship.” Ewing Marion Kauffman Foundation. <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/occupational-licensing-a-barrier-to-entrepreneurship>.

⁷⁴ Wiens, Jason. February 4, 2016. “Occupational Licensing: A Looming Barrier to Entrepreneurship and Upward Mobility.” Testimony Before the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy. <http://www.kauffman.org/newsroom/2016/02/kauffman-foundation-policy-director-warns-state-how-licensing-laws-fence-out-new-businesses>.

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