

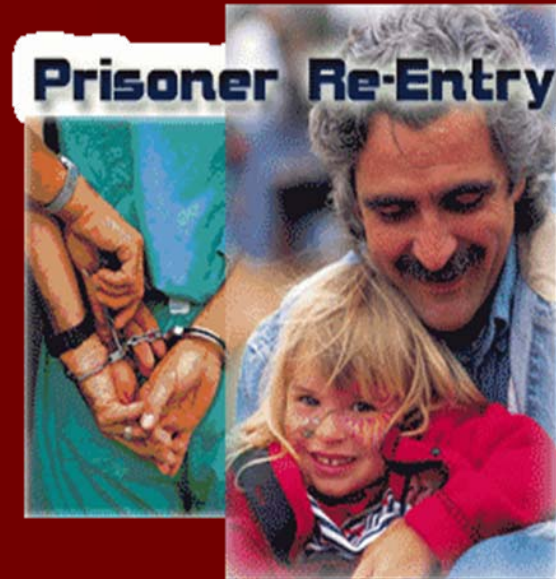
Locked Out of Their Livelihoods: Criminal Convictions and Occupational Licensing in Texas

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Introduction

- State statutes and regulations potentially bar ex-offenders from 168 different licensed occupations from plumber to electrician to manicurist.
- About half of these restrictions are statutes and the other half are agency rules.
- Some apply only to felonies while others also include misdemeanors of moral turpitude.
- Many apply to offenses for which the defendant received deferred adjudication.



Why It Matters



- There are at least 2 million ex-offenders in Texas. Between 15 to 20 percent of Texas men are in prison, on probation, on parole, or have a warrant for their arrest.
- Ex-offenders who are employed are three times less likely to re-offend
- Texas ex-offenders owe billions in child support and restitution.



Basic Texas Law

- **Texas Occupations Code Section 53.021 provides that a licensing authority may suspend or revoke a license or disqualify a person from receiving a license "on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the occupation."**
- **The problems are that some agencies very broadly interpret "directly relates" and there are over a hundred other occupation-specific statutes and rules.**

The "Directly Relating" Requirement

- Section 53.025 directs each licensing authority to issue guidelines stating the reasons a particular crime is considered to relate to a particular license.
- In fact, most agencies view all offenses as directly relating. For example, the Nursing Board's 22 Tex. Admin. Code 213.28 states that all offenses against the person, drug offenses, property offenses, and offenses involving fraud are directly related.



"Directly Relating" Factors

- The "directly relating" factors set out in Section 53.022 that the agency must consider are:
- the nature and seriousness of the crime;
- the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Fitness to Perform Duties Factors

- the extent and nature of the person's past criminal activity;
- age when crime was committed;
- amount of time elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- other evidence, including letters from law law enforcement and corrections officials



Examples of Texas Barriers

- Section 76.108 of the Agriculture Code disqualifies ex-offenders from obtaining a commercial license to apply pesticides.
- Section 43.01 of the Human Resources Code excludes ex-offenders from being an employee at a facility for the elderly or disabled.
- Section 53.021 of the Occupations Code that requires revocation of licenses for all licensed occupations upon conviction of selected offenses.

More Examples of Texas Barriers

- **Section 451.251 of the Occupations Code** that authorizes revocation of athletic trainer license upon conviction of a certain misdemeanors and all felonies
- **Section 548.507 of the Transportation Code** that authorizes TXDOT to revoke certification of a vehicle inspector due to a criminal conviction.

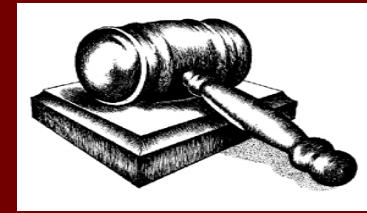


Texas Private Security Board

- The Department of Public Safety's Private Security Bureau in 2006 alone "cited an unacceptable criminal history to summarily deny nearly 10,000 applicants the opportunity to work in one of the 16 professions it regulates," including locksmiths and guard dog trainers
- Despite contrary rulings by several administrative law judges, the Bureau has refused to reinstate highly respected lifelong locksmiths whose licenses were revoked for petty crimes decades ago, insisting instead that criminal offense no matter how ancient is an automatic disqualifier.



Legal Procedures



- Applicants denied a license may challenge the decision before an administrative law judge. Some agencies do not always comply.
- Even juvenile offenses that are "restricted access" can be viewed by a licensing agency and used to exclude. Many juveniles do not know that they can petition to have the records sealed or cannot afford a lawyer to bring the proceeding.
- While agencies can see nondisclosure but not expungement, no obligation to list nondisclosed offense.

National Trends

- The American Bar Association has recommended that states lower barriers, excluding only those offenders whose conviction directly related to the occupation as narrowly defined and occurred within five years.
- In Florida, then Governor Jeb Bush appointed a commission that overhauled their laws to allow ex-offenders more opportunities.
- Jeb Bush issued executive order 06-89 in March 2006 which forced all state agencies to reexamine their rules.



80th Legislature Activity

- SB1750 by Sen. John Whitmire would have allowed nonviolent ex-offenders to obtain provisional licenses in most occupations. The bill overwhelmingly passed the Senate but was not considered in time in the House due to time running out.
- HB3203 by Rep. Elliot Naishtat, which was not heard, would have limited the Private Security Board's authority to deny and revoke licenses to Class B misdemeanor offenses or greater that relate to the person's fitness to perform the occupation.
- SB199 by Sen. Jane Nelson was enacted to ban certain ex-offenders from working in facilities that care for the elderly and disabled. Offenses covered include robbery, indecent exposure, improper photography or visual recording, and terroristic threat should not be absolute disqualifiers in all cases. There is no provision to consider how long ago the offense occurred, whether the person was a juvenile at the time, and evidence of rehabilitation.



Dean Whitmire

Conclusions & Recommendations

- Ensure that the \$16 million the state spends on Project RIO job for prison inmates yields dividends.
- Institute provisional or probationary licenses and integrate with probation and parole departments.
- More public members of boards and better awareness of how employment reduces recidivism.
- Allow sealed records for deferred adjudication.
- Study existence of correlation between types of prior offenses and occupational violations.
- Certificates of rehabilitation issued by judge or probation/parole creating presumption of fitness.

Conclusions & Recommendations

- Approve licenses with conditions – like commercial plumber who does not go into residence.
- Consider statutes that categorically state that some minor offenses, particularly that are many years old, are categorically not “directly related.”
- Avoid licensing new occupations if no danger to public safety. New HB2644 authorizes the Dept. of Health Services to license any person who performs “any service with a purported health benefit that involves physical contact with a client.” Could include personal trainers and yoga instructors.

