



## **NEED NOT APPLY:**

### **HOW OCCUPATIONAL LICENSING AUTHORITIES UNFAIRLY LOCK OUT PEOPLE WITH CRIMINAL HISTORIES FROM GROWING PROFESSIONS**

#### **BACKGROUND**

Approximately 4.7 million adults in Texas have a criminal record,<sup>1</sup> all of whom may face difficulty finding employment in this state. Of the nearly 500 occupations that require licenses, over 100 carry mandatory bans for people with any felony record.<sup>2</sup> Several occupations may deny licenses based solely on “good moral character” or “moral turpitude” clauses, stipulations that are so vague that applicants with *any* conviction may be subject to denial.<sup>3</sup>

In the 1950s, only 5 percent of jobs nationally required an occupational license;<sup>4</sup> today, more than one in four jobs requires a license,<sup>5</sup> and 60 percent of the fastest-growing industries require licenses<sup>6</sup> for professions that run the gamut from nurses and lawyers to barbers and cosmetologists. While Texas’ current unemployment rate is historically low, licensing agencies’ overly broad restrictions and background checks — which can extend back nearly 50 years — systematically and continuously prevent people with criminal records from obtaining occupational licenses.

And with licenses clustered in occupations that are often considered pathways to economic mobility, unnecessarily restrictive policies are especially

harmful, and the damage done to families and communities across Texas can reverberate through generations, extending poverty, food insecurity, and lack of access to meaningful employment from parent to child and to their children’s children. Furthermore, given that Black and Latinx people are disproportionately subject to incarceration, these occupational licensing laws have an even more harmful impact on the most marginalized communities.

**Extending licensed employment creates job stability for individual families — in some cases increasing wages by up to 15 percent compared to wages in unlicensed fields — and, by extension, it enhances the economic stability of whole neighborhoods.<sup>7</sup>**

In 2018, fourteen states introduced and/or passed reforms that removed overly restrictive clauses and extended fair-chance licensing to people with records.<sup>8</sup> This national effort has been both geographically diverse and solidly bipartisan. Legislation enacted in 2017 and 2018 in Kentucky and Tennessee bars occupational licensing agencies from using “any felony” with “moral turpitude” clauses to disqualify someone from a license, while at the same time requiring that any offense triggering a denial must be directly related to the particular license sought by the applicant.<sup>9</sup> In 2017, Illinois passed legislation that

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reformed how occupational licensing agencies consider convictions, and it implemented a data-tracking system to allow audits of the way in which the agencies were denying licenses to applicants with records.<sup>10</sup> Texas should similarly support opportunities for people returning home from incarceration to contribute to a strong workforce.

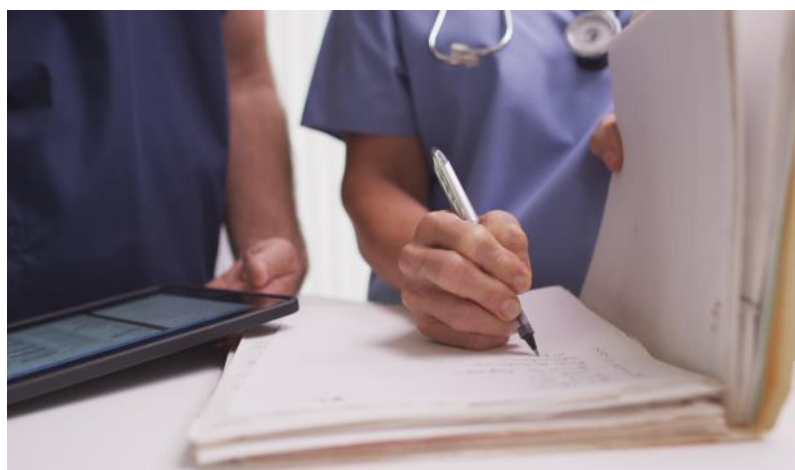
## EXAMINATION OF TEXAS LICENSING PRACTICES

In 2018, the Office of Texas State Representative Alma Allen requested records from 30 licensing agencies across Texas. Fourteen responded, including the Texas Department of Licensing and Regulation (TDLR), which oversees the majority of state licenses. The findings show that many agencies have denied only a few applicants exclusively based on their criminal history, but where licensing agencies *have* issued such denials, they were often in occupations that offer greater economic advancement, and too often the convictions at the basis of a denial were either old or irrelevant to the license being sought.

**In the course of this research, it was also discovered that, while denial rates are relatively low, the larger problem may be that people are often discouraged from even applying for an occupational license in the first place, as they are routinely told that their prosecution or conviction will make them ineligible.**

For instance, of those requesting a criminal history evaluation letter from the Texas Medical Board (TMB), 50 percent of people with criminal records were determined to be potentially ineligible for the prospective occupation.<sup>11</sup> Individual rationales were not enumerated; rather, the TMB included a list of

reasons why a license could be denied, including a vague clause suggesting that a prosecution alone for felony or misdemeanor crimes of so-called “moral turpitude” were cause for denial.<sup>12</sup> **This violates due process by denying licenses based on *potential* convictions of people who are presumed innocent, and it undermines transparency by presumptively making any crime or even alleged crime subject to ambiguous and subjective scrutiny.**



Critically, the majority of prospective applicants deemed ineligible across licensing boards are (a) in fields where applicants are applying for positions in occupations considered part of the fastest-growing industries in the state or (b) in industries in which vocational training may have been offered during incarceration and that are considered employment pathways to a stable working status.

The Texas Board of Nursing (BON), which licenses occupations in a fast-growing field, deemed 489 individuals ineligible for licensure as a result of criminal histories.<sup>13</sup> While several were deemed ineligible based on convictions that could be considered directly related to the occupation at hand (registered and vocational nursing), more often the



## **Why some applicants seeking a vocational nursing license were deemed ineligible:**

**A 26-year-old driving while intoxicated conviction**

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**An 8-year-old conviction for resisting arrest and failure to identify to a peace officer**

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**A 19-year-old criminal mischief charge, which resulted in one year of successfully completed probation**

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**A 10-year-old driving while intoxicated Class B misdemeanor**

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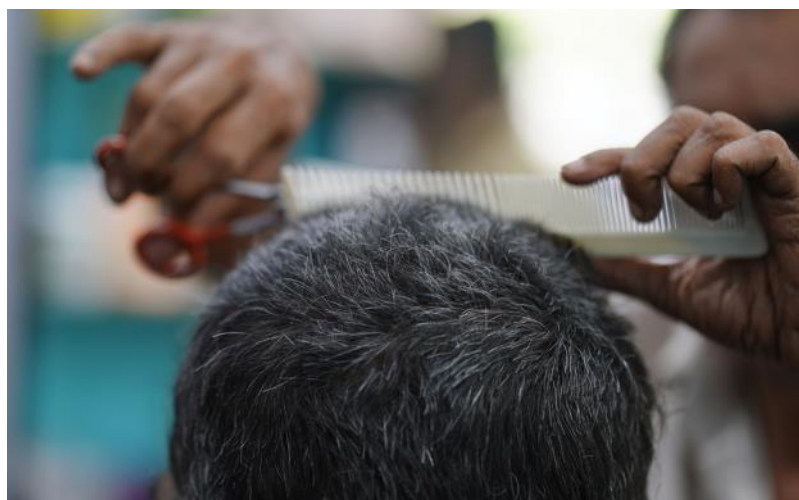
**And other cases where the convictions dated back over a 30-year period**

referenced conviction amounted to an incident in the past that would have little effect on the capacity to serve in the occupation.

Though the list to the left represents some of the most blatant examples of ineligibility, a review of the balance of stated rationales shows that most findings of ineligibility were unrelated to the license being sought, especially in light of the particular education and training needed for nursing.<sup>14</sup>

Even when reviewing data from TDLR, which is noted for working proactively with the Texas Department of Criminal Justice to expand access to certain occupations irrespective of criminal history, there are persistent roadblocks in certain professions.

Most surprising was the number of applicants deemed ineligible — sometimes solely based on a criminal record — that would allow them to work as apprentices to certified electricians or in positions as barbers and cosmetologists.<sup>15</sup> These represent entry-level positions that people often receive training for while incarcerated and that offer a ladder to economic mobility upon release.



## RECOMMENDATIONS

For Texas to continue to grow its economy, boost public safety, and invest in community growth, occupational licensing reform is urgently necessary. Legislators should support measures that would do the following:

- (1) Prohibit licensing agencies from disqualifying an applicant whose offense history does not “directly relate” to the occupation being considered. Furthermore, require agencies to clearly and narrowly define how an offense does “directly relate” to an occupation, and eliminate vague “moral character” standards.**
- (2) Allow applicants for a license to dispute incorrect criminal records or provide evidence of mitigating factors prior to the denial of a license.**
- (3) Require licensing agencies to provide clear guidance to applicants deemed ineligible for a license about what they can do to improve their future chances of approval.**

1. Helen Gaebler, “Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas,” The University of Texas School of Law, 2013, 2, <https://bit.ly/2MfrSy1>.
2. Terry-Ann Craigie, “Employment After Incarceration: Ban the Box and Racial Discrimination,” (Brennan Center for Justice, 2017), <https://bit.ly/2Misa9D>. See also: Council of State Governments Justice Center, National Inventory of Collateral Consequences of Conviction (2018), <https://bit.ly/2xQ2kCw>.
3. The National Occupational Licensing Database (January 1, 2018), <https://bit.ly/2npSRL5>.
4. Beth Avery, Maurice Emsellum, and Phil Hernandez, Fair Chance Licensing Reform: Opening Pathways for People with Records To Join Licensed Professions, (National Employment Law Project, 2017), <https://bit.ly/2QRwDOV>.
5. Rebecca Pirius, “States Making It Easier for Ex-Offenders To Get Occupational Licenses,” National Conference of State Legislatures Blog, March 29, 2018, <https://bit.ly/2GwyEvG>.
6. Avery et al., Fair Chance Licensing Reform.
7. Adam Millsap, “Occupational Licensing Linked to Less Economic Mobility,” Forbes, April 11, 2018, <https://bit.ly/2W0PR8o>. See also: Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor, Occupational Licensing: A Framework for Policymakers (July 2015), <https://bit.ly/2QTcU1n>.
8. Billy Culleton, “States Take on Occupational Licensing Reform,” MultiState Insider, May 17, 2018, <https://bit.ly/2FGTr1R>.
9. Avery et al., Fair Chance Licensing Reform. See also: Jared Meyer, “Tennessee Leads the Nation in Licensing Reform,” Forbes, August 10, 2018, <https://bit.ly/2FHWC1>.
10. Pirius, “States Making It Easier.” See also: Institute for Justice, “Illinois Governor Signs Licensing Bill,” September 22, 2017, <https://bit.ly/2HielNq>.
11. Megan Goode (Texas Medical Board) to Jaime Puentes, Criminal History Evals by License Type, Response to Data Request from the Office of Rep. Alma Allen, received October 8, 2018, as part of an FOIA request to Rep. Allen.
12. Megan Goode (Texas Medical Board) to Jaime Puentes.
13. Mark Majek (Texas Board of Nursing) to Jaime Puentes, Texas Board of Nursing-Open Records Request (Criminal Action), Response to Data Request from the Office of Rep. Alma Allen, received October 8, 2018, as part of an FOIA request to Rep. Allen.
14. Mark Majek (Texas Board of Nursing) to Jaime Puentes.
15. Texas Board of Licensing and Regulation, Criminal History Denials and Revocations and CHEL-Ineligible Reports – FY16, FY17, & FY 18, Response to Data Request from the Office of Rep. Alma Allen, received November 30, 2018, as part of an FOIA request to Rep. Allen.

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