

Give ex-cons work to do, study recommends

by Mark Lavergne

If we, the people don't want ex-convicts to break the law again, it may not be a good idea to make it next-to-impossible for them to get jobs.

That's the thrust of a study released this month on the difficulty of ex-offenders to find gainful employment in Texas.

The Texas Public Policy Foundation (TPPF) report focuses on occupations that require licensing, such as nursing, plumbing, interior design, residential home construction, security, and cosmetology.

Texas, the report charges, makes it unreasonably difficult or impossible for ex-offenders to obtain licenses for professions that require them. In fact, according to the study, ex-offenders face more difficulty getting jobs than illegal immigrants. Yet ex-offenders who are employed are three to five times less likely to re-offend, according to the Federal Bureau of Prisons.

Marc Levin, director of TPPF's Center for Effective Justice, told *LSR* the subject piqued his interest when he had heard of difficulties facing ex-offenders in finding employment. Levin mentioned also, as evidence of the problem, a 2006 *Austin American-Statesman* article on the subject. Texas Department of Public Safety last year, Levin said, revoked the licenses of over 10,000 alarm salespeople, locksmiths, and others, largely because of not-always-recent criminal histories.

Texas could ease jail overcrowding by helping ex-convicts enter the job market, said Levin, citing research studies that found:

*83 percent of New York parole violators were unemployed at the time;

*Across the country, 88 percent of 624 sex offenders employed both at the start and end of their supervision successfully complied with the conditions, whereas less than 37 percent of those unemployed at both stages did so;

*In Massachusetts, parolees who were employed within three months of release were more than seven times less likely to go back to prison than those not employed.

Job quality also plays a role. Levin reports that a move from food service work to more skilled crafts decreases by about 11 percent the probability of criminal behavior among ex-offenders.

Provisional licensing

Levin has several recommendations for lowering hurdles for post-incarceration employment. Chief among them: allow *provisional* licenses for non-violent ex-offenders.

One bill from the 80th session that looked to accomplish that was SB 1750 from Sen. **John Whitmire** (D-Houston). Levin worked with Whitmire on the bill, which passed the Senate unanimously but died in consequence of the uprising in the House against Speaker **Tom Craddick**.

The bill would have required most agencies to issue occupational
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licenses valid for a six months' probationary period. The offense had to be more than five years past, and not "directly related" to the work for which the ex-offender was seeking a license.

Levin said the legislation, which would have limited licensing disqualification to offenses less than five years old, raised particular concerns.

For example, some convictions (i.e., burglary) might have excluded someone from the locksmith industry, but possession of marijuana 20 years ago would not have been among those exemptions.

But therein lies a weakness in the final version of Whitmire's bill, Levin says—the ambiguity of a little phrase: "directly related." Just about anything can be considered "directly related" to a line of work, Levin says. He calls the language a "major limitation" of the bill. Offenses that in practical terms don't have much to do with a particular line of work can be used to disqualify applicants.

The report cites studies showing that for misdemeanors and/or nonviolent offenses, offenses more than seven years old do not affect future criminal activity.

Levin recommends language in the Whitmire bill be modified to require issuance of at least a provisional license for less serious offenses whether or not related to the occupation.

Speaking with *LSR*, Levin cited free-market reasons for provisional licensing. "People who tend to be free market-oriented are, I think appropriately, critical of occupational licensing being so broad to begin with." Liberals also tend to support post-incarceration employment because of its rehabilitative dimension, Levin said.

Levin brought the idea of provisional licensing to Whitmire after considering other options that seemed more cumbersome. For example, he had looked at other states that issue rehabilitation certificates, finding there were "a lot of moving parts."

The right to issue such a certificate empowers judges or probation officers at the expense of occupational agencies, Levin said. It would also disadvantage ex-offenders released from supervision by imposing legal costs to go through the process.

Levin recalled Sen. **Royce West's** (D-Dallas) SB 1738, a bill that would have removed deferred adjudication as a licensure disqualifier, excluding the most serious "3g" offenses such as murder and rape. That bill also perished in the House.

Liability reductions

Making it possible for ex-offenders to obtain licenses for regulated professions is only part of the process of facilitating their entry to the workplace. Levin said the government "provides disincentives" for employers to hire ex-offenders in the form of civil liability risk.

He calls for an end to punitive damages in negligent hiring suits, saying, "It makes little sense for the state to spend \$16 million every biennium on Project RIO, which trains ex-offenders and encourages employees to hire them, while operating a civil justice system that provides a disincentive to do so."

Levin points to a bill passed in the 78th Legislature and intended to shield employers from liability for negligent hiring lawsuits so long as they conducted background checks showing that in the last 20 years the employee was not convicted of certain offenses against persons or property. Though the legislation doesn't say the employer necessarily *would* be liable if the background check uncovered one of those offenses, trial lawyers interpreted it that way.

An employer could even be liable for negligent hiring if an ex-offender committed a tort, like accidentally injuring a customer—even if the accidental injury had nothing to do with the offense for which the employee was convicted in the past. Yet another bill that did not survive the 80th session, HB 2537 by Rep. **Nathan Macias** (R-Bulverde), would have eliminated negligent hiring liability imposed on employers who hired non-violent offenders.

Other recommendations

There are currently 500 Class C and regulatory misdemeanors in state law—little stuff like shipping citrus fruit from out-of-state without submitting paperwork to the Comptroller, or failing to register and vaccinate a cat. Such puny offenses are not even grounds for jail time, but they can result in the revocation or denial of a license.

Class C misdemeanors should have no bearing on a potential licensee's eligibility, Levin argues. "If the offense is not serious enough to warrant jail time and is not committed while performing the occupation, it should not be of concern to licensing agencies."

Levin also recommends expanding use of declaratory orders, which convicts can ask for to determine whether they are license-eligible for certain fields. That way prisoners could participate in vocational programs for occupations for which they know they will be eligible upon release—and not waste time training for those

they won't, Levin argues. He also recommended that agencies should be required to act on declaratory order requests within a reasonable amount of time, like 90 days.

Some laws governing occupations could also be moved out of the Department of Public Safety's Private Securities Bureau (PSB) and into the Texas Department of Licensing and Regulation (TDLR), Levin suggests. PSB covers licensing for security guards, guard dog trainers, alarm salesmen, locksmiths and a dozen others.

Unlike other agencies, PSB is not required to focus on offenses directly related to the occupation. So moving some professions out of PSB could reduce the number of outright denials. TDLR controls the licensing of barbers, cosmetologists, manicurists, electricians, water well drillers etc.

Of course, some licensed professions require more screening than others. Security guards, for example, require a higher standard than guard dog trainers or alarm salespeople. Levin recommended that professions requiring less rigorous screening be moved out of the Private Security Bureau and into the Texas Department of Licensing and Regulation, or even completely deregulate them.

Levin observed in talking with *LSR* that the locksmith industry was not even licensed until 2003. "I am unaware ... that there was a big crisis of renegade locksmiths committing crimes or creating havoc."

"There's a lot of other ways for holding people accountable besides occupational licensing," Levin said, such as suing companies who fail to properly perform background checks.

Levin summed it up in his report: "[W]hen our government doesn't let ex-offenders get back on their feet, we shoot ourselves in the foot." ☞

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