



INCREASING EMPLOYMENT OPPORTUNITIES FOR EX-OFFENDERS

POLICY RECOMMENDATIONS FOR THE STATE OF GEORGIA

BY: MICHAEL SCHULTE AND ERIC COCHLING | DECEMBER 2013



GEORGIA
CENTER for OPPORTUNITY
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ABOUT GEORGIA CENTER FOR OPPORTUNITY

Georgia Center for Opportunity (GCO) is an independent, non-partisan think tank dedicated to increasing opportunity and improving the quality of life for all Georgians. We research ways to help remove barriers to opportunity, promote those solutions to policymakers and the public, and help innovative social enterprises deliver results on the ground. The primary pathways to opportunity – strong families, quality schools, and stable employment – which historically gave people a chance to succeed, regardless of social and economic background, have experienced a rapid decline in recent decades. We study and understand the obstacles along these pathways to success and work to break through the barriers that keep Georgians from thriving.

Our work is focused on five primary impact areas:



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EXECUTIVE SUMMARY

Offenders reentering society face many obstacles to success outside prison. Many are eager to find work, a place to live, and a way of getting around, but find these basic ingredients for success difficult to acquire. The barriers that they face can be frustrating and demoralizing, leading many ex-offenders to revert back to a life of crime as a means of supporting themselves or their families. As a result, many find themselves back behind bars and even further entrenched into the cycle of recidivism.

The number of barriers that a person faces coming out of prison can be crippling. Those who are recently released are largely dependent on other people to provide for their immediate needs, including housing, food, clothing, and transportation. While securing legitimate work is key to becoming self-sufficient, ex-offenders soon discover how difficult it is to get hired with a felony conviction. All the while, various debts that they may have, such as child support arrears, court fees, damages, and restitution, often demand resources that they do not have. Add a substance abuse problem into the mix and the obstacles become seemingly insurmountable.

Unfortunately, a number of these barriers are often made worse by state laws and policies that are well-intentioned, but end up working against an offender who is trying to reenter society and make an honest living. This is especially true when it comes to employment. There are several legal barriers in place that make it difficult for an ex-offender to find employment in the first place and then keep a job once they have been hired. For instance, laws that suspend an offender's driver's license for non-driving related crimes create formidable barriers to transportation. These, in turn, affect an ex-offender's ability to interview for jobs and commute to work once a job is found. Modifying or repealing laws such as these would instantly remove barriers to opportunity and increase the likelihood that more offenders would transition successfully from prison to the community, without measurably increasing risk to the public. It would also save the state millions of dollars annually in reduced costs of recidivism.

The state of Georgia can serve an important role in enhancing the transition process for ex-offenders by removing the legal barriers to work and implementing positive incentives for employers to consider ex-offenders for employment. This could have an immediate impact on the recidivism rate in Georgia – an outcome that would have positive financial and public safety benefits for the state. Importantly, it would also serve to promote the well-being of individuals, families, and communities by giving those with a criminal record a second chance to live productive and meaningful lives.

Currently, the legal barriers that hinder ex-offenders from finding and keeping jobs include the suspension of driver's licenses for non-driving related offenses, the absence of legal protections for employers who hire ex-offenders, and the denial of numerous professional licenses to those with a felony conviction. These are all hindrances that can be addressed through changes in law or policy.

As a means of addressing these barriers to employment and creating new incentives for employers to hire ex-offenders, we offer the following six recommendations:

LIFT DRIVER'S LICENSE SUSPENSIONS

Lifting driver's license suspensions for those who have not committed a driving-related crime would eliminate a major transportation barrier for numerous ex-offenders and provide them access to a



job, to substance abuse treatment, to doctor's appointments, to the grocery store, and to a variety of other needs which are critical to their successful reintegration. It would also give them a primary form of identification to use for the purpose of obtaining employment and housing.

ENSURE IDENTIFICATION IS SECURED PRIOR TO RELEASE

The state should ensure, consistent with current state policy, that every offender receives proper identification prior to being released from custody or moved to a transitional setting. In addition to removing a barrier to finding employment, this would also ensure that valuable transition time is not squandered while offenders wait for identification to be processed.

INCENTIVIZE EMPLOYERS

The state should offer employer incentives such as a bonding program, tax credits or deductions, and liability protection for those who hire ex-offenders. A bonding program and liability protection from claims of negligent hiring would insure the employer against loss resulting from the acts of hired ex-offenders, while tax credits or deductions would encourage employers to hire ex-offenders by offsetting some of their costs related to hiring and training ex-offenders.

"ENHANCE THE CHANCE"

This reform would increase the likelihood that a person with a criminal record will get hired by postponing the question about an applicant's criminal history to a point after the interview stage of the hiring process. It would give the applicant an opportunity to demonstrate his or her qualifications for a job and provide an explanation for any criminal history to the employer during an interview. Postponing the question about criminal history would also give the employer an opportunity to assess an ex-offender's skill level and fit for the position before having their judgment biased by knowledge of the applicant's criminal history.

LIFT PROFESSIONAL LICENSING RESTRICTIONS

Lifting restrictions on professional licensing would open up job opportunities in specific professions for ex-offenders which are currently inaccessible to them because of a felony conviction. It would allow ex-offenders to begin training for certain professions while in prison and fill the workforce demand for such jobs upon release.

SET THE EXAMPLE

When appropriate, the state should set the example by hiring ex-offenders. It would demonstrate that the state is serious about helping ex-offenders become employed and successfully transition back into society. The degree of success that the state has in finding and maintaining qualified ex-offenders as employees will directly impact the willingness of private employers to adopt similar policies.



INTRODUCTION

Over the last decade, part of Georgia Center for Opportunity's work has involved efforts to strengthen families in the inner city through helping local leaders address the problems they see in their communities. In many areas, the work has included efforts to improve family life by offering workshops on relationship skills, conflict resolution, financial management, and similar topics to individuals and couples. The thinking – supported by the evidence and common sense – is that if you can improve relationships among family and community members, you can help improve many of the social problems they face. When you do this kind of work in the inner city, you quickly find that successfully working to strengthen

In 2009, Georgia led the country with 1 in 13 adults under some form of correctional supervision.

families must also include addressing the impact of incarceration, which too many inner-city families experience – especially in Georgia.¹

In 2009, the Pew Center on the States released a study showing that Georgia led the country with 1 in 13 adults under some form of correctional supervision.² Nationally, the number is 1 in 31.³ The Georgia correctional population in 2012 included some 57,000 prisoners and 163,000 probationers.⁴ About 20,000 prisoners are released each year in Georgia and,

as our experience in inner-city Atlanta confirmed, most are not prepared to be successful outside the prison walls.⁵ Of those released nationally, an estimated 68 percent will be re-arrested in three years and, in Georgia, about 30 percent will find themselves reconvicted within that time.⁶

That is why we launched our prisoner reentry working group in July after many months of research, nearly four dozen interviews, and visits to four state prison facilities. Our eight working group members consist of individuals with considerable expertise in Georgia's correctional system and a strong interest in improving outcomes for prisoners returning to the community. Their professional backgrounds range from working in state criminal justice agencies, to various non-profits, to addiction recovery, to research and reentry consulting. The working group has met several times already and will continue to meet monthly over the next year. The goal of the group is to develop policy and service-related recommendations on ways our state can reduce recidivism by improving positive outcomes for prisoners (such as job attainment and retention, housing stability, and staying sober and drug-free, among others).

The working group will focus upon several broad areas of reform over the next year. Those areas include, among others:

EMPLOYMENT

Looking at ways to remove barriers to and increase opportunities for prisoners to obtain and retain employment upon release.

REENTRY COURTS

Exploring how the state might create courts that specialize in working with prisoners as they are reentering the community.

TRANSITIONAL CENTERS

Identifying ways to increase the capacity of Georgia's transitional centers to serve more offenders and looking at whether specialized centers for specific kinds of offenders could be



more effective in reducing recidivism.

While each of these topics is broad, the working group is committed to zeroing in on very specific, common sense ways to improve each area that offer the greatest potential for measurable improvement.

With the 2014 legislative session quickly approaching, the working group sensed the importance of publishing a report with specific recommendations to improve employment opportunities for ex-offenders. This area is one which can arguably make the biggest difference in determining whether an ex-offender succeeds or fails in his or her transition back to society. This report aims to provide clear legislative reforms that could make an immediate difference in the lives of ex-offenders.

EMPLOYMENT IS KEY

While the relationship between employment and recidivism is complex, research has shown that it does play a critical role in reducing offender recidivism.⁷ Stable employment has the power to both deter ex-offenders from crime and incentivize law-abiding behavior.⁸

This impact can be seen on a practical level, as stable employment enables ex-offenders to meet their basic needs for housing, food, clothing, and transportation. Ex-offenders who obtain and maintain employment are less likely to commit a crime in order to meet these needs. Their job incentivizes them to abide by the law and serves as a constructive use of their time, thereby reducing their likelihood of engaging in criminal behavior.⁹

A steady income also affords ex-offenders the means to pay various debts that they may owe to individuals and the state, including child support, court fees, damages, and restitution.¹⁰ For many offenders, the overwhelming amount of debt owed as they exit prison is a major obstacle. Child support is one area in particular where ex-offenders are often burdened by the demand placed upon them, as some leave prison owing many thousands of dollars in arrears.¹¹ Having the ability to begin paying these debts soon after release is crucial to their successful reentry.

On a more intangible level, employment fills a vital need for social connection and feelings of societal contribution and self-worth.¹² Working a job can help ex-offenders develop a positive identity and self-image through being able to provide for themselves and their families. Their contribution can generate more personal support and enable them to develop stronger positive relationships among family members.¹³ These benefits affect the psychological well-being of ex-offenders and promote their ongoing success.

Unemployment, on the other hand, has been found to relate closely to substance abuse and other negative behaviors.¹⁴ It is a risk factor for reoffending, which is why most community supervision agencies use employment as a variable in assessing the risk of future crime.¹⁵ The U.S. Probation and Pretrial Services System found that in 2003, unemployed offenders under their supervision were revoked at a rate more than 500 percent higher than the rate of employed offenders.¹⁶ In addition, 80 percent of total revocations that year consisted of unemployed offenders.¹⁷ Another study of federal offenders found a high correlation between employment and the outcome of supervision. The results showed that the “[u]nemployed offenders were more likely to be revoked, while nine out of ten

Stable employment has the power to both deter ex-offenders from crime and incentivize law-abiding behavior.

employed offenders completed supervision successfully.”¹⁸

The legal and policy barriers to employment faced by ex-offenders merit greater attention from policymakers because they can be reduced through smart reforms that will translate into significant savings to the state,¹ enhanced public safety, and improved outcomes for ex-offenders and their families.¹⁹ From the perspective of wanting to encourage a just society, these reforms will also minimize the likelihood that ex-offenders will suffer an unjust form of punishment after their sentences have been served.

The following will identify those specific barriers and offer recommendations for creating new opportunities for ex-offenders.

THE IMPACT OF A CRIMINAL RECORD ON EMPLOYMENT

A criminal record presents numerous barriers to employment for ex-offenders. Those with felony convictions are automatically placed in a category of applicants that many employers are hesitant to hire, whether due to lack of work experience, prevailing social stigmas, negative stereotypes, or fear of liability.²⁰ One study reveals that a criminal record reduces the likelihood of a job callback or offer by nearly 50 percent.²¹ This is a hard reality for an estimated 2.6 million people with a criminal record on file in Georgia.²²

One study reveals that a criminal record reduces the likelihood of a job callback or offer by nearly 50 percent.

Today, an estimated 87 percent of companies are conducting criminal background checks on some or all of their job candidates before hiring.²³ Many are using private background check companies which are not regulated in terms of accuracy, so they often contain incorrect, incomplete, or irrelevant information.²⁴ The result is that employers are making hiring decisions without considering all of an applicant’s criminal history information, potentially hurting their chances of becoming employed.

Georgia spends \$21,039 for every offender who ends up back behind bars, amounting to nearly \$130 million a year for every cohort of released prisoners that recidivates.

The struggle for ex-offenders to find and maintain employment has not only hampered their reintegration into society, but it has hurt the nation as a whole. The Center for Economic and Policy Research estimated that, in 2008, the number of unemployed ex-offenders cost the U.S. economy between \$57 and \$65 billion in lost output.²⁵ In terms of the cost to the state, Georgia spends \$21,039 for every offender who ends up back behind bars, amounting to nearly \$130 million a year for every cohort of released prisoners that recidivates.²⁶

For the purpose of this report, we will focus specifically on changes in law and policy that can reduce the barriers created by a criminal record.

These barriers include the suspension of one’s driver’s license, the inability to maintain or apply for various professional licenses, and the negative perception of employers.

¹ Every percentage point that parole recidivism is reduced results in savings of \$6 to \$7 million in reduced costs of incarceration to the state.



DRIVER'S LICENSE SUSPENSIONS

Current law in the state of Georgia requires a six-month suspension of one's driver's license with the conviction of a drug offense that violates the Georgia Controlled Substances Act.²⁷ This requirement is not limited to those who have committed a driving-related drug offense i.e., driving under the influence of a controlled substance, but includes those who have committed any drug offense, including possession, manufacture, cultivation, or sale of a controlled substance or marijuana.²⁸

This statute originates from the Federal Highway Apportionment Act passed in 1992, in which Congress stated that they would withhold 10 percent of certain highway funds unless a state enacted a law revoking or suspending driver's licenses for anyone convicted of any drug offense for at least sixth months after the time of conviction.²⁹ Georgia chose to comply with the conditions set forth by Congress. In addition, the state requires offenders to pay a \$200 fee and complete an approved DUI Alcohol or Drug Use Risk Reduction Program before their driver's licenses can be reinstated.³⁰

The sanctions increase for a person convicted of a second drug offense within five years, as their license is suspended for three years. However, a person is eligible to apply for reinstatement of his or her driver's license after one year upon completion of a DUI Alcohol or Drug Risk Reduction Program and a payment of \$300. For those convicted of a third drug offense, a five year suspension is imposed, though offenders may apply for a driving permit after two years if they meet certain conditions for transportation to and from school, work, medical care, or addiction support groups.³¹ At the end of five years, a person may apply for reinstatement of his or her license by submitting proof of completion of a DUI Alcohol or Drug Risk Reduction Program and a restoration fee of \$400.³²

This law creates significant transportation barriers for the number of people who have committed a non-driving-related drug offense and need access to a vehicle. For nearly all ex-offenders in Georgia, the ability to drive is essential to finding a job and commuting to work daily, in addition to meeting many other needs such as fulfilling court-ordered requirements of release. Unfortunately, public transportation is simply not a realistic option for the majority of ex-offenders in Georgia. Like most Georgians, ex-offenders have diverse needs requiring significant travel by car from where they live.

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Missing Identification

Driver's licenses also serve as the most common and readily accessible state identification that a person carries. While ex-offenders can use alternative forms of identification to apply for a job or a place to live, such as a birth certificate or Social Security card, it is often the case that these documents are not provided prior to an offender's release from custody or transfer to a transitional setting.³³ This leaves ex-offenders in a difficult position, as they are forced to track down various forms of state identification without the ability to drive.

Under current state policy, the task of retrieving offenders' primary documents is supposed to be handled prior to release, but too often it falls on the shoulders of transitional center staff and overburdened parole and probation officers.³⁴ Because their caseloads are so large, parole and probation officers are not always able to obtain offenders' identification in a timely manner.³⁵ Part of the reason why some offenders are not receiving identification while in prison is because programs such as the The Offender Parolee Probationer State Training Employment Program (TOPPSTEP) – a program designed to ensure offenders receive their identification prior to release – are being offered



only to those being paroled, not those maxing out.³⁶ This leaves a large number of offenders without identification upon release.³⁷

PROFESSIONAL LICENSE RESTRICTIONS

Those who have been convicted of a felony involving moral turpitude in this state face the inability to acquire numerous occupational licenses.³⁸ This prevents ex-offenders from becoming a professional in a wide range of jobs, including a barber, cosmetologist, electrical contractor, plumber, conditioned air contractor, auctioneer, utility contractor, peddler and itinerant trader, residential and general contractor, registered trade sanitarian, scrap metal processor, structural pest control, and used motor vehicle dealer, among others.³⁹

Nearly 80 professions are off-limits to those with a felony conviction.

One of the problems with this law is that the state of Georgia has not identified which specific felonies fall under crimes of moral turpitude. In the case of voting, the State Attorney General in 1983 advised that the “Board broadly define ‘moral turpitude’ and consider *all* felonies crimes of moral turpitude for purposes of granting clemency and restoring civil rights to felons.”⁴⁰ There was no clear distinction made between crimes of moral turpitude and any other felony. This interpretation has been applied

to occupational licensing as well, causing nearly 80 professions to be off-limits to those with a felony conviction.⁴¹ This restriction severely curtails the number of professions available to offenders coming out of prison, many of which offer considerable promise for ex-offenders, because of the training that is often available in prison (i.e. training to become a barber). The inability to obtain a license in these professions means that much of the training an ex-offender may have received while incarcerated is of little practical benefit upon release.

EMPLOYERS' PERCEPTIONS

One of the most difficult barriers to employment for ex-offenders to overcome is employers' negative perceptions of them. This barrier cannot be changed completely by simple legislative means because, as research by Georgetown University Professor Harry Holzer has shown, employers are more reluctant to hire ex-offenders than any other disadvantaged group, such as former welfare recipients.⁴²

Employers are more reluctant to hire ex-offenders than any other disadvantaged group.

Part of this reluctance stems from the fears that employers have concerning hiring ex-offenders. They are responsible to a variety of stakeholders for ensuring quality goods and services and they fear that hiring a person with a criminal record alone, even if the person is a model employee, could reflect poorly upon their business and drive away current and potential customers. Employers also fear becoming victims of theft and other forms of dishonesty if they hire ex-offenders or being held liable if an employed ex-offender were to commit a crime while on the job.

In addition to these fears, employers are hesitant to be the first person to give an offender a second chance at a job, as he or she has not proven his or her trustworthiness, work ethic, or ability to succeed. Likewise, many ex-offenders lack work experience and the hard and soft skills employers consider key qualifications for new employees.



Other factors that affect employers' willingness to hire ex-offenders include the type of industry they work in, the position being sought, the type of crime committed, and the severity of the crime committed by the job applicant.⁴³

RECOMMENDATIONS

Given the barriers outlined above, below are seven recommendations that would greatly enhance an ex-offender's ability to find and maintain employment:

LIFT DRIVER'S LICENSE SUSPENSIONS

The state should lift driver's license suspensions for ex-offenders who have committed a non-driving-related drug offense in order to grant them much more flexibility in pursuing employment opportunities.^{ii,44}

Already, the state allows for one exception to the driver's license suspension statute for those who have committed a drug offense in violation of the Georgia Controlled Substances Act.⁴⁵ A judge in a drug court or mental health court is permitted to restore a defendant's suspended driver's license or issue a limited driving permit as a reward for good behavior.⁴⁶

Twenty-three states have recognized the importance of limiting the suspension or revocation of driver's licenses.

In addition, 23 states have recognized the importance of limiting the suspension or revocation of driver's licenses to only those drug offenses that relate to an individual's ability to drive safely. In these states, revocation or suspension of a driver's license is only triggered by conviction of driving under the influence of alcohol and/or drugs or drug-related offenses while operating a motor vehicle.⁴⁷ Maryland, in addition to limiting revocations and suspensions to driving-related offenses, also limits the length of a revocation or suspension to not more than 60 days for a first offense and 120 days for two or more offenses.⁴⁸

Another alternative would be to provide restricted licenses that leave open the ability for those convicted of a non-driving-related drug offense to drive to work, school, and treatment facilities upon release. Georgia already allows offenders to apply for such restricted licenses, but they are only offered to those with a third drug conviction after they have served two out of their five-year driver's license suspension.⁴⁹ Missouri is an example of a state that provides restricted licenses to drug offenders whose driver's licenses have been revoked in order to work, attend school, attend treatment programs, or for any other purpose that the court or the director of revenue finds would create an undue hardship on the ex-offender upon being released from prison.⁵⁰

Lifting suspensions on driver's licenses for drug offenders who have committed a non-driving-related offense also provides them an important piece of identification that is needed to secure employment, as detailed below.

ⁱⁱ While this requirement is tied to federal highway dollars, it is possible to change the current revocation law and still keep the federal funding if the Governor submits to the Secretary of the Department of Labor a written certification specifying that the legislature (including both Houses) has adopted a resolution expressing its opposition to such a law.

ENSURE IDENTIFICATION IS SECURED PRIOR TO RELEASE

The state should ensure every offender receives the proper identification that they need to obtain employment and other services upon release from prison. The primary documents that an offender needs to apply for a job include a birth certificate, a Social Security card, and a driver's license. Other vital documents necessary for securing a state-issued identification card include a valid passport, a marriage certificate, and a court order or judgment.⁵¹ The most pertinent documents for employment – a birth certificate, Social Security card, and driver's license, given that it is not suspended – need to be in the possession of offenders when they max-out or are released to a transitional center, parole, probation, or some other form of correctional supervision. Not having these documents readily accessible slows down the job application process, impedes transition, and increases the likelihood of recidivism.

The Department of Corrections already has the TOPSTEPP program in place, which is responsible for retrieving the primary documents offenders need to obtain employment. This is supposed to take place three to six months prior to release.⁵² We recommend the state take steps to ensure this requirement is being met for every offender leaving prison.

INCENTIVIZE EMPLOYERS

The state of Georgia should identify ways to incentivize employers to hire those with a criminal record. Three ways the state can do this is by implementing a supplemental bonding program, offering tax credits or deductions, and providing employer liability protection.

State Bonding Program

Currently, the federal government offers a bonding program that provides insurance to protect employers from employee dishonesty. The program provides fidelity bonding for at-risk job seekers who have been or may be denied commercial insurance coverage due to a criminal record, a history of substance abuse, poor credit, lack of work history, dishonorable military discharge, or because they are receiving welfare.⁵³ The program insures employers from \$5,000 to \$25,000 for a six-month period against any type of theft, forgery, larceny, or embezzlement.⁵⁴ Since its start in 1966, over 42,000 job placements have been made for at-risk applicants who were automatically made bondable. Of these job placements, only 460 applicants have proven to be dishonest workers, giving the program a 99 percent success rate.⁵⁵ The federal bonding program encourages employers to hire at-risk job applicants and makes ex-offenders more marketable for jobs. It is offered at no cost to either the employer or the job applicant.⁵⁶

Georgia policymakers should consider offering a supplemental bonding program to improve upon the weaknesses of the federal program.

Unfortunately, the program has been used by only a very small fraction of ex-offenders released since 1966. The likely reasons why this is the case include that the bond is provided at no cost for a relatively short term of only six months before the ex-offender or some other private party must start paying the premiums. Additionally, the bond is only available to ex-offenders with a job offer, which may be too late in the hiring process to incentivize employers to consider them.

Given the very low loss history of the federal program, Georgia policymakers should consider offering a supplemental bonding program to improve upon the weaknesses of the federal program,



which would offer employers additional incentives to hire at-risk applicants.⁵⁷ The state program could extend the time the bond is provided at no cost to the ex-offender or employer to a year or more at a relatively small additional cost to the state.^{iii,58} The state could also provide a form of bond pre-certification or approval letter for ex-offenders to offer to prospective employers as a means of improving an ex-offender's marketability.

Tax Credits for Hiring Employers

A second incentive that the state can use to encourage more employers to hire ex-offenders is to offer generous state income tax credits or deductions to those who do. The Georgia Department of Labor already administers a federal tax credit known as the Work Opportunity Tax Credit (WOTC), which is awarded to companies that hire people from certain target groups who have faced significant barriers to employment.⁵⁹ One of these target groups includes those with felony convictions. Companies generally are eligible to receive a tax credit for up to \$2,400 for each new person they hire with a felony conviction.⁶⁰ A couple of factors affect the size of the tax credit including the wages paid to the employee in the first year of employment and the number of hours the employee works.⁶¹

Unfortunately, the WOTC does not appear to significantly spur new hiring because the amount of the credit is relatively low compared to the true cost of hiring and training an ex-offender. Additionally, the fact that the credit is only available in the first year of employment may be insufficient to encourage employers to seriously consider hiring ex-offenders.

Recognizing the shortcomings of the WOTC, four states now offer state income tax credits or deductions to employers who hire people with criminal records which can serve as an example for Georgia to follow. Louisiana offers tax credits to employers who grant full-time employment to an individual convicted of their first-time non-violent offense (\$200 per taxable year, per eligible employee, for up to 2 years), who hire a reentrant who has been convicted of a felony and successfully completed the "Intensive Incarceration Program" (\$150 for one year), and who hire first-time drug offenders under 25 years of age who have completed a court-ordered drug treatment/rehabilitation program and worked 180 days full-time for the employer (\$200 per taxable year, per eligible employee, for up to 2 years). Iowa allows employers to deduct 65 percent of the wages paid during the first 12 months to an employee who has been convicted of a felony, who is serving a sentence on probation or parole, or who is participating in a work release program. Illinois offers a tax credit that amounts to 5 percent of the wages paid to ex-offenders who are hired within one year of release and have not committed certain offenses.⁶⁷ Lastly, California has a tiered approach in which the state offers tax credits "for wages paid in varying percentages for each year an employer hires and retains an ex-offender" (50 percent of wages paid in the first year of employment, 40 percent in the second, 30 percent in the third, 20 percent in the fourth, and 10 percent in the fifth).⁶²

By offering tax credits at the state level, Georgia can offer even stronger incentives for employers to hire ex-offenders.^{iv,63}

ⁱⁱⁱ The cost of an individual bond under the current federal program ranges from \$84 to \$98. Assuming the state could obtain similar premium pricing for extending the bond an additional six months, the additional cost to the state per class of released offenders (assuming roughly 20,000 offenders released) would be approximately \$1.68 to \$1.96 million annually.

^{iv} The state could cap the tax credit or deduction in any given year to an amount well below \$21,039, which is the average cost to incarcerate a person in Georgia for one year, and still greatly increase the employer incentive to hire ex-offenders. This cap would ensure savings to the state and reinforce the connection between employment opportunities and reduced state spending.

Recognizing the shortcomings of the WOTC, four states now offer state income tax credits or deductions to employers who hire people with criminal records.



Employer Liability Protection

A third way that the state can encourage more employers to hire ex-offenders is by offering them liability protection. By hiring ex-offenders, employers face the very real threat of civil liability for not exercising ordinary care in hiring an employee. They can be found liable for negligent hiring if they knew or should have known of an employee's dangerous or criminal propensities, especially in an era when background checks are so readily available to employers.⁶⁴ As a means of assuaging these concerns, liability protection can ensure that prospective employers will be protected in taking the risk of hiring those with a criminal record.

Six states have sought to protect their employers from negligent hiring liability in regard to hiring ex-offenders.

Already, six states have sought to protect their employers from negligent hiring liability in regard to hiring ex-offenders. These states include Florida, North Carolina, Texas, Colorado, Ohio, and Kansas.⁶⁵

In Florida, employers are protected from negligent hiring claims if they conduct a background check on a prospective employee which did not reveal any information that called into question the applicant's suitability for the position. The criminal record information must correspond with the information provided by the state repository.⁶⁶ North Carolina provides a

"Certificate of Relief" which is a bar to any action alleging lack of due care in hiring given the employer knew of the Certificate of Relief at the time of the alleged negligence.⁶⁷ Texas prevents liability for negligent hiring based solely on the fact that the employee was previously convicted of a crime, unless the offense was committed while performing substantially similar duties, was a certain violent or sexual offense, or was for fraud or misuse of funds (and that is the same basis for the claim of negligent hiring).⁶⁸ Colorado bars criminal histories from being introduced into evidence for negligent hiring liability if the criminal history is unrelated to the facts of the claim, if the criminal record was sealed prior to the claim, if the record relates to an arrest or charge not leading to a conviction, or if the employee received a deferred sentence which was not revoked.⁶⁹ Ohio offers a "Certificate of Qualification for Employment" which renders an employer immune from negligent hiring claims if the employer knew of the certificate at the time of the negligent act.⁷⁰ Lastly, Kansas protects employers from being held liable for employment decisions based upon the knowledge of an applicant's criminal history so long as the employer reasonably considers the applicant's trustworthiness and the safety or well-being of the employees and customers in making the hiring decision.⁷¹

Employers who hire those with a criminal record are providing a valuable service to the ex-offender and to society as a whole. While providing employment to some of the least employable in society, they are also reducing the likelihood that ex-offenders will recidivate or otherwise become burdens to the taxpayers of the state. The savings to the state for each offender who does not recidivate is tremendous.⁷² For these reasons, it is in the state's interest to encourage employers to take on this important responsibility. Offering employer liability protection would be a significant step in fostering ex-offender employment.

"ENHANCE THE CHANCE"^v

The state of Georgia should "enhance the chance" for ex-offenders to become employed by changing the way criminal records are considered during the hiring process.⁷³ This reform can be achieved by requiring employers to ask questions about criminal history at a later point in the hiring process

^v Also known as "Ban the Box."



instead of using it as a screening tool to automatically deny ex-offenders jobs.^{vi} Changing this practice would give ex-offenders additional opportunities to find work by allowing them to demonstrate their interpersonal skills and fit for a position before being disqualified due to a criminal record.

Employers have a responsibility to make sure the person they hire for a position is a right fit for the job. Background checks are one important part of this process, as they help to determine whether a particular industry or position is suitable for an applicant with a certain criminal history. However, it is vital that criminal records are used properly and not discriminatorily.⁷⁴ They should not be used as a screening tool to automatically dismiss all applicants with felony convictions. Rather, they should be used in a discerning manner, causing an employer to examine whether a person's criminal history has any relation to the position sought. If there is a strong correlation, then there may be reasonable grounds to remove the applicant from consideration. If not, the applicant deserves the same chance as any person to demonstrate his or her qualifications for a job.

Postponing the question of an applicant's criminal history to a later point in the hiring process serves another important purpose – it allows applicants to explain their criminal record to an employer in person. This face-to-face interaction is essential to increasing an ex-offender's chance of becoming employed. It provides an ex-offender the opportunity to be candid about his or her past and to explain how overcoming setbacks have fashioned him or her into a qualified candidate for the position. This conversation gives an employer the chance to listen to the ex-offender's story, relate to him or her as a person, and get a better grasp of the person's character and strengths. By giving ex-offenders the opportunity to represent themselves in the best light and to prove how qualified they are for a position, an employer may find his or her best candidate for the job.

As many as ten states and 50 cities and counties across the nation have specifically adopted “ban-the-box” or “enhance the chance” policies.

Currently, fourteen states have legal standards governing public employers' consideration of an applicant's criminal record that must include an assessment of the applicant's qualifications. These states are Arizona, Colorado, Connecticut, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, New Mexico, New York, Pennsylvania, Washington, and Wisconsin.⁷⁵ Of these states, Hawaii, Kansas, New York, Pennsylvania, and Wisconsin extend these standards to private employers.⁷⁶ Hawaii prohibits all non-federal employers, even those with one employee, from inquiring about an applicant's criminal record until a conditional offer of employment has been made. In addition, employers may not consider convictions that occurred more than ten years ago. New York prevents public and private employers from denying employment to an applicant with one or more criminal offenses by reason of finding “lack of good moral character.” The law outlines eight specific factors that must be considered when reviewing a previous criminal conviction including evidence of rehabilitation. Any denial of employment must also include a written explanation.⁷⁷

As many as ten states and 50 cities and counties across the nation have specifically adopted “ban-the-box” or “enhance the chance” policies as a means of removing a significant barrier to employment for ex-offenders.⁷⁸ Some prohibit employers from inquiring into an applicant's criminal history until after the interview, while others prohibit the inquiry until a conditional offer for employment is made. This latter approach represents the strongest protection for ex-offenders.^{vii, 79}

^{vi} We recommend the state first incorporate this reform into hiring for public employment as a way to demonstrate to private employers that it can be done effectively without creating significant additional burdens.

^{vii} Our specific recommendation would be to postpone the question of criminal history until after the interview stage of the hiring process, so as to maximize an ex-offender's opportunity without unnecessarily burdening employers in their hiring decisions.



The states that have enacted such policies include California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Mexico, and Rhode Island. Four of these states – Hawaii, Massachusetts, Minnesota, and Rhode Island – require postponing the question of criminal history for both public and private employers.⁸⁰

LIFT PROFESSIONAL LICENSE RESTRICTIONS

The state should lift restrictions on professional licenses in order to open up a greater range of professions for ex-offenders to pursue upon release from prison. Some of the professions most suitable to ex-offenders' skillsets are currently inaccessible to them because they are barred from acquiring a license in those professions. There is a need for these blanket restrictions to be lifted in order to be replaced with reasonable criteria for determining whether a given profession is suitable for an ex-offender given his or her criminal history.

As is the case for determining whether any job is suitable for ex-offenders, it is important to consider the following factors and their relationship to the professional license being sought: the nature of the crime committed, the time elapsed since the crime, the applicant's age at the time of the crime, and the evidence that the applicant has been rehabilitated.⁸¹ By using these criteria, professional licensing boards could determine whether an applicant with a particular criminal history is a good candidate for receiving a license. An applicant may be restricted from obtaining a license in one profession due to the nature of his or her crime, for example, but be an excellent candidate to receive a license in numerous other professions where his or her crime is unrelated. These decisions, as they are today, would be made on a case-by-case basis.

Many states are already working toward increasing opportunities for those with felony convictions to obtain professional licenses. Currently, "21 states have standards that require a 'direct,' 'rational,' or 'reasonable' relationship between the license sought and the applicant's criminal history to justify the agency's denial of a license."⁸² Colorado law mandates that a felony conviction or other offense involving "moral turpitude" cannot, in and of itself, prevent a person from applying for and receiving an occupational license.⁸³ New Mexico only allows occupational licensing authorities to disqualify applicants from felony or misdemeanor convictions involving "moral turpitude" if they are directly related to the position or license sought.⁸⁴ In Connecticut, a state agency must first consider the relationship between the offense and the job, the applicant's post-conviction rehabilitation, and the time elapsed since conviction and release before determining a person is not suitable for a license.⁸⁵ Louisiana forbids licensing agencies from disqualifying a person from obtaining a license or practicing a trade solely because of a prior criminal record, unless the conviction directly relates to the specific occupation. In the event the applicant is denied because of a conviction, the reason for the decision must be made explicit in writing.⁸⁶

Currently, 21 states have standards that require a 'direct,' 'rational,' or 'reasonable' relationship between the license sought and the applicant's criminal history to justify the agency's denial of a license.

Enabling people with felony convictions to acquire professional licenses in Georgia would benefit a variety of stakeholders. Not only would it give ex-offenders greater access to a variety of occupations and enable them to support themselves and their families, it would also make the most of current job-training programs offered in state prisons, create opportunities for expansion and partnership with technical schools, and enable offenders to maximize their time in prison and develop transferable job skills.



SET THE EXAMPLE

State agencies should set the example in employing those with a criminal record so as to open up more job opportunities for ex-offenders in the public and private sectors. For starters, having access to state jobs creates an array of new career opportunities for qualified ex-offenders to pursue. It would give them a chance to use their skills in jobs that were formerly off-limits for them, even though the nature of their crimes may not have corresponded to the jobs that they were seeking.

Simultaneously, the state setting the precedent in hiring ex-offenders would encourage more private employers to do the same. Private employers may be more willing to follow the state's lead in hiring ex-offenders if they can see that the state is willing to take a calculated risk in hiring them, particularly if coupled with some of the other reforms outlined above. One of the main reasons employers do not hire ex-offenders is because of the perceived risk associated with doing so.⁸⁷ If they can see that state agencies are successfully employing ex-offenders, with minimal negative outcomes, they will be more inclined to follow suit.⁸⁸

Finally, the state setting the example would draw important public awareness to the barriers that ex-offenders face upon coming out of prison and highlight the way employers in the community can help to improve their transition and break the cycle of recidivism. State agencies that have had success in hiring ex-offenders would have the chance to speak up about how they assess a person's qualifications for a position without allowing his or her criminal history to be an unreasonable roadblock to employment.

The state setting the precedent in hiring ex-offenders would encourage more private employers to do the same.

CONCLUSION

Stable employment has been shown to be a key factor in offenders' successful transition from prison to society. It follows then that it is in the state's interest to remove every unnecessary obstacle to employment that it can in order to achieve this outcome. Policymakers can play a critical role in increasing employment opportunities for ex-offenders, and decreasing their chances of recidivating, through sensible changes in law and policy.

If applied by the state, the recommendations set forth in the preceding have the potential of making an immediate impact upon the well-being of Georgians by improving public safety, allowing more people with a criminal record to enjoy the benefits of having gainful and steady employment, increasing the prospects of offenders successfully transitioning into society, stimulating the economy through a larger labor force and more taxpayers, saving the state millions of dollars through reduced costs of incarceration, and critically, helping ex-offenders to get back on their feet, support their families, and become productive members of their communities.

NOTES

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