

Do Licensing Restrictions Make Sense?

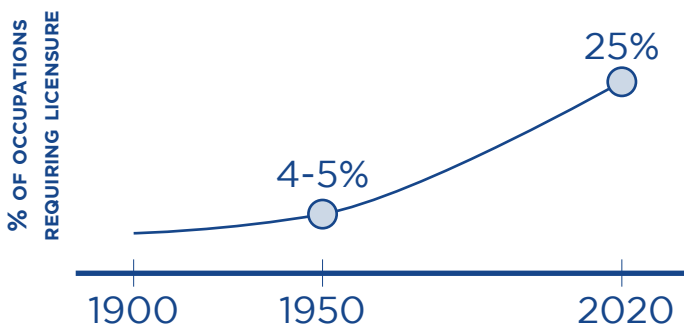
Using the standard of

“SUBSTANTIAL RELATIONSHIP”

an agency may deny licensure to a candidate if the crime for which they were convicted is “substantially related” to the duties of the profession. Not only does this standard ignore the contextual nature of crime and assume that a conviction accurately predicts future behavior, it is also often used very broadly. Many **agencies view nearly all offenses as somehow directly related to the occupations** they regulate.^{iv}

The number of occupations requiring a license has roughly quadrupled since the 1950s. While some professions have been motivated to ensure quality of services and public safety, case studies indicate that in many cases, the motivation has had more to do with increased wages and limited competition that licensing brings.ⁱ

The Licensing Boom



Timeline of Likelihood of New Offenses

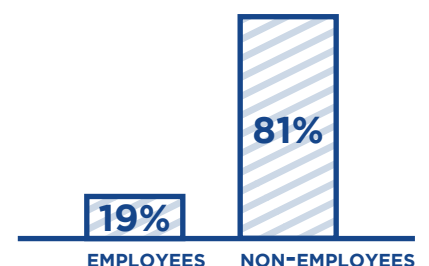


Criminal record-based restrictions to occupational licenses are generally based on a presumption of future ‘risk,’ but this presumption is not grounded in empirical data. Research shows the likelihood of new offenses among those who have been convicted declines quickly and that after 7 years, people who have been convicted are no more likely than others to be arrested.ⁱⁱ

The inconsistency across licensing requirements further demonstrates their lack of correlation with “safety.” For example, cosmetologists are required to complete approximately one year of training, compared to Emergency Medical Technicians’ one month of training.ⁱⁱⁱ

Workplace Violence

Criminal record-based restrictions to occupational licenses are partially justified in the name of protecting other employees from potential violence. However, the vast majority of workplace violence is perpetrated by non-employees.^v



ⁱ Historical analyses of court decisions, legislation and relevant actors indicate that the recent boom in occupational licensing has been driven in part by people who are already members of that occupation, out of a desire to increase their wages by limiting entry into the field. State governments are generally supportive because the revenue generated by licensing fees and education can be used to offset the costs of monitoring and balance state budgets.

- Carpenter, D. (2012). Testing the Utility of Licensing: Evidence from a Field Experiment on Occupational Regulation. *Journal of Applied Business and Economics*, 13, 28–41.
- Kleiner, M. (2006). A License For Protection: Why are States Regulating More and More Occupations? (pp. 17–21). University of Minnesota.
- Smith, D. J., & Trudeau, N. J. (2019, June 22). The Undertaker's Cut: Challenging the Rational Basis for Casket Licensure. *Journal of Private Enterprise*.
<http://link.galegroup.com/apps/doc/A588079253/AONE?sid=lms>

ⁱⁱ Analyses of longitudinal criminology birth cohort and recidivism studies lead these authors to conclude that after about 7 years people with criminal records are no more likely to offend than the average person.

- Blumstein, A., & Nakamura, K. (2009). Redemption in the Presence of Widespread Criminal Background Checks*. *Criminology*, 47(2), 327–359. <https://doi.org/10.1111/j.1745-9125.2009.00155.x>
- Kurlychek, M. C., Brame, R., & Bushway, S. D. (2007). Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement. *Crime & Delinquency*, 53(1), 64–83.
<https://doi.org/10.1177/0011128706294439>

ⁱⁱⁱ Comparative analyses of occupational licensing burdens reveal both irrational requirements when linked to public safety and an inconsistency in requirements across states.

- Carpenter, D., Knepper, L., Sweetland, K., & McDonald, J. (2017). License to Work: A National Study of Burdens from Occupational Licensing (No. 2nd Edition). Retrieved from Institute for Justice website: <https://ij.org/report/license-work-2/>
- Flanders, W., & Roth, C. (2017). Fencing Out Opportunity: The Effect of Licensing Regulations on Employment. Wisconsin Institute for Law & Liberty.

^{iv} Analyses of policy implementation and recent case law show that the 'substantial relationship' standard is used broadly and at the discretion of professional Boards with the power to grant licensure. For example, drug related convictions are often considered 'substantially related' to any type of work, without considering the person's current behavior, or the fact that very few crimes are actually committed while working and under the influence.

- J, H., P. (2018). MOUSTAFA v. BOARD OF REGI | 29 Cal.App.5th 1119... | 20181210003| Leagle.com. Leagle. <https://www.leagle.com/decision/incaco20181210003>.
- Levin, M. (2007). Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas. 15.

^v Statistical data from the FBI, OSHA, the National Center for Injury Prevention & Control, as well as other federal agencies that track violent crimes, indicates that workers face higher risks of assault from strangers, customers, intimate partners, or family members than from coworkers.

- Lucken, K., & Ponte, L. M. (2008). A Just Measure of Forgiveness: Reforming Occupational Licensing Regulations for Ex-Offenders Using BFOQ Analysis. *Law & Policy*, 30(1), 46–72.
<https://doi.org/10.1111/j.1467-9930.2008.00269.x>
- Merchant, J. A., & Lundell, J. A. (2001). Workplace Violence: A Report to the Nation. Retrieved from University of Iowa Injury Prevention Research Center website:
<https://www.dgs.pt/departamento-da-qualidade-na-saude/observatorio-da-violencia/estudoint2-pdf.aspx>
- Harrell, E. (2011). Workplace Violence, 1993-2009: National Crime Victimization Survey and the Census of Fatal Occupational Injuries (p. 18) [Special Report]. U.S. Department of Justice Bureau of Justice Statistics.