



To: Chair Estes, Vice-Chair Olson, Ranking Member Faust-Goudeau, and Honorable Committee Members
Members, Senate Committee on Federal and State Affairs
From: Jared Meyer, Opportunity Solutions Project
Date: March 7, 2018
RE: **Testimony in Support of Senate Bill 421 Relating to
Licensing of Professional Occupations**

Chair Estes, Vice-Chair Olson, Ranking Member Faust-Goudeau, and Honorable Committee Members,

Thank you for the opportunity to testify in support of Senate Bill 421, which addresses the government-created barrier to work faced by those with criminal records. My name is Jared Meyer, and I am a senior fellow at the Opportunity Solution Project. OSP is a nonpartisan, multi-state advocacy organization that seeks to improve lives by promoting work.

SB 421 expands and updates the workforce protections that Kansas has currently. It is the state's policy that felony conviction "shall not operate as a bar to licensure, certification, or registration." However, licensing authorities can consider old convictions, convictions that are unrelated to the occupation, and minor infractions.

Under SB 421, the previous protections would be strengthened to ensure that those with records do not face undue barriers to work. Licensing authorities will have to list the specific and directly-related offenses that could disqualify applicants from receiving licenses. Furthermore, if five or more years have passed since an applicant's conviction of a non-violent or non-sexual crime, an occupational license may not be denied to an applicant. Lastly, applicants will be able to get assurance from licensing authorities that their applicants will be approved before they invest in costly and timely licensing requirements.

It is important to note that nothing in this legislation applies to private employers. Only government-created barriers that limit Kansans' ability to receive occupational licenses will be affected. This desire to allow those with criminal records to get a fresh start is widespread, as there are over 25 states, plus the District of Columbia, that are considering similar reforms this year.

Licensing's Effect on Those with Criminal Records

It is estimated that one in three American adults has a criminal record. This statistic means over 700,000 Kansas residents have some conviction. Just as not having a job is the main predictor of how likely someone is to be in poverty, not being able to get a job is the clearest indicator of

how likely someone is to re-offend or end up incarcerated again. And the sooner someone who commits a crime finds a job, the less likely they are to re-offend.

Though having a job has clear advantages, occupational licensing laws can pose unnecessary, often insurmountable, barriers to work for many people with records. An occupational license is essentially a government permission slip required to work in a certain profession. Today, 15 percent of Kansas workers require a state occupational license to work in the numerous occupations licensed by the state.

Nationwide, there are about 30,000 licensing restrictions for those with criminal records. Thousands of these restrictions are blanket bans, or laws allowing ex-offenders to be denied licenses because they have a felony or misdemeanor on their record. Others are mandatory bans, which require licensing boards to deny licensure regardless of mitigating circumstances, and many of these bans are permanent. Furthermore, ambiguous language, such as “good character” or “moral turpitude” requirements, gives licensing boards added discretion to deny people work.

With the opioid epidemic leaving Kansas residents who struggled with addiction with criminal records, vague standards that allow boards to judge applicants’ character can serve as a major disincentive for those in recovery seeking work in licensed occupations. Because work is a core component of recovery and has the largest positive effect of any indicator on overcoming drug addiction, state lawmakers should promote work for these individuals.

The Benefits of SB 421

The first section of SB 421 requires boards to list the specific criminal convictions that could disqualify an applicant from receiving a license. This reform would disallow boards from using language like “good character,” “any felony conviction,” or “moral turpitude.” The specific crimes that are listed would have to be “directly related to protecting the general welfare and the duties and responsibilities for such entities.”

Even with the state’s standard that applicants’ criminal records should not automatically keep them out of work, examples in the next section of this testimony show how boards tend to have overly-broad restrictions on work. If boards were not allowed to use blanket bans and instead had to list the offenses that could potentially disqualify an applicant, then there would be greater certainty for workers and a more robust check on boards’ powers to keep people out of work.

Just because someone has a criminal record does not mean they are a danger to the public. Over 95 percent of arrests are for non-violent or non-sexual crimes. The majority of people who

are arrested never go to prison and those who do usually do not return. Many people who do return to prison do so because they violated parole, not because they committed a new crime.

Additionally, research has shown that once a non-violent offender is crime-free for three to four years, they are no more likely to commit a crime than the average person. Therefore, it makes sense to allow those with non-violent, non-sexual convictions that are over five years old to receive occupational licenses if they have remained crime-free since their conviction.

The last section of this bill allows those with records to petition a board at any time and get a determination of if their criminal records will disqualify them from receiving a license or certification. Considering that the average training for Kansas's 35 low- to moderate-income licensed occupations is 200 days, getting this information is critical for someone who is about to invest time and money completing government-required training.

Aspiring workers who have criminal records need this certainty for occupations including athletic trainers (four years of required education), barbers and cosmetologists (one year of required education and experience), and veterinary technicians (two years of required education).

An option to improve this reform is to limit regulatory red tape from local governments, where occupational licensing also creates barriers to work. For example, in Lawrence, it costs \$100 to start working as a plumber and \$60 to work as a tree trimmer. Contractors in Topeka must pay \$250 to get the city's permission to work, and Wichita charges massage therapists \$100 for a license.

To guard against a patchwork of restrictions and ensure a consistent work environment, licensing should stay at the state level. For this reason, states like Wisconsin and Tennessee prohibit local government from creating new occupational licensing laws or having local licenses for occupations already regulated by the state. If the rest of Kansas can maintain public safety, consumer protections, and fair competition without licensing an occupation, then it is unlikely that one city needs to do so.

Addressing Public Safety Concerns

It is possible to protect public safety and peoples' ability to work at the same time. Nothing in this legislation stops licensing boards from disqualifying people with criminal records that pose a direct threat to public safety from working in certain occupations. If an applicant's conviction is directly related to the duties and responsibilities of a licensed occupation, and if granting the license would pose an unreasonable risk to the general welfare, then licensing boards may disqualify applicants with those types of convictions on their records.

An Arizona State University study found that broad licensing restrictions on ex-offenders endanger the public more than they protect it. From 1997 to 2007, states with the most burdensome licensing requirements for ex-offenders saw a nine percent increase in recidivism rates—conversely, states with the least burdensome requirements for ex-offenders saw a decrease in recidivism rates of over four percent.

Proponents of these broad licensing restrictions argue they are necessary to protect public safety—and it is true that individuals with certain criminal backgrounds should not be allowed to work in some professions. But given that most people with records pose no danger to the public, many of the licensing restrictions faced by ex-offenders reach well beyond what is necessary to protect public safety.

There are many examples of licensing restrictions in Kansas that have little connection to promoting public safety. For example, someone with any felony conviction can be denied a pesticide license. And even applicants with certain expunged convictions cannot be a certified fire investigator.

A conviction for any crime is enough grounds for a board to deny a professional counselor license to an applicant. Applicants who have “been convicted of a felony or a misdemeanor involving moral turpitude” can be denied a dental hygienist license. Further, an applicant with any class A misdemeanor can be denied a physician assistant license even if the misdemeanor is unrelated to working as a physician assistant.

The Kansas state board of mortuary arts may deny an assistant funeral director license application if it thinks that the applicant is not “a person of good moral character and temperate habits” or if it decides the applicant does not have “good standing in the community.” Those hoping to work as licensed barbers can be denied a license if they have a drug conviction. Cosmetology license and tattoo or body piercing license applicants can be denied for having any felony on their record.

Those with any criminal record who hope to work as a licensed adult home care administrator must bear the burden of proof that they have been rehabilitated. This standard applies to all misdemeanors and even DUIs. Marriage or family therapist, social worker, and athletic trainer licenses can be denied to applicants with felony convictions unless they prove to the board that they have been rehabilitated. A similar requirement that applicants with a misdemeanor bear the burden of proving rehabilitation applies for real estate broker licenses. Real estate broker license applicants with felony records are banned from the occupation.

With these restrictions, it is no wonder why those with records struggle to find work, especially formerly incarcerated individuals. There are 18,000 individuals currently incarcerated in Kansas,

and over 95 percent of these prisoners will be released back into the general population. Unfortunately, a year after release, 60 percent of formerly incarcerated individuals in the United States are still unemployed.

Conclusion

Considering the significant impact employment has on reducing recidivism rates, policymakers should be making it less difficult for formerly incarcerated individuals and those with criminal records to find work. After someone commits a crime, they face two options. They can find a job and substantially lower their likelihood of reoffending, or they can face government dependence and a higher likelihood of committing another crime. Since state and local spending on incarceration costs over \$500 million a year in Kansas, any reform that lowers recidivism helps taxpayers.

Finding work is vital for those with criminal records to rebuild their lives. Work keeps ex-offenders out of poverty, allows them to gain valuable skills and experience, moves them off welfare, and helps them avoid reoffending—and it is possible to do all of this while still protecting public safety. Even those who are tough on crime should want the thousands of Kansas residents who leave incarceration each year to work and become independent. It is time for Kansas legislators to continue their efforts to promote public safety and work by giving those with records a fresh start.