

# Second Chances:

## The Importance of Occupational Licensing Reform to Arkansas's Criminal Justice Reform Initiatives



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# What You'll Find in This Report

- Ex-prisoners who get a job are much less likely to reoffend.
- Arkansas's burdensome occupational licensing laws can be a barrier to anyone trying to find honest work. Some specific licensing laws, like "good character" requirements, can be used to discriminate against ex-prisoners in particular.
- Arkansas is one of 3 states with the heaviest licensing burdens for low to moderate income occupations, the ones mostly likely to be labor market entry points for ex-offenders.
- States with heavy occupational licensing burdens have increased recidivism over time. Meanwhile, states with light burdens have decreased their rates of recidivism.
- If Arkansas had lowered its licensing burden to that of Kansas or Missouri, we predict that its crime recidivism rate would have fallen by 17.5% in 5 years.
- Arkansas's 1973 "general rehabilitation" law was meant to ensure that the state did not discourage employment for ex-offenders. But that law has been hampered by political pressures and judicial decisions.

## Conclusion and Solution

- Returning to the original intent of the "general rehabilitation" statute would help ex-offenders break free from cycles of crime. It would also protect Arkansans from future crimes and higher taxes.

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### Executive Summary

Arkansas policy makers are aware of their state's high criminal recidivism rates (the percentage of released prisoners that reoffend). The criminal justice reforms in Arkansas have also indicated that policy makers know the key determinant in reducing criminal recidivism rates: employed ex-prisoners reoffend at a substantially lower rate than unemployed ex-prisoners do. However, an important reform in Arkansas has been missing: the reduction of occupational licensing burdens. This study investigates the relationship between occupational licensing and criminal recidivism.

Barriers to employment for former prisoners extend beyond the obvious problems of low education level and limited work experience. Based on some states' "good character" laws, which allow occupational licensing boards to reject an applicant merely because of a criminal record, such boards have denied former prisoners the opportunity to receive a license. Even if someone with a criminal record can overcome the barrier erected exclusively for them, the other burdens of getting the

occupational license—exams, fees, education, and experience requirements that vary by state—may constitute too high a hurdle. Arkansas policy makers should be especially sensitive to this: measures of occupational licensing burdens place the state in the top three for the heaviest occupational licensing burdens in the nation.

Integrating both good-character laws and other licensing barriers into the analysis is crucial. Doing so helps illustrate the higher-than-average hurdle faced by former prisoners that isn't fully taken into account in conventional measures of occupational licensing burdens. This study combines data from the Institute for Justice, the Pew Center on the States, and the National Employment Law Project and estimates that between 1999 and 2007 the states with the heaviest occupational licensing burdens—including those impacting ex-prisoners specifically—saw a larger-than-average increase in recidivism rates. Conversely, the states that had the lowest burdens and no such character provisions saw a decline.

Even if we ignore good-character restrictions, occupational licensing burdens still matter greatly. The states that had high occupational licensing burdens had greater

increases or lower reductions in their recidivism rates than those that had low licensing burdens. This relationship was statistically significant even after controlling for variables such as the growth in the overall crime rate, the employment climate of a state, and per-capita income. The regression results in this study predict that if Arkansas had lowered its licensing burden to that of Kansas or Missouri, its three-year new-crime recidivism rate would have fallen by 17.5 percent over a five-year period. This study presupposes, based on existing evidence, that reintegration of released prisoners into the workforce is crucial to the success of any criminal justice reform effort. It contends that licensing reform should be included as an important component of any such reforms.

This study also discusses Arkansas's recent legal changes in these areas in light of these results. Arkansas is a mixed bag. The changes in 2011 to the criminal justice system were a step toward making better use of alternatives to prison. However, the burdens of occupational licensing in the state could prove to be counterproductive to state policy makers' efforts to give those coming out of the prison system a second chance in life.

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## Introduction

The revolving door of America's prison systems—release, reoffend, reincarcerate—has proven costly and counterproductive to society and harmful to those reentering the prison system. Policy makers looking to reduce prison costs, protect public safety, and improve reentry outcomes for ex-prisoners have been looking for ways to stop this cycle of recidivism.

Most recidivism occurs within the first three years after release. Nationally, an average of nearly 68 percent of released prisoners recidivate during this time.<sup>1</sup> Focusing on these critical three years is likely to produce the most success.

Several states have provided education and job training as a means to decrease relapses into crime.<sup>2</sup> The impetus behind these programs is the reality that those leaving prison have much lower levels of education and workplace skills than the average worker. Gainful employment is the surest way to reduce the probability of recidivism. The recidivism rate for those employed after release from prison (19.6 percent) is substantially lower than it is for those unemployed after release (32.4 percent).<sup>3</sup>

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1 Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010." April 22, 2014, Bureau of Justice Statistics, NCJ 244205, available at: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>

2 For a review of the literature on these programs, see "Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism," by Nathan James, January 12, 2015, Congressional Research Service RL 34287, available at: <https://fas.org/sgp/crs/misc/RL34287.pdf>

3 United States Sentencing Commission, "Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines," May 2004, p. 29, available at: <http://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405RecidivismCriminalHistory.pdf>

Despite the strong evidence for the benefit of employment after prison, the government imposes barriers to gainful employment. A common barrier to entry for ex-prisoners is state licensing requirements for the jobs they are most likely to fill: low-skill occupations. A licensed occupation is illegal to practice without first meeting the requirements of the license. The hours-of-training requirements and education requirements imposed by the occupational licensing statutes may be too difficult and time-consuming for ex-prisoners to overcome. These ex-prisoners are adults that do not have the same luxuries and support as traditional college students. Some licenses require years of training, during which returning to crime instead of pursuing employment may be a more attractive option in the short term. Other licensing requirements may necessitate that license applicants have a high school degree, something many of those leaving prison do not have.<sup>4</sup>

Ex-prisoners face an additional barrier that other license applicants of comparable skill levels do not. Occupational licensing statutes in a number of states have blanket prohibitions on awarding licenses to those with a criminal record. Even states that do not have these explicit good-character provisions in their licensing laws may nonetheless have few restrictions on the ability of licensing boards to reject a license application based largely on the applicants' crim-

inal or arrest history.<sup>5</sup> Such policies may be designed to enhance safety, but they may incentivize an ex-prisoner to return to crime.

For these reasons, this study can inform the current policy discussion on criminal justice reform. It suggests that a reappraisal of government-imposed barriers to labor-market entry must be included in any realistic attempt at successful criminal justice reform. This study looks at publicly available data from thirty-two states to determine how these barriers to entry facing potential workers coming out of prison can be counterproductive by increasing criminal recidivism. It also explores, using insight from the national analysis, how current Arkansas state law—better than many states in some respects but worse in others—might be expected to positively or negatively impact those leaving prison hoping to have a second chance by entering the workforce and staying out of prison.

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4 US Census Bureau and Bureau of Justice Statistics, cited in Slivinski (2016).

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5 For more detail, see Michelle Natividad Rodriguez and Beth Avery, "Unlicensed and Untapped: Removing Barriers to Occupational Licenses for People with Records," National Employment Law Project, April 2016, available at: <http://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>

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# Employment, Recidivism, and Economic Liberty

Most researchers agree that occupational licensing substantially hurts poor and lower-skilled workers while doing little to protect the public's health and safety.<sup>6</sup> Studies of populations that fall into the category of lower-skilled workers have found similar results: in particular, the employment prospects of workers touched most often by the requirements to obtain an occupational license—immigrants and low-income entrepreneurs—are further reduced the more burdensome those requirements become.<sup>7</sup>

Males leaving prison are another population of low-skilled workers who often don't have degrees and consequently may find

it harder to obtain an occupational license or be gainfully employed. While nationally the percentage of male workers who have obtained an educational level no higher than some high school classes is around 15 percent, an average of nearly 40 percent of the males coming out of prison have not achieved a high school diploma.<sup>8</sup>

Occupational licensing burdens fall most heavily on these workers. Some states have occupational licensing laws that require a minimum level of educational attainment. For instance, seven states require a high school degree to get a license to be an auctioneer and thirteen require one to get a barber's license.<sup>9</sup> Such restrictions are an immediate barrier to at least four out of ten in the ex-prisoner population.

The choice of what activities ex-prisoners may pursue after serving their sentence depends on the relative costs and benefits of those activities. For those who have an unusually difficult experience scaling the barriers to entry into the labor market, returning to crime could be the more attractive alternative. An increase in a state's recidivism may indicate, in part, a higher barrier for former prisoners to enter the workforce. Examining changes in the recidivism rate can help indicate the effectiveness of, among other things, attempts at reentry into the labor force for those leaving prison.

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6 For a review of the literature, see "Reforming Occupational Licensing Policies," by Dr. Morris Kleiner, The Hamilton Project Discussion Paper 2015-01, March 2015, available at: [https://www.brookings.edu/wp-content/uploads/2016/06/THP\\_KleinerDiscPaper\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf); and "Occupational Licensing: A Framework for Policymakers," prepared by the U.S. Department of the Treasury Office of Economic Policy, the President's Council of Economic Advisers, and the U.S. Department of Labor, July 2015, available at: [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf)

7 Stephen Slivinski, "Weighing Down the Bootstraps: The Heavy Burden of Occupational Licensing on Immigrant Entrepreneurs," Center for the Study of Economic Liberty at Arizona State University Policy Report No. 2017-01, October 16, 2017, available at: <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2015/03/CSEL-2017-01-Weighing-Down-the-Bootstraps.pdf>; Stephen Slivinski, "Bootstraps Tangled in Red Tape: How State Occupational Licensing Hinders Low-Income Entrepreneurship," Goldwater Institute Policy Report No. 272, February 23, 2015, available at: [https://goldwaterinstitute.org/wp-content/uploads/cms\\_page\\_media/2015/4/15/OccLicensingKauffman.pdf](https://goldwaterinstitute.org/wp-content/uploads/cms_page_media/2015/4/15/OccLicensingKauffman.pdf); and Thomas J. Snyder, "The Effects of Arkansas' Occupational Licensure Regulations on the Poor," Arkansas Center for Research in Economics, Spring 2014, available at: <http://uca.edu/acre/files/2015/04/Occupational-Licensure-Regulations1.pdf>

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8 US Census Bureau and Bureau of Justice Statistics cited in Slivinski (2016). Released prisoners returning to society are overwhelmingly male (over 90 percent). Because the percentage of people leaving prison who are women is small, most studies focus on males.

9 Dick M. Carpenter II, Lisa Knepper, Kyle Sweetland, and Jennifer McDonald. "License to Work: A National Study of Burdens from Occupational Licensing, 2nd Edition," Institute for Justice, 2017, available at: <http://ij.org/report/license-work-2/>

Observing the employment-rate changes of those with criminal records would better accomplish this goal. However, it is impossible to construct a state-by-state estimate of the employment of former prisoners because labor-market data of this sort are not available. Employment surveys, such as those from the Bureau of Labor Statistics, do not include questions about a household's or individual's incarceration history. Until a direct survey of the number of ex-prisoners in the workforce exists and the estimate can be broken down by state, indirect measures of the labor-market outcomes of ex-prisoners, such as the recidivism rate, will have to suffice.

Studies that seek a connection between liberalized labor markets and recidivism find one between high levels of economic liberty, broadly defined, and low or declining rates of recidivism.<sup>10</sup> Effective reentry of prisoners into society seems less likely in states whose licensing laws have good-character requirements. These requirements make it more difficult to obtain an occupational license if the applicant has a criminal record. Some state laws even explicitly prohibit the granting of occupational licenses to applicants with a criminal record, even if they meet all other requirements to obtain a license.<sup>11</sup>

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10 Joshua C. Hall, Kaitlyn Harger, and Dean Stansel ("Economic Freedom and Recidivism: Evidence from U.S. States," *International Advances in Economic Research*, vol. 21(2), p. 155-165, May 2015, available at: <http://be.wvu.edu/phdeconomics/pdf/14-34.pdf>) found that recidivism rates grow faster in states that have lower economic-freedom scores.

11 Michelle Natividad Rodriguez and Beth Avery, "Unlicensed and Untapped: Removing Barriers to Occupational Licenses for People with Records," National Employment Law Project, April 2016, available at: <http://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>

Arkansas did not receive the worst scores by the National Employment Law Project (NELP) when the NELP measured restrictions on licensing boards' ability to reject an applicant based solely or mainly on the presence of a criminal record, but the NELP categorized the state as "needs improvement."<sup>12</sup> According to Arkansas's Department of Workforce Services, thirty-seven occupations, such as interior designer, barber, and sanitarian, require "good character."<sup>13</sup>

If the good-character requirements do not stop Arkansas's ex-prisoners from gaining employment, the other licensing requirements may do so. Arkansas scores poorly on overall measures of occupational licensing burdens, ranking as the third most burdensome state according to the 2017 report by the Institute for Justice.<sup>14</sup> Policy makers should keep in mind both the good-character and overall licensing requirements when creating criminal justice reforms and changes to economic development policy.

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12 Ibid.

13 "2017 Directory of Licensed, Certified and Registered Occupations in Arkansas," Arkansas Department of Workforce Services

14 Dick M. Carpenter II, Lisa Knepper, Kyle Sweetland, and Jennifer McDonald. "License to Work: A National Study of Burdens from Occupational Licensing, 2nd Edition," Institute for Justice, 2017, available at: <http://ij.org/report/license-work-2/>



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# How State Licensing Laws Increase Recidivism

To understand how state occupational licensing burdens can impact former prisoners' reintegration into the labor force, we first need a measure of those burdens. The most advanced attempt to measure them for occupations that are generally populated by those in the lower-income quartiles (which is generally seen as a proxy for low-skilled laborers and would appropriately include the population with which this study is concerned) was first published in 2012 by the Institute for Justice (IJ).<sup>15</sup>

Starting with aggregate data from the Bureau of Labor Statistics and the Department of Labor, IJ excluded from its list of observations those occupational categories that were most heavily represented by workers with above-average income and higher levels of educational attainment (such as doctors and lawyers). That left 102 specific occupational categories out of nearly 800.

Then the authors compiled occupational licensing data for all fifty states, ranging from whether a state licenses the occupation or not, to the fees charged to obtain a license, to education and experience requirements. Finally, they assigned scores to the states and ranked them based on the heaviness of the licensing burden. For instance, a state that

requires a bachelor's degree, three months of experience, and a \$250 fee to obtain a license to work in a specific occupation would be scored as having a heavier licensing burden than a state that did not have any education or experience requirements and only a \$50 fee.

These requirements can be a high barrier to ex-prisoners. Heaping time-consuming training requirements and high fees on ex-prisoners hoping to get into the labor force could be a prohibitive barrier. While it's certainly possible for those exiting prison to obtain new skills that can serve them well in the workforce, it's an open question whether all the milestones required for approval of an occupational license are even relevant to the success of someone in a chosen profession. Additionally, looking at the probability of re-offense in the three years following the release from prison, it's clear that returning to crime during that three-year window can be a more attractive choice than attempting to satisfy all of the required education, exams, experience, and fees to become licensed.

If the education, exams, experience, and fees are not enough to push an ex-prisoner back to crime, laws specific to criminal records may be. For instance, the American Bar Association has catalogued an estimated thirty-two thousand state laws specific to occupational licenses and business licenses that include provisions regarding licensing boards' consideration of criminal records. Among the provisions are automatic exclusions for those with a criminal record, which make up one-third

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15 Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross. "License to Work: A National Study of Burdens from Occupational Licensing," Institute for Justice, May 2012, available at: <http://ij.org/report/license-to-work/>. A second edition of the study was published in 2017. We use the first edition in our regression analysis because it was completed closer to the years of our other data.

of the laws catalogued.<sup>16</sup> These provisions coupled with the licensing burdens facing ex-prisoners in most states provide an incentive for ex-prisoners to return to a life of crime rather than to pursue formal employment.

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## Recidivism rates as a proxy for reintegration into the workforce

The hypothesis in this study is that the greater the legal restrictions to working in a state, the higher the likelihood that an ex-prisoner will be turned away from entering the labor force and will return to crime. The choice of what activities to pursue depends on the relative costs and benefits. For ex-prisoners who have an unusually difficult experience scaling the barriers to entry into the labor market, returning to crime could be the better alternative. Therefore, the change in the recidivism rate over time in a state may indicate, in part, a higher opportunity cost to entering the workforce.

The most common source of national recidivism statistics is the Bureau of Justice Statistics (BJS) division of the Department of Justice. The most recent study on recidivism was published in 2002 and tracked former prisoners who were released in 1994 over the following three years in fifteen states. A little over half of those released

offenders (51.8 percent) were back in prison within that three-year period.<sup>17</sup> This is consistent with a later study by the BJS published in 2014.<sup>18</sup> However, the BJS studies didn't publish breakdowns of the state-level recidivism data but instead published aggregate figures. This makes it impossible to compare states.

A 2011 Pew Center on the States study does have this state-level focus. Conducted jointly with the Association of State Correctional Administrators, it includes three-year recidivism rates for thirty-three states from 1999 and 2004 for both new crimes and technical violations (e.g., parole violations). A three-year recidivism rate tells you about the percentage of people who left imprisonment in a given year and returned to imprisonment within three years. So, the three-year recidivism rate for 1999 tells you how many people who left imprisonment in 1999 had returned to imprisonment by 2002.”

The states in the Pew study account for around 90 percent of all releases from state prisons during this period. A connection between legal barriers to entry into the labor force and a return to crime is likely to be seen using the new-crime recidivism rate.

Other studies have used the Bureau of Justice Statistics' Annual Parole Survey data to find connections between recidivism and

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16 See “The Consideration of Criminal Records in Occupational Licensing,” published jointly by the National Employment Law Project and the Council of State Governments, December 2015, available at: <https://csgjusticecenter.org/wp-content/uploads/2015/12/TheConsiderationofCriminalRecordsinOccupationalLicensing.pdf>

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17 Patrick A. Langan and David J. Levin, “Recidivism of Prisoners Released in 1994,” US Department of Justice, Bureau of Justice Statistics (2002). Both reports are available online at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=44>

18 Durose, Cooper, and Snyder (2014).

broad measures of economic freedom.<sup>19</sup> However, the rates that come from the BJS survey are one-year rates. This study, in contrast, uses the Pew survey instead to account for the fact that someone released from prison may not recidivate within the same year but is more likely to do so (if kept out of the labor force) within three years.<sup>20</sup>

The timeframe presented in the Pew study is also useful since it occurs prior to changes in criminal-sentencing laws and state-based programs that a number of states passed after 2007 to reduce recidivism. That makes this period a good candidate for isolating the effect government-imposed barriers to entry may have on the recidivism rate since the analysis won't likely be complicated by major changes in policy during the same period.

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19 Joshua C. Hall, Kaitlyn Harger, and Dean Stansel. "Economic Freedom and Recidivism: Evidence from U.S. States," *International Advances in Economic Research*, vol. 21(2), p. 155–65, May 2015, available at: <http://be.wvu.edu/phdeconomics/pdf/14-34.pdf>

20 It might seem that relying instead on an ex-prisoner employment rate would accomplish this better. However, as noted above, it is impossible to construct a state-by-state estimate of employment of former prisoners because labor-market data of this sort are simply not available. See John Schmitt and Kris Warner. "Ex-offenders and the Labor Market," Center for Economic and Policy Research, November 2010, available at <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>. Even attempts to create such a national measure are built on a series of assumptions and are not broken down on a state-by-state basis. The best attempt at this comes from the study published by the Center for Economic and Policy Research. That study creates an estimate of the portion of the labor force that is likely to have been incarcerated by taking the number of prisoners who have been released and then applying a multiplier to that number. This is of no practical use to understand the differences in the labor market for ex-prisoners at the state level in particular because there is no state-level estimate of the multiplier. Until a direct survey of the number of ex-prisoners in the workforce exists and those estimates can be broken down on a state-level basis, proxy measures of the labor-market conditions facing ex-prisoners will have to suffice.

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## The importance of properly measuring occupational licensing barriers

Comparing the average change in the new-crime recidivism rate in states with high licensing burdens and those with low occupational licensing burdens can give a broad understanding of how these laws relate to the recidivism rate of a state. This can, by extension, provide some evidence of how occupational licensing laws might diminish a state's ability to reintegrate ex-prisoners into the labor force.

State scores in the Institute for Justice study indicate whether states are more or less free in terms of occupational licensing.<sup>21</sup> But we cannot simply compare states with high scores to those with low scores. It is not always similarly easy or difficult for an ex-convict and a nonconvict to receive a license in states with, for example, low occupational licensing burdens. As noted previously, some states include good-character requirements in their licensing laws or, even worse, explicitly prohibit awarding occupational licenses to applicants with a criminal record even if they meet all other requirements to obtain a license.

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21 The IJ study (2017) uses t-scores to indicate the overall licensing-burden score in their study. The "low" scores in that study indicate lighter occupational licensing burdens; therefore the heaviest occupational licensing burdens would appear at the top of the ranking. For the purposes of this study, however, the ranking of these scores has been flipped so that the heaviest licensing burdens fall at the bottom of the distribution, not the top. Therefore, contra the IJ study, when this study notes that a state falls in the "upper half" of occupational licensing scores, it actually means that a state has a lighter-than-average licensing burden.

Even if the state licensing board cannot automatically reject an ex-convict, there may be little to no restriction in state law on a licensing board denying, at its discretion, a license based on the mere presence of a criminal record.<sup>22</sup> A 2016 study from the National Employment Law Project graded the state laws pertaining to the powers of licensing boards when reviewing a license application from someone with a criminal record.<sup>23</sup> Ranging from a grade of “unsatisfactory” to “most effective,” the NELP study essentially quantified the severity of these occupational licensing burdens, which specifically target ex-prisoners. Eleven of the thirty-two states included in this study are what might be called “prohibition states”—that is, they either severely penalize ex-prisoners in the licensing process or have no legal restrictions on the power of a licensing board to base denial of a license on anything other than the presence of a criminal record, even for nonviolent offenders or if an ex-prisoner’s conviction has no relationship to the license being sought.<sup>24</sup>

Because of this extremely high barrier, it’s important to include the status of these states as prohibition states in the analysis.

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22 The exception would be an applicant whose criminal record has been sealed or who has received a “certificate of rehabilitation” from the state. Those certificates, however, are rarely issued in most states, even though all states have the power to issue them.

23 Michelle Natividad Rodriguez and Beth Avery, “Unlicensed and Untapped: Removing Barriers to Occupational Licenses for People with Records,” National Employment Law Project, April 2016, available at: <http://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>

24 These prohibition states are those that received a grade of “no overarching law” or “unsatisfactory” in the “Blanket Ban Prohibition” category of the NELP study.

A state that mandates or allows a licensing board to reject a candidate based on a criminal record should rightly be viewed as having the heaviest licensing burdens of all: a nearly impossible-to-clear hurdle. Those states have the most inhospitable environment possible and rule out an essential first step at reintegrating a prisoner into the workforce.

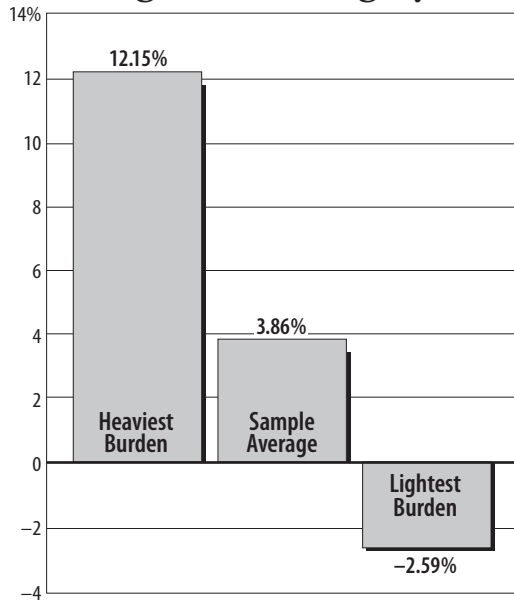
Incidentally, these prohibition states also happen to have lower average licensing burdens based on the scores assigned in the Institute for Justice report: seven of the eleven prohibition states in this study have licensing burdens among the nation’s lightest as ranked by IJ. While these states may look on paper like they have a low occupational licensing burden, the truth is exactly the opposite for ex-prisoners.

### *Occupational licensing and good-character laws can influence the labor-market prospects of former prisoners*

The results of comparing the average change in the three-year new-crime recidivism rate between states with different occupational licensing and those with effectively high burdens are seen in figure 1. The high-burden states are the states that have both the least restrictions on the ability of a licensing board to deny those coming out of prison a license (as measured by the NELP) and the heaviest licensing burdens generally (as measured by IJ). The low-burden states are the ones that both do not prohibit those with a prison record

Figure 1

## Change in new-crime recidivism rate by occupational licensing burden category



from receiving a license and have the lowest licensing burdens generally.<sup>25</sup>

As the figure shows, the average increase in the three-year new-crime recidivism rate for the heavy-burden states during the survey period (12 percent) was larger than the average of all states (3.86 percent). Meanwhile, the low-burden states saw a decline of around 2.6 percent.

Even if good-character laws were removed, other licensing requirements may make crime relatively attractive for

<sup>25</sup> Both the IJ and the NELP scores were combined and normalized to create a ranking of states by occupational licensing burdens for those leaving prison. The states with the five highest scores (which roughly translate to being at or above the eighty-fifth percentile, meaning they had the fewest restrictions on the ability of those with a criminal record to obtain an occupational license) make up the “lightest burden” category. The states with the five lowest scores (which roughly translates to being at or below the twenty-fifth percentile) make up the “highest burden” category.

ex-prisoners. Figure 2 displays the relationship between the average number of days of education and experience required to obtain a license from IJ’s 2012 report and a state’s change in three-year new-crime recidivism rates between 1999 and 2004. The figure shows a positive relationship: more-burden-some licensing requirements are associated with larger increases or smaller decreases in recidivism rates.<sup>26</sup>

This positive relationship does not control for other factors that may affect licensing burdens and recidivism rates. Therefore this study uses regression analysis to isolate the relationship between licensing requirements and recidivism rates.

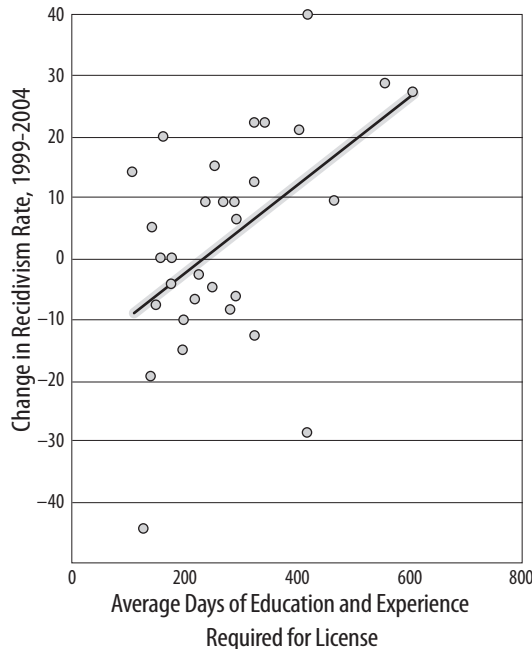
### *After adjusting for other factors, licensing burdens still have an impact*

At least three other factors can potentially influence the recidivism rate in a state. First, it’s likely that the labor-market climate in a state is a critical factor in the reduction of the recidivism rate in that state. Regardless of how difficult it is to get an occupational license, if there are fewer jobs to be had, the more likely it will be that an ex-prisoner will

<sup>26</sup> Note that Arkansas was taken out of figure 2 because it appeared as an outlier. The state’s unusually large increase in the three-year new-crime recidivism rate—which grew by more than double during this period, according to the Pew Center report—may be explained by changes in state law that were enacted during this period and might have altered the definition of what constitutes a “new crime.” As Pew reports, the state of Arkansas created in 2003 and 2004 alternative incarceration programs for adult offenders who violate parole. In this scatter plot, the inclusion of Arkansas would have augmented the overall trend because it has large licensing burdens and a high increase in recidivism rates. Nonetheless, Arkansas state-level data is included in the regression analysis outlined in the appendix. As will be explained there, exclusion does not significantly change the main result. c

Figure 2

## Occupational licensing requirements and changes in new-crime recidivism rates



not be able to find a job (in either a licensed field or otherwise) and might eventually turn back to crime. The average change in the unemployment rate can be used to indicate the direction of the labor-market trend. Of course, licensing requirements may affect the unemployment rate, so we should examine the impact of licensing on recidivism with and without controlling for unemployment.

Second, the overall change in the crime rate in each state could help explain the change in the recidivism rates. For instance, if a state is experiencing an overall increase in crime, it might also see growth in the new-crime recidivism rate as well.

Third, the overall economy may be a factor for recidivism. People with high incomes

are less likely to have an incentive to commit crime.

Simple regression analysis can help us understand how these factors and the licensing burdens can influence the recidivism rates. (The detailed results of the regression analysis are explained in the appendix.) The results indicate that, even after accounting for the above factors, occupational licensing burdens still have a positive and statistically significant relationship with new-crime recidivism rates. For instance, the regression results predict that Arkansas would have experienced a 17.5 percent decrease in new-crime recidivism if it had lowered the number of occupations it licensed to the same number as Kansas or Missouri.<sup>27</sup>

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## Rehabilitation Statutes and Criminal Justice Reform in Arkansas

These broad results can be seen as a form of guidance for policy makers concerned about the ability of their state to give those coming out of prison a second chance to get on their feet through gainful post-incarceration employment. Yet all states are different, and particular state laws, some of which may not even be related directly to licensing burdens, can certainly be expected to have an impact as well. When it comes to state laws directed at both the general rehabilitation of post-release prisoners and the decision of whom to put in prison in the first place, Arkansas is a mixed bag.

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<sup>27</sup> Arkansas is compared with Kansas and Missouri in the 2017 Institute for Justice "License to Work" report.

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## General-rehabilitation statutes and background checks

In 1973, Arkansas enacted a statute that deemed it state policy to “encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship.”<sup>28</sup> Referred to as the “general rehabilitation” statute in court decisions because this law acknowledged that the way to “best protect” the public against the prospect of offenders committing crimes again and falling into a cycle of recidivism was to make sure state policy did not discourage secure employment opportunities for ex-offenders.<sup>29</sup>

To that end, Arkansas Code, Title 17 (17-1-103) states the following:

1.) records of arrest not followed by a valid felony conviction, convictions that have been annulled or expunged or pardoned by the governor, and misdemeanor convictions shall not operate as an automatic bar to the receipt of an occupational license; and,

2.) prima facie evidence of sufficient rehabilitation includes the certification of such from a probation or parole supervisor, and/or no subsequent convictions for a period of 3 years after final discharge or release from any term of imprisonment in the state penitentiary.

This general-rehabilitation statute is relatively distinctive and puts Arkansas in the category of states that make it official policy to discourage a licensing board from blocking former prisoners who want to enter the labor market.

However protective that statute may look, political pressures and judicial decisions since its enactment have created an environment that, in practice, doesn’t allow this law to necessarily protect applicants if the licensing board deems them a threat to public safety (which can, by the lack of a coherent working definition, give licensing boards very broad discretion and power).<sup>30</sup> Additionally, conditions have been added and the law has been amended over the years to the point that it has substantially weakened the restrictions it puts on state occupational licensing boards. In 1997, for instance, the legislature lengthened the period after which rehabilitation is automatically assumed to be established from three years to five years.<sup>31</sup>

In the years following the 1997 legal changes and the interpretations of case law that allowed licensing boards to factor criminal convictions into their decisions, other, small legislative changes chipped away at the legal protections in the licensing-application process for those with prior criminal records. Most of these changes occurred by way of allowing certain information from background checks to be included in licensing-application decisions. For instance,

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28 <http://codes.findlaw.com/ar/title-17-professions-occupations-and-businesses/ar-code-sect-17-1-103.html>

29 The date of enactment of this general-rehabilitation statute is confirmed in the court case of *Bolden v. Watt*, 290 Ark. 343, 719 S.W.2d 428(1986), available at: <https://www.legaleagle.com/decision/19861147719sw2d42811138>

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30 See *Bolden v. Watt*, 290 Ark. 343, 719 S.W.2d 428(1986). Available at: <https://www.legaleagle.com/decision/19861147719sw2d42811138>

31 See Act 1317 of 1997, 81st General Assembly, Regular Session, available at: <ftp://www.arkleg.state.ar.us/acts/1997/HTM/1317.htm>

changes in 2003 broadened the admissibility of nonviolent sex offenses unearthed in these checks.<sup>32</sup>

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## Criminal-record expungement and other criminal justice reforms

In 2005, however, state policy makers reversed course a bit by passing and enacting Act 1923. The title of this act explains its intent well: “An Act to Provide That Certain Expunged Offenses Do Not Cause Disqualification from Employment, Licensure, Certification, or Other Activities for Persons Subject to Criminal Background Checks.”<sup>33</sup> This act effectively restricted the use of expunged or sealed criminal records for the purpose of denying occupational licenses in several professions that require applicants to pass a background check, including child welfare, counseling, and emergency medical services. Additionally, it included pleas of guilty or *nolo contendere* (no contest) as insufficient grounds on which to deny an applicant a license in these cases. This act specifically states that felonies and violent crimes, such as capital murder, manslaughter, kidnapping, rape, sexual assault, incest, robbery, aggravated robbery, and endangerment of children or the elderly, would be excluded from the act’s provisions.<sup>34</sup>

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32 Acts 1379 through 1389 and Act 1393, described in General Session 2003 summary, p. 38, available at: <http://www.arkleg.state.ar.us/assembly/2003/R/General%20Summary/General%20Summary.pdf>

33 <ftp://www.arkleg.state.ar.us/acts/2005/public/ACT1923.pdf>

34 Act 1923 text available at <ftp://www.arkleg.state.ar.us/acts/2005/public/ACT2289.pdf>

In other words, Act 1923 was meant to cover most nonviolent offenses. It was intended to protect those with a nonviolent criminal record who had their records expunged or sealed or had simply pleaded either no contest or guilty and served their sentences, thereby returning Arkansas state law to one that more closely abided by the spirit of the 1997 rehabilitation statute, particularly in health and welfare services. The five-year rehabilitation period remains intact today.

Also enacted in the early to mid-2000s were criminal justice reforms that influenced how many people with criminal records had the potential to reenter the workforce. The first wave occurred from 2003 to 2005, when state law increased the number of prisoners eligible for probation and redirected the state correctional approach toward the increased use of community correctional facilities that work more closely with the prisoner on rehabilitation and focus less on incarceration. It also downplayed the heretofore standard treatment of sending back to prison “technical violators”—those who may have disobeyed the technical aspects of their parole or probation, such as attending parole-officer meetings, missing curfew, or fulfilling community-service requirements, but hadn’t committed a new crime. The new goal would be to allow nonprison penalties for such violations.<sup>35</sup>

The biggest change came in 2011 with the Public Safety Improvement Act (Act

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35 For a general description of these changes, see this description of the state Technical Violators Program, available at: <http://www.arkleg.state.ar.us/assembly/2015/Meeting%20Attachments/520/I12080/EXHIBIT%20D%20-%20Technical%20Violators%20Program%20Summary.pdf>



570).<sup>36</sup> While this legislation does not include anything specifically pertaining to barriers to licensing faced by license applicants with a criminal record that might disqualify them, it did make changes that could reduce that portion of the labor supply—in particular, by both raising the threshold at which a property crime becomes a felony and reclassifying some nonviolent felonies as misdemeanors. Although this would require further study, the provisions of Act 570 might have the potential to reduce the number of license applications that would trigger a firm dismissal or encounter a snag in the licensing process under post-2005 law mainly because the classifications of their offenses have changed.

The state appeals court heard in 2013 the case of Andrew Beavers, a license applicant who had a prison record but who met all the conditions of rehabilitation as then codified in state law. The court ruled that the state Board of Examiners in Counseling had violated both Beavers's rights and state law when it declined his counseling license application on the grounds of his

criminal record.<sup>37</sup> This decision may have an ongoing impact on the future behavior of licensing boards and act as a restatement of the original intent of the state's general-rehabilitation law.

Further study is needed to determine how court decisions and statutory changes will influence the ability of former prisoners to find their way into the labor force.

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## Conclusion: Suggested Policy Directions and Future Research

Based on the analysis in this study of the available data from thirty-two states, changes to how former prisoners are treated in the licensing process are likely to have some effect on the recidivism rate. While the data are limited, the available evidence appears to show a clear relationship between licensing burdens and recidivism rates.

If Arkansas's licensing regime incentivizes former prisoners to return to prison, it is a lose-lose situation for the general public and the ex-prisoners. The general public is made less safe when the licensing laws encourage crime. The general public also has to pay higher taxes for the courts, police, prison space, and accommodations for the prisoners. Ex-prisoners get stuck in cycles of crime and do not successfully reenter society or labor markets outside of prison.

However, these results and the results from other studies cited here indicate a

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<sup>36</sup> For a description of what led to the passage of the act and a summary of what the act accomplishes, see Pew Center on the States, "Arkansas' 2011 Public Safety Reform," Public Safety Performance Project Issue Brief, July 2011, available at: <http://www.ncsl.org/documents/cj/pew/arhandoutaug2011.pdf>. See also Mason L. Boling, "That Was the Easy Part: The Development of Arkansas's Public Safety Improvement Act of 2011, and Why the Biggest Obstacle to Prison Reform Remains Intact," University of Arkansas Law School, Case Notes/Legislative Notes, Volume 66, March 20, 2014, available at: <https://wordpressua.uark.edu/lawreview/that-was-the-easy-part-the-development-of-arkansas-public-safety-improvement-act-of-2011-and-why-the-biggest-obstacle-to-prison-reform-remains-intact/>

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<sup>37</sup> See *Beavers v. Board of Examiners in Counseling*, No. CA 12-732, 2013 Ark. App. 222 (2013), available at: <https://www.leagle.com/decision/inarco20130410008>

way forward for reforms in Arkansas. The state has made some beneficial strides. Additional steps that return state law to the original intent of the preexisting rehabilitation statute would be both beneficial and warranted.

More data and analysis are needed, however, on how former prisoners fare—specifically, in their search for employment and in their success before licensing boards. Further tracking of general employment metrics for those leaving prison would also be welcome. Studies that track individual prison-release cohorts would allow researchers to understand the effectiveness of both the licensing changes and the increased use of community corrections and alternatives to incarceration. This understanding would allow state policy makers to see what has and has not worked in the 2011 criminal justice reforms. Additionally, the changes to state criminal statutes in 2013 posed some potential challenges to the success of the 2011 reform, particularly in regard

to how recidivism is now measured in the state. The 2013 changes created an overly broad definition of recidivism in current law, will likely muddy future analysis, and could send a skewed message to taxpayers and policy makers that criminal justice outcomes are getting worse when, using the old definition, the state may be experiencing no change or even an improvement.

State lawmakers should also not stop at simply weeding out punitive laws that make it harder for former prisoners to receive a license. Arkansas's occupational licensing burdens, even for those without criminal records, are higher than forty-seven other states' burdens. Lowering and eliminating those barriers would increase employment and entrepreneurship, generate more opportunities for those with and without criminal records, and generally increase the economic well-being of Arkansans. Lowering occupational licensing barriers across the board is a policy reform that both supports criminal justice reform and transcends it.

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# Appendix

This appendix empirically investigates the relationship between occupational licensing burdens and new-crime recidivism rates. The results from the ordinary least square (OLS) regression analysis are from the thirty-two states that have data on recidivism in the 2011 Pew Center on the States study. The dependent variable is the percentage change in three-year new-crime recidivism rates from 1999 prison releases to 2004 prison releases.

The model specifications include the following independent variables:

**Overall Burden:** This variable equals the natural log of the number of low- to moderate-income occupations licensed (from the 2012 Institute for Justice “License to Work” report) multiplied by the average number of days of education and experience required to get a license in a state. The advantage of taking a natural log is that it allows the reader to interpret the variable as a percentage change in the OLS regression. OLS estimates take a derivative, which allows us

to interpret the variable as the percentage change in the number of occupations plus the percentage change in days required. This is in decimal form. This study uses the 2012 report instead of the 2017 report by the Institute for Justice to keep the data closer to the prison-release years.

**Crime Rate:** a measure of the change in the overall crime rate in a state. The data are from the Bureau of Justice Statistics. This variable controls for the general crime environment.

**NELP Blanket:** a variable based on the scores of the blanket-prohibition variable from the National Employment Law Project (ranging from a 1 for “no overarching law” to 6 for “most effective”) to account for the intensity of the licensing prohibitions facing ex-prisoners.

**Reform Dummy:** Based on the Pew Center on the States report, it equals 1 if a state has enacted reforms dealing with re-routing those on probation out of the prison population after a probation violation (i.e., booking it as a technical violation rather than a new crime) during the study period. This variable helps account

Table A-1.

## Summary statistics

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Variable	Observations	Mean	Standard Deviation	Minimum	Maximum
Overall Burden	32	9.32	0.51	8.51	10.55
New-Crime Recidivism	32	8.65	35.07	-44.44	175.00
Crime Rate	32	-12.37	8.54	-26.75	11.44
NELP Blanket	32	2.91	1.38	1.00	6.00
Reform Dummy	32	0.16	0.37	0.00	1.00
Unemployment Change	32	0.20	0.31	-0.45	0.94
GDP Per Capita Change	32	8.16	5.25	-2.34	25.23

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for slight changes in who is counted in the prison-release populations over the survey period.

**Unemployment Change:** the change in the male unemployment rate in each state. Data are from the Bureau of Labor Statistics. It is an average for both the 1999–2002 and the 2004–7 periods and serves as a proxy for changes in labor-market conditions facing most ex-prisoners.

**GDP Per Capita Change:** the percentage change in real per capita GDP in the state between 1999 and 2004. Data are from

the Bureau of Economic Analysis. This variable controls for the economic conditions in the state.

Table A-1 provides the summary statistics.

Table A-2 displays the cross-sectional OLS estimates from five model specifications. Each model examines the relationship between the overall licensing burden and changes in new-crime recidivism rates. Model 1 only includes the overall licensing regulations as an independent variable. Models 2 through 5 introduce more control variables. Introducing some controls may

Table A-2

### Cross-section of US states. New-crime recidivism rate changes and state occupational licensing burdens

Variable	New-Crime Recidivism				
	(1)	(2)	(3)	(4)	(5)
<b>Overall Burden</b>	38.99*	35.97**	35.09**	34.26**	32.61**
	<i>19.87</i>	<i>14.39</i>	<i>14.35</i>	<i>13.15</i>	<i>13.26</i>
<b>Crime Rate</b>		1.67*	1.61*	1.49*	1.56*
		<i>0.95</i>	<i>0.92</i>	<i>0.80</i>	<i>0.83</i>
<b>NELP Blanket</b>			1.56	0.38	1.45
			<i>2.72</i>	<i>3.05</i>	<i>3.45</i>
<b>Reform Dummy</b>				18.98	20.85
				<i>15.70</i>	<i>17.43</i>
<b>Unemployment Change</b>					-14.12
					<i>16.24</i>
<b>GDP Per Capita Change</b>					0.48
					<i>0.90</i>
<b>Constant</b>	-354.89*	-306.07**	-303.18**	-296.39**	-284.64**
	<i>181.97</i>	<i>125.42</i>	<i>126.14</i>	<i>116.47</i>	<i>120.63</i>
N	32	32	32	32	32
r-sq	0.32	0.49	0.49	0.53	0.54

*Robust standard errors are in italics.* \*\*\*1% significance level, \*\*5% significance level, \*10% significance level. Note that Arkansas is an outlier for recidivism rate change. Removing Arkansas changes the magnitudes of the licensing coefficients in the OLS regressions, but it does not change the sign or statistical significance.

reduce omitted-variable bias, but it may also downplay the effect that licensing has on recidivism. For example, including the crime-rate variable may allow us to control for the general crime environment, but licensing rules may have affected that crime environment. Including the unemployment rate in model 5 may allow us to control for the labor-market conditions of the state, but licensing rules may have also affected the unemployment rate.

All models in table A-2 demonstrate a positive and statistically significant relationship between overall licensing burdens and new-crime recidivism rates. The coefficient on the overall-burden variable in the regressions can then be interpreted as the percentage change in new-crime recidivism rates resulting from a 100 percent increase in licensing burdens across states. For example, the coefficient in model 3 tells us that a 100 percent increase in licensing burdens is associated with an increase in new-crime recidivism rates of 35 percent. The percentage change in licensing burden equals the percentage change in the number of occupations licensed and the number of days of education and experience required to get a license. If Arkansas, for instance, had experienced a 50 percent reduction in the number of occupations it licensed, bringing it to about the same level as Kansas and Missouri, the model predicts a drop in Arkansas's recidivism rates of 17.5 percent over the five-year span.

The coefficient on the general crime rate is also statistically significant in all models, though not as strong as the coefficient on the licensing-burden variable. The coefficient on the NELP-blanket variable has the predicted sign but is not statistically significant. The coefficient on the reform-dummy

Table A-3

### Bootstrapping cross-section OLS results

Variable	New-Crime Recidivism	
	(1)	(2)
<b>Overall Burden</b>	34.26**	32.61**
	14.64	13.40
<b>Crime Rate</b>	1.49*	1.56
	0.80	0.97
<b>NELP Blanket</b>	0.38	1.45
	3.20	4.04
<b>Reform Dummy</b>	18.98	20.85
	23.49	20.62
<b>Unemployment Change</b>		-14.12
		18.61
<b>GDP Per Capita Change</b>		0.48
		1.00
<b>Constant</b>	-296.39**	-284.64**
	128.76	121.18
N	32	32
Replications	499	496
r-sq	0.53	0.54

*Bootstrapped standard errors are in italics. \*\*\*1% significance level, \*\*5% significance level, \*10% significance level.*

variable also has the predicted sign but is not statistically significant. The coefficients on unemployment and GDP per capita changes are not statistically different from zero.

A potential criticism of the results is the low number of observations. One way we compensate for that is to run many replications of the sample. Table A-3 uses a bootstrapping technique. For example, model 1 takes 500 replications of the data, with replacement, resulting in 499 unique samples. Bootstrapping give us more confidence that our results did not come from an outlier

regression. The results from both models in table A-3 yield similar results to table A-2. Occupational licensing burdens have a positive and statistically significant relationship with changes in new-crime recidivism rates. Lowering the licensing burdens would lower the predicted recidivism rates.

This analysis used data from the following thirty-two states: Alabama, Arizona,

Arkansas, California, Connecticut, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin.

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ACRE promotes solutions that respect the personal and economic freedoms

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