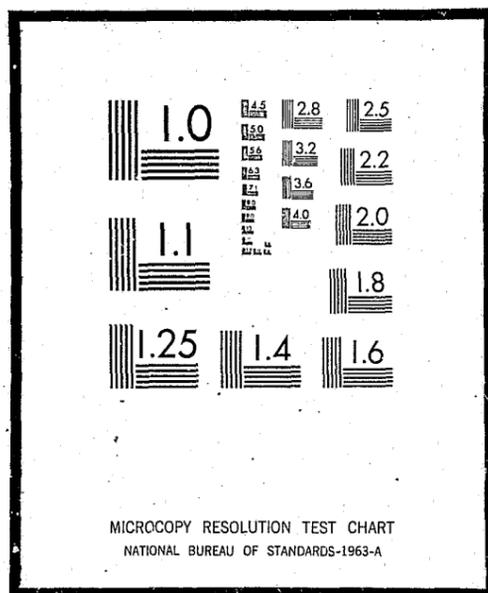


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GUIDE TO LEGISLATIVE ACTION

A review of strategies to remove statutory restrictions on offender job opportunities

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NATIONAL CLEARINGHOUSE ON OFFENDER EMPLOYMENT RESTRICTIONS

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**GUIDE
TO
LEGISLATIVE ACTION —**

**A review of strategies to remove statutory
restrictions on offender job opportunities**

**James W. Hunt
James E. Bowers**

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A PROJECT OF THE COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES AND SECTION OF CRIMINAL JUSTICE

GUIDE TO LEGISLATIVE ACTION

Introduction

In the past three years an unprecedented effort has been made to ease statutory restrictions on job opportunities for ex offenders. This effort has resulted in litigation, executive orders and, most often, state legislation. The legislative action has usually dealt with alleviating public employment restrictions along with occupational licensing barriers and has resulted from efforts initiated not only by lawmakers, but by numerous individuals and groups.

The activity of persons involved in the legislative process is the subject of this monograph. It was prepared so that their experience can help other concerned citizens develop attacks on the statutory employment restrictions facing ex offenders. Although many of these initiatives were made by lawmakers and groups, there are also excellent examples for others of individuals who almost single-handedly carried a measure over its hurdles to passage.

Part I of this monograph will (1) outline the general form of the legislative process and (2) summarize strategic considerations of which proponents of reform should be aware. Part II traces in more detail the specific and differing kinds of initiatives used in the states of Florida, Washington, California and Connecticut to achieve legislative success.

Throughout, the discussion dwells on procedural rather than substantive aspects of legislative action. A more detailed analysis of employment restrictions and examples of enacted legislation are contained in other publications available without charge from the National Clearinghouse. These are listed on the back of this monograph.

PART I

1. The Legislative Process: An Overview

Strictly speaking, the legislative process begins with the introduction of a bill on the floor of a chamber of the legislature. An elected representative performs this task, but the real initiative probably came much earlier. A bill may, for example, be recommended to a legislator by the governor or a government agency, or result from proposals by individuals, citizen groups, or associations concerning the need for legislative action in some area of public interest.

If the lawmaker agrees to sponsor the proposal, it must then be framed in the proper legal form for a bill by the legislator, or drafted for his consideration by the persons or group who have recommended it. In some states, a legislative research and drafting service prepares the bill.

After being drafted, the bill is introduced in one of the two sides of the legislature, or in both simultaneously.* In most states, a statement or memorandum accompanies the bill, listing its sponsors, purpose, and proposed effective date.

The new bill receives a number to distinguish it from others and given some other identification to indicate the chamber in which the bill was introduced. The letters "A.B." before a bill number, for instance, would indicate an assembly bill, while the senate designation would be "S.B."

The bill is then given a "reading" and referred by the speaker or leader of the chamber to a committee whose concern most appropriately fits the subject of the proposed legislation. (In some states, bills are referred to joint committees composed of members of both chambers.) After considering the bill, and conducting a hearing to receive testimony from interested parties if the committee considers the measure of significant public interest to warrant such action, the committee will amend, revise or rewrite the bill, "table" it, or report it favorably to the full house for a vote. If tabled — the fate of many bills — it will not be reported out of the committee unless forced by a majority vote of the house members or through other procedures that may be available. A bill reported favorably to the house is placed on a calendar to await consideration by all members of the house.

If a majority of the members vote for the bill, it goes to the other chamber where the process is repeated. If a majority there approves the measure, or reaches agreement with the other body on any changes, it

* The two sides of a legislature are usually called the "senate" and "assembly" or "house of representatives." Nebraska, however, has only one chamber.

becomes an act of the legislature and is sent to the governor for signature or veto. Vetoes are usually overridden by a two-thirds majority of the legislature.

Chart I outlines this legislative process in Missouri which is similar to the procedure in most other states.

2. Enacting Legislation to Alleviate Barriers to Employment: Strategy

This skeletal version of the legislative process often has its roots in the recognition of a need for change, either in laws that exist or in the addition of new regulation. In the case of offender employment restrictions, this change concerns the modification of statutory language which allows licensing boards and public employment agencies to deny certification or employment on the basis of past conviction without demonstrating that the offense has any relationship to the individual's fitness to be employed or be licensed, or allows "good moral character" requirements for a license to be arbitrarily interpreted.

One of the first steps in preparing for a legislative proposal to alleviate these restrictions is to document the need for governmental action. A source of such information on offender job restrictions and on remedial legislation are the publications listed on the back of this monograph. Other sources include probation and parole officers, ex offender organizations, and even, on occasion, officials who are involved in issuing occupational licenses or in hiring persons for public employment positions and who must operate under the restraints of restrictive laws. Actual case histories or newspaper accounts of persons who have been arbitrarily barred from government controlled employment opportunities because of a past offense also help to document the need for legislative action.

The next step is to contact a lawmaker sympathetic to the ex offender employment problem who will sponsor reform legislation.* Here, a number of factors come into play and the weight given to each will vary in every jurisdiction. One would desire an influential sponsor, of course, one who would champion the bill through the shoals of hearings and votes. But precisely because of his or her status, the competing demands may diminish the official's commitment to the measure. And, in this regard, it is important to note that most bills die — are "tabled" — in committee because they receive no vigorous support.

* Before turning to the legislature, it may be possible to get immediate action from the governor or attorney general. In Maryland, for example, the state attorney general issued an opinion letter to licensing officials pointing out the necessity for job related standards in determining the fitness of an ex offender for a license and, in Maine and Rhode Island, the governor issued an executive order prohibiting discrimination against former offenders in public employment

interest of elected officials in the measure, including the governor, or central figures such as the departments of corrections or justice.

Such an individual, acting as the spokesman for the bill, should carefully monitor its movement through the legislative process and obtain bi-partisan support for the measure, urging the committee to which the bill has been assigned to act on it, attending committee hearings, distributing hand-out material to legislators containing precise and succinct information about the bill, answering any objections to the measure, and encouraging others to testify in its favor or otherwise provide support for the bill. This backing by others is most effective when it has broad based support from individuals and groups in the public and private sectors, especially those most affected — such as personnel, licensing and police officials.

The aim of this concerted lobbying campaign is to persuade legislators to agree with the purposes of the bill and to take action on it. The following additional notions on how to wage this campaign effectively have

How do you go about getting your views across to your legislators? The following organizations have available (usually for a nominal charge) easy-to-read materials on how to write to legislators and testify at public hearings.

League of Women Voters of the United States
1730 M Street, N.W.
Washington D.C. 20036

Quaker Information Center on Criminal Justice
821 Euclid Avenue
Syracuse, N.Y. 13210

Friends Committee on Legislation
245 Second Street, N.E.
Washington, D.C. 20002

Effective Citizens Organization, Inc.
1601 Eighteenth Street, N.W.
Washington, D.C. 20009

Common Cause
2030 M Street, N.W.
Washington, D.C. 20036

Chamber of Commerce of the U.S.
1615 H Street, N.W.
Washington, D.C. 20006

AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006

been suggested by Professor Harvey S. Perlman in his essay on "Recommendations for Implementation of Correctional Code Reform."*

"How a bill is lobbied through a legislature will differ widely from jurisdiction to jurisdiction. For example, the influence of political parties on the legislative process may dictate in a particular state that the parties be involved. In others, working with the political parties may make correctional reform a partisan issue which makes passage generally more difficult.

"Those individuals who have nurtured the development of the correctional code should assume for themselves responsibility for following the progress of the bill through the legislature and, whenever possible, attempt to act as coordinator of lobbying efforts. The ability to do this may depend on the extent to which one or more legislators takes the proposed code as his 'pet' project. If there are legislators who consider passage of the proposed code as one of their major legislative goals during the legislative session, then they may rightly desire to coordinate lobbying activities. Even so, it appears to us that the drafters should remain as close to the bill as possible since it is they who know its intricacies; and if compromise on any provision becomes necessary, it is they who can draft the revisions consistent in language and effect with the remainder of the code.

"The proponents should compile a list and make available to the sponsoring legislators, any organized groups of public citizens who can be counted upon for support. Various advisory groups to the correctional system, service organizations who have participated in correctional programs, and other 'friends of corrections' wherever located should be encouraged to direct their efforts toward passage of the bill.

"The proponents should consider approaching individuals who act as paid lobbyists for private interests. These lobbyists who are continually approaching legislators on matters for their clients may welcome the opportunity to lobby for some bill in 'the public interest' without compensation. They may rightfully consider that by occasionally asking for consideration of a 'public interest' bill where they are obviously not being paid for their services, subsequent approaches on behalf of paying, private interests will be better received.

"The proponents should make themselves available for 'backgrounding' sessions with the local press. It may be useful, if possible, to hold a briefing session with the editorial and reporting staff of the major newspapers so they more fully understand the intent and content of the proposed code.

* Perlman, "Recommendations for Implementation of Correctional Code Reform," Compendium of Model Correctional Legislation and Standards, American Bar Association (Commission on Correctional Facilities and Services) and Council of State Governments, Washington, D.C., 1972.

"The proponent should call on other segments of the criminal justice system for support. The testimony of a police chief of a major metropolitan area may be crucial in persuading some legislators. Testimony of a like nature from a correctional administrator may not have the same impact.

"In the last analysis, the success of the effort will depend on a number of factors, some over which the proponents will have no control. However, critical among them will be the soundness of the product being sold. The standards announced herein are directed toward that goal."

Legislative action, however, is not enough. After being approved by both houses of the legislature, an act must still receive the governor's signature before it becomes law. Contact should therefore be made with the governor, or with the appropriate advisor in his office, for the purpose of explaining the need for the act, countering any opposition which can develop at the last moment, and urging the governor's approval.

After the act becomes law it would be important that officials responsible for its passage be appropriately recognized and thanked, not only for their contribution to criminal justice but for their potential help on other issues in the future.

PART II

Legislative Experience in Florida, California, Washington and Connecticut

This section deals with the actual experience of persons involved in having remedial legislation enacted. Some of the practical considerations mentioned in these experiences include: the selection of a committee to consider the bill; whether to introduce the measure in one house or both simultaneously; the extent to which the bill should be publicized; and the type of organizations that helped to support the bill.

Florida

The alleviation of statutory licensing restrictions in Florida was the result of recognition by key legislators, the Governor, and the state's Department of Health and Rehabilitative Services of the employment problems encountered by ex offenders.

These problems were pointed out in a 1971 report on Florida's corrections system by the Committee on Health, Welfare and Institutions of the state senate. A section of this report dealing with offender employment matters noted, among other things, that many of the state's occupational licensing laws excluded ex offenders and thereby hindered their rehabilitation efforts by limiting their job opportunities.

Following the issuance of this report, O. J. Keller, Secretary of Florida's Department of Health and Rehabilitative Services and State Senator Kenneth Myers, then Chairman of the Senate Committee on Health, Welfare and Institutions, met to discuss how this problem could be remedied through legislation and what form a bill should take which would have the least procedural problems moving through the legislature; that is, a bill that could be introduced and acted on within the short 60-day legislative session. Governor Rubin Askew was also interested in the improvement of the state's corrections system and gave his support to the efforts of Myers and Keller.

Two forms of legislative proposals were considered:

One would amend *each* licensing law to remove the bars in them to the occupational licensing of former offenders (an approach that had been used in Illinois); the other procedure would remove licensing bars through one bill applicable to all state licensing laws.

After weighing the merits of each procedure, Myers decided that an attempt to amend each of the licensing statutes would involve several committees in each house of the bicameral legislature and greatly lessen the chances that the measure would clear these committees before the legislative session ended.

He therefore settled on one bill which would be applicable to all licensing agencies since it would have to be reviewed by fewer committees. A general bill would also be more difficult for one special interest group to oppose.

However, being the first state to consider legislation in this form, there was no model to follow. The first draft of a bill attempted a blanket ban on discrimination against ex offenders seeking an occupational license or public employment. The Senate Committee on Health, Welfare and Institutions reviewed this draft but considered it too broad, although the Committee supported the draft bill's concepts. Following the Committee's suggestion, the bill was redrafted and the result turned out to be much the same as the one ultimately enacted into law.

This bill provided:

- That it would apply to occupational licensing and to public employment.
- That the bill would not be applicable to any law enforcement agency. (The reason for this provision was to lessen possible opposition from law enforcement officials.)
- That a person would not be disqualified from public employment or a license unless the felony for which the person was convicted "directly relates" to the position or occupation. The bill, however, did make a distinction between a former felon's eligibility for public employment and for a license: Before a felon could apply for an occupational license, the bill required that he must first have had his civil rights restored. (In Florida this requires the filing of a petition for restoration of rights with the Pardon Board.) Restoration of rights, however, was not made a prerequisite to the felon's eligibility for public employment. The reason for this provision was the belief by the drafters of the bill that, as a general proposition, former offenders should not be denied job opportunities with the state. But as a practical matter, the drafters felt that the bill would receive less opposition from licensing agencies if former felons were required to have their civil rights restored prior to applying for a license.

Before being introduced, the bill was carefully screened to make sure that it did not require any appropriations. If an appropriation were required, the bill would be sent to the legislative finance committee where it might get bottled up and then die in the rush to enact legislation in the closing days of the session.

The next step was to decide on the strategy for the bill. In order to speed up the process, it was decided that a companion bill should be introduced on the House side of the legislature as well as the Senate.

Finally, to pave the way for the bill, Senator Myers prepared a report for distribution to fellow members of the legislature explaining the purposes of the bill in which he emphasized that the best hope to reduce crime

was to restructure the life pattern of the ex offender through employment.

The bill was then introduced as part of a package of correctional legislation by Senator Myers with support from the Governor.

With these preparations made, the measure moved through the legislature receiving approval in both houses (and a unanimous vote in the Senate). With the Governor's signature, the bill was enacted into law on June 10, 1971.

California

In 1972 California enacted legislation establishing standards for the denial of an occupational license because of a lack of good moral character. Under this law, an applicant for a license is presumed to possess good moral character unless it is shown that the person has committed an "act" which would be grounds for suspension or revocation of a license. But in no case can an act (including a crime) be grounds for denial of a license by an agency if the act does not have a "substantial relationship to the functions and responsibilities of the licensed business or profession." Licensing agencies are further required to develop criteria to evaluate the rehabilitation of a person denied a license on the grounds of lack of good moral character.

This legislation grew out of an interest by State Senator George Deukmejian in establishing up-to-date vocational training programs in the state's prisons.

In the course of his activities in this area, Deukmejian discovered that persons receiving vocational training in these institutions sometimes experienced difficulty in obtaining the state-required license necessary to pursue their vocations upon release from prison because of a requirement in many of the state's licensing laws that an applicant possess "good moral character." Some licensing officials regarded a person with a criminal record as lacking the requisite character regardless of the nature or age of the offense.

In view of this discovery, the State's Senate Committee on Business and Professions, of which Deukmejian was Chairman, decided to conduct a study of the impact of this good moral character requirement on license applicants. In its report on this study, the Committee found that twenty-nine of the state's licensing agencies administer licenses for sixty-four occupations and that these agency decisions on an applicant's good moral character were made without a clear definition or any guidelines as to what the term meant. As a result, these agencies often presume that applicants with "clean" records possessed the proper character for a license; and that applicants with criminal records lacked it, with the burden upon the

former offender to show that he is a person of good character. The study further found that these agencies would suspend or revoke the license of persons convicted of a crime, even if the crime committed had no relationship to the activity for which the person was licensed.

Following the release of this report, a bill to guide licensing agencies in considering the good moral character of an applicant was drafted at Deukmejian's request by James Cathcart, who as a consultant to the Business and Professions Committee had assisted the Committee's study and report on state licensing.

At the time the bill was being drafted, there was somewhat of a public backlash to recent disturbances in the state's prison. Deukmejian was concerned that legislators might react by acting unfavorably on his proposed bill. To counteract this possible reaction, Deukmejian circulated his Committee's report to other legislators in order that they understand that the measure was intended to correct inequities in the licensing process and was not a proposal for correctional reform that the legislature might oppose.

Deukmejian also believed that his measure would move more quickly by "piggy-backing" it to another relatively unimportant bill that he intended to sponsor, but one that he knew that other legislators were likely to support.

Cathcart, in the meantime, contacted several licensing officials and lobbyists representing business and professions to explain the purpose of the bill and to iron out any problems that they might have with the bill. It was considered far more advisable to work these problems out in advance rather than encounter later objections by an organized opposition.

Deukmejian did not expect any difficulty from the Governor's office since good rapport had been established previously when Deukmejian, a respected legislator, had assisted the Governor in several of his legislative programs.

As a result of these preparations, the measure was not faced with any organized opposition when it was introduced. As it moved through the legislature and through public hearings, Deukmejian minimized publicity on his proposal because he believed that the bill would have a greater chance of success through a low key approach.

The legislation was approved by both the Assembly and the Senate and was signed into law by Governor Reagan on August 15, 1972.*

* In 1974, California enacted a new law deleting "good moral character" as a requirement for a license.

Washington

The state of Washington enacted a public employment and licensing statute in 1973 similar to the one adopted in Florida.

The person who did a great deal to spark interest in legislation to alleviate offender job restrictions in Washington was Donald J. Horowitz. In 1973, he was the state's Senior Assistant Attorney General; today, he is a judge in the Washington Superior Court.

As the Senior Assistant Attorney General, Horowitz was very familiar with the restrictions in the public employment and licensing of former offenders and the impact these restrictions had on their rehabilitation efforts.

Horowitz worked with staff of the State Department of Social and Health Services (which gave the bill a "departmental request" endorsement) in drafting a bill to remove unwarranted offender job restrictions. The bill was patterned to a great extent after the Florida law. However, unlike Florida, the Washington bill did not require the ex offender to have his civil rights restored before applying for a license.

In selecting a committee to consider the bill, the backers decided that the Committee on Social and Health Services would be more responsive to the objectives of this legislation and act on it more quickly than the Judiciary Committee. In the previous legislative session, a detailed bill dealing with the modification of offender job restrictions (amending each specific statute) had been introduced in the House Judiciary Committee but the Committee failed to report the bill out.

After the bill was introduced, Horowitz worked hard to convince legislators — liberals and conservatives alike — that the bill was intended to correct arbitrary statutory discrimination in employment against offenders and that it furthered society's goals that persons willing, able and qualified to work should not be arbitrarily locked out of a job. Material prepared by the National Clearinghouse was also distributed to these legislators.

Although the bill was introduced with little publicity, support for the bill was obtained from the Washington Council on Crime and Delinquency, the Jaycees, the Washington Corrections Association, and the Washington State Bar Association. Support by these organizations was considered important in gaining acceptance for the legislation.

Unlike Florida, the bill was first introduced only in the House side of the legislature. After passing the House, it was sent to the Senate. The reason for this strategy was the belief that the effort to gain support for the measure might be too difficult if both sides of the legislature were to consider the bill simultaneously. In

other words, it was considered easier to concentrate one's forces by dealing with only one house of the legislature at a time.

After being approved by both houses, the bill was signed by Governor Daniel Evans on March 27, 1973. Governor Evans lauded the measure as one that will "aid greatly in the rehabilitation of convicted felons."

Connecticut

The next state after Washington to enact a public employment and occupational licensing statute was Connecticut in 1973.

This legislative action stemmed from the interest several state organizations had in the employment problems of persons with arrest and conviction records. In 1972, the Governmental Affairs Council of the Urban League of Connecticut examined the state's licensing boards and personnel board concerning their policies regarding the occupational licensing and public employment of former offenders. The Council, organized in 1971, is a state-wide affiliation of the Hartford, New Haven and Southwestern Fairfield County Urban Leagues. Ms. Constance B. Green is the Council's staff lawyer and acts as its coordinator. The goals of the Council include the persuasion of state agencies and public officials to respond to the needs of the minority community.

Following its examination of state practices on the licensing and employment of ex-offenders, the Council scheduled a workshop early in 1973 to discuss the action that might be taken to remove state imposed restrictions on offender job opportunities.

Invited to attend the workshop were those organizations that were considered by the Council to be interested in the offender employment problem. This included the Connecticut Prison Association, League of Women Voters, NAACP, State Human Rights Commission, Urban League, and Department of Corrections. The National Clearinghouse also attended.

The workshop participants decided on two initial courses of action: First, meet with the State Director of Personnel for the purpose of having the state adopt a policy of hiring ex-offenders, and second, urge the appropriate state licensing agency to adopt regulations for the licensing of hairdressers and cosmeticians.

A short time after the workshop was held, the Joint Committee on Human Rights and Opportunities of the Connecticut General Assembly invited the Council to meet with it to discuss legislation to remedy restrictions on the public employment and licensing of former offenders. The Co-Chairman of the Committee were Senator George Carruthers and Representative E. Ronald Bard.

Following the meeting, the Committee requested the Assembly's Legislative Drafting Service to prepare a bill for the Committee to remove offender employment restrictions.

Upon receiving this request, Ms. Linda Hershman, a lawyer with the Service, began drafting a bill and asked the Governmental Affairs Council for any information that might be of assistance in her work.

The council, in turn, asked the participants in the earlier workshop to provide whatever assistance they could to Ms. Hershman.

At a meeting to discuss this matter, the National Clearinghouse, represented by Assistant Director James E. Bowers, a lawyer, provided the Council and Hershman with information and assistance in drafting the bill. After considering various models, Representative Bard selected the Washington statute to serve as the nucleus for the bill that would be introduced in his Committee. However, some features in the bill were changed, such as broadening the bill to cover all persons who had committed a "crime" instead of applying only to those who had committed a felony and establishing standards to determine a person's degree of rehabilitation.

The Committee then sent the bill to the Committee on Corrections for its review, since the latter Committee was interested in sponsoring similar legislation. However, in view of the action already taken by the Committee on Human Rights and to prevent overlapping of activity, the Corrections Committee decided not to proceed with its separate legislation covering the same matter.

The next step was to hold public hearings on the bill. None of the persons or organizations appearing to testify on the bill were opposed to it. Among the organizations supporting the bill were the State Human Rights Commission, NAACP, The Governmental Affairs Council and Ebony Business League. The Connecticut Bar Association, after being alerted by the National Clearinghouse, gave its support for the bill. John Manson, Commissioner of the state's Department of Corrections, also submitted a letter of support to the Committee.

The Governor's office did not appear at the hearing, but tentative "feelers" to his office indicated that he was not opposed.

After the hearing, the Committee made few changes in the bill and placed it on the House Calendar for a vote. The House voted in favor and sent it to the floor of the Senate which also approved the bill, followed by Governor Meskill's signature.

Notes

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