

A Return to the “World of Work”: An Analysis of California’s Prison Job Training Programs and Statutory Barriers to Ex-Offender Employment

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This paper seeks to propose ways in which the State of California can help ex-offenders find employment upon their release from prison. In particular, the paper examines California's current prison employment programs and suggests that California should more effectively tailor them to train prisoners for those jobs that are both practically and legally available in California's current labor market.

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I. Introduction

In 2003, Marc LaCloche, an inmate in the Clinton County Correctional Facility in New York, was released upon completing his sentence for a first-degree robbery conviction. After spending 1200 hours in prison studying barbering so that he could find a job when released, Mr. LaCloche was no doubt surprised to find that the state had denied his application for a license as a barber's apprentice on the ground that he "lack[ed] of good moral character."¹ One New York judge, appreciating what the state did not, noted, "[I]f the state offers this vocational-training program to persons who are incarcerated, it must offer them a reasonable opportunity to use the skills learned thereby after they are released from prison."²

Too often ex-offenders find themselves in Mr. LaCloche's position, having received job training in prison and yet having no ability to find a job outside the prison walls. States that put their inmates in this situation should be worried: a recently-released ex-felon with no job prospects is a dangerous combination indeed.

Thirteen million Americans – 7% of the adult population and 12% of the male population – have felony convictions. Three million of these Americans are former prisoners.³ As the number of Americans in prison continues to grow due to policies emphasizing punishment rather than rehabilitation, those who craft these policies have lost sight of the fact that nearly 95% of the current 1.4 million prison inmates will eventually be released and will return to their

¹ Dareh Gregorian & Pia Ackerman, *Ex-Con Barber in Hair Tangle*, N.Y. POST, Feb. 21, 2003, at 3.

² *Id.*; see also Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. REV. 255, 282 (2004) [hereinafter Thompson].

³ JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 164 (2005) [hereinafter TRAVIS].

communities.⁴ In 2002 alone, 635,000 people were released from prison, and the United States Department of Justice estimates that at least that many will be released in future years.⁵ In California, which has one of the largest prison populations in the United States at approximately 158,300⁶, nearly 40% of that population will be released this year.⁷ Because California also has the nation's highest recidivism rate, 67% of those released from state prisons will be back in prison within three years.⁸

Only recently have policymakers and academics begun to study the impact of these high rates of prisoner reentry on the ex-offenders themselves and on the communities to which they return. Research shows that among the most pressing issues for ex-offenders is their inability to find jobs. According to a study performed in New York State by the Vera Institute of Justice, the primary concern for the prisoners in the study was finding a job upon release.⁹ There is nothing to suggest that the priorities would be any different for prisoners in California and other states. Despite the emphasis former prisoners place on finding jobs, however, evidence suggests that states are failing to provide prisoners with the necessary resources and training while in prison to enable them to successfully find employment upon release. According to Jeremy Travis, “[O]ur prisons represent a massive failure to prepare prisoners for their return to the world of work.”¹⁰ Similarly, even ex-offenders who do have the necessary skills to obtain employment are often unable to actually find jobs because of barriers instituted by the states or by employers themselves.

⁴ JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY i (2003) [hereinafter PETERSILIA].

⁵ *Id.*

⁶ DATA ANALYSIS UNIT, DEPARTMENT OF CORRECTIONS AND REHABILITATION, CALIFORNIA PRISONERS AND PAROLEES 2004 (2005), <http://www.corr.ca.gov/ReportsResearch/docs/Annual/CalPris/CALPRISd2004.pdf> (last visited Jan.27, 2006).

⁷ Joan Petersilia, Rehabilitation: What It Is, Does It Work?, Class taught at Stanford Law School (Oct. 5, 2005).

⁸ *Id.*, see also *infra* Part II.

⁹ TRAVIS, *supra* note 3, at 162.

¹⁰ *Id.* at 161.

A 2003 paper authored by Holzer, Raphael, and Stoll identifies two types of barriers to employment for former prisoners: supply-side barriers that are indicative of ex-offenders' own characteristics and attitudes; and demand-side barriers that are a reflection of state and employer policies in the labor market.¹¹ Holzer, Raphael, and Stoll argue that ex-offenders possess a variety of characteristics that limit their employability and earnings capacities, including: limited education and cognitive skills; limited work experience; and substance abuse and other physical and mental problems.¹² These attributes reflect a “mismatch” between the characteristics many ex-offenders possess and the criteria employers often use in hiring.¹³ On the demand side, Holzer, Raphael, and Stoll identify two types of barriers ex-offenders face in finding employment: those that relate to the general characteristics of ex-offenders as discussed above, and those that are explicitly related to their *status* as ex-offenders.¹⁴ With regard to status, legal barriers are among the most difficult for ex-offenders to surmount. These restrictions arise in a number of forms, including, but not limited to: statutory prohibitions on hiring ex-offenders for certain types of jobs, such as law enforcement or education; laws giving state licensing boards broad discretion to deny occupational licenses to ex-offenders; and requirements that certain categories of private employers review applicants' criminal histories before hiring them.¹⁵ These laws, when operating in conjunction with widespread employer discrimination against applicants with criminal records¹⁶, serve to exclude ex-offenders from myriad employment opportunities. Although the exact impact of these legal restrictions has not thus far been quantified, it should

¹¹ HARRY HOLZER, STEVEN RAPHAEL, & MICHAEL STOLL, *EMPLOYMENT BARRIERS FACING EX-OFFENDERS*, (2003) [hereinafter HOLZER ET AL.].

¹² *Id.* at 4-5.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ Elena Saxonhouse, Note, *Unequal Protection: Comparing Former Felons' Challenges to Disenfranchisement and Employment Discrimination*, 56 *Stan. L. Rev.* 1597, 1611 (2004).

¹⁶ See, e.g. HOLZER ET AL., *supra* note 11, at 11 (“Employers are much more averse to hiring ex-offenders than they are towards any other disadvantaged group, such as welfare recipients.”).

come as no surprise that nationwide, approximately two-thirds of ex-offenders remain unemployed within three years of their release.¹⁷

This paper will seek to propose ways in which the State of California can more successfully help ex-offenders find employment upon release, thereby eliminating the "mismatch" identified by Holzer, Raphael, and Stoll. The potential means of addressing the mismatch run the gamut and a discussion of each is beyond the scope of this paper. Thus, the paper will focus specifically on the *types* of jobs both practically and legally available to those with a criminal record. In other words, in which job sectors are ex-offenders likely to find both a demand for labor and a lack of statutory bars to being hired? It is crucial that the State coordinate efforts to increase its prison job programs with both the labor market and the present statutory scheme to the greatest extent possible, so as not to train prisoners for jobs they cannot get.

In pursuit of this agenda, Part II of this paper will explain why it is important that California expands prison work programs to include more inmates and to better serve those inmates who already participate. Part III will examine the current work programs provided by the California Department of Corrections and Rehabilitation (CDCR): Prison Industry Authority (PIA) enterprises, vocational training programs, and Joint Venture Programs (JVP). Specifically, the paper will look at the types of job training these programs provide, and how many inmates are receiving the training. Part IV will explore generally the labor market in California, and will identify the job sectors expected to experience the most growth in the coming years. Part V of the paper explains the scope of the legal barriers to employment for ex-offenders imposed by the State and then analyzes how these statutory restrictions apply to the job sectors identified in Part

¹⁷ *Id.*; see also U.S. DEP'T OF LABOR, FROM HARD TIME TO FULL TIME: STRATEGIES TO HELP MOVE EX-OFFENDERS FROM WELFARE TO WORK (2001), <http://wtw.doleta.gov/documents/hard.asp>.

IV. Part VI contains recommendations to the State, based on the above analysis, regarding job sectors to which it should consider expanding its current prison job training programs.

II. Significance of the Issue

Evidence suggests that reorganizing California's prison work programs will benefit both inmates and the people of the State of California if the CDCR can succeed in reducing the mismatch between the types of jobs for which ex-offenders are trained and the types of jobs they are most likely to obtain. Prison industry programs generally are associated with reduced recidivism and increased employment success for released inmates. Indeed, a 1995 meta-analysis conducted by Mark W. Lipsey of nearly 400 studies performed between 1950 and 1990 found that "the single most effective factor in reducing reoffending rates was employment."¹⁸ In addition, several studies show that work programs in prison have a significant impact on the employment outcomes and recidivism rates of males who are over the age of twenty-six.¹⁹ The Federal Bureau of Prisons' 1991 analysis of its Post-Release Employment Program (PREP) evaluated more than 7,000 federal program participants over a two-year period, and found that offenders who received training and work experience while in prison were 24% more likely to obtain a full-time or day-labor job upon release. One year after release, 10.1% of the comparison group inmates had been re-arrested or had had conditional release revoked, while only 6.6% of program participants had suffered similar fates. The study also found that 72% of the program participants found and maintained employment during this period, while just 63% of comparison inmates had similar luck. The study concluded, "It appears that prison employment in an

¹⁸ PETERSILIA, *supra* note 4, at 112.

¹⁹ See Shawn Bushway & Peter Reuter, *Labor Markets and Crime*, in CRIME: PUBLIC POLICIES FOR CRIME CONTROL 191-224 (J.Q. Wilson and J. Petersilia eds., 2002); Richard Seiter & Karen Kadela, *Prisoner Reentry: What Works, What Doesn't, and What's Promising*, 49 CRIME AND DELINQUENCY (2003).

industrial work setting and vocational or apprenticeship training can have both short- and long-term effects that reduce the likelihood of recidivism, particularly for men”²⁰

The majority of the evidence thus indicates that ex-offenders who work in open-market jobs have slower and reduced recidivism rates than releasees who do not maintain employment after release.²¹ Given that California has the nation’s highest rate of recidivism, with 67% of releasees returning to prison within three years²², it should be looking for ways to reduce the rates of re-offending. Helping ex-offenders to more effectively find and maintain employment would no doubt assist California in its crime control efforts.

Increasing joint ventures with the private sector would also benefit the State of California from an economic standpoint. Those companies that have engaged in joint ventures with the private sector have generally had a positive experience and have been able to identify an available workforce through the partnership.²³ The inmate population could be particularly valuable to industries that will be experiencing a labor shortage in the future. Finally, some scholars have suggested that prison industry work benefits the economy through increased output of goods and labor.²⁴

III. California Department of Corrections and Rehabilitation: Current Job Programs

The CDCR currently provides job training and experience to inmates through three major programs: the Prison Industry Authority (PIA), vocational education, and the Joint Venture Program. Many inmates also participate in general work assignments that mainly serve an institutional-support function, such as prison maintenance. As of July 30, 2004, 94,800 (60.9%)

²⁰ CINDY SMITH, ET. AL., U.S. DEP’T OF JUSTICE, CORRECTIONAL INDUSTRIES PREPARING INMATES FOR RE-ENTRY: RECIDIVISM & POST-RELEASE EMPLOYMENT 7 (2005) [hereinafter SMITH, ET AL.].

²¹ *Id.*

²² Joan Petersilia, Rehabilitation: What It Is, Does It Work?, Class taught at Stanford Law School (Oct. 5, 2005).

²³ See, e.g. GEORGE SEXTON, U.S. DEP’T OF JUSTICE, WORK IN AMERICAN PRISONS: JOINT VENTURE WITH THE PRIVATE SECTOR 9 (1995) [hereinafter SEXTON].

²⁴ ROB ATKINSON & KNUT A. ROSTAD, CAN INMATES BECOME AN INTEGRAL PART OF THE U.S. WORKFORCE? 11 (2003) [hereinafter ATKINSON & ROSTAD].

of inmates in California state prisons had either an educational or a work program assignment. PIA employed 5,600 (3.6%) of California's state inmates, 7,900 inmates (5.1%) had vocational education assignments, and 10,200 inmates (6.5%) were lumped into a category entitled "all other assignments," which includes base camps, work crews, community services, forestry training programs, substance abuse programs, and unknown program assignments. Institutional support and work programs, which include maintenance teams and nursery crews, employed 43,100 (27.7%) of inmates.²⁵ In addition, 35,600 (22.9%) of inmates were on program waiting lists. Of those inmates not in a work program or on a waiting list, some were in educational programs, some were unwilling to work, some were ineligible for programming due to placement in administrative segregation or in a lockup unit, and some were new inmates who had not yet been assigned.²⁶

These numbers suggest that far too many inmates are left without programming. In particular, PIA and the vocational programs combined serve only 8.7% of California's massive prison population, a paltry number considering that approximately 95% of these inmates will be released, and most will not have engaged in any job training while in prison. Although the majority of inmates do not receive job training while in prison, this Section will examine the job programming experienced by those inmates who are fortunate enough to receive it.

A. The Prison Industry Authority

California's corrections system has been partnered since 1982 with the Prison Industry Authority (PIA), a semi-autonomous agency established by the state legislature "to operate

²⁵BUREAU OF STATE AUDITS, CALIFORNIA STATE AUDITOR, , PRISON INDUSTRY AUTHORITY: ALTHOUGH IT HAS BROAD DISCRETION IN PURSUING ITS STATUTORY PURPOSES, IT COULD IMPROVE CERTAIN PRICING PRACTICES AND DEVELOP PERFORMANCE MEASURES 8-9 (2004), <http://www.bsa.ca.gov/bsa/> (last visited Jan. 27, 2006) [hereinafter CALIFORNIA STATE AUDITOR].

²⁶ *Id.*

California's prison industries in a manner similar to private industry.²⁷ The PIA lists as its goals: employing inmates; assisting inmates in finding employment upon release; developing effective work habits and occupational skills for inmates; reducing operating costs of the CDCR; and supporting itself by generating sufficient revenue from the sale of its products and services to cover its own expenses.²⁸

While PIA still pursues these initial legislative objectives, the emphasis placed on some of the goals has changed over time. Initially, PIA attempted to maximize inmate employment. In the last ten years, however, PIA has focused more on increased productivity and improved customer satisfaction.²⁹ This shift in emphasis has resulted in a decline in PIA's inmate participation, both in absolute terms and as a percentage of the State's correctional population. Initially, PIA and the then-CDC (California Department of Corrections)³⁰ (hereinafter CDCR) agreed to a mutual goal of employing in PIA enterprises 42% of the inmates at newly built prisons. A period of rapid growth in California's prison population forced PIA and the CDCR to abandon this goal, however, and now PIA does not have an inmate employment target.³¹ To be sure, the percentage of inmates currently employed by PIA (3.6%) is nowhere near the initial goal of 42% set when the legislature first established the program.

As of July 1995, PIA operated thirty-one enterprises at twenty-three of the State's then thirty-one prisons, and employed approximately 7,000 (5.3%) of the State's then 131,100 inmates.³² In July 2004, PIA operated twenty-five enterprises located at twenty-two of the

²⁷ Prison Industry Authority Mission, at http://www.pia.ca.gov/piawebdev/pia_facts.html (last visited Jan. 27, 2006).

²⁸ *Id.*; see also CALIFORNIA STATE AUDITOR, *supra* note 25, at 5.

²⁹ LEGISLATIVE ANALYST'S OFFICE (LAO), REFORMING THE PRISON INDUSTRY AUTHORITY 9 (1996), http://www.lao.ca.gov/1996/043096_pia/pb042996.html (last visited Jan. 27, 2006) [hereinafter LAO].

³⁰ Note: The California Department of Corrections (CDC) recently changed its name to reflect its emphasis on assisting inmates in rehabilitating themselves. It is now known as the California Department of Corrections and Rehabilitation (CDCR).

³¹ LAO, *supra* note 29, at 9.

³² *Id.* at 1.

state's then thirty-two prisons and employed 5,600 (3.6%) of the state's then 155,600 inmates.³³ According to the State Auditor, by 2004, PIA participation had continually declined over the last twelve fiscal years relative to the Department's institutional population.³⁴ This decline was due in part to the demise of PIA's prison construction program, the closure or consolidation of various enterprises, and the recent economic downturn.³⁵ Despite the decrease in inmate participation, PIA has not established any participation targets for the number of inmates or percentage of the population that it would like to employ in the coming years, either overall or by specific enterprise.³⁶

Currently, PIA operates over sixty service, manufacturing, and agricultural industries at twenty-two prisons. The PIA enterprises produce a variety of goods, including office furniture, clothing, shoes, signs, binders, eye wear, gloves, and license plates. All of the PIA assignments are voluntary, but the Department of Corrections reports that inmates are eager to participate and that waiting lists are common for many enterprises.³⁷ Table 1 shows the number of inmates employed in each PIA enterprise in the 2002-03 and the 2003-04 fiscal years. In the 2003-04 fiscal year the largest numbers of inmates were employed in the fabric products, laundry, and furniture enterprises. The optical, metal products, general fabrication, and dairy enterprises employed over 200 inmates each, as did the support services sector of PIA, which employs inmates to perform support service functions like maintenance and repair, warehousing of PIA products, and office administration.³⁸

³³ CALIFORNIA STATE AUDITOR, *supra* note 25, at 5.

³⁴ *Id.* at 28.

³⁵ *Id.*

³⁶ *Id.*

³⁷ CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, PRISON INDUSTRY AUTHORITY, *at* <http://www.pia.ca.gov> (last visited Jan. 27, 2006).

³⁸ CALIFORNIA STATE AUDITOR, *supra* note 25, at 32.

Although PIA is not serving nearly as many inmates as it had hoped to when it first received its legislative mandate, it has recently embarked on new programming to assist the approximately 600 PIA participants who are released each year³⁹ in improving their job readiness. In 2000, PIA instituted the Inmate Employability Program (IEP), with the mission of “develop[ing], implement[ing] and evaluat[ing] training and other programs that increase inmate employability and . . . coordinat[ing] job placement activities with the Department of Corrections.”⁴⁰ In pursuit of this goal, the program documents and certifies inmates’ skills, work experience, and positive work habits acquired while engaged in PIA work assignments. IEP also maintains certification programs that enable qualified inmates to obtain industry-accredited certifications from organizations such as the National Association of Institutional Linen Management and the American Board of Opticianry.⁴¹ For example, PIA operates a dental lab where inmates can become certified dental laboratory technicians through the Productivity Training Corporation, which provides skills training to dental labs nationwide.⁴² PIA claims that inmates earning skill certifications from industry-accredited associations have high rates of success, although the employment rates have not been quantified.

PIA is also attempting to enhance partnerships with the private sector so that PIA participants have better job opportunities when they are released. In an experimental program,

³⁹ Michael Kinsman, *Adjusting Isn’t Easy, but Ex-Offenders Offer Key Job Skills*, THE SAN DIEGO UNION-TRIBUNE, Sept. 25, 2005, <http://www.signonsandiego.com/news/business/kinsman/20050925-9999-1b25kinsman.html> (last visited Jan. 27, 2006) [hereinafter Kinsman].

⁴⁰ CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, INMATE EMPLOYABILITY PROGRAM, at http://www.pia.ca.gov/piawebdev/pia_iep/iep_3.html (last visited Jan. 27, 2006).

⁴¹ Certificates are available from the following: the National Association of Institutional Linen Management (NAILM) – certified laundry and linen management; the American Board of Opticianry (ABO) – certified optician; the American Welding Society (AWS) – certified welder; the National Institute for Metalworking Skills (NIMS) – certified machinist, certified metal former/stamper; the CA Department of Food and Agriculture – licensed pasteurizer; the Federal Emergency Management Institute - Hazmat (FEMA) – decision making/problem solving, effective communication; the Electronics Technicians’ Association (ETA) – certified customer services specialist; the PBS Video Training Series – GED, workplace essential skills; and Stiles Computer-Based Training Modules – Weeke Machining Center Programming. *Id.*

⁴² Kinsman, *supra* note 39.

PIA is working with employers in San Diego to encourage them to hire former PIA participants. The hope is that if employers are educated about the PIA program so they understand that PIA graduates have sought-after job skills, then the participating employers will provide a logical place for ex-offenders to begin their job search. In an effort to get San Diego employers involved in the partnership, PIA held an employers forum in the city on October 20, 2005 and beforehand it expected 150 companies to participate. One of the employers PIA hopes will begin hiring, National Steel & Shipbuilding Co. (NASSCO), says that about 20% of its 4,200 employees have a past criminal conviction. According to the company's hiring manager, "We have a lot of turnover, so we're always looking for good workers. As long as the people we hire obey our rules and do good work, there are no problems."⁴³ The key for PIA if it wants to assist its graduates in finding jobs is to ensure that they not only do "good work," but also that they do the right kind of work for the current labor market.

PIA is also partnering with business executives to teach inmates how to start their own businesses. The Prison Entrepreneurship Program (PEP) is a non-profit corporation founded in Texas that pairs business executives with inmates in an attempt to direct pre-existing entrepreneurial qualities toward legal, rather than illegal, business ventures. According to PEP founder Catherine Rohr, "Prisoners usually don't end up in prison because they're lazy. They may not be the best educated, but talk about street smarts. They're driven, passionate and very charming. All of these traits they share with business executives."⁴⁴ PEP has already established a partnership with PIA and once PEP raises the appropriate funds, it will begin teaching inmates at San Quentin State Prison how to start their own businesses, with plans to expand to Folsom State Prison next. Each inmate participating in the program will be paired with a mentor, who is

⁴³ *Id.*

⁴⁴ David M. Drucker, *Prison Entrepreneurs: Pros Work with Cons*, PROSPER, September 2005, at 48, http://www.prospermag.com/default/archives/september_2005/prison_entrepreneurs1/ (last visited Jan. 27, 2006).

usually a successful business executive or entrepreneur. Together, they will brainstorm business ideas and compose a business plan, and in some cases PEP helps recently released or paroled inmates pitch their programs to investors and venture capitalists. Robert Aikens, a former inmate in Houston, established a successful landscaping business upon release with the help of PEP and his PEP mentor.⁴⁵

Along with implementing new experimental programs, PIA is considering expanding its current programming both to serve more inmates and to increase the number of enterprises it offers. According to a recent report by the State Auditor, PIA “anticipates the development of a strategic business plan . . . that will result in a marketing plan focused on markets that it can penetrate or expand, given its strengths and limitations.”⁴⁶ Given this goal, the Auditor recommends that PIA describe the markets it plans to penetrate and the enterprises most likely to employ a greater number of inmates as a result.⁴⁷ In addition, the Auditor recommends that PIA establish performance measures in order to evaluate the program’s impact on its participants’ post-release success. Because PIA has not historically conducted such an evaluation, the State does not know how well it actually helps ex-offenders in finding jobs upon release. These performance measures will be important, because without them, PIA cannot focus inmate employability activities in sectors that actually demonstrate success. PIA has agreed to undertake such a study and has also agreed, per the Auditor’s recommendation, to establish long-range annual inmate employability targets.⁴⁸

While these goals are admirable and will no doubt lead to improvements, PIA also should consider whether there is a strong correlation between the jobs for which it provides training, and

⁴⁵ *Id.* at 50.

⁴⁶ CALIFORNIA STATE AUDITOR, *supra* note 25, at 30.

⁴⁷ *Id.*

⁴⁸ *Id.* at 65-66.

the jobs that will be available to ex-offenders in California in the future. For example, it would behoove PIA not to expand to a job sector that is on the decline in California, or to train inmates for occupations from which they are statutorily barred. The Legislative Analyst's Office (LAO) has also suggested that PIA could stabilize its inmate workforce by funding vocational programs that correspond with pre-existing PIA enterprises. After the inmates have been successfully trained through vocational programs, they could be shifted to PIA work assignments.⁴⁹ Once again, however, neither the PIA nor the CDCR should consider expanding existing programs or embarking on new programs unless they have determined that these programs have the potential to translate to jobs upon release for the participants. This paper will later on recommend job sectors PIA should consider when it is developing its strategic business plan and deciding which new markets to penetrate.

B. Vocational Programming

Nationwide, we have little data on the number of inmates participating in vocational programs or the types of training they do receive, and California is no exception. As Professor Joan Petersilia notes, "It is quite telling that such little data exist about prison education and treatment: we measure what matters most to us."⁵⁰ We do know that in 1997, 31% of state inmates nationwide received vocational training. That same year, 27% of soon-to-be-released inmates reported that they had participated in vocational programs, as compared with 31% who reported such participation in 1991. Petersilia suggests that low participation rates are not an indication of a lack of need or willingness to participate among prisoners, but rather are an

⁴⁹ LAO, *supra* note 29, at 17.

⁵⁰ PETERSILIA, *supra* note 4, at 94.

indication of unavailability: “Existing programs simply cannot accommodate all prisoners who are willing to participate.”⁵¹

Table 3 lists the vocational programs offered in each of California’s thirty-two state correctional facilities. In some cases programs have been grouped together for ease of recording. For example, dry cleaning and janitorial services have both been accounted for in the “Cleaning/Maintenance” category, and auto body, auto repair, and auto mechanics have all been listed under “Auto Body/Mechanics.”

The most common vocational programs, present in twenty or more institutions, are: auto programs, including auto body, auto mechanics, and auto repair (26 institutions); cleaning and maintenance, including dry cleaning and janitorial services (24); electronics (23); graphic arts and printing (20); landscaping and gardening (24); and mill and cabinetry (22). The least common programs, present in five or less of California’s state institutions, are: audio/visual technology (1); baking and culinary arts (1); cosmetology (1); data and word processing (3); eyewear manufacturing (4); garment making (3); roofing (1); sheet metal (3); and x-ray technology (1). While this data tells us which programs are most numerous, it does not tell us which programs have the highest rates of inmate participation. Unfortunately, that data is currently unavailable.

C. Joint Venture Programs

Currently only 6% of state prisoners nationwide work in prison industries sponsored by the private sector.⁵² Many scholars and policymakers have argued that it is good public policy to expand the range of joint venture programs so that more inmates can take advantage of these partnerships. While California currently engages in a variety of joint venture programs, by

⁵¹ *Id.* at 95-96.

⁵² ATKINSON & ROSTAD, *supra* note 24.

expanding the breadth of the programs so that more inmates and private employers can participate, the state could help decrease some of the supply- and demand-side barriers to ex-offender employment.

After decades of prohibition in response to complaints of unfair competition from competing manufacturers and labor unions, private sector prison industries were revived nationwide in 1979, when Congress enacted 18 U.S.C. §1761(c) and 41 U.S.C. §35 in order to lift the ban on the interstate transportation and sale of prison-made goods.⁵³ The statutes, which created the Private Sector/Prison Industry Enhancement Certification Program (PS/PIEC), authorize prisons that meet certain conditions to engage in interstate shipment of prison-made goods for private business use. Because many businesses in the United States sell goods and services in interstate commerce, the legislation was crucial in enabling state departments of correction to establish partnerships with private sector companies. The law requires: (1) that inmates working in the program are paid the local prevailing wage; (2) that local unions are consulted before commencement of any prison industry project; and (3) that inmate employment does not adversely affect other constituencies, such as workers employed outside the prison.⁵⁴

In 1990, at the same time they rejected a \$450 million bond issue for prison construction⁵⁵, the California voters passed Proposition 139, the Prison Inmate Work Incentive, which requires the CDCR to recruit private businesses in order to establish partnerships between these businesses and California's prisons. The CDCR created the Joint Venture Program (JVP) in 1991 to implement this mandate. JVP works with private businesses to set up their operations inside state prisons. The businesses then hire California state inmates and pay them the prevailing local wage.

⁵³ SEXTON, *supra* note 23, at 3.

⁵⁴ *Id.*

⁵⁵ *Id.* at 4.

In pursuit of its mandate, JVP identifies the following four goals: (1) to identify businesses with the potential to become venture partners; (2) to determine the availability of suitable work sites and characteristics of the available inmates; (3) to develop strategies to market the program both to potential business partners and to the general public; and (4) to evaluate and monitor venture partners and overall program progress.⁵⁶ Currently, the CDCR operates Joint Venture Programs in over 30 of California's prisons.⁵⁷ Employers are enticed to the program through offers of state tax incentives, no expenses for retirement, vacation, sick leave, and medical benefits, cost-effective lease agreements on state land, discount rates for Workers' Compensation Insurance, and an on-call labor pool. Inmates receive benefits from the program as well, including developing good work habits, gaining job experience, and learning valuable job skills. The inmates' earnings are subject to deductions for room and board, victim compensation funds, prisoner family support, and required inmate savings to be used upon release.⁵⁸

Current Joint Venture Programs include a computerized message center owned by a private business and employing as operators female inmates at the California Rehabilitation Center in Norco, and a partnership between Central California Women's Facility in Chowchilla and a private company that employs approximately forty-five of the inmates in an electronics manufacturing program.

Although this paper principally concerns California's adult prisons, the CDCR has also established a successful joint venture in the California Youth Authority (CYA) that might serve as a useful model for the State's adult prisons. Starting in 1986, Trans World Airlines (TWA)

⁵⁶ CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, JOINT VENTURE PROGRAM, available at <http://www.corr.ca.gov/> (last visited November 15, 2005).

⁵⁷ *Id.*

⁵⁸ *Id.*

began employing youth incarcerated at CYA's Ventura Training School. As of 1995, TWA had employed 300 inmates to work as telephone reservation agents for the airline. The school became one of TWA's five major reservation centers and became the only center that scheduled the airline's international itineraries. According to TWA, the Ventura agents were best-equipped to handle the complexity of round-the-world reservations because the Ventura workforce was small and could be closely monitored by TWA staff supervising the program. The program eventually led to gainful employment for some of the incarcerated youths who participated. As of 1995, fifty-five of the inmates who worked for TWA at the training school had continued their employment at the company's Los Angeles reservation center upon release.⁵⁹

The successes of Joint Venture Programs have led the CDCR to solicit through its website new partnerships with the private sector.⁶⁰ In particular, the CDCR seeks to establish joint ventures with companies that engage in various types of manufacturing, assembly work, support services, such as clerical assistance, information scanning, and packaging and recycling.⁶¹ As is the case with PIA, the CDCR should attempt to expand the Joint Venture Program by partnering with companies that work within the job sectors in California expected to experience the most growth in the future.

IV. The California Labor Market

Any effort to improve the job training received by California's inmates must take into account trends in the State's labor market. If the goal is to better equip prisoners for their entry into the open labor market upon release, then the State should be preparing inmates for jobs that are available to them. For instance, it would be poor public policy to train California inmates to

⁵⁹ SEXTON, *supra* note 23, at 9.

⁶⁰ CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, JOINT VENTURE PROGRAM, available at <http://www.corr.ca.gov/> (last visited November 15, 2005).

⁶¹ *Id.*

drive snowplows, as snowplow drivers are unlikely to be in high demand in California. Despite the frivolity of the example, the principle is important: we need to coordinate any expansion in prison job programs with expected growth in California's labor market to the best extent possible. This will entail a careful analysis of job growth in California as it relates to the ability of ex-offenders to obtain jobs.

Recent national economic trends have not been favorable to ex-offenders searching for jobs. While the economy experienced rapid growth in the 1990s, which resulted in increased earnings for many and a decrease in unemployment, most ex-offenders did not benefit from this upswing. Historically, industries with little customer contact, such as manufacturing, have been more willing to hire ex-offenders than service industries have been.⁶² Thus, most ex-offenders worked in low-skilled, blue-collar jobs. Despite the strong economy and overall wage increases in the 1990s, the average wages of low-skilled male workers stayed the same.⁶³ Additionally, the number of blue collar and manufacturing jobs has *decreased* over time, and this market sector is not expected to experience an increase in the near future.⁶⁴ As the jobs for which ex-offenders could get hired decrease, the jobs from which they are generally excluded, such as health care and customer services, are increasing.⁶⁵ This nationwide increase in service sector jobs and decrease in blue-collar jobs looks as if it will only exacerbate the already-significant mismatch between the skills and abilities of ex-offenders and the current hiring trends in the open labor market.

These trends do not mean that California should abandon its efforts to help ex-offenders obtain jobs, however. According to a Hudson Institute study, "baby boomers" will leave the job

⁶² See HARRY HOLZER, STEVEN RAPHAEL, & MICHAEL STOLL, EMPLOYER DEMAND FOR EX-OFFENDERS: RECENT EVIDENCE FROM LOS ANGELES 12 (2003).

⁶³ TRAVIS, *supra* note 3, at 166.

⁶⁴ *Id.* at 166-67.

⁶⁵ *Id.* at 167.

market in significant numbers over the next twenty-five years, which will result in a tightening of the labor market, including demand for workers in low-wage and low-skill job sectors.

According to Jeremy Travis, this means that “employers will be compelled to turn to new sources of labor, including the ex-offender population.”⁶⁶ Indeed, certain low-wage and low-skill job markets in California will even experience growth in the near future, suggesting that there is hope for ex-felons looking for jobs.

California’s Employment Development Department’s Labor Market Information Division (LMID) has developed two-year and ten-year employment projections. According to this data, total employment in California is expected to grow at a 1.5% annual rate in 2005 and 2006, which would lead to a total of 475,000 new jobs by the end of 2006.⁶⁷ Of this growth, the Administrative and Support Services sector is growing at the fastest rate (7.4% over two years) and is projected to account for 15% of the new jobs. This growth is largely due to expansion in the Employment Services sector, which is comprised mainly of Temporary Help Services.⁶⁸ Other job sectors anticipated to contribute to this growth include: Retail Trade (13% of new jobs); Accommodation and Food Services (12%); Construction (11%); and Health and Social Assistance (10%). Of these sectors, the construction industry, which is responding to a residential housing boom in California, is expected to grow at a rate of 5.7%, the second fastest rate of projected employment growth of any major industry sector.⁶⁹ In addition, almost half of the fifty fastest growing occupations in California are in construction-related industries.⁷⁰

⁶⁶ *Id.*

⁶⁷ EMPLOYMENT DEVELOPMENT DEPARTMENT LABOR MARKET INFORMATION DIVISION, STATE OF CALIFORNIA, CALIFORNIA INDUSTRY PROJECTIONS 2004-2006 (2005), at <http://www.calmis.ca.gov> (last visited Jan. 27, 2006).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ EMPLOYMENT DEVELOPMENT DEPARTMENT LABOR MARKET INFORMATION DIVISION, STATE OF CALIFORNIA, CALIFORNIA OCCUPATIONAL PROJECTIONS 2004-2006 (2005) available at <http://www.calmis.ca.gov> (last visited Jan. 27, 2006).

Some of these jobs will pay over \$18.00 an hour: drywall installers, sheet metal workers, and roofers are predicted to make this much, and electricians and plumbers are expected to make over \$20.00 an hour.⁷¹ The health and high tech industries also will experience rapid economic growth through 2006. Medical Assistants will be making over \$13.00 an hour while respiratory therapists will make over \$25.00 an hour. And jobs that require a bachelor's degree, such as Network Systems and Data Communications Analysts, Computer Software Engineers, and Database Administrators will pay more than \$30.00 an hour.⁷² On the other end of the hourly pay spectrum, retail salespersons, food preparation and serving workers, cashiers, and janitors and cleaners can expect to receive over \$8.00 an hour.⁷³

These figures demonstrate that there is room for job growth in California, some of which might even be in areas amenable to hiring ex-offenders. A cursory glance at the data above reveals that while some of the job growth is in service sectors, such as Administrative and Support Services and Health and Social Assistance, areas which are least likely to hire ex-offenders, there is an almost equal amount of growth in sectors that would be more willing to hire ex-felons, including the construction industry and the food services industry. A more detailed analysis will reveal which jobs, if any, the CDCR should focus on as it expands its prison job programs.

In order to compare job growth with statutory barriers to employment for ex-felons, with the hopes of identifying job sectors that are growing and are open to ex-offenders, this paper uses the ten-year occupational growth projections, from 2002 to 2012, provided by the State Department of Labor. Because the CDCR will likely take time to implement new programs, it makes most sense to focus on occupations that are expected to experience the most growth over

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

the coming decade. This will give the CDCR the opportunity to develop a long-range employment plan for its inmates. The Employment Development Department's LMID projects occupational growth both in absolute terms and by rate of change. Because the focus in this paper is on identifying occupations that will be most readily available for ex-offenders, this analysis uses statistics that represent absolute job growth in California through 2012.

Table 4 lists the twenty occupations with the largest projected occupational growth between 2002 and 2012. The table also shows the rate of growth for each of these occupations, although, again the emphasis is on the occupations that will have the greatest need for workers in the coming years. The data reveals wide variety in the types of occupations that will be experiencing significant growth. Some of the growth appears in low-skilled, low-wage jobs, such as food prep workers, cashiers, and waiters and waitresses, while the State also expects to see growth in occupations that pay higher wages and require more skill or education, such as elementary school teachers and software engineers. Analyzing each of these twenty occupations under California's law will reveal that while ex-felons may have success in obtaining some of these jobs, many of these occupations will be nearly impossible to obtain for someone with a felony conviction.

V. Statutory Barriers to Employment

In many states there is a disconnect between the programs offered to prisoners as a means of improving their job prospects upon release, and the statutory barriers these same prisoners face when they get out and actually apply for jobs. In the 1980s, as part of a nationwide trend to become "tough on crime," a number of states enacted blanket restrictions denying people certain jobs because of their status as ex-felons. According to one commentator, "Rather than focusing on employment that might be related to an offense, these prohibitions generally assume the form

of blanket restrictions based on the individual's status as an ex-offender as opposed to some specific relationship to conduct."⁷⁴ This means that simply having a felony on one's record can be a categorical bar to some jobs, without regard to the conduct underlying the conviction. California uses such blanket restrictions, and prohibits parolees from working in real estate, nursing, or physical therapy.⁷⁵

In addition to these statutory bars to employment, many states have occupational licensing restrictions that subject applicants to criminal history background checks and allow licensing boards to deny a license to someone on the grounds that he has a criminal history, or that he does not possess "good moral character." Because "good moral character" is rarely defined, "licensing boards and agencies have tremendous latitude in defining the term," which can lead to arbitrary and inconsistent denials of licensure based on one's criminal history.⁷⁶ A state's power to require occupational licenses generally stems from its police powers to protect the health, morals, and welfare of the public⁷⁷ and thereby to serve the public interest by regulating who can and cannot practice in certain occupations.⁷⁸ In California, §101.6 of the Business and Professions Code gives the boards their power, and states that they are "established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California."⁷⁹

Depending on the state, operating without a valid occupational license can lead to penalties or fines, can constitute an administrative or criminal offense, and can leave a party with

⁷⁴ Thompson, *supra* note 2, at 280.

⁷⁵ *Id.*

⁷⁶ *Id.* at 281.

⁷⁷ See, e.g. *Watson v. Maryland*, 218 U.S. 173, 178 (1910) ("Regulations of a particular trade or business essential to the public health and safety are within the legislative capacity of the state in the exercise of its police power . . .").

⁷⁸ Bruce E. May, *The Character Component of Occupational Licensing Laws: A Continuing Barrier to the Ex-Felon's Employment Opportunities*, 71 N.D. L. Rev. 187, 190 (1995) [hereinafter May].

⁷⁹ CAL. BUS. & PROF. CODE § 101.6 (2005).

no recourse in the case of a breach of contract, because parties cannot enforce a contract if they were not properly licensed at the time of the agreement. According to one commentator, “The ability to obtain an occupational license is vital to anyone seeking to enter a regulated occupation,” and because of restrictions and character components, many ex-felons simply do not have this ability.⁸⁰ Thus, “[s]tate occupational licensing laws can operate to reduce the availability of employment opportunities for ex-felons.”⁸¹

A. California’s Statutory Scheme Generally

California currently employs both blanket bars and occupational licensing restrictions, making it difficult for ex-felons to gain access to many occupations. First, the State requires certain types of employers to conduct criminal history background checks during the hiring process. California Business and Professions Code §144(a) mandates that the twenty-six agencies identified in the statute *shall* require job applicants to furnish a full set of fingerprints to enable the employer to conduct a criminal history record check. In addition, the statute allows the designated agencies to obtain and receive, at their discretion, criminal history information from the Department of Justice and the Federal Bureau of Investigation. The agencies identified in §144(b) of the statute include the California Board of Accountancy, the California State Board of Pharmacy, the Board of Registered Nursing, the Physical Therapy Board of California, the State Board of Optometry, and the Contractors’ State License Board.⁸² Although none of these

⁸⁰ May, *supra* note 78, at 188.

⁸¹ *Id.* at 192-93.

⁸² CAL. BUS. & PROF. CODE § 144 (2005). Cal. Bus. & Prof. Code § 144(a) applies to the following agencies: (1) California Board of Accountancy; (2) State Athletic Commission; (3) Board of Behavioral Sciences; (4) Court Reporters Board of California; (5) State Board of Guide Dogs for the Blind; (6) California State Board of Pharmacy; (7) Board of Registered Nursing; (8) Veterinary Medical Board; (9) Registered Veterinary Technician Committee; (10) Board of Vocational Nursing and Psychiatric Technicians; (11) Respiratory Care Board of California; (12) Hearing Aid Dispensers Advisory Committee; (13) Physical Therapy Board of California; (14) Physician Assistant Committee of the Medical Board of California; (15) Speech-Language Pathology and Audiology Board; (16) Medical Board of California; (17) State Board of Optometry; (18) Acupuncture Board; (19) Cemetery and Funeral Bureau; (20) Bureau of Security and Investigative Services; (21) Division of Investigation; (22) Board of

organizations places a per se bar on employing ex-offenders, each requires criminal history checks, and research suggests that knowledge of a person's status as a former prisoner can significantly hinder his chances of getting hired.⁸³

California's Penal Code regulates the type of criminal history available to employers who ask for it pursuant to their authority under §144(a). California Penal Code §11105 requires the Department of Justice to maintain "state summary criminal history information," which is a master record of someone's identification and criminal history. It can include name, date of birth, a physical description, fingerprints, photographs, dates of arrest, arresting agencies and booking numbers, charges, and dispositions. Under the statute, the Attorney General can furnish this criminal history information to assist "any other entity in fulfilling employment, certifications, or licensing duties."⁸⁴ In addition, the statute allows the Attorney General to furnish the information to "any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct. . . ."⁸⁵ Thus, the Attorney General can provide criminal history information to the entities listed in §144(b). The State also allows local criminal justice agencies to furnish criminal history information to entities that have statutory authority to request such information.⁸⁶

In addition to requiring certain agencies to conduct criminal history background checks, the California Business and Professions Code allows occupational licensing boards to deny a license to an applicant on the grounds that he or she has been convicted of a crime.⁸⁷ It is

Psychology; (23) The California Board of Occupational Therapy; (24) Structural Pest Control Board; (25) Contractors' State License Board; (26) Bureau of Neuropathic Medicine.

⁸³ See HOLZER, ET. AL., *supra* note 11.

⁸⁴ CAL. PENAL CODE § 11105 (2005).

⁸⁵ *Id.* § 11105(b)(12).

⁸⁶ *Id.* § 13300.

⁸⁷ CAL. BUS. & PROF. CODE §480(a)(1) (2005).

important to note that the relevant statute, §480(a)(1) of the Business and Professions Code, does not differentiate between levels or types of crimes, and thus, even a misdemeanor conviction could be grounds upon which a board might deny an applicant a license. The statute also allows a board to deny an applicant a license if he has “done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another”⁸⁸, or if he has “done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license”⁸⁹. Although the terms are not defined in the statute, presumably many criminal convictions involve acts that could be considered dishonest, fraudulent, or deceitful under (a)(2), or would be grounds for revocation or suspension of a license under (a)(3). The statute thus provides board members with a number of routes they could take to deny a license to an applicant who has a criminal history.

The boards generally have plenary power over their respective occupational realms. Business and Professions Code §108 outlines board functions, which include the ability to set standards, prepare and conduct examinations, pass upon applicants, conduct investigations of violations of laws under the board’s jurisdiction, issue citations and hold hearings for the revocation of licenses, and impose penalties following such hearings, if there is a statute giving the respective board such power.⁹⁰ Not only do the boards have a broad range of powers, but also their decisions are often final. Section 109 of the Business and Professions Code states that board decisions with respect to the functions outlined in §108 are final and are not to be reviewed by the department director, with the exception of alleged misconduct on the part of the board.⁹¹ The State’s statutory scheme gives broad discretion to these occupational licensing

⁸⁸ *Id.* § 480(a)(2).

⁸⁹ *Id.* § 480(a)(3).

⁹⁰ *Id.* § 108.

⁹¹ *Id.* § 109.

boards, and there is often little chance that an ex-offender who is denied an occupational license will get review of that decision.

The statute, however, does place two qualifications on the power of the boards. First, a board may only deny a license to someone on the grounds that he has been convicted of a crime or committed a dishonest, fraudulent, or deceitful act “if the crime or act is *substantially related* to the qualifications, functions or duties of the business or profession for which the application is made.”⁹² This standard is ambiguous at best, however, as the statute allows each board to develop its own criteria to aid it in determining whether a crime is “substantially related” to the business or profession it regulates.⁹³ Indeed, on the occasions when the California courts have reviewed a board decision, they seem to have interpreted this standard liberally. For example, the Court of Appeal in the case of *Golde v. Fox* held that the conviction of possession of marijuana for sale was substantially related to the business of a real estate broker, as it showed a lack of honesty and integrity.⁹⁴ On the other hand, the California courts do require some sort of connection between the crime, its underlying conduct, and the qualifications required for the job. In the 1979 case of *Brandt v. Fox*, the California Court of Appeal chided the Attorney General and the Real Estate Commissioner for arguing that Mr. Brandt should be denied a real estate license because he had once been convicted of distributing cocaine. According to the court:

[O]nly by indulging in the sort of abstract characterization which has been condemned by the California courts, can the connection between this plaintiff’s one instance of misbehavior and his qualifications to act as a real estate salesman be established. The Attorney General’s argument that, having once violated the law to make a quick profit, plaintiff might be tempted to engage in overreaching and dishonest conduct as a real estate salesman, is not convincing.⁹⁵

⁹² *Id.* §480(a) (emphasis added).

⁹³ *Id.* §481.

⁹⁴ 98 Cal.App.3d 167 (Cal. Ct. App. 1979).

⁹⁵ *Brandt v. Fox*, 90 Cal.App.3d 737, 747 (Cal. Ct. App. 1979).

The courts also ensure that licensing boards that operate under §480 implement proper procedures to comply with the statute's mandate to find a substantial relationship between the crime and the qualifications for the license being sought. For example, an agency cannot enact regulations that automatically deny an applicant a license on the grounds that he or she has been convicted of a crime without an initial board finding that the substantial relationship element of the statute has been satisfied. Thus, in the 1980 case of *Selby v. Dept. of Motor Vehicles*, the Court of Appeal held that the Department of Motor Vehicles (DMV) could not pass a regulation that automatically denied an applicant a school bus driver's license because of a past conviction.⁹⁶ Rather, the DMV had to consider whether the "conviction [was] substantially related to [the applicant's] qualifications to be a school bus driver and, if so, whether she has been rehabilitated," pursuant to the mandate of §480.⁹⁷

In addition to requiring a connection between the crime and the type of license sought, the statute ensures that ex-offenders who have been rehabilitated in the eyes of the State will not continue to be haunted by their criminal pasts in the job application process. Under the statute, no person shall be denied a license *solely* on the basis of a criminal conviction if he or she has obtained a state-issued certificate of rehabilitation (in the case of a felony), or has met the particular board's criteria for rehabilitation (in the case of a misdemeanor).⁹⁸ In the case of a misdemeanor, under §482 of the Business and Professions Code, each board is required to develop criteria to evaluate the rehabilitation of the applicant. The statute does not give much

⁹⁶ *Selby v. Dept. of Motor Vehicles*, 110 Cal.App.3d 470 (Cal. Ct. App. 1980).

⁹⁷ *Id.* at 475.

⁹⁸ CAL. BUS. & PROF. CODE § 480(b) (2005). *See also* CAL. BUS. & PROF. CODE § 482 (2005) (mandating that each board shall develop criteria to evaluate the rehabilitation of a person and shall take into account all competent evidence of rehabilitation furnished by the applicant).

guidance for boards in the development of these criteria beyond instructing the board to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”⁹⁹

In the case of a felony, the applicant must go through a rigorous process to obtain a certificate of rehabilitation pursuant to §4852.01 of the California Penal Code. Ex-offenders cannot even apply for certificates of rehabilitation until they have completed a waiting period, which consists of five years of California residence after release from incarceration, and can include an additional waiting period depending on the crime of conviction. For example, anyone convicted of an offense that carries a life sentence must wait four additional years on top of the five years of residency, for a total of nine years.¹⁰⁰ Once the waiting period has elapsed, the applicant must follow a number of steps, including: calling the county Superior Court clerk to ask for an application for a Certificate of Rehabilitation and Pardon; filling out the application, which may include a statement that the applicant is seeking to be rehabilitated for employment purposes; giving a copy of the application to the District Attorney and giving him or her a chance to object to the request for a certificate and to prepare a report for the court; and attending a court hearing to determine whether the applicant has been rehabilitated, at which point the court has the option of granting or denying the petition.¹⁰¹

Even if an ex-offender is able to complete this rigorous process and obtain a certificate of rehabilitation, he is still by no means assured a job. The statute forbids a board from denying a license to someone *solely* on the basis of a criminal conviction *if* he has been rehabilitated. The licensing agency is still entitled to deny the license on other grounds. As the board will have information about the applicant’s criminal history even if he has been rehabilitated, it is

⁹⁹ *Id.* § 482.

¹⁰⁰ LEGAL ACTION CENTER, EMPLOYMENT DISCRIMINATION AND WHAT TO DO ABOUT IT: A GUIDE FOR CALIFORNIA COUNSELORS OF INDIVIDUALS WITH CRIMINAL RECORDS OR IN RECOVERY FROM DRUG AND ALCOHOL DEPENDENCE 28-29 (2002), http://www.hirenetwork.org/pdfs/050542_ca_disc.pdf (last visited Jan. 27, 2006).

¹⁰¹ *Id.* at 29.

conceivable that a board could deny a license to someone with a criminal history without explicitly stating the grounds for denial, and thereby circumvent the statute's prohibitions. Furthermore, with the exception of a general nondiscrimination law barring consideration of judicially expunged offenses or misdemeanors by employers¹⁰², no standards currently exist in California prohibiting employment discrimination by public or private employers or occupational licensing agencies based on a conviction record¹⁰³. Thus, although a statutory bar may no longer apply after an ex-offender has obtained a certificate of rehabilitation, there is no anti-discrimination statute preventing a licensing board from refusing to license the applicant. Because we know that ex-felons as a group are least likely to be hired by employers¹⁰⁴, a certificate of rehabilitation alone will not assist ex-offenders in obtaining relief from the de facto discrimination practiced by many employers. Nonetheless, while the statute certainly imposes significant barriers on ex-offenders seeking to obtain licenses to practice in a variety of professions, none of the exclusions are absolute.

B. Application of the Statutory Scheme to Specific Jobs

This Section will refer back to Table 4 listing the top twenty occupations in California expected to experience the most growth through 2012, will analyze each of these job sectors as they are affected by the general statutory scheme discussed above, and will also discuss whether any of these occupations are also subject to more specific legal restrictions applied to ex-offenders. This analysis will identify which of these rapidly-growing occupations are most likely to be available to ex-offenders and which are likely to be unavailable, at least from a legal

¹⁰² MARGARET COLGATE LOVE, RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE Table # 6 (2005), at <http://www.sentencingproject.org/rights-restoration.cfm> (last visited Jan. 27, 2006).

¹⁰³ See LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY – A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL (2004), http://www.hirenetwork.org/pdfs/LAC_PrintReport.pdf (last visited Jan. 27, 2006).

¹⁰⁴ See HOLZER ET. AL., *supra* note 11, at 11.

standpoint. This knowledge should help the CDCR in determining what type of job training will be most effective for California's inmates. For ease of reference, the occupations are listed in the same order as in Table 4, with those expected to experience the most job growth discussed first.

1. Retail Salespersons

The category of retail salespersons is obviously quite broad. Although it is difficult to analyze every potential retail job for which an ex-felon might apply, some general observations based on the statutory scheme can be made. First, §144, which mandates criminal history checks, does not apply to any entity that might regulate retail. In addition, it would seem that basic retail jobs, such as those in the areas of clothing or sports equipment, would not require licensure, and are legally available to ex-offenders.

More specific and specialized retail positions, however, could be subject to legal barriers. For instance, California requires licensure of all salespersons selling manufactured homes, mobile homes, or commercial modular structures. The Department of Housing and Community Development, which regulates these licenses, has statutory authority pursuant to the Health and Safety Code to require fingerprint cards and a personal history from all applicants, and the Department states explicitly that "any felony convictions and all crimes involving moral turpitude issues may be used to deny or revoke a license."¹⁰⁵ Thus, depending on the type of sales job for which the ex-offender is applying, his criminal history could be a legal hindrance to getting hired.

2. Food Prep/Service Workers

Food preparation is not an industry that seems to be regulated, at least at the lowest levels. Thus, there are no explicit legal barriers to an ex-offender who is applying to work as a food preparation or service worker.

¹⁰⁵ See CAL. HEALTH & SAFETY CODE § 18045, available at <http://www.acinet.org> (last visited Jan. 27, 2006).

3. Cashiers

Similar to food preparation and service laborers, cashiers are not subject to any formal licensing restrictions. Ex-offenders would not face any legal barriers in getting these jobs, although one could imagine that many employers might be reluctant to put someone with certain types of criminal convictions in the position of handling money.

4. Registered Nurses

Because of the nature of the work, including close contact with patients and responsibility for their health and safety, registered nurses are subject to a bevy of regulations that would likely make it difficult for an ex-offender to obtain a registered nurse's license. In California, practicing a "healing art" without a proper license or certificate is prohibited by law. Registered nurses are among those persons required to be licensed or registered in order to practice a healing art.¹⁰⁶

Any applicant for a nursing license will be required to submit fingerprints, as the Board of Registered Nursing is covered by §144, which mandates that it conduct criminal history background checks. With fingerprints, the Board would have access to all of the applicant's criminal history information, and would have discretion under §480 to deny the applicant a license because of a criminal conviction. This discretion under §480 is strengthened by another statute directly on point, Business and Professions Code §2736(a)(3), which states that an applicant for licensure as a registered nurse *cannot* be licensed if he or she is subject to denial of licensure under §480, in other words, for a past criminal conviction.¹⁰⁷ This statute seems to remove all discretion from the board in the case of an applicant with a criminal history, which would make it difficult, if not impossible, for an ex-offender to practice as a registered nurse.

¹⁰⁶ See CAL. JUR. 3D HEALING ARTS AND INSTITUTIONS §171 (2005).

¹⁰⁷ CAL. BUS. & PROF. CODE § 2736 (2005).

5. Waiters and Waitresses

Because waiters and waitresses as a group are not subject to specific licensure requirement or regulations, there do not appear to be any legal barriers in place that would prevent ex-offenders from being hired for these jobs.

6. Customer Service Representatives

Generally, customer service representatives are not subject to specific legal barriers. That said, we know generally that ex-offenders are less likely to be hired for jobs requiring significant customer contact. While there may be few legal barriers in place, jobs as customer service representatives still might be difficult for ex-offenders to obtain.

7. General Office Clerks

Like cashiers, waitresses, and customer service representatives, office clerks are not subject to state regulation or the discretion of licensing boards. Thus, there are no formal legal restrictions preventing ex-offenders from obtain these jobs.

8. General and Operations Managers

The category of “general and operations managers” encompasses a wide range of jobs. It is thus difficult to do an analysis of every potential job in this category for which an ex-offender might apply. For illustrative purposes, this section will examine two jobs that fit into this category: cemetery managers and nursing home administrators.

Cemetery managers are subject to strict licensing requirements. The Cemetery and Funeral Bureau is regulated by §144 and is required to obtain fingerprints from every applicant in order to run a criminal history background check. With this information, the board is likely to deny anyone with a criminal history a license because of both its discretion to do so under §480 and because of separate statutory authority to do under Business and Professions Code §9702.1.

This statute mandates that the board must investigate the qualifications of applicants and cannot issue a license if the applicant has committed an act or crime constituting grounds for denial of licensure under §480.¹⁰⁸ Because of these prohibitions, someone with a criminal record is unlikely to be hired as a cemetery manager.

Nursing home administrator licenses will also be difficult for ex-offenders to obtain. Under §480 the Board of Nursing Home Administrators has the discretion to deny a license to someone who has committed a crime, and as discussed above, such denials are difficult to review. It should also be noted that in addition to legal barriers, there are a number of practical barriers for ex-felons who may wish to pursue a job in nursing home administration. In order to be licensed, an applicant must satisfy a host of stringent requirements, including a master's degree in nursing home administration or a related health administration field, or some type of related experience, such as ten years full-time experience as a registered nurse in a nursing home.¹⁰⁹ Most ex-offenders are unlikely to have either the education or prior job experience necessary to obtain this sort of position.

9. Teacher Assistants

While teaching assistants may not need to be credentialed in the same way as the teachers themselves, they are still subject to stringent legal regulation. Section 45125.01 of the California Education Code disqualifies from non-certified public school employment anyone who has been convicted of a serious or violent felony. When someone applies for a non-certified job, such as that of a teacher assistant, at a school, he or she must submit fingerprints so that the district can conduct a criminal history background check. Upon finding that an applicant has been convicted

¹⁰⁸ See *id.* § 9702.1.

¹⁰⁹ See *id.* §§ 3901-50; see also CAL. CODE REGS. tit. 16, §§ 3100-80 (2005), available at <http://www.acinet.org> (last visited Jan. 27, 2006).

of a serious or violent felony, the school district *must* eliminate the applicant from employment eligibility. The district has no discretion to decide otherwise.¹¹⁰

10. Janitors/Cleaners

Janitors and cleaners are not generally regulated by the state, and thus there may be few legal barriers to ex-offenders wishing to obtain a position as a custodian. Depending on where the applicant wishes to work, however, he may experience difficulty in getting hired. For example, §45125.1 of California's Education Code requires any school janitorial applicant to submit fingerprints so that the Department of Justice can conduct a background check. The Department will then notify the school district of any applicant who has been convicted of a felony or is the subject of pending felony charges. Although the school district has discretion in deciding whether or not to hire that applicant, it seems unlikely that most schools will risk hiring an ex-offender if applicants without criminal records are available.

11. Sales Representatives

There is no specific state statute prohibiting ex-offenders from working as sales representatives generally. Still, specific types of sales may be regulated. For example, insurance sales agents are regulated and subject to licensing requirements by the Department of Insurance Producer Licensing Bureau. As we have seen, any time a license is required, the regulations make it difficult for ex-offenders to receive licenses. Thus, ex-offenders could in some circumstances face barriers in working as sales representatives.

12. Security Guards

As might be expected, ex-offenders face great legal difficulties in obtaining employment as security guards. First, §144 requires the Board of Security and Investigative Services to obtain fingerprints from every applicant for the purposes of conducting a criminal history record

¹¹⁰ CAL. EDUC. CODE § 45125.01 (2005).

check. As we know, once a board discovers the presence of a past conviction, it has discretion under §480 to deny that applicant a license to practice unless the applicant has been sufficiently rehabilitated, which is a difficult process rarely used by ex-offenders.

Business and Professions Code §7582.8 also states that before an application for a license to be a security guard is granted, the applicant shall “not have committed acts or crimes constituting grounds for denial of a license under Section 480.”¹¹¹ The director of the board has discretion to deny a license to an applicant unless the applicant can make a satisfactory showing that he has not committed any act constituting dishonesty or fraud or committed any act or crime constituting grounds for denial of licensure under Section 480, including illegally using, carrying, or possessing a deadly weapon.¹¹² Given the extensive legal barriers as well as the practical concerns of hiring someone with a criminal record to work in security and carry a weapon, ex-offenders are highly unlikely to be hired as security guards.

13. Receptionists and Information Clerks

Receptionists and information clerks are not regulated by the state and are not subject to formal legal restrictions. Ex-offenders applying to these jobs only have to get past the employer, not the state as well.

14. Carpenters

Some carpenters are subject to state licensing requirements, depending on the specific type of carpentry they perform. For example, carpenters who specialize in siding and decking or in suspended ceilings must be licensed by the Contractors State License Board. As discussed above, this boards has discretion under §480 to deny a license to ex-offenders, although the board must determine that there is a substantial relationship between the crime and the license

¹¹¹CAL. BUS. & PROF. CODE § 7582.8 (2005).

¹¹² *Id.* § 7582.24.

being sought. While some ex-offenders wishing to work in carpentry will face legal barriers and potential difficulty in becoming licensed, there are no categorical bars to ex-felons working as carpenters.

15. Landscaping/Groundskeeping Workers

With the exception of highly specialized work, such as tree services specialties, landscapers and groundskeepers are not subject to formal legal barriers. This is a field that might be open to ex-offenders.

16. Elementary School Teachers

Along with becoming licensed to be a police officer or a doctor, obtaining certification as an elementary school teacher is among the hardest things an ex-offender can do. Because there are a multitude of statutory barriers to ex-offenders wishing to become teachers, only the most pertinent here are discussed here. First, the Education Commission must deny a teaching credential to any applicant who: (1) has been determined to be a sexual psychopath; (2) has been convicted of any sex offense; or (3) has been convicted of a controlled substance offense.¹¹³ Second, the Commission *must* deny a credential to any applicant who has been convicted of a violent or serious felony or crime set forth in §44424, which include murder, manslaughter, and lewd and lascivious conduct with a minor.¹¹⁴ Finally, the school district shall not employ any person who has been convicted of most sex offenses or controlled substance offenses.¹¹⁵ These statutory restrictions working together operate to place a categorical bar on anyone with a serious criminal conviction working as an elementary school teacher.

¹¹³ CAL. EDUC. CODE § 44346 (2005).

¹¹⁴ *Id.* §§ 44346.1, 44424.

¹¹⁵ *Id.* § 45123.

17. Computer Software Engineers

Computer software engineers are not heavily regulated by the state. However, practical considerations like a lack of skill and education do not make this a likely job prospect for most ex-offenders.

18. Laborers and Freight, Stock, and Material Movers

Laborers and movers of the type described in this category are not generally subject to stringent legal regulations. Ex-offenders do not face significant legal barriers when applying for jobs in this field.

19. Construction Laborers

While low-level construction workers are not subject to statutory employment restrictions, anyone who must obtain a state license, which includes officers, directors, partners, associates, and responsible managing employees of contractor businesses, faces significant legal hurdles. Section 7069 of the Business and Professions Code requires those applying for a contractor's license to furnish a full set of fingerprints for the purposes of conducting a criminal history record check. The statute also states that an applicant shall not have committed an act or crime that is a grounds for denial of licensure under §480. As discussed above, under §480 the board still has to find a substantial relationship between the crime and the license being sought. In its instructions to applicants, the Contractors State License Board (CSLB) explains that in making a §480 determination CSLB staff will consider "whether the crime shows the present or potential unfitness of an applicant . . . to perform the functions authorized by the license in a manner consistent with public health, safety, or welfare."¹¹⁶ Pursuant to §480, the CSLB will also take into account evidence of rehabilitation, including counseling, gainful employment, and

¹¹⁶STATE OF CALIFORNIA, CONTRACTORS STATE LICENSE BOARD, *at* <http://www.cslb.ca.gov/applicants/FingerprintQA.asp> (last visited Jan. 27, 2006).

completion of an appropriate rehabilitation program.¹¹⁷ While it is therefore not impossible to become licensed, ex-offenders who do wish to obtain a contractor's license may encounter significant legal difficulties in doing so. Lower-level workers who do not need to be licensed will likely have an easier time finding employment in the industry.

20. Truck Drivers (Heavy and Tractor-Trailer)

Those who wish to drive a heavy truck or tractor trailer in California must obtain a commercial drivers license (CDL) from the state. While there are no categorical bars restricting ex-offenders from obtaining a CDL, certain classes of offenders are barred. Those who have been convicted of driving with or causing injury because of an excessive blood alcohol level content in *any* vehicle (not just a truck) cannot obtain a CDL. Similarly, anyone who has used a motor vehicle in the commission of a felony cannot obtain a CDL.¹¹⁸ While some ex-offenders will be eligible for a CDL, others will face absolute bars.

VI. Recommendations

The above statutory analysis reveals, all other factors being equal, where ex-felons will face significant legal hurdles in the job application process. Similarly, the analysis indicates which occupations are least subject to statutory regulation and therefore most available to ex-offenders looking for work. Table 5 uses the statutory analysis to divide the occupations studied into those that are more likely to be available to ex-offenders, and those that are more likely to be *unavailable*. This information can help the CDCR as it expands its job programs to accommodate more inmates.

A number of trends emerge from the statutory analysis. First and foremost, occupations that require the employee to exercise personal responsibility over the health, safety, or welfare of

¹¹⁷ *Id.*

¹¹⁸ CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, COMMERCIAL DRIVER LICENSE INFORMATION, *at* <http://www.dmv.ca.gov/commercial/commercial.htm> (last visited Jan. 27, 2006).

another human being are subject to the most legal regulation and are not welcoming to those with criminal records. Ex-offenders will almost never be hired as nurses, security guards, teachers, or teacher assistants. Fortunately, the CDCR is without a doubt aware of the unlikelihood that an ex-offender would be hired as a security guard, a nurse, or a teacher, and currently does not train its inmates for any of these occupations. On the opposite end of the spectrum, the State rarely regulates menial, low-level workers like cashiers or waiters. These types of positions are available to ex-offenders, at least from a legal standpoint. Neither of these outcomes is particularly surprising, although both are somewhat troubling. As things stand, the positions most readily available to ex-offenders are by their very nature dead-end, unstable jobs. Although a job working at McDonald's is better than nothing, it is less likely to provide an ex-offender with the resources, stability, and sense of accomplishment he needs to get his life on track.

Although the overall trends are discouraging, the CDCR can work within the present statutory scheme to improve job prospects for ex-offenders. It appears that ex-offenders will be statutorily barred from any of the higher-level, better-paying jobs in California that will be experiencing the most growth in the next decade. Conversely, the growing job sectors that are most readily available to ex-offenders involve little skill and pay low wages. This makes it somewhat difficult for the CDCR as it looks to expand its job training programs. While ex-offenders could probably get hired as cashiers, waitresses, and food prep workers, the CDCR cannot play much role in training inmates for these jobs, beyond giving them general workplace skills, which every inmate should receive. There are some occupations, however, that are both potentially attainable for ex-offenders and that require training of the sort the CDCR could provide.

Specifically, the CDCR should expand its programming to train inmates to work as office clerks, receptionists and information clerks, carpenters, landscapers, and construction laborers. Each of these occupations is among those growing fastest in California, is not subject to restrictive statutory barriers that would bar ex-offenders, and requires specialized skill training.

First, office clerks likely need computer, and perhaps accounting skills, both of which are areas in which the CDCR could provide training. Office clerks are also likely to get paid more and experience more job stability than cashiers or waitresses, attributes that are important to ex-offenders in finding employment.

Second, receptionists and information clerks also likely need computer training, as well as training in appropriate and helpful personal interaction. The CDCR has already experienced positive results when training inmates to work at call centers. As discussed above in Part IIIC, the CYA and TWA established a successful call-reservation center, and many CYA inmates continued to work for TWA upon release. The CDCR should consider emulating this successful joint venture in its adult prisons.

Third, the CDCR should continue to focus on carpentry programs. As Tables 2 and 3 show, PIA already has a wood products enterprise, and over twenty of the state prisons train inmates in mill work and cabinetry. These programs should be expanded both in the number of inmates they serve and in the breadth of carpentry skills they teach. Carpentry is not generally subject to stringent legal regulations and could be a strong potential source of jobs for ex-offenders.

Fourth, inmates could be effectively trained to work as groundskeepers and landscapers. While some inmates currently work as landscapers for the prison grounds, the CDCR should attempt to increase the number of inmates receiving this type of training.

Finally, although PIA recently closed its prison-construction program, the CDCR as a whole should seriously consider reviving construction-related job programming in some capacity. The construction industry is flourishing in California due to the housing boom and the demand for construction laborers will continue to grow. While statutes might bar ex-offenders from obtaining licenses to practice as contractors and managers, there appear to be no statutory restrictions that would prevent an ex-offender from working on a construction crew. Many of these crew members will still need specialized training – something the CDCR should provide for its inmates.

By expanding into these five job sectors, the CDCR can help pave the way for ex-offenders attempting to turn their lives around. The CDCR should also develop performance measures to track inmate employability upon release. As discussed above, PIA, for example, currently does not evaluate its participants' post-release success. If the CDCR expands programming to encompass the jobs sectors identified above, it must evaluate the impact of the expanded programs on released prisoners to ensure that the programs are actually correlating to job success on the outside.

This paper has focused on evaluating job prospects for ex-offenders as they appear within the State's present statutory scheme. While it is most realistic for the CDCR to work within this statutory scheme at the moment, legislators and policymakers who truly want to increase employment prospects for ex-felons should also consider more drastic steps.

First, the State should help facilitate and streamline the process of obtaining a Certificate of Rehabilitation. Under §480 of the Business and Professions Code, a board cannot deny a license to an applicant based solely on the fact that he committed a crime if he has been properly rehabilitated. If we increase the number of ex-felons who are rehabilitated in the eyes of the

State, then we can increase the number of formerly incarcerated persons who can obtain occupational licenses and thereby improve their employment prospects. In order to make certificates more accessible, the State should provide information about the rehabilitation process to all offenders upon their release, and should make the process more user-friendly so as to encourage more ex-offenders to participate.

Second, the State should revisit the present statutory scheme. While the CDCR can make strides towards improving job prospects for inmates by re-designing its job programming, the Department is still hampered to a great degree by the State's statutory restrictions. As the above analysis reveals, many of the higher-paying and higher-skilled jobs are simply off-limits to someone with a criminal conviction. The State does not signal a desire to assist ex-offenders in establishing a productive life if the only jobs they can get are menial and low-wage. If the State truly believes in the concept of "rehabilitation" as embodied in the Department's new title, then the legislature should consider relaxing some of the statutory barriers so that those ex-offenders who want high-quality jobs can get them. In particular, the legislature should define the contours of the "substantial relationship" requirement embodied in §480. Currently, the courts have given the phrase a broad interpretation, due in part to little legislative guidance. If the legislature made clear that an extremely close nexus is required between the crime of conviction and the qualities required for the license being sought, then fewer ex-offenders would be denied occupational licenses because of their criminal records.

Finally, discrimination against ex-offenders by employers is widespread and needs to be diminished. Wisconsin, Hawaii, and New York have all succeeded in passing anti-discrimination statutes that prohibit employment and licensing discrimination based on criminal

convictions.¹¹⁹ California should consider doing the same if it wants to assist ex-offenders in getting jobs, and thereby work on reducing the State's incredibly high rate of recidivism.

VII. Conclusion

By expanding its job programming to train inmates as office clerks, receptionists and information clerks, landscapers, carpenters, and construction laborers, the CDCR can begin to address the supply and demand mismatch identified by Holzer, Raphael, and Stoll. If ex-offenders are able to perform jobs for which there is both a need for labor and a legal ability to employ those with a criminal record, then one might see an increase in the number of ex-felons in California who find steady, paying work. This will help the CDCR achieve its goal of rehabilitating its prisoners and will potentially assist the State of California in reducing its high rate of recidivism. Policymakers should also consider revamping the present statutory scheme to increase the attainability of certificates of rehabilitation, to relax the occupational licensing restrictions as they apply to ex-offenders, and to include an anti-discrimination component.

Research suggests that employment is the single most effective factor in reducing reoffending rates. A prison job program can only be truly successful if it assists offenders in finding the employment that will keep them from returning to prison. By following the recommendations outlined in this paper and by carefully studying the subsequent results of changes to prison job programming, the State of California might never be forced to tell someone like Mr. LaCloche that he is unemployable in his chosen profession by virtue of his criminal record.

¹¹⁹ May, *supra* note 78, at 208.