The Successful Reentry Project:
Working Towards Justice, Dignity and Redemption

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

A Collaboration Between the Criminal Justice, Voting Rights, and Economic Programs
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Introduction

According to the Pew Center on the States, the United States has 5% of the world’s population, but 25% of the world’s prison population. More than two million people are incarcerated in the United States, disproportionately for nonviolent drug offenses, and almost all of them are released back into our communities sooner or later—usually sooner. The average prison stay in the United States is two years. With more than 700,000 individuals leaving U.S. prisons each year, our communities continue to grapple with the unique challenges presented by those who ostensibly have “paid their debt to society” and yet are presented with barriers to reentry that continue their punishment. Without an opportunity for redemption and the chance to move forward—through continued treatment, employment, housing, and other assistance—up to half of all released individuals may return to prison, where their incarceration will cost taxpayers more money and will continue to undermine our nation’s overall workforce productivity. Without any opportunity for employment or support, many cycle back into prison after committing new crimes—some petty, some not—posing a pressing threat to public safety. For this reason, many leading law enforcement agencies, including the National District Attorneys Association and national police organizations, have made facilitating successful reentry from prison and jail a priority approach to public safety.

When our nation’s returning citizens have an opportunity for redemption and employment, all our communities win. Returning citizens who gain employment are more than one-third less likely than their counterparts to recidivate and are more capable of turning their lives around for good. When this happens, our communities are safer, our economy is stronger, and we all can save money and live better.

The demands of our current economy present new challenges and opportunities for the nation’s employers. Nationwide, communities are grappling with the challenges presented by an underperforming economy and a strained fiscal climate. People of all socioeconomic strata continue to see inclusion in processes that will improve their employment outcomes – and formerly incarcerated people are no exception. Like most Americans, most of these returning citizens want the opportunity to be forgiven for their past mistakes and to take ownership of their lives. However, too often they are turned away from legitimate employment, which would help engage them in productive activities that improve the quality of life for everyone.
The Problem: Although they have paid their debt and served their time, individuals with a criminal history are too often denied the opportunity at redemption and turned away from legitimate employment, which would help engage them in productive activities that improve the quality of life for everyone and enable them to become productive members of society.

The Facts:
- In 2008, there were an estimated 2.4 million people in U.S. jails and prisons – the disproportionate majority of whom (over 2/3) are people of color.
- African Americans make up roughly 13% of the U.S. population, but are 40% of its prisoners.
- Approximated 95% of incarcerated individuals are eventually released into local communities nationwide.
- More than 700,000 individuals leave U.S. prisons each year.
- An estimated 65 million Americans have criminal records.12
- Returning citizens who gain employment are more than 1/3 less likely than their counterparts to recidivate (return to crime) and are more capable of turning their lives around permanently.
- According to federal courts, Title VII of the Civil Rights Act of 1964 prohibits employers from imposing blanket bans on employment of individuals with conviction histories.
- In 2012, the U.S. Equal Employment Opportunity Commission, issued renewed guidelines strengthening national standards against employer discrimination of formerly incarcerated individuals.
- The Federal Work Opportunity Tax Credit allows a company to claim a tax credit of up to $2,400 for hiring an employee with a felony conviction within one year of the date of his or her conviction or release form incarceration.
- The U.S. Department of Labor offers a free bonding program for “at-risk” job applicants, including people with criminal records, indemnifying employees for loss of money or property due to an employee’s dishonesty or theft.
**The Solution:** In efforts to eliminate employment barriers for formerly incarcerated people, public entities (local municipalities and state governments), as well as corporations and business, must “ban the box” or remove the question about criminal history from the initial job application forms. This question should be asked during the face-to-face interview and only in instances where criminal history relates to the job in question. In this way, formerly incarcerated people will have the opportunity to meet and interview for jobs, increasing the applicant’s chances for employment.

What NAACP Leaders Can do to Advance this Cause Locally

The NAACP has worked to help remove the barriers to employment for the formerly incarcerated and allow individuals a chance to right their mistakes and redeem themselves as productive members of their community.

We ask that you work with the NAACP National Office on this initiative so that we may provide you with support, as well as to coordinate your efforts with NAACP units in/near your community who may also be engaged in the work. **Before you begin this work, contact the, Criminal Justice Program at NAACP National Headquarters at: reentry@naacpnet.org** so we can coordinate your efforts with other NAACP units and partners so that their reentry initiatives can be coordinated with yours for greater effectiveness.

Here are a number of possibilities for implementation of this work:

**Create/Join Reentry Councils in Your Community** – Reentry councils are a publically-funded, multi-agency collaborative designed to address the specific needs of formerly incarcerated people. Service providers, elected officials, business leaders, and community stakeholders often make up these bodies. If your community already has a reentry council, we encourage you join them and help them perfect their work and protocols. If such a council does not exist in your community or state, please contact the NAACP national office at reentry@naacpnet.org for substantive support and guidelines.

**Provide Direct Services** – Too often returning citizens find themselves without a support system to help them get reoriented and back in their communities. Community organizations and religious institutions are ideally situated to provide this much needed support to help returning citizens turn their lives around. These programs often include mentoring, housing placement, GED classes, job training and placement, conflict resolution in relationships, substance abuse and mental health treatment, and life and parenting skills workshops. For most effectiveness, programs should begin a few months prior to the individual’s release – in which case a prior agreement between correctional institutions and faith or community organizations must be made to identify those eligible for release – to work with them during their last few months and prepare them for release, and to pair them with an appropriate mentor upon release. If such coordination is not possible, services can be provided upon release.

In addition, your unit can partner with existing reentry programs to ensure that the needs of those returning to your community are met. A list of some of the most prominent programs can be found at: [www.NationalReentryResourceCenter.org/states](http://www.NationalReentryResourceCenter.org/states).
**Advocate For Hiring of Formerly Incarcerated People** – Many people may not recognize the magnitude of this problem and its impact on their local community. They are unaware of how many people return from prison or jail in search of a better and more secure life. It bears repeating to the masses that everyone is entitled to a chance at redemption and restoration of their rights, and the NAACP and faith community can be leaders in helping the formerly incarcerated population learn to support themselves and their families. Additionally, many may not be aware of the economic incentives for hiring formerly incarcerated individuals such as government bonding programs; work opportunity tax credit, welfare-to-work programs, and first source agreements that make recently release individuals ideal employees (see Appendix II).

**Advocate for Policy Change** – NAACP and other community leaders have a lot of pull with public officials and political figures who can create policies to “ban the box” on government employment applications. An example of one of our successes included engaging the Governor of California to issue an administrative order and remove the question about criminal history from the application process of jobs where such history is not relevant. You can partner with faith and other community leaders to set up meetings with local and state officials to educate them on this issue, emphasize the importance of allowing people to redeem themselves, and ask them to issue similar orders to “ban the box.” Also, see Key Provisions to Include in State Legislation/Anti-Discrimination Policy in Resources Section of toolkit for other policy ideas. For model legislation on ban the box, please contact the Criminal Justice Program at the NAACP at: reentry@naacpnet.org.

**Advocate for Voting Rights of Formerly Incarcerated People** - Nearly 5.8 million Americans are not allowed to vote because they have been convicted of a felony, regardless of the nature or seriousness of the offense. More than 2 million are African American. State laws vary when it comes to defining which felony offenses are disenfranchising offenses and in determining how and if people who are no longer incarcerated can regain their right to vote. Thus it is possible that in some states a person can functionally lose their right to vote forever if he or she writes one bad check. And the process to regain one’s right to vote in any state is often difficult and cumbersome. The “war on drugs” has had a disproportionate impact on African Americans’ right to vote as well; between 1985 and 1995, there was a 707% increase in the number of African Americans in state prison for a drug offense, compared to a 306% increase for whites over the same period. Thus, African Americans are disproportionately losing their right to vote, and having greater difficulty in reclaiming it, even after they have paid their debt to society.
Felony Disenfranchisement

Fast facts:

In direct response to the political participation of black men after passage of the 15th Amendment, felony disenfranchisement became a widespread practice across the country in the late 1890’s. Today, all but two states continue the disenfranchisement in one form or another (e.g. some states take voting rights from those on probation or parole, others only from those on parole). Four states however – Florida, Iowa, Kentucky, and Virginia – disenfranchise people for life.¹

National Impact

- After release 48 states and the District of Columbia currently deprive citizens with a felony conviction of their right to vote for some duration of time.²

- Overall, 5.8 million citizens are pushed into the margins of democracy; including 4.3 million who continue to be silenced after returning to their community.³

- On any given day more than 2 million people are behind bars; more than 60 percent are racial or ethnic minorities.⁴

- 1 out of every 13 voting-eligible African-American has been stripped of their voting rights.⁵

Strictest Disenfranchisement Law

- Florida: Over 1.5 million Floridians are disenfranchised; an estimated 1.3 million have completed all the terms of their sentence.⁶ In 2007, the governor issued an Executive Order to restore the voting rights of people with felony conviction. In 2011, his successor (the current governor) reversed that order back to a five-year waiting period.⁷ Florida’s disenfranchisement scheme is in the state constitution. Overall, Florida silences more voting-eligible citizens than any other state.

- Kentucky: An estimated 243,842 people are disenfranchised; approximately 74% have completed all the terms of their sentence. The state disenfranchises nearly 1 in 5 African Americans.⁸ Kentucky’s disenfranchisement scheme is in the state constitution.
• Iowa: As of 2011 more than 120,000 individuals are estimated to be disenfranchised. Approximately 34% are African American. In 2005 the governor issued an Executive Order restoring voting rights to approximately 80,000 people. The sitting governor, Terry Branstad issued an executive order to streamline the application process. Iowa’s disenfranchisement scheme is in the state constitution.

• Virginia: Prior to Gov. McDonnell’s 2013 change in restoration of rights policy for non-violent offenders, more than 450,000 individuals are disenfranchised; with an estimated 78% having completed all the terms of their sentence. Over 20 percent are African American; Virginia disenfranchises nearly 1 in every 5 African Americans. Virginia’s disenfranchisement scheme is in the state constitution.

For more information on felony disenfranchisement in America visit www.NAACP.org/billboard

Voter Suppression Tactics:

REPLACEMENT BILLS
Particularly ripe for action in states where referendum is possible. A referendum is a proposal placed on the ballot by the citizens of the state (after petition) for the purpose of repealing a previously enacted law. Twenty-four states offer the referendum option: AK, AR, AZ, CA, CO, ID, KY, MA, MD, ME, MI, MO, MT, ND, NE, NM, NV, OH, OK, OR, SD, UT, WA and WY.

To prevent the people from voting a new law up or down, some legislators try to revoke their own law and then replace it with a series of smaller bills that have the same cumulative effect.

CONSTITUTIONAL AMENDMENTS
Also known as Ballot Measures, they seek to imbed voter suppression into the fabric of local democratic processes through constitutional changes. They are particularly dangerous because, if successful, they allow suppressive measures to remain indefinitely. Felony disenfranchisement for instance, was added to Virginia’s constitution in 1902 and remains there today. Several states have recently pursued constitutional amendments including MS, MN, and MO.

INCREASED USE OF PROVISIONAL BALLOTS COUPLED WITH LESS TRANSPARENCY
Provisional Ballots were meant to be a failsafe measure to allow people whose names did not appear on the rolls to cast a ballot on the spot, have their voting eligibility confirmed later and once confirmed, have their ballot counted. Today, election law changes require people whose name is on the rolls to cast a Provisional Ballot (for instance, lack of photo ID). These ballots will not be counted if the voter does not take steps to ensure the ballot. In turn, this is being coupled with other changes limiting the public’s ability to be present during the Provisional Ballot counting process.

LIMITS ON PROVIDING ASSISTANCE AT THE POLLS
These measures severely limit voters’ ability to choose who will help them at the polls as they restrict
individuals’ ability to provide assistance. MS and VA for instance, have pursued this approach already.

LOCAL RESOLUTIONS
While they do not have the force of law (i.e. election law can rarely be changed at the local level), they are used to saturate the public conversation (like local media) with the idea that voting-related requirements have changed. In turn, mass confusion is a tried and true voter suppression tactic.
Dear Member of Congress:

We, the undersigned organizations, a coalition of civil rights, social and criminal justice, and other legal and advocacy organizations, are writing to urge your support and co-sponsorship of the Democracy Restoration Act of 2011, a bill that seeks to restore voting rights in federal elections to people who are out of prison and living in the community. The current patchwork of laws that disfranchise people with criminal records has created an inconsistent and unfair federal electoral process, perpetuating entrenched racial discrimination. As organizations dedicated to promoting democracy and justice as well as equal rights for all Americans, we strongly support passage of this legislation.

Currently, 5.3 million American citizens are denied the right to vote because they have a criminal conviction in their past. Four million of these people are out of prison, living in the community, paying taxes and raising families; yet they remain disfranchised for years, often decades, and sometimes for life. The United States is one of the few western democratic nations that excludes such large numbers of people from the democratic process. Congressional action is needed to restore voting rights in federal elections to the millions of Americans who have been released from incarceration, but continue to be denied their ability to fully participate in civic life. Fortunately, Senator Ben Cardin and Representative John Conyers are lead sponsors of the Democracy Restoration Act of 2011, which is intended to address these injustices.

Criminal disfranchisement laws are rooted in the Jim Crow era. They were enacted alongside poll taxes and literacy tests and were intended to keep African Americans from voting. By 1900, 38 states denied voting rights to people with criminal convictions, most of which disfranchised people until they received a pardon. The intended effects of these laws continue to this day. Nationwide, 13% of African-American men have lost the right to vote. If current incarceration rates continue, three in ten of the next generation of African American men will lose the right to vote at some point in their lifetimes. This racial disparity also impacts the families of those who are disfranchised and the communities in which they reside by diminishing their collective political voice.

In this country, voting is a national symbol of political equality and full citizenship. When a citizen is denied this right and responsibility, his or her standing as a full and equal member of our society is called into question. The responsibilities of citizenship – working, paying taxes and contributing to one’s community – are duties conferred upon those reentering society. To further punish individuals who are back in the community by denying them a right of citizenship counters the expectation that citizens have rehabilitated themselves after a conviction. The United States should not be a country where the effects of past mistakes have countless consequences – and no opportunity for redress.
Passage of the Democracy Restoration Act of 2011 will ensure that all Americans living in their communities will have the opportunity to participate in our electoral process. A strong, vibrant democracy requires the broadest possible base of voter participation, and allowing all persons who have completed their prison time to vote is the best way to ensure the greatest level of participation.

We urge you to support the passage of the Democracy Restoration Act of 2011. If you have any questions, please contact [INSERT NAME & PHONE NUMBER OF CONTACT PERSON].

Sincerely,
The Honorable __________________________
U.S. House of Representatives / U.S.
Senate Washington, D.C. 20515 / 20510

RE: RE-ENFRANCHISEMENT OF REHABILITATED EX-FELONY OFFENDERS

Dear Congressman / Senator __________________________;

I am writing to let you know of my strong support for allowing ex-felony offenders, men and women who have served their time and paid their debt to society, to regain their right to vote. Specifically, I strongly support legislation that would allow people who have been convicted of a felony and who are not incarcerated to vote in federal elections, and thus urge you to co-sponsor the Democracy Restoration Act.

This legislation is needed to address existing felony disenfranchisement laws that currently disqualify almost 4 million Americans, none of whom are incarcerated, from voting. As a result of these laws roughly 1 out of every 50 adults in this country is not allowed to participate in the most fundamental aspect of being an American citizen. Furthermore, because these laws vary dramatically between states, as does the definition of a felony, it is possible that a young man or woman who writes one bad check can be banned from voting for the rest of his or her life.

Furthermore, the “war on drugs” has resulted in a disproportionate number of African Americans, especially African American men, being convicted of felony offenses. As a result, 13% of all African American men today are prohibited from voting. Felony voting restrictions are the last vestige of voting prohibitions; when the U.S. was founded, only wealthy white men were allowed to vote. Women, minorities, illiterates and the poor were excluded. These restrictions have all been eliminated over time, often with much debate and rancor. People who have served their time and been released from prison are the last Americans to be denied their basic American rights.

Because the right to vote is such an integral and basic element of being an American citizen, it seems to me that we should be encouraging ex-felons to participate in the electoral process, not prohibiting it. Thus I strongly urge you to support any and all legislative initiatives that would achieve this goal. I hope that you will co-sponsor the Democracy Restoration Act and support these bills and that you will contact me soon to let me know what you are doing to promote this legislation, and what I can do to help.

Sincerely,
Sign and print your name and include address

[Don’t forget to contact your
Representative in the House and both your U.S. Senators]
Encourage Congress to Provide Sufficient Funding for the Second Chance Act

On April 17, 2012 the House and Senate Appropriations Subcommittees on Commerce, Justice, and Science released their fiscal year 2013 justice funding bills. In the House, appropriators proposed $70 million for the Second Chance Act, an increase of $7 million from the FY12 funding level. Senate appropriators included $25 million in their bill, while also proposing $6 million for the Justice Reinvestment initiative. The robust funding provided for the Second Chance Act and Justice Reinvestment Initiative reflects continued congressional support for prisoner reentry and recidivism reduction efforts.

Recently, 82 Members of Congress signaled their support for the Second Chance Act in two letters sent to leading appropriators responsible for determining funding for justice programs. In the House, 59 Members of Congress signed a bipartisan letter circulated by Representatives Howard Coble (R-NC-6) and Danny Davis (D-IL-7). A similar letter in the Senate, led by Senator Patrick Leahy (D-VT), collected 23 signatures.

At a time when Congress is increasingly focused on reducing spending, these letters, and the Commerce, Justice, Science Subcommittees’ decision to provide strong funding for the Second Chance Act, demonstrated that this important program remains a priority for many lawmakers. The Second Chance Act was passed by Congress in 2008 and supports evidence-based strategies proven to reduce recidivism.

Meanwhile, agencies and organizations concerned with reentry issues have begun to voice their support for the Second Chance Act by drafting their own letter calling on Congress to provide robust funding for Second Chance programs in fiscal year 2013. The letter has been signed by 213 groups throughout the country, and the number of supporting organizations continues to grow. Please also help ensure the letter below reaches all organizations in support of the Second Chance Act by forwarding it to colleagues, friends, and other advocates in your community.
Dear Chairmen Mikulski and Wolf and Ranking Members Shelby and Fattah:

Our diverse organizations write to express our support for funding of the Second Chance Act in fiscal year 2013-14. The Second Chance Act provides critical support to improve the coordination of reentry services and policies at the state, tribal, and local levels, including demonstration grants, reentry courts, family-centered programs, addiction treatment, employment, mentoring and other services needed to improve transition from prison, jail, and the juvenile justice system to communities and to reduce recidivism. The Second Chance Act provides crucial resources at a time when they are desperately needed. In 2010, federal and state prisons held over 1.6 million inmates – one in every 201 U.S. residents – and released over 700,000 individuals back to their communities. More than 9 million individuals are released from jail each year, and on any given night over 90,000 youth are confined in juvenile facilities or adult prison or jail. Unfortunately, most individuals face numerous challenges when returning to the community from prison, jail, or juvenile detention, and recent research indicates that more than four in ten are reincarcerated within three years of their release. However, research also confirms that comprehensive, coordinated services can significantly reduce recidivism by addressing the issues that place formerly incarcerated individuals at risk of reoffending, such as unstable employment and housing or the need for substance abuse or mental health treatment.

Since 2009, over 370 Second Chance grants have been awarded to community and faith-based organizations as well as state, local and tribal governments spanning nearly every state in the country. The Second Chance Act has promoted the public/private partnerships that are required to tackle the complex task of reducing recidivism.
The Second Chance Act provides a much needed investment in programs working to end the revolving door in and out of prison, jail and juvenile facilities. Across the country, public agencies and nonprofit organizations are interested in creating and expanding effective reentry programs. Through the Second Chance Act, the support needed to advance these reentry efforts is available.

Please support funding for Second Chance Act programs in FY2013-14.

Sincerely,

___________________
Let Us Know What You Are Working On: Communicating with National NAACP

In order for us to be able to collaborate with you and provide you with any support that you may need, we must be kept up-to-date about your activities. Below is the form you should use to tell us about your work on this issue. It includes a section for you to tell us about your challenges and let us know how we can be helpful. We ask that you send this information to us on a quarterly basis.

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<td>Contact Person:</td>
<td>Contact Person’s Phone &amp; Email:</td>
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<tr>
<td>Name of Criminal Justice Committee Chairman: (if you don’t have one contact the Criminal justice program)</td>
<td>Criminal Justice Chair’s Email and Phone:</td>
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<tr>
<td>Summary of Your Work – Last 3 Months:</td>
<td>Successes &amp; Challenges:</td>
</tr>
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Please Let Us Know How You Think NAACP National Can Help You Overcome Challenges. Please be specific.

Complete this form and return to at Reentry@naacpnet.org.
Appendix I: NAACP Recommendations & Best Practices

The NAACP and its partners suggest that employers, from both public and private sectors, take the following steps toward easing restrictions on the hiring of people with criminal records:

1. Meet with other community organizations and employers regarding inclusive hiring policies and the recommendations in this proposal. The NAACP continues to build a database of employers who have had successful relationships and outcomes with respect to the employment of people with criminal records.

2. Review and amend hiring policies to lift the potential “blanket ban” against hiring those convicted of felonies and/or drug offenses. Develop a plan to implement the continuum of options presented in this document.

3. Review and amend existing policies to lift the automatic termination of employment for associates arrested and convicted of non-work-related felonies and/or drug offenses. Develop a plan to implement the continuum of options presented in this document.

4. Develop formal partnerships with intermediaries to identify and prepare potential candidates for employment. Also, employers may consider the development of regional or local plans to partner with available state, municipal, or nonprofit intermediaries currently working in various areas.

5. Develop a procedure to consider “evidence of rehabilitation” and to grant a “waiver” to allow for the hire of applicants with criminal records when they show evidence of rehabilitation, treatment, and/or demonstrate a connection with a support network (e.g., an intermediary).

6. Work with the NAACP to engage in a series of research and program activities designed to monitor the successes and challenges associated with this project.
Appendix II: Resources on the Web

1. The National Institute of Corrections (NIC) lays out a number of faith based and community initiatives that you may engage in. To learn more, visit: http://nicic.gov/FaithBasedInitiatives.

2. The National Employment Law Project (NELP) provides information on which localities and states “ban the box” in the U.S. To learn more, visit:

3. NIC also offers several ways in which formerly incarcerated people can be employed in green jobs. This work is a result of government funding opportunities that are available to those who bring in people with criminal records into the green economy. To learn more, visit:
   http://nicic.gov/Library/024626.

4. A complete national list of reentry programs does not yet exist. However, the most comprehensive list can be found through the National Reentry Resource Center at:
   http://nationalreentryresourcecenter.org/.

5. According to Title VII of the Civil Rights Act of 1964, employers cannot impose a blanket ban on employing individuals with criminal records. To learn more about this provision, please visit the U.S. Equal Employment Opportunity Commission at:
Appendix III: How to Hold a Public Hearing

In order to more deeply grasp and publicize the nature and impact of reentry in your community, you may consider organizing a public hearing to bring key players together (including experts, advocates, community leaders, government and other officials, and individuals with personal stories to share). A public hearing is more formal than a town hall meeting (often has the feel of a Congressional Hearing) and allows for the formal gathering of testimony from advocates, experts, formerly incarcerated individuals, government officials and other key players. Public hearings often focus on a long-standing issue that will require long-term campaigning advocacy. Depending on the size and target audience of your event, planning could take anywhere from 3 to 9 months.

To plan a successful public hearing, consider the following:

Budget
- Determine if there is a budget available and decide upon the scope of your event based on the amount of this budget. You may find that a smaller budget lends itself to organizing a less elaborate and more informal town hall meeting, but a more substantial budget will allow for a larger more formal public hearing, and open up other avenues such as the possibility to fly in experts, have the hearings recorded or transcribed, etc. Keep in mind that in the end, the quality of the testimony, the participants, and how organized your event is will determine the success of the hearing, and not financial matters.

Partner Organizations
- Working with other organizations that have similar goals and can help bring the community together will play an important role in helping your event have a wide reach and greater impact.
- One of the first things you should do is to identify local organizations that share the same mission and are willing to partner up and help plan and execute the event. These organizations can be other advocacy organizations, civil or human rights organizations, and organizations that represent the interests of other minority groups in your area.
- It is critical to ensure outreach to and participation by organizations that represent other racial and ethnic minority groups (i.e. Latino, Asian American, Middle Eastern, etc.), because a majority of the civil and human rights issues we deal with impact other communities of color as well and working together can increase your power to combat this problem.

Panel of Experts to Receive Testimony
- It is important that those who testify about their experience and/or knowledge feel that their voice is being heard not just by the audience, but also by credible experts and advocates who may have greater ability to create change.
- Choose a panel of 5-7 local, credible experts to receive the speakers’ testimony. You can look to local advocates, leaders, and renowned experts for this role. You may also choose the most prominent person from the panel to chair the hearings.
- The role of the panel is to increase the credibility of the hearings, receive the testimony, question the witnesses, and to lend expertise during opening and closing remarks.
- They may also help provide guidance for any follow up actions that may result from the
hearing.

Testimony

- Together with your partner organizations, identify and approach people to give testimony at the hearings. All witnesses should be identified and confirmed at least one month prior to the hearings.
- Ensure participation by community leaders, formerly incarcerated individuals, advocates, academics, lawmakers, and issue experts. Also, make sure to include testimony from people of diverse ethnic, religious, national, and racial backgrounds.
- With your partner organizations, work with those who have agreed to testify to prepare and review their statements. Make sure to give them specific time limits for their testimony. The testimony does not have to be recited word for word on the day of the event, but having a general structure will allow for a smoother event.
- If your budget allows, record and/or transcribe the testimony. Make sure that all who testify know that they are going on record. Should anyone wish to remain off record, you can turn off camera/recorder/transcription during said testimony.
- Prepare a program, that details how the testimony for the day unfolds and make that available to the public and, more importantly, to the panel of experts (whose role it will be to announce each speaker by name and organizational affiliation and call them to the microphone/podium).

Inviting State and Local Officials

- Ensuring participation by government officials is important not only because it will lend more credibility to the hearings, but it will also make it easier to work with them to implement changes in policy and practice.
- Reach out to local and state agencies/officials and invite them to participate in and/or to attend the event. Make sure to reach out to them at least a month (if not more) prior to the event, as their schedules tend to be full. If there is a prominent official that is particularly known for his/her work on the issue, invite them to give testimony.
- Make every attempt to have at least one speaker who is from state or local government so that their perspective can be included.
- Because testifying about civil rights and human rights issues lends itself to emotions running high, inform the community and the speakers of the presence of government officials and encourage an atmosphere of mutual respect and professionalism.

Research State & Local Laws

- It is important to have knowledge of state and local laws and policies about your issue, so be sure to research and know these laws well in advance.
- Make a list of these laws/policies available to the public at the hearing, and include in the press packet. Your list can also include the changes you would like to see in these policies and laws.
- Use this information in talking points, when talking to the press and the public.
- Use this information in the follow up efforts after the hearings.

Invite Media

- Send a press release to all local media.
- Invite local media to cover the event, at least 3 weeks prior to the hearings.
Create and make available a press packet that includes:
  - A list of panelists and their bios, speakers and their bios (with their permission)
  - A list of partner organizations for this event/campaign
  - NAACP mission, mission of partner organizations, and purpose of these hearings; List of local and state laws (if they exist)
  - List of goals/changes for which you are campaigning.

Venue Selection
- Select a venue that is neutral and easily accessible (such as a community center, place of worship or a school campus that is central).
- Make sure there is enough seating available for the audience as these hearings can run long.
- Make sure the room is set up with a separate section in front for the panel and the witnesses who testify.
- Check to see that the venue has a working sound system if necessary, and heating/air conditioning if needed.

Promote the Hearing
- Promote the event in your local newsletters, pass out flyers, send e-mail blasts, and if you can use social networking sites such as Facebook, Twitter, Tumblr. Ask partner organizations to also help promote the event.

The Day Of
- Get there early to set up, perform a sound check, and take care of other details.
- Provide water for speakers and guests (and other refreshments, if budget permits).
- Provide name cards to identify each panelist at the allotted table where they sit so that the audience and the media can quickly know who is on the panel of experts.
- Schedule volunteers and staff from the NAACP and other partner organizations to set up and staff a welcome table, where people can check in, provide their name and emails, and pick up relevant material (speaker & panel bios, other NAACP literature, etc.).
- Make sure that members of the press check in and receive press passes and schedule interviews if they wish. Have at least one person (preferably someone who has experience working in communications) interact with the press and make sure they receive needed information.
- Use a time-keeper who sits in the front row and uses placards to inform the panel and speakers of their allotted time via placard cards (i.e. “2 Minutes,” “1 Minute,” “TIME,” and “Thank You!”).
- Allow for a break midway through the hearings.
- Allow a specific time for the panel to ask questions from each witness. Make sure to keep time during this Q & A session.
- Schedule time for the audience to ask questions of the panel (not the speakers) at the end of the day.

Follow Up
- Holding these hearings is the first step. To ensure that the impact of the hearing continues and its findings are used to potentially bring about change, it is important to have a follow up plan.
• Write a report/article on the findings of the hearing, including highlights from the testimony, conclusions, and recommendations. Publicize report on your website, share with media, and other community organizations. Send a copy of your report to the NAACP’s Criminal Justice Department, specifically Carlton Mayers, II, Criminal Justice Program Specialist, at Reentry@naacpnet.org.

• Several weeks after the hearing, follow up with partner organizations and all the witnesses to thank them and see how they are feeling (since giving testimony can sometimes be an emotional experience).

• Schedule meetings with officials to begin working on implementing recommendations.

• Schedule a follow-up town hall meeting to discuss achievements, challenges, and set new goals 4 – 6 months following the initial hearings.

• Use the strategy documents provided in this handbook to clearly plan your long-term advocacy efforts.
Appendix IV: Sample Media Advisory

Date

Contact:
Name
Phone number
Email address
Name (2nd contact)
Phone number
Email address

NAACP To Host Public Hearing On
Reentry of Formerly Incarcerated
Individuals

On [date] at [time] the local unit of the NAACP
will bring together community leaders, advocates, and experts to discuss barriers
in our community faced by formerly incarcerated individuals

WASHINGTON, DC – The NAACP will host a panel discussion on the barriers that formerly
incarcerated individuals face in our community. Ranging from social stigmas and discrimination to
inability to secure housing and employment, these individuals are marginalized even after they have
served their time for their mistakes.

The panel comes as our nation recovers from an economic depression that left many without jobs.
These individuals seek redemption and an opportunity to reenter our society as productive
individuals. Still they face barriers during this process of getting their lives back on track.

“It is up to us to work with businesses and policy makers to strengthen employment practices for
formerly incarcerated individuals,” said former NAACP Criminal Justice Director Robert Rooks.

The Public Hearing will be held at [location], [address] at [time].

For further information please contact [name of contact] at [email] or [second contact] at [email], [phone
number].

Founded in 1909, the NAACP is the nation’s oldest and largest civil rights organization. Its members
throughout the United States and the world are the premier advocates for civil rights in their
communities, conducting voter mobilization and monitoring equal opportunity in the public and
private sectors.

# #
Appendix V: Financial Incentives/Government Programs to Support Hiring Individuals with Criminal Records

State Tax Incentives to Benefit Employers Who Hire People with Criminal Records
The United States Government offers a federal tax credit of up to $2,400 for employers who hire individuals from nine targeted groups of job seekers, including individuals with felony records. States can offer an additional tax break to business owners who hire people with criminal records as one way to support the re-entry of those who are legitimately trying to return to the job market in order to support their families and rejoin their communities. 12

Six states—California, Illinois, Iowa, Louisiana, Maryland, and Texas—provide state income tax credits to employers who hire people with criminal records. In 1998, the Hawaii Legislature proposed an employment discrimination measure that would have required the state to “appeal to the community spirit and good citizenship” in order to encourage employers to hire individuals with arrest and court records. Even though this measure was never passed, it was suggested that a tax incentive should be provided for employers who hired recently released felons.

Summary of States Granting Additional Income Tax Credits

1. California
Any employer who hires an “ex-offender” may be eligible for a state tax credit. The credit given is equal to the sum of each of the following:

(1) 50% of qualified wages in the first year of employment.

(2) 40% of qualified wages in the second year of employment.

(3) 30% of qualified wages in the third year of employment.

(4) 20% of qualified wages in the fourth year of employment.

(5) 10% of qualified wages in the fifth year of employment.

Additional Contact: California Employment Development Department

2. Illinois
The Ex-felon Jobs Credit allows any employer that hires any number of “qualified ex-offenders” to apply for a credit amount equal to 5% of qualified wages paid or up to $600 per hire. A “qualified ex-offender” must be formerly incarcerated from an Illinois adult correction facility and was hired within the first year of his/her release from prison.
Employers in Iowa are allowed an additional deduction on their Iowa income tax returns for hiring a person who has been convicted of a felony (in Iowa, any other state, or the District of Columbia) or who is serving a parole or probation sentence or is participating in a work release program. This deduction is 65% of the wages paid in the first 12 months of employment; the maximum deduction is $20,000 per employee.

Additional Contact: Iowa Department of Revenue or [http://www.state.ia.us/tax/educate/78522.html](http://www.state.ia.us/tax/educate/78522.html)

4. Louisiana
A tax credit is available to any taxpayer who provides full-time employment (at least 30 hours per week) to an individual who has been convicted of a first time drug offense and who is less than twenty-five years of age at the time of initial employment.

The credit is $200 per taxable year per eligible employee. Only one credit is allowed per taxable year per employee and may be received for a maximum of two years per employee.

The credit is available upon certification by the employee’s probation officer that the employee has successfully completed a court-ordered drug treatment program and has worked 180 days full time for the employer seeking the credit.

Additional Contact: Louisiana Department of Revenue: [http://revenue.louisiana.gov/](http://revenue.louisiana.gov/)

5. Maryland
For each taxable year, for the wages paid to each qualified ex-felon employee, a credit is allowed in an amount equal to:

(1) 30% of up to the first $6,000 of the wages paid to the qualified ex-felon employee during the first year of employment; and

(2) 20% of up to the first $6,000 of the wages paid to the qualified ex-felon employee during the second year of employment.

For purposes of this credit, an ex-felon employee is anyone who has been convicted of a state or federal felony; is hired within a year of being convicted or released from prison; and is member of a family with an annual income 70% below the Bureau of Labor Statistics living standard.

Additional Contact: Maryland Department of Employment Services: [http://www.dllr.state.md.us/](http://www.dllr.state.md.us/)

6. Texas
The amount of the credit for wages paid by a corporation to an employee who was employed by the corporation when the employee was a work program participant is equal to 10% of that portion of the wages paid that, were the employee still a participant, the department would apportion to the state as reimbursement for the cost of the participant’s confinement.

Additional Contact: Texas Comptroller of Public Account
Federal Bonding Program\textsuperscript{13}

\textbf{An Incentive Program for Hiring Individuals with Criminal Records}

Some employers may require their employees to be bonded as protection against money or property loss due to employee dishonesty. However, many private bonding agencies will not bond job applicants with criminal histories or other questionable past behaviors because they are often categorized as “at-risk” or “not bondable.” Being ineligible for private bonding insurance can be an additional employment barrier for many qualified job applicants with past criminal records. The Federal Bonding Program exists to help alleviate employers’ concerns about hiring qualified, but “at-risk,” job applicants.

\textbf{What Is the Federal Bonding Program?}

The Federal Bonding Program serves as a job placement tool by guaranteeing to an employer the job honesty of “at-risk,” hard-to-place job applicants.

The Federal Bonding Program issues fidelity bonds, which are business insurance policies that protect employers in case of theft, forgery, larceny, or embezzlement of money or property by an employee who is covered by the bond. The bond coverage is usually $5,000 with no deductible amount of liability for the employer. Higher amounts of coverage, up to $25,000, may be allowed if justified. The bond does not cover liability due to poor workmanship, job injuries, or work accidents.

Bond packages are issued by the Department of Labor to a purchasing organization such as a job placement agency or employer. The purchasing organization can be public or private, nonprofit or for profit. Then, the job placement organization or employer is able to bond individuals who other bonding agencies usually will not, such as individuals with criminal records.

The bond is put into effect instantly on the first day of employment. The employer simply makes the applicant a job offer and sets a date for the individual to start working. There are no forms or other papers for the employer to sign, and no processing to delay matters.

\textbf{Who Is Eligible for the Federal Bonding Program?}

Bond coverage is provided for any at-risk job applicant whose background usually leads employers to question their honesty and deny them a job. This includes people with criminal records, people in treatment or recovery for alcohol and/or other drug addictions, and people with little or no work history, including people transitioning from welfare to work.

All jobs are bondable in private and public sectors, full and part-time positions, as well as jobs secured through temporary agencies. The bond insurance is \textbf{free} to the employer. It goes into effect the first day of the job applicant’s employment and will terminate after six months. After the six months, continued coverage can be purchased under the program’s bond.
Program Requirements

- The worker must meet the state’s legal age for working.
- Workers must be paid wages with federal taxes automatically deducted from the pay.
- The employer must make the applicant a job offer and set a date for the individual to start work.
- Bonds also can be issued to cover an already employed worker who needs bonding in order to (a) prevent being laid off, or (b) secure a promotion to a new job at the company.

Efficiency and Effectiveness of the Program

Bonding services as a job placement tool has achieved a 99% success rate. About 41,000 job placements have been made for at-risk persons who were automatically made bondable.

It encourages employers to hire people with criminal records. A survey of “Employer Attitudes Toward Hiring Ex-Offenders,” published in The Prison Journal, determined that employers were much more willing to hire people with criminal records who are bonded. The report states “bonding was the only variable to which the majority of employers (51%) responded favorably.”

It reduces recidivism rates and saves money. A Texas A&M comparison group study found that people with criminal records who were released from Texas State prisons and were job placed by the Texas Employment Commission (Project RIO) through use of bonding and other services, had their reincarceration rate reduced by 40%. Most important was that “RIO saved Texas over $10 million per year in potential reincarceration costs, and participants who secured employment generated about $1,000 per year in state and local taxes.”

Program History

Purchasers of the bonds include state employment agencies, Workforce Investment Boards and One-Stop Centers, organizations employing people with criminal records, state departments of corrections, private sector organizations and veteran’s initiatives.

In 1966, the U.S. Department of Labor created the Federal Bonding Program. The Fidelity Bonds issued under the Program are insurance policies of the Travelers Property Casualty Insurance Company. The McLaughlin Company in Washington, DC is the agent for Travelers in managing the program nationwide.
Appendix VI: Liabilities & Incentives for Employers

Liability Issues

Background checks for employment raise several legal and liability issues that must be explored in the effort to help inform employers to limit criminal background checks for both new hires and promotional opportunities.

Of special significance, Title VII of the Civil Rights Act of 1964, as interpreted by the Equal Employment Opportunity Commission (EEOC), requires all employers to adopt fair standards related to decisions based on criminal background checks. Thus, absent evidence that an individual’s criminal record is directly related to the specific job, the employer can be held liable for substantial monetary damages to an individual or a class of workers and for court-ordered injunctive relief mandating specific activities.

However, most states recognize the torts of “negligent hiring” and “negligent retention” that require employers to exercise reasonable care to ensure that an employee known to have violent propensities is not unreasonably exposed to the public. While laws vary from state to state, they do not impose a legal duty on employers to conduct criminal background checks. Instead, the level of scrutiny required of an individual will vary depending on the specific position, job duties, and level of supervision.

What follows is a more detailed analysis of these legal obligations, which require a balancing of the interests protecting the rights of people with criminal records under Title VII and the expectation of safety on the part of the general public and employees.

Title VII of the Civil Rights Act of 1964

Because criminal background checks for employment have a disproportionate impact on people of color, the EEOC has determined that employers have a special obligation under Title VII of the Civil Rights Act of 1964 to ensure that their screening policies are, in fact, directly related to the job in question.

Based on a number of court cases regarding this subject, the EEOC has issued guidelines precluding employers from relying on arrest records of any sort, except in very special cases.15 When an employer takes into account an individual’s conviction, Title VII requires that the screening policy be “job related” and consistent with “business necessity.”16 To satisfy the heavy burden of proving that the offense is substantially related to the job, the employer must consider the nature and gravity of the offense, the specific responsibilities of the job, and the time that has passed since the conviction or the completion of the applicant’s sentence.17 Employers found liable under Title VII are subject to the full range of remedies, including the payment of back pay and injunctive relief.

In recent years, the EEOC, private attorneys, and nonprofit legal groups have been more actively enforcing Title VII protections, as more workers of color are denied employment due to the growing use of criminal background checks. For example, the EEOC in Michigan recently filed suit against Peoplemark, Inc., a major staffing agency that is alleged to have violated Title VII based on its criminal
background check policy.\textsuperscript{18}

In California, New York, and elsewhere around the county, EEOC charges have recently been filed against several large employers, including Comcast, Home Depot, Lowe’s, Pacific Gas & Electric, and Madison Square Garden.\textsuperscript{19} Recognizing that the proliferation of criminal background checks is now impacting larger numbers of workers of color who find themselves with criminal records, the EEOC also recently held a public forum to evaluate the need to update its guidelines.\textsuperscript{20}

Hiring and promotion policies are likely to face increased scrutiny for compliance with EEOC guidelines and possible legal challenge. Accordingly, to avoid liability, precise standards are required to clarify the specific offenses that disqualify applicants from employment; the time elapsed since such offenses, and their direct relationship to the positions that are subject to criminal background checks.

**EEOC Guidance**

On April 25, 2012, the Equal Employment Opportunity Commission approved, by a 4-1 vote, updated guidance regarding employers’ use of criminal background checks titled, “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964.” This guidance, which will impact most organizations in the United States, became effective on the date of approval. It makes it even more difficult for employers to discriminate against applicants based on their criminal records. Employers can access the EEOC’s website, [www.eeoc.gov](http://www.eeoc.gov), for the guidance, a question-and-answer document, and the agency’s press release.

It also provides an overview of the guidance and outlines topics covered, including scenarios that an employer might encounter when considering the history of current or prospective employees, best practices for employers and the applicability of disparate treatment and disparate impact analysis under Title VII.

**State Antidiscrimination Laws**

In addition to the EEOC policy guidance barring discrimination, states have enacted laws that prohibit employment discrimination against individuals with criminal records:

**Arizona- Civil Rights Restored or Pardoned**- If civil rights restored cannot be barred from licensure or public employment “solely because of” conviction; offense must have “reasonable relationship” to employment or occupation. Ariz. Rev. Stat. § 13-904(E).

**Arkansas- Regulation of Licensing Only**- Conviction may be considered but may not bar; 5 yrs of law-abiding conduct following completion of sentence is “prima facie evidence of rehabilitation.” Reasons for prohibition must be given in writing. Ark. Code Ann. § 17-1-103.

**California- Civil Rights Restored or Pardoned**- General nondiscrimination law bars consideration of felony offense that has been set aside, or misdemeanor. Cal. Bus. & Prof. § 480(b). Suspension or revocation of license allowed only if crime “substantially related” to qualifications. Cal. Bus. & Prof. § 490.

**Colorado- Regulation of Licensing and Public Employment**- “[T]he fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent the person from
applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession. Colo. Rev. Stat. § 24-5-101(1).

**Connecticut- Regulation of Licensing and Public Employment**- With limited exceptions relating to law enforcement and certain mortgage-related licenses, public employers and licensing authorities may not disqualify a person automatically on the grounds of a prior conviction but must consider: 1) the nature of the crime and its relationship to the job; 2) information pertaining to rehabilitation; and 3) time elapsed since conviction. Conn. Gen. Stat. §§ 46a- 80 (a) and (c). If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. §§ 46a- 80(d).

**Civil Rights Restored or Pardoned**- May not deny employment or licensure based on pardoned offense. Conn. Gen. Stat. §§ 46a-80(a) and (c).


**District of Columbia- Regulation of Licensing and Public Employment**- Licensing: Crimes must be “bear directly upon the fitness of the person to be licensed. D.C. Code §§ 47-2853.17(a), 3-1205.03. Public employment: Limits pre-employment inquiries for most government positions until after the initial screening. Must consider: duties and responsibilities of the position, bearing on performance duties, time elapsed, age at time of the offense, the frequency and seriousness of the offense, rehabilitation and good conduct, and public policy interest. D.C. Code 1-620.42-.43.


**Civil Rights Restored or Pardoned**- Licensing boards may not reject based on conviction if the person’s civil rights have been restored, unless offense conduct is “directly related”: to license. Fla. Stat. 112.011(1)(b).

**Georgia- No Regulation of Licensing or Employment**- [conviction of a felony or any crime involving moral turpitude may be grounds for revocation or refusal of a license, without regard to whether it is related to the practice of the licensed business or profession. See. Ga. Code Ann. § 43-1-19(a)(3).]

**Hawaii- Regulation of Licensing, Public and Private Employment**- General FEP law prohibits inquiry into arrest and conviction before a conditional offer of employment which may be withdrawn if a conviction within the previous 10 years “bears a rational relationship to the duties and responsibilities of the position.” Haw. Rev. Stat. §§ 378-2.5(b), (c). In addition, crime within 10 years may be considered only if there is a rational relationship to job or occupation. Haw. Rev. Stat. § 831-3.1(f). Arrest records may not be considered at all. See Haw. Rev. Stat. § 378-2.5(b), (c).

**Illinois- Regulation of Licensing Only**- In general, Illinois limits consideration of conviction in connection with occupational licensing only for certain employments, and only where a person has received a certificate of rehabilitation. Ill. Comp. Stat. 5/5-5-5. Certain occupational licensing, using “direct relationship”: test. See e.g., Ill. Comp. Stat. 450/20.1 (accountant); § 335. /9.1 (b) (roofer).
Civil Rights Restored or Pardoned- Human Rights Act prohibits discrimination based on conviction only if expunged or sealed. Ill. Comp. Stat. § 5/2-103(A). Waiver by agency permits for certain healthcare positions. See § 46/40.

Iowa- No Regulation of Licensing or Employment- Iowa has no general law regulating consideration of conviction in employment or licensure, but applies a direct relationship test in connection with some licenses. See, e.g., Iowa Code § 147.3 (health-related professions licensing).

Kansas- No Regulation of Licensing or Employment- No nondiscrimination rule, but is a misdemeanor for an employer to inquire into an applicant’s criminal history record without the applicant’s consent. See Kan. Stat. Ann. § 22-4710(a)-(c).

Kentucky- Regulation of Licensing and Public Employment- No person shall be disqualified from public employment, [or from]... any occupation for which a license is required, solely because of a prior conviction of a crime, unless the crime for which convicted is a felony or misdemeanor punishable by imprisonment or otherwise directly relates to the position of employment sought or the occupation for which the license is sought. Factors include nature and seriousness of the crime; the relationship of the crime to duties and responsibilities of the position sought. Ky. Rev. Stat. Ann § 335B.020(1) – (3).

Louisiana- Regulation of Licensing Only- A person may be held ineligible to practice or engage in any licensed trade, occupation, or profession solely because of a prior criminal record only if conviction involves a felony, and the conviction, and the conviction “directly relates to the position of employment sought, or to the specific occupation, trade or profession for which the license, permit or certificate is sought.” Exemptions for law enforcement, nursing, various other licensed professions. Reasons required, APA enforcement. La. Rev. Stat. Ann. § 37:2950

Maine- Regulation of Licensing Only- May not consider convictions more than 3 years old, or which call for less than a year in prison. Me. Rev. Stat. Ann. Tit. 5, § 5303. Certain professions (medical, nursing) have 10 year debarment. Id.

Maryland- No Regulation of Licensing or Employment- No general law, but a consumer reporting agency cannot report conviction information that is older than 7 years for purposes of employment, if the job about which information sought is expected to pay an annual salary less than $20,000. Md. Code Ann., Com. Law § 14-1203(a)(5).

Massachusetts- No Regulation of Licensing or Employment- No general rule but licensing agency may not disqualify based on conviction alone in certain specific professions. See, e.g., Mass. Gen. Laws ch. 112, § 52D (dentistry); ch. 112, § 61 (medical license); ch. 112, § 189 (real estate appraiser). Limits on inquiry into records. E.g., employers may not inquire into misdemeanor convictions more than 5 years old or arrest records. Mass. Gen. Laws ch. 151B, § 4 (9).

Michigan- Regulation of Licensing Only- Conviction shall not be used, in and of itself, by licensing board or agency as proof of a person’s lack of good moral character, “but it may be used as evidence in the determination.” Mich. Comp. Laws § 338.42. Cannot consider non-conviction records, convictions that did not result in incarceration, or, convictions unrelated to capacity to serve the public. § 338.43(1).

Minnesota- Regulation of Licensing and Public Employment- Must be “direct relationship” between occupation or license and conviction history and individual must not have shown “sufficient rehabilitation and present fitness to perform” the duties of the public employment or licensed occupation. Minn. Stat § 364.03. Factors to be considered set out. Rehabilitation established by 1 year without arrest after release, or successful completion of probation or parole. See id.

Montana- Regulation of Licensing Only- Conviction shall not operate as bar to licensure for any profession, but may be considered. Mont. Code Ann. § 37-1-201. 203.

Nevada- Regulation of Licensing or Employment- Nevada has no general law but applies a direct relationship test in connection with some licenses. See, e.g., Nev. Rev. Stat. § 625.4104(4) (engineering and land surveying).


Civil Rights Restored or Pardoned- Pardon or expungement, or certificate of rehabilitation, “shall preclude a licensing authority from disqualifying or discriminating against the applicant.” N.J. Stat. Ann. § A:168A-3.

New Mexico- Regulation of Licensing and Public Employment- A person may be disqualified for public employment or licensure based on prior conviction if: 1) conviction relates directly to the position sought; 2) or if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or 3) if an applicant for a teaching certificate or employment at child-care facility has been convicted of drug trafficking or sex offenses regardless of rehabilitation. N.M. Stat. Ann. § 28-2-4 (A). Completion of parole or probation or a 3 year period following release from incarceration creates a presumption of rehabilitation. N.M. Stat. Ann. § 28-2-4(B). Must state reasons in writing.

New York- Regulation of Licensing, Public and Private Employment- Prohibits discrimination in employment and licensing based on conviction. N.Y. Correct. Law §§ 750-755. Must be direct relationship and unreasonable risk to property or safety. § 752. Individual is entitled to reasons. § 754. N.Y.S. Human Rights Law, N.Y. Exec. Law § 296(16), prohibits public and private employers and occupational licensing agencies from denying any individual employment or a license (or otherwise discriminating against that person) because of any arrest that did NOT result in a conviction.

North Carolina- No Regulation of Licensing or Employment- No general restriction but agency may consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification. N.C. Gen. Stat. § 15A-173.2(d).

North Dakota- Regulation of Licensing Only- Licenses for most professions and occupations may be denied only if offense has direct bearing, or insufficient rehabilitation; factors to be considered include nature of offense, evidence of rehabilitation, and date of offense (5 years deemed prima facie evidence of rehabilitation). N.D. Cent. Code § 12.1-33-02.1. Written statement of reasons if denied in whole or in part because of conviction. Id.

Ohio- Civil Rights Restored or Pardoned- May be questioned about sealed conviction only if it bears a direct and substantial relationship to the position. Ohio Rev. code Ann. §§ 2953.33(B).

Oklahoma- Civil Rights Restored or Pardoned- No public or private employer may ask about or consider a sealed conviction. 22 Okla. Stat. Ann. § 19 (F).

Oregon- Regulation of Licensing Only- May not bar from licensure solely on grounds of conviction; may consider facts of conviction and all intervening circumstances in determining the fitness of the person. Or. Rev. Stat. 670.2802(2),(3). Teacher licenses accepted. Id.

Pennsylvania- Regulation of Licensing, Public and Private Employment- Felony and misdemeanor convictions may be considered only to the extent they “relate to” the applicant’s suitability for employment or licensure in the position for which he has applied. 18 Pa. Cons. Stat. §§ 9124 (licensure) 3125 (employment).
Rhode Island- No Regulation of Licensing or Employment- Prohibits inquiries about arrests as unlawful employment practice, but specifically permits inquiries about convictions. See R.I. Gen. Laws § 28-5-7(7).

South Carolina- Regulation of Licensing Only- May not be denied a license solely due to conviction unless the criminal conviction is directly related to the profession or occupation. S.C. Code. Ann. § 40-1-140.

Texas- Regulation of Licensing Only- Licensing authority may deny/suspend/revoke license if conviction “directly relates to the duties and responsibilities of the licensed occupation,” “if offense does not directly relate but is less than 5 years old, or if specified violent and sexual offenses. Tex. Occupations Code § 53.021(a) §§ 53.022 and 53.023 require licensing agencies to consider a number of factors in determining whether a conviction is directly related to the occupation.

Utah- Regulation of Licensing Only- “Unprofessional conduct” includes commission of crime that “bears a reasonable relationship to the licensee’s or applicant’s ability to safely or competently practice the occupation or profession.” Utah Code Ann. § 58-1-501(2).

Vermont- Regulation of Licensing Only- “Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession” grounds for denial of license in over 40 professions. See Vt. Stat. Ann. Tit. 3, § 129a(10).

Virginia- Regulation of Licensing Only- May not be denied license “solely because of” conviction unless “directly related to the occupation or profession for which the license is sought. However, board can refuse a license if it finds that the applicant is “unfit or unsuited.” Va. Code Ann. § 54.1-204. Standards for determining “direct relationship” spelled out in § 54.1-204(B).

Washington- Regulation of Licensing and Public Employment- May consider a conviction only if within the last 10 years and the crime “directly relates” to the employment or license sought. Several exceptions. Wash. Rev. Code § 9.96A.020(1)-(2).

Wisconsin- Regulation of Licensing, Public and Private Employment- Fair employment act bars discrimination by public and private employers, licensing boards, unless crime “substantially relates” to the particular job or licensed activity. Wis. Stat. §§ 111.32, 111.335 (1)(c).

West Virginia- No regulation of Licensing or Employment- No general law but a few professions require that conviction be “directly related” to the activity. See W. Va Code § 30-3-14 (c) (2)(medicine) § 30-16-11(a)(3) (chiropractic); § 74-14-11(a)(4)(sale of pre-need funeral contracts).

Federal- Regulation of Public Employment Only- Only limitation on employment in Title VII of Civil Rights Act.


Negligent Hiring and Negligent Retention

Violence at the workplace is a serious concern requiring a comprehensive approach toward safety and security that goes far beyond conducting criminal background checks for employment. However, it is important to emphasize that violence at the workplace, especially in retail establishments, is mostly perpetrated by third parties outside the scope of employment, not by employees.

When a customer or co-worker is injured on the job by an employee, in most states the injured party may have the right to sue for damages under the tort theories of “negligent hiring” and “negligent retention.”
Contrary to the promotional material produced by some human resource firms and other interested groups, a high degree of proof is required to obtain damages on behalf of an injured individual against the employer.

Generally speaking, the law requires businesses to exercise reasonable care in hiring, retaining, and supervising employees to protect others from harm. According to a leading treatise on the subject, “The existence of this duty depends upon whether the risk of harm from an employee to [the plaintiff] was reasonably foreseeable as a result of the employment.” The analysis for each employer comes down to the specific nature of the employee’s duties and the extent to which these responsibilities create a foreseeable risk of injury to another on the job. In other words, the scope of the employer’s investigation into an applicant’s background should be directly related to the severity of the risk of harm to a third party.

Thus, some jobs require heightened scrutiny by employers because the employees are in a unique position to cause harm to other individuals, as in the case of workers who have exceptional access to customers’ homes (e.g., appliance repair and installation workers) or workers who have regular unsupervised contact with young children (e.g., day care providers), elderly people (e.g., nursing homes), and other vulnerable populations. Retail establishments are not subject by law to this stricter level of scrutiny, and thus their legal duty is to do what is “reasonable” in screening their employees. The critical question, therefore, is what is “reasonable” and “foreseeable” conduct on the part of a retail employer in screening its employees or prospective hires?

In retail, what is reasonable and foreseeable will depend largely on the particular job, the employee’s level of contact with the public, the employee’s level of responsibility, and the level of supervision provided. Thus, workers employed in the stockroom, in the warehouse, or in other jobs further removed from the public will not require as much screening as workers, such as cashiers or sales staff. Thus, workers employed in the stockroom, in the warehouse, or in other jobs further removed from the public will not require as much screening as workers, such as cashiers or sales staff, who have more routine interaction with retail customers.

When it comes to cashiers and sales personnel, or supervisors and store managers, the best approach to avoid liability is to have an effective and responsible screening policy, evaluating reference checks, interviews, prior work history, and other relevant information. In such cases, criminal background checks may be appropriate as well, especially if information is discovered that requires further inquiry, but the background checks should be conducted at the right time and under the right circumstances.

However, the courts have consistently held that criminal background checks are not required to avoid liability for negligent hiring and negligent retention. As the leading case issued by Minnesota’s Supreme Court states, “Despite the increased use by employers recently, there is no legal duty to utilize criminal background checks for all prospective employees.” According to the court, criminal background checks “in fact may not bring the blanket protection that employers may feel they provide.”

A minority of the courts have allowed these cases to go to jury to decide whether a criminal background check is required to avoid liability in a negligent hiring or negligent retention case. However, unlike in
the retail industry, those cases typically involve situations in which the worker is employed in an especially sensitive position that offers far more opportunity to physically harm another individual.\textsuperscript{27} In the vast majority of cases, however, the law is clear that a judge can dismiss a lawsuit early on in the proceedings without requiring the issue to go to a jury to decide. Moreover, even when a background check reveals that an individual has a criminal record, the record will often identify another crime, such as a property offense, that will not support a claim for negligent hiring or negligent retention resulting from an assault or other forms of physical violence.\textsuperscript{28} Thus, to avoid liability, employers should primarily focus their concern on offenses that demonstrate a propensity for violence.

In addition, adopting a zero-tolerance policy toward violence in the workplace will reduce the potential for violent episodes on the job. Violence-prevention policies include training staff to effectively identify the warning signs that typically predate violent episodes, focusing on store security (security guards, electronic surveillance, etc.), and reporting specific incidents.

Finally, the courts have been mindful of the impact that tort exposure can have on society’s concern to promote rehabilitation. As a Florida appeals court stated, “to say that an employer can never hire a person with a criminal record at the risk of being held liable for his tortuous assault flies in the face of the premise that society must make a reasonable effort to rehabilitate those who have gone astray.”\textsuperscript{29}
Appendix VIII: Key Provisions to Include in State Legislation/ Anti-Discrimination Policy

Based on Recommendations put forth by the Legal Action Center:

The Legal Action Center recommends that state laws prohibiting employment discrimination against people with criminal records contain the following key provisions:

Protect applicants for employment or licensing from discrimination by both private and public employers, including licensing agencies. Protect applicants from discrimination based on both conviction and arrest records. Apply these provisions to all stages of employment: hiring, retention, promotion, and dismissal. State that for employers to consider a conviction at any stage of the employment process, there should be an individualized determination and the conviction should bear some type of rational relationship to the employment.

Make clear to employers how they should determine whether the conviction is related to the employment. Four Important factors for employers to consider are:

- the nature of the crime for which the applicant was convicted;
- whether the applicant has been rehabilitated;
- the time elapsed since the applicant was arrested; and
- the applicant’s age when he or she was arrested.

Protect applicants against discrimination based on convictions that are not yet finalized (e.g., if the defendant has not yet been sentenced or his or her direct appeal is still pending) or that have been nullified by pardon, judicial overruling, etc. Make it explicit that it is a public policy of that state (if state law exists) to encourage the licensing and employment of people with criminal histories. Other provisions that some states have included in their anti-discrimination statutes increase the likelihood that statutes will be enforced. These provisions include: requiring employers and agencies to document in writing their decisions not to hire applicants because of their criminal records, and providing notice to these applicants of their rejection and the reason for it. These tasks should be completed within a reasonable amount of time. In addition, providing for the award of attorneys’ fees when people seek to enforce their rights through private lawsuits. This allows private plaintiffs’ access to lawyers who can enforce their clients’ rights. In the words of Justice Blackmun, laws that provide attorneys’ fees grant private citizens “a meaningful opportunity to vindicate the important . . . policies which these laws contain.” Finally, insulating employers who comply with its provisions against liability for negligent hiring. Employers who follow the law should be able to use their compliance as a defense if they are sued for the acts of an employee with a criminal record.
Appendix IX: List of References

1 Brennan Center for Justice at New York University School of Law, Criminal Disenfranchisement Laws Across the United States, 2013


3 Ibid. page 15

4 Ibid. page 16

5 Ibid. page 1

6 Ibid. page 16 table 3

7 Ibid. Page 12-13

8 Ibid. page 17 table 4

9 Ibid. page 17 table 4

10 Ibid. page 16 table 3

11 Ibid. page 17 table 4


17 For example, a hit-and-run conviction is not job-related to a position as a kitchen worker (EEOC Dec. No. 79-61), delivery of marijuana is not job-related to the position of a utility worker in a factory (EEOC Dec. No. 80-18), and unlawful possession of a firearm is not job-related to a factory worker position (EEOC Dec. No. 80-10).

While employee theft is a special concern for retail establishments, this analysis does not address that issue because it does not present a major liability for employers subject to lawsuits by third parties.


Pontics v. K.M.S. Investments, 331 N.W.2d 907 (Minn. 1983); see also Peters v. Ashtabula Metropolitan Housing Authority, 624 N.E.2d 1088 (Ohio App. 11th Dist. 1993), which determined that the employer’s “only duty was to exercise ordinary care” and “no facts were offered which would give rise to a duty to conduct a criminal background check.”

See, for example, TGM Ashley Lakes, Inc. v. Jennings, 590 S.E.2d 807 (Ga. App. 2003), a case in which a handyman in an apartment complex, who murdered a resident, was allowed full access to the resident’s apartment. In Blair v. Defender Services, 386 F.3d 623 (4th Cir. 2004), which involved a janitor who assaulted a Virginia Tech student, the court held that the jury could consider that a criminal background check was not conducted by the employer. However, in this case the court took special note of the fact that the contractor that hired the worker also had a contractual agreement with the university to require criminal background checks of all personnel assigned to Virginia Tech property.


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