

The National Employment and Reentry Committee

Federal Policy Recommendations to Increase Job Opportunities for
Justice-Involved Workers

A policy brief submitted to the White House Domestic Policy Council

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INTRODUCTION

The Obama Administration has been instrumental in encouraging states and localities to pursue policies that will further improve and increase opportunities for justice-involved individuals to succeed and be full participants in society. The convening of the Federal Interagency Reentry Council by the Attorney General has ensured that the momentum for reentry reform is sustained. The Council has promoted reentry policy reform and changes in practices in the states to afford people with criminal histories opportunities to secure housing, financial aid, and to be treated fairly in the job market. The Secretary of Housing and Urban Development issued guidance to housing authority directors and to private landlords that receive federal subsidies encouraging them to exercise their broad discretion to house homeless individuals with criminal histories. The Department of Education removed from its student loan application the question about past criminal convictions. And, the Equal Employment Opportunity Commission and the Department of Labor directed the One-Stop Career Centers to post only those job announcements that comply with EEOC's guidance, and the Office of Federal Contract Compliance Programs directed its contractors to comply. However, there is more the Administration can do.

The National Reentry and Employment Committee has come together to offer recommendations that the Administration can act upon to achieve positive results to improve the employability and employment of job seekers with criminal histories.

EXECUTIVE SUMMARY

Work represents responsibility and dignity. And for most motivated and ambitious individuals, it can breed opportunity. It is true that no one is owed a job but everyone should be provided the opportunity to work and earn adequate wages to take care of themselves and their families. John D. Rockefeller, a shrewd 19th century American businessman and founder of two universities, once said, “I believe in the dignity of labor, whether with head or hand; that the world owes no man a living but that it owes every man an opportunity to make a living.” Unfortunately, even the most motivated job seeker with a criminal history struggles to find a job and faces a myriad of barriers to employment that we, as a nation, must address in addition to providing adequate services and skill building opportunities.

The sheer number of individuals affected by the criminal justice system makes employment and reentry priority social and economic issues. Over 100 million people have a criminal record on file with a state repository.¹ Millions of individuals who are incarcerated each year in prisons and jails will be released and returned to their communities. Many of these individuals are parents. A disproportionate number of them are men and women of color — while people of color make up about 30 percent of the United States’ population they account for 60 percent of those imprisoned.²

Most formerly incarcerated individuals return home with enthusiasm and hope that they will secure a job right away. However, it is estimated that workers with criminal histories suffer unemployment rates between 25 and 40 percent in certain areas of the country. These prospective workers face several challenges when seeking employment such as:

- The stigma of having a criminal record.
- A tight labor market with high unemployment.

¹ Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012, Criminal Justice Information Policy Report*. Washington, DC: Bureau of Justice Statistics, January 2014, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

² Kirby, S. (2012, March 13). Center for American Progress, *The Top 10 Most Startling Facts About People of Color and Criminal Justice in the United States: A Look at the Racial Disparities Inherent in Our Nation’s Criminal-Justice System*. Available at <http://www.americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/>.

- An immediate need for income.
- Limited or no work experience.
- Limited education and skills.
- Competing agency obligations and mandates.
- Occupational bars and licensing restrictions – often unrelated to the type of crime for which an individual was convicted.
- Inaccuracies or mistakes on criminal record reports.
- The extent of criminal background checks.
- Lack of protection against discrimination.
- Other legal and practical issues (lack of housing, child support arrears, and substantial debt, etc.).

Reentry and employment are interconnected and they are critical issues facing our nation. Public safety remains one of the most pressing issues of our time and the strength of our economy and labor market is equally vital to our nation’s success. In the past decade, with help from the federal government, states and local jurisdictions have been able to move forward with retooling their criminal justice systems to be less costly, more efficient, and more effective. Many jurisdictions have also implemented laws and policies to support the reintegration of formerly incarcerated individuals, particularly by removing barriers to employment. The Obama Administration has been instrumental in encouraging states and localities to pursue policies that will further improve and increase opportunities for justice-involved individuals to succeed and be full participants in society. The formation of the Federal Interagency Reentry Council has ensured that the momentum for reentry reform is sustained. We, the National Reentry and Employment Committee offer recommendations that the President and Administration can act upon to achieve positive results that will improve the employability and employment of job seekers with criminal histories.

There is an ongoing need to increase funding for employment services that comprehensively support the needs of justice-involved individuals. However, this policy brief was written to offer alternative opportunities for the Administration to improve the efficiency of programs to operate at higher levels of service that will maximize the potential for every consumer to become a productive member of society. We offer key recommendations for executive action that are listed below and explained in further detail in the Recommendation section of this brief.

- I. Increase access to employment services, job training, and job placement.**
 - a. Require all federal employment and training grant initiatives to include people with criminal histories as a priority target group for services.
 - b. Eliminate mandatory regulatory barriers to employment in the healthcare industry.

- II. Build the capacity of community-based employment service providers to provide jobs and services to justice-involved workers.**
 - a. Implement “Impact Sourcing” initiatives to create paid job-training opportunities for workers with criminal histories.
 - b. Require the Departments of Labor and Justice to implement multiple demonstration grant programs to improve employment retention by validating the relationship between employment service components and risk assessments.

- III. Increase access to higher education.**
 - a. Urge Congress to restore Pell Grant eligibility to incarcerated people interested in educational advancement.
 - b. Instruct the U.S. Department of Education to issue guidance on fair admission standards for students with criminal histories.

Respectfully submitted by
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RECOMMENDATIONS

I. Increase and expand access to employment services, job training, and job placement.

Require all federal employment and training grant initiatives to include people with criminal histories as a priority target group for services.

The President should issue an Executive Order that directs the U.S. Department of Labor to prioritize services for justice-involved workers and create performance based measures that incentivizes states and local Workforce Investment Boards to comply and partner with community-based employment providers that are experienced with servicing the population.

The Department of Labor (DOL) operates America’s Job Centers through two major programs – the Employment Service, funded by the Wagner-Peyser grant, and the local Workforce Investment Boards, funded by Workforce Investment Act grants. This federal-state–local partnership is overseen in its totality by the U.S. Secretary of Labor. DOL has oversight over the long-term unemployed and one of its charges is helping employers find workers. The One-Stop Career Center system was implemented in 1994 to create a place that provides a full integrated system of employment services for the general public including assistance in filing unemployment claims, job preparation, job search and placement services, career counseling, and training and education.³ However, job seekers with criminal records often have special needs and face a myriad of employment barriers that DOL One-Stop Career Center staff needs to be familiar with if they are to successfully and effectively assist them in finding gainful employment. While some One-Stop Career Centers have made advancements in servicing this segment of customers by creating facilities equipped to exclusively meet the needs of individuals with criminal histories—known as Reentry Centers—most Career Centers around the country have not adopted a clear-cut service delivery plan to assist job seekers with criminal histories.

³ Glazier, Ray. “One-Stop Shopping and Vocational Rehabilitation”, (Autumn 199), *American Rehabilitation*.

Job seekers with criminal histories must be a priority of the country's workforce development system, particularly since this segment of the population face high unemployment rates and stigma that is often hard to overcome without the assistance of workforce intermediaries. To incentivize states and local WIBs, increase the amount and volume of community level grant funding available and institute performance measures and incentive based funding.

Eliminate mandatory regulatory barriers to employment in the healthcare industry.

The President should issue an Executive Order that instructs the U.S. Department of Health and Human Services (HHS) to eliminate or reduce regulatory barriers that expand the scope or duration of exclusions required by 42 U.S.C. §1320a-7. HHS should be instructed to:

- 1.) Ensure that aggravating and mitigating factors in 42 C.F.R. §1001.101-501, which can be considered to increase or decrease the length of an exclusion from employment, include those factors commonly known to reflect "criminogenic" risk; and*
- 2.) Ensure that the waiver provision found at 42 C.F.R. §1001.1801 includes an opportunity for individuals to petition for and receive waivers from mandatory and permissive exclusions based on evidence of rehabilitation and other mitigating factors.*

The Obama Administration should work to end blanket felony or misdemeanor disqualifications in high job growth industries, beginning first with the healthcare sector. Our nation's economy may suffer significant demand shortages and losses in the next decade if we do not remove legal barriers to the employment in the healthcare sector. It is estimated that the potential overall output of goods and services of people with felonies and prison records is estimated at \$57 to \$65 billion in losses to the nation's economy when these individuals remain unemployed.⁴ With individuals with criminal records being barred from healthcare jobs, these

⁴Schmitt, J. & Warner, K. Ex-offenders and the Labor Market. Center for Economic and Policy Research, November 2010, available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

losses will be compounded as the healthcare industry continues to grow. Growth in healthcare is projected by the U.S. Bureau of Labor Statistics as far exceeding other industries within the next decade (2012-2022) with total employment increasing 10.8 percent, or 15.6 million.⁵ Five of the twenty top growth industries fall under the major industry of healthcare.

In addition, there are many entry-level, low- to medium-skilled jobs in the healthcare industry that could be available to job seekers. However, mandatory employment exclusions impose restrictions on individuals even if they seek to work in maintenance, administrative, or food preparation positions in the health care industry. The federal law also does not consider that individuals may have been actively addicted at the time of their offense and have since completed treatment; this has a tremendous impact on the ability of many people in recovery to work in the field.

Given the large market for healthcare services and the forecasted shortages of skilled workers, qualified individuals who can show evidence of rehabilitation should be given full consideration to work in their profession. 42 U.S.C. § 1320a-7 and 42 C.F.R. §1001.101 create numerous barriers to employment in the health care industry for individuals with misdemeanor or felony convictions, including convictions for most drug-related offenses. For individuals with drug-related and certain other types of convictions, a number of these federal statutes and regulations require permanent mandatory exclusions from employment in a health care office or institution that participates in any federal health care program such as Medicare, Medicaid and state Block Grant programs.

A number of additional permissive employment exclusions in regulations promulgated by HHS apply to positions that require no medical competency or fiduciary trust. Although a waiver process exists for certain exclusions, this process is very limited and precludes most effected individuals from meaningful review. In healthcare, persons with felony or even-non felony records cannot get healthcare education in their respective field, and are barred from licensing and employment by many laws including blanket felony or misdemeanor disqualifications that fail to take into account evidence or rehabilitation or even the age of the offender at the time of the offense. These professionals are being denied health education and

⁵Bureau of Labor Statistics, U.S. Department of Labor, "Employment Projections – 2012 – 2022," news release, December 19, 2013, <http://www.bls.gov/news.release/pdf/ecopro.pdf>.

employment if the state laws do not include the protections that call for a “waiver” or certificates of a disqualifying criminal offense based on evidence of rehabilitation.

Some anchor institutions – such as Johns Hopkins Hospital in Baltimore, Maryland – have opened the doors to persons with criminal records and found success in training ex-offenders.

Hopkins Hospital’s human resources department decided to hire persons with criminal records because the hospital could not find enough qualified workers to meet its growing needs, and in the future, would not have had enough workers for the jobs they needed to fill. In 2010, of the 2000 new hires at Hopkins, 100 individuals had a criminal history. While most were hired in entry-level positions, some were placed in high skill work. And retention of these employees has been strong at approximately 80 percent retention.

The White House should convene a meeting with major healthcare providers, hospitals, hospital systems, and other major healthcare employers to further educate and encourage them to hire qualified workers with criminal histories.

II. Build the capacity of community-based employment service providers to provide jobs and services to justice-involved workers.

Implement “Impact Sourcing” programs to create paid job-training opportunities for workers with criminal histories.

The President should issue an Executive Order to authorize federal agencies to procure work from nonprofits for a small amount of federal contracts through agencies including EPA, DOI, DOT, FEMA, DOD and GSA, others to provide transitional and permanent work opportunities for justice-involved workers. Agencies should be instructed to set aside a small portion of routine work to be awarded competitively to agencies that have a proven track record of successfully engaging this population.

Transitional jobs programs help individuals with barriers to entering the full-time job-market learn basic work skills in a supportive environment. These programs can be used effectively for multiple populations, but are particularly promising for helping formerly incarcerated individuals bridge to the full-time labor market, while helping them earn income for their families and reintegrate into the workforce.

Adults learn best by doing and transitional work creates an employment laboratory to practice skills like punctuality, cooperation with supervisors and personal presentation before beginning in full-time job. In order to provide these opportunities, successful programs have secured contracts to maintain community colleges, clean business improvements and operate recycling plants. These contracts allow them to cycle multiple individuals through each available slot on an annual basis. At the same time, additional services such as counseling, housing assistance and full-time placement are generally provided to support to overall needs of the individual.

There is a body of evidence that transitional jobs programs are effective in reducing recidivism for returning citizens. A random assignment study of the Center for Employment Opportunities (a program in New York City) funded by the US Department of Health and Human Services found that after three years of follow-up convictions of a crime fell by over 22 percent, and re-incarceration for a new crime fell by over 26 percent.⁶ The study also found that CEO's public safety impacts translated into significant savings: every \$1 invested in CEO yielded \$3.30 in taxpayer savings.⁷ Further, the federal government has already invested heavily in these programs through the Department of Labor's "Enhanced Transitional Jobs Demonstration Program," which is expected to considerably grow the knowledge base of the field.

The scaling of transitional jobs programs are generally limited by the number of available "slots" that can be secured with a public or private sector employer. The federal government has the ability to give thousands of formerly incarcerated basic work skills and a path to a full-time job by directing a small amount of sourcing for services to non-profits who have been proven effective in offering transitional work to the formerly incarcerated population. Agencies including EPA, DOI, DOT, FEMA, DOD and GSA, among others, could use these groups to perform needed work, using existing operational budgets. Developing federal agency crews would serve the dual purpose of giving thousands of individuals vital work experience through evidence-based models, while also helping to maintain important federal resources. A modest expansion in sourcing could allow for at least 5,000 new individuals to be given employment services annually.

⁶Redcross, C., Millenky, M., Rudd, T., & Levshin, V. (2012). *More Than a Job: Final Results from the Evaluation of the Center for Employment Opportunities (CEO) Transitional Jobs Program*. OPRE Report 2001-18. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

⁷ Ibid.

Require the Departments of Labor and Justice to implement multiple demonstration grant programs to improve employment retention by validating the relationship between employment service components and risk assessments.

The President should issue an Executive Order that requires the U.S. Departments of Labor and Justice to integrate reentry and employment strategies and direct both agencies to identify valid criminogenic risk assessment tools and work readiness assessments to appropriately serve this population.

Corrections and workforce development professionals understand intuitively that for long term success in the labor market, individuals must be motivated to live pro-social lifestyles. The Risk-Need-Responsivity framework relies heavily on appropriate and timely intervention services such as substance abuse treatment, pro-social behavior therapy, housing services, legal services, transportation services and others. To this end, funding streams must be developed to provide community level grants that support evidenced-based methods for designing employment programs that are tailored for adults with criminal histories based on their levels of risk for future activity, as described in the Council of State Government Justice Center’s White Paper entitled, *Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness* (September 2013). The Administration should rely on the expertise of the Council of State Government Justice Center’s expert advisors who are experts from the corrections, reentry, and workforce development fields.

III. Increase Higher Education

Urge Congress to restore Pell Grant eligibility to incarcerated students nationwide to promote post-secondary education that leads to increased employability of formerly incarcerated individuals.

The President should issue an Executive Order that urges Congress to restore Pell Grant eligibility to incarcerated students.

Individuals who have earned academic credentials have a better chance to compete in the labor market and those credentials serve as an indicator to employers that she or he has an aptitude for learning. Additionally, higher education encourages

personal and social development and may be a contributing factor in strengthening an individual's ties to family, fostering healthier living habits, and improving social skills. Therefore, the elimination of Pell Grant eligibility for people who are incarcerated not only eliminated the opportunity to motivate individuals with high school diplomas or GED's to participate in college classes and seek college degrees it eliminated the opportunity to promote rehabilitation through education. When Congress instituted the ban in 1994 within ten years nearly all of the post-secondary correctional education programs disappeared.

According to the advocacy group, Education from the Inside Out Coalition (EIO), Pell Grant eligibility for incarcerated individuals would not "diminish the opportunity of any other eligible student to receive aid. It simply ensures that all qualified low-income students who are motivated to pursue higher education have equal access to aid."⁸ Before the federal ban was enacted, prison-based higher education accounted for 1/10 of 1% of the Pell Grants' annual budget.⁹ Studies that analyzed the impact of ban documented the effectiveness of correctional post-secondary education program on recidivism reduction. Restoring Pell Grant eligibility to incarcerated students would have a positive impact on individuals and the communities they return to.

Instruct the U.S. Department of Education to issue guidance on fair admission standards for students with criminal histories.

The President should issue an Executive Order that instructs the U.S. Department of Education to issue guidance on fair admission standards for students with criminal histories and requires college admission applications to eliminate questions about criminal history.

In 2006, the Center for Community Alternatives (CCA) and the National H.I.R.E. Network (H.I.R.E.) conducted an audit study in two states to analyze the admission policies of public and private post-secondary educational institutions. They concluded in "Closing the Doors to Higher Education: Another collateral consequence of a criminal conviction" (2008), that there was a growing practice by

⁸ Education from the Inside Out, *Policy Brief: Restoration of Pell Grant Eligibility*, available at http://www.eiocoalition.org/files/EIO_Pell-Grant-2013-Policy-Brief_V4.pdf.

⁹ "Education as Crime Prevention: Providing education to prisoners." *Open Society Institute Criminal Justice Initiative*. Research Brief. Occasional Paper Series No. 2, September 1997, available at http://www.prisonpolicy.org/scans/research_brief_2.pdf.

colleges and universities to consider criminal record information and deny admission of applicants who have a criminal history regardless of whether there is evidentiary risk to the student participating in campus life. Blanket exclusions or policies such as these may have a disparate impact on students of color. People of color are overrepresented in the criminal and juvenile justice systems and according to CCA and H.I.R.E., “despite the lack of evidence that students with criminal records commit crimes on campus at a rate higher than other student, a few high profile crimes and concern about institutional liability have led to admission policies that now require prospective applicants to disclose their criminal records and even their secondary school disciplinary history.”¹⁰

The guidance should educate colleges and universities about discriminatory practices and policies that impede equal opportunity and encourage fair admission policies that discourage blanket exclusion of students with criminal histories.

¹⁰Center for Community Alternatives and National H.I.R.E. Network, *Closing the Doors to Higher Education: Another collateral consequence of a criminal conviction*, (2008), available at <http://www.communityalternatives.org/pdf/HigherEd.pdf>.

CONCLUSION

Implementing the recommendations noted above will result not only in increased opportunities, but will in fact, net a significant increase in the number of people with criminal records working, supporting themselves, supporting their families, and contributing to the safety of their communities. Most recommendations add no cost to the federal budget requiring simply a change in focus rather than an increase in dollars. Others require a reallocation of existing expenditures, but are likely to net a greater gain.

Given our intent to keep this document relatively short many related factors are not included and implementation work plans are not developed. We welcome the opportunity to meet with White House staff to delineate the plan details and get the recommendations implemented. We look forward to an opportunity to answer questions and to create a joint plan consistent with the President's position on employment for people with criminal records.

These initiatives and the President's "My Brothers' Keeper" project are directly linked as boys and men of color comprise a significant portion of U. S. citizens with criminal records. The needs of this overlapping population are expectedly similar. The barriers to employment are also basically the same. To maximize the outcomes for people with criminal records and participants in the My Brothers' Keepers program both design and implementation teams should work closely.

Thank you for the opportunity to share our thoughts and we look forward to continuing this conversation.

National Reentry and Employment Committee

Organizational Descriptions