

THE FEDERAL INTERAGENCY REENTRY COUNCIL

A Record of Progress and a Roadmap for the Future

Employment



AUGUST 2016



To view the full report, visit:

<http://csgjusticecenter.org/wp-content/uploads/2016/08/FIRC-Reentry-Report.pdf>

Improving access to meaningful employment opportunities

The Challenge. More than 70 million people – roughly one in three Americans of working age – have a criminal record, mostly for relatively minor non-violent offenses, and sometimes from decades in the past. While research is clear that stable employment is an important predictor of successful reentry,⁵⁸ individuals with criminal records face high obstacles obtaining meaningful employment, even if they have paid their debt to society, are unlikely to reoffend, and are qualified for the job for which they are applying. The impact of having a criminal record is exacerbated among African Americans, who are more likely than whites both to have a criminal record and also to experience racial discrimination in the labor market without a criminal record.⁵⁹

Many employers are reluctant to hire applicants with criminal records,⁶⁰ even though emerging research suggests that employees with criminal records may perform as well on the job as those without.⁶¹ A new study of military data showed that people with criminal records were no more likely to be discharged for negative reasons and, in fact, were more likely to be promoted – and to higher ranks – than their counterparts without records.⁶² Another study in Durham, North Carolina showed that “ban the box” policies led to substantial increases in employment of people with records, without compromising public safety.⁶³

While the majority of employers conduct criminal background checks when seeking to fill job vacancies,⁶⁴ questions about criminal records are not always relevant to a particular job



Labor Secretary Tom Perez facilitates a business reentry roundtable at the White House, June 30, 2014. Also pictured: Pennsylvania Department of Corrections Secretary John Wetzel. (Photo: Council of State Governments Justice Center)

Demographic Shifts

Over the next few decades the baby boomer generation will age out of the work force, while at the same time the majority of the population will become people of color.⁶⁶ If African Americans and Latinos, who comprise almost sixty percent of the prison population,⁶⁷ are denied the ability to get jobs or education to build their human capital, then there will be fewer qualified people to replace a dwindling workforce. A less qualified workforce means lower economic activity and production, which impacts the broader society.

opening. Human resources staff also often lack training on how to appropriately consider a person's criminal history as part of an application. Moreover, employers may not have access to complete and accurate criminal background information. According to a recent GAO report, only 20 states reported that more than 75 percent of their arrest records had final dispositions.⁶⁵ Because inaccurate and incomplete records are so common, processes to challenge the accuracy of these records are essential to fair hiring practices.

EEOC Guidance

In 2012, the EEOC issued its Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 in a 4-1 bi-partisan vote. The Guidance seeks to ensure that criminal background reports obtained by employers about job applicants and employees are not used in a discriminatory way. There are two ways in which an employer's use of criminal history information may be discriminatory:

- » Disparate treatment discrimination – Policies that treat job applicants or employees with the same criminal records differently because of their race, national origin, or another protected characteristic; and
- » Disparate impact discrimination – Criminal record exclusions that operate to disproportionately exclude people of a particular race or national origin. In such cases, the employer has to show that the exclusions are “job related and consistent with business necessity” under Title VII to avoid liability.

As a best practice, and consistent with applicable laws, the guidance recommends that employers do not ask about criminal history on job applications. The guidance also recommends that, if and when employers make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity. An exclusion based on an arrest, in itself, is not job related and consistent with business necessity.

“The ability of African-Americans and Hispanics to gain employment after prison is one of the paramount civil justice issues of our time.”

**Former EEOC Commissioner Stuart Ishimaru
statement on the day of their historic vote,**

April 25, 2012

The Path Forward. The Reentry Council will continue working to expand employment opportunities for qualified job seekers with prior justice involvement. Council agencies will continue to enforce existing laws that protect job seekers. The Reentry Council will also continue to support grants that provide job training and placement; to work with the business community to expand employment opportunities; and to launch new efforts to improve the accuracy of criminal records and their appropriate use for employment purposes. Reducing barriers to reentry has been – and will continue to be – a foundational focus of the Reentry Council.

Reentry Council Accomplishments:

» **Issued anti-discrimination guidance, directives, and advisories.** In 2012, the EEOC issued [guidance](#) on the appropriate use of arrest and conviction records in employment decisions under [Title VII of the Civil Rights Act of 1964](#). Building on that momentum, DOL issued a Training and Employment [Guidance Letter](#) to state and local public workforce administrators. This guidance provides explicit steps that the public workforce system – including [One Stop Career Centers](#) – should take to ensure compliance with federal EEO law and other nondiscrimination laws, to educate their employer customers, and to promote employment opportunities for people with criminal records. DOL also issued a [directive](#) for federal contractors about their obligations regarding the use of criminal records as an employment screen. Based on these principles, the Reentry Council published Myth Busters and other materials describing ways employers should consider a criminal record in their hiring decisions, and outlining protections for job seekers undergoing background checks.

» **Pursued enforcement actions that help protect job seekers.** As necessary, EEOC, DOL, FTC, and the Consumer Financial Protection Bureau (CFPB) have each brought enforcement actions against companies that allegedly discriminate against job-seekers and employees with criminal records, as well as those companies that improperly disseminate criminal records. For example:

“This administration has made a commitment to getting more formerly incarcerated youth and adults successfully transitioned back into their lives and communities...the Labor Department has been at the forefront of this work by [funding a number of innovative programs](#) that are preparing both youth and adults for successful careers upon release...We don't kick people to the curb when they've made a mistake or fallen on hard times. We help them back on their feet and help them find ladders of opportunity, and we do so out of compassion and as a matter of conscience. Those are the values that animate our reentry programs, which we're confident will continue to change lives in powerful ways.”

**Labor Secretary Tom Perez,
[Blog, June 25, 2015](#)**

- In fall 2015, EEOC resolved a race discrimination case against an employer involving criminal background screens. The employer has since changed its guidelines, and will pay \$1.6 million to 56 aggrieved individuals and offer employment opportunities to the discharged employees and up to 90 black applicants denied hire.
- DOL settled a race discrimination case challenging a federal contractor's hiring process, which asked applicants for entry-level factory jobs whether they had been convicted for theft, illegal drug violations, or related felonies in the last seven years. This, coupled with other discriminatory screening questions, kept 5,557 African-Americans from advancing in the hiring process. The [settlement](#) required the contractor to pay \$1 million in back wages and interest to the affected job-seekers, make job offers to some rejected applicants, and to completely revise its application process to remove all vestiges of discrimination.
- FTC announced a \$2.6 million civil penalty and permanent injunction in a settlement agreement with a national employment background screening agency for allegedly violating the Fair Credit Reporting Act, by, among other things, failing to ensure accuracy and properly investigate consumer disputes.
- In October 2015, CFPB took action against two of the largest employment background screening companies, finding that they violated the Fair Credit Reporting Act by, among other things, failing to employ reasonable procedures to assure the maximum possible accuracy of the information contained in reports provided to consumers' potential employers. CFPB ordered the companies to correct their practices, provide \$10.5 million in relief to harmed consumers, and pay a \$2.5 million civil penalty.

» **Expanded grants, training, outreach and stakeholder engagement to improve employment and recidivism outcomes.** DOJ's SCA and DOL's Reentry Employment Opportunities (REO) programs provide grantees nationwide the resources and technical assistance (TA) they need both before release and upon return to the community. For example:

- DOL's Linking to Employment Activities Pre-Release (LEAP) grants put One Stop Career Centers – also known as American Job Centers – in correctional facilities so that individuals can get comprehensive services before release and ongoing support as they regain their place in the community when their incarceration ends. DOL also recently awarded over \$21 million in Training to Work Grants, which will allow returning citizens in a state or local work release program to participate in a career pathway program that maps out a sequence of education, training and workforce skills training that will produce skilled workers who meet the needs of local employers.

- With support from BJA, the Center for State Government (CSG) Justice Center developed the *Integrated Reentry and Employment Strategies* (IRES) white paper, which focused on strategies to design and implement employment-focused reentry programs. The framework in the IRES paper is being tested in two national demonstration sites to help workforce development and corrections systems triage their scarce resources and tailor service delivery in ways that reduce re-incarceration and improve employability for their shared population.⁶⁸
- FTC and EEOC also continue to educate businesses and consumers and workers on the proper use of background checks to make employment and other decisions, including housing. EEOC alone participated in more than 200 trainings in FY2015.
- SBA entered into a public/private partnership with the W.K. Kellogg Foundation to pilot a three-year initiative to provide formerly incarcerated parents with intensive entrepreneurship education and access to microloans for starting or growing a business. The goal of this pilot is to help individuals achieve economic stability, gain access to opportunity and become more employable or successful at business ownership. The three-year initiative will operate in four cities: Detroit, St. Louis, Louisville, and Chicago. To understand and strengthen the impact of this pilot program, the Kellogg Foundation and SBA will conduct a rigorous evaluation of the initiative and the outcomes of the participants.

» **Highlighted incentives to hiring and other public education material.** Reentry Council agencies have published five Reentry Myth Busters that tackle employer obligations and incentives. For example, the DOL offers [federal bonding protection](#) and promotes the [Work Opportunity Tax Credit \(WOTC\)](#) for employers who hire people with a criminal record. EEOC also developed a new [Fact Sheet](#) for its Youth at Work outreach program that provides young workers with information about their employment rights regarding criminal records.

“When we allow a person’s criminal history to permanently derail his or her ability to achieve the American dream, our economy, our public safety, and our communities suffer as a result.”

**EEOC Chair Jenny Yang,
National Reentry Week
2016 Statement**

» **Engaged private sector companies to consider the benefits of expanding their talent pool.**

- The White House launched a [Fair Chance Business Pledge](#) along with 19 founding pledge takers, including American Airlines, Coca-Cola, Google, The Hershey Company, Koch Industries, PepsiCo, Prudential, Starbucks, and Xerox. These businesses made substantial commitments to provide individuals with criminal records, including those formerly incarcerated, a fair chance to participate in the American economy. Today, over 100 businesses have taken the pledge.

- The CSG Justice Center, with DOJ support, has provided technical assistance for planning [employer engagement events](#) around the country modeled after the Business [Roundtable](#) hosted at the White House and DOL in June 2014.
- In their Beyond the Box Guide and [Letter from the Secretary](#), ED called for institutions of higher education, both public and private, to Ban the Box in their hiring and employment practices.

» **Enacted policy changes that reduce barriers to employment and business development.**

- OPM published a [proposed rule](#) to delay inquiries into criminal history until after a conditional offer. While most agencies had already taken this step, this action will ensure that applicants from all segments of society, including those with prior criminal histories, receive a fair opportunity to compete for federal employment.
- OPM also developed a [best practices guide](#) regarding contractor applicants who support federal agencies.
- SBA published a final [rule](#) for the Microloan Program that provides more flexibility to SBA non-profit intermediaries and expands the pool of microloan recipients. The change will make small businesses that have an owner who is currently on probation or parole eligible for microloan programs, aiding individuals who face significant barriers to traditional employment reenter the workforce.
- HHS launched a project to examine the barriers faced by individuals with a criminal record who are trying to enter the healthcare workforce, and to identify opportunities to increase access to such employment.

» **Launched new efforts to document expungement and record-clearing policies.**

To identify the variations in state laws governing the sealing and expungement of conviction and non-conviction information, the CSG Justice Center, with DOJ support, developed a 50-state inventory of record clearance policies, including the information eligible for clearance, waiting period, procedure, effect, and fees. States interested in exploring record clearance reform have been given an overview of their state's policies, access to state repository information, state fair credit reporting act laws that govern commercially prepared background checks, and fair hiring (ban the box) policies at the state and local level. This database will inform the National Clean Slate Clearinghouse, a joint effort by DOJ and DOL to provide technical assistance for record-clearing, expungement, and other means of mitigating criminal records.

“In the year 2000, Katherine Graham was headed to college on a basketball scholarship when she got mixed up with the wrong guy. He persuaded her to transport some drugs for him, and she wound up with a 10-year prison sentence. She was 21. In prison, she became depressed, lost her faith and almost lost her life. But after hitting rock-bottom, she became determined to turn her life around. One day, in the prison library, she came across Black Enterprise Magazine. She saw a woman in a hard hat and said, “That’s me.” Katherine went to work as crew chief on a construction crew in prison. She became a leader of women. Then she was released. It wasn’t easy. When she applied for jobs, and checked the box on criminal history, no one would call her back. So she tried not checking the box. She was hired, her new employer loved her, but then two weeks later, the results of her background check came in and she was unemployed again.

Finally, Katherine went to work for Habitat for Humanity to hone her construction skills. From there, with \$1,000 in her pocket, she bought a house in foreclosure for practically nothing – and used her construction skills to flip it for a healthy profit. That’s when she visited SBA’s Norfolk office. They referred her to our counselors at SCORE. SCORE helped her create a business plan and a marketing strategy for a home improvement company. That was back in 2006. A few years later, she returned to SBA, and we helped her get certified as a HUB Zone business for preferential access to federal contracts. Today, her company works on a \$10 million project for HUD. They also manage maintenance contracts for McDonald’s, Dollar General and 7/11 – and they do lead paint inspections in more than 20 states. Katherine also runs a nonprofit called “Do It, Girl” that gives at-risk young women their first exposure to the world of work. SBA is proud to have played a role in Katherine’s success. Her story shows the promise of entrepreneurship for returning citizens.”

**SBA Administrator Maria Contreras-Sweet,
Speech in Washington, DC December 18, 2015**



Small Business Administration Administrator Maria Contreras-Sweet speaks at the Second Chance Act Conference, December 18, 2015. (Photo: Council of State Governments Justice Center)

On his 21st birthday, **James Mays** was sentenced to 10 and a half years in federal prison for armed robbery. “I vowed that when I got out, I’d be better – but more importantly, I’d do better,” James recalls. “I made every second of prison count.” While incarcerated, James earned a degree in general studies and began working for the Federal Prison Industries (FPI) program. Through FPI, James learned to manufacture tactical vests used to protect soldiers in combat for Point Blank Enterprises, a leading body armor distributor. When representatives from Point Blank toured the factory, they were so impressed by James that they encouraged him to apply to their company upon release. Five days after James was released from a halfway house, Point Blank offered him a job. James worked hard at Point Blank, and was promoted several times in the subsequent years. In recognition of his achievements, he was named Employee of the Year in 2012. Mr. Mays is featured in FPI’s [Second Chances video](#), which chronicles his story.



James Mays, with Employee of the Year award, 2012.
(Photo: Point Blank Enterprises)

» **Empowered justice-involved individuals to take control over their financial lives.**

The CFPB is creating a *Focus on Reentry* initiative to supplement its [Your Money, Your Goals](#) financial empowerment toolkit and training. The *Your Money, Your Goals* program has trained more than 8,000 social workers and legal aid staff on money management and financial consumer protection topics, such as consumers’ rights under debt collection law. *Focus on Reentry* provides information and tools addressing challenges such as how to access and dispute errors in background screening reports. The goal is to use this quick-to-scale effort to train frontline staff to help their justice-involved clients address financial issues that may affect their ability to secure jobs, housing, and other basic needs. The FTC has launched a [Reentry and Corrections Education](#) webpage for justice-involved individuals and staff working with this community that provides resources on financial literacy, scams, identity theft, and background checks.

Upcoming Actions:

» **Training people exiting prison and jail for employment.** To ensure federal grantees are utilizing evidence-based practices in employment programs, the CSG Justice Center is providing

cross-training to DOJ's SCA grantees and DOL's REO TA providers on core components of effective programming and service delivery principles. Over the next year, the IRES pilot sites will institute coordination among corrections and workforce agencies on a scale rarely seen in the field. Additionally, WIOA will support training opportunities for people with criminal records in partnership with local and state workforce investment boards. WIOA also offers opportunities to leverage coordination with workforce development systems and vocational rehabilitation to facilitate increased access to employment for re-entering individuals with disabilities.

» **Addressing the employment practices of private employers.** Reentry Council agencies are exploring a public/private partnership to provide business-to-business technical assistance on best and promising practices related to hiring justice-involved individuals. The TA would focus on helping companies better understand: (1) when criminal background checks should be conducted in the hiring process; (2) what types of criminal records should be considered for particular positions; and (3) how those records should be appropriately evaluated when filling job vacancies. BJA will also support the CSG Justice Center to hold additional local public/private dialogues to engage employers about hiring people with criminal records. Additionally, the CSG Justice Center will partner with the Association of Chamber of Commerce Executives and local Chambers to develop resources for business leaders across the country on the importance of considering people with criminal records in hiring decisions. DOL's Office of Federal Compliance Contract Programs will also conduct regional trainings for federal contractors on its Directive.

» **Training and educating employers, American Job Centers, and other key stakeholders.** DOL will host an online training session in fall 2016 (via webinar) to ensure that the workforce system understands the process and legal implications of the 2012 guidance regarding the use of criminal records as an employment screen. EEOC will continue its trainings, engage stakeholders regarding promising outreach strategies, and develop a toolkit for its field staff.

» **Making the federal government a model employer.** Upon issuance of the final "Ban the Box" rule, OPM will provide webinars or information sessions with agencies and stakeholders. The agency will also provide virtual workshops to reentry stakeholders so they can better understand

"Now, a lot of time, that record disqualifies you from being a full participant in our society – even if you've already paid your debt to society. It means millions of Americans have difficulty even getting their foot in the door to try to get a job much less actually hang on to that job. That's bad for not only those individuals, it's bad for our economy. It's bad for the communities that desperately need more role models who are gainfully employed. So we've got to make sure Americans who've paid their debt to society can earn their second chance..."

**President Obama,
Speech in Newark, NJ,
November 2, 2015**

the opportunities available in the federal government. OPM will provide training webinars to federal contractors on its 2013 Fitness Adjudication [Best Practices Guide](#).

- » **Launching new efforts to address record clearing and related legal aid.** DOL and DOJ recently announced the National Clean Slate Clearinghouse, which will provide technical assistance to local legal aid programs, public defender offices, and reentry service providers to build capacity for legal services needed to help with record-cleaning, expungement, other means

Community Development Financial Institutions (CDFIs) Assist Reentry Efforts

Through the Community Development Financial Institutions (CDFI) Fund, the U.S. Treasury is working to expand economic opportunity for underserved people, including justice-involved individuals. CDFIs are mission-driven organizations that offer affordable financial products and services that meet the unique needs of economically underserved communities. The CDFI Program invests in and builds the capacity of CDFIs, empowering them to grow, achieve organizational sustainability, and contribute to the revitalization of their communities. CDFI Financial Assistance is widely used by CDFIs to support reentry-focused initiatives in underserved areas across the country, totaling millions of dollars in investments.

Mercy Corps Northwest, an Oregon-based CDFI, has leveraged CDFI Financial Assistance to make a tremendous impact on outcomes for currently and formerly incarcerated individuals. Mercy Corps works within two correctional facilities in the Pacific Northwest to provide business education classes for incarcerated women, teaching them important skills for reentering the community and the workforce. Mercy also supports an organic garden at a women's state prison, promoting healthy eating, education and environmental action among incarcerated women.

Through their Reentry Transition Center, Mercy Corps works with formerly incarcerated people to address their immediate and long-term needs, connect them with community-based services, and help them obtain employment, housing, and healthcare. Mercy Corps is also piloting a program to reduce barriers to housing. The initiative will provide qualified candidates with a "Certificate of Good Standing," which helps landlords and property managers identify which people with criminal histories have documented indicators of successful rehabilitation. In 2015 alone, Mercy Corps helped 345 formerly incarcerated individuals secure employment, served 1,025 individuals through their Reentry Transition Center, and saved more than \$8 million in public safety expenditures.



Reentry and Employment Champions of Change June 30, 2014



Housing and Urban Development's Tonya Robinson (then Special Assistant to the President for Justice and Regulatory Policy) hosts a panel at the Reentry and Employment Champions of Change event, June 30, 2014. Also pictured: Tyrone Mullins, Sam White, Daryl Atkinson, and Tracey Syphax, who were all recognized at the event. (Photo: Council of State Governments Justice Center)

of mitigating criminal records, and related civil legal services. HUD and DOJ will also support the 18 jurisdictions receiving Juvenile Re-entry Assistance Program (JRAP) aid, a legal aid program for young public housing residents.⁶⁹

- » **Addressing widespread inaccuracies in criminal records.** The Presidential Memorandum directed the Reentry Council to focus on improving the accuracy of criminal records. This entails systems at the federal, state, and local levels, and also from multiple sectors, including government, criminal background check companies, and employers. Reentry Council agencies will engage consumer reporting agencies to develop industry-wide best practices on the types of records that should be searched and ensure that applicants have adequate time and notice to challenge inaccurate records. The Council will explore additional proposals as well.