

Executive Summary

Reaching a Higher Ground:
Increasing Employment Opportunities
for People with Prior Convictions

November, 2010



Advisory Board Members

- ***Deborah Alvarez-Rodriguez***, President and CEO, Goodwill Industries of San Francisco, San Mateo, and Marin Counties
- ***Father Greg Boyle***, Executive Director, Homeboy Industries
- ***Bill Brown***, Sheriff, Santa Barbara County
- ***Allen Davenport***, Former Government Relations Director, Service Employees International Union (SEIU)
- ***Ronald Davis***, Chief of Police, East Palo Alto Police Department
- ***Bonnie Dumanis***, District Attorney, San Diego County
- ***Maurice Emsellem***, Policy Co-Director, National Employment Law Project (NELP)
- ***Kevin Grant***, Violence Prevention Network Coordinator, Oakland Department of Human Services
- ***Mike Jimenez***, President, California Correctional Peace Officers Association (CCPOA)
- ***Nancy Nittler***, Past President, County Personnel Administrators' Association of California (CPAAC) and Personnel Director, Placer County
- ***Anita Paredes***, Executive Director, Community Connection Resource Center
- ***Colleene Preciado***, Chief Probation Officer (retired), Orange County
- ***Steven Raphael***, Professor, UC Berkeley, Goldman School of Public Policy
- ***John Shegerian***, Chief Executive Officer, Electronic Recyclers, Inc.
- ***Richard Valle***, Chief Executive Officer, Tri-CED Community Recycling

This report was authored by Sarah Lawrence, Director of Programs, Berkeley Center for Criminal Justice, with assistance from BCCJ staff Andrea Russi, Executive Director; Jennifer Lynn-Whaley, Senior Research Associate; Gregory Shapiro, Research Associate; and Caroline Cheng, Administrative Coordinator.

About the Berkeley Center for Criminal Justice

The Berkeley Center for Criminal Justice (BCCJ) is a research and policy institute that seeks to connect scholarship to practice to improve the criminal justice system. BCCJ works to enhance public safety and foster a fair and accountable justice system through research, analysis, and collaboration.

About the Project

The Berkeley Center for Criminal Justice at the University of California, Berkeley School of Law received a grant from The Rosenberg Foundation to explore ways to increase employment opportunities for people with prior convictions in California. This work is based on guidance from an Advisory Board; existing research, data, and publications; and site visits and interviews with stakeholders and experts from across the state.

The Advisory Board consists of 15 highly accomplished leaders and experts from across the state who represent diverse perspectives including employers, people with prior convictions, law enforcement, service providers, and advocates. The Board set the project's priorities; provided knowledge and insight; guided the overall direction of the project; and developed a set of Guiding Principles and a set of Recommendations that are presented in this document.

This report is available on the BCCJ website: www.bccj.berkeley.edu. Three companion documents are also available: the full report, a policy brief with a focus on research and recommendations for employers, and a policy brief with a focus on research and recommendations for corrections officials.

Introduction

Stable employment makes for a higher quality of life for almost all working adults. With employment typically comes an increased ability to take care of oneself and one's family, the power to purchase goods and services, the opportunity to develop personal relationships, and the fulfillment of personal growth, among other benefits.

The reach of the criminal justice system has grown in recent decades, and the consequences of involvement with the criminal justice system are more serious than ever. An historic number of citizens have been convicted of a felony, and hundreds of thousands of people have served time in a California prison. People with felony convictions are impacted by laws, policies, and practices related to almost all facets of life including housing, voting, education, and employment. This results in a situation in which one of the most important aspects of life—employment—is one of the biggest challenges for a remarkable number of citizens.

Between 1980 and 2009, California's prison population increased by 583%, from approximately 25,000 to 168,000. The recidivism rates of people released from incarceration are troubling, and California's are above the national average. Nationally, 40% of parolees are returned to prison within three years of release compared to 66% in California (Grattet et al. 2009). High recidivism rates come with significant financial costs to the state. The California Department of Corrections and Rehabilitation (CDCR) budget was \$9.8 billion in the 2009-2010 fiscal year, and the average annual cost to house a prisoner was approximately \$49,000 (CDCR 2009). The prevalence

of background checks has also increased. The number of Californians with a criminal record has continued to grow; there are nearly eight million individuals in the state's criminal history file (Bureau of Justice Statistics 2008).

Although the challenges facing individuals with prior convictions are daunting, and the number of individuals impacted is enormous, there is reason for hope. There are opportunities for change in the current social and political environment.

Public Awareness. High-profile debates between the legislature and the governor on the early release of CDCR prisoners has greatly increased the public's knowledge about the size and nature of problems in the state correctional system. On the local level, many counties are struggling with overcrowded jails. The public seems to be increasingly supportive of a rehabilitative function within the correctional system (Krisberg and Marchionna 2006).

Attention of Key Stakeholders. During the most recent California legislative sessions, many bills were introduced related to prisons, parole, reentry, criminal history records, correctional programming, and sentencing, among others. At the federal level, the Second Chance Act authorizes grant money for reentry programs and can be used for employment assistance programs, mentoring programs, and other programs intended to reduce recidivism. In addition, numerous expert panels, commissions, advocacy groups, and researchers have published reports that address employment challenges for people with prior convictions.

Policy Environment. In addition to efforts at the state and federal levels, municipalities in California and across the country are making major changes to local policies and practices. These include systematic reviews of hiring policies, moving or removing questions about criminal histories from employment applications, and changes in contractor bidding processes.

Current Economic Climate. The condition of the state's economy may both help and hinder employment opportunities for people with prior convictions. California's current fiscal crisis necessitates significant—indeed drastic—cuts in state spending. At the same time, the struggling economy creates even greater challenges for people with prior convictions to get and keep a job as employers are less likely to hire people with criminal records in tight labor markets.

Pressure from the Courts. Since the early 1990s, California has been involved in lawsuits related to inadequate mental health services, substandard

medical care, and overcrowding in CDCR facilities. In August of 2009, a three-judge panel convened under the federal Prison Litigation Reform Act issued an order which could require the state to reduce its prison population by as much as 40,000 over the next two years.

Why should we care about employment for people who have been convicted? Given the many issues of importance to society, why does this issue warrant attention? The short answer is that the benefits of increased employment go far beyond people with prior convictions and their immediate families. Communities are stronger when the individuals that live there are gainfully employed and engaged. Taxpayers benefit as reduced recidivism means lower costs to police, courts, jails, probation, prison, and parole. Lower recidivism means fewer victims. For employers, more people competing for jobs ultimately means better quality employees. Lastly, increasing employment opportunities for people with prior convictions is not just the “right” thing to do, it is the “smart” thing to do.

Guiding Principles for Increasing Employment Opportunities for People with Prior Convictions

Eight Guiding Principles provided a broad framework for thinking about employment opportunities for people with prior convictions. They were drafted, reviewed, and refined through input and feedback from each of the 15 Board members. Covering a wide range of topics, the principles assert fundamental truths about ways to improve the employment prospects of people with prior convictions as well as ways to benefit our communities, increase public safety, and achieve cost savings at the local and state levels.

Healthy Communities: State and local governments derive significant benefits by reducing barriers to employment for people with prior convictions, thereby building strong, safe, and healthy communities.

Smart on Crime: Employing people recently released from incarceration in quality jobs is a proven strategy to reduce recidivism, achieve cost savings, reduce victimization, and promote public safety.

Fiscal Responsibility: Investing in rehabilitative programs and providing tools to people with prior convictions to increase their employability is fiscally responsible in this time of limited resources.

Fair and Accurate Background Checks: Criminal background checks for employment should be accurate and implemented to comply with legal

protections in order to ensure that all workers are treated fairly and to improve employers' hiring processes.

Discrimination: Employment discrimination based on prior convictions has a negative impact on public safety and a disproportionate impact on people of color and low-income communities. Strong public policies are critical to helping overcome employment discrimination based on prior convictions. At the same time, precluding people with certain types of convictions from working in certain types of jobs may be appropriate to ensure public safety.

Justice Reinvestment: Preparation for a return to the community and program participation should start at the earliest opportunity in the criminal justice system and should be a key focus of the system. It is imperative to invest in the future by increasing sustainable employment and education prospects of people with prior convictions.

Rehabilitation: Public policy should promote rehabilitation and support families and individual growth by creating opportunities that reinforce the critical value of work in our society.

Program Investment: Resources should be directed at sustainable programs that are based on best practices and core principles, or are considered innovative and promising.

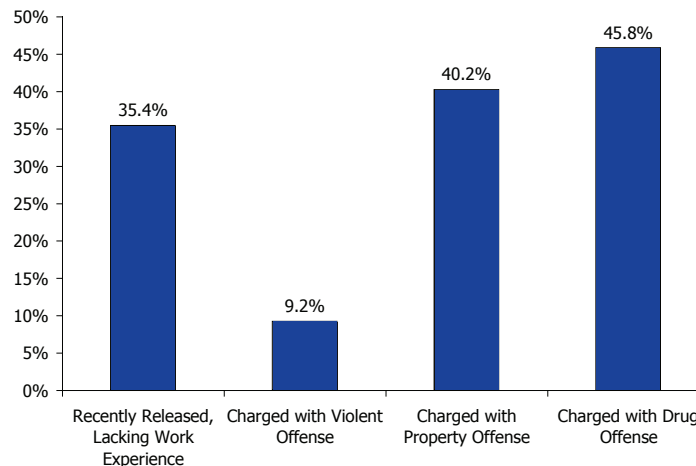
Employers' Perspectives

Research reveals that employers are very reluctant to hire people with prior convictions, even more so relative to other groups of difficult-to-employ populations such as welfare recipients and the long-term unemployed (Holzer et al. 2003). Employer willingness to hire varies depending on job-related factors (e.g., type of industry and size of business), applicant characteristics (e.g., the type of offense and prior work experience), and legal requirements to check backgrounds. However, industry and individual characteristics aside, there is also ample evidence that employers' reluctance in large part stems from a negative stigma associated with people with prior convictions.

The specific position and type of industry can influence an employer's decision to hire or not to hire a person with a prior conviction (Stoll and Bushway 2008). Many employers in some industries (such as social services) are legally prohibited from hiring people with prior convictions. Employers are less likely to consider hiring people with prior convictions for jobs in which there is a significant amount of interaction with customers. Conversely, they are more likely to consider hiring people with prior convictions for jobs in which employees have limited interaction with

customers, such as construction, manufacturing, and transportation (Holzer et al. 2003; Fahey et al. 2006). Other company characteristics that impact hiring decisions on the percent of unskilled jobs (in one study, at least 20%) and the total number of employees hired in the previous year (Holzer et al. 2003). External factors such as the economic climate can influence employer decisions; there is evidence of a strong correlation between the degree to which employers discriminate against people with prior convictions and the tightness of the labor market (Freeman and Rodgers 1999; Pager 2003).

Figure 1. Percentage of Employers Willing to Hire Ex-Offenders



Source: Holzer et al. 2003.

An employer's willingness to hire an applicant depends on a number of individual characteristics. The type of offense, time since release from prison, and prior work experience have been shown to play a role in hiring decisions (see Figure 1) (EGRS 2002; Holzer et al. 2003). Evidence shows that employers almost universally seek out characteristics that indicate job-readiness as a "precondition to

employment," even when the job requires little formal training (Holzer et al. 2003). Furthermore, aspects of job-readiness involve less technical skills and more "soft skills" such as the expectation that the employee

will arrive to work everyday on time, be a hard worker, take responsibility, have strong communication and interpersonal skills, have the capacity and desire to learn, and be generally trustworthy (Holzer 1996; Fahey et al. 2006).

Employers who avoid or are unwilling to hire people with prior convictions may use race as a proxy for contact with the criminal justice system—discriminating against people of color—as non-white groups are disproportionately represented in the criminal justice system (Weich and Angulo 2002). It is well documented in the research literature that race and prior convictions appear to work together to negatively impact employment opportunities—especially for African American men (Kirschenman and Neckerman 1991; Moss and Tilly 2001; Pager 2003).

Recommendations

Skill Development

It is well documented that the majority of incarcerated individuals have fewer marketable skills and less education than the general population (Harlow 2003; Crayton and Neusteter 2008; Greenberg et al. 2007). A growing body of research supports the effectiveness of certain types of corrections-based and community-based programs such as adult basic education, secondary education, and vocational training (Gaes 2008; Drake et al. 2009). A general consensus is emerging on the key principles of effective programs which include skill building and cognitive development at an individual level, “multi-modal” approaches that address multiple needs of individuals and do not focus on only one issue, and program integrity—meaning that programs are implemented as designed and led by properly trained staff (MacKenzie 2008).

Recommendation 1: Remove barriers to implementing programs in correctional settings and allow more individuals to participate.

Recommendation 2: Administer validated needs assessment tools and skills assessment tools to determine the most appropriate educational programs, vocational training, and job placement.

Recommendation 3: Ensure that all individuals leaving incarceration have a commonly accepted form of personal identification.

Recommendation 4: Ensure that programs include a transitional element from a correctional setting to a community setting and include both skill development through classroom learning and skill application through actual work experience.

Recommendation 5: Require state-funded education, vocational training, and job placement programs that work with people with prior convictions to collect data and monitor program performance.

Recommendation 6: Ensure that individuals’ professional development and advancement are considered as part of education, training, and placement.

Job Creation

Another means to increasing employment opportunities is through the creation of jobs. A range of external factors play a role in the extent to which job opportunities for people with prior convictions exist. What job markets or industries are in need of workers? What industries are experiencing significant growth? What networks are in place to connect people with prior convictions to job openings and connect appropriate skills with appropriate jobs? What local networks can be utilized to facilitate job creation at a community level?

Recommendation 7: Assess local labor needs as well as growth market needs to ensure that educational programs and vocational training are responsive to local needs and growth industries.

Recommendation 8: Support local job creation strategies that utilize the power of government hiring and leverage government funding to provide equal employment opportunities for people with prior convictions.

Recommendation 9: Engage private employers from both local markets and growing markets as strategic partners in shaping programs and training on an ongoing basis.

Recommendation 10: Institute reentry roundtables or councils that represent a diverse group of stakeholders to assess how to increase employment opportunities for people with prior convictions at a local level and develop strategies to make the most of those opportunities.

Fair and Accurate Background Checks

Restrictions on the types of jobs that people with prior convictions can hold have increased; the percentage of employers who check applicants' backgrounds has increased; the number of non-law enforcement entities that has access to criminal records has increased; and concerns about the accuracy of information have increased. There is no

doubt that these legal restrictions and increased use of background checks pose significant challenges for people with prior convictions who are looking for employment.

Recommendation 11: Educate employers about laws regulating the hiring of people with prior convictions, understanding information provided in criminal records, and contracting with reputable background screening firms.

Recommendation 12: Strengthen and expand oversight and quality control mechanisms for background screening firms.

Recommendation 13: Develop a quality control system that makes public the accuracy of information provided by private screening firms in terms of their legal obligations and compliance with federal and state consumer protection laws.

Recommendation 14: Strengthen and enforce laws and regulations that create clear standards regulating the hiring of people with prior convictions and background screening and encourage employers to adopt fair hiring practices that reduce discrimination against people with conviction histories.

Recommendation 15: Engage district attorneys' offices in prosecuting employers and private screening firms that violate consumer protection laws.

Emergent Themes and Conclusion

Several notable themes emerge from the range of issues covered in this Executive Summary and the full report.

Relationships and Networks. Across almost all topics addressed by this project, it was found that diverse groups with a variety of perspectives need to collaborate in a meaningful way, develop relationships, and establish trust.

Localization and Individualization. Tailoring an approach to best fit the needs and resources of people, programs, and communities leads to greater success. Training programs (both in and out of correctional settings) and community services should reflect the local labor market. Individuals should be well matched with training and services, and those should be matched to real job opportunities. Skill assessment tools and career plans can help increase the chances for a good match between the employee and the job.

Awareness and Knowledge of Relevant Laws, Regulations, and Rights. An increased understanding of the issues covered in this report can lead to more employment opportunities. In addition, knowledge about laws and regulations related to background checks and private screening firms on the part of employers is also a priority.

Increasing employment opportunities for people with prior convictions can be accomplished in many ways. Some of the issues discussed here require state-level legislative action, others require changes at the county level, and still others involve individual employers. This document can be useful to a wide range of people and organizations—state and local, public and private—to pursue their specific interests.

Currently there are opportunities for change as a result of increased public awareness, the attention of key stakeholders, the current economic climate, and pressure from the courts. However, many challenges remain. Political challenges must be addressed to realize some of the Recommendations presented in this report. The current economic climate makes this work more difficult, but also more important.

The Guiding Principles can inform other efforts. The basic concepts of safety, community, equity, and responsibility should guide endeavors to increase employment opportunities for people with prior convictions. Reform efforts must allow for and respond to failures, highlight and build on successes, create momentum, and demonstrate the value to society of getting back to work.

References

- Bureau of Justice Statistics, "Survey of State Criminal History Information Systems, 2006," (Washington, DC: US Department of Justice, Office of Justice Programs, October 2008).
- California Department of Corrections and Rehabilitation, "Corrections Moving Forward," (Sacramento, CA: California Department of Corrections and Rehabilitation, 2009).
- Crayton, Anna and Suzanne Rebecca Neustete, "The Current State of Correctional Education," (paper Presented at the Reentry Roundtable on Education, John Jay College of Criminal Justice, New York, March 31, 2008).
- Drake, Elizabeth, Steve Aos and Marna G. Miller, "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State," *Victims and Offenders*, 4: 170-196 (2009).
- Employers Group Research Services, "Employment of Ex-Offenders: A Survey of Employers' Policies and Practices," (SFWORKS 2002).
- Fahey, Jennifer, Cheryl Roberts, and Len Engel, "Employment of Ex-Offenders: Employer Perspectives," (Crime and Justice Institute 2006).
- Freeman, Richard, and William M. Rodgers III, "Area Economic Conditions and the Labor Market Outcomes of Young Men in the 1990s Expansion," NBER Working Paper No. 7073, (Cambridge, MA: National Bureau of Economic Research, 1999).
- Gaes, Gerald G., "The Impact of Prison Education Programs on Post-Release Outcomes," Reentry Roundtable on Education (2008).
- Grattet, Ryken, Joan Petersilia, Jeffrey Lin, and Marlene Beckman, "Parole Violations and Revocations in California: Analysis and Suggestions for Action," *Federal Probation*, Vol. 73, No.1 (2009).
- Greenberg, Elizabeth, Eric Dunleavy, and Mark Kutner, "Literacy Behind Bars: Results from the 2003 National Assessment of Adult Literacy Prison Survey," (Washington, DC: National Center for Education Statistics, 2007).
- Harlow, Caroline W., "Education and Correctional Populations," (Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2003).
- Holzer, Harry, "What Employers Want: Job Prospects for Less-Educated Workers," (New York: Russell Sage Foundation, 1996).
- Holzer, Harry, Steven Raphael, and Michael A. Stoll, "Employer Demand for Ex-Offenders: Recent Evidence from Los Angeles," (Washington, DC: The Urban Institute, 2003).
- Holzer, Harry, Steven Raphael, and Michael A. Stoll, "Employment Barriers Facing Ex-Offenders," (Washington, DC: The Urban Institute, 2003).
- Kirschenman, Joleen and Kathryn Neckerman, "We'd Love to Hire Them But..." In Christopher Jencks and Paul E. Peterson, (Eds.). *The Urban Underclass*, (Washington, DC: The Brookings Institution, 1991).
- Krisberg, Barry and Susan Marchionna. "Attitudes of US Voters towards Prisoner Rehabilitation and Reentry Policies," National Council on Crime and Delinquency (April 2006).
- MacKenzie, Doris Layton, "Structure and Components of Successful Educational Programs," John Jay College of Criminal Justice, Reentry Roundtable on Education (2008).
- Moss, Philip, and Chris Tilly, "Why Opportunity Isn't Knocking: Racial Inequality and the Demand for Labor" in *Urban Inequity: Evidence from Four Cities*, (Russell Sage Foundation, 2001).
- Pager, Devah, "The Mark of a Criminal Record," *American Journal of Sociology*, 108:937-975 (2003).
- Stoll, Michael, and Shawn D. Bushway, "The Effect of Criminal Background Checks on Hiring Ex-Offenders," *Criminology and Public Policy*, Vol. 7 No. 3 (2008).
- Weich, R.H., and C.T. Angulo, "Racial Disparities in the American Criminal Justice System," In D.M. Piché, W.L. Taylor, and R.A. Reed (Eds.), *Rights at Risk: Equality in an Age of Terrorism* (Washington, DC: Citizen's Civil Rights Commission, 2002).



Berkeley Center for Criminal Justice
University of California, Berkeley School of Law
2850 Telegraph Avenue, Suite 500, Berkeley, CA 94705-7220
Tel: 510-643-7025 Fax: 510-643-4533
www.bccj.berkeley.edu