Respectfully submitted by

THE INDEPENDENT COMMITTEE ON REENTRY AND EMPLOYMENT

232 East 84th Street
New York, NY 10028

P: 212.628.5207

THE INDEPENDENT COMMITTEE ON

Reentry and Employment

Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People

Respectfully submitted by

THE INDEPENDENT COMMITTEE ON REENTRY AND EMPLOYMENT

George T. McDonald, *Chairman*
Elizabeth Gaynes
David R. Jones
Glenn E. Martin
Randolph Peers
Bonnie Potter
Mindy S. Tarlow

TABLE OF CONTENTS

02 EXECUTIVE SUMMARY

09 INTRODUCTION

10 MISSION

11 RECOMMENDATIONS

23 CONCLUSION

27 APPENDIX A: BARRIERS TO REENTRY EMPLOYMENT

39 APPENDIX B: MEMORANDUM IN SUPPORT OF THE LEGAL ACTION CENTER "SECOND CHANCE" LEGISLATION

55 APPENDIX C: NEW YORK STATE OCCUPATIONAL LICENSING SURVEY

79 APPENDIX D: STATE OF FLORIDA OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 06-89

EXECUTIVE SUMMARY

The issue of reentry and reintegration of persons with criminal records has become a public policy concern of national importance. Every year, over 600,000 Americans are released from prisons across the country. Two-thirds of these individuals are rearrested within three years. While many of the laws enacted in the 1980s and 1990s were designed to promote public safety, they failed to anticipate the consequences for formerly incarcerated people and the general public when, decades later, those who were imprisoned would be released. The failure to plan for their reintegration has directly contributed to and will continue to perpetuate other devastating societal problems, including unemployment, poverty, crime, broken families, substance abuse and homelessness.

The Independent Committee on Reentry and Employment proposes solutions to the problem of reintegration in New York State. We believe our recommendations will promote public safety and successful reintegration by enhancing employment opportunities for formerly incarcerated New Yorkers.

In New York State, there are nearly 63,000 people incarcerated in state prisons, 40,000 in local jails and another 100,000 under some form of community supervision (i.e., on parole or probation). Every year, 27,000 individuals are released from state prisons and more than 100,000 from local jails back into communities throughout our state. Two-thirds of them are rearrested within three years.

According to a recent report by the New York State Bar Association's Special Committee on Collateral Consequences of Criminal Proceedings, "Research from both academics and practitioners suggest that **the chief factor which influences the reduction of recidivism is an individual's ability to gain 'quality employment.'"** Unfortunately, this ability is hampered by multiple barriers faced by formerly incarcerated people seeking employment, including the stigma of their criminal backgrounds and discrimination by employers. As a result, statistics show that one year after release up to 60% of formerly incarcerated people are unemployed, as are 89% of those who violate the terms of their parole or probation.

Recognizing the importance of "quality employment" with regard to the successful reentry and sustained reintegration into society of those released from prisons and jails, Chauncey G. Parker, Director of the New York State Division of Criminal Justice Services, asked George T. McDonald, Founder and President of The Doe Fund, Inc., to assemble a committee of interested and knowledgeable stakeholders to formulate recommendations that would enhance employment opportunities for job seekers with criminal records.

Beginning in 2005, the Committee met several times over the course of more than one year to discuss relevant issues and agree on policy recommendations. The Committee also engaged Global Strategy Group, LLC (GSG), a national market research firm, to professionally facilitate focus groups assessing the attitudes and concerns of small and mid-sized New York City business owners and hiring managers with regard to employing formerly incarcerated people. GSG also investigated the potential of intermediary groups and financial and social incentives to further encourage the hiring of those with criminal histories. This is the first qualitative research of its kind conducted in New York State. The report of GSG to this committee is attached hereto as Appendix A.

The key policy recommendations, explained in detail in the following report, are as follows:

1. Amend public policies and legislative statutes related to the employment of formerly incarcerated people to clarify legislative intent and enhance effectiveness of current legislation.

2. Create a $25 million New York State Wage Subsidy Program specifically for formerly incarcerated people.

3. Improve pre-release "hard" and "soft" skills training to better prepare and enhance the marketability of incarcerated people for post-release employment.

4. Develop and implement a New York State Reentry Planning Initiative, modeled on the Discharge Planning Initiative developed by the New York City Departments of Corrections and Homeless Services, utilizing the expertise of public and nonprofit agencies currently involved in providing workforce development, discharge planning and reentry services to people released from city jails.

5. Streamline and enhance parole policies and procedures.

6. Offer meaningful and frequent education and training for owners and hiring personnel of all new and existing businesses licensed or registered in New York State, ensuring their awareness of state laws, financial incentives and resources, including intermediary organizations, regulating and promoting the hiring of formerly incarcerated people.

...The chief factor which influences the reduction of recidivism is an individual's ability to gain 'quality employment.'

–Special Committee on Collateral Consequences of Criminal Proceedings, New York State Bar Association

7. Appoint a New York State Commissioner of Reentry, reporting directly to the Governor, responsible for monitoring, tracking and coordinating state laws and policies regarding all aspects of prisoner reentry.

The Committee concludes that the thousands of people released from New York State prisons and jails every year face serious, but not insurmountable barriers to gaining employment, a key component of a successsful reentry and reintegration into society. The adoption of these recommendations will mitigate those barriers without compromising public safety, thus, reducing criminal recidivism and crime, rebuilding families and communities, and helping formerly incarcerated individuals become productive, law-abiding, tax-paying, citizens of our state.

New York State must summon the political and public will to begin reversing the devastating impact of decades of policies that caused the boom in our prison population, but failed to provide opportunities and services necessary for those returning to the community after incarceration.

The Committee further concludes that solutions that focus on helping formerly incarcerated people become employed yield long-term cost savings for participants and their families, employers, communities, taxpayers and the state. The Committee conservatively estimates that the adoption of these recommendations will result in savings to taxpayers in the amount of $3.615 million for every 100 people that accomplish the following:

A. Avoid Entering the Welfare System: New York State annually pays $1,896 per person under Safety Net to single adults and $2,472 per person to families. Assuming that most people returning from prison are single adults, each person who attains employment and does not enter the welfare system would save the system an average of $2,000 annually, equaling $200,000 for every 100 people that avoid welfare.

B. Begin Paying Child Support: Approximately 90% of people in jail and prison are male, most of them non-custodial fathers. Assuming conservatively that the annual income of those working would be $15,000 (average wage of $8.00 per hour), the annual child support owed for one dependent child would be $2,550. Thus, $255,000 would be added to the child support system per 100 fathers who begin paying child support.

C. Avoid Reentering Prison: People who are working commit fewer crimes than people who are not working. With incarceration in state prison costing $32,400 per person per year, the state correctional system would save $3,240,000 for every 100 people who do not return to prison.

We must also consider the costs incurred by the victims of crime. These include: physical and mental health-related costs; lost productivity from both paid employment and unpaid household work; lost jobs; direct expenditures for police protection, judicial and legal services; and state compensation program payments. **Nationally, these costs range in the hundreds of billions of dollars.** There is also the pain, suffering and loss of quality of life that crime victims experience, the costs of which cannot be adequately measured in dollars. The victims of crime will benefit as much or more from efforts to reduce criminal recidivism through enhanced employment opportunities for former offenders as will the former offenders themselves.

New York State must summon the political and public will to begin reversing the devastating impact of decades of policies that caused the boom in our prison population, but failed to provide opportunities and services necessary for those returning to the community after incarceration. Improving employment opportunities for people with criminal records will begin reducing the correlation between poverty, low educational and professional skill levels, high unemployment rates, crime and incarceration, all of which have profound and adverse economic, social, racial and moral consequences for New York State.

Respectfully submitted by
The Independent Committee on Reentry and Employment

George T. McDonald, Chairman
Elizabeth Gaynes
David R. Jones
Glenn Martin
Randolph Peers
Bonnie Potter
Mindy S. Tarlow

George T. McDonald, Founder and President of The Doe Fund, Inc.: Mr. McDonald is best-known for his unwavering commitment to the core philosophy that has guided and shaped his more than twenty years of public service: **"Work works."** The Doe Fund, the nonprofit organization he founded in 1985 after a successful career in private industry, is best known for its innovative and highly effective residential paid-work and training program, *Ready, Willing & Able (RWA)*. *RWA* was started in 1991 to help homeless people rebuild their lives by offering them transitional jobs, housing and supportive services in return for a commitment to work responsibly and maintain sobriety. It quickly became apparent to Mr. McDonald that, to a great extent, homeless and formerly incarcerated people were one and the same. More than 70% of those served by *RWA* have criminal records as well as long histories of substance abuse, thus facing tremendous barriers to private-sector employment. By cleaning and maintaining more than 150 of miles of New York City streets and sidewalks every day, *RWA* trainees make a highly visible and valuable contribution to their communities. As a result, local businesses have become increasingly open to hiring them permanently. Trainees complete *RWA* with the attitudes, ethics and "soft" and "hard" skills that employers value most. While in the program, they receive comprehensive services, including case management, on-the-job and vocational training, substance abuse counseling, remedial education, life skills and job preparation courses and job placement assistance. More than 2,250 homeless and/or formerly incarcerated individuals have used *Ready, Willing & Able* as a bridge back to the mainstream workforce. 60% of them retain full-time employment for more than three years after leaving the program. Creating more transitional jobs that lead to a secure foothold on the American economic ladder is Mr. McDonald's passion and life's work, making him eminently qualified to chair The Independent Committee on Reentry and Employment.

Elizabeth Gaynes, Executive Director of the Osborne Association: The Osborne Association is a 75-year-old nonprofit organization based in New York City that provides a wide range of services to individuals and families affected by incarceration. Under Ms. Gaynes' leadership for the last 21 years, Osborne has developed and operated programs in community sites in the Bronx, Brooklyn and Queens, as well as in more than 17 prisons and jails. With a staff of more than 150, Osborne offers family services, job training and placement, prison and reentry services, prevention and treatment programs, and alternatives to incarceration. Osborne's first program, the Bureau of Vocational Placement, has been finding employment for people leaving prison since the 1930s. In 2000, it merged with the South Forty Corporation to expand Osborne's capacity for job placement and training. Ms. Gaynes is a nationally recognized expert on the impact of incarceration and reentry on children and families. She is the author of "Reentry: Helping Former Prisoners Return to Communities," published by the Annie E. Casey Foundation. In 2004, she and her daughter, Emani Davis, were the first Americans ever nominated for the prestigious international World's Children's Prize for the Rights of the Child for their work defending the rights of children with parents in prison. Prior to coming to Osborne, Ms. Gaynes practiced law in criminal defense and prison legal services.

David R. Jones, Esq., President and Chief Executive Officer of the Community Service Society of New York (CSS): Led by Mr. Jones since 1986, CSS is a nonprofit organization promoting economic advancement and full civic participation for low-income New Yorkers. Born in Bedford-Stuyvesant, Brooklyn, and an outspoken advocate for the poor, Mr. Jones writes a bi-weekly newspaper column and hosts a cable television program, both named "The Urban Agenda," which educate the public and government officials on issues relevant to minority and poor communities. From 1983 to 1986, Mr. Jones served as Executive Director of the New York City Youth Bureau. From 1979 to 1983, he was Special Advisor to Mayor Koch on race relations, urban development, immigration reform and education. He is currently Co-Chair of the NYC Council Commission on the Campaign for Fiscal Equity and a member of Mayor Bloomberg's Commission for Economic Opportunity, a task force attacking poverty and unemployment in New York City. Mr. Jones was also Chairman of the Board of Carver Federal Savings Bank, the largest African-American–managed bank in America, and served on the Board of Directors of the NYC Health and Hospitals Corporation. He was Vice Chairman of the Primary Care Development Corporation, which finances health care programs and facilities in medically underserved communities. Mr. Jones was a founding member of the Upper Manhattan Empowerment Zone and President of Black Agency Executives, a group of black leaders of major New York City human service agencies. He also served as a member of the Board of Directors of the Puerto Rican Legal Defense and Education Fund. While receiving his degree from Wesleyan University, Mr. Jones interned for the late Senator Robert F. Kennedy in Washington, D.C. He went on to earn a Juris Doctor's degree from Yale Law School in 1974. Prior to his nonprofit and public service careers, he specialized in corporate antitrust cases and contract litigation at the law firm of Cravath, Swaine & Moore. He was a recipient of the Thomas J. Watson Fellowship.

Glenn E. Martin, Co-Director of the Legal Action Center's National H.I.R.E. Network: Established by the Legal Action Center, the National **H**elping **I**ndividuals with criminal records **R**e-enter through **E**mployment (H.I.R.E.) Network is a clearinghouse for information and an advocate for policy change. It provides training and technical assistance to agencies working to improve the employment prospects of people with criminal records. Mr. Martin is responsible for developing H.I.R.E.'s capacity to foster and promote employer and labor support for former offenders. He works with advocates and policymakers around the country to identify and implement criminal justice policy reforms to remove unfair practical and statutory roadblocks to employment and licensure. Mr. Martin also directed the development of H.I.R.E.'s job retention materials for employee assistance programs and human resource professionals. He served as Program Manager on a national employment discrimination audit study entitled, *Discrimination in NYC Low Wage Labor Markets,* measuring race and criminal conviction–related discrimination in the New York City entry-level labor market. Mr. Martin also drafted the sixth edition of *How to Get and Clean Up Your New York State Rap Sheet,* a manual assisting clients in obtaining and understanding their state criminal records. He remains actively involved in policy advocacy efforts to increase advanced educational opportunities for people currently and formerly incarcerated and is involved on a number of other fronts related to criminal justice issues, including working to reinstate Pell Grants for people who are currently incarcerated and serving on the Steering Committee of Reentry.net.

Randolph Peers, Executive Director of Opportunities for a Better Tomorrow (OBT): OBT is a $3.5 million employment and training organization that works with out-of-school youth in the areas of Sunset Park, Bushwick and Bedford-Stuyvesant, Brooklyn. OBT serves approximately 400 young people annually, providing GED and business-skills classes, pharmacy technician training and job placement assistance. Before becoming Executive Director of OBT, Mr. Peers was Vice President for Economic Development at the Brooklyn Chamber of Commerce, where he developed a successful model for integrating workforce and economic development services for small businesses. He has also held senior management positions in several non-profit organizations, including the Osborne Association. A life-long Brooklynite, Mr. Peers has spent the last fifteen years in the fields of adult education, workforce development and economic development. He holds a Bachelor's degree in Political Science from Brooklyn College and a Master's in Public Administration from New York University. He currently serves as Chairperson of Community Board 7, encompassing the neighborhoods of Sunset Park, Windsor Terrace and Greenwood Heights, Brooklyn.

Bonnie Potter, Executive Director of the New York City Employment and Training Coalition: The New York City Employment and Training Coalition is an association of over 180 community-based organizations, community colleges and labor unions, which provides education, training and employment services to up to 500,000 low-income New Yorkers. Ms. Potter previously served as the Deputy Director of Nontraditional Employment for Women, a pre-apprenticeship program that prepares low-income women for jobs in construction. She came to the employment and training field after having served as an Assistant District Attorney for four years and deciding that preparing the economically disadvantaged for employment would serve as a better disincentive to crime than prison.

Mindy S. Tarlow, Executive Director and Chief Executive Officer of the Center for Employment Opportunities (CEO): CEO is a large New York–based nonprofit corporation that provides employment services to men and women returning to New York City from prison and detention. CEO was created by the Vera Institute of Justice in the late 1970s and has been operating as an independent corporation since 1996. Ms. Tarlow began her association with CEO as a Program Director at the Vera Institute of Justice in 1994, where she managed the successful spin-off of CEO from Vera. Prior to joining CEO, Ms. Tarlow spent nearly ten years at the New York City Office of Management and Budget, where she rose from Senior Analyst in 1984 to Deputy Director in 1992. Ms. Tarlow has guided many criminal justice projects during her tenure in government, including co-authoring the Mayor's "Safe Streets, Safe City Omnibus Criminal Justice Program." Ms. Tarlow is a member of the National Advisory Board of the Vera Institute of Justice National Associates Program and the Prisoner Reentry Institute Advisory Board at John Jay College of Criminal Justice. She is a Mayoral Appointee to the Audit Committee for the City of New York and the Commission for Economic Opportunity; a founding board member of the Workforce Professionals Training Institute; and a member of the Executive Committee of the New York City Employment and Training Coalition. She is an Adjunct Professor at New York University's Robert F. Wagner Graduate School of Public Service.

Acknowledgments: The Independent Committee on Reentry and Employment thanks Chauncey Parker for his vision and leadership in requesting the formation and work of this Committee; Anthony Ellis for his efforts to increase the employment rate of individuals on parole; Isabel McDevitt, Riva Kelton and Suzanne Neusteter for their edits, ideas and input; Kris E. Watson for coordinating the project and guiding the production of the report; Carol Tannenhauser and Maura Greaney for their eloquent and persuasive writing; and the individual Committee members who dedicated so much time, talent and expertise to the creation of this report.

The costs of this report and the associated research were underwritten by an anonymous donor to The Doe Fund, who specified that the funds be used for this purpose.

INTRODUCTION

In New York State, there are nearly 63,000 people incarcerated in state prisons, 40,000 in local jails and another 100,000 under some kind of community supervision (i.e., on parole or probation). Every year, 27,000 individuals are released from prisons and more than 100,000 from jails back into our communities. A dismaying two-thirds of them are rearrested within three years.

According to a recent report by the New York State Bar Association's Special Committee on Collateral Consequences of Criminal Proceedings, "Research from both academics and practitioners suggest that **the chief factor which influences the reduction of recidivism is an individual's ability to gain 'quality employment.'"** Unfortunately, this ability is greatly hampered by the barriers faced by formerly incarcerated people seeking employment, including not only the stigma of their criminal backgrounds and discrimination by employers, but also low educational levels, lack of work histories and skills, substance abuse and mental health problems, and a myriad of other personal and social issues. As a result, statistics show that one year after release, up to 60% of formerly incarcerated people are unemployed, as are 89% of those who violate the terms of their parole or probation.

MISSION

Recognizing the importance of "quality employment" with regard to the successful reentry and sustained reintegration into society of those released from prisons and jails, Chauncey G. Parker, Director of the New York State Division of Criminal Justice Services, asked George T. McDonald, Founder and President of The Doe Fund, Inc., to assemble a committee of interested and knowledgeable stakeholders to formulate and report on recommendations that would enhance employment opportunities for job seekers with criminal records. Mr. McDonald enlisted the CEOs and Executive Directors of several highly regarded non profit organizations, as well as a former Vice President of the Brooklyn Chamber of Commerce, to respond to Director Parker's charge. All members of the Independent Committee on Reentry and Employment (the Committee) possess significant experience and expertise in the area of reentry policy and work directly with populations facing serious barriers to employment.

Beginning in February 2005, the Committee met several times over the course of more than a year to discuss relevant issues and agree on policy recommendations. The Committee also engaged Global Strategy Group, LLC (GSG), a national market research firm, to assess the attitudes and concerns of small and mid-sized New York City business owners and hiring managers with regard to employing formerly incarcerated people. GSG also investigated the potential of intermediary groups and financial and social incentives to further encourage the hiring of people with criminal backgrounds.

Drawing upon the input and expertise of its members and the findings of GSG, the Committee respectfully sets forth the following recommendations:

RECOMMENDATIONS

1. Amend public policies and legislative statute related to the employment of formerly incarcerated persons to clarify legislative intent and enhance effectiveness of current legislation.

During the past three decades, New York State has enacted a series of statutes to implement a strong statewide public policy encouraging the hiring of qualified individuals with histories of incarceration who are striving to lead productive, tax-paying, law-abiding lives. These laws have been highly beneficial, but, as a result of technical problems with them, unintended obstacles remain for those who have completed their rehabilitation and have demonstrated job-readiness. The stigma of a criminal conviction often means some people will be denied employment and other opportunities, no matter how long ago or minor their offenses. The Legal Action Center has drafted a package of legislative amendments that clarify the intent and facilitate the execution of these statutes. The Committee supports the following policy changes and legislative initiatives drafted by the Legal Action Center.

The stigma of a criminal conviction often means some people will be denied employment and other opportunities, no matter how long ago or minor their offenses.

A. "A Second Chance"

As evidenced by release data, thousands of formerly incarcerated New Yorkers must deal with the stigma of having criminal records as they seek employment and housing. New York State has long been a leader in providing fair employment opportunities for such qualified individuals, but there is more to be done. People with criminal records must be able to earn a living in order to contribute to their families and communities and lead productive, self-sufficient lives. When this is made possible by the availability of non-discriminatory, living-wage employment opportunities, they are far less likely to return to lives of crime.

The Legal Action Center's draft bill, ***A.10988:*** **An Act to Amend the Criminal Procedure Law and the Executive Law, in relation to the Conditional Sealing of Drug Convictions,** will give qualified people with criminal records a true "second chance" to achieve the American dream of becoming responsible, employed family members, parents and citizens. It includes the following key components:

1. Provides for the sealing of several categories of non-violent convictions. An individual who has a drug felony conviction and has been mandated into chemical dependence treatment will be able to petition to have his or her record conditionally sealed upon completion of his or her sentence.
A person with a class D or E non-violent felony will be allowed to petition for a conditional seal after 3 years of completion of his or her sentence. A person who has a class B or C non-violent felony will be able to petition for sealing 5 years after sentence completion. In all of these cases, the records would not be sealed if the individuals have additional felony convictions and/or more than 2 other non-violent misdemeanor convictions. In some cases, the petition would be filed with the court; in other instances, with an administrative tribunal. Lastly, individuals with longer records of non-violent convictions would be allowed to petition to have their records sealed 10 years after sentence completion for the last conviction.

Current laws deny adequate protections to young people who receive youthful offender (YO) status, as well as to others who have paid their debt to society.

2. Gives prosecutors notice of the record-sealing petitions. This would provide an opportunity for prosecutors to express their support or opposition to the filing.

3. Makes sealing of all records conditional. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in a conviction, the sealing order would be vacated. If the case is dismissed, it would be reinstated. This is identical to the conditional sealing provisions in Governor George Pataki's bill.

4. Renders ineligible individuals whose records contain a conviction for a sexual offense, as defined in § 130 of the Penal Law.

5. Deems a conviction that has been conditionally sealed a nullity. Employers may thus only inquire about convictions of crimes that have not been sealed.

B. Technical Amendments to Other Existing Legislation

The Committee supports technical amendments to existing legislation that will assist people with criminal records in obtaining employment, housing and basic civil rights, such as the right to vote. Current laws deny adequate protections to young people who receive youthful offender (YO) status, as well as to others who have paid their debt to society. The Committee thereby endorses the following amendments proposed by the Legal Action Center and other organizations:

1. Amend Article 23-A of the Correction Law so that individuals who are **already employed,** as well as **applicants** for a job (who are currently protected under Article 23-A), are also protected from unfair employment discrimination. This amendment was passed by the State Legislature, but has not yet been signed by the Governor.

2. Amend the Human Rights Law (Executive Law § 296 (16)) so that individuals with confidential youthful offender adjudications and sealed convictions for non-criminal offenses are protected against discrimination. This amendment was passed by the State Legislature, but has not yet been signed by the Governor.

3. Amend Criminal Procedure Law § 160.60 so that individuals with YO adjudications or convictions for non-criminal offenses are restored to the status they had before their prosecutions.

4. Amend Criminal Procedure Law § 160.55 so that convictions for non-criminal offenses are sealed, with certain exceptions, on the court level.

5. Support *A.06393,* a bill that would limit the length of time conviction histories can be posted on the New York State Department of Corrections' website to 10 years after a person is released from custody. (See Appendix B for draft legislation and memoranda in support of the above proposals.)

2. Create a $25 million Wage Subsidy Program specifically for formerly incarcerated people.

As stated, following release from prison, former inmates face substantial challenges in gaining employment. Most have little or no work experience, poor educational backgrounds, substance abuse issues and few or no supportive community-based networks. Formerly incarcerated people are also legally barred from working in specific positions in a number of industries, including security, insurance, real estate and finance. Furthermore, federal legislation passed after September 11, 2001, including the Patriot Act, has increased the number of occupations from which formerly incarcerated people are barred. Employment restrictions may also be placed on them by their parole officers, limiting the kinds of work they may do and where and when they may do it. Finally, although it is illegal under New York State law, formerly incarcerated persons face widespread workplace and employment discrimination as a result of their past convictions.

People with criminal histories must overcome barriers to employment not faced by other difficult-to-employ populations. Employer discrimination can take the employment decision out of a job applicant's hands, rendering futile interview preparation and on-the-job training provided by intermediaries, such as nonprofit organizations. Action must be taken to level the playing field for those with criminal records. The provision of wage subsidies to those who hire formerly incarcerated people is one such measure, giving employers financial incentives to take a chance on candidates they might otherwise dismiss.

Action must be taken to level the playing field for those with criminal records. The provision of wage subsidies to those who hire formerly incarcerated people is one such measure, giving employers financial incentives to take a chance on candidates they might otherwise dismiss.

A. Current Wage Subsidy Program

Currently, the Office of Temporary Disability Assistance (OTDA) operates a Wage Subsidy Program (WSP) with TANF (Temporary Aid to Needy Families) surplus funds that serves Family Assistance (FA) recipients who have been unable to find or retain employment, as well as non-FA families with household incomes under 200% of the federal poverty level. Under this program, nonprofit community-based organizations (CBOs) place individuals in subsidized jobs, which they develop with employers in the private, public and nonprofit sectors. Each CBO determines the suitability of candidates for these jobs and provides the workplace support necessary for their success. Non-wage subsidy costs, such as administrative expenses, are awarded to CBOs on the basis of performance, as participants in subsidized positions transition to unsubsidized jobs.

Duration of Wage Subsidies

The duration of subsidized employment can be up to 52 weeks, with most current providers using a 3 or 6-month subsidy period. Jobs must involve at least 30 hours of work per week. Benefits to employers include a subsidy equal to the wages and related fringe benefits paid to eligible WSP participants. Employers receive 80% of wages during the subsidy period. If the participant is hired and retains unsubsidized employment for 90 days, employers can claim the remaining 20%.

We propose that $25 million be designated for such wage subsidies, with first priority given to those being released from prisons to the seven neighborhoods with the highest reentry rates: the Lower East Side, the South Bronx, Harlem, Brownsville, Bedford-Stuyvesant, East New York and South Jamaica.

Hourly Wages

Hourly wages range from the New York State minimum of $6.75 to $12.00 per hour. Employers are also reimbursed for fringe benefit costs. Employers can pay more than $12.00 per hour, but must pay the difference themselves. Employers are also asked to make a good faith effort to retain WSP participants on their payroll after the subsidy period ends.

B. Proposed Wage Subsidy Program for Formerly Incarcerated People

The Committee recommends that New York State, through the Division of Criminal Justice Services, create and administer a wage subsidy program specifically targeted to formerly incarcerated people. We propose that $25 million be designated for such wage subsidies, with first priority given to those being released from prisons to the seven neighborhoods with the highest reentry rates: the Lower East Side, the South Bronx, Harlem, Brownsville, Bedford-Stuyvesant, East New York and South Jamaica. We are also setting forth recommendations that would greatly improve the efficacy and long-term impact of wage subsidies for formerly incarcerated persons.

General Terms & Conditions

The committee recommends a program modeled on the current wage subsidy program, with a few significant changes that will further encourage employer participation. First, small businesses should be targeted for this initiative as they typically have less capital to expend on overhead and human resources. The program should prove attractive to small businesses by helping them recruit and pay their entry-level workforce. We propose that the percentage of subsidized wages vary on a sliding scale, based on the size of the business (e.g., a business with 50 employees would receive 90 percent of the wage, while a business with 75 employees would receive 80 percent). Contracts should be flexible and terms should be negotiable between employers and employment intermediaries (CBOs). However, contracts must prohibit employers from replacing an existing employee with a wage-subsidized employee and/or cycling several individuals through one wage-subsidized position.

The program will not target specific business sectors, but will be sensitive to occupational bans on people with criminal records. (See Appendix C for a complete list of occupational bans in the state of New York.)

Number Served by Proposed Wage Subsidy Program for Formerly Incarcerated People

The program design will provide for maximum flexibility and negotiation between targeted employers and employment intermediaries regarding the benefits, term and amount of subsidies. The number of people served by the $25 million will vary according to these factors. It is possible to establish an upper limit on each subsidy or to simply allow the (increasing) minimum wage to determine the lower limit on wages and to establish a lower limit on subsidy duration. Some outcomes in terms of numbers served, all of which assume a 35-hour work week, are listed herein.

Average Hourly Wage	Average Duration in Weeks		
	52	24	12
$8.50	1,454	3,151	6,302
$10.00	1,236	2,678	5,357
$12.00	1,030	2,232	4,464

Thus, if an hourly subsidized wage averaged $10.00 with an average duration of 24 weeks, the program could serve 2,678 people.

Benefits

The intention of the program should be to maximize the number of formerly incarcerated people eligible for WSP benefits. The subsidy would therefore be applicable to the total hourly cost of employment, including fringe benefits, although employers would not be required to provide such benefits.

Administrative Costs

The analysis above assumes 10 percent of the $25 million will support administrative costs for each grantee (CBO). Funds should be made available to grantees as a fixed payment to cover the cost of administering the program.

Outcomes

The proposed wage subsidy program will help level the playing field for formerly incarcerated people by providing a way for them to get "a foot in the door" and prove their value to companies. The program will appeal to small and mid-size employers, allowing them to "try before they buy," resulting in lower turnover rates. (High turnover rates are a significant problem for companies filling entry-level, hourly wage positions.) Wage subsidies will provide powerful incentives for employers to hire former offenders, while providing subsidized employees with work experience, paving the way for thousands of them to obtain full-time, unsubsidized employment.

The proposed wage subsidy program will help level the playing field for formerly incarcerated people by providing a way for them to get "a foot in the door" and prove their value to companies.

3. Improve pre-release training to better prepare and to enhance the marketability of incarcerated people for post-release employment.

The sector of the workforce to which formerly incarcerated people become attached typically consists of low-wage jobs similar to those they had access to before they were incarcerated. We believe this is due in large measure to the fact that the period between sentencing and reentry (i.e., the period of incarceration) is not being utilized to yield maximum results in terms of post-incarceration employment. There are certainly some who acquire education or skills in prison that qualify them for better paying, more skilled employment. Higher education had been especially effective in helping formerly incarcerated people secure more skilled employment, but it is no longer widely available. While most people have access to some form of vocational training or perform a prison "job" during their incarceration, few of these training or work opportunities are thoughtfully designed to be relevant to the actual job market in which they will compete upon release.

The following policy recommendations focus on improving the employment prospects of individuals leaving prison through better training and preparation for post-release employment.

A. The Committee urges the state to redesign the vocational and educational programs within the Department of Correctional Services to increase individuals' industry-specific skill levels during incarceration. The state must design training opportunities that are more relevant to the modern workplace. Very few formerly incarcerated individuals who seek employment through intermediary organizations are able to identify truly useful skills acquired while in prison. Most do increase their education levels and many believe they have acquired general maintenance skills that will enable them to work in construction or janitorial services. However, few acquire the critical "customer service" and other "soft" workplace skills (such as punctuality, accountability and the ability to get along with supervisors and co-workers) they need to succeed in any industry.

Very few formerly incarcerated individuals who seek employment through intermediary organizations are able to identify truly useful skills acquired while in prison.

There is no general consensus about whether specific job training could feasibly be provided during incarceration. Some correctional systems (i.e., Canada's) believe that prison training should focus on soft skills and cognitive behavioral interventions that will be of value in post-release situations and that vocational training does not lead to post-prison success. On the other hand, specific skills training, such as that offered by the Department of Correctional Services (DOCS) in optometry, have clearly led to good, career-oriented jobs after release. In fact, more DOCS programs might lead to good employment if there were a stronger relationship between those responsible for providing the pre-release training and those responsible for providing post-release job placement services. Outside intermediary organizations are not generally—but should be—utilized to provide feedback based on their knowledge of the job market that would be useful in the development and delivery of training within DOCS.

The state currently invests millions of dollars in vocational programming within DOCS. These funds could be better invested if preceded by a strategic planning process, which would include input from members of the business and nonprofit communities and result in tailoring pre-release training to post-release private-sector needs and demands. Essential prison jobs (industrial, culinary, cleaning, maintenance and repair) could then be designed and managed in a manner that offers better preparation for the outside job market.

B. The Committee recommends that the state provide meaningful reentry planning and workforce development for people with histories of violent convictions. This can be achieved in the following ways:

- As a condition of parole, for a minimum of six months or until stable employment and adequate savings are achieved, individuals who have served sentences of more than 5 years for violent offenses would be required to spend six months, prior to their release, at newly created reentry facilities where they would be provided with services and training to facilitate their reentry process.
- People who have been incarcerated for a decade or more but whose prison records are exemplary should be targeted for work and training services. Many people with prison records of a decade or more took advantage of the educational resources that were once available in state prisons and these individuals are often more employable upon release. However, they are unable to access job opportunities because of the nature of their convictions. The addition of industry-specific skills could greatly enhance their marketability.
- A consortium of nonprofit agencies, in collaboration with the business community, should administer industry-specific training, job placement services, substance abuse counseling and educational programming to those individuals within nine months of release to prepare them for success in the labor market upon release.

C. The State should commit to providing space, financial resources and human capital toward the development of the following services, without which formerly incarcerated people will not be able to reintegrate. These services could be made available onsite by qualified stakeholders, including state agencies, nonprofits and community-based organizations. To maximize the impact of such services, the state should facilitate creative collaborations between service and employment providers, including unions, trade associations, private businesses, governmental agencies, educational providers and substance abuse counselors. Services would include and/or result in:

The state should facilitate creative collaborations between service and employment providers, including unions, trade associations, private businesses, governmental agencies, educational providers and substance abuse counselors.

- the acquisition of documents required for employment and referrals for entitlements;
- job training, including hard and soft skills training, such as training on Microsoft Office programs, the Internet and other computer technology relevant to the current labor market, and training in culinary arts, building maintenance, and other skills relevant to specific small and large businesses;
- job placement, job retention and job coaching services;
- housing placement assistance and independent living skills (e.g., model apartments);
- outpatient substance abuse treatment referrals;
- workshops and counseling on effective parenting, healthy relationships and family reunification;
- child support counseling and assistance;
- cognitive behavioral programs;
- transitional planning and reentry and case management, with specific focus on those with minor children, those living with HIV/AIDS or mental illness and those who are homeless.

D. The Committee urges the State to convert under-utilized work-release or urban facilities into community reentry centers or transitional housing for individuals leaving the custody of the Department of Correctional Services.

In the private sector, various models of transitional work programs and halfway houses have resulted in successful reentry. Work release is the single most promising strategy for improving employment outcomes for people leaving prison; yet, because of space and building limitations, enough work-release programs do not exist. Work-release offers a structured transition and an opportunity to gain experience, acquire skills, save money and build a resume. Not enough individuals can take advantage of these programs. Also, because of statutory restrictions, individuals are often ineligible to apply for or be granted work-release.

While work-release programs are subject to laws and regulations that limit effectiveness, work-release facilities could be modified to offer more relevant employment services, including vocational training. **Current work-release facilities should be converted into reentry centers that can accommodate the larger population of returning inmates who are currently unable to access resources.** Through a variety of models it would be possible to offer a broader range of relevant reentry services that will improve long-term success. Enabling people to complete their incarceration in a non-restrictive environment where they can leave during the day and participate in appropriate employment, education or training greatly increases the likelihood of their successful transition to crime-free lives. During this period, individuals would engage in realistic transitional planning, while also receiving access to treatment for physical and mental health problems and chemical dependencies, as well as support in reuniting with their families and/or acquiring permanent housing.

4. Develop and implement a New York State Reentry Planning Initiative, modeled on the Discharge Planning Initiative developed by the New York City Departments of Corrections and Homeless Services, utilizing the expertise of public and nonprofit agencies currently involved in providing workforce development, discharge planning and reentry services to people released from city jails.

Frequent and concentrated group retreats and small committee meetings to address the needs of those returning from state prison would facilitate the cooperative resolution of the challenging issues arising from their reentry. This approach is being successfully utilized by the New York City Discharge Planning Initiative, which brings together all interested stakeholders and the finest minds in the reentry community and city government to discuss, address and attempt to resolve the cyclical nature of homelessness and reentry on the local level. This model should be replicated on the state level and would address such issues as:

A. The revision of child support enforcement regulations to provide for the setting aside or downward modification of child support arrears that accrue during incarceration. Such a revision would allow those exiting prison to manage their child support obligations, further encouraging them to participate in the legitimate workforce.

B. The feasibility of early release of those with current diagnoses of HIV/AIDS and/or serious and persistent mental health issues and those who are chemically dependent. Such a policy should require that an inmate be released with an all-inclusive health plan, adequate prescriptions and immediate access to Medicaid so that comprehensive and well-considered discharge plans can be fulfilled.

C. Increasing public support (both fiscal and political) for the establishment and operation of halfway houses. For people estranged from their families or whose families are unable to support them, housing remains a critical issue facing individuals released from prison. The public has so demonized persons convicted of crimes that few are willing to live next door to them. **The state must take the lead in making both housing and support for those reentering society available to those who desperately need them.**

D. Creating a sustained public awareness media campaign that would educate the public about the enormity of the issue of reentry and its social, economic, political, public safety and human impact on our state and society.

5. Streamline and enhance parole policies and procedures.

The laudable mission of the New York State Division of Parole, under the leadership of Executive Director Anthony Ellis, has been to "promote public safety by preparing inmates for release and supervising parolees in the successful completion of their sentences." It is indisputable that meaningful employment opportunities and the maintenance of employment by parolees advance the Division's goals, while also offering those with criminal histories the chance to build productive, law-abiding lives to the great benefit of themselves, their families, their communities and all citizens of the State of New York. In support of their mission and ours, the Committee recommends the following adjustments to the policies of the New York State Division of Parole.

A. Adopt electronic reporting. Electronic reporting "kiosks" in parole offices should be implemented for parolees who: (i) have been convicted of lower-level felonies, (ii) are recommended by their parole officers after a period of successful reporting, (iii) are employed, and (iv) are nearing the completion of their community supervision. The New York City Department of Probation has adopted with great success electronic reporting for probationers who are deemed non-violent and who do not require intensive or personal supervision. Such electronic reporting would not only promote public safety by effectively monitoring low-risk parolees, it would be a cost-saving measure. Funds saved should be redirected to enhancing parole programs and resources designed to promote effective reentry services, including post-release employment.

B. Improve and standardize the availability of resources to parolees at all parole offices. Upon release, many parolees are overwhelmed and unaware of the multitude of services and service providers available to help them reenter society. Furthermore, there is no uniformity with respect to the information that individual parole officers provide to parolees regarding these available services. The simple installing of highly visible resource desks at all parole offices would ensure that all parolees have immediate, up-to-date and on-going access to the resources

The state must take the lead in making both housing and support for those reentering society available to those who desperately need them.

available to them. Resource desks could offer videotapes, printed literature, resource directories and computer stations with the websites of service providers available, making it much easier and less daunting to find resources and services appropriate to each individual.

C. Establish linkages with Medicaid, Social Security and other agencies to establish designated days when staff members from these offices would come to parole offices and assist parolees in obtaining documentation required for legal employment and government assistance.

D. Design parole waiting rooms to convey the expectation of successful reintegration. Current parole waiting areas are reminiscent of correctional settings, orienting parolees toward the past. The Committee believes that constant reminders that a parolee is still serving a sentence are a deterrent to his or her successful reintegration, reinforcing the stigma associated with his or her criminal history. More positive, inviting and motivational waiting areas will instill greater confidence that he or she can successfully reintegrate and remain in the mainstream. Even more important, such waiting areas would convey to parolees the Division of Parole's expectation of their successful reentry.

E. Revise performance measures for all parole officers. For example, parole officers should have their performances evaluated, in part, based on the number of referrals they make to community and faith-based organizations and Workforce One Centers, which provide reentry and workforce development services to parolees. The Committee recommends that parole officers' performance be based not only on their monitoring abilities, but on their consistent effort and ability to find and develop resources that will help the formerly incarcerated reenter society. Finally, we recommend that the Division of Parole develop a Reentry Resource and Referral database that would be used to track the participation and outcomes of parolees in programs designed to assist them in reentry.

Offer meaningful and frequent education and training for owners and hiring personnel of all new and existing businesses licensed or registered in New York State to ensure their awareness of state laws, financial incentives and resources, including intermediary organizations, and to regulate and promote the hiring of formerly incarcerated people.

6. Offer meaningful and frequent education and training for owners and hiring personnel of all new and existing businesses licensed or registered in New York State to ensure their awareness of state laws, financial incentives and resources, including intermediary organizations, and to regulate and promote the hiring of formerly incarcerated people.

GSG research focused on New York City companies with between 5 and 250 employees, owned or managed by both Caucasian and African-American men and women. Industries represented included construction, manufacturing, retail, food services, transportation, utilities and wholesale trade. Queries were limited to entry-level, hourly wage positions.

GSG findings show that most business owners "are not very knowledgeable about the legal ramifications and restrictions surrounding an employer's ability to screen for an applicant's criminal background." However, "some employers ask about both prior arrests and convictions on job applications, knowing full well that it is against the law to ask about arrests not leading to convictions." The report candidly stated that, while "opportunities exist within the business community to strengthen relationships and cultivate partnerships with businesses that are inclined to hire individuals with criminal backgrounds…some employers may never be persuaded and it would be difficult to move them past safety and liability concerns." GSG therefore recommends that "education efforts should work to cultivate a pool of employers who currently hire, either knowingly or unknowingly, from among the population of ex-offenders, but who do so sporadically and with little knowledge of the social or economic incentives available to them." The report also noted that male and African-American employers who work in manual labor-type industries may be most inclined to hire individuals with criminal backgrounds and that African-Americans "stress the importance of economic development in primarily minority neighborhoods."

Critically important to this report is the finding that "employers are virtually unaware of staffing resources in the form of intermediary organizations and transitional job programs." When informed about them, many said that "ideally, they would prefer to work with intermediary or transitional employment organizations that provide a range of employment and supportive services, including employee referrals and screening services; ongoing supervision and support to at-risk employees; and ongoing job training focused on technical and soft skills development." Most employers stressed the importance of "job training programs that focus on 'soft skills' (i.e., job readiness and interpersonal skills, such as showing up at work on time and ready to learn; dressing appropriately; and communicating with co-workers.)" GSG added that intermediary organizations and job training programs can also be instrumental in encouraging employment, as they have the capability to link employers with existing financial incentive programs. "Employers need and want more information about financial incentives available, but would prefer intermediary organizations to assist them in applying for these programs [which] need to be as easy and hassle-free as possible." Preferred financial incentives include: wage subsidies, tax credits or government-provided health benefits for qualifying employees for up to one year of employment.

"The role of intermediary organizations in providing on-going social services and support speaks to these concerns, as employers are looking to other agencies to share the burden of responsibility."

Summarizing the importance of transitional job programs and intermediary organizations, GSG stated that "employers express numerous safety and liability concerns when it comes to hiring individuals with criminal records. The role of intermediary organizations in providing on-going social services and support speaks to these concerns, as employers are looking to other agencies to share the burden of responsibility."

The Committee urges the state to offer meaningful and frequent education and training in this area, not only about state laws, but about the large number of people (i.e., potential employees) being released from prison and the incentives and intermediary support available to businesses hiring them. GSG found that "employers complain that it is difficult to find dedicated hourly wage employees who come ready and willing to learn…who show up at the designated hour, dress appropriately and communicate well with customers and fellow employees. Many recognize the humanitarian as well as economic benefits of hiring individuals with criminal records [saying] that individuals convicted of a crime may be more grateful for the opportunity to work and make more loyal employees than typical hourly wage workers. They also assume

such individuals are more likely to work hard to stay at one job rather than face the challenge of having to discuss their record with a new employer." (See Appendix A for complete Global Strategy Group report.)

7. Appoint a New York State Commissioner of Reentry, reporting directly to the Governor, responsible for monitoring, tracking and coordinating state laws and policies pertaining to all aspects of prisoner reentry.

The Committee recommends that the Reentry Commissioner begin by reviewing the impact of current state laws and policies, many of which impose restrictions on employment opportunities for people with criminal histories. Positions reviewed should include: state government positions; jobs in state-licensed, regulated and funded entities; and jobs requiring state certification. No such comprehensive review of these restrictions has been undertaken to evaluate whether they are, in fact, related to the safety, trust and responsibilities required by the given jobs, or to determine whether a less restrictive approach that protects the public while preserving employment opportunities for the formerly incarcerated could be adopted. The Committee further recommends that the Governor issue an Executive Order requiring a thorough review of all New York State laws and policies to determine whether state agencies and their contracting partners could also adopt less restrictive approaches in order to create additional employment opportunities for the formerly incarcerated.

The Committee further recommends that the Governor issue an Executive Order requiring a thorough review of all New York State laws and policies to determine whether state agencies and their contracting partners could also adopt less restrictive approaches in order to create additional employment opportunities for the formerly incarcerated.

The Committee suggests that the Governor of New York follow the lead of the Governor of Florida by issuing an Executive Order requiring that state agencies assume a leadership role with regard to the issue of prisoner reentry. The employment policies and practices of these agencies and their contractors should be reviewed; employment opportunities should be provided for the formerly incarcerated; and barriers to those opportunities should be identified and those that do not jeopardize public safety should be removed. (See Appendix D for a copy of Governor Bush's Executive Order No. 05-28.)

CONCLUSION

The thousands of individuals released from prisons and jails throughout New York State every day face difficult but not insurmountable hurdles to obtaining employment, a key component of successful reentry and reintegration. Left on their own, their efforts to find work too often fail, resulting in a return to crime and incarceration. The Committee believes that if the recommendations presented in this report are implemented, rather than remaining a burden on society, many of those released from prison will become productive, tax-paying members of our communities and positive role models to their families — especially their children.

As indicated by the GSG report, intermediary organizations and transitional work/training programs for formerly incarcerated people can contribute greatly to achieving these goals by enhancing employment opportunities. Furthermore, according to John Roman of the Urban Institute and his colleague Aaron Chalfin, they can easily pay for themselves. Roman and Chalfin determined that **reentry programs must only reduce recidivism by less than 2% to offset the costs of reentry programming and that 70% of this will benefit the public, while 30% will benefit the criminal justice system.** This Committee anticipates achieving a far greater reduction in recidivism and far greater cost savings, which can be applied to proactive strategies, such as a broad and sustained public awareness campaign. New Yorkers must be educated about the large number of people reentering our communities from prison and the urgency of the need to hire former offenders. Their representatives have an obligation to ensure that public tax dollars promote public safety by offering former offenders a real "second chance."

New Yorkers must be educated about the large number of people reentering our communities from prison and the urgency of the need to hire former offenders.

We estimate that the adoption of the Committee's proposals to increase the number of employed former offenders will result in savings to taxpayers in the conservative amount of $3.615 million for every 100 former offenders that accomplish the following:

A. Avoid entering the welfare system: New York State annually pays $1,896 per person under Safety Net to single adults and $2,472 per person per year to families. Assuming that most people returning from prison fall into the first category, each person who attains employment and does not enter the welfare system would save the system an average of $2,000 annually, equaling $200,000 for every 100 people that avoid welfare.

B. Begin Paying Child Support: Approximately 90% of people in jail and prison are male, most non-custodial fathers. According to federal guidelines, those owing child support would pay 17 percent of gross pay for one dependent child. Again, making conservative assumptions that the annual income of those working

would be $15,000 (average wage of $8.00 per hour), the annual child support owed for one dependent child would be $2,550. Thus, $255,000 would be added to the child support system per 100 fathers who begin paying support.

C. Avoid Reentering Prison: People who are working commit fewer crimes than people who are not working. With incarceration in state prison costing $32,400 per person per year, the state correctional system would save $3,240,000 for every 100 people who do not return to prison. Related cost savings include reductions in court costs and indigent defender attorney fees incurred when crimes are committed.

By improving employment opportunities for people with criminal records, New York State can take a monumentally important step toward reducing the correlation between poverty, low educational and professional skill levels, high unemployment rates, crime and incarceration, all of which have profoundly adverse economic, social, racial and moral consequences for our state and society.

We must also consider the costs of crime on its victims. These include: physical and mental health-related costs; lost productivity from both paid employment and unpaid household work; lost jobs; direct expenditures for police protection, judicial and legal services; and state compensation program payments. **Nationally, these costs range in the hundreds of billions of dollars.** There is also the pain, suffering and loss of quality of life that crime victims experience, the costs of which cannot be adequately measured in dollars. The victims of crimes will benefit as much or more by efforts to reduce criminal recidivism through enhanced employment opportunities for former offenders, as will the former offenders themselves.

The Reentry Employment Committee is ever mindful of the significant and sustained effort necessary to promote the kind of changes that will make a true difference in the lives of all those affected. Therefore, our recommendations are intentionally broad. Yet, we believe that they are adoptable and replicable. New York State must summon the political and public will to begin reversing the devastating impact of decades of policies that caused the boom in our prison population without providing the corresponding opportunities and resources necessary for those returning home. By improving employment opportunities for people with criminal records, New York State can take a monumentally important step toward reducing the correlation between poverty, low educational and professional skill levels, high unemployment rates, crime and incarceration, all of which have profoundly adverse economic, social, racial and moral consequences for our state and society.

APPENDIX A

REPORT OF FINDINGS FROM FOCUS GROUPS CONDUCTED FOR THE REENTRY EMPLOYMENT COMMITTEE

Barriers to Reentry Employment:

Business Owners' Willingness to Hire Individuals with a Criminal Background

Prepared by Global Strategy Group, LLC • July 2006

STATEMENT OF LIMITATIONS

Focus groups are a form of qualitative research. They measure the emotional and behavioral dispositions of a select, target audience. Unlike survey research, where typically hundreds of people are interviewed to formulate quantitative conclusions, focus groups reveal the sentiment of a group of individuals. Qualitative research may uncover how and why people hold a certain belief, but it can never reveal how many people feel the same way.

OBJECTIVES

The Reentry Employment Committee is working with the State of New York to address barriers to employment for individuals with a criminal background. In the hopes of forging new partnerships with New York City employers and thereby expanding employment opportunities, the Reentry Employment Committee seeks to understand issues impacting employers' willingness to hire individuals with a criminal background, including reservations, points of acceptance, and incentive programs that will encourage further hiring.

To meet these objectives, the Reentry Employment Committee commissioned Global Strategy Group (GSG) to conduct focus groups among business owners and executives responsible for hiring decisions at small to medium-sized companies in New York City.

- Research objectives included, but were not limited to:
  - Understanding hiring processes at small and medium-sized companies,
    - Exploring how individuals locate and screen potential employees;
    - Probing whether employers ask about criminal convictions in the hiring process and what kinds of background checks, if any, they perform;
    - Determining the level of familiarity with New York State law pertaining to employers' ability to inquire about and consider a potential hire's criminal background in the application process.
  - Exploring the perceived advantages and drawbacks of employing someone with a criminal background.
  - Probing levels of familiarity with intermediary organizations and transitional job programs which help individuals with a criminal record reenter the work force.
  - Probing the relative attractiveness of incentive programs — both financial and social—aimed at encouraging employers to hire individuals with a criminal background.

METHODOLOGY

- Global Strategy Group conducted four focus groups on behalf of the Reentry Employment Committee on June 6 and June 8, 2006, in New York City.
- Focus groups were conducted with business leaders from both majority and minority-owned businesses who are responsible for company hiring decisions.

WHO WE TALKED TO

- Focus groups were conducted among business owners and individuals who make hiring decisions at companies which employ more than five 5 but less than 250 employees.
- Individuals were recruited from among the following industries: construction, manufacturing, retail, food services, transportation, utilities, and wholesale trade.
- Focus groups consisted of business owners, presidents, directors, and general managers.
- All employers interviewed hire for entry-level or hourly wage positions. Employers were asked to focus on hourly wage and entry-level employees for the purpose of focus group discussions.

EXECUTIVE SUMMARY

- A number of employers interviewed knowingly hire individuals with a criminal background, but the majority are hesitant to hire from among this population. Employers express serious reservations about hiring individuals with a criminal record, especially when it comes to notions of personal safety and professional liability.
- African-American business owners interviewed, as well as male employers from manual labor-type industries, such as construction and transportation, express greater willingness to hire individuals with a criminal background. African-American business owners make compelling humanitarian as well as economic arguments in favor of hiring individuals with a criminal record.
- White women and retail business owners seem less inclined to hire ex-offenders, and if they were to do so, say they would be more likely to hire for back office positions which require minimal client contact. Retail employers worry about theft, and white women specifically express concerns for their safety and the safety of their employees.
- Ignorance—both ignorance about the law and ignorance about the population in question—poses a significant barrier to employment for individuals with a criminal record. Employers are largely unfamiliar with New York State laws governing employment discrimination and the hiring or individuals with a criminal record. Some employers consider arrests not leading to a conviction in the hiring practice and others conceal the findings of criminal background checks from potential employees.
- Employers seem to have extreme notions of what it means to have been convicted of a crime. Most employers interviewed have had few personal experiences interacting or working with individuals who have been convicted of a crime. Employers tend to associate all or most criminal convictions with extreme behaviors and violent crimes, such as rape and murder. A majority of employers, white women especially, would refuse to hire someone convicted of a violent crime.
- Racial, as well as gender anxieties impact hiring decisions. While employers avoid open discussion of race, employers allude to racial considerations throughout discussions of hiring practices. White employers tend to emphasize personal appearance and dress in the hiring process, which some use as proxies for character and ability. Some may refuse to hire an individual on the basis of dress alone.
- Employers interviewed who hire ex-offenders do so sporadically and with little knowledge of the social or economic incentives available to them. These employers are largely unaware of intermediary organizations, transitional employment agencies, and financial incentive programs which reward employers who hire at–risk employees, but express interest in participating in these programs.
- Attractive incentive programs must address employers' concerns regarding safety and liability at the same time they provide economic benefits to hiring. To this end, the role of intermediary organizations and transitional job programs is instrumental to creating employment opportunities. Some employers would be more comfortable hiring individuals with a criminal background if an intermediary organization or workforce development agency, such as a Workforce One Center, could not only refer and train suitable job candidates, but share responsibility for ensuring employee success.
- Ideally, employers would prefer to work with intermediary or transitional employment organizations that provide a range of employment and supportive services, including employee referrals and screening services, on–going supervision and support to at–risk employees, and on–going job training focused on technical and soft skills development.
- Labor requirements vary across industries and employers, but all employers stress the importance of "soft" skills development to job training programs. Soft skills, or job readiness and interpersonal skills, include communication skills, as well as a commitment to showing up at work on time and ready to learn. Employers believe soft skills training can and should begin long before individuals leave prison. Technical skills, including basic computer skills, are important, but skills requirements differ depending on the employer.
- Financial incentives in and of themselves are not enough to cause employers to reconsider hiring practices. Financial incentive programs, however—specifically wage subsidies—are most attractive to employers when offered in addition to the services of intermediary organizations and employment agencies in referring and vouching for potential job candidates.
- Wage subsidies which account for at least one-third of an employee's salary are the most popular of financial incentive programs tested. Employers would also be attracted by tax credits exceeding $2,000 per employee or a government assumption of responsibility for providing employees with health and other benefits for the first year of employment in place of tax credits.

KEY RESEARCH FINDINGS

LABOR PRACTICES AND HIRING NEEDS:

- Employers offer mixed reviews of current staff, specifically when it comes to the quality of their hourly wage or entry-level employees. Many are willing to sacrifice experience for attitude but have a hard time finding employees who can think on their feet, who show up at the designated hour, who dress appropriately, and who can communicate well with customers.

  "Anytime you have employees, such as laborers, you have the ones who work hard and then the ones who just show up."
  (CAUCASIAN BUSINESS LEADER)

  "You get what you pay for (with non-salaried workers). If you are paying minimum wage or using a temp agency, you want to get rid of them as fast as you can. If they don't get it after you explain it once, they're a loss to you."
  (CAUCASIAN BUSINESS LEADER)

- Employers tend to look to their own network of potential recruiters—friends, business associates, and existing employees—to recommend and vouch for potential hires. Word–of–mouth and personal referrals are the best and most preferred means of locating potential employees. In addition, employers rely on online job postings, including Craigslist, storefront posters, and newspaper, magazine or Yellow Pages advertisements to locate potential employees.

  "I find employees through other employees. I never hire anyone off the street."
  (CAUCASIAN BUSINESS LEADER)

  "I always rely on word-of-mouth. One employee recommends another."
  (CAUCASIAN BUSINESS LEADER)

- Skills requirements differ according to industry and position, and employers screen for a mixture of both technical abilities, such as metallurgy or plumbing skills, and non-technical abilities, such as interpersonal skills.

  "For my salespeople, you need to be dressed well, show up on time, have basic math skills, but if you're eager, you have a great employer in me."
  (CAUCASIAN BUSINESS LEADER)

  "[I look at] timeliness, their appearance, and I would look at their resume and try to ask questions that would let me know what type of worker they are — how long they stay at jobs, are they dedicated, how they deal with pressure."
  (AFRICAN-AMERICAN BUSINESS LEADER)

- Employers tend to place a higher premium on "soft" skills than "hard" skills. Employers say individuals with an aptitude and ability to learn are more valuable, yet harder to come by, than employees with technical skills training. They also seek employees with strong communication and interpersonal skills.

  "You don't really know how people will work out until you train them to be like yourself. You have to put your energy into them and focus on making [them good employees]."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "Showing up and being willing to learn are two key factors to determining whether I will hire someone."
  (CAUCASIAN BUSINESS LEADER)

  "I am looking at how well versed they are and how courteous they are. With any young person, how they greet me when they come in the door. Do they say, 'Hello'? Do they look me in the eye?"
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "[I am looking for] good people skills—somebody who is friendly and goes out of their way to make an experience pleasurable for customers."
  (CAUCASIAN BUSINESS LEADER)

- Many employers expect employees to look and carry themselves in a certain way and oftentimes use personal appearance and dress as proxies for character, loyalty, and ability. Some say they would not hire an individual who came for an interview dressed in baggy pants or revealing attire.

  "Clean appearance, presentable, not too many tattoos, not too many piercings, no purple hair."
  (CAUCASIAN BUSINESS LEADER)

  "You can tell a lot about a person from when they walk in the door, and how they present themselves."
  (CAUCASIAN BUSINESS LEADER)

- Nonetheless, "soft" skills do not replace hard skill requirements, and a number of employers hire for positions which require a specific type of craftsmanship or technical skill. They may look for employees with relevant experience or training—from something as general as past sales or accounting experience to something as specific as experience operating a printing press.

  "For our office work, I look for customer service or bookkeeping skills…but [they] also have to be able to answer the phone, talk with the people."
  (CAUCASIAN BUSINESS LEADER)

- Educational attainment is of lesser importance to employers interviewed, and few require a college or even high school diploma to fill hourly wage positions. Employers place some level of importance on basic math, bookkeeping, or computer skills, but few employers interviewed screen for educational attainment beyond a high school diploma. In some instances, physical ability and strength, speed, agility, customer service or interpersonal skills outweigh a diploma.

SCREENING EMPLOYEES AND THE APPLICATION PROCESS:

- Employers screen potential employees in a variety of ways. Some employers collect resumes, conduct in-person or telephone interviews, ask employees to fill out standardized application forms, and check personal references. Others simply hire potential candidates based on personal recommendations without the use of standardized screening mechanisms.

- Only a handful of employers across groups formally screen for criminal records in the hiring process. Many employers are uncomfortable with the notion of hiring someone with a criminal background but do not ask about criminal arrests or convictions on employment applications or do not attempt to verify the validity of application responses with criminal background checks. Few employers run criminal background checks to verify information presented on employment applications.

  "We don't do background checks. I would be open to it in certain circumstances, but it depends. People can change and I believe in that. But I work very hard and I want to create the best possible environment for my employees."
  (CAUCASIAN BUSINESS LEADER)

  "I don't have it on my form, but I'll ask them, and I can tell by their expression if they are telling the truth; they usually tell me. After they tell me, then I make up my mind. If they did a really bad crime, then I tell them I would have to think about it. If they've done something [minor], they deserve a second chance."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "In construction, nobody's really checking anything. You can look at them right away and you know. I feel people out by conversations. As far as being discriminatory about a person's past, I can't do that."
  (AFRICAN-AMERICAN BUSINESS LEADER)

- Employers are not very knowledgeable about the legal ramifications and restrictions surrounding an employer's ability to screen for an applicant's criminal background. Some employers ask about both prior arrests and convictions on job applications and do so knowing full well it is against the law.

  "I ask about convictions. That's it—as far as I know, that's the only thing you can ask."
  (CAUCASIAN BUSINESS LEADER)

  "I ask about arrests and convictions. Sometimes I conduct criminal background checks if it's important."
  (CAUCASIAN BUSINESS LEADER)

- Some individuals will refuse to hire individuals who are found to have been convicted of a crime, while others place a higher degree of importance on the truthfulness of an employee's response in the interview process. They want an employee to admit to their background without having to re-verify responses through more formalized means. These employers might not, however, exclude individuals from the application process based on their background.

- If an employer chooses to hire an individual regardless of their background, he may choose to share the results with a potential employee. However, if the conviction in question is intolerable to the employer, he may dismiss the applicant from the hiring process without explanation.

  "I don't disclose the findings—I hope they know what they've done."
  (CAUCASIAN BUSINESS LEADER)

OPENNESS TO HIRING:

- A number of employers interviewed knowingly hire individuals with a criminal background, but the majority are hesitant to hire from among this population. Employers have varying degrees of comfort with the notion of hiring individuals with a criminal background, and many express serious concerns about knowingly hiring an individual who has been convicted of a crime.

  "I don't hire too often, I have almost zero tolerance. If it was something way back in his childhood maybe I could make an exception. Honesty and character are the big things, and if you see things on the record then something may mean that something is not right. I don't have any particular scale. I sort of go with my instinct. They have to have a good heart and be honest."
  (CAUCASIAN BUSINESS LEADER)

  "I work really long hours. I don't have time to deal with people's problems."
  (CAUCASIAN BUSINESS LEADER)

- That being said, relatively few employers have corporate policies in place which prohibit the hiring of an individual with a criminal record, and employers make decisions about employability on a case-by-case basis.

- African-American business owners interviewed seem more open to employing individuals with a criminal background than their white counterparts. They may discuss a potential employee's background in the interview process but are less likely to use it against them in the hiring process.

  - ➤ African-American employers stress the importance of economic development in predominantly minority neighborhoods and in giving individuals a second chance, regardless of the offense.

  "We've done it unknowingly. We had a young man who was in the middle of a trial and then the verdict came down and he asked for a leave of absence. It was hard because he was one of my best employees…He returned to the job when he was done [serving his sentence]."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "I've had people who have committed crimes or been accused of crimes, but if they were good employees, we've stuck by them."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "The form says in parentheses [this will not disqualify you]…and I don't have a problem with it … I'm an equal opportunity employer, you show me how you perform [and I will stick by you]."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "I actually have hired individuals with a criminal record, and I made a conscious choice. They're two of our best employees. We had a follow-up conversation internally about the employees and the type of crime, [but in the end we were fine with it]."
  (AFRICAN-AMERICAN BUSINESS LEADER)

- Male focus group participants who hire for construction or other manual labor type positions also seem somewhat more inclined to hire individuals with a criminal background. These employers are more concerned with finding individuals who possess the skills and know-how to perform at the required level and have less concern for their employees' personal histories.

  "It doesn't matter to me. If I know that they are and I see that they are reformed from my observation, than I have no problem with it. An individual is reformed if they can work with honesty and integrity."
  (CAUCASIAN BUSINESS LEADER)

  "If I knew, it wouldn't matter. For the type of employees we hire, if they've been convicted or not, what's most important is if they can do the job."
  (CAUCASIAN BUSINESS LEADER)

  "I haven't come across anybody who did anything that bad that I wouldn't let them move furniture for me."
  (CAUCASIAN BUSINESS LEADER)

  "Because you have to give people a chance. If a guy shows up and wants to work, how can you tell him no? If he wants to show up at 7:00 AM and earn a paycheck how can you tell him he can't?"
  (CAUCASIAN BUSINESS LEADER)

- Women, employers who run cash businesses (typically smaller retail enterprises), and employers who hire for positions which require direct customer contact or which require employees to enter customers homes unattended seem less likely to knowingly hire individuals with a criminal background. These employers are concerned about the safety of employees, theft, and the impact on employee morale of knowingly hiring someone with a criminal record.

  "If my interests were in manufacturing … and I was Henry Ford creating that widget then I would consider it. Even if somebody could write me the check for the amount of what was stolen, but I don't know what it would do to the morale of the company."
  (CAUCASIAN BUSINESS LEADER)

- Regardless, most employers say they are willing to weigh all available information before making a definitive decision as to the employability of individuals with a criminal record. Employers distinguish between types of crime—violent and non-violent crimes—as well as whether the conviction was for a juvenile or adult offense.

- Employers interviewed are willing to excuse juvenile offenses, such as drug possession, but are less comfortable considering adult offenses, especially violent crimes. Most would not consider hiring someone convicted of a violent or sexually-motivated crime.

  "The thing is if the person came to me and they were 28 and they were arrested when they were 17 for shoplifting, I would maybe discuss it with them if they were honest about it on the application."
  (CAUCASIAN BUSINESS LEADER)

  "My office is primarily women, so I wouldn't be comfortable hiring someone convicted of something like murder. Maybe shoplifting, the minor things…"
  (CAUCASIAN BUSINESS LEADER)

  "I have one male person and five women in my office, and if you're a rapist I don't want you. If you stole a car when you were 16 then hopefully you've learned to be a better person."
  (CAUCASIAN BUSINESS LEADER)

THE PROS AND CONS OF HIRING:

- Employers can speak to both the potential benefits and drawbacks of hiring individuals with a criminal record regardless of whether they are personally willing to do so. They recognize the humanitarian as well as economic benefits to hiring individuals with a criminal record.

  - ➤ Some employers believe hiring someone with a criminal record is the right thing to do. Giving someone with a criminal background a second chance is an especially compelling humanitarian argument and incentive for African-American employers interviewed.
  - ➤ Individuals recognize a potentially hard working and loyal employee pool. They say individuals convicted of a crime may be more grateful for the opportunity to work and are more likely to stay at one job rather than have to disclose their record to multiple employers.

  "They're some of my most loyal workers. They are thankful for the opportunity."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "They would be grateful and I would see that they would want a job. I could give them a reference so they could move on. I have an employee who has a record and got into trouble and they are looking to start their own business and I could back them up."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "If he had been convicted of a crime, he would really want the job and work harder."
  (CAUCASIAN BUSINESS LEADER)

  "The guys who worked for me went the extra mile and took on jobs that weren't their responsibilities."
  (CAUCASIAN BUSINESS LEADER)

- On the flip side, liability and personal safety concerns are major deterrents to hiring among this population. Female employers or employers with large numbers of female employees express concerns about the physical safety of their employees. For cash–driven businesses, the potential for theft is a major concern. Employers also worry they might lose customers if an employee were to act out on the job.

"I wouldn't hire someone with a criminal record. I have a cash business. I wouldn't trust that person that they wouldn't in some way take advantage of that business."
(CAUCASIAN BUSINESS LEADER)

"I feel like I would be so worried that I would have to be watching everything, and I have enough to do already. I don't want to spend time nurturing someone who I would worry would potentially rip me off."
(CAUCASIAN BUSINESS LEADER)

"If they do something to another employee on the premises, you have liability issues."
(AFRICAN-AMERICAN BUSINESS LEADER)

"I am concerned that they could cause you to lose a customer. If they're on drugs and they show up at someone's house and you lose a customer."
(CAUCASIAN BUSINESS LEADER)

THE FEDERAL BONDING PROGRAM:

- Participants are unfamiliar with New York State law pertaining to employer liability if an employee was to commit a crime on the job. However, explanations of liability do more to aggravate than assuage employer concerns. Descriptions of current New York State law with regards to liability raise fresh concerns for employers who may not have considered the issue previously.

  "I don't want to be on the other side when the stuff goes down. It's very nice that the laws are written but you still have to pay for the defense."
  (CAUCASIAN BUSINESS LEADER)

- Participants have not heard of the Federal Bonding Program though few employers, other than African-Americans, view the program as an incentive to hiring among the population of ex-offenders. The Federal Bonding Program, which on average offers coverage of $5,000 per employee, seems too small in scope to entice potential employers or to alleviate liability concerns pertaining to theft.

  - ➤ Participants are largely unmoved by information that higher amounts of coverage, up to $25,000, may be available if justified.

  "It's not enough insurance for me. The amount of time trying to recoup your loss is not worth the effort."
  (CAUCASIAN BUSINESS LEADER)

  "The coverage is low, but the idea is good."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "I think it sounds great, and it looks great on paper, but let's say I did have one of these employees, and let's say that I suspected him of something, I would have to prove it. I'd have to put in the time and money to prove it."
  (CAUCASIAN BUSINESS LEADER)

INTERMEDIARY ORGANIZATIONS AND TRANSITIONAL EMPLOYMENT:

- There is only modest familiarity with existing intermediary organizations and transitional employment agencies in New York City which help prepare individuals for workforce reentry. There are a few mentions of The Doe Fund, the Coalition for the Homeless, NY Works, Harlem Business Capital, CEO, and Labor Ready across groups.

  - ➤ Transitional organizations are largely viewed as charitable agencies which provide social or supportive services to New York City residents in need, but employers are less likely to associate them with employment referral and job placement services.

  "[Referring to The Doe Fund]…They're homeless, mostly men; they've had all kind of background problems. They give them a sense of pride, a place to live. They get grants from the city. They teach them not only about a job, but a new attitude."
  (CAUCASIAN BUSINESS LEADER)

  "I've seen these people. I've met them over the years. I did some work for the Coalition for the Homeless over the years. The organization gives people a sense of pride and responsibility."
  (CAUCASIAN BUSINESS LEADER)

  "CEO, we used them for some job because they reached out to me."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "Ready, Willing, and Able … The Doe Fund. They're on the street picking up your garbage and in the parks."
  (CAUCASIAN BUSINESS LEADER)

- Employers are interested in learning more not-for-profit organizations and agencies that provide transitional employment and supportive services to individuals reentering the workforce. Organizational descriptions move some to reconsider current hiring practices, and several employers say they would be interested in partnering with intermediary organizations in the hiring process

  "I'm changing my mind about it as we're talking about it—I'm softening on it a little bit. I would be more inclined to hire someone through an intermediary organization that would oversee the process."
  (CAUCASIAN BUSINESS LEADER)

- Employers place high importance on supportive services, such as counseling services, offered by intermediary organizations, and transitional employment and job training programs are even more attractive incentives when offered in conjunction with supportive services.

  - ➤ Employers would be more comfortable hiring individuals with a criminal background if intermediary organizations could pre-screen and refer suitable job candidates, as well as share responsibility for ensuring employee success.

  "If there was some kind of back-up, to know that the person has some sort of a support structure … I don't know if it's a parole officer, a halfway house, a relative, a family…"
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "I think it's a pretty good program, they're going to support them. I think you have an upper hand because you have someone you can go to. I would consider people coming out of this program."
  (CAUCASIAN BUSINESS LEADER)

  "If they were a drug offender, I would like some type of follow-up where they were going somewhere for drug testing."
  (AFRICAN-AMERICAN BUSINESS LEADER)

- Ideally, employers would want intermediary organizations and transitional job programs to:

  - ➤ Refer, screen, and vouch for potential employees;
  - ➤ Share responsibility (and potentially liability) for the success or failure of employees;
  - ➤ Provide on–going supervision to at–risk employees, including follow-up care and supportive services, including drug testing and treatment;
  - ➤ Provide transitional job training, as well as on-going job training and support once individuals have been placed with employers; and
  - ➤ Link employers to financial incentive programs available to individuals who hire at-risk employees.

- Employers are largely unfamiliar with Workforce One Centers, but they are also viewed as a valuable employer resource. Workforce One Centers are positively received in that 1) they cater to employees of all types, not just individuals with a criminal background, 2) they will prescreen applicants and match employers with appropriate candidates, and 3) provide additional job training when needed. Some would consider using Workforce One Centers for both temporary and permanent workforce needs.

  "I conducted interviews at a Workforce Center, but they didn't tell me I could apply for [financial incentives]. I could go into a room with 50-75 people and do my interviews … and then they would scale back the pool for me for my second round … The great thing is that they pre-screen for you … they put them in a room and you can say here's my pool—I like these twenty, and I'm not going to hire all of them now, but I've got a pool of resumes that I can pull from in the future."
  (AFRICAN-AMERICAN BUSINESS LEADER)

- However, while Workforce One Centers are valuable resources in linking employers to potential employees, they fall short of assuaging the wider range of employer concerns pertaining to liability and risk.

- Training needs and skills requirements vary across industries and employers, and employers are interested in programs which range in length from three to twelve months. Employers emphasize the importance of "soft" skills training and job preparedness over more technical training, though some level of educational and technical training is still important.

  "I think that they need social skills as well as the work skills because they've got to reintegrate themselves into society."
  (CAUCASIAN BUSINESS LEADER)

  "[Teach employees about] building a resume, dressing for success, customer service skills."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "Provide a basic GED, just some basic skills, writing, reading, arithmetic."
  (CAUCASIAN BUSINESS LEADER)

FINANCIAL INCENTIVES:

- Employers are largely unfamiliar with financial incentive programs which reward employers who hire individuals with a criminal record. They assume there must be financial incentives involved but cannot point to specific government programs.

- Employers are somewhat encouraged by financial incentive programs, though these programs in and of themselves are not enough to encourage employment. Financial incentives are most attractive when offered in conjunction with the role of intermediary organizations.

  "There should be a bang for the buck. There should be a good quality employee for two-thirds the cost. I would want them to make 70-80% of the normal wage, because I have to take them in and train them."
  (CAUCASIAN BUSINESS LEADER)

  "By the government paying half an employee's salary, it's cheaper for all of us in the long run, because if they're not working, they're on welfare."
  (CAUCASIAN BUSINESS LEADER)

  "I'd want a tax credit. The employee could feel good about the salary they are getting and it would help the employer. Maybe 30% for the employee or half the salary is tax deductible. If it's a good employee, he thinks he's getting more than I'm actually paying."
  (CAUCASIAN BUSINESS LEADER)

- Preferred financial incentives include wage subsidies (25%-50% of employees' salary), tax credits ($2,000 to $3,000 per employee), or government provided health benefits for qualifying employees for up to one year of employment.

  "Government gives $3000 for twelve months."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "If they were trained, maybe pay 30% of their salary."
  (CAUCASIAN BUSINESS LEADER)

  "Maybe they pay them what is part of the minimum wage. Maybe it's for a time period—3 months."
  (AFRICAN-AMERICAN BUSINESS LEADER)

  "A cash incentive—reimburse part of the salary—maybe one-quarter to one-third of an individual's salary for two years."
  (CAUCASIAN BUSINESS LEADER)

- Individuals need and want more information about financial incentives available, but would prefer intermediary organizations to assist them in applying for these programs. Employers interviewed insist programs should be as easy and hassle-free as possible and say they are too busy to navigate multiple layers of bureaucracy in applying for programs.

CONCLUSIONS

- Employers are concerned about employing individuals with a criminal background but are open to some level of education and information on reentry efforts.

- Partnerships should be cultivated with employers who are already at least somewhat inclined to hire among the population of ex-offenders but who do not do so through any formalized channels. African-American employers interviewed seem more willing to hire individuals with a criminal record, as well as men who hire for manual labor or for back office positions.

- Few employers interviewed are familiar with employment and incentive programs aimed at increasing employment opportunities for individuals with a criminal record, and education and information is needed to promote these programs among potential partners.

- Intermediary and transitional job programs can play a potentially important role in increasing employment opportunities for individuals with a criminal background. Employers express numerous safety and liability concerns when it comes to hiring individuals with a criminal record. Employers would feel more comfortable working with organizations that not only refer and vouch for the credibility of potential employees, but provide supportive social services as well.

- In addition, some employers interviewed would consider working with Workforce One Centers and other agencies which place mainstream as well as at–risk employees. Employers are less likely to work with organizations that place ex-offenders only, but might work with agencies that help place employees from all backgrounds. Centers are considered attractive in that they pre-screen potential hires, only matching employers with appropriate candidates.

- These employers are also attracted by the promise of on-going job training for employees. They say training programs should stress "soft" skills development—appropriate dress, preparing for work, communicating with others—in addition to teaching technical skills.

- Financial incentives, especially wage subsidies, are most attractive when offered in addition to, not instead of, the supportive services provided by intermediary organizations. Popular financial incentives include wage subsidies, tax credits of $2,000–$3,000 per employee, and the possibility of government-provided health benefits for the first year of employment.

APPENDIX B

Memorandum In Support of "Second Chance" Legislation to Conditionally Seal Non-Violent Criminal Records

Thousands of New Yorkers currently must deal with the stigma associated with having a criminal record for the rest of their lives as they seek employment and housing and strive to become productive members of society—even after they have fully paid their debt to society and, in many cases, lived law-abiding lives for many years after completion of their sentences. New York State has long been a leader in providing fair employment opportunities for qualified individuals with histories of criminal justice system involvement for the sensible reason that people with criminal records who are able to earn a living are much more likely to lead productive, tax-paying lives and much less likely to return to crime.

Recognizing the wisdom of assisting individuals with criminal records who are qualified and not a threat to public safety to obtain employment and housing, a wide range of leaders, including a diverse group convened by former Mayor Ed Koch in 1989 and Governor Pataki when he proposed his drug law reform bill of 2003, have proposed that New York State enact a "Second Chance" law to permit the sealing of certain non-violent criminal records. Building on their proposals and consultations with a wide range of policymakers and experts, the Legal Action Center has drafted a Second Chance that has the following key components:

- Provides for the sealing of different categories of non-violent convictions. An individual who has a drug felony conviction and is mandated into chemical dependence treatment can petition to have his or her record conditionally sealed upon completion of sentence; a person with a class D or E non-violent felony can petition for a conditional seal after 3 years of completion of sentence, and after 5 years after completion of sentence on a class B or C non-violent felony. In all of these cases, individuals cannot have any other felony convictions and cannot have more than two other non-violent misdemeanor convictions. In some cases the petition is filed with the court, in other instances with an administrative tribunal. Individuals with longer records of non-violent convictions can petition to have their records sealed 10 years after completion of sentence for the last conviction.

- Gives prosecutors in all cases notice of the petition and an opportunity to support or oppose the petition.
- Lists the factors that a court or administrative tribunal has to consider, based on those listed in the Governor's bill.
- Conditionally seals records. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in a conviction, the sealing order is vacated; if the case is dismissed, it is reinstated. This is identical to the conditional sealing provisions in the Governor's bill.
- Renders ineligible individuals whose records contain a conviction for a sexual offense defined in section 130 of the penal law.
- Deems a conviction that has been conditionally sealed a nullity. An employer may only inquire about convictions of crimes that have not been sealed.

Second Chance Proposals

The criminal procedure law is amended by adding a new section 160.65 to read as follows:

Petition to conditionally seal certain convictions

1. A person may petition for the record of conviction or convictions to be conditionally sealed:

(a) Upon a person's completion of sentence on a felony defined in article 220 or 221 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law, and such person was mandated into and completed a term of chemical dependence treatment, or upon completion of a sentence on a misdemeanor, such misdemeanor imposed prior to or after the effective date of this chapter, where such person stands convicted of not more than two other misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law; or

(b) three years after the completion of a sentence on a class D or E non-violent felony, other than offenses defined in section 130 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law; or

(c) five years after the completion of a sentence on a class B or C non-violent felony, other than offenses defined in section 130 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law.

(d) Notwithstanding the provision of paragraph (a) (b) (c) of subdivision one of this section, and subdivision six, a determination by the court following a hearing that (a) the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim of such offense, (b) such abuse was a factor in causing the defendant to commit such offense and (c) the victim or intended victim of such offense was a member of the same family or household as the defendant as such term is defined in subdivision two or section four hundred fifty-nine-a of the social services law, shall be eligible to petition for the record of conviction or convictions to be conditionally sealed.

(e) For the purposes of this section, a conviction of a misdemeanor or felony shall include a conviction in any other jurisdiction of an offense that includes all the essential elements of a felony or a misdemeanor as defined in the penal law.

2. Such petition shall include:

(a) identification of the conviction or convictions for which the petitioner is seeking relief;

(b) a sworn affirmation that the sentence imposed on the conviction or convictions has been completed and date of completion;

(c) if the petitioner was mandated into chemical dependence treatment, evidence that the petitioner completed such treatment or other evidence that the petitioner is not dependent on alcohol or drugs except as prescribed by a medical practitioner;

(d) (i) for petitions to conditionally seal conviction or convictions pursuant to paragraph (a) (b) and (c) of subdivision one of this section, a sworn affirmation that no charges are pending against the petitioner, and the petitioner has not been convicted of more than one non-violent felony and the allowable number of misdemeanors not including offenses defined in section 130 of the penal law, (ii) for petitions to conditionally seal conviction or convictions pursuant to paragraph (d) of subdivision one of this section, a sworn affirmation that no charges are pending against the petitioner and the petitioner has not been convicted of any crimes for the ten–year period following the petitioner's completion of sentence on the petitioner's last conviction.

(e) any other supporting materials that would assist in determining whether it would be in the interest of justice to grant the petition.

3. For convictions to be sealed pursuant to paragraphs (b) and (c) of subdivision one of this section, the petition shall be filed with division of parole, with notice to the prosecutors of the jurisdictions in which the petitioner was convicted. The prosecutors, within 10 days of receiving the petition, may submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition. If the prosecutors do not submit materials in opposition to the petition, the division of parole shall determine if the petition complies with paragraphs (a), (b), (c) and (d) of subdivision, one and two of this section and if it does so comply, shall grant the petition. The division of parole shall notify the division of criminal justice services, and the division of criminal justice services shall notify the clerks of the court where such actions or proceedings shall be sealed, and heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The division of parole shall also notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon receipt of a conditional sealing order from the division of parole, the division of criminal justice services shall follow the procedures set forth in section 160.50 of this article except that the division of parole shall specify in the order that it is based upon the authority of this section.

4. If the prosecutors submit materials in opposition to the petition, the division of parole shall request from the division of criminal justice services a copy of the petitioner's current criminal history record, including any sealed information. The division of parole shall determine whether the petitioner has demonstrated, by a preponderance of the evidence, that it would be in the interest of justice to grant the petition. In making its determination, the division of parole shall consider the following factors: (a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (b) the character of the petitioner, including evidence that the petitioner participated in and successfully completed chemical dependence treatment or otherwise is in recovery if it is determined that the petitioner has a history of chemical dependence; (c) the criminal history of the petitioner; (d) the impact of granting the petition upon the criminal justice system; and (e) any other relevant factor. The division of parole shall state the reasons for its determination on the record. If the petition is granted, the division of parole shall notify the division of criminal justice services, and the division of criminal justice services shall notify the clerks of the court where such actions or proceedings shall be sealed, and heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The division of parole shall also notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon receipt of a conditional sealing order from the division of parole, the division of criminal justice services shall follow the procedures set forth in section 160.50 of this article except that the division of criminal justice services shall specify in the order that it is based upon the authority of this section.

5. For petitions to be sealed pursuant to paragraph (a) of subdivision one of this section, the petition shall be filed with the sentencing court for the felony conviction, with notice to the prosecutor of the jurisdiction in which the petitioner was convicted. The prosecutor, within 10 days of receiving the petition, may submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition. The court to which the petition is submitted shall request from the division of criminal justice services a copy of the petitioner's current criminal history record, including any sealed information. The court shall determine whether the petitioner has demonstrated, by a preponderance of the evidence, that it would be in the interest of justice to grant the petition. In making its determination, the court shall consider the following factors: (a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (b) the character of the petitioner, including evidence that the petitioner participated in and successfully completed treatment or otherwise is in recovery if it is determined that the petitioner has a history of drug abuse; (c) the criminal history of the petitioner; (d) the impact of granting the petition upon the criminal justice system; and (e) any other relevant factor. The court shall state the reasons for its determination on the record. If the petition is granted, the court shall notify the division of criminal justice services, and the division of criminal justice services shall notify the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The court shall notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon issuing a conditional sealing order, the court shall inform the division of criminal justice services which shall follow the procedures set forth in section 160.50 of this article except that the court shall specify in the order that it is based upon the authority of this section.

6. For any record of conviction where 10 years have passed following a person's completion of a sentence on his or her last conviction on a non-violent felony or misdemeanor offense, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of only non-violent offenses not including non-violent offenses defined in section 130 of the penal law, the conditional sealing shall be automatic and shall not require a petition. Such conditional sealing shall be initiated by the division of criminal justice services and the division of criminal justice services shall notify the clerks of the court where such actions or proceedings shall be sealed and the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions and shall follow the procedures set forth in section 160.50 of this article.

7. In the event that a person who has had a record conditionally sealed under this section is subsequently arrested for any crime, the records relating to the conviction or convictions shall be conditionally unsealed pending the final disposition of the arrest. If such arrest results in a conviction of a crime, the order of conditional sealing shall be deemed automatically vacated. The division of criminal justice services and any other entity subject to such order shall unseal any records that had been sealed by virtue of this section. All records unsealed pursuant to this subdivision shall be

restored to their original status and treated as though the order had never been entered. If such subsequent arrest results in proceedings that are terminated as described in subdivision three of section 160.50 or 160.55 of this article, the original conditional sealing order shall remain in effect and the records relating to the original order shall be sealed again in accordance with the provisions of section 160.50 or 160.55 of this article.

8. For purposes of this section, conditional sealing shall mean that the records of the subject conviction or convictions are sealed and shall not be made available to any person or public or private agency, as provided in section 160.50, except those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check; provided, however, that any record conditionally sealed pursuant to this section shall also be made available, if otherwise admissible, for use before the jury, or the judge as trier of fact, if the person who is the subject of the record is a witness as defined in paragraph (b) or (c) of subdivision one or paragraph (b) or (c) of subdivision two of section 240.45 of this article.

Effect of termination of criminal actions in favor of the accused or by conviction that has been conditionally sealed.

N.Y. Crim. Proc. Law § 160.60 shall be amended as follows:

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this [chapter] article, or upon the conditional sealing of a conviction or convictions, as defined in section 160.65 of this chapter, the arrest and prosecution and conviction or convictions conditionally sealed shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest, prosecution and conviction or convictions. The arrest or prosecution or conviction(s) conditionally sealed shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required in section 160.65 of the criminal procedure law or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution or conviction or convictions conditionally sealed. In the case of a conviction conditionally sealed, an employer, except those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check, may only ask whether a person has been convicted of a crime that has not been conditionally sealed. In the event that an employer other than those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check, asks an illegal question, the person will only have to reveal those criminal convictions that have not been conditionally sealed.

N.Y. Exec. Law § 296(16) shall be amended as follows:

It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or any conviction or convictions that have been conditionally sealed, as defined in section 160.65 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law.

Need for Amendment

With the advent of the computer age and all the other means by which criminal history information can be obtained, employers have easy access to criminal history information. Once this information is obtained, employers can act (and have acted) at will to terminate employees on the basis of their criminal histories, even if there is no direct relationship between the criminal offense(s) and the job and no unreasonable risk to the safety to the public or property, the criteria upon which an employer can deny a job to an applicant. (See § 752 of the Correction Law.)

With the advent of the computer age and all the other means by which criminal history information can be obtained, employers have easy access to criminal history information.

It is inconsistent to require employers to individually consider each person with a criminal history who applies for a job and make it illegal to deny that person a job unless specific criteria are met, but not extend that protection to individuals who are already employed. New York has a strong, longstanding policy of encouraging the employment of qualified individuals with criminal records. Sections 750 through 755 of the Correction Law should be amended to include current employees and license holders so that its protections are implemented consistently, evenly and fairly across the board.

Memorandum in Support of Amending Article 23-A of Correction Law §§ 750-755

Proposed Amendment

Article 23-A of Correction Law prohibits unfair discrimination against individuals with criminal records whose convictions are unrelated to the job sought and do not constitute a threat to safety and encourages "the licensure and employment of persons previously convicted of one or more criminal offenses." However, gaps in the statute have limited the intended protections in several key respects. The Legal Action Center proposes to close these gaps by amending Article 23-A as follows:

- The anti-discrimination protections in § 752 apply only to applicants for employment or occupational licenses who have criminal convictions. The law provides no protection to current employees or license holders who face unfair discrimination based on criminal records that predate their employment or licensure. The proposed amendment extends the anti-discrimination protections to current employees and license holders whose convictions predate employment or licensure and were not improperly denied by the applicant in response to legal inquiries from the employer or licensing agent.
- Section 752 (1) states that there must be a "direct relationship" between the criminal offense and the job or license sought for an individual with a criminal record to be denied a job or license, but provides no definition as to what constitutes a direct relationship, leaving employers and licensing agencies free to find such a connection when only the most tenuous relationship exists. The attached amendment includes such a definition.
- Section 752 (2) states that if there is an "unreasonable risk" to property, an individual with a criminal record should be denied a job or license, but again provides no definition as to what constitutes an unreasonable risk, allowing employers and licensing agencies to broadly interpret the language and decide that any risk is unreasonable. Because § 753 enumerates the factors that employers and licensing agencies should consider, which read together provide very clear guidance as to what constitute an unreasonable risk, the "unreasonable risk" prong of § 752 (2) is unnecessary. The attached amendment eliminates this language.
- While § 754 states that applicants with criminal records who are denied licensure or employment are entitled to a written statement setting forth the reasons for such denial, courts have interpreted this provision as allowing employers to merely state that they considered the factors enumerated in § 753 without requiring them to state how they evaluated and weighed each of the eight factors. This places the burden on the applicant to prove that the employer or licensing agency did not act lawfully in making their decision. The attached amendment requires such specificity in the written statement.

Need for Amendment

With the advent of the computer age and all the other means by which criminal history information can be obtained, employers have easy access to criminal history information, leading more employers to refuse to hire, or fire individuals with criminal records. In order to ensure that New York's strong, longstanding policy of encouraging the employment of qualified individuals with criminal records is enforced, §§ 750 through 755 of the Correction Law should be amended as suggested above.

Memorandum in Support of Amending the Human Rights Law So That Individuals with Confidential Youthful Offender Adjudications and Sealed Convictions for Non-Criminal Offenses are Protected Against Discrimination

Proposed Amendment

Under current law, employers cannot ask job applicants about arrest terminated in their favor nor use those arrests in making employment decisions. Furthermore, individuals with criminal convictions are protected against discrimination if their conviction is not job-related and they do not pose a threat to safety or property. However, individuals who have confidential youthful offender (YO) adjudications or sealed convictions for non-criminal offenses have none of these protections, frustrating New York State's important policy goal of helping them lead productive and crime-free lives. We propose that § 296(16) of the Executive Law be amended to extend the same protections to people with YO adjudications, a disposition granted by a judge to alleviate a youthful defendant from the stigma of a criminal conviction, and to people with non-criminal offenses, as those whose criminal cases have been terminated in their favor.

> 16. It shall be an unlawful discriminatory practice... for any person, agency, bureau, corporation or association... to make any inquiry about... or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual.. which was followed by a termination of that criminal action or proceeding in favor of such individual... <u>or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law,</u> in connection with the licensing, employment..to such individual....

Need for Amendment

Section 296(15) of the Executive Law prohibits unfair employment and licensure discrimination, as provided in Article 23-A of the Corrections Law, against individuals who have criminal convictions. Section 296(16) of the Executive Law provides even greater protection to individuals whose cases have been terminated in their favor, not allowing employers even to ask about or use the arrest in making employment decisions. The state enacted these laws to prevent people who have never been convicted of a crime from suffering the stigma and discriminatory consequences that so often result from the disclosure and use of criminal history information.

YO adjudications, which are not judgments of convictions (see C.P.L. § 720.35), and convictions for non-criminal offenses, fall under neither of these categories, and thus individuals with these histories are entirely without protection against unfair employment and licensure discriminatory practices. Because of the failure to include them within the protection of the Human Rights Law, these two groups of individuals have no remedy if employers refuse to hire them. Indeed, it makes no sense that they have even less protection than people with adult criminal convictions. New York State should correct this oversight.

Memorandum in Support of Amending Criminal Procedure Law § 160.60 To Correct Unforeseen Gaps in Sealing Law Protections

Proposed amendment

New York's sealing laws were enacted to prevent the inappropriate disclosure or use by employers of sealed criminal history information about records of arrests that did not result in a criminal conviction. For cases that are terminated in an individual's favor, § 160.60 of the Criminal Procedure Law explains the legal effect of such termination. However, for the two other groups whose cases are sealed or afforded comparable confidential protections, youthful offenders (YO) and individuals with non-criminal dispositions, no such provision exists. To remedy this, we propose the following amendment:

> **§ 160.60 Effect of termination of criminal actions in favor of the accused, <u>or by youthful offender adjudication or conviction for non–criminal offense.</u>**
>
> Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, <u>or by a youthful offender adjudication, as defined in section 720.35 of this chapter, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law,</u> the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he <u>or she</u> occupied before the arrest and prosecution....

Need for amendment

Section 160.60 of the criminal procedure law restores individuals whose cases have terminated in their favor to the legal status they had before the arrest occurred. It allows these individuals not to respond in the affirmative to inquiries about the sealed arrest or prosecution. Individuals who have confidential YO adjudications and sealed non-criminal convictions have no such protection. Thus, even though their cases are sealed or confidential, an employer can legally ask if individuals have these dispositions. And, because New York's two laws that protect individuals with past arrests or conviction records from unfair employment discrimination do not apply to these two groups, (see Exec. L. §§ 296(15) and (16); Article 23-A of the Correction Law, Corr. L. §§ 750-755), employers not only can ask about these dispositions, they can lawfully refuse to hire individuals with these histories.

An increasing number of employers are obtaining access to sealed criminal history records from sources that simply did not exist when the sealing laws were originally enacted. Records pertaining to sealed cases involving non-criminal convictions, not yet sealed at the court level, are available on the Office of Court Administration's new electronic criminal history information database. Rapidly increasing numbers of employers are also using consumer credit agencies to conduct background checks on job applicants and employees, and are being given reports containing information about non-criminal convictions even though that is in violation of the state Fair Credit Reporting Act provisions. (G.B.L. § 380-j(a)(1).

Amending C.P.L. § 160.60 will remedy the problems outlined above by bringing statutory protections for confidential YO adjudications and sealed non-criminal convictions in line with § 160.60, thus ensuring that the same fundamental protections are afforded to records of individuals in all three categories of cases where arrests do not end in a criminal conviction.

An increasing number of employers are obtaining access to sealed criminal history records from sources that simply did not exist when the sealing laws were originally enacted.

Memorandum in Support of Amending the Criminal Procedure Law § 160.55 To Seal Court Records

Proposed Amendment

Pursuant to CPL § 160.55, when a person is arrested and fingerprinted for a crime, but is convicted only of a non-criminal offense (with limited exceptions, which this proposal would not change), the fingerprints and associated photographs are destroyed, and associated police and prosecution records are sealed, under the same terms as such records are sealed under § 160.50. Court records, however, are not sealed. With the advance in technology and the proliferation of commercial background check companies that increasingly purchase their data directly from the Office of Court Administration, people who plead guilty to non-criminal convictions with the understanding that their records will be sealed now suffer unexpected disclosures and resulting barriers to employment and housing based on these minor, non-criminal convictions. To prevent unfair discrimination based on these sealed non-criminal convictions, we propose the following amendment:

CPL § 160.55 (1)(c) should be amended to read:

"All official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, <u>any court,</u> police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency, <u>except as provided in paragraphs (d) or (e) of this subdivision;</u>

<u>This paragraph shall not apply to published court decisions or opinions, or records and briefs on appeal.</u>

CPL § 160.55(1)(d) should be amended to read:

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to <u>(i)</u> a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or <u>(ii)</u> any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or <u>(iii)</u> the New York state division of parole when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or <u>(iv)</u> the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision. <u>Records made available to an officer or agency under this paragraph shall be used only by the officer or agency and shall not be re-disclosed, except with the consent of the accused or pursuant to a lawful court order, to any other person or public or private agency.</u>

CPL § 160.55(1)(e) shall be amended to read:

(e) <u>the court records referred to in paragraph (c) of this subdivision shall be made available to the court's own personnel or to a prosecutor, on the court's own motion or on the motion of a party, in the event that the criminal action or proceeding is re-opened, or in the event that the accused person is subsequently charged with an additional crime or offense, or in the event that the accused person subsequently becomes a witness and disclosure of his or her criminal record is required by this chapter or by court order. Disclosure under this paragraph shall occur, under the specified circumstances, only if the court determines that disclosure is required by law or in the interest of justice. Records made available to the court or the prosecution under this paragraph shall also be made available to the subject of the record. Records made available to the court or the prosecution under this paragraph shall be used only in the particular proceeding and shall not be re-disclosed, except with the consent of the accused or pursuant to a lawful court order, to any other person or public or private agency. At the conclusion of the proceeding, they shall be re-sealed.</u>

[provision providing disclosure if accused subsequently moves for a marijuana ACD is deleted as superfluous; in this situation, disclosure would be required by law under the amended wording]

Existing CPL § 160.55(1)(e) shall be re-designated CLP § 160.55 (1) (f).

CPL § 160.55, subd. 3 is replaced by the following language:

3. A person against whom a criminal action or proceeding was terminated <u>as defined in subdivision one of this section</u> [delete more specific language], prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

An additional section of the new law, not part of the Consolidated Laws, should provide,

<u>The office of court administration shall develop and promulgate regulations which shall require the implementation of the amendments of the laws of 2006, requiring the sealing of court records under CPL § 160.55, with respect to criminal actions or proceedings terminated after the effective date of that section, but prior to the effective date of said amendments.</u>

Need for Amendment

Availability of non-criminal conviction information on the court level has become a serious problem because court records are now computerized, and the court system sells easy, computerized access to licensed investigative agencies, among others. Indeed, access to court records is easier than access to NYSIID (rap sheet) information. The result is that potential employers, creditors, and others who investigate applicants now often use court records, instead of rap sheet inquiries, to learn about criminal histories. These electronic court records contain not only the charge that led to conviction but also additional charges that appear in arrest documents or accusatory instruments that were dropped by the prosecution or dismissed by the court, in many cases because they were unproven or inaccurate.

Availability of non-criminal conviction information on the court level has become a serious problem because court records are now computerized, and the court system sells easy, computerized access to licensed investigative agencies, among others.

The Legislature's purpose in enacting CPL § 160.55, to shield persons who were arrested but not convicted of crimes from employment discrimination and damage to their reputations arising from the unproven charges, has been undermined and frustrated. These protections must be restored, and reinvigorated, by sealing the computerized court records and preventing employers from gaining access to information that they would not legally be allowed to gain from the Division of Criminal Justice Services or any other agency.

The proposed amendment restores the Legislature's original intent, while also respecting the purpose behind the Legislature's 1992 amendment (chapter 249, laws of 1992) clarifying that court records were not to be sealed under § 160.55. At the time § 160.55 was originally enacted, the goal of eliminating employment-related discrimination against this class of persons could be accomplished by sealing fingerprint-related records. Court records were not normally used to investigate job applicants because of the practical difficulty of traveling to every courthouse to look them up. The Legislature's 1992 amendment was not meant to facilitate the discrimination that § 160.55 prohibits, but to assure that persons who pled down to infractions or violations could not hide their past petty-offense convictions in the event of future violations of the law. (See, e.g., memo of Dept. of Motor Vehicles, expressing concern that sealing of court records could impair the Department's efforts to maintain accurate driving records and impose appropriate license sanctions.) The amendment would allow intended uses of these records while preventing unintended uses.

The amendment also limits the use of unsealed records and prohibits re-disclosure by persons and agencies who have obtained lawful access.

The amendment allows access to court records sealed under § 160.55 when a sealed case is re-opened (e.g., when a defendant has failed to perform restitution or community service), when the defendant is re-arrested, or when the former defendant testifies as a witness. This serves the legitimate desire of the prosecution to consider the previous charges in formulating their recommended disposition of the new case, and also serves the legitimate need of trial attorneys to be able to cross-examine witnesses about their prior convictions and bad acts. The provisions reinforce the distinction between CPL § 160.50, under which cases terminated in the defendant's favor are to be deemed a nullity, and CPL § 160.55, under which a conviction exists but should not be the basis for discrimination in employment or other non-criminal contexts.

The amendment also limits the use of unsealed records and prohibits re-disclosure by persons and agencies who have obtained lawful access. This prohibition is implicit in existing law, but making it explicit will provide added protection. Cf. § 995-d of the Executive Law, making DNA records confidential and prohibiting unauthorized redisclosure of such records outside the limited contexts in which disclosure is lawful.

Finally, the proposed legislation requires the court system to implement record-sealing for completed cases. This is readily achievable, particularly for computerized records and for paper records which are specifically requested. These Court records already bear an indication that they are sealed under CPL § 160.55. There is no reason to require a person whose law enforcement records are already sealed to come into court and move for sealing of the court records. Imposing such a requirement would nullify the value of the amendment for many tens of thousands of persons who would otherwise benefit from it.

Memorandum in Support of A.06393 To Streamline DOCS Website Listing of Current and Formerly Incarcerated Persons

The Legal Action Center and its National H.I.R.E. Network support A.06393, legislation that would limit the length of time that conviction history can be posted on the Department of Correctional Services (DOCS) website to 10 years after a person is released from custody. (This proposal does not affect sex offenders.) Currently, DOCS maintains all information on people currently or formerly incarcerated on its website indefinitely, even if the person is deceased or has been released from custody for decades. We urge the New York State Senate to introduce companion legislation and the Senate and the Assembly to pass it.

The Department of Correctional Services has a legitimate need to maintain a website of individuals incarcerated in state prisons. Victims of crimes may want to ascertain if people who committed crimes against them are still incarcerated, and family and friends of people in prison may need a means of determining where their loved ones are being held. Once a person is released from prison, however, those reasons disappear. Those individuals who need criminal record information can obtain it from New York State's Division of Criminal Justice Services, which provides comprehensive criminal conviction information for individuals and agencies who are authorized to conduct such requests, and from the Office of Court Administration, which also provides statewide criminal conviction information.

Old, incomplete, and misleading information about a person's incarceration is simply irrelevant once that individual is released from prison.

Instead, the DOCS information database, available on the Internet as a free service, *is being misused as an inappropriate criminal background check resource for employers and others.* The result of this practice is that large numbers of qualified jobseekers are being denied access to employment and housing based on information that is incomplete and potentially misleading. For example, it contains information about when a person is eligible for release from parole, but, because the database is maintained by DOCS and not the Division of Parole, omits information that the person has been discharged from parole, leaving the impression that they are still under state supervision. Moreover, the DOCS database can be accessed by name alone, making it likely that a person with a common name but no criminal history might be confused with another person, currently or formerly incarcerated, with the same name.

Old, incomplete, and misleading information about a person's incarceration is simply irrelevant once that individual is released from prison. Given the other options in New York for individuals to obtain complete criminal history information, the time that a conviction history can be posted on the DOCS website should be limited, at most, to 10 years after a person is released from custody. This is consistent, also, with the ten–year period used by the courts to determine second and persistent felony offender status.

APPENDIX C

NEW YORK STATE

Occupational Licensing Survey

Prepared by
Legal Action Center

INTRODUCTION

Over one hundred occupations in New York State require some type of license, registration, or certification by a state agency. This survey provides information about statutory restrictions placed on licensure of individuals with criminal records and about the procedures available to appeal a denial of licensure, registration, or certification based on an individual's criminal history.

For over thirty years, the Legal Action Center has worked with individuals with criminal records who are seeking employment. Our experience is that many people, including individuals with criminal records and those who counsel them, mistakenly believe that persons with criminal records are barred from obtaining most occupational licenses. As a result, many individuals with criminal records do not pursue employment opportunities that otherwise might have been available to them.

This survey can assist individuals with criminal records, employment counselors, and others who work with them to identify those State licenses for which they are eligible. (This survey does not cover federal licenses or other federal employment barriers.) The survey shows that there are only a few statutes that automatically bar individuals with criminal records from licensure solely on the basis of past convictions, and most of those statutes provide for lifting the automatic bar when an individual is granted a Certificate of Relief from Disabilities, a Certificate of Good Conduct, or Executive Clemency (pardon).

Although Certificates of Relief from Disabilities and Good Conduct lift automatic bars, individuals with criminal records may still be denied licenses based upon their conviction records. Licensing agencies are required by Article 23-A of the New York Correction Law (§§ 750-55) to make licensing decisions on a case-by-case basis. The law prohibits an agency from denying an individual with a criminal record a license because of his or her conviction record unless the individual's conviction(s) is (are) "directly related" to the specific license sought or the issuance of the license would create "an unreasonable risk to property or to the safety" of people (§ 752).

In determining job-relatedness and risk to the public or to property, licensing agencies must consider the following factors:

1. New York's public policy to encourage the licensing and employment of individuals with criminal records;

2. The specific duties and responsibilities necessarily related to the license being applied for, and the bearing, if any, that the individual's criminal history will have on his or her fitness to perform these duties and responsibilities;

3. The time that has elapsed since the individual's criminal conduct, and the individual's age at the time of the occurrence;

4. The seriousness of the individual's offense(s);

5. The legitimate interest of the licensing agency in protecting property, specific persons, or the general public; and

6. Any evidence of rehabilitation that an individual with a criminal record presents, including a Certificate of Relief from Disabilities or Certificate of Good Conduct. (Certificates of Relief from Disabilities and Good Conduct create a presumption of rehabilitation.)

In determining whether a particular individual's convictions are, or are not, so related to the licensure sought as to justify a denial, licensing agencies must proceed on a case-by-case basis.

Some other statutes do not contain any automatic bar for individuals with criminal records but do restrict licensure or certification to persons of "good moral character." The meaning of this requirement may vary depending upon the licensing agency and the occupation or profession involved; more often than not, however, an applicant's criminal history will be taken into account as reflecting on his or her moral character. Again, the criminal record should be evaluated in accordance with Article 23-A.

HOW TO USE THIS SURVEY

The first column of the survey lists occupations in alphabetical order. The occupational titles are taken from the statutory language, and thus may not necessarily be the most common title. For example, "Doctor" is listed as "Physician," and "Lawyer" as "Attorney."

The second column, "Agency," provides the name of the city or state agency that issues that particular license. A list of addresses and phone numbers for the agencies is attached as Appendix 2.

The third column lists any information found in the licensing statute concerning specific restrictions placed on individuals with criminal records. The column specifies whether the restriction is mandatory (meaning that the licensing agency may not issue a license to someone with this conviction), or discretionary. For example, an applicant for licensure as an Alcoholic Beverage Manufacturer is automatically barred if s/he has been convicted of a felony or of certain offenses listed in the statute. On the other hand, an applicant for licensure as a barber or wrestler may be denied a license because of a conviction or because of having consorted with someone with a conviction. In some instances, the statute differentiates between people applying for licenses versus those who are convicted of a crime after holding a license.

The information about criminal record restrictions is followed by a citation to the statute containing the restriction. If the statute imposes a different restriction for people who are applying for the license, as opposed to those who are convicted of crimes once they hold a license, then the column explains that distinction as well.

The fourth column describes the circumstances under which a bar may (or in some cases, must) be lifted, such as after passage of a certain amount of time, at the discretion of the licensing agency, or upon receipt of a pardon.

The fifth column, "Related Restrictions," lists information about restrictions or requirements that may not bar an individual with a criminal record from licensure but are likely to have some bearing on whether the licensure or certification will be issued. The most common example is a "good moral character" requirement. For example, applicants for licenses issued by the State Education Department, which is responsible for issuing licenses for such medical occupations as nursing, opthalmic dispensing, and occupational therapy and certifications for, among others, the fields of psychology, teaching, social work, and shorthand reporting, must show good moral character.

The fifth column also states whether the applicant for licensure must be fingerprinted or bonded. Fingerprints are usually used to request a copy of the applicant's Criminal History Record from the State Division of Criminal Justice Services (DCJS). If the applicant is required to be bonded, the bonding agency will probably inquire into criminal records and have access to the DCJS file. Thus, even though there may be no specific criminal record restrictions listed for a particular license, other requirements or restrictions may affect an individual with a criminal record's application for licensure.

If an applicant is denied a license based on a criminal record, s/he may appeal the decision in one of several ways. Some licensing statutes have specific provisions for hearings, written appeals or court proceedings that an applicant may pursue. Those provisions are listed in the fifth column, "Rights And Appeal Procedures." Many licensing statutes do not specifically provide for appeals. "N/A" indicates that no statute directly specifies procedures for appealing the denial of that particular license. This does not mean, however, that the applicant is without recourse. An arbitrary denial of licensure based on criminal history may usually be challenged in a court proceeding brought under Article 78 of the Civil Practice Law and Rules (CPLR). This type of proceeding usually requires the assistance of legal counsel.

For further information about a particular license, consult the issuing agency.

The study does not include a complete survey of State and City Civil Service positions or of municipal licenses. Nor does it include criminal record bars imposed in certain industries, such as the home health care or trucking industries. These bars may apply even to individuals with a license to work in that industry.

ABOUT THE LEGAL ACTION CENTER

The Legal Action Center is a non-profit, public interest organization whose primary purpose is to combat discrimination based on a person's criminal record, history of drug or alcohol abuse, or HIV/AIDS status. The Center does this by educating individuals, their counselors, and employers that such discrimination is illegal and by providing legal representation as well as policy advocacy.

For individuals with criminal records living in New York State, the Center provides advice about their rights and assists them to develop job-seeking strategies, helps them "clean up" their criminal records and obtain Certificates of Relief and Good Conduct, and provides legal representation to challenge illegal denial or termination of employment and licensure. The Center has helped many individuals obtain licenses as taxi drivers, social workers, nurses, doctors, insurance agents, locksmiths and teachers. The Center's staff also helps those who have suffered discrimination in areas such as medical care, housing, insurance, and access to government benefits.

The survey initially was conducted with funding from the New York State Department of Probation and Correctional Alternatives and was revised with funding from the New York State Division of Criminal Justice Services.

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
1. Accountant	State Ed Dept	None		Good moral character, ADBD -CPA: **Educ L** 7404(1)(7)-Public: **Educ L** 7405(3) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
2. Acupuncturist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6506 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
3. Aircraft Operator	Federal Aviation Administration	Drug-related conviction renders one ineligible for license for 1 year and is grounds for suspension or revocation. Title 14 **CFR** 61.15	Become eligible for license one year after drug–related offense. Title 14 **CFR** 61.15	Must have federal license, **GBL** 241	N/A
4. Alcoholic Beverage Wholesaler/Manufacturer/ Retailer	State Liquor Authority	Mandatory bar for felonies and specific misdemeanors for licenses & employees. Applicant must disclose whether spouse has been convicted of crimes listed in § 126. **ABCL** 110, 126, 3, 102	Bar for employees may be lifted by SLA permission, for employees & all others by pardon, C/GC, or C/R.	Fingerprinting Bonding Must disclose any pending criminal charges or convictions against applicant or applicant's spouse unless acquitted, dismissed, pardoned, C/GC, or C/R. **ABCL** 110	Apply for hearing & review of denial of application by SLA to SLA. Subject to review by Supreme Ct. **ABCL** 121, 54
5. Ambulance Driver	SEE EMERGENCY MEDICAL TECHNICIAN				
6. Animal Health Permit	Dept of Agri & Mkts	Discretionary–application may be denied or revoked if convicted of a felony. **A&M L** 90-e		Good character and responsibility, ADBC. **A&M L** 90-d	Notice and hearing **A&M L** 90-e

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
7. Architect	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7304 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
8. Attorney	Committee on Character & Fitness of Applicants for Admission to the Bar	None		Good moral character **CPLR** § 9404	N/A Must obtain permission from appellate division in which had filed in order to refile application. **CPLR** § 9405
9. Baby Chick Seller	Dept of Agri & Mkts	None		None **A&M L** § 175-n	N/A
10. Bail Bondsman (sic)	State Ins Dept	Mandatory–applicant *must* not have been convicted of any offense involving moral turpitude or of any crime. **Ins L** § 6802(g)		Fingerprinting Good character & reputation Bonding **Ins L** § 6802(g)	Art. 78 **CPLR** **Ins L** § 2124
11. Barber	Dept of State	Discretionary–license may be suspended or revoked for one year if convicted of crime or offense involving moral turpitude or for habitual substance abuse. **GBL** § 441	N/A	Good moral character **GBL** § 434(B)	Revocation hearing
12. Barber Shop Owner	Dept of State	Discretionary–license may be suspended or revoked for one year if convicted of crime or offense involving moral turpitude or for habitual substance abuse. **GBL** § 441		Good moral character **GBL** § 438(3)	Revocation hearing
13. Beer Brewer/Wholesaler	SEE ALCOHOLIC BEVERAGE WHOLESALER				

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
14. Bingo Distributor/ Operator	State Racing & Wagering Bd NYC: Consumer Affairs	Bar for conviction of any crime. **Exec L** § 435(2)(c)(1)	Bar may be lifted by pardon, C/GC, or C/R **Exec L** § 435(2)(c)(1)	Good moral character No one who has been a professional gambler or gambling promoter. **Exec L** § 435(2)(c)(2)	Appeal to State Bingo Control Commission **Exec L** § 435(1)(d)
15. Blasters (also: Lasers, Radiation & Crane Ops.)	Dept of Labor NYC: Fire Dept	None		May require: Bonding Fingerprinting **GBL** § 483	N/A
16. Boxer/Wrestler	State Athletic Commission of Dept of State	Discretionary–may refuse to issue or revoke if convicted of a crime or if consorting with anyone convicted of a crime. **Uncon L** § 8917		Fingerprinting **Uncon L** § 8911 Character & fitness **Uncon L** § 8912	N/A
17. Boxing/Wrestling: License to ALL Direct or Indirect Participants	SEE BOXER/ WRESTLER				N/A
18. Bus Driver	Dept. of Motor Vehicles	Mandatory–felony bar for certain sex offenses and for certain vehicular offenses. **V&T L** § 509-C	Bar may be waived if 5 years since release from sentence and (in case of felony) a C/R. **V&T L** § 509-C	None	Art. 78 **CPLR** **V&T L** § 263
19. Chauffeur	SEE TAXI DRIVER				
20. Check Cashier	State Banking Dept	Discretionary–may be refused if convicted of a crime or if consorting with anyone who has been convicted of a crime. Mandatory–must not have been convicted of a felony. **Banking L** § 369(6)	Both bars may be lifted by reversal of conviction, pardon or C/GC. **Banking L** § 369(6)	Character & fitness **Banking L** § 369(1)	N/A

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
21. Chiropractor	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6554(7) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
22. Civil Service Employee of NYC	NYC Dept of Citywide Admin Services	None		Satisfactory character and reputation **NYC Civil Service Rules & Regulations** § 3.2.6	
23. Commercial Feed Mftr/Distributor	Dept of Agri & Mkts	Discretionary–may be denied or revoked if convicted of felony, without subsequent pardon by the governor or other appropriate authority in the state or jurisdiction of the conduct or without a certificate of good conduct. **A&M L** § 129	Bar may be lifted by pardon or by C/GC. **A&M L** § 129	Character & responsibility **A&M L** § 129	Notice and hearing Art 78 **CPLR** **A&M L** § 129-a
24. Controlled Substance Mftr/Dist.	Dept of Health	None	N/A	Must submit affidavit if ever convicted of drug offense. **PHL** § 3312(2)(b) Good moral character **PHL** § 3312(1)(a)	Within 30 days of denial of license may submit additional info or demand hearing. **PHL** § 3313(2)
25. Cosmetologist	SEE HAIR-DRESSER				
26. Dental Hygienist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6609(7) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
27. Dentist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6604(7) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
28. Deputy Sheriff	County Supervisor's Office	None		Fingerprinting **County L** § 652(4)	N/A
29. Dietician	State Ed Dept	None **Educ L** § 8004		None **Educ L** § 8004	N/A
30. Disposal Plant or Transportation Service Operator	Dept of Agri & Mkts	Discretionary–may be barred, suspended or revoked if convicted of a felony. **A&M L** § 96-z-3	Bar may be lifted by pardon or C/GC. **A&M L** § 96-z-3	Character, ADBC **A&M L** § 96-z-2	Notice and hearing Review if requested w/in 30 days of denial according to Art. 78 **CPLR.** **A&M L** § 96-z-4
31. Dog Owner	Dept of Agri & Mkts	None		None **A&M L** § 109	N/A
32. Dry Milk Importer	Dept of Agri & Mkts	None **A&M L** § 258dd		Registration 1 **NYCRR** 13.2	N/A
33. Licensed Electrician	Dept of Buildings	Discretionary–may be suspended or revoked if convicted of a crime. **NYC Admin Code** § 27-3016(1)(vii)		Good moral character **NYC Admin Code** § 27-3010	Notice & revocation hearing **NYC Admin Code** § 27-3016(i)
34. Embalmer	SEE FUNERAL DIRECTOR				
35. Emergency Medical Technician	State Emergency Medical Services Council	Mandatory bar for (i) certain felonies (e.g., murder, manslaughter, theft, drug offenses, robbery, fraud, assault, sexual abuse) and (ii) embezzlement. **PHL** § 3005(8)	Bar waived if conviction does not demonstrate present danger. **PHL** § 3005(8)	None **PHL** § 3005(5)	N/A

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
36. Employment Agency Operator	Dept of Labor NYC: Consumer Affairs	None		Good moral character Fingerprinting **GBL** § 173, 174	N/A
37. Engineer	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7206 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
38. Explosives Handler	Commissioner of Dept of Labor	Discretionary–may be denied or revoked if convicted of crime for which sentenced to serve one or more years in prison. **Labor L** § 459(1)		Not confined as patient or inmate in institution for treatment of mental diseases. Reliable Fingerprinting (may be waived if applicant has gun license) **Labor L** § 458(4) &(7), § 459(1)	Hearing **Labor L** § 459.3
39. Farm Labor Contractor	Div of Labor Standards of Dept of Labor	Discretionary–may be denied or revoked if convicted of any crime or offense, except traffic violations. **Labor L** § 212-a		Fingerprinting **Labor L** § 212-a	Hearing **Labor L** § 212-a
40. Farm Products Dealer	Dept of Agri & Mkts	None		Good character Bonding **A&M L** 248	Art 78 **CPLR** **A&M L** § 250-h
41. Fertilizer Distributor	Dept of Agri & Mkts	None		None **A&M L** § 146	N/A
42. Firearms Carrier	Licensing Officer of City	Mandatory denial of applicant for felony and serious offenses. **PL** § 400.00 Mandatory–automatic revocation if convicted of felony or serious offense while licensed. **PL** § 400.00	N/A	Good moral character and never been confined to mental hospital or have history of mental illness. Fingerprinting **PL** § 400.00	N/A

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
43. Firefighter	Fire Dept	Mandatory felony bar for applicants **NYC Admin Code** § 15-103. Discretionary discipline or removal for conviction of any legal offense, conduct injurious to public peace or welfare, or immoral conduct, ADBC. **NYC Admin Code** § 15-113	N/A	None	Right to public examination of charges for dismissal **NYC Admin Code** § 15-113
44. Food Processing Plant Operator	Dept of Agri & Mkts	Discretionary–may be denied or revoked if convicted of a felony. **A&M L** § 251-z-5(7)	N/A	Good character Bonding **A&M L** § 251-z-3	Art 78 **CPLR** **A&M L** § 251-z-6
45. Food Salvager	Dept of Agri & Mkts	Discretionary–may be denied, revoked or suspended if convicted of a crime. **A&M L** § 220		Good character, ADBC **A&M L** § 219	Art 78 **CPLR** **A&M L** § 221
46. Frozen Dessert	Dept of Agri & Mkts	None		Character and experience **A&M L** § 71-d	Art 78 **CPLR** **A&M L** § 71-f
47. Funeral Director	Dept of Health	None for applicants Discretionary–may be revoked for conviction of crime. Automatically revoked for conviction of a felony. **PHL** § 3450	License may be restored if granted a pardon or C/GC. **PHL** § 3454	May be revoked for habitual drunkenness or addiction to narcotics. **PHL** § 3450	Hearing **PHL** § 3451 Art. 78 **CPLR**
48. Furniture & Bedding Manufacturing	Dept of State	None		None **GBL** § 388	N/A
49. Harbor Pilot	State Bd of Commissioners of Pilots	None		Good moral character & temperate habits **Nav L** § 92	N/A
50. Hairdresser	Dept of State	None for applicants License *may* be revoked if convicted of any crime or offense involving moral turpitude or for habitual substance abuse. **GBL** § 411		Freedom from infectious or communicable disease. Good moral character **GBL** § 411	Revocation hearing & Denial hearing **GBL** § 411

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
51. Hearing Aid Dealer	Dept of State	Revocation/suspension for conviction of any crime related to duties of the job.	N/A	Good character, reputation, & fitness **GBL** § 790	May request hearing if denied. **GBL** § 800
52. Horse Racing	Dept of Agri & Mkts	Discretionary–may be denied or revoked if convicted of a crime or for consorting with anyone convicted of a crime. **RPMWBL** § 213(2)	N/A	Character and general fitness **RPMWBL** § 213(2)	N/A
53. Insurance Securities Salesperson	State Ins Dept	None		Public interest **Ins L** § 1204	Hearing **Ins L** § 2103 Art 78 **CPLR** **Ins L** § 2124
54. Insurance & Savings Bank Officers & Employees	State Ins Dept	None		Trustworthy and competent **Ins L** § 2202(2)	Hearing **Ins L** § 2103 Art 78 **CPLR** **Ins L** § 2124
55. Inspectors & Investigators for Dept of Agri	Dept of Agri & Mkts	None		Fingerprinting **A&M L** § 11	N/A
56. Jockey	SEE HORSE RACING PERSONNEL				
57. Junk Dealer	Mayor's Office of City	Mandatory–applicant must not have been convicted of larceny or knowingly receiving stolen property. **GBL** § 61	None	None	N/A
58. Land Surveyor	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7206-a(7) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
59. Liming Materials Seller	Dept of Agri & Mkts	None		None **A&M L** § 142ee	Art 78 **CPLR** **A&M L** § 142ee
60. Long-Shoreman (sic)	Waterfront Commission	Discretionary–registration *may* be denied or revoked if convicted of treason, murder, manslaughter, or of any felony or high misdemeanor. **Uncon L** § 9829	Bar may be lifted by pardon. **Uncon L** § 9829	None	Hearing **Uncon L** § 9845
61. Masseur/Masseuse	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7804(6) *Any information about criminal record referred to OPD for investigation and determination.	Hearning Written appeal 8 **NYCRR** 28
62. Melloream Mftr	Dept of Agri & Mkts	None		None **A&M L** § 50-g	N/A
63. Midwife	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6955 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
64. Migrant Farm Worker	SEE FARM LABOR CONTRACTOR				
65. Milk Dealer	Dept of Agri & Mkts	Discretionary–may be denied, revoked or suspended if convicted of a felony. **A&ML** § 258-c(i)		Good character (No) acts injurious to public health Bonding **A&M L** § 258-c	Notice and hearing **A&M L** § 258-c Art 78 **CPLR** **A&M L** § 258-d
66. Milk Tester/Weigher/Grader	Dept of Agri & Mkts	None		Good moral character **A&M L** § 57-a	N/A

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
67. Money Lender	State Banking Dept	None		Good character & general fitness **Banking L** § 342	N/A
68. Money Transmitter	State Banking Dept	None		Good character & general fitness **Banking L** § 642	Hearing **Banking L** § 642
69. Notary Public	Dept of State	Mandatory–felony and specific misdemeanor (e.g., drug offenses) bars for applicants. Exec L § 130		Good moral character **Banking L** § 130 **Exec L** § 130	N/A
70. Nurse	State Ed Dept	None		Good moral character, ADBD -RN: **Educ L** § 6905 -LPN: **Educ L** § 6906 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
71. Nursery (Trees) Stock Seller	Dept of Agri & Mkts	None		None **A&M L** § 163-a	N/A
72. Nutritionist	SEE DIETICIAN				
73. Occupational Therapist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7904 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
74. Opthalmic Dispenser	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7124 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
75. Optometrist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7104 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
76. Pawn Broker	Mayor's Office or local licensing authority	None		Good character Bonding **GBL** § 41	N/A
77. Pharmacist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6805 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
78. Physical Therapist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6734 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
79. Physician	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6524 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
80. Physician's Assistant	State Ed Dept	None		Good moral character, ADBD **Educ L** § 6541 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
81. Pier Superintendent/ Hiring Agent	Waterfront Commission	Mandatory–felony and specific misdemeanor (e.g., drug offenses) bar for applicants. **Uncon L** § 9814 Discretionary–revocation for (i) conviction of felony or specific misdemeanor (e.g. drug offense) (ii) consorting with anyone convicted of such an offense or (iii) drug addiction or distribution. **Uncon L** § 9818	Bar may be lifted if applicant has 5 years good conduct or by pardon. **Uncon L** § 9814	Good character and integrity **Uncon L** § 9814	Hearing **Uncon L** § 9845

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
82. Plant/Soil Innoculant Seller	Dept of Agri & Mkts	None		None **A&M L** § 147-b	Art 78 **CPLR** **A&M L** § 147-g
83. Licensed Plumber	Dept of Buildings	None		Good moral character **NYC Admin Code** § 26-133 Revocation for poor moral character that adversely reflects on fitness to conduct plumbing business **NYC Admin Code** § 26-151	Revocation hearing **NYC Admin Code** § 26-151
84. Podiatrist	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7004 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
85. Police Officer	Police Dept	Mandatory–permanent felony bar **NYC Admin Code** § 14-109		None	N/A
86. Private Investigator (and employees)	Dept of State	Mandatory–felony and specific misdemeanor bar (e.g., drug offenses, buying/receiving/possessing stolen property, unlawful entry) for applicants. **GBL** § 74 License suspended if convicted of crime. **GBL** § 74	Bar may be lifted by pardon or C/GC. **GBL** § 74	Bonding Fingerprinting Good character, competency, honesty and integrity Criminal history investigated **GBL** §§ 72, 81, 74	Hearing **GBL** § 79
87. Psychologist	Dept of State	None		Good moral character, ADBD **Educ L** §7 603 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
88. Public Adjuster	State Ins Dept	Mandatory–felony and specific misdemeanor bar for convictions involving fraudulent or dishonest practices. **Ins L** § 2108(d)(3)&(4)	Bar may be lifted by pardon or C/GC. **Ins L** § 2108(d)(3)&(4)	Trustworthy and competent Fingerprinting **Ins L** § 2107, 2108(d)(2)&(5)	Hearing **Ins L** § 2108 Art 78 **CPLR** **Ins L** § 2124
89. Race Track Worker	SEE HORSE RACING PERSONNEL				
90. Radiologist	Bureau of Environmental Radiation Protection	Suspension/revocation if guilty of crime involving moral turpitude. Forfeiture of license if convicted of any crime considered a felony in New York. **PHL** § 3510	Forfeiture may be lifted by pardon or C/GC **PHL** § 3510	Good moral character **PHL** § 3505	Hearing **PHL** § 3511 Art 78 **CPLR**
91. Real Estate Broker/ Salesperson	Secretary of State	Mandatory–must not have been convicted of a felony. **Real Prop L** § 440-a	Bar may be lifted by pardon or C/GC. **Real Prop L** § 440-a	Trustworthiness **Real Prop L** § 441	Hearing **Real Prop L** § 441-e Art 78 **CPLR** **Real Prop L** § 441-f
92. Refrigerator Warehouse and/or Locker Plant Operator	Dept of Agri & Mkts	None		Good character, fiscal responsibility & competency, ADBC **A&M L** § 231	Art 78 **CPLR** **A&M L** § 232
93. Sanitation Worker	Sanitation Dept	Discretionary–*may* be punished or dismissed for conviction of any legal offense, conduct injurious to public peace or welfare, or immoral conduct, ADBC **NYC Admin Code** § 16-106		None	Opportunity to give explanation before punishment meted out. **NYC Admin Code** § 16-106
94. Scrap Processor	Mayor's Office	None		None **GBL** § 69-f	N/A

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
95. Securities Broker Dealer Salesperson	Dept of Law	None		Must disclose criminal record. **GBL** § 359-e(3)(a)(b) Fingerprinting **GBL** § 359-e(12)	N/A
96. Security Guard	SEE PRIVATE INVESTIGATOR				
97. Shorthand Reporter (Certified)	State Ed Dept	None		Good moral character, ADBD **Educ L** § 7504(7) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
98. Social Worker (Certified)	State Ed Dept	None		Good moral character, ADBD Educ L § 7704(7) *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
99. Speech Pathologist	State Ed Dept	None		Good moral character, ADBD **Educ L** 8206 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
100. Stevedore	Waterfront Commission	SAME AS PIER SUPERINTENDENT. **Uncon L** § 9821		Good character & integrity **Uncon L** § 9821	Hearing **Uncon L** § 9845
101. Taxi Driver	Dept of Motor Vehicles	Same as for drivers licenses generally. Mandatory revocation for convictions for certain vehicular offenses. Mandatory suspension for convictions for certain drug-related felonies and misdemeanors and for assault against traffic enforcement agent. Permissive suspension and revocation for any felony conviction. **V&T L** § 510		Permissive suspensions for intoxication or use of drugs and for commitment to institution under jurisdiction of Dept of Mental Hygiene. **V&T L** 510 Good moral character Fingerprinting No drug or alcohol addiction **NYC Admin Code** § 19-505	Art 78 **CPLR** **V&T L** § 263 Revocation hearing for city license **NYC Admin Code** § 19-505(L)

OCCUPATION	AGENCY	CRIMINAL RECORD RESTRICTIONS	REMOVAL OF CRIMINAL RECORD RESTRICTIONS	RELATED RESTRICTIONS	RIGHTS AND APPEAL PROCEDURES
102. Teacher	State Dept of Ed	None		Good moral character, ADBD Fingerprinting **Educ L** §§ 3012, 3020, 2590-h(20).	Hearing **Educ L** § 2590-g
103. Theatre Ticket Reseller	City or County Licensing Commission	None		Good moral character **ACA L** § 25.03 Bonding **ACA L** § 25.07	N/A
104. Truck Driver	Dept of Motor Vehicles	Must report once per year all convictions for violations of vehicle laws & ordinances other than those involving parking. **V&T L** § 509-t		None	Art. 78 **CPLR** **V&T L** § 263
105. Undertaker	SEE FUNERAL DIRECTOR				
106. Veterinarian	State Ed Dept	None		Good moral character, ADBD Educ L § 6704 *Any information about criminal record referred to OPD for investigation and determination.	Hearing Written appeal 8 **NYCRR** 28
107. Weighmaster	Dept of Agri & Mkts	None		Good character **A&M L** § 195	Hearing **A&M L** § 195
108. X-Ray Technician and X-Ray Therapy Technician	SEE RADIOLOGIST				

APPENDIX 1 - ABBREVIATIONS

ABCL	Alcoholic Beverage Control Law
ACA L	Arts and Cultural Affairs Law
ADBC	As Determined by Commissioner
ADBD	As Determined by Department
A&M L	Agriculture and Markets Law
CFR	Code of Federal Regulations
C/GC	Certificate of Good Conduct
Cor L	Correction Law
CPA	Certified Public Accounting
CPLR	Civil Practice Law and Rules
C/R	Certificate of Relief from Disabilities
Educ L	Education Law
Exec L	Executive Law
GBL	General Business Law
Ins L	Insurance Law
LPN	Licensed Practical Nurse
N/A	No Applicable Statute
NYCRR	New York Code of Rules and Regulations
OPD	Office of Professional Discipline
PHL	Public Health Law
PL	Penal Law
RN	Registered Nurse
RPMWBL	Racing, Pari-Mutual Wagering, and Breeding Law
Uncon L	Unconsolidated Laws
V&T L	Vehicle and Traffic Law

APPENDIX 2 ISSUING AGENCIES

Dept. of Citywide Administrative Services
Municipal Building
1 Centre Street, 17th Fl.
NY, NY 10007
(212) 669-7000

Committee on Character and Fitness of Applicants for Admission to the Bar, First Judicial Dept.
60 Madison Avenue
NY, NY 10010
(212) 779-1779

Consumer Affairs Dept.
42 Broadway, 5th Floor
NY, NY 10004
(212) 487-4436

Dept. of Agriculture and Markets
10 Airline Drive
Albany, NY 12235
(518) 457-3136

In NYC:
55 Hanson Place
Brooklyn, NY 11217-1583
(718) 722-2877

Dept. of Buildings
280 Broadway, 3rd Fl
NY, NY 10007
(212) 566-5000

Bureau of Environmental Radiation Protection
547 River St.
Flanigan Sq., Rm 530
Troy, NY 12180
(800) 458-1158 ext. 27580

Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
(202) 426-3111

Fire Department
9 Metrotech Center
Brooklyn, NY 11201
(718) 999-2000

Police Dept.
1 Police Plaza, Rm 1320
NY, NY 10038
(646) 610-5000

State Athletic Commission
123 William Street, 20th Floor
NY, NY 10038
(212) 417-5700

State Banking Dept.
5 Empire Plaza, Suite 2310
Albany, NY 12223
(518) 474-2364

In NYC:
One State Street
NY, NY 10004
(877) BANK-NYS

State Board of Commissioners of Pilots
17 Battery Place
NY, NY 10004
(212) 425-5027

Dept. of Health
Nelson Rockefeller Empire State Plaza
Albany, NY 12237
(518) 474-7354

In NYC:
90 Church Street
NY, NY 10007
(212) 417-5000

Dept. of Labor Division of Labor Standards
345 Hudson Street
NY, NY 10014
(212) 352-6700

Dept. of Law
Capitol Bldg.
Albany, NY 12224

In NYC:
100 Church St
NY, NY 10007

Dept. of Motor Vehicles
6 Empire State Plaza
Albany, NY 12228

In NYC:
141 Worth Street
NY, NY 10013
(212) 645-5550

Dept. of Sanitation
125 Worth Street
NY, NY 10013
(212) 219-8090

Dept. of State
Division of Licensing Services
84 Holland Avenue
Albany, NY 12208-3490

In NYC:
123 William St.
NY, NY 10038
(212) 417-5724

APPENDIX D

State of Florida Office of the Governor Executive Order Number 06-89

WHEREAS, on February 7, 2005, I issued Executive Order 05-28 establishing the Governor's Ex-Offender Task Force (Task Force) to improve the effectiveness of the State of Florida in facilitating the reentry of ex-offenders into our communities and reduce the incidence of recidivism; and

WHEREAS, the Task Force has found that gainful employment after release from prison is one of the critical elements necessary to achieve successful reentry after prison and that employment has been shown to reduce recidivism and, thus, to make our communities safer; and

WHEREAS, the Task Force has found many state laws and policies that impose restrictions on the employment of people who have been to prison and has estimated that these restrictions may affect more than one-third of Florida's 7.9 million non-farm jobs, including state and local government jobs, jobs in state-licensed, regulated and funded entities, and jobs requiring state certification; and

WHEREAS, the Task Force has further found that no comprehensive review of these restrictions has been undertaken to evaluate whether the restrictions are related to the safety, trust and responsibility required of the job or to determine whether a less restrictive approach could protect the public while preserving employment opportunities; and

WHEREAS, the Task Force has further found that the disqualifications for many kinds of jobs can be lifted through exemptions and other mechanisms that allow a case-by-case showing of rehabilitation, yet the disqualifications for many other jobs requiring a similar level of safety, trust and responsibility cannot be lifted, exempted or relieved; and

WHEREAS, the State's executive agencies can assume a leadership role in providing employment opportunities to ex-offenders by reviewing their employment policies and practices and identifying barriers to employment that can safely be removed to enable ex-offenders to demonstrate their rehabilitation;

NOW THEREFORE, I, JEB BUSH, as Governor of the State of Florida, by virtue of the authority vested in me by the Constitution and Laws of the State of Florida, do hereby promulgate the following Executive Order, effective immediately:

Section 1. Terms of Employment Disqualifications.

A. All executive agencies shall produce a report for the Task Force that describes the employment restrictions and disqualifications that are based on criminal records for each occupation under the agency's jurisdiction and that of its boards, if any, including, but not limited to, employment within the agency; employment in facilities licensed, regulated, supervised, or funded by the agency; employment pursuant to contracts with the agency; and employment in occupations that the agency licenses or provides certifications to practice. For each occupation subject to an ex-offender restriction or disqualification, the

agency shall set forth the following:

1. The job title, occupation or job classification;

2. The cause of the disqualification (statutory, regulatory, policy or practice) and the substance and terms of the disqualification, including a listing of the disqualifying offenses, the recency of the disqualifying offenses, and the duration of the disqualification;

3. The year the disqualification was adopted and its rationale;

4. In instances where the disqualification is based upon conviction of any offense "related to" the practice of a given profession, the criteria the agency has adopted to apply the disqualification to individual cases;

5. The source of any requirement (statute, rule, policy, or practice) for an individual convicted of a felony to have his civil rights restored to become qualified for the job; and

6. The exemption, waiver, or review mechanisms available to seek relief from the disqualification, based on a showing of rehabilitation or otherwise. This should include the terms of the exemption, waiver or review, the nature of the relief it affords, and whether an administrative and judicial appeal is authorized.

B. The agency shall also describe, for each occupation subject to ex-offender disqualification, the procedures used to determine and review the disqualification, and shall provide to the Executive Office of the Governor copies of the forms, rules, and procedures that it employs to provide notice of disqualification, to review applications subject to disqualification, and to provide for exemptions and appeals of disqualification.

C. Agencies are strongly encouraged to adopt such policy reforms and changes as will achieve the goals of this Order. Agencies shall report to the Executive Office of the Governor reform efforts including eliminated or modified ex-offender employment disqualifications, draft legislation for a case-by-case exemption or review mechanism, and modified criteria and procedures used in relation to ex-offender employment restrictions.

Section 2. Data.

The second part of the review involves the collection of data to determine the impact of the disqualifications on employment opportunities for ex-offenders in Florida and the effectiveness of existing case-by-case review mechanisms that list the disqualifications. For each occupation under the jurisdiction of the agency for which there are employment disqualifications based on criminal records, the agency must provide, for the previous two-year period, the number and percentage of individuals who underwent a criminal history background check, the number who were merely required to disclose their criminal history without a criminal history background check, the number and percentage found disqualified based on criminal records; the number and percentage found disqualified because their civil rights had not been restored; the number and percentage who sought review and exemption from or reversal of the disqualification, the number and percentage that were found qualified for the initial review, and the number and percentage that were found qualified for any subsequent level of review. If the agency maintains records of active licenses or certifications, the agency shall provide the total number of employees in occupations subject to criminal history restrictions.

Section 3. Time Frame for Provision of Information.

The terms of each of the agency's employment disqualifications described in Section 1 of this Order shall be provided to the Executive Office of the Governor no later than 60 days from the issuance of this Order. The data described in Section 2 shall be provided no later than 90 days from the issuance of this Order.

Section 4. Other State Agencies and Private Sector.

I strongly encourage all other state agencies, counties, municipalities and political subdivisions of the State to likewise conduct an inventory of employment disqualifications as described herein, to eliminate or modify such disqualifications that are not tailored to protect the public safety, and to create case-by-case review mechanisms to provide individuals the opportunity to make a showing of their rehabilitation and their qualifications for employment. I encourage private employers, to the extent they are able, to take similar actions to review their own employment policies and provide employment opportunities to individuals with criminal records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 25th of April, 2006.

_____

GOVERNOR

ATTEST:

_____

SECRETARY OF STATE