A Fair Chance for Work: Strategies to Address Barriers to Public Employment for People with Criminal Records

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Presentation Outline

I. Organization Overview

II. Understanding the Need

III. Fair Chance Public Hiring Policies and Innovations
We are a national nonprofit, nonpartisan organization that combines the power of a membership association, serving state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities.
How We Work

- We bring people together
- We drive the criminal justice field forward with original research
- We build momentum for policy change
- We provide expert assistance
Our Goals

• Break the cycle of incarceration
• Advance health, opportunity, and equity
• Use data to improve safety and justice
Equity and Inclusion Statement

The Council of State Governments Justice Center is committed to advancing racial equity internally and through our work with states, local communities, and Tribal Nations.

We support efforts to dismantle racial inequities within the criminal and juvenile justice systems by providing rigorous and high-quality research and analysis to decision-makers and helping stakeholders navigate the critical, and at times uncomfortable, issues the data reveal. Beyond empirical data, we rely on stakeholder engagement and other measures to advance equity, provide guidance and technical assistance, and improve outcomes across all touchpoints in the justice, behavioral health, crisis response, and reentry systems.
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The importance of public sector jobs

21M+

workers employed by the federal, state, & local governments

("May 2021 National Occupational Employment and Wage Estimates.")

1 in 5 Black workers employed in the public sector

(Madowitz, Price, and Weller, Public Work Provides Economic Security for Black Families and Communities.)

An increasingly aging workforce means a high demand in workers to fill those jobs

(Miller, "A Pandemic Problem for Older Workers: Will They Have to Retire Sooner?")
The importance of public sector jobs

- Public sector jobs historically provide:
  - better compensation than private sector jobs in occupations that do not require significant educational attainment
  - higher levels of job security during difficult economic times
  - increased opportunities for career growth
  - competitive health and retirement benefits

(Makridis. "(Why) Is There a Public/Private Pay Gap?"
Kopelman and Rosen, "Are Public Sector Jobs Recession-Proof? Were They Ever?"
("Employee Benefits.")
(Ibid.)
The importance of public sector jobs

• Public sector employment can provide an important pathway to long-term economic mobility
  ▪ Due to:
    o Incentives for government to implement policies that encourage hiring people with criminal histories
    o Broad reach – authority generally extends to the millions more workers employed by public sector vendors, contractors, and grantees whose hiring policies are subject to public regulation

(Light, "The true size of government is nearing a record high.")
The effects of criminal history on employment and wages

• A 2022 Prison Policy Initiative study of people released from federal prison in 2010 found that:
  - 33 percent never found a job in the 4 years after release;
  - 60 percent or more were jobless at any given time in those 4 years; and
  - For those looking for work, the unemployment rate remained around 36 percent during all 4 years.

• For people who found jobs, most were unstable, and earnings were far below the U.S. median income. (Wang & Bertram, "New data on formerly incarcerated people’s employment reveal labor market injustices.")

• A 2022 study using data from 1997 to 2017 estimates that 46 percent of unemployed men have a conviction record for a non-traffic offense by age 35. (Bushway, “Barred from Employment.”)
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“Banning the box”

• Eliminates questions about criminal history in initial stages of hiring

• Mitigates deterrent effect of inquiries

• Allows applicant qualifications to be considered without bias

• A strong foundation for more comprehensive fair chance policies
“Banning the box” – State-wide implementation

37 states and Washington, D.C. have passed ban-the-box policies for state employment

Avery and Ly, *Ban the Box: U.S. Cities Counties and State Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Conviction.*

*ID, KS, KY policies are imposed by executive order and only covers employees in the executive branch*
EEOC Guidance – Key principles

- Criminal history should not be *automatically* disqualifying.
- Chance to explain current and past circumstances, including challenging the accuracy of any criminal history report.
- Require a direct relationship between the specific job at issue and the nature of an applicant’s criminal conduct.
- Workers should be assessed based on a consistent set of factors, including:
  - the nature and gravity of the offense or conduct;
  - the time that has passed since the offense or conduct and/or completion of the sentence;
  - the nature of the job held or sought; and
  - evidence of rehabilitation
State implementation of EEOC guidance

- Only 12 states fully incorporate the key EEOC principles to a significant degree.
  - California, Colorado, Delaware, Hawaii, Illinois, Kentucky, Louisiana, Minnesota, Nevada, New York, Ohio, Tennessee

- Partial adoption of the principles is common and serves as a strong foundation upon which to build more robust policies.
Implementation – “Direct relationship” & “individualized consideration” policies

- No Direct Relationship or Individual Consideration
- Individual Consideration only
- Both a Direct Relationship and Individual Consideration

*ID, KS, KY policy imposed by executive order and only covers employees in the executive branch
Implementation of EEOC principles — Local & federal policy

- 8 of the 15 largest U.S. cities substantially incorporate the EEOC standards into municipal hiring policies.
  - New York
  - Los Angeles
  - Chicago
  - Phoenix
  - Philadelphia
  - San Antonio
  - Austin
  - Jacksonville, FL

- Apart from banning the box, there is no government-wide federal hiring law that incorporates the key principles of the federally issued EEOC guidance.
In the years since the EEOC Guidance was published, many states have developed policies that go even further. These include:

- Limiting the age of convictions that can be considered
  - (HI, MA, NM, WA)
- Broadly limiting the categories of offenses that can be considered
- Prohibiting consideration of arrests not followed by conviction, juvenile adjudications, and pardoned/sealed/expunged convictions and records
- Creating robust appeals and reconsideration procedures that are specific to criminal history-based denials
In the years since the EEOC Guidance was published, many states have developed policies that go even further. These include:

+ Limiting the age of convictions that can be considered

+ Limiting the categories of offenses that can be considered
  - (CO, IL, MA, MN, NM)

+ Prohibiting consideration of arrests not followed by conviction, juvenile adjudications, and pardoned/sealed/expunged convictions and records

+ Creating robust appeals and reconsideration procedures that are specific to criminal history-based denials
Beyond the EEOC Guidance

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+ Prohibiting consideration of arrests not followed by conviction, juvenile adjudications, and pardoned/sealed/expunged convictions and records
  - (CA, CO, IL, LA, MA, MI, MN, NY, WI)

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Employer vs. location - Who is covered by fair-chance hiring policies?

- State-implemented fair chance policies do not necessarily cover all public-sector jobs in the state.
  - Many state policies only cover state-government jobs & do not extend to jobs in local government. (No state policies cover federal-government jobs)
  - Some state-wide policies are implemented by an order of the governor and only cover executive branch employment.
- Depending on the employer, a single job may be covered by more than one fair chance policy.
  - State-imposed policies may extend to cover local government jobs (“political subdivisions of the state”) and local governments may have their own fair chance policies.
Private sector workers & public contractors

- Many state-wide fair chance hiring policies cover both **private AND public jobs**.

- Even where *all* private employers are not covered, public contractors may be, either by law or as a condition of receiving state funds.
Who is covered by state-wide policies?

- No coverage of any kind
- State and political subdivision coverage
- Direct private sector coverage
- Contractor/vendor coverage

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Policy priorities for states to consider

- Delay employer inquiries into criminal history until the later stages of the hiring process (i.e., ban-the-box policies).

- Implement comprehensive fair chance hiring policies that, at a minimum, incorporate the key principles of the EEOC guidance.

- States with comprehensive fair chance licensing policies should consider those licensing policies as models.

- Prohibit consideration of convictions that are broadly irrelevant to job qualifications or safety like non-conviction records and convictions for older and less serious offenses.
Policy priorities for states to consider, cont’d

- Explore smaller reforms to hiring practices that increase transparency about how criminal history is considered and strategies for public employers to directly reach out to workers with criminal histories.

- Expand the coverage of fair chance hiring policies by including state contractors and political subdivisions of the state (cities, counties, and other municipalities).

- Ensure that non-traditional workers, including gig workers, part-time workers, and independent contractors, are covered by existing policies.
Sources


Nearly 7 million workers are employed by federal contractors and grantees in addition to the 2.2 million that are employed directly by the federal government.

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