

The Successful Reentry Project: Working Towards Justice, Dignity and Redemption



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE



A Collaboration Between the
Criminal Justice Program and Economic Programs

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Dear Faith Leaders,

It is an honor and a privilege to release our first reentry toolkit specially designed for the faith community. The toolkit is a roadmap that will support your work in advancing practices and policies to strengthen employment practices for the formerly incarcerated. This work is about restoring dignity and respect for formerly incarcerated individuals who have paid their debt to society and return to their communities with hopes of gaining stability and turning their lives around.

As you know, the faith community has not only advanced this cause more than any other group in this country, but is in the best position to have the greatest impact in helping individuals restore their lives and attain the basic human rights.

This toolkit contains updated information, advocacy tools, guidelines for communication, and ways the National NAACP office can best support you as you engage in this work. It is designed as a dynamic set of strategies and information to support advocacy for best practices and sound policies at the local, state, and national level.

We look forward to working with you to regain respect and dignity for our brothers and sisters who deserve a fair shot at becoming productive members of society.

Yours Truly,

A handwritten signature in black ink, appearing to read 'Rt' followed by a stylized flourish.

Robert Rooks, MSW
Criminal Justice Department Director
NAACP

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Introduction

According to the Pew Center on the States, the United States has 5% of the world's population, but 25% of the world's prison population. More than two million people are incarcerated in the United States, disproportionately for nonviolent drug offenses, and almost all of them are released back into our communities sooner or later—usually sooner. The average prison stay in the United States is two years. With more than 600,000 individuals leaving U.S. prisons each year, our communities continue to grapple with the unique challenges presented by those who ostensibly have “paid their debt to society” and yet are presented with barriers to reentry that continue their punishment. Without an opportunity for redemption and the chance to move forward—through continued treatment, employment, housing, and other assistance—up to half of all released individuals may return to prison, where their incarceration will cost taxpayers more money and will continue to undermine our nation's overall workforce productivity. Without any opportunity for employment or support, many cycle back into prison after committing new crimes—some petty, some not—posing a pressing threat to public safety. For this reason, many leading law enforcement agencies, including the National District Attorneys Association and national police organizations, have made facilitating successful reentry from prison and jail a priority approach to public safety.

When our nation's returning citizens have an opportunity for redemption and employment, all our communities win. Returning citizens who gain employment are more than one-third less likely than their counterparts to recidivate and are more capable of turning their lives around for good. When this happens, our communities are safer, our economy is stronger, and we all can save money and live better.

The demands of our current economy present new challenges and opportunities for the nation's employers. Nationwide, communities are grappling with the challenges presented by an underperforming economy and a strained fiscal climate. People of all socioeconomic strata continue to seek inclusion in processes that will improve their employment outcomes—and formerly incarcerated people are no exception. Like most Americans, most of these returning citizens want the opportunity to be forgiven for their mistakes and to take ownership of their lives. However, too often they are turned away from legitimate employment, which would help engage them in productive activities that improve the quality of life for everyone.

Initiative: The Successful Reentry Project: Ban the Box Campaign

The Problem: Although they have paid their debt and served their time, individuals with a criminal history are too often denied the opportunity at redemption and turned away from legitimate employment, which would help engage them in productive activities that improve the quality of life for everyone and enable them to become productive members of society.

The Facts:

- In 2008, there were an estimated 2.4 million people in U.S. jails and prisons – the disproportionate majority of whom (over 2/3) are people of color.
- African Americans make up roughly 13% of the U.S. population, but are 40% of its prisoners.
- Approximated 95% of incarcerated individuals are eventually released into local communities nationwide.
- More than 600,000 individuals leave U.S. prisons each year.
- Returning citizens who gain employment are more than 1/3 less likely than their counterparts to recidivate (return to crime) and are more capable of turning their lives around permanently.
- According to federal courts, Title VII of the Civil Rights Act of 1964 prohibits employers from imposing blanket bans on employment of individuals with conviction histories.
- Today, in 2010, twenty-one cities and counties have decided to “ban the box,” and not ask about an individual’s criminal record on employment applications. Founded by All of Us or None, a grassroots group from the Bay Area, “ban the box” is a campaign to eliminate the questions about criminal history from employment applications.
- The Federal Work Opportunity Tax Credit allows a company to claim a tax credit of up to \$2,400 for hiring an employee with a felony conviction within one year of the date of his or her conviction or release from incarceration.
- The U.D. Department of Labor offers a free bonding program for “at-risk” job applicants, including people with criminal records, indemnifying employees for loss of money or property due to an employee’s dishonesty or theft.



The Solution: In efforts to eliminate employment barriers for formerly incarcerated people, public entities (local municipalities and state governments), as well as corporations and business, must “ban the box” or remove the question about criminal history from the initial job application forms. This question should be asked during the face to face interview and only in instances where criminal history relates to the job in question. In this way, formerly incarcerated people will have the opportunity to meet and interview for jobs, increasing the applicant’s chances for employment.



Eckholm, Erik. The New York Times. Parolees Who Return to Prison. May 17, 2008: <http://www.nytimes.com/2008/05/17/us/17parole.html? r=2>

What Faith Community Can Do To Advance This Cause Locally

Faith leaders are among the most influential and respected members of communities across America. To hold a position of leadership within any faith allows one to have access to the hearts and minds of not only your parishioners, but of the local, statewide, and national community at large.

The NAACP would like to partner with faith leaders from across the nation to help remove the barriers to employment for the formerly incarcerated and allow individuals a chance to right their mistakes and redeem themselves as productive members of their community.

We ask that you work with the NAACP National Office on this initiative so that we may provide you with support, as well as to coordinate your efforts with NAACP units in/near your community who may also be engaged in the work. **Before you begin this work, you contact the Robert Rooks, Criminal Justice Director at NAACP National Headquarters at: reentry@naacpnet.org or (443) 562-4205, so we can coordinate your efforts with the local or state NAACP unit so that their reentry initiatives can be coordinated with yours for greater effectiveness.**

Here are a number of possibilities for implementation of this work:

Create/Join Reentry Councils in Your Community – Reentry councils are a publically-funded, multi-agency collaborative designed to address the specific needs of formerly incarcerated people. Service providers, elected officials, business leaders, and community stakeholders often make up these bodies. If your community already has a reentry council, we encourage you join them and help them perfect their work and protocols. If such a council does not exist in your community or state, please contact the NAACP national office, specifically Robert Rooks, Criminal Justice Director at @naacpnet.org or (443) 562- 4205, for substantive support and guidelines.

Provide Direct Services – Too often returning citizens find themselves without a support system to help them get reoriented and back in their communities. Religious institutions are ideally situated to provide this much needed support to help returning citizens turn their lives around. These programs often include mentoring, behavior monitoring, and financial trainings. For most effectiveness, programs should begin a few months prior to the individual's release – in which case a prior agreement between correctional institutions and faith organizations must be made to identify those eligible for release – to work with them during their last few months and prepare them for release, and to pair them with an appropriate mentor upon release. If such coordination is not possible, services can be provided upon release.

In addition, the faith community can partner with existing reentry programs to ensure that the needs of those returning to your community are met. A list of some of the most prominent programs can be found at: www.NationalReentryResourceCenter.org/states.

Advocate For Hiring of Formerly Incarcerated People – Many people may not recognize the magnitude of this problem and its impact on their local community. They are unaware of how many people return from prison or jail in search of a better and more secure life. It bears repeating to the masses that everyone is entitled to a chance at redemption and restoration of their rights, and the faith community can be leaders in helping the formerly incarcerated population learn to support themselves and their families. Additionally, many may not be aware of the economic incentives for hiring formerly incarcerated individuals such as government bonding programs, work opportunity tax credit, welfare-to-work programs, and first source agreements that make recently release individuals ideal employees.

Advocate for Policy Change – Leaders from the faith community also have a lot of pull with public officials and political figures who can create policies to “ban the box” from government employment applications. The NAACP has successfully engaged the Governor of California to issue an administrative order and remove the question about criminal history from the application process of jobs where such history is not relevant. Faith leaders can set up meetings with local and state officials to educate them on this issue, emphasize the importance of allowing people to redeem themselves, and ask them to issue similar orders to “ban the box.” Also, see Key Provisions to Include in State Legislation/Anti-Discrimination Policy in Resources Section of toolkit for Policy Ideas.

What Faith Community Can Do To Advance Reentry at National Level

NAACP's Washington Bureau is legislatively active on a number of issues that impact formerly incarcerated individuals. These include the restoration of voting rights as well as efforts to strengthen employment practices for those with criminal records.

Voting Rights

Almost 4 million Americans, or 1 in 50 American adults, are not allowed to vote because they have been convicted of a felony, regardless of the nature or seriousness of the offense. Three fourths of these Americans are no longer in jail. As such, **13% of African American males – 1.4 million – are prohibited from voting.**

Furthermore, state laws vary when it comes to defining which felony offenses are disenfranchising offenses and in determining how and if people who are no longer incarcerated can regain their right to vote. Thus it is possible that in some states a person can functionally lose their right to vote forever if he or she writes one bad check. Furthermore, the process to regain one's right to vote in any state is often difficult and cumbersome. Most states require specific gubernatorial action, and in 16 states federal ex-felons need a presidential pardon to regain their voting rights.

The "war on drugs" has had a disproportionate impact on African Americans; between 1985 and 1995, there was a 707% increase in the number of African Americans in state prison for a drug offense, compared to a 306% increase for whites over the same period. Thus, African Americans are disproportionately losing their right to vote, and having greater difficulty in reclaiming it, even after they have paid their debt to society.

Because voting is such an integral part of being a productive member of American society, the NAACP has worked closely with other like-minded groups to develop legislation that would allow felons who are no longer incarcerated to reintegrate themselves into society and vote in federal elections. In July 2009, Congressman John Conyers (MI) and Senator Russ Feingold (WI) reintroduced the "*Democracy Restoration Act*" (H.R. 3335 / S. 1516) re-enfranchising ex-felony offenders once they are released from prison. Furthermore, re-enfranchisement for rehabilitated felony offenders may be part of the continuing election reform package also to be considered later in the 111th Congress.

Action you can take on Voting Rights:

- Contact your Representative and BOTH your Senators and **URGE THEM TO CO-SPONSOR H.R. 3335 / S. 1516, THE "DEMOCRACY RESTORATION ACT"**. To contact your elected federal representatives, you may:
 - Make a Phone Call: Call your Senator and your Representative in Washington by dialing the Capitol Switchboard and asking to be transferred to your Senator/Congressman's

office. The switchboard phone number is **(202) 224-3121** (see message section, below).

- Write a Letter:
 - *To write a letter to your Senator or Representative, send it to:*
The Honorable (name of Senator or Representative)
U.S. Senate
Washington, D.C. 20510
- Send a Fax: If you would like to send a fax, call your Senator or Representative's office (through the Capitol switchboard) and ask for his/her fax number (you can use either the attached sample letter or the message box, below).
- Send an E-Mail:
 - To send an e-mail to your senator, simply go to www.Senate.gov, click on Senators, then click on Contacting Senators (by name or by state). This selection will also help you to identify who your two senators are.
 - To send an e-mail to your Representative, go to www.House.gov, and click on "write your representative." This will help you identify who your congressman is and how to contact him/her.

THE MESSAGE:

- ◆ Felony voting disenfranchisement laws currently disqualify almost 4 million Americans, or 1 in every 50 adult American.
- ◆ The "war on drugs" has resulted in a disproportionate number of African Americans, specifically African American men, being convicted of felony offenses. As a result, 13%, or 1.4 million, of African American males are prohibited from voting.
- ◆ Because the definition of a felony varies from state to state, as do felony disenfranchisement laws, there is a vast disparity in which ex-offenders may vote, based on where they live. In some states, writing one bad check may result in you losing your voting privileges for life!
- ◆ Felony voting restrictions are the last vestige of voting prohibitions; when the U.S. was founded only wealthy white men were allowed to vote. Women, minorities, illiterates and the poor were excluded. These restrictions have all been eliminated over time, often with much debate and rancor. People who have served their time and been released from prison are the last Americans to be denied their basic right to vote.
- ◆ With voting such an integral part of becoming a productive member of American society, we should be encouraging ex-felons to vote, not prohibiting them.

Sample Letter to Legislator

Date _____

The Honorable _____
U.S. House of Representatives / U.S. Senate
Washington, D.C. 20515 / 20510

RE: RE-ENFRANCHISEMENT OF REHABILITATED EX-FELONY OFFENDERS

Dear Congressman / Senator _____;

I am writing to let you know of my strong support for allowing ex-felony offenders, men and women who have served their time and paid their debt to society, to regain their right to vote. Specifically, I strongly support legislation that would allow people who have been convicted of a felony and *who are not incarcerated* to vote in federal elections, and thus urge you to co-sponsor the *Democracy Restoration Act*, H.R. 3335 / S. 1516, which was introduced by Congressman John Conyers (MI) and Senator Russ Feingold (WI) in July, 2009.

This legislation is needed to address existing felony disenfranchisement laws that currently disqualify almost 4 million Americans, none of whom are incarcerated, from voting. As a result of these laws roughly 1 out of every 50 adults in this country is not allowed to participate in the most fundamental aspect of being an American citizen. Furthermore, because these laws vary dramatically between states, as does the definition of a felony, it is possible that a young man or woman who writes one bad check can be banned from voting for the rest of his or her life.

Furthermore, the “war on drugs” has resulted in a disproportionate number of African Americans, especially African American men, being convicted of felony offenses. As a result, 13% of all African American men today are prohibited from voting. Felony voting restrictions are the last vestige of voting prohibitions; when the U.S. was founded, only wealthy white men were allowed to vote. Women, minorities, illiterates and the poor were excluded. These restrictions have all been eliminated over time, often with much debate and rancor. People who have served their time and been released from prison are the last Americans to be denied their basic American rights.

Because the right to vote is such an integral and basic element of being an American citizen, it seems to me that we should be encouraging ex-felons to participate in the electoral process, not prohibiting it. Thus I strongly urge you to support any and all legislative initiatives that would achieve this goal. I hope that you will co-sponsor the *Democracy Restoration Act* and support these bills and that you will contact me soon to let me know what you are doing to promote this legislation, and what I can do to help.

Sincerely,

(sign and print your name and
remember to include your address)

***Don't forget to contact your
Representative in the House and
BOTH your U.S. Senators!***

Update on Second Chance Act

On April 9, 2008, President Bush signed the *Second Chance Act* into law. This was less than a month after the United States Senate passed, by a unanimous vote, H.R. 1593, the "*Second Chance Act of 2007*". This was the same bill that the U.S. House of Representatives passed on November 13, 2007, by an overwhelming bipartisan vote of 347 yeas to 62 nays.

The Second Chance Act is intended to help the more than 650,000 men and women who are released from prison each year as they re-enter society. Ex-prisoner reentry has a disparate effect on communities of color, since two-thirds of the people currently in prison are racial and ethnic minorities. For African American males in their twenties, one in every eight is in prison or jail on any given day. These numbers are expected to grow, as more men and women are incarcerated each year.

For most ex-offenders, the transition back into their communities is difficult: many lack the necessary skills to successfully re-enter society. Studies have shown that many of those released from prison come back into society with a substance abuse addiction or mental health problem. Employment and housing are often difficult; one study found that applicants with criminal records experienced a 50% reduction in job offers for entry level jobs, compared to those without records. This is compounded by racial bias as African American former inmates experienced a 64% reduction in job offers. As many as a quarter of all ex-offenders go to homeless shelters upon release. Furthermore, many communities where prisoners return upon release already struggle with high poverty, unemployment, fragile families and a dearth of jobs. It should be no surprise, then, that over two-thirds of released prisoners are re-arrested for a felony or serious misdemeanor within three years and one-half of those re-arrested are convicted and re-incarcerated. Not only does this recidivism cause tremendous problems for our communities, but it also places a huge burden on American taxpayers. The average cost of incarcerating each prisoner exceeds \$22,600 per year; expenditures on corrections alone have increased from \$9 billion in 1982 to \$60 billion in 2002 and it continues to skyrocket out of control.

The "*Second Chance Act of 2007*", which was introduced in March of 2007 and championed by Congressman Danny Davis (IL) and Senators Joe Biden (DE), Sam Brownback (KS) and Patrick Leahy (VT) would provide state and local communities with federal assistance to establish ex-offender reentry projects, with enhanced focus on job training, housing, substance abuse and mental health treatment, as well as programs to work with the children and families of ex-offenders. In short, the *Second Chance Act* was intended encourage new community partnerships to help educate, train, and employ those recently released who might otherwise return to a life of crime.

Let Us Know What You Are Working On

In order for us to be able to collaborate with you and provide you with any support that you may need, we must be kept up-to-date about your activities. Below is the form you should use to tell us about your work on this issue. It includes a section for you to tell us about your challenges and let us know how we can be helpful. We ask that you send this information to us on a quarterly basis.

Name of Religious Institution:	Address:
	Phone:
Contact Person:	Contact Person's Phone & Email:
Local NAACP Branch You Are Working With:	Contact Information for Local NAACP Branch:
Summary of Your Work – Last 3 Months:	Successes & Challenges:
Please Let Us Know How You Think NAACP National Can Help You Overcome Challenges. Please be specific.	

Complete this form and return to Robert Rooks at Reentry@naacpnet.org.

Resources

NAACP Recommendations & Best Practices

The NAACP and its partners suggest that employers, from both public and private sectors, take the following steps toward easing restrictions on the hiring of people with criminal records:

1. Meet with the NAACP and other employers regarding inclusive hiring policies and the recommendations in this proposal. The NAACP continues to build a database of employers who have had successful relationships and outcomes with respect to the employment of people with criminal records.
2. Review and amend hiring policies to lift the potential “blanket ban” against hiring those convicted of felonies and/or drug offenses. Develop a plan to implement the continuum of options presented in this document.
3. Review and amend existing policies to lift the automatic termination of employment for associates arrested and convicted of non-work-related felonies and/or drug offenses. Develop a plan to implement the continuum of options presented in this document.
4. Develop formal partnerships with intermediaries to identify and prepare potential candidates for employment. Also, employers may consider the development of regional or local plans to partner with available state, municipal, or nonprofit intermediaries currently working in various areas.
5. Develop a procedure to consider “evidence of rehabilitation” and to grant a “waiver” to allow for the hire of applicants with criminal records when they show evidence of rehabilitation, treatment, and/or demonstrate a connection with a support network (e.g., an intermediary).
6. Work with the NAACP to engage in a series of research and program activities designed to monitor the successes and challenges associated with this project.

Resources on the Web

1. The National Institute of Corrections (NIC) lays out a number of faith based and community initiatives that you may engage in. To learn more, visit: <http://nicic.gov/FaithBasedInitiatives>
2. NIC also offers several ways in which formerly incarcerated people can be employed in green jobs. This work is a result of government funding opportunities that are available to those who bring in people with criminal records into the green economy. To learn more, visit: <http://nicic.gov/Library/024626>
3. A complete national list of reentry programs does not yet exist. However, the most comprehensive list can be found through the National Reentry Resource Center at: <http://nationalreentryresourcecenter.org/>
4. According to Title VII of the Civil Rights Act of 1964, employers cannot impose a blanket ban on employing individuals with criminal records. To learn more about this provision, please visit the U.S. Equal Employment Opportunity Commission at: <http://www.eeoc.gov/facts/fs-race.html>.

How to Hold a Public Hearing

In order to more deeply grasp and publicize the nature and impact of reentry in your community, you may consider organizing a public hearing to bring key players together (including experts, advocates, community leaders, government and other officials, and individuals with personal stories to share). A public hearing is more formal than a town hall meeting (often has the feel of a Congressional Hearing) and allows for the formal gathering of testimony from advocates, experts, formerly incarcerated individuals, government officials and other key players. Public hearings often focus on a long-standing issue that will require long-term campaigning advocacy. Depending on the size and target audience of your event, planning could take anywhere from 3 to 9 months.

To plan a successful public hearing, consider the following:

Budget

- Determine if there is a budget available and decide upon the scope of your event based on the amount of this budget. You may find that a smaller budget lends itself to organizing a less elaborate and more informal town hall meeting, but a more substantial budget will allow for a larger more formal public hearing, and open up other avenues such as the possibility to fly in experts, have the hearings recorded or transcribed, etc. Keep in mind that in the end, the quality of the testimony, the participants, and how organized your event is will determine the success of the hearing, and not financial matters.

Partner Organizations

- Working with other organizations that have similar goals and can help bring the community together will play an important role in helping your event have a wide reach and greater impact.
- One of the first things you should do is to identify local organizations that share the same mission and are willing to partner up and help plan and execute the event. These organizations can be other advocacy organizations, civil or human rights organizations, and organizations that represent the interests of other minority groups in your area.
- It is critical to ensure outreach to and participation by organizations that represent other racial and ethnic minority groups (i.e. Latino, Asian American, Middle Eastern, etc.), because a majority of the civil and human rights issues we deal with impact other communities of color as well and working together can increase your power to combat this problem.

Panel of Experts to Receive Testimony

- It is important that those who testify about their experience and/or knowledge feel that their voice is being heard not just by the audience, but also by credible experts and advocates who may have greater ability to create change.
- Choose a panel of 5-7 local, credible experts to receive the speakers' testimony. You can look to local advocates, leaders, and renowned experts for this role. You may also choose the most prominent person from the panel to chair the hearings.
- The role of the panel is to increase the credibility of the hearings, receive the testimony, question the witnesses, and to lend expertise during opening and closing remarks.
- They may also help provide guidance for any follow up actions that may result from the hearings.

Testimony

- Together with your partner organizations, identify and approach people to give testimony at the hearings. All witnesses should be identified and confirmed at least one month prior to the hearings.
- Ensure participation by community leaders, formerly incarcerated individuals, advocates, academics, lawmakers, and issue experts. Also, make sure to include testimony from people of diverse ethnic, religious, national, and racial backgrounds.
- With your partner organizations, work with those who have agreed to testify to prepare and review their statements. Make sure to give them specific time limits for their testimony. The testimony does not have to be recited word for word on the day of the event, but having a general structure will allow for a smoother event.
- If your budget allows, record and/or transcribe the testimony. Make sure that all who testify know that they are going on record. Should anyone wish to remain off record, you can turn off camera/recorder/transcription during said testimony.
- Prepare a program, that details how the testimony for the day unfolds and make that available to the public and, more importantly, to the panel of experts (whose role it will be to announce each speaker by name and organizational affiliation and call them to the microphone/podium).

Inviting State and Local Officials

- Ensuring participation by government officials is important not only because it will lend more credibility to the hearings, but it will also make it easier to work with them to implement changes in policy and practice.
- Reach out to local and state agencies/officials and invite them to participate in and/or to attend the event. Make sure to reach out to them at least a month (if not more) prior to the event, as their schedules tend to be full. If there is a prominent official that is particularly known for his/her work on the issue, invite them to give testimony.
- Make every attempt to have at least one speaker who is from state or local government so that their perspective can be included.
- Because testifying about civil rights and human rights issues lends itself to emotions running high, inform the community and the speakers of the presence of government officials and encourage an atmosphere of mutual respect and professionalism.

Research State & Local Laws

- It is important to have knowledge of state and local laws and policies about your issue, so be sure to research and know these laws well in advance.
- Make a list of these laws/policies available to the public at the hearing, and include in the press packet. Your list can also include the changes you would like to see in these policies and laws.
- Use this information in talking points, when talking to the press and the public.
- Use this information in the follow up efforts after the hearings.

Invite Media

- Send a press release to all local media.
- Invite local media to cover the event, at least 3 weeks prior to the hearings.
- Create and make available a press packet that includes:
 - A list of panelists and their bios, speakers and their bios (with their permission);
 - A list of partner organizations for this event/campaign;
 - NAACP mission, mission of partner organizations, and purpose of these hearings;
 - List of local and state laws (if they exist); and
 - List of goals/changes for which you are campaigning.

Venue Selection

- Select a venue that is neutral and easily accessible (such as a community center, place of worship, or a school campus that is central).
- Make sure there is enough seating available for the audience as these hearings can run long.
- Make sure the room is set up with a separate section in front for the panel and the witnesses who testify.
- Check to see that the venue has a working sound system if necessary, and heating/air conditioning if needed.

Promote the Hearing

- Promote the event in your local newsletters, pass out flyers, send e-mail blasts, and if you can use social networking sites such as Facebook, Twitter, Myspace. Ask partner organizations to also help promote the event.

The Day Of

- Get there early to set up, perform a sound check, and take care of other details.
- Provide water for speakers and guests (and other refreshments, if budget permits).
- Provide name cards to identify each panelist at the allotted table where they sit so that the audience and the media can quickly know who is on the panel of experts.
- Schedule volunteers and staff from the NAACP and other partner organizations to set up and staff a welcome table, where people can check in, provide their name and emails, and pick up relevant material (speaker & panel bios, other NAACP literature, etc.).
- Make sure that members of the press check in and receive press passes and schedule interviews if they wish. Have at least one person (preferably someone who has experience working in communications) interact with the press and make sure they receive needed information.
- Use a time-keeper who sits in the front row and uses placards to inform the panel and speakers of their allotted time via placard cards (i.e. "2 Minutes," "1 Minute," "TIME," and "Thank You!").
- Allow for a break midway through the hearings.
- Allow a specific time for the panel to ask questions from each witness. Make sure to keep time during this Q & A session.
- Schedule time for the audience to ask questions from the panel (not the speakers) at the end of the day.

Follow Up

- Holding these hearings is the first step. To ensure that the impact of the hearing continues and its findings are used to potentially bring about change, it is important to have a follow up plan.
- Write a report/article on the findings of the hearing, including highlights from the testimony, conclusions, and recommendations. Publicize report on your website, share with media, and other community organizations. Send a copy of your report to the NAACP's Criminal Justice Department, specifically Robert Rooks, Criminal Justice Director, at Reentry@naacpnet.org.
- Several weeks after the hearing, follow up with partner organizations and all the witnesses to thank them and see how they are feeling (since giving testimony can sometimes be an emotional experience).
- Schedule meetings with officials to begin working on implementing recommendations.
- Schedule a follow-up town hall meeting to discuss achievements, challenges, and set new goals 4 – 6 months following the initial hearings.
- Use the strategy documents provided in this handbook to clearly plan you long-term advocacy efforts.

Sample Media Advisory



Date

Contact:

Name Name (2nd contact)
Phone number Phone number
Email address Email address

NAACP To Host Public Hearing On Reentry of Formerly Incarcerate Individuals

On [date] at [time] the local unit of the NAACP will bring together community leaders, advocates, and experts to discuss barriers in our community faced by formerly incarcerated individuals

WASHINGTON, DC – The NAACP will host a panel discussion on the barriers that formerly incarcerated individuals face in our community. Ranging from social stigmas and discrimination to inability to secure housing and employment, these individuals are marginalized even after they have served their time for their mistakes.

The panel comes as our nation recovers from an economic depression that left many without jobs. These individuals seek redemption and an opportunity to reenter our society as productive individuals. Still they face barriers during this process of getting their lives back on track.

“It is up to us to work with businesses and policy makers to strengthen employment practices for formerly incarcerated individuals,” said NAACP Criminal Justice Director Robert Rooks.

The Public Hearing will be held at [location], [address] at [time].

For further information please contact [name of contact] at [email] or [second contact] at [email], [phone number].

Founded in 1909, the NAACP is the nation’s oldest and largest civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities, conducting voter mobilization and monitoring equal opportunity in the public and private sectors.

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Financial Incentives/Government Programs

State Tax Incentives to Benefit Employers Who Hire People with Criminal Records

The United States Government offers a federal tax credit of up to \$2,400 for employers who hire individuals from nine targeted groups of job seekers, including individuals with felony records. States can offer an additional tax break to business owners who hire people with criminal records as one way to support the re-entry of those who are legitimately trying to return to the job market in order to support their families and rejoin their communities.

Six states—California, Illinois, Iowa, Louisiana, Maryland, and Texas—provide state income tax credits to employers who hire people with criminal records. In 1998, the Hawaii Legislature proposed an employment discrimination measure that would have required the state to “appeal to the community spirit and good citizenship” in order to encourage employers to hire individuals with arrest and court records. Even though this measure was never passed, it was suggested that a tax incentive should be provided for employers who hired recently released felons.

Summary of States Granting Additional Income Tax Credits

1. California

Any employer who hires an “ex-offender” may be eligible for a state tax credit. The credit given is equal to the sum of each of the following:

- (1) 50% of qualified wages in the first year of employment.
- (2) 40% of qualified wages in the second year of employment.
- (3) 30% of qualified wages in the third year of employment.
- (4) 20% of qualified wages in the fourth year of employment.
- (5) 10% of qualified wages in the fifth year of employment.

Additional Contact: California Employment Development Department

2. Illinois

The Ex-felon Jobs Credit allows any employer that hires any number of “qualified ex-offenders” to apply for a credit amount equal to 5% of qualified wages paid or up to \$600 per hire. A “qualified ex-offender” must be formerly incarcerated from an Illinois adult correction facility and was hired within the first year of his/her release from prison.

3. Iowa

Employers in Iowa are allowed an additional deduction on their Iowa income tax returns for hiring a person who has been convicted of a felony (in Iowa, any other state, or the District of Columbia) or who is serving a parole or probation sentence or is participating in a work release program. This

deduction is 65% of the wages paid in the first 12 months of employment; the maximum deduction is \$20,000 per employee.

Additional Contact: Iowa Department of Revenue or <http://www.state.ia.us/tax/educate/78522.html>

4. Louisiana

A tax credit is available to any taxpayer who provides full-time employment (at least 30 hours per week) to an individual who has been convicted of a first time drug offense and who is less than twenty-five years of age at the time of initial employment.

The credit is \$200 per taxable year per eligible employee. Only one credit is allowed per taxable year per employee and may be received for a maximum of two years per employee.

The credit is available upon certification by the employee's probation officer that the employee has successfully completed a court-ordered drug treatment program and has worked 180 days full time for the employer seeking the credit.

Additional Contact: Louisiana Department of Revenue

5. Maryland

For each taxable year, for the wages paid to each qualified ex-felon employee, a credit is allowed in an amount equal to:

- (1) 30% of up to the first \$6,000 of the wages paid to the qualified ex-felon employee during the first year of employment; and
- (2) 20% of up to the first \$6,000 of the wages paid to the qualified ex-felon employee during the second year of employment.

For purposes of this credit, an ex-felon employee is anyone who has been convicted of a state or federal felony; is hired within a year of being convicted or released from prison; and is member of a family with an annual income 70% below the Bureau of Labor Statistics living standard.

Additional Contact: Maryland Department of Employment Services

6. Texas

The amount of the credit for wages paid by a corporation to an employee who was employed by the corporation when the employee was a work program participant is equal to 10% of that portion of the wages paid that, were the employee still a participant, the department would apportion to the state as reimbursement for the cost of the participant's confinement.

Additional Contact: Texas Comptroller of Public Accounts

Last updated: 2007

Federal Bonding Program

An Incentive Program for Hiring Individuals with Criminal Records

Some employers may require their employees to be bonded as protection against money or property loss due to employee dishonesty. However, many private bonding agencies will not bond job applicants with criminal histories or other questionable past behaviors because they are often categorized as “at-risk” or “not bondable.” Being ineligible for private bonding insurance can be an additional employment barrier for many qualified job applicants with past criminal records. The Federal Bonding Program exists to help alleviate employers’ concerns about hiring qualified, but “at-risk,” job applicants.

What Is the Federal Bonding Program?

The Federal Bonding Program serves as a job placement tool by guaranteeing to an employer the job honesty of “at-risk,” hard-to-place job applicants.

- The Federal Bonding Program issues fidelity bonds, which are business insurance policies that protect employers in case of theft, forgery, larceny, or embezzlement of money or property by an employee who is covered by the bond. The bond coverage is usually \$5,000 with no deductible amount of liability for the employer. Higher amounts of coverage, up to \$25,000, may be allowed if justified. The bond does not cover liability due to poor workmanship, job injuries, or work accidents.
- Bond packages are issued by the Department of Labor to a purchasing organization such as a job placement agency or employer. The purchasing organization can be public or private, nonprofit or for profit. Then, the job placement organization or employer is able to bond individuals who other bonding agencies usually will not, such as individuals with criminal records.
- The bond is put into effect instantly on the first day of employment. The employer simply makes the applicant a job offer and sets a date for the individual to start working. There are no forms or other papers for the employer to sign, and no processing to delay matters.

Who Is Eligible for the Federal Bonding Program?

- Bond coverage is provided for any at-risk job applicant whose background usually leads employers to question their honesty and deny them a job. This includes people with criminal records, people in treatment or recovery for alcohol and/or other drug addictions, and people with little or no work history, including people transitioning from welfare to work.

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- All jobs are bondable in private and public sectors, full and part-time positions, as well as jobs secured through temporary agencies. The bond insurance is **free** to the employer. It goes into effect the first day of the job applicant's employment and will terminate after six months. After the six months, continued coverage can be purchased under the program's bond.

Program Requirements

- The worker must meet the state's legal age for working.
- Workers must be paid wages with federal taxes automatically deducted from the pay.
- The employer must make the applicant a job offer and set a date for the individual to start work.
- Bonds also can be issued to cover an already employed worker who needs bonding in order to (a) prevent being laid off, or (b) secure a promotion to a new job at the company.

Efficiency and Effectiveness of the Program

- Bonding services as a job placement tool has achieved a 99% success rate. About 41,000 job placements have been made for at-risk persons who were automatically made bondable.
- It encourages employers to hire people with criminal records. A survey of "Employer Attitudes Toward Hiring Ex-Offenders," published in *The Prison Journal*, determined that employers were much more willing to hire people with criminal records who are bonded. The report states "bonding was the only variable to which the majority of employers (51%) responded favorably."
- It reduces reincarceration rates and saves money. A Texas A&M comparison group study found that people with criminal records who were released from Texas State prisons and were job placed by the Texas Employment Commission (Project RIO) through use of bonding and other services, had their reincarceration rate reduced by 40%. Most important was that "RIO saved Texas over \$10 million per year in potential reincarceration costs, and participants who secured employment generated about \$1,000 per year in state and local taxes."

Program History

- Purchasers of the bonds include state employment agencies, Workforce Investment Boards and One-Stop Centers, organizations employing people with criminal records, state departments of corrections, private sector organizations and veteran's initiatives.
- In 1966, the U.S. Department of Labor created the Federal Bonding Program. The Fidelity Bonds issued under the Program are insurance policies of the Travelers Property Casualty Insurance Company. The McLaughlin Company in Washington, DC is the agent for Travelers in managing the program nationwide.

Liabilities & Incentives for Employers

Liability Issues

Background checks for employment raise several legal and liability issues that must be explored in the effort to help inform employers to limit criminal background checks for both new hires and promotional opportunities.

Of special significance, Title VII of the Civil Rights Act of 1964, as interpreted by the Equal Employment Opportunity Commission (EEOC), requires all employers to adopt fair standards related to decisions based on criminal background checks. Thus, absent evidence that an individual's criminal record is *directly related to the specific job*, the employer can be held liable for substantial monetary damages to an individual or a class of workers and for court-ordered injunctive relief mandating specific activities.

However, most states recognize the torts of "negligent hiring" and "negligent retention" that require employers to exercise *reasonable care* to ensure that an employee known to have violent propensities is not unreasonably exposed to the public. While laws vary from state to state, they do not impose a legal duty on employers to conduct criminal background checks. Instead, the level of scrutiny required of an individual will vary depending on the specific position, job duties, and level of supervision.

What follows is a more detailed analysis of these legal obligations, *which require a balancing of the interests* protecting the rights of people with criminal records under Title VII and the expectation of safety on the part of the general public and employees.

Title VII of the Civil Rights Act of 1964

Because criminal background checks for employment have a disproportionate impact on people of color, the EEOC has determined that employers have a special obligation under Title VII of the Civil Rights Act of 1964 to ensure that their screening policies are, in fact, directly related to the job in question.

Based on a number of court cases regarding this subject, the EEOC has issued guidelines precluding employers from relying on arrest records of any sort, except in very special cases.¹ When an employer takes into account an individual's conviction, Title VII requires that the screening policy be "job related" and consistent with "business necessity."² To satisfy the heavy burden of proving that the offense is substantially related to the job, the employer must consider the nature and gravity of the offense, the specific responsibilities of the job, and the time that has passed since the conviction or the

¹ Equal Employment Opportunity Commission, "EEOC Policy Guidance on the Consideration of Arrest Records in Employment Decisions" (Washington, DC: Equal Employment Opportunity Commission, September 7, 1990).

² Equal Employment Opportunity Commission, "EEOC Policy Statement on the Issue of Conviction Records" (Washington, DC: Equal Employment Opportunity Commission, February 4, 1987).

completion of the applicant's sentence.³ Employers found liable under Title VII are subject to the full range of remedies, including the payment of back pay and injunctive relief.

In recent years, the EEOC, private attorneys, and nonprofit legal groups have been more actively enforcing Title VII protections, as more workers of color are denied employment due to the growing use of criminal background checks. For example, the EEOC in Michigan recently filed suit against Peoplemark, Inc., a major staffing agency that is alleged to have violated Title VII based on its criminal background check policy.⁴

In California, New York, and elsewhere around the country, EEOC charges have recently been filed against several large employers, including Comcast, Home Depot, Lowe's, Pacific Gas & Electric, and Madison Square Garden.⁵ Recognizing that the proliferation of criminal background checks is now impacting larger numbers of workers of color who find themselves with criminal records, the EEOC also recently held a public forum to evaluate the need to update its guidelines.⁶

Hiring and promotion policies are likely to face increased scrutiny for compliance with EEOC guidelines and possible legal challenge. Accordingly, to avoid liability, precise standards are required to clarify the specific offenses that disqualify applicants from employment, the time elapsed since such offenses, and their direct relationship to the positions that are subject to criminal background checks.

State Antidiscrimination Laws

In addition to the EEOC policy guidance barring discrimination, at least 14 states have enacted laws that prohibit employment discrimination against individuals with criminal records: Arizona, Colorado, Connecticut, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, New Mexico, New York, Pennsylvania, Washington, and Wisconsin.

Negligent Hiring and Negligent Retention

Violence at the workplace is a serious concern⁷ requiring a comprehensive approach toward safety and security that goes far beyond conducting criminal background checks for employment. However, it is

³ For example, a hit-and-run conviction is not job-related to a position as a kitchen worker (EEOC Dec. No. 79-61), delivery of marijuana is not job-related to the position of a utility worker in a factory (EEOC Dec. No. 80-18), and unlawful possession of a firearm is not job-related to a factory worker position (EEOC Dec. No. 80-10).

⁴ Miriam Aukerman, "Criminal Convictions as a Barrier to Employment: How Attorneys Can Help People with Criminal Records Get a Second Chance," *Michigan Law Journal* (November 2008): 32-34, <http://www.michbar.org/journal/pdf/pdf4article1434.pdf>.

⁵ National Employment Law Project, "National Employment Law Project Files Complaint with EEOC Against Lowe's for Race Discrimination Based on Minor Criminal Record; NELP Urges Policy Improvements at EEOC Forum in D.C.," press release, November 20, 2008; Outten & Golden LLP, "Madison Square Garden Faces New Discrimination Charge According to Outten & Golden LLP and Co-Counsel," press release, August 15, 2008.

⁶ U.S. Equal Opportunity Commission, "Meeting of November 20, 2008: Employment Discrimination Faced by Individuals with Arrest and Conviction Records," transcript, <http://www.eeoc.gov/abouteeoc/meetings/11-20-08/transcript.html>.

⁷ U.S. Department of Labor, Bureau of Labor Statistics, *Survey of Workplace Violence Prevention 2005* (Washington, DC: Bureau of Labor Statistics, October 27, 2006), p. 4.

important to emphasize that violence at the workplace, especially in retail establishments, is mostly perpetrated by third parties outside the scope of employment, not by employees.⁸

When a customer or co-worker is injured on the job by an employee, in most states the injured party may have the right to sue for damages under the tort theories of “negligent hiring” and “negligent retention.” Contrary to the promotional material produced by some human resource firms and other interested groups,⁹ a high degree of proof is required to obtain damages on behalf of an injured individual against the employer.

Generally speaking, the law requires businesses to exercise reasonable care in hiring, retaining, and supervising employees to protect others from harm. According to a leading treatise on the subject, “The existence of this duty depends upon whether the risk of harm from an employee to [the plaintiff] was reasonably foreseeable as a result of the employment.”¹⁰ The analysis for each employer comes down to the specific nature of the employee’s duties and the extent to which these responsibilities create a foreseeable risk of injury to another on the job. In other words, the scope of the employer’s investigation into an applicant’s background should be directly related to the severity of the risk of harm to a third party.

Thus, some jobs require heightened scrutiny by employers because the employees are in a unique position to cause harm to other individuals, as in the case of workers who have exceptional access to customers’ homes (e.g., appliance repair and installation workers) or workers who have regular unsupervised contact with young children (e.g., day care providers), elderly people (e.g., nursing homes), and other vulnerable populations. Retail establishments are not subject by law to this stricter level of scrutiny, and thus their legal duty is to do what is “reasonable” in screening their employees. The critical question, therefore, is what is “reasonable” and “foreseeable” conduct on the part of a retail employer in screening its employees or prospective hires?

In retail, what is reasonable and foreseeable will depend largely on the particular job, the employee’s level of contact with the public, the employee’s level of responsibility, and the level of supervision provided. Thus, workers employed in the stockroom, in the warehouse, or in other jobs further removed from the public will not require as much screening as workers, such as cashiers or sales staff, who have more routine interaction with retail customers.¹¹

⁸ While employee theft is a special concern for retail establishments, this analysis does not address that issue because it does not present a major liability for employers subject to lawsuits by third parties.

⁹ Consumer Credentials, “Why Conduct Background Checks?” 2004, <http://www.consumercredentials.com/background-checks-why.htm>; Kevin Pendergrast, “Your Company’s Reputation: You Are Who You Hire,” *Human Resources Professional* (March 2001).

¹⁰ “Unemployment Section 393,” in *American Jurisprudence*, 2nd ed. (Rochester, NY: Lawyers Cooperative Publishing, 2007).

¹¹ For example, in *Coughlin v. Titus & Bean Graphics, Inc.*, 767 N.E.2d 106 (Mass. App. 2002), the employer was not held liable for the actions of a warehouse worker who had served 14 years in prison, because his assault on an individual was not foreseeable.

When it comes to cashiers and sales personnel, or supervisors and store managers, the best approach to avoid liability is to have an effective and responsible screening policy, evaluating reference checks, interviews, prior work history, and other relevant information. In such cases, criminal background checks may be appropriate as well, especially if information is discovered that requires further inquiry, but the background checks should be conducted at the right time and under the right circumstances.

However, the courts have consistently held that criminal background checks are not required to avoid liability for negligent hiring and negligent retention. As the leading case issued by Minnesota's Supreme Court states, "Despite the increased use by employers recently, there is no legal duty to utilize criminal background checks for all prospective employees."¹² According to the court, criminal background checks "in fact may not bring the blanket protection that employers may feel they provide."

A minority of the courts have allowed these cases to go to jury to decide whether a criminal background check is required to avoid liability in a negligent hiring or negligent retention case. However, unlike in the retail industry, those cases typically involve situations in which the worker is employed in an especially sensitive position that offers far more opportunity to physically harm another individual.¹³ In the vast majority of cases, however, the law is clear that a judge can dismiss a lawsuit early on in the proceedings without requiring the issue to go to a jury to decide.

Moreover, even when a background check reveals that an individual has a criminal record, the record will often identify another crime, such as a property offense, that will not support a claim for negligent hiring or negligent retention resulting from an assault or other forms of physical violence.¹⁴ Thus, to avoid liability, employers should primarily focus their concern on offenses that demonstrate a propensity for violence.

In addition, adopting a zero-tolerance policy toward violence in the workplace will reduce the potential for violent episodes on the job. Violence-prevention policies include training staff to effectively identify the warning signs that typically predate violent episodes, focusing on store security (security guards, electronic surveillance, etc.), and reporting specific incidents.

Finally, the courts have been mindful of the impact that tort exposure can have on society's concern to promote rehabilitation. As a Florida appeals court stated, "[t]o say that an employer can never hire a

¹² *Ponticas v. K.M.S. Investments*, 331 N.W.2d 907 (Minn. 1983); see also *Peters v. Ashtabula Metropolitan Housing Authority*, 624 N.E.2d 1088 (Ohio App. 11th Dist. 1993), which determined that the employer's "only duty was to exercise ordinary care" and "[n]o facts were offered which would give rise to a duty to conduct a criminal background check."

¹³ See, for example, *TGM Ashley Lakes, Inc. v. Jennings*, 590 S.E.2d 807 (Ga. App. 2003), a case in which a handyman in an apartment complex, who murdered a resident, was allowed full access to the resident's apartment. In *Blair v. Defender Services*, 386 F.3d 623 (4th Cir. 2004), which involved a janitor who assaulted a Virginia Tech student, the court also held that the jury could consider that a criminal background check was not conducted by the employer. However, in this case the court took special note of the fact that the contractor that hired the worker also had a contractual agreement with the university to require criminal background checks of all personnel assigned to Virginia Tech property.

¹⁴ *Foster v. The Loft, Inc.*, 26 Mass. App. Ct. 289, 295, n. 7 (1988). According to this case, "An employee's past conviction of larceny by check would not make an employer liable, on the basis of the doctrine of negligent hiring or negligent retention, for the employee's subsequent rape of a customer."

person with a criminal record at the risk of being held liable for his tortuous assault flies in the face of the premise that society must make a reasonable effort to rehabilitate those who have gone astray.”¹⁵

Key Provisions to Include in State Legislation/Anti-Discrimination Policy

Based on Recommendations put forth by the Legal Action Center:

<http://www.lac.org/toolkits/standards/Key%20Provisions%20-%20Standards.pdf>

The Legal Action Center recommends that state laws prohibiting employment discrimination against people with criminal records contain the following key provisions:

- Protect applicants for employment or licensing from discrimination by both private and public employers, including licensing agencies.
- Protect applicants from discrimination based on both conviction and arrest records.
- Apply these provisions to all stages of employment: hiring, retention, promotion, and dismissal.
- State that for employers to consider a conviction at any stage of the employment process, there should be an individualized determination and the conviction should bear some type of rational relationship to the employment.
- Make clear to employers how they should determine whether the conviction is related to the employment.⁴ Important factors for employers to consider are:
 - the nature of the crime for which the applicant was convicted;
 - whether the applicant has been rehabilitated;
 - the time elapsed since the applicant was arrested; and
 - the applicant’s age when he or she was arrested.
- Protect applicants against discrimination based on convictions that are not yet finalized (e.g., if the defendant has not yet been sentenced or his or her direct appeal is still pending) or that have been nullified by pardon, judicial overruling, etc.
- Make it explicit that it is a public policy of that state (if state law exists) to encourage the licensing and employment of people with criminal histories.

Other provisions that some states have included in their anti-discrimination statutes increase the likelihood that statutes will be enforced. These provisions include:

- Require employers and agencies to document in writing their decisions not to hire applicants because of their criminal records, and provide notice to these applicants of their rejection and the reason for it. These tasks should be completed within a reasonable amount of time.
- Providing for the award of attorneys’ fees when people seek to enforce their rights through private lawsuits.¹⁰ Providing attorneys’ fees will allow private plaintiffs access to lawyers who can enforce their clients’ rights. In the words of Justice Blackmun, laws that provide attorneys’ fees grant private citizens “a meaningful opportunity to vindicate the important . . . policies which these laws contain.”
- Insulate employers who comply with its provisions against liability for negligent hiring.

¹⁵ *Williams v. Feather Sound*, 386 So.2d 1238, 1241 (Fla. Dist. Ct. App. 1980).

- Employers who follow the law should be able to use their compliance as a defense if they are sued for the acts of an employee with a criminal record.



A Collaboration Between the
Criminal Justice Program and Economic Programs