

# BACK TO BUSINESS

HOW HIRING FORMERLY INCARCERATED JOB SEEKERS  
BENEFITS YOUR COMPANY

A report from the Trone Private Sector  
and Education Advisory Council to the  
American Civil Liberties Union



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## HOW HIRING FORMERLY INCARCERATED JOB SEEKERS BENEFITS YOUR COMPANY

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# INTRODUCTION

**T**oday, 70 million Americans—one in three adults—have a criminal record. This is the result of nearly five decades of punitive criminal justice policies that fed mass incarceration.<sup>1</sup> While 2.3 million people are imprisoned in the United States, 95 percent of people in state prisons will re-enter our communities at some point.<sup>2</sup> More than 640,000 people are released from prisons each year.<sup>3</sup>

Because of the stigma associated with a criminal record, nearly 75 percent of formerly incarcerated individuals are still unemployed a year after release.<sup>4</sup> Some government policies—like making these individuals ineligible for professional licenses in cosmetology or roofing work—create significant obstacles to employment.

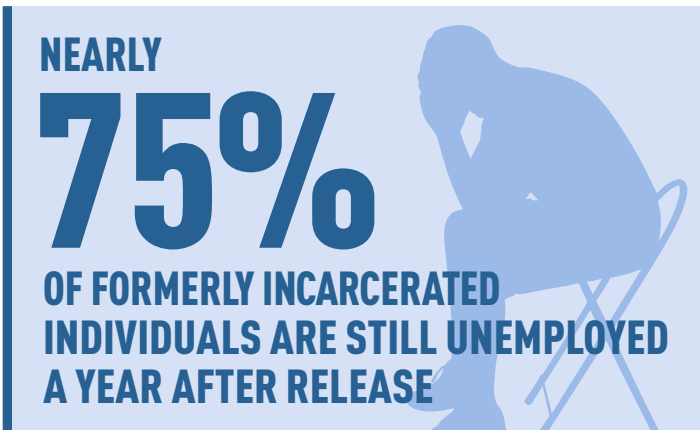
A lack of stable employment increases the likelihood that an individual will return to jail or prison; research has found that joblessness is the single most important predictor of

recidivism.<sup>5</sup> The impact on black and Latino communities has been particularly destructive.<sup>6</sup> Pervasive racial disparities in the criminal justice system exacerbate bias in the employment arena.<sup>7</sup> For African Americans, the adverse effect of a criminal record on getting a job interview is 40 percent greater than for whites with similar histories.<sup>8</sup>

The consequences of unemployment for this population can be ruinous. At the national level, economists estimate that the gross national product is reduced between \$78 and \$87 billion dollars as a result of excluding formerly incarcerated job seekers from the workforce.<sup>9</sup>

Some business leaders across the country, recognizing the damage, are finding ways to reduce barriers to employment. Corporations like Total Wine & More, Starbucks, Home Depot, American Airlines, Koch Industries and Under Armour have created hiring practices inclusive of people with criminal records.<sup>10</sup> Smaller companies, including Butterball Farms, Dave's Killer Bread, and Haley House Bakery, have found qualified talent by tapping into this pool of job seekers.<sup>11</sup>

Research by economists confirms that hiring people with records is simply smart business. Retention rates are higher, turnover is lower, and employees with criminal records are more loyal.<sup>12</sup> Given the costs associated with turnover and recruitment, researchers have found that “employees with a criminal background are in fact a better pool for employers.”<sup>13</sup>





Business leaders are in a strong position to make a positive difference for these individuals and their communities. By expanding the hiring pool to include people with criminal histories, companies can improve their bottom line, reduce recidivism and incarceration costs, avoid discriminatory practices, and increase public safety.

**RESEARCH REVEALS  
THAT EMPLOYEES WITH  
CRIMINAL BACKGROUNDS  
ARE IN FACT A BETTER POOL  
FOR EMPLOYERS**

## CASE STUDY

### Walmart

As one of the largest employers in the United States, Walmart has made a commitment not to judge job seekers only by their past mistakes. The company has taken questions about criminal history off its employment applications and has established a vetting team to consider an individual's total profile and qualifications, including demonstrated efforts at rehabilitation. The company will run a background check only *after* a

conditional offer is made. If the candidate accepts the offer, they are asked to consent to a background screening and are required to self-disclose their criminal conviction. Background checks and collection of the consent forms from the candidate (to include the self disclosure) are online and centralized so the hiring manager and HR teams in the facility are not aware of convictions disclosed, only whether the candidate is eligible for hire or deferred for hire to a later date based on the final results of the report. Candidates that appear to have something potentially adverse on their record are allowed to participate in a review by providing additional information that only they can give (i.e., rehabilitation efforts, continuing education, work experience, etc.) before Walmart makes a final decision to hire. These standardized hiring practices protect the applicant from discrimination in the work place and offer a fair chance at employment.

Susie's\* application to work at a Walmart distribution center was flagged when a background check came back with nine convictions, ranging from drug possession to attempted first-degree murder. She was 17 when she and a relative, also a teenager, were playing with a gun when it discharged and killed her companion. She was convicted and served nine years in state prison. Upon release, she started stealing and delivering drugs for dealers. Within a few years though, Susie began taking steps toward rehabilitation and to change her life. She joined a local church, and began to speak at local prisons about her experiences with rehabilitation and recovery. She has spent several years volunteering with a local sports team that mentors low-income children of color. Recently, she was appointed to the board of directors for a local rehabilitation and reentry center for formerly incarcerated individuals. When she applied for the job at Walmart in 2008, the company gave her a fair chance based on all of the facts presented during the background check process. She has performed so well that she was promoted to area manager in January 2017.

Thomas H is a Walmart employee who got a second chance under this policy. In 1990, Thomas was working as a part-time armed security guard at a warehouse to pay for college. He dreamed of becoming a pharmacist. Unbeknownst to him, the warehouse was being used at night as an illegal gambling facility. One night, F.B.I. and the local police department raided the warehouse. Thomas believed he was in danger, fired his weapon and killed two officers. He was found guilty of two counts of manslaughter and sentenced to five years, of which he served 11 months. After being pardoned by the state's governor, Thomas finished pharmacy school and began a career as a pharmacist. In 2015, he applied to Walmart for a pharmacy position. When a background check flagged his conviction, the hiring team weighed his criminal record against his nearly 24 years without another arrest and decided that the risk in hiring him was very low. For the past two years, Thomas has managed a Walmart supercenter pharmacy.

\*Pseudonyms have been used in the case studies to protect the individuals' privacy.

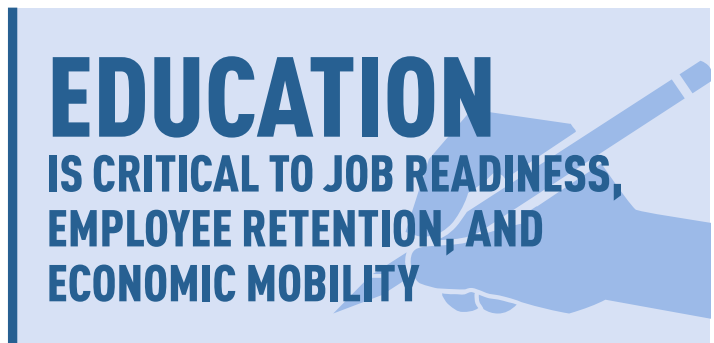
# SUMMARY

**T**his report examines successful efforts by corporations and government leaders to promote “fair chance” policies for people with criminal histories. It reviews the latest research on the effect of a criminal record on employment interviews and on the job performance of workers with such records. Several case studies presented here show how fair chance policies can promote loyalty and stability in the labor pool.

The report provides a roadmap for businesses seeking to create and sustain fair chance policies, including “banning the box,” or removing criminal history questions from job applications. It explains how hiring officers can effectively carry out this policy, and how to choose background check companies that use best practices in data collection.

It analyzes racial bias that has been connected with “ban the box” policies, and how to eliminate such bias by training administrators involved in hiring processes. The report also outlines compliance requirements with federal equal employment rules as they apply to people with criminal records. And it examines the issue of negligent hiring liability and how to avoid such liability.

Education is critical to job readiness, employee retention, and economic mobility. The costs of re-incarceration far exceed the costs of correctional education, and access to training and higher education have been shown to reduce recidivism and increase the likelihood of employment upon release. One case study describes how one college is developing in-prison education programs under a federal pilot program and offers a model for making correctional education scalable.



The report examines how partnering with workforce training and development programs can help employers succeed with employees who have been in prison. Many workforce development agencies offer training and counseling tailored to help these individuals transition into jobs. Lastly, the report provides recommended actions that businesses can take to create a fair chance for all.

# HOW HIRING FORMERLY INCARCERATED JOBSEEKERS WILL INCREASE YOUR BOTTOM LINE

**B**usinesses, small and large, can strengthen their workforce by opening their hiring process to all job seekers, without excluding those with criminal records. Recent research has found that employees with records are retained at higher rates than those without criminal histories. Better retention can significantly reduce an employer's recruitment and training costs for lower-skilled white-collar workers, which analysts estimate are close to \$4,000 per employee.<sup>14</sup> In fact, with higher retention rates and greater loyalty, job seekers with criminal histories, researchers say, are “a better pool for employers.”

Companies are recognizing this advantage. At Total Wine & More, human resources managers found that annual turnover was on average 12.2 percent lower for employees with criminal records.<sup>15</sup> Electronic Recyclers International (ERI) saw a similar outcome: by adopting a program to recruit employees with criminal histories it reduced turnover from 25 percent to just 11 percent.<sup>16</sup>

**ARMY ENLISTEES WITH  
FELONY RECORDS WERE  
33%  
MORE LIKELY TO BE  
PROMOTED TO SERGEANT**



These results are not unusual. “The characteristic of job loyalty and company dedication by [formerly incarcerated] workers is repeatedly noted to us by employers,”<sup>17</sup> says Luis Brown-Peña, an administrative supervisor for the Minnesota Department of Employment and Economic Development. A continuing study tracking 500 employees with criminal records, conducted by the Johns Hopkins Health Resource Center, has found that retention rates were substantially higher for these individuals.<sup>18</sup> While final results have yet to be released, of the 79 employees with very

serious criminal records; 73 were still employed five years later; only one employee was terminated.<sup>19</sup>

A study of the nation's largest employer, the United States military, supports this conclusion. The armed forces have been engaged in recruiting individuals with felony convictions, providing waivers



for candidates who show good moral character. Enlistees with felony records were 33 percent more likely to be promoted to sergeant than those with no conviction history, irrespective of other factors, including educational background.<sup>20</sup> Evidence also suggests that individuals with criminal records will be more motivated to perform because they often have fewer employment options.<sup>21</sup> Hence, not only is retention better; the candidates do better once on the job. As one human resources consultant said, “When you eliminate this portion of the population, you miss out on talent.”<sup>22</sup>

The benefits of hiring these individuals go far beyond improving a company’s bottom line. Companies with fair chance policies are also playing an important role in reducing public spending associated with cycles of re-incarceration. Experts note that employment a critical factor associated with reductions in recidivism—two years after release, employed individuals were twice as likely to have avoided arrest as their unemployed counterparts.<sup>23</sup>

Without work, formerly incarcerated individuals can fall back into criminal behavior and are likely to end up on public assistance programs. Individuals who were homeless prior to incarceration (almost 10 percent of those entering jails and prisons each year are homeless) are five times more likely to be homeless after release than those who were not homeless prior to incarceration.<sup>24</sup> These conditions burden taxpayers with increased public costs for shelters and social services.

Stable employment, by helping to reduce re-arrests and re-incarceration, also keeps down prison costs,



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which have been a huge strain on state and local budgets. A nonprofit organization, DC Central Kitchen in Washington, D.C., that hires formerly incarcerated individuals, reports that its program eliminates at least \$2.4 million in incarceration costs annually.<sup>25</sup>

A study conducted in Philadelphia concluded that employing just 100 more formerly incarcerated individuals would lead to a \$2 million reduction in the city's correctional costs.<sup>26</sup> A Florida study estimated that increasing employment for individuals released from state prisons by 50 percent would save the state \$86 million annually in costs associated with future recidivism.<sup>27</sup> Similarly, Pew Research Center has suggested that if states could lower recidivism rates by just 10 percent, they could save an average of \$635 million annually.<sup>28</sup>

There is also strong evidence that putting up employment barriers for people with criminal histories hurts the economy. The employment penalty imposed on people with criminal records results in a loss of somewhere between \$78 and \$87 billion in annual gross domestic product.<sup>29</sup> This means millions of dollars in lost tax revenue for state and local jurisdictions. Massachusetts alone reports as much as \$20 million lost annually in reduced tax revenue because of the limited earning potential of formerly incarcerated people.<sup>30</sup>

Expanding employment opportunities would also improve spending and economic conditions in communities that are most damaged by mass incarceration. A Washington State study revealed that the benefit to taxpayers from a reduction in crime due to job training and employment for a single formerly incarcerated individual amounted more than \$2,600.<sup>31</sup> The nonprofit organization DC Central Kitchen found that its full-time employees with criminal histories contributed over \$60,000 in payroll taxes annually.<sup>32</sup> The benefits can have a substantial impact on fragile communities. As John Santa, former chair of Santa Energy, a Connecticut-based oil and gas supplier, observed: "When individuals coming out of prison get and keep jobs, our whole community benefits. Businesses fill jobs, taxpayers are not paying the costs of incarceration and new employees are paying taxes and contributing to the local economy as productive members of society."<sup>33</sup>

## CASE STUDY

### Total Wine & More

David Trone believes in second chances. That's why his company, Total Wine & More, has made a commitment to hiring people with criminal histories. "We are working to give folks the benefit of the doubt," Mr. Trone said, "and knowing the numbers, we believe it's an imperative."

The numbers are compelling. Total Wine & More has been tracking its retention rates and collecting data on the results of fair chance hiring. Although turnover is high in retail industries, particularly for entry-level positions, Total Wine & More believed that this pool of potential employees was worth considering. "We were sure," Mr. Trone said, "that people with a criminal background were going to be more loyal and have better rates of retention."

Indeed, across several job types, turnover was significantly lower for employees with a criminal record than those without. In fact, for cashiers, the first-year turnover was 14.1 percent lower for employees with criminal convictions. This held true for positions in merchandising (stock) and wine assistants.

These results, which have mirrored studies in comparable industries, were found not only for individuals with low-level drug- or alcohol-related offenses, but also for individuals with more serious convictions. More than half of the employees with criminal histories had convictions for theft, assault and battery, or another serious offense.

For Mr. Trone, the company's policy represents a core value that's also smart business. "It is about giving individuals the opportunity to turn their lives around. My employees have gone on to do great things," he says.



© Total Wine & More

#### TURNOVER FOR EMPLOYEES WITH CRIMINAL BACKGROUND AS COMPARED TO OVERALL EMPLOYEE TURNOVER

	+/- Difference
Cashier	-14.10%
Stock	-11.40%
Wine Assistant	-10.90%

# HOW TO CREATE AND SUSTAIN FAIR CHANCE HIRING

**F**air chance hiring is about giving the 70 million Americans with a criminal conviction a fair shot at a job and a decent life. The economic benefits to both employers and the national economy are clear. This chapter offers information on how to develop and maintain fair chance hiring practices that work for business.

In 2016, more than 300 companies, including every employer on the Trone Private Sector and Education Advisory Council, signed the White House Fair Chance Hiring Pledge, in which companies commit to postpone criminal history questions until an interview is conducted or a conditional offer of employment is made.<sup>34</sup> Signatories ranged from large corporations like Koch Industries, Coca-Cola, and CVS Health to smaller companies like Ben & Jerry's, Dave's Killer Bread, and WeWork.<sup>35</sup> The pledge serves as a good baseline for implementing fair chance policies.

## Banning the Box

The campaign to “ban the box”—eliminating criminal record questions on job applications—was spearheaded by the All of Us or None organization more than a decade ago.<sup>36</sup> The policy does not exclude the use of criminal background checks or discussion of criminal histories. Rather, it encourages employers to eliminate blanket exclusions of people with criminal records, delaying criminal history inquiries until later in the hiring process, and ensuring that information about an applicant's criminal record is considered in a job-related context.

As of May 2017, 28 states and more than 150 cities and counties have passed some form of “ban the box” legislation. While most of these laws apply only to public sector employment, the policies extend to private sector employers in nine states and 15 major cities.<sup>37</sup> In cities that have adopted fair chance policies, job opportunities for people with criminal histories have expanded significantly. When Minneapolis banned the box in 2007, more than 50 percent of job seekers with criminal convictions, whose records were previously marked as a “concern,” were hired for public employment in the first year.<sup>38</sup> And in Durham, North Carolina, 96 percent of those with criminal records applying for city jobs were recommended for hire.<sup>39</sup>

While the track record with “ban the box” has been promising, this policy alone isn't sufficient to end discrimination if employers make assumptions that applicants of color are more likely to have a criminal record.

This pernicious dynamic exacerbates racial inequality in job opportunities. That’s why it’s imperative that companies adopting a “ban the box” policy train their staff to identify bias in the hiring process and to root it out. The fact is, most human resources professionals are not equipped to assess how a prior conviction might or might not interfere with an individual’s capacity to do the job. Without good training, managers may well fall back on false, racially-biased assumptions. As one employer notes, “We’re conditioned to be hyper-vigilant” when it comes to employee assessments.<sup>40</sup> Absent education and data, a sense of caution might well turn into illegal discrimination that could be severely damaging to job seekers and the company itself.



Aside from creating strong anti-bias programs, companies must also educate managers on how to assess the relevance of a past conviction and evaluate an individual’s rehabilitation efforts.<sup>41</sup> In other words, managers have to be able to evaluate each job candidate on a case-by-case basis. See the National Employment Law Project’s employer guides for additional assistance on conducting individualized assessments, [www.nelp.org](http://www.nelp.org).

Federal guidance echoes the need for individualized assessment. In 2012, the Equal Employment Opportunity Commission (EEOC), as the federal regulatory body overseeing Title VII of the Civil Rights Act of 1964, re-issued guidance stating that blanket exclusion of individuals with criminal convictions disproportionately impact black and Latino job candidates, given the pervasive racial disparities in the criminal justice system.<sup>42</sup> To avoid liability, the EEOC requires employers to conduct individualized assessments of job applicants who are screened out because of a criminal history.<sup>43</sup> In such cases, the applicant must be provided an opportunity to show that the exclusion should not apply because it is not job related or a business necessity. The employer must consider other information, like the nature of the crime, time from conviction, and the relevance of the misconduct to the job.

## **Avoiding Negligent Hiring Liability**

Some employers refuse to consider applicants with criminal records for fear that such employees might commit crimes on the job. While the number of lawsuits filed against employers for negligent hiring is very small, it is a concern states can address sensibly.<sup>44</sup> Negligent hiring liability is not a considerable

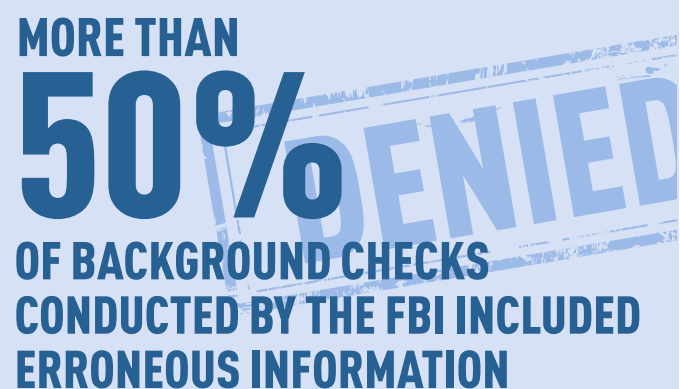
risk for employers engaged in fair chance hiring, particularly if employers follow EEOC guidance. In fact, one study concluded “[n]o research has shown that workplace violence is generally attributed to employee ex-offenders or that hiring ex-offenders is causally linked to increased workplace violence.”<sup>45</sup>

Some have restricted liability for negligent hiring in specific ways. In 2013, Texas passed legislation that limits actions taken against an employer solely because of an employee’s criminal history.<sup>46</sup> Under that law, negligent hiring liability attaches only when the employer should have known of a conviction and when the offense was committed “while performing duties substantially similar to those reasonably expected to be performed in employment.” Several states have passed similar legislation to make it easier for employers to hire people with criminal histories. These states include Alabama, Colorado, Georgia, Indiana, Louisiana, Massachusetts, Michigan, New York, and Tennessee.<sup>47</sup>

In states that allow broader liability for negligent hiring, the Federal Bonding Program can help shield employers with insurance grants that cover the hiring of people with criminal histories. The program, managed by the Department of Labor, provides six-month bonds for individuals who, despite a criminal history or past drug addiction, are otherwise qualified for the position.<sup>48</sup> This allows employers to hire and assess an individual’s skills without the risk of liability. If a company decides to retain the employee after the six-month period, it can apply for private bonding insurance that would not have been available without the certification of the Federal Bonding Program. The federal program has been successfully used in 50,000 job placements.<sup>49</sup> (For more information on negligent hiring, please contact the National Workrights Institute.)

## Conducting Accurate Background Checks

Banning the box is a first step. Employers who choose to conduct criminal background checks on applicants should also abide by best practices on this process, as outlined by the EEOC. Background checks should be limited to information that would be “job related for the position in question and consistent with business necessity.”<sup>50</sup> Employers should notify the background check agency, also known as a commercial reporting agency (CRA), of the types of convictions relevant to the job. Human resources managers must take care to choose an agency with high standards, preferably one that is certified by the National Association of Professional Background Screeners (NAPBS). Agencies that are certified submit to voluntary audits and comply with nationally recognized standards, including data verification procedures and consumer protection



**MORE THAN  
50%  
OF BACKGROUND CHECKS  
CONDUCTED BY THE FBI INCLUDED  
ERRONEOUS INFORMATION**

protocol.<sup>51</sup> However, less than one percent of all background checking companies adhere to the standards set forth by NAPBS.<sup>52</sup>

Contracting with a qualified agency is critical because a lot of background check data is wrong or incomplete. In fact, one study of New York State found that 87 percent of criminal records reported included at least one error.<sup>53</sup> According to the Department of Justice, background checks of federal employees conducted by the FBI include inaccuracies approximately 50 percent of the time.<sup>54</sup> Similarly, a study issued by the Government Accountability office found that as of 2012, 10 states did not include information about the disposition of criminal cases in over 50 percent of their criminal background checks.<sup>55</sup>

These errors occur for several reasons. Courts do not always include disposition data in their records, so while arrests are included, dismissals or diversions are not. In other cases, background checks will include information that has been expunged or sealed.<sup>56</sup> Very often, errors involve misspelled names, failure to make distinctions between individuals with similar names, or reporting a single conviction more than once.<sup>57</sup> Job applicants are often unaware of these inaccuracies and thus unable to correct them. Reporting companies that follow best practices will report only relevant convictions, confirm the accuracy of the record, and update records periodically.

## Getting Support for Fair Chance Policies

Businesses that adopt fair chance hiring can take advantage of some federal and state programs designed to encourage these policies. The federal Work Opportunity Tax Credit allows employers who hire workers with criminal records to reduce their federal income tax by as much as \$9,600 per employee in the first two years of work.<sup>58</sup> Many states and cities have their own incentive programs.

Workforce development programs, run by state and local governments, as well as programs run by nonprofit organizations, can help businesses ensure that workers get the support they need. These programs can offer new employees training and other services, like getting into transitional housing, substance abuse counseling, and transportation to work—at no cost to the employer.<sup>59</sup> They can also help people recently released from prison develop workplace skills, including interpersonal communication, customer service preparation, and training on teamwork. The best programs provide this type of job coaching coupled with GED courses.<sup>60</sup>

These programs can also offer employers advice on how to apply for tax credits and subsidies and provide case management for employees with criminal histories. And they have the expertise to educate businesses on state and local laws that pertain to the employment of people with criminal records. (See the Legal Action Center's H.I.R.E. Network clearinghouse for a list of workforce development programs by state.<sup>61</sup>)

## **Koch Industries**

Employers today are engaged in a global battle for talent. They need the best employees, not just the best employees without a criminal record. At Koch Industries, Inc., we believe in second chances. That's why we opted to "ban-the-box" and removed questions about an applicant's criminal record from our employment applications. We instead perform job-related background checks only on candidates who receive a conditional offer of employment. This approach has worked well for us, and we encourage other employers to voluntarily "ban-the-box," as well. Blanket prohibitions without any evaluation of the entire record do not significantly enhance public safety, and may, in fact, hurt it.

But beyond just fair chance hiring, we believe people who have served their time and want to pursue a second chance deserve the opportunity to rebuild their lives. We should all have the humility to realize that no one should be judged forever by what happened on their worst day. Businesses and society need to support a culture of opportunity to give persons with criminal records a chance to lead a productive and purposeful life. We all have a stake and a role in this. Who among us has not received and valued a second chance in life?

We also encourage policymakers across the country to start thinking about making positive reforms to our criminal justice system that will help people improve their lives. The human, societal, and fiscal costs of our current systems are simply unsustainable.



# THE BROADER CHALLENGE OF EDUCATION AND TRAINING

**E**ducation is central to reducing recidivism and improving chances of post-release employment. A 2013 RAND Corporation study found that participation in a correctional education program decreased the likelihood that individuals would become engaged in criminal behavior after release.<sup>62</sup> In fact, *any* form of educational participation resulted in a 43 percent reduction in the rate of recidivism over three years. A Texas study, found that higher education reduces recidivism even further: Incarcerated individuals who earn a bachelor's degree return to prison at a rate of just 5.6 percent.<sup>63</sup>

In California, the Prison University Project, housed at the maximum security San Quentin Correctional Facility, reports a 17 percent recidivism rate with no violent offenses among their graduates compared with an average rate of 65 percent for incarcerated individuals overall.<sup>64</sup> The Bard Prison Initiative, which operates in six medium- and maximum-security prisons in New York State, enrolls 300 men and women in college programs. Formerly incarcerated individuals who have participated in the Bard program return to prison at a rate of less than 2 percent.<sup>65</sup> New York's College and Community Fellowship (CCF), one of the few programs that works directly with justice-involved women, reports a recidivism rate of less than two percent for college graduates. Combining prison in-reach with academic counseling and leadership training, CCF has aided women in obtaining over 300 degrees.<sup>66</sup>

The reductions in recidivism are reason alone to expand and promote robust correctional education programs, but there are significant savings associated with these programs as well. RAND estimates that for every dollar spent on prison education, \$5 is saved on correctional costs.<sup>67</sup> The Bard Prison Initiative estimates that the program costs \$5,000 per year per student, while incarceration in New York state prisons costs more than \$60,000 per incarcerated individual per year.<sup>68</sup> Bedford Hills, a women's maximum-security correctional facility in New York, reported that providing 100 women access to college-level education, reduced recidivism rates and saved the prison more than \$900,000 in a two-year period.<sup>69</sup>





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**FOR EVERY DOLLAR SPENT  
ON PRISON EDUCATION,  
\$5 IS SAVED ON  
CORRECTIONAL  
COSTS**

Furthermore, education improves the chances of getting a job. People who participate in correctional education programs are 13 percent more likely to be employed following their release.<sup>70</sup> Not only are individuals with criminal records far less likely to commit new crimes, they are better situated to support their families and pay taxes, and are less likely to be reliant on public support.

Unfortunately, access to correctional education has diminished significantly since the enactment of the 1994 Violent Crime Control and Law Enforcement Act, which eliminated federal funding for incarcerated individuals seeking to take college courses.<sup>71</sup> While Pell Grants awarded to these individuals made up just one-tenth of a percentage point in the overall program's budget, the impact of this exclusion was dramatic. Where there were once more than 350 degree-granting programs in the nation's prisons, there were only eight in 2005.<sup>72</sup>

In response to advocacy by coalitions like Education from the Inside Out, the Obama administration's Second Chance Pell Pilot Program, which was rolled out in 2016, extends Pell Grants to 12,000 students in 104 penal institutions.<sup>73</sup> Sixty-seven colleges and universities were selected to provide educational services—from vocational certifications, associates and bachelor degrees—at federal and state prisons under this program, and of these, more than 10 percent are colleges that traditionally serve students of

color.<sup>74</sup> The program provides \$30 million in Pell grants to incarcerated students in 27 states.

With research clearly showing that in-prison education can help reduce recidivism and increase employability after release, this pilot program should be expanded. And if employment is the goal for the hundreds of thousands leaving prisons every year, then “we need to be asking how does the educational experience contribute to doing more than providing subsistence,” says Dr. Michael Lomax, President of the United Negro College Fund.

## CASE STUDY

### Wiley College

Selected by the Obama administration along with 66 other colleges and universities for the Second Chance Pell Pilot Program, Wiley College in Texas, a historically black college, is creating associate and bachelor degree programs in prisons, taught by college professors and teaching aides, beginning in Spring 2017. Wiley will work in three Louisiana penitentiaries, including one women’s facility. Students will get the chance to pick from several majors, including criminal justice and sociology. Dr. Tracy Andrus, director of Wiley College’s Criminal Justice Department and the college’s prison program, sees this initiative as instrumental to elevating the mission at the center of Historically Black Colleges and Universities: equitable opportunity, social justice, and economic mobility.

The programs are a natural fit for the colleges, says Dr. Andrus, who served time in one of the prisons where Wiley will now operate, before going on to earn a Ph.D. in juvenile justice. He sees this as a chance to expand the college’s efforts to work with nontraditional students. “This program will serve a population that is not unlike many of the students at Wiley already,” he says, noting that students at Wiley often come from the same impoverished communities.

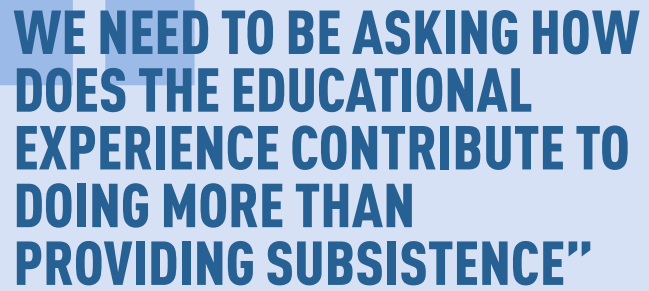
It is critical, he says, to develop spaces for learning in prisons. “Many of these individuals never got a first chance, let alone a second,” Dr. Andrus notes, “This can be a critical means of beginning, at least, to correct the structural inequalities that led to policies of mass incarceration.”

## Post-Incarceration Education and Training

People with criminal histories face significant barriers to continuing their education after incarceration. A study conducted by the Center for Community Alternatives found that nearly two-thirds of the colleges surveyed collected information on students' criminal background.<sup>75</sup> Such questions deter individuals from applying for entrance because they are likely to assume that having

a criminal record will exclude them automatically.<sup>76</sup> Colleges are starting to wrestle with this problem. The State University of New York system recently “banned the box” on its application form at the urging of politicians and advocates,<sup>77</sup> though the SUNY system may still ask about felony records for any student applying for campus housing or seeking to enter certain programs, like study abroad.

Many employers recognize that employees with criminal records need training and education opportunities. They're partnering with federal- and state-funded workforce development programs to provide stipends for employees with risk factors (including criminal histories) to attend training tailored to their job needs, as well as college programs. Some workforce development programs offer GED courses, literacy tutoring, and occupational skill development. Many also coordinate with employers to provide on-site training. Total Wine & More, for example, provides both GED courses and access to college programs by partnering with the University of Maryland to offer online courses. “When employees see you invest in their future, they grow with the company,” says David Trone, founder of the company.



**WE NEED TO BE ASKING HOW DOES THE EDUCATIONAL EXPERIENCE CONTRIBUTE TO DOING MORE THAN PROVIDING SUBSISTENCE”**

—Dr. Michael Lomax, President of the United Negro College Fund

### CASE STUDY

## eWaste Tech, Richmond, VA

Felipe Wright and Janice Davis, founders of eWaste Tech, saw an opportunity to bring social entrepreneurship to the growing electronic waste recycling industry. The company, established in 2014, seeks to employ marginalized job seekers—veterans, public housing residents, and people with criminal convictions. To meet the needs of this



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population, it created flexible work schedules and a comprehensive training program. Nearly half of its employees have criminal histories.

eWaste Tech also partnered with ResCare, a workforce development center, which provides professional skills training, federally-funded stipends to attend school, and assistance in connecting employees to social services. eWaste Tech now has several employees attending college programs. As Ms. Davis says, “We are interested in improving the quality of life of our employees. The dividends are that you have employees with a desire to remain, there is a lot of trust, and that reduces turnover.”

Tim was just six days out of prison when he attended a job fair hosted by ResCare and found himself at the eWaste Tech booth. During the interview process, Tim explained the circumstances surrounding his conviction. Mr. Wright recalled, “He came up and said to me: If you give me this chance, I will never ever let you down.” Mr. Wright hired him on the spot, and Tim began training later that week. Tim now runs the shop floor, overseeing the work of all the warehouse and technical employees. There are dozens of stories like his at the company. Nearly 76 percent of formerly incarcerated job seekers said they were unemployed in the first year of release. eWaste Tech shows that businesses can change that trend. The result of its efforts, Ms. Davis believes, is a dedicated and stable staff. “The dividends are that you have employees with a desire to remain,” she says, “there is a lot of trust, and that reduces turnover.”

# ACTIONS AND RECOMMENDATIONS



**H**iring new employees is a critically important and costly function for any business. Every hiring decision represents a major investment that employers must make with limited information. Responsible hiring practices, outlined here, can help employers comply with the law, minimize the risk of liability, and better meet their staffing needs by expanding the pool of worthy applicants.

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## Legal Compliance and Employer Best Practices

The first step in developing fair and effective hiring programs is to ensure your company complies with all civil rights and consumer protection laws and regulations. Employers have legal obligations under Title VII of the Civil Rights Act of 1964 and the Fair Credit Reporting Act for all employees. There are particular stipulations that apply to hiring people with arrest and criminal records. Some states and local governments offer additional guidance to decision-makers by enacting fair chance policies, which incorporate many of these federal protections.

### *a. Title VII of the Civil Rights Act of 1964:*

An employer's neutral policy of excluding applicants based on certain criminal history may disproportionately impact some individuals protected under Title VII. This may constitute illegal discrimination based on race or ethnicity if the employer is unable to show that the policy is job-related and consistent with business necessity.

The employer can best defend against claims of discrimination for its screening policy by considering the nature of the crime, the time elapsed, the nature of the job, and providing people identified by the screening an opportunity for an individualized assessment.

- Ensure that hiring managers are not treating criminal history information differently for different applicants, based on their race or national origin. It is illegal to ask only people of a certain race or gender about their criminal records.<sup>78</sup>
- Remove questions about criminal records on application forms and delay the inquiry until the interview, and preferably after a conditional job offer is made.
- Consider only convictions and pending prosecutions that are relevant to the job in question. Do not consider arrests.

- Consider only convictions recent enough to indicate significant risk.
- Consider evidence of rehabilitation.
- Train human resources personnel to conduct individualized assessments that consider relevant factors like the number of years that have elapsed since conviction; evidence of rehabilitation; the connection of the crime to job duties. Provide anti-bias training to all staff with hiring responsibilities.
- If questions still persist, seek legal guidance before making any final decisions.

### *b. The Fair Credit Reporting Act (FCRA)*

The federal Fair Credit Reporting Act requires that applicants who are going to be turned down for a job because of the results of a background check be notified before a final decision is made and be given the opportunity to review and challenge the information. A few states also have state FCRA requirements that may go beyond the federal law. Some states prohibit the disclosure by background check agencies of arrests that did not lead to conviction or minor criminal offenses like disorderly conduct.

- Notify the applicant in writing that the company may use the information obtained from a background report for employment decisions.
- Get the applicant's written permission to do the background check.
- Before making an adverse employment decision, promptly provide the applicant an opportunity to challenge the information in the background report and to provide evidence of rehabilitation.

### *c. State and local laws, including "ban the box" statutes*

Some states and local governments bar companies from using blanket exclusions against hiring individuals with criminal histories. Others, like New York State, have passed comprehensive fair chance hiring policies. Currently, nine states and 15 local jurisdictions prohibit private employers from asking about an applicant's criminal background on job applications and require private employers to delay inquiring about criminal history until later in the hiring process, usually after a conditional offer of employment has been made. (See Appendix for a comprehensive list.)

- If your company is subject to a state or local ban-the-box law, remove any question regarding criminal conviction history from job applications.
- Remove language from employment advertisements that excludes applicants with criminal records.
- Educate recruitment and hiring managers about relevant state and local laws, and direct them to delay asking about an applicant's criminal history until after a conditional job offer has been made.
- Conduct anti-discrimination and implicit bias training for recruitment and hiring managers to ensure that they are applying screening criteria objectively and consistently.

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## Ensure accuracy and relevance in background check data

Making fair hiring decisions requires accurate information. Turning down a qualified applicant because of inaccuracies in a criminal background check hurts both the applicant and the employer. Employers should only engage credit reporting agencies that follow best practices.

Determine in advance the convictions that the company considers relevant for specific jobs and the time period for which they are considered relevant. Provide these guidelines to the reporting agency with instructions to report only convictions that meet the criteria. Alternatively, companies can handle the report screening “in-house” using a consistent process to evaluate relevant convictions.

Questions to ask in selecting a credit reporting agency:

- Are you certified by the National Association of Professional Background Screeners?
- Do you verify all information with the original criminal justice source?
- Do you require the full name and at least one other identifier to match before reporting a criminal record?
- Do you require all identifiers in your possession to match?
- Do you report all charges from a single incident as a single entry?
- Do you remove expunged or dismissed dispositions?
- Do you provide regularly updated information on the disposition of relevant cases?

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## Take affirmative steps to reach qualified jobseekers with criminal records

Many people with criminal records have encountered so much rejection that they assume no employer will give them a fair chance. Businesses who let it be known that they will consider people with criminal histories will receive many qualified applicants they would not otherwise have seen.

- Frame job notices and advertisements in language that supports diversity and inclusion of persons with criminal records.
- Attend job fairs that promote inclusionary practices.



- Post job openings with workforce development agencies and reentry programs that train and place persons with criminal records.
- Develop partnerships with workforce development agencies and reentry job training programs that can refer qualified and trained persons with criminal records. Most human resources professionals aren't trained to determine whether an applicant is rehabilitated and job-ready. Fortunately, many workforce development organizations have experience in doing this and in placing people with criminal histories in appropriate employment. See Appendix C for example.

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## Improve the hiring process and promote ways to monitor progress

Employees making hiring decisions about applicants with criminal records need support and training. They may fear being blamed if an applicant with a record is hired and later commits another offense. Comprehensive training and a transparent process can reduce these concerns and enable hiring managers to better meet company goals.

- Provide anti-discrimination and implicit bias training for all staff and managers who participate in hiring decisions.
- Set clear objectives for fair hiring and recruitment efforts.
- Consider conducting regular statistical analyses to determine whether criminal record screening policies are having an adverse impact on black and Latino job applicants.
- Have hiring decisions for applicants with criminal records made by a senior manager or a group of managers.
- Keep the applicant's record confidential.
- Require hiring managers to document the selection criteria they used.
- Train the human resources staff on facts about negligent hiring claims. The way to defend against such claims is to conduct appropriate background checks and review evidence that mitigates the applicant's conviction history.
- Monitor recruitment and hiring results and adjust practices when necessary.

**This toolkit was co-authored with the Legal Action Center, Lawyers' Committee for Civil Rights Under Law, and the National Workrights Institute.**

# RECOMMENDATIONS ON EDUCATION

- Partner with local workforce development programs to create continuing education programs for employees. These programs can provide resources and opportunities for adult education and professional development, often at no expense to the employer.
- Give employees an incentive to seek additional training and education by offering tuition assistance. Modest investments in employee education may help reduce hiring and retraining costs.
- Lobby legislators to expand funding for prison education programs at all levels. Research shows that education for incarcerated individuals can significantly reduce recidivism rates, advances public safety and improves job-readiness when they reenter society.
- As a business leader, you can create opportunities for growth by supporting policies that expand access to educational opportunities. Urge colleges and universities to “ban the box” on college applications. A criminal record should not be used to exclude a qualified student from earning a college degree. In the 21<sup>st</sup> century, post-secondary education is necessary for job security and economic advancement. Colleges should embrace policies that give all applicants—including those with criminal histories—a fair chance.

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72. Katherine Long, “Behind Bars College is Back in Session in Some Washington Prisons,” *Seattle Times* January 21, 2015: <http://www.seattletimes.com/news/behind-bars-college-is-back-in-session-in-some-washington-prisons/>; see also Policy Brief, “Restoration of Pell Grant Eligibility,” Education From the Inside Out Coalition, 2013: [http://www.eiocoalition.org/files/EIO\\_Pell-Grant-2013-Policy-Brief\\_V4.pdf](http://www.eiocoalition.org/files/EIO_Pell-Grant-2013-Policy-Brief_V4.pdf).
73. Press Release, “12,000 Incarcerated Students to Enroll in Postsecondary Educational and training Programs Through Education Department’s New Second Chance Pell Pilot Program,” U.S. Department of Education, June 24, 2016: <https://www.ed.gov/news/press-releases/12000-incarcerated-students-enroll-postsecondary-educational-and-training-programs-through-education-departments-new-second-chance-pell-pilot-program>.
74. Ibid.
75. Marsha Weissman and Emily NaPier, “Education Suspended: The Use of High School Disciplinary Records in College Admissions,” Center for Community Alternatives (2015): <http://www.communityalternatives.org/pdf/publications/EducationSuspended.pdf>.
76. Ibid.
77. Scott Jaschik, “SUNY Bans the Box,” *Inside Higher Ed*, September 15, 2016, <https://www.insidehighered.com/news/2016/09/15/suny-removes-question-criminal-convictions-application>.
78. U.S. Equal Employment Opportunity Commission, “Pre-Employment Inquiries and Arrest & Conviction, 2012.

# APPENDIX A

## Resource Page

### *For Compliance Concerns:*

#### **National Workrights Institute**

[www.workrights.us](http://www.workrights.us)  
128 Stone Cliff Road  
Princeton, NJ 08540

#### **Lawyers' Committee For Civil Rights Under Law**

[www.lawyerscommittee.org](http://www.lawyerscommittee.org)  
1401 New York Avenue, NW, Suite 400  
Washington, DC 2005

### *For Assistance on Finding Workforce Development Partners:*

#### **National H.I.R.E Network**

[www.hirenetwork.org](http://www.hirenetwork.org)  
225 Varick Street  
New York, NY 10014

### *For More Information on Ban the Box:*

#### **Legal Services for Prisoners with Children**

[www.prisonerswithchildren.org](http://www.prisonerswithchildren.org)  
1540 Market Street, Suite 490  
San Francisco, CA 94102

#### **National Employment Law Project**

[www.nelp.org](http://www.nelp.org)  
75 Maiden Lane, #601  
New York, NY 10038

#### **Southern Coalition for Social Justice**

[www.southerncoalition.org](http://www.southerncoalition.org)  
1415 West Highway 54, Suite 101  
Durham, NC 27707

### *For Accredited Screening Companies:*

#### **National Association of Professional Background Screeners**

[www.napbs.com](http://www.napbs.com)  
110 Horizon Drive, Suite 210  
Raleigh, NC 27615

### *For More Information on Correctional Education Programs:*

#### **Bard Prison Initiative**

[www.bpi.bard.edu](http://www.bpi.bard.edu)  
Bard College  
PO Box 5000  
Annandale-On-Hudson, NY 12504-5000

#### **College and Community Fellowship**

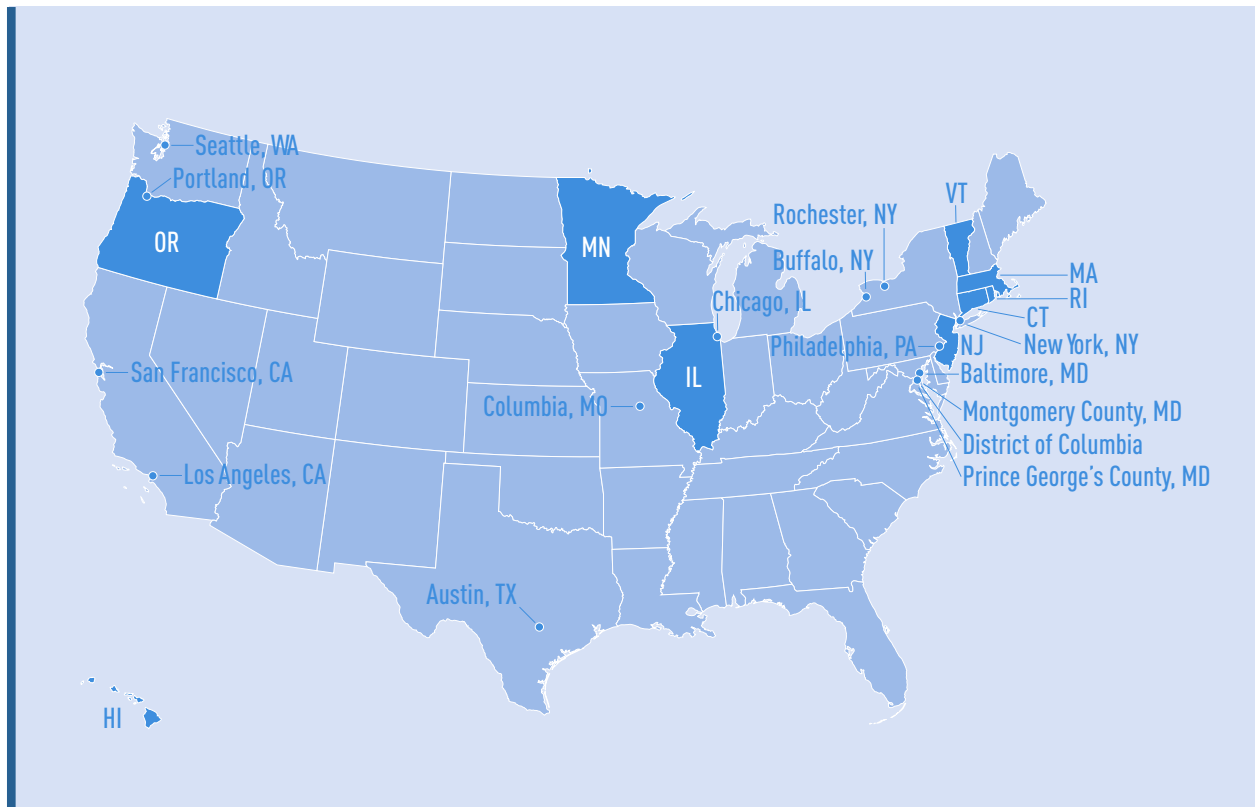
[www.collegeandcommunity.org](http://www.collegeandcommunity.org)  
475 Riverside Drive, Suite 1626  
New York, NY 10115

#### **Prison University Project**

[www.prisonuniversityproject.org](http://www.prisonuniversityproject.org)  
PO Box 492  
San Quentin, CA 94964

# APPENDIX B

## States and Municipalities that Have Enacted “Ban the Box” Legislation Applying to Private Sector Companies





# APPENDIX C

## Making Reentry Work For Your Company —M.A.D.E. Transitional Services

**T**he process of hiring qualified formerly incarcerated candidates can be simplified with nonprofit organizations that specialize in workforce development. An example for such engagement is M.A.D.E. Transitional Services, a New York-based nonprofit agency that aids formerly incarcerated individuals in their pursuit of employment.

Its success in providing employers with a steady stream of qualified, pre-screened candidates can be traced to two sources: its unique leadership and its organizational model. M.A.D.E. was founded by Toney Earl, Jr., and Tarik Greene—both formerly incarcerated—who now serve as the organization’s Executive Director and Executive Deputy Director, respectively. They draw on hard-won knowledge in developing their two-way recruiting and support model. This model accounts for both the specialized needs of formerly incarcerated people as prospective employees as well as those of prospective employers. As a result, they help secure placement, assure retention, and add value to both ends of the employment equation.

While M.A.D.E. functions like a traditional recruiter, the program draws on evidence-based job-readiness programs like the Department of Criminal Justice Services’ (DCJS) Ready, Set Work! and Thinking 4 a Change (T4C), which enhance soft skills such as effective communication, conflict resolution and critical thinking. The agency conducts tailored career assessments at the outset to ensure an appropriate and long-term fit, increasing the likelihood of job retention. After employment begins, they provide individualized 30-, 60-, and 90-day support plans that address punctuality, work/life balance, and a range of employee tools necessary to meet—and often exceed—employer expectations.

After placement, M.A.D.E. schedules periodic check-ins with employers to ensure hires are acclimating well. This “early and often” paradigm allows for swift mediation of any concerns. Their ongoing support also includes peer-to-peer engagement between current clients and other formerly incarcerated people who have successfully transitioned to long-term employment.

They have a 76 percent job placement rate and just an eight percent recidivism rate. In one testimonial, a White Plains Hospital HR Manager who has worked with M.A.D.E. stated that, “working with M.A.D.E.’s clients has been an asset to our organization, and we look forward to a continued mutually-beneficial working relationship.”