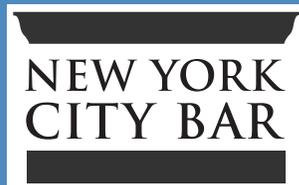


**Legal Employers Taking the Lead:
Enhancing
Employment Opportunities
for the Previously Incarcerated**



**New York City Bar Association
Task Force on Employment Opportunities
for the Previously Incarcerated**

March 2008

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The public policy of this state...[is] to encourage the licensure and employment of persons previously convicted of one or more criminal offenses."

New York Correction Law, Art. 23-A, Section 753

"Providing a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime."

Gov. Hugh L. Carey on approving L. 1976 c. 931
(now Article 23-A of the New York Correction Law)

[T]he importance of employing former inmates, and reintegrating them into society, without risk of absolute liability for those who open doors to them."

Haddock v. City of New York, 75 N.Y.2d 478, 485
(Ct. App. 1980)

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Introduction and Summary

On December 31, 2007, more than 62,000 individuals were incarcerated in New York state prisons, and an additional 28,000 or more were confined in jails throughout the State.¹ New York is by no means unique in the prevalence of incarceration in this country; the United States has the largest prison population in the world—25% of the world's prisoners with only 5% of its population.² The prison population is not only vast but ever-changing, as individuals are arrested, convicted, incarcerated for varying periods, and eventually released back into society. In New York State alone, 27,000 individuals are released each year from state prisons,³ and 100,000 from jails.⁴

The aggregate costs of incarceration are staggering: maintaining a single prison inmate for one year costs more than \$30,000,⁵ but that is only a small fraction of the total cost, for it fails to take into account the other direct costs of the criminal justice system, lost productivity, added burdens on the welfare system, and such non-quantifiable but nonetheless very real collateral consequences as broken families and an increase in homelessness.

The vast prison population is swollen by recidivism. According to federally compiled statistics, 30% of all people released from prison are rearrested within the following six months; 44% within the first year; and 67.5% within three years.⁶ Many of those rearrests are for parole violations, but even with this qualification, the extent of recidivism is striking.

How can this vicious cycle be stopped or at least slowed? Individuals released from prison or jail face a host of problems conducive to a renewal of criminal behavior, not the least of which is the difficulty that they face in securing employment. Reflect on just one statistic: nine out of ten parole violators are unemployed.⁷ Unemployment may in fact be the most serious of all contributors to the high rate of recidivism.⁸

In order to stop or at least slow the recidivism cycle, it is necessary to understand the reasons behind the severe obstacles formerly incarcerated individuals encounter in securing employment, and then to find ways to combat those difficulties and to expand employment opportunities.

Enhancing employment opportunities for the formerly incarcerated and thereby reducing recidivism is a crucial aspect of the administration of criminal justice. Lawyers play central roles in the processes that lead to the imprisonment of individuals. The legal profession should also take a leading role in securing employment for individuals who are released from prison and seek reintegration into society. The New York City Bar Association, with more than 22,000 members from all corners of the legal profession, is uniquely situated to address this subject, particularly when it comes to employment within the legal profession. Accordingly, on the recommendation of the Pipeline Project,⁹ President Barry Kamins of the New York City Bar Association appointed this Task Force in August 2007. Its members are identified in Appendix 2.

President Kamins charged the Task Force not only with identifying the barriers that previously incarcerated persons face when seeking work in the legal sector and elsewhere, but also with determining ways to surmount them. This Report suggests that employment barriers may be heightened by the failure of employers to understand the laws under which they operate, as well as employers' generalized misperceptions about job applicants with conviction histories. We have also found that legal and other employers seem not to be aware, much less make full use, of workforce intermediaries, many of which provide a wide range of employment-related services, including soft-skills and hard-skills training, job placement and post-placement assistance.

We recommend that legal and other employers become familiar with workforce intermediaries and turn to them for support and assistance in identifying and employing qualified applicants. By taking full advantage of workforce intermediaries, an employer can do well *and* do good — both enlarging the pool of suitable job candidates from which the employer may choose and providing a stabilizing and supportive work environment that will facilitate a former prisoner’s reintegration into society. If this Report broadens awareness and appreciation of the range of valuable services offered by workforce intermediaries, and if employers — especially but not only law firms and other legal employers — avail themselves of those services *and* thereby hire and retain a greater number of qualified persons with conviction histories in positions that afford them the prospect of dignity and self-esteem, our Task Force will have achieved its purpose.

The Magnitude and Multiplicity of the Problem

Barriers to employment faced by formerly incarcerated persons are numerous, varied and formidable. They range from statutory bars to employment in, or licensing required for, certain types of employment to a reluctance to hire based on open or latent fears of threat to safety, dishonesty and liability. Surveys have shown that the formerly incarcerated are less likely to be hired than any other single disadvantaged group (*see p. 8, supra*), and when they are hired, they are likely to be paid lower wages than employees recruited from other sectors in society.¹⁰ Barriers to employment are exacerbated by the difficulties releasees face in obtaining housing and medical care, as discussed below.

The prison population is by definition out of sight, and perhaps it is that invisibility which makes the extent of our country's resort to imprisonment so startling. The New York State Bar Association has observed that one in three New Yorkers passes through the criminal justice system at some point, and nearly six million New Yorkers have conviction histories of felonies, misdemeanors or other violations of law.¹¹ New York is by no means unique in this respect. It has recently been reported that one in every one hundred Americans is currently incarcerated.¹² According to the federal Bureau of Justice Statistics, approximately nine percent of all men — one in every eleven — will spend some time in state or federal prison.¹³ The number is much higher for Latinos (16%), and it is highest of all for African-Americans (about 30%).¹⁴

Young black men are going to prison in record numbers; they are jailed at a higher rate than any other cohort of our population—more than 2.4 times the rate of Latino men and 6.2 times the rate of white males.¹⁵ Indeed, every black male child born in the United States today has a 1-in-3 chance of serving a prison sentence.¹⁶ The social and economic reverberations of these incarceration rates are profound, for more black men serving prison sentences means reduced income, fewer college enrollments and fewer productive careers.¹⁷

Costs to Society (taxpayers, formerly incarcerated persons and their families)

Like the numbers of the prison population, the costs of crime are enormous. Crime victims may suffer injury, loss of or damage to property, and/or pain and suffering. State and local governments (and, to a limited extent, the federal government) must foot most of the bill for police protection and judicial and legal services, and must bear the costs of maintaining and staffing prisons and jails and making payments under compensation programs. (A small portion of these costs is offset by fees assessed against persons convicted of crimes and in some cases by the restitution they are ordered to pay.)

The imprisoned and their families pay a steep price as well. Many imprisoned adult men are non-custodial fathers who are unable to pay child support or otherwise contribute financially to their families from prison.¹⁸ They cannot serve as beneficial male role models for their children and other youth. And their own social capital depreciates while they are incarcerated, as they fail to accumulate additional meaningful work experience or higher education, and as whatever skills and employment contacts they possessed before imprisonment erode.¹⁹

Housing and Medical Care

Upon release from prison or jail, many individuals are cast adrift. They may be unable to reconnect with their families and resettle in their former neighborhoods, in no small part due to state- and federally funded housing authorities' rigid restrictions on renting to persons with conviction histories. Formerly incarcerated persons are generally prohibited from rejoining their families for certain periods of time when those families reside in public housing, or from renting a public housing apartment on their own.²⁰ As a consequence, and because of the dearth of affordable housing in most New York metropolitan areas, individuals recently released from prison may turn to rooming houses, to temporarily doubling up with friends, and, in many instances, eventually to the streets.

Individuals released from custody frequently lack medical insurance or access to health care providers, including mental health, drug and alcohol treatment programs.²¹ They may, therefore, be unable to obtain medication or care for chronic conditions such as diabetes, asthma or addiction.

Other Obstacles

Given these realities, it is understandable that persons released from custody may be alienated or wanting in either the ability or the motivation to work. It is extremely difficult to seek or to secure a job when living in a shelter with untreated medical needs.

Releasees may also lack basic skills and habits required to obtain — and, equally important, to retain — a job. While some jail and prison facilities provide job readiness programs, these are often not adequate to prepare individuals for a job search in the outside world, and are no longer available to them once they are released.

Finally, formerly incarcerated persons may encounter subtle (and not so subtle) obstacles, including illegal discrimination, when they seek employment. These range from flat bans on hiring persons with conviction histories²² to de facto refusal to consider such applicants.

Employment: Issues

Numerous studies have shown that an individual's likelihood of committing a crime is correlated with his or her work status.²³ A survey conducted by the Federal Bureau of Justice Statistics in 1997 disclosed that between 21 and 38 percent of prisoners were unemployed just prior being incarcerated, depending on their level of educational attainment.²⁴ Another study reported that nearly half (45%) of a group of surveyed prisoners reported having been fired from a job at least once, and an equally large number had never held a job for as long as two years.²⁵ According to a third study, the vast majority (89%) of individuals who violate the terms of their probation are unemployed at the time of the violation.²⁶

The correlation between the incidence of crime and extent of unemployment is hardly surprising. It stands to reason that when an individual is working within the structure of a job environment and earning a salary capable of meeting at least basic needs, he or she is less likely to commit a crime. That essential point is reinforced by numerous studies showing that job instability is associated with higher arrest rates and that as wages go up, crime is reduced. Given the correlation between crime and unemployment, it is ominous that one year after release up to 60% of formerly incarcerated people are unemployed.²⁷ Why is that number so high?

Objective Barriers to Employment

The obstacles to employment confronted by an individual released from prison are daunting. Some have already been touched upon: the complexities of family reunion and possible estrangement, lack of appropriate housing leading to unstable living arrangements and, in many cases, eventually to homelessness, and lack of adequate access to affordable health care leading to exacerbation of alcohol and drug abuse and of other physical and mental health problems. These alone would prove formidable obstacles to getting and keeping a job. But there are still other barriers to employment.

Many individuals released from jail or prison return to large urban centers, where there are numerous unskilled residents and relatively few unskilled jobs, such as manufacturing.²⁸ The effects of this “spatial mismatch” are compounded by the fact that these areas are characterized by little or no job growth. Released inmates return to these areas with diminished social or human capital, lacking the “soft” skills valued by many employers, particularly in service industries, and also lacking contacts to social networks through which job opportunities may be found and pursued. Depending on the length of their imprisonment, their work skills may well have eroded, and their job-related knowledge may have become outdated.²⁹

Formerly incarcerated individuals are barred by statute from many occupations, particularly those involving vulnerable populations, such as the elderly, the disabled and children, and from obtaining occupational licenses, such as a tow truck license. In some instances, newly released individuals may find themselves barred from the very same jobs they held before being imprisoned, or for which they were trained while in prison, for the number of occupations from which the formerly incarcerated are excluded has been increased by legislation passed after September 11, including the USA PATRIOT Act. One study lists more than thirty different occupations from which the formerly incarcerated either are barred or may be rejected by licensing authorities in New York State.³⁰ Some of the restrictions are rationally related to the offense of which the job applicant has been convicted (for example, an individual convicted of certain vehicular offenses may not be employed as a bus driver), but other restrictions make little or no sense (an electrician convicted of a crime may have his license revoked or suspended, and a convicted embezzler may not be hired as an emergency medical technician).³¹ Many occupational licenses will be granted only to those of “good moral character,” a term widely understood to exclude most persons convicted of a crime.

The impact of the numerous statutory absolute and discretionary bans against employment under New York law is ameliorated by the availability of certificates of relief from disabilities and certificates of good conduct, both of which may be issued by the Board of Parole and the former of which may also be issued by the sentencing court.³² However, certificate applications may take as many as 18 months to process, and may be rejected or denied (in some cases on specious grounds, such as the applicant's having stated he needs the certificate in order to seek employment generally rather than for a specific job).

In addition to employment bans under New York state law, there are numerous federal law restrictions on employment of individuals with criminal records. Many of these restrictions were put in place after September 11: for example, airport baggage handlers are now required to obtain security seals from the Bureau of Customs and Border Protection, which are denied an applicant convicted of one of a long list of crimes within five years prior to the application "or any longer period that the [Bureau] deems appropriate for the offense in question."³³ As another example, individuals convicted of a criminal offense involving dishonesty may not be employed by or otherwise work in a federally insured depository institution (except, in certain instances, with the written permission of the FDIC or more than ten years after conviction).³⁴

Employer Reluctance to Hire

Statutory and administrative prohibitions or limitations on employment are at least clear and specific, if not always understandable and defensible. In contrast, several published surveys have demonstrated that the most difficult barriers to employment of the formerly incarcerated are subjective, rooted in a deep-seated and often not wholly rational reluctance to employ a person coming out of prison or jail. Moreover, the presence of a prison record has been found to compound existing racial bias.³⁵

The previously incarcerated are at the very bottom of the hierarchy of potential employees. Consider the affirmative survey responses of a group of 619 employers in the Los Angeles area who were asked whether they would definitely or probably hire an individual falling into one of the following categories:

Current or former welfare recipients	93%
Recipients of a GED diploma	97%
Individuals unemployed for a year or more.....	80%
Individuals with a spotty employment history	66%
<i>Ex-prisoners</i>	21% ³⁶

The modal (most frequent) response of the 619 establishments surveyed was that their willingness to hire previously incarcerated individuals would depend on the nature of the crime of which the individual was convicted; 36.4% of the employers gave that response.³⁷ In contrast, fully 42.6% responded that they definitely (18.5%) or probably (24.1%) would not hire such an individual, regardless of the nature of his or her conviction history.³⁸

The industries most willing to employ formerly incarcerated applicants are those whose workers have little customer contact, like manufacturing and construction.³⁹ Those industries have a preponderance of unskilled or low-skilled jobs, in contrast to establishments in the service sector.

It is instructive to probe the reasons given by employers for their reluctance or hesitancy to hire an individual with a conviction history. In doing so, we draw upon three surveys conducted in the past seven years:

- the survey just mentioned, which was conducted by telephone in Los Angeles between May 2001 and November 2001;
- four focus groups interviewed in New York City in June 2006, consisting of business owners or individuals with hiring responsibility in companies with more than 5 but fewer than 250 employees;⁴⁰ and
- an October 2007 survey conducted by this Task Force of the human resources directors at 21 large New York City-based law firms.⁴¹

The Law Firm Experience

While the Task Force survey results may not be statistically valid, its teachings are nonetheless helpful. Eleven law firms responded to the survey questionnaire (a response rate of 52.4%); three declined to participate; one was unable to provide information because of a recent merger with another law firm; and the remaining six failed to respond. When asked whether they would be willing to hire an individual with a prior criminal history for various employee categories (assuming the individual were qualified), nine answered “yes;” two responded that it “depends.”⁴² In response to a question as to why they might be reluctant to hire an individual with a criminal record, four firms cited safety concerns; four pointed to “trust/honesty” issues; two expressed concern with “comfort/fit;” and two were suspicious of an individual’s willingness to volunteer complete information about his or her criminal record.⁴³

Three firms noted (not in response to a specific question) that their willingness to hire a previously incarcerated individual would depend on the crime of which the individual had been convicted (the modal response in the 619-establishment survey discussed above).⁴⁴ Notably, all eleven responding law firms stated that they had at some point hired an employee who had been convicted of a crime, although one qualified its response by noting that it had not known of the conviction at the time of employment (and that may have been true of others as well).⁴⁵

Fears of Negligent Hiring Liability

Many employers are reluctant to hire formerly incarcerated individuals for fear of liability if they hire a person with a criminal record who then commits a criminal or tortious act causing injury to person or property. Although the Task Force survey did not specifically isolate employer fear of liability as a reason for refusal or reluctance to employ former prisoners, other studies suggest that this fear is perhaps the single largest obstacle to employment confronting a person released from prison. Not surprisingly, employer reluctance is greatest in the case of individuals convicted of a crime of violence; employers are five times more likely to hire a drug offender than a perpetrator of violence.⁴⁶

Employer liability concerns are not without foundation, because New York, like most if not all other states, has accepted the doctrine of negligent hiring, retention and supervision. Under this doctrine, an employer may be held liable for injury inflicted by an employee when the employer knew or should have known that the employee posed a risk of harm to others.

There is reason to believe, though, that many prospective employers, even legal employers, fail to appreciate fully the separate elements that must be established before an employer may be held liable under this theory.

A plaintiff must first establish that the defendant owed him or her a duty of care, that is, that the plaintiff was a member of a class of foreseeable victims.⁴⁷

Second, the plaintiff must show that the employer either knew or, after making appropriate inquiry under the circumstances, would have known, that the employee might commit a wrongful act.⁴⁸ In practice, actual knowledge may have to be shown, because "courts virtually never find employers liable because they 'should have known' of an employee's harmful propensities."⁴⁹

Third, the plaintiff must establish that the employer's negligence in hiring or retaining the employee was the proximate cause of the plaintiff's injury. Thus, for example, the Appellate Division, First Department, has held that an employer who hired as a building porter a person convicted of manslaughter was not liable when the porter many years later abused a child who resided in the building.⁵⁰

Notably, in negligent hiring and retention cases, both the Court of Appeals and the Appellate Division, First Department, have recognized (in the former's words) "[t]he importance of employing former inmates, and reintegrating them into society, without risk of absolute liability for those who open doors to them...."⁵¹

Both the federal and New York State governments recognize the reluctance of business establishments to employ individuals released from prison or jail, and both have enacted legislation that protects an employer's right to make legitimate inquiry concerning a job applicant's background while at the same time protecting job applicants from discrimination because of a criminal record.

According to a recent report by the American Bar Association Commission on Effective Criminal Sanctions, New York affords a greater protection to the formerly incarcerated against discrimination in employment and provides more effective enforcement of those rights than most other states.⁵² Under Section 752 of the New York Correction Law (part of Article 23-A of the Law, by which it is commonly known), an employer may not discriminate against a job applicant on the ground of a prior conviction — and it is unlawful for a state or local authority to deny a license application on that ground — unless either:

- (i) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought, or
- (ii) the issuance of the license or granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

The Correction Law provides guidance in applying Section 752 by defining "direct relationship" to mean that "the nature of [the] criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought."

Section 753 of the Law provides further guidance in making the Section 752 determination by enumerating relevant factors to be weighed in arriving at that determination. A prospective employer “shall consider” (a) “the public policy of this state . . . to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;” (b) the “specific duties and responsibilities” of the prospective job; (c) “the bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities;” (d) “the time which has elapsed since the occurrence” of the offense; (e) “the age of the person” at time of the offense; (f) the “seriousness of the offense . . .;” (g) any available information regarding the person’s “rehabilitation and good conduct;” and (h) the “legitimate interest of the . . . employer in protecting property, and the safety and welfare of specific individuals or the general public.”⁵³

Read together, Sections 752 and 753 clearly require, as the courts have in applying the statute, an individual assessment of each applicant and his or her record; flat bans on employing persons with conviction histories violate the statute. So long as the employer weighs in good faith the various factors enumerated in Section 753, the resulting determination will not be overturned⁵⁴

We believe that compliance with Article 23-A should effectively foreclose liability for negligent hiring.

Article 23-A is reinforced by the New York State Human Rights Law, Section 296(15) of the New York Executive Law and Section 8-107(10)(a) of the New York City Human Rights Law, which make it unlawful to deny employment or a license to an individual in violation of Article 23-A.⁵⁵ Prospective employers should also be aware that it is a violation of Section 296(16) of the Executive Law to ask a job applicant about, or act adversely on, any *arrest* or criminal accusation not then pending that was resolved favorably to the applicant (or Youthful Offender adjudication or sealed violation-level conviction).

Under Title VII of the Civil Rights Act of 1964, job applicants are similarly protected against discrimination in employment. Guidance provided by the Equal Employment Opportunity Commission admonishes employers not to exclude job applicants with criminal *convictions* from employment unless there is a “business necessity” to do so, taking into account the gravity of the offense, the time that has elapsed since the conviction and/or completion of the sentence, the nature of the job sought and the applicant’s employment history.⁵⁶ There is a complementary prohibition against denying employment because of an *arrest* record in the absence of a “business justification” (defined similarly to “business necessity”).⁵⁷

The foregoing federal and state law substantive protections are reinforced by the New York State Fair Credit Reporting Act, which prohibits a credit reporting agency from reporting or maintaining information regarding an arrest or criminal charge unless there has been a criminal conviction or the charge is still pending.⁵⁸ In addition, the federal Fair Credit Reporting Act requires that where an employer intends to make an adverse employment determination (such as denying a job) based on a “consumer report” (defined include commercially prepared criminal background checks), the employer is required to provide the applicant with a copy of the report prior to making the determination.⁵⁹ This requirement gives the applicant an opportunity both to check the report for errors and to explain the circumstances described in the report and whatever rehabilitation she or he has undertaken since any conviction was entered. While no time is specified in the law, it has been suggested that employers do so at least five days prior to denying employment.

One lesson to be drawn from state, local and federal legislation is that fears of some prospective employers that a formerly imprisoned person may renew criminal conduct in the workplace are in fact recognized by government, but only to the extent these fears are rationally related to the characteristics of the job under consideration. Individual consideration of each applicant is the touchstone. While none of these laws *requires* that an employer hire a person with a conviction history, they do require that prospective employers analyze the nature of the crime committed and how long ago it took place against the backdrop of the applicant's rehabilitation, achievements and fitness for the job in question.

The foregoing review of New York State, New York City and federal law is informative, but does not itself provide a useful guide to human resources directors and others engaged in hiring who obtain commercially a background check that discloses a criminal conviction. A detailed and practical guide has been prepared by the National H.I.R.E. Network and is reproduced in Appendix 4.⁶⁰ Additionally, the Labor and Employment Committee of this Association is preparing informational brochures for both employers and prison releasees seeking employment.

The Role of Workforce Intermediaries in Overcoming Employer Reluctance to Hire

As we have seen, there are supply-side and demand-side barriers to reentry of prisoners into the workforce after release. These barriers are powerful; neither side of the employment equation can alone overcome them, nor is it practical to expect them to work together to surmount those barriers without assistance. There is, fortunately, a category of organization that can and does successfully interface between the employer and employee and bring them together. These organizations, known as workforce intermediaries, provide job readiness and solid skills training, job placement assistance, and continuing support once the applicant is employed. They work with both the applicant and the employer to assure, as best they can, that the placement works. New York City is fortunate to have several such organizations.

They include (in alphabetical order):

- the Center for Employment Opportunities (*see* Appendix 5),
- ComALERT (*see* Appendix 6),
- the Doe Fund (*see* Appendix 7),
- the Fortune Society (*see* Appendix 8),
- the Osborne Association (*see* Appendix 9) and
- STRIVE (*see* Appendix 10).

Five are not-for-profit organizations; the sixth, ComALERT (the acronym for Community and Law Enforcement Resources Together), was created by the Kings County District Attorney's Office in 1999 under the personal leadership of District Attorney Charles J. Hynes and is rapidly expanding (in 2006, 365 parolees entered the program; it hopes to serve 1,200 in 2008). Most recently, Manhattan District Attorney Robert M. Morgenthau last month announced his office's Fair Chance Initiative, which will work with reentry service providers to address the major issues, including employment, facing individuals recently released from incarceration.⁶¹

As the tables on the following pages show, these intermediary agencies provide a wide array of services including both "soft skills" and "hard skills" training, and some have chosen to partner with others (the Doe Fund's Ready, Willing and Able program provides transitional employment and housing to participants in ComALERT). What they have in common is that they all contribute in one or more ways to provide connections between, and support for, formerly incarcerated job seekers and prospective employers.⁶² In addition to securing employment for former prisoners and assisting employers in identifying job applicants, the workforce intermediaries offer continuing services to assist previously incarcerated employees in gaining additional training and education and developing social skills that will qualify them for advancement in their careers.

Hard Skills Training Offered by Work Force Intermediaries

The Doe Fund		
	Supervisory Training	Pest Control
	Culinary Arts	Janitorial and Advanced Building Maintenance
	Computer Skills — Microsoft Office Suite	Office Skills/Mail Room/ Direct Mail
	Security	Driving/Commercial Driving (referred out)
CEO		
	Heavy Duty Cleaning	General Landscaping
	Maintenance	
Fortune Society		
	Computer Skills	Asbestos Handling
Osborne		
	Janitorial Maintenance	Culinary Arts
STRIVE		
	Computer Technician	Office Operators (Beginning 2008)
	Environmental Revalidation	Building Maintenance
	HVAC Repairs	Automotive Repairs

Employment and Related Services Available to Formerly Incarcerated Individuals and their Employers

Providers	The Doe Fund		CEO		Fortune Society		Osborne		STRIVE	
	In-House	Referral	In-House	Referral	In-House	Referral	In-House	Referral	In-House	Referral
Services for Participants: Employment										
Pre-Employment/Soft Skills Training	●						●		●	
Transitional Employment	●		●		●				●	
Hard Skills Training (see below)	●		●		●		●	●	●	
Job Placement Assistance	●		●		●		●	●	●	
Career Development/Advancement Services	●		●		●		●	●	●	
Post Placement Support/Follow-Up	●		●		●		●	●	●	
Services for Participants: Non-Employment										
Case Management/Counseling/Mentoring Services	●		●		●		●		●	
Mental Health Services		●		●	●	●		●		●
GED/Continuing-Higher Education	●			●	●			●		●
Computer Courses	●		●		●		●		●	●
Financial Management Assistance	●	●	●	●	●		●		●	
Substance Abuse Services	●	●		●	●		●			●
Housing Placement Assistance	●	●	●	●	●					
Housing (On-Site)	●				●					
Legal Services	●		●	●	●	●		●		●
Fatherhood Services/Child Support Advocacy	●		●		●		●		●	
Health Services/Counseling		●	●	●	●		●			●
Family Services		●	●		●		●			●
Services for Employers										
Federal Bonding			●					●		●
Assistance Accessing Tax Credits	●		●				●			●
Pre-employment Screening	●		●		●		●		●	
Post Placement Support	●		●		●		●		●	
Wage Subsidies							●	●		

How effective are the programs operated by these organizations? That effectiveness can be portrayed anecdotally.

- **Phillip A.** was released from prison in 2006 after serving a sentence for criminal sale of a controlled substance. He entered CEO's Paid Transitional Employment program, where he learned resumé preparation and interviewing skills. After initially gaining employment as a sheet metal laborer, Phillip was laid off during a business downturn. CEO subsequently placed him in a position as a forklift driver. He has been promoted twice in ten months and now supervises a staff of four.
- **Derrick S.** embarked on a path of addiction and violence that led to imprisonment for more than five years. He found The Doe Fund Ready, Willing & Able (RWA) program in mid-2006, participated in its food services vocational training track, received a New York City Department of Health food handler's certificate and was hired as a cook by a major national company in 2007. He currently participates in The Doe Fund's Graduate Services program.
- **James L.** came to CEO following his release after conviction and imprisonment for sale of a controlled substance. After working with a Job Developer and Job Coach, James was hired by a national ice cream chain, which has subsequently promoted him to train new hires.
- **Rudolph W.** was recruited into The Doe Fund's RWA program as a trainee just before his release from prison in December 2005. After a year in the program, following 25 years of drug addiction, imprisonment and homelessness, Rudolph was hired by a private company and earned a salary increase after only a few weeks of employment.

The effectiveness of the workforce intermediary programs can also be measured statistically, although caution must be taken in using the data because individuals may avail themselves of differing services offered by different organizations — or even within the same organization. With that qualification, an October 2007 evaluation report on the ComALERT prisoner reentry program noted that ComALERT graduates were nearly four times more likely to be employed than a comparison group with similar criminal history.⁶³ Indeed, ComALERT graduates during the evaluation period (October 1, 2004-December 31, 2006) who participated in the Ready, Willing and Able program of the Doe Fund exhibited an especially high 90% rate of employment,⁶⁴ and only 5% of Ready, Willing and Able Criminal Justice graduates were rearrested within one year of graduation.⁶⁵ In a separate study of the Center for Employment Opportunities' reentry population, using a random assignment research methodology, fewer than 1% of the people entering CEO were sent back to prison for a new crime during the year after entering the program, and only 9.1% were reincarcerated for technical parole violations and other non-criminal activity.⁶⁶

With the training and support these organizations offer — free of charge — it would be expected that employers would frequently turn to them for help with hiring and retention. However, this is not the case. Why is this so? A previously cited recent survey of several hundred business establishments in New York City concluded that “employers are virtually unaware of staffing resources in the form of intermediary organizations and transitional programs.”⁶⁷ Efforts, therefore, need to be made to alert employers — large and small, within and beyond the legal community — to the existence of these organizations and to the benefits they provide. Similarly, workforce development organizations should be encouraged to seek more connections with legal and other employers.

Additional Employer Incentives

Recognizing that employers face certain real and perceived obstacles in hiring persons with conviction histories, the federal and New York State governments have created certain incentives in order to increase employer willingness to hire such persons. The Federal Bonding Program of the Department of Labor issues fidelity bonds to protect *employers* against theft, embezzlement or forgery by covered employees. The program was created because many private agencies will not bond job applicants with a criminal record. The employer need not pay any premium. Coverage is usually up to \$5,000 with no deductible, but may be increased up to \$25,000; coverage is extended to any at-risk applicant, including individuals with criminal records. The bonds are issued by a local agency certified by the Federal Bonding Program.⁶⁸

Another incentive to employment of the formerly incarcerated is the Work Opportunity Tax Credit authorized by the Small Business Job Protection Act of 1996, which has been subsequently reauthorized and most recently extended through August 31, 2011.⁶⁹ This federal tax credit reduces an employer's federal income tax liability by as much as \$2,400 per qualified new worker. Among the categories of qualifying new hires are persons convicted of felonies who are members of low-income families. The individuals must have been hired not more than one year after their conviction or release from prison.

Finally, the New York State Office of Temporary and Disability Assistance operates a wage subsidy program for Family Assistance recipients who have been unable to find or retain employment and other families with household incomes less than 200% of the federal poverty level. Under this program, nonprofit community-based organizations place individuals in wage-subsidized jobs which the organizations develop with employers. Most current providers use a three- or six-month subsidy period. Employers receive 80% of wages and can claim the remaining 20% if the employee is retained for 90 days.⁷⁰

Recommendations

Our study of employment opportunities for the formerly incarcerated leads us to make the following six specific recommendations:

- In accordance with the stated legislative policy “to encourage the licensure and employment of persons previously convicted of one or more criminal offenses,” law firms and other legal employers should be as willing to interview and hire such persons as any other individuals possessing comparable job skills
- Consistent with the quoted legislative policy, law firms and other legal employers should provide the same opportunities for advancement to individuals released from prison as they do to other employees possessing comparable job skills.
- Law firms and other legal employers should take full advantage of the job placement and post-placement services provided by workforce intermediaries to identify, employ and provide supportive services to individuals released from prison or jail.
- All appropriate steps should be taken to publicize broadly the availability of workforce intermediaries, the variety of services they provide and the success they have achieved in placing formerly incarcerated individuals in productive and remunerative employment.
- Law firms and other legal employers should encourage suppliers and organizations to which they outsource functions such as food service to employ and promote formerly incarcerated persons and to utilize for that purpose the services of workforce intermediaries.
- All statutory and regulatory restrictions and disqualifications on licensure and employment based upon criminal convictions should be reviewed and modified, so that denial of employment or licensure is not automatic, but rather requires an individualized determination (i) there is a direct relationship between the conduct constituting the offense and the license or job sought, or (ii) granting the license or employment in the job would pose an unreasonable risk to individual or public safety or property.

The foregoing recommendations are addressed in the first instance to law firms and other legal employers. But it bears emphasis that the recommendations are equally applicable to all other establishments with hiring needs in both the private and the public sectors. The effects of the failure to reverse the policies that have swollen our prison population and the failure to reintegrate into society individuals released from prison extend far beyond the legal profession.

Nevertheless, it is appropriate that lawyers “lead the way.” To that end, the Association is committed to enhancing the employment opportunities for the previously incarcerated. In furtherance of that commitment, the Association will collaborate with its members, bar leaders, legal and other employers and workforce intermediaries to implement the recommendations of this report. The Association’s reentry project director will consult with law firms and corporate law departments that request assistance in this area, and the Association will encourage the development of opportunities for individuals released from prison to enhance interviewing skills and meet with prospective employers through such approaches as mock interviews and job fairs.

Conclusion

Providing secure employment with prospects for advancement to the formerly incarcerated will reduce recidivism, reduce the costs of maintaining a huge prison population (thereby lowering taxes or reducing the pressure to raise them), strengthen family ties, and enhance public safety — all of which are important social objectives. Moreover, there is an economic value to having a diverse, inclusive workforce, reflecting the self-evident fact that needed skill sets exist within groups of employees of diverse backgrounds.

As we have seen, employment is not easily found by the formerly incarcerated, for there are numerous, significant hurdles, some caused by prejudice and misinformation and others by law or social circumstances. To overcome these hurdles requires a “match-making” that can be brokered and supported by workforce intermediaries. These groups not only assist the prospective applicant with appropriate training and support, but also assist the prospective employer with opportunity for feedback and help if the employee requires it. The Task Force believes that the services of these groups are fundamental to shattering employers’ misconceptions about the formerly incarcerated and to helping the prospective employees both cross the hiring threshold and remain in work that provides financial support and fosters reintegration into society.

New York City Bar Association Task Force on Employment Opportunities for the Previously Incarcerated

March 2008

Endnotes

- ¹ New York State Comm'n of Corrs., *available* at <http://www.scoc.state.ny.us/pop.htm>.
- ² Roy Walmsley, Int'l Ctr. for Prison Studies, King's College London, *World Prison Population List* (7th ed. 2007), *available* at <http://www.kcl.ac.uk/depsta/rel/icps/world-prison-pop-seventh.pdf>. As of January 1, 2008, more than 2.3 million adults were incarcerated in this country; China was second with 1.5 million, and Russia a distant third. The Pew Ctr. on the States, *One in 100: Behind Bars in America 2008* at 5, *available* at <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf> (hereinafter "Pew Center Report").
- ³ New York State Dep't of Corr. Servs., *Admissions and Releases 2006*, *available* at <http://nysl.nysed.gov/uhtbin/cgisirsi/fA4WoRwVtz/NYSL/3230014/523/80525>.
- ⁴ The Indep. Comm. on Reentry and Employment, *Report and Recommendation to New York State on Enhancing Employment Opportunities for the Formerly Incarcerated People 2* (2006) (hereinafter "Independent Committee Report").
- ⁵ *See id.* at 4. In fiscal 2007, New York State spent \$2.622 billion on corrections expenditures. *See* Pew Center Report at 30.
- ⁶ Patrick A. Langan & David J. Levin, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Special Report Washington, D.C. 2002: Recidivism of Prisoners Released in 1994*, *available* at <http://ojp.usdoj.gov/bjs/pub/ascii/rpr94.txt>.
- ⁷ *See* Independent Committee Report at 9; *see also* Debbie A. Mukamal, *Confronting the Employment Barriers of Criminal Records: Effective Legal and Political Strategies*, *JOURNAL OF POVERTY LAW AND POLICY* (Jan.-Feb. 2000).
- ⁸ A recent report by a Special Committee of the New York State Bar Association stated that "[r]esearch from both academics and practitioners suggest that the chief factor which influences the reduction of recidivism is an individual's ability to gain 'quality employment.'" Special Comm. on Collateral Consequences of Criminal Proceedings, New York State Bar Ass'n, *"Re-Entry and Reintegration: The Road to Public Safety,"* 59 (May 2006) (hereinafter "Re-Entry and Reintegration"), *available* at http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11415.
- ⁹ The Pipeline Crisis/Winning Strategies Initiative is a consortium of individuals and organizations in the legal, financial services and business communities who are pooling their talents, know-how and resources to help reverse the rising rates of school drop-outs, joblessness and incarceration among young black men, and to increase their representation in the pipeline to higher education and professional endeavors.
- ¹⁰ Joan Petersilia, *When Prisoners Come Home: Parole and Prison Reentry* 119 (2003).
- ¹¹ Re-Entry and Reintegration at Introduction n.1.
- ¹² *See* Pew Center Report at 3.
- ¹³ Harry J. Holzer, Steven Raphael & Michael A. Stoll, Nat'l Poverty Ctr., *The Effect of an Applicant's Criminal History on Employer Hiring Decisions and Screening Practices: Evidence from Los Angeles 1* (Dec. 2004).
- ¹⁴ *Id.*
- ¹⁵ Press Release, Bureau of Justice Statistics, U.S. Dep't of Justice, *More than 5.6 Million U.S. Residents Have Served or Are Serving Time in State or Federal Prisons* (Aug. 17, 2003); *see also* Bruce Western & Becky Pettit, *Black-White Wage Inequality, Employment Rates, and Incarceration*, 111 *Am. J. Soc.* 553 (2005).
- ¹⁶ *See id.*
- ¹⁷ *Black Student College Graduation Rates Inch Higher but a Large Racial Gap Exists*, *J. BLACKS HIGHER EDUC.* (Winter 2006/07).
- ¹⁸ Non-custodial parents' child support obligations do not abate when they are incarcerated: incarceration is considered by law to be "voluntary unemployment." *See* Re-Entry and Reintegration at 279-81. By the time they are released from prison, these parents have often accrued arrears in the tens of thousands of dollars, and lack means by which to repay them. *Id.*
- ¹⁹ *See* Solomon et al., Reentry Roundtable, Urban Inst. Justice Policy Ctr., *From Prison to Work: The Employment Dimensions of Prisoner Reentry 12* (Oct. 2004).
- ²⁰ The New York City Housing Authority, which receives state and federal funds, prohibits individuals with conviction histories (ranging from non-criminal violation-level convictions through serious felonies) from applying to reside or residing in its project apartments or from receiving Section 8 housing vouchers that defray the cost of renting a private apartment. The prohibition period differs depending on the severity of the offense and begins to run only after the individual is released from parole or probation supervision. While the prohibition may in a very few cases be overcome by a showing that the individual has been "rehabilitated" following commission of the offense at issue, this showing is difficult to make without the assistance of specially trained advocates or attorneys. Re-Entry and Reintegration at 231-39.

- ²¹ Legislation passed last session to become effective April 1, 2008 requires that Medicaid coverage be “suspended” during the period of an individual’s incarceration in state or local custody. N.Y. Soc. Servs. L. § 366(1)(13)(d)(1-a) (eff. Apr. 1, 2008). However, the majority of inmates enter jail and prison without Medicaid coverage and so must apply for it when they are released. The application process generally takes three months, and sometimes longer.
- ²² These flat bans may violate both the New York State and New York City Human Rights Laws. Employers are required to evaluate each job applicant individually. See Statutory Protections for Employment Applicants, *infra* pp. 23-26.
- ²³ See, e.g., Jeremy Travis, *But They All Come Back—Facing the Challenges of Prisoner Reentry* 168 (2005).
- ²⁴ <http://www.ojp.usdoj.gov/bjs/pub/pdf/ecp.pdf> p. 10 of 12.
- ²⁵ See Travis at 158.
- ²⁶ See Independent Committee Report at 6; see also Mukamal.
- ²⁷ See Independent Committee Report at 3.
- ²⁸ See Petersilia, *supra* note 10, at 113.
- ²⁹ See Re-entry Policy Council, *Charting the Safe and Successful Return of Prisoners in the Community* 294 (2005) (cited hereinafter as “Re-entry Policy Council Report”).
- ³⁰ See Legal Action Ctr., *New York State Occupational Licensing Survey*, reproduced in Independent Committee Report App. C.
- ³¹ See Petersilia, *supra* note 10, at 114-15. In collaboration with the Legal Action Center, this Association’s Labor and Employment Committee is attempting to prioritize the statutes that, if amended, would have the most beneficial effect in reducing barriers to employment.
- ³² See N.Y. Corr. L. §§ 702, 703, 703-a (2007).
- ³³ See 19 C.F.R. § 122.183 (2007).
- ³⁴ See 12 U.S.C. § 1829 (2008).
- ³⁵ See Solomon et al., *supra* note 19, at 14; see also Paul Von Zielbauer, *Study Shows More Job Offers for Ex-Convicts Who Are White*, N.Y. Times, June 17, 2005, at B5.
- ³⁶ See Holzer, Raphael & Stoll, *supra* note 13, at 8.
- ³⁷ *Id.* at Figure 1.
- ³⁸ *Id.*
- ³⁹ See Solomon et al., *supra* note 19, at 6, 13.
- ⁴⁰ The focus groups were conducted by Global Strategy Group, LLC, which was commissioned for that purpose by The Independent Committee on Reentry and Employment (see Independent Committee Report App. A).
- ⁴¹ A tabulation of the results of this survey may be found in App. 3.
- ⁴² See App. 3.
- ⁴³ See *id.*
- ⁴⁴ See *id.*
- ⁴⁵ See *id.*
- ⁴⁶ See Holzer, Raphael & Stoll at Fig. 3.
- ⁴⁷ See *Haddock v. City of New York*, 75 N.Y.2d 478, 485-86 (1990) (discussing the foreseeability that a park employee with a rape conviction would have unsupervised contact with children in the park).
- ⁴⁸ See, e.g., *T.W. v. City of New York*, 729 N.Y.S.2d 96 (1st Dep’t 2001).
- ⁴⁹ Dermot Sullivan, Note, *Employee Violence, Negligent Hiring, and Criminal Record Checks: New York’s Need to Reevaluate its Priorities to Promote Public Safety*, 72 ST. JOHN’S L. REV 581, 593 (1998) (finding only one such case in a survey of negligent hiring cases).

- ⁵⁰ See *Ford v. Gildin*, 613 N.Y.S.2d 139, 142 (1st Dep't 1994) (noting that the employee resided in the building, had befriended the child's mother and became the child's godfather, and reasoning that "Taylor's sexual assaults upon the infant plaintiff had nothing to do with his employment as a porter . . .").
- ⁵¹ *Haddock*, 75 N.Y.2d at 485; see also *Ford*, 613 N.Y.S.2d at 141.
- ⁵² American Bar Ass'n Comm'n on Effective Criminal Sanctions, *Report to the House of Delegates on Employment and Licensure of Persons with a Criminal Record* n. 25 (2007).
- ⁵³ This Association's Labor and Employment Law Committee has proposed legislation that would create a rebuttable presumption in favor of an employer sued for negligent hiring or retention if the employer, after learning of an applicant's or employee's conviction history, has evaluated the factors enumerated in Section 753 and determined in good faith that such factors militate in favor of hiring of the applicant or retention of the employee. A prior proposal by the Committee, which would have created a statutory affirmative defense to a negligent hiring claim if the employer could demonstrate compliance with Article 23-A, has been noted in a recent report issued by the New York State Commission on Sentencing Reform. New York State Comm'n on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal for Reform* 50 (Oct. 15, 2007).
- ⁵⁴ But if a job applicant is refused employment and the record reveals that a significant statutory factor was not considered, the employment decision will be overturned. See *Gallo v. State, Office Of Mental Retardation and Developmental Disabilities*, 830 N.Y.S.2d 796, 797 (N.Y. App. Div. 2007) (remanding petition in Article 78 proceeding because of a failure to consider the "public policy...to encourage the . . . employment of persons previously convicted . . ."); see also *Hollingshed v. The New York State Office of Mental Retardation and Developmental Disability*, Index No. 6848/07 (N.Y. Sup. Ct. Bronx County, Feb. 11, 2008), reported in N.Y.L.J. Feb. 20, 2008 p. 27, col. 1 (granting relief under Article 78 and holding that OMRDD had been arbitrary and capricious and had abused its discretion in rejecting petitioner's job application given the facts that "[h]is felony convictions are decades old and they are not related to the job he will be performing . . .").
- ⁵⁵ The New York State Human Rights Law was amended last legislative session to apply not only to job applicants but also to current job holders. The New York City Human Rights Commission interprets the New York City Human Rights Law to apply to current job holders as well.
- ⁵⁶ See EEOC Notice No. 9-105, *Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964* (Feb. 4, 1987), EEOC Compliance Manual § 604.10 2089 (CCH).
- ⁵⁷ See EEOC Notice No. N-915-061, *Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Sept. 7, 1990), EEOC Compliance Manual § 604 App. 2094.
- ⁵⁸ N.Y. Gen. Bus. L §380-j. Credit reporting agencies thus violate this law if they report or maintain information regarding a conviction for a non-criminal offense, such as a violation. With this understanding, the New York State Office of Court Administration last year stated that it would no longer include information about non-criminal convictions in the records it sells to the public, including to credit reporting agencies.
- ⁵⁹ 15 U.S.C. § 1681b(b)(3) (2008).
- ⁶⁰ *Protecting Yourself When Using Criminal Background Checks*. H.I.R.E (an acronym for Helping Individuals Reenter through Employment) is a project of the Legal Action Center and has issued a number of other informative publications on workforce and related topics. See, e.g., *Employment Discrimination in New York and What to do about it*, available at <http://hirenetwork.org/publications.html>.
- ⁶¹ See Press Release, Manhattan District Attorney's Office, (Feb. 8, 2008) <http://www.manhattanda.org/whatsnew/press/2008-02-08.shtml> (last visited Mar. 6, 2008).
- ⁶² In addition to the direct service providers identified above, there is a valuable information resource on the national H.I.R.E. web site <http://www.hirenetwork.org>.
- ⁶³ Bruce Western & Erin Jacobs, *Report on the Evaluation of the ComALERT Prisoner Reentry Program* 72 Table 19 (Oct. 2007).
- ⁶⁴ *Id.* at 60.
- ⁶⁵ Press Release, Ready, Willing and Able Day Program, The Doe Fund, (Feb 24, 2008), <http://www.doe.org/news/pressdetail.cfm?PressID=279> (last visited Mar. 7, 2008).
- ⁶⁶ Dan Bloom et al., MRDC, *Transitional Jobs for Ex-Prisoners: Early Impacts from Random Assessment Evaluation of the Center for Employment Opportunities (CEO) Prisoner Reentry Program*, iii (Nov. 2007).
- ⁶⁷ See Independent Committee Report at 21.
- ⁶⁸ See Re-entry Policy Council Report at 296.
- ⁶⁹ See Small Business and Work Opportunity Tax Act of 2007, Pub. L. 110-28 § 8201(a); see also 26 U.S.C.S. § 51.
- ⁷⁰ See http://www.otda.state.ny.us/main/pma/programs/WSP_2007-2008.asp (last visited Mar. 7, 2008).

Appendices

There is a large and growing body of literature on the subject of prisoner reentry and reintegration into society upon release from prison or jail. The magnitude of the prison population and the social and economic costs of initial imprisonment and recidivism have commanded increasing attention in recent years, yielding a rich harvest of sociological studies, reports by governmental bodies and private organizations, and data compilations.

This Report draws principally upon the following sources in addition to numerous web-based materials:

Independent Committee on Reentry and Employment, Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated Persons (2006)

Harry J. Holzer, Steven Raphael & Michael A. Stoll, The Effect of an Applicant's Criminal History on Employer Hiring Decisions and Screening Practices: Evidence from Los Angeles Nat'l Poverty Center (2004)

Joan Petersilia, When Prisoners Come Home—Parole and Prisoner Reentry (Oxford 2003)

Re-entry Policy Council, Charting the Safe and Successful Return of Prisoners to the Community (2005)

Reentry Roundtable, From Prison to Work: The Employment Dimensions of Prison Reentry (Urban Inst. 2004)

Special Committee on Collateral Consequences of Criminal Proceedings, Re-Entry and Reintegration: The Road to Public Safety (N. Y. St. Bar Ass'n (2006)

Jeremy Travis, But They All Come Back—Facing the Challenges of Prisoner Reentry (Urban Inst. Press 2005)

Bruce Western and Erin Jacobs, Report on the Evaluation of the ComALERT Prisoner Reentry Program (Oct. 2007)

Appendix 2

The following is a list of the members of the New York City Bar Association Task Force on Employment Opportunities for the Previously Incarcerated, including their principal occupations:

- Michael A. Cooper (Chair), former Partner and now Of Counsel, Sullivan & Cromwell LLP;
former New York City Bar Association President
- Sharron M. Davis, Director-Human Resources,
Sullivan & Cromwell LLP
- William J. Dean, Executive Director,
Volunteers of Legal Service
- Hon. Laura E. Drager, Supreme Court Justice,
First Judicial District
- James L. Lipscomb,
Executive Vice President and General Counsel,
MetLife, Inc.
- Bettina B. Plevan, Partner, Proskauer Rose LLP;
former New York City Bar Association President
- Richard Roberts, Managing Director,
Doe Fund Real Estate and Property Services
- Frederick A.O. Schwarz, Jr., Senior Counsel,
Brennan Center for Justice
- Robert C. Sheehan, Managing Partner,
Skadden Arps Slate Meagher & Flom LLP
- Hon. George Bundy Smith, Partner,
Chadbourne & Parke LLP;
former Judge of the New York Court of Appeals
- William J. Snipes, Partner,
Sullivan & Cromwell LLP
- Mindy Tarlow, Executive Director & CEO,
Center for Employment Opportunities
- Judith Whiting, Senior Staff Attorney, Legal Action Center and
Chair, City Bar Committee on Corrections

Questionnaire for Law Firm Human Resources Directors

Questions						
Question 1. How many employees (other than managers and supervisors) are there in the following departments of your firm?	Average Number of Employees	Number of Firms	Low	High		
cafeteria/food service ¹	25	2	20	30		
computer/IT operations	62	8	3	102		
facsimile/telex	6.2	5	3	10		
mail clerk	18.4	7	2	40		
maintenance	12.4	10	5	28		
records	17.1	9	7	28		
reproduction and printing	20.4	7	8	40		
messenger and related services	30	3	2	56		
reception	13.1	10	4	48		
supplies	2.4	10	1	5		
other service or support functions ²	25.6	5	6	61		
Question 2.³ What educational requirements (None; HS Diploma/GED; Associate's; BA or BS) does your firm have for the following positions?	HS Dip./GED	Associate's	Tech School	BA/BS	Varies or Depends	None
cafeteria/food service	2					
computer/IT operations	3	3	1	3	2	
facsimile/telex	5					
mail clerk	6					
maintenance	9					2
records	6	1		2	1	1
reproduction and printing	5				1	
messenger and related services	5					
reception	8			1		2
supplies	8				1	1
other service or support functions ²	5				1	

Questionnaire for Law Firm Human Resources Directors

Questions						
Question 3. What background check, if any (Credit; Criminal; Educational) does your firm conduct for employees in the following positions?	Credit	Criminal	Education	Prev. Employment	Other	None
cafeteria/food service (3 respondents)	1	3	1		1	
computer/IT operations (9 respondents)	4	9	4	3	2	
facsimile/telex (5 respondents)	2	5	2	1	1	
mail clerk (6 respondents)	2	6	2	1	1	
maintenance (9 respondents)	3	8	3	2	1	1
records (9 respondents)	2	8	3	2	2	1
reproduction and printing (6 respondents)	2	6	2	1	1	
messenger/related services (6 respondents)	2	6	2	1	1	
reception (10 respondents)	3	9	4	3	2	1
supplies (9 respondents)	3	8	3	2	1	1
other service or support functions 2 (8 respondents)	4	8	3	2	2	
Question 4. Please list the source(s) your firm uses to hire for the foregoing non-legal positions (e.g., classified ads; walk-ins; employment service; job posting website; etc.) (Responses listed in descending order)						
employee referrals	9					
Internet job board/posting website (i.e. hotjobs, career builder) & internet advertising	8					
employment agencies / services	7					
firm website	4					
job posting	4					
classified ads	3					
college postings/college placement offices	2					
temp to permanent agreements/agencies	2					
walk-ins	2					
workforce intermediaries & skills, training & vocational programs	2					
job fairs	1					
welfare agencies	1					

Questionnaire for Law Firm Human Resources Directors

Questions	
Question 5. Which of the following functions are outsourced entirely or partly by your firm? <i>(Responses listed in descending order)</i>	
cafeteria/food service	8
messenger and related services	8
mail clerk	7
reproduction and printing	6
facsimile/telex	5
maintenance	2
records	2
other service or support functions	2
computer/IT operations	1
supplies	1
reception	0
Question 6. Has your firm ever hired anyone with a criminal record?	
All eleven respondents in this survey answered "YES" to Question 6.	
Question 7. If the answer to Question 5 is YES a. What was (were) the source(s) of the hire? <i>(Responses listed in descending order)</i>	
employment agency	3
employee referral	3
temp to perm/hire	2
job board	1
rehire	1
response to advertisement	1
varied sources	1
vendor	1
write-in	1

Questionnaire for Law Firm Human Resources Directors

Questions			
Question 7, continued: b. In which department(s) was (were) such individual(s) hired (Responses listed in descending order)			
Global Tech Solutions/PC Support/IT records	3		
maintenance	2		
secretarial services/office services	2		
financial services	1		
messengers	1		
paralegal	1		
Question 8.⁴ Would your firm hire an individual with a prior criminal history for the following departments, assuming the individual was qualified for the position?			
	Yes	No	Depemds
cafeteria/food service	3	0	2
computer/IT operations	9	0	2
facsimile/telex	5	0	2
mail clerk	5	0	2
maintenance	8	0	2
records	8	0	2
reproduction and printing	5	0	2
messenger and related services	6	0	2
reception	8	0	2
supplies	7	0	2
other service or support functions	2	1 ⁵	2
Question 9. If your firm would be reluctant to hire individuals with prior criminal histories for the departments listed above, which of the following causes that reluctance? (Responses listed in descending order)			
trust/honesty	4		
safety concerns	4		
other (please describe) ⁶	4		
comfort/fit	2		
conviction or other info not disclosed	2		
skill level	0		
attitude	0		

Questionnaire for Law Firm Human Resources Directors

Questions				
Question 10. Would your answer to question 8 change if the individual and your firm could call on a workforce intermediary that provides support services such as, for example, skills training, counseling and welfare services?				
Most respondents did not provide an answer to this question. Two firms said "No", one said "Not Sure" and one said "Probably".				
Question 11. Has your firm ever used a workforce intermediary for placement services?		Yes	No	Not Aware
		6	4	1
Question 12. If the answer to Question 11 is yes, was your experience satisfactory, and if not, why?		Yes	No	Mixed
		4		2 ⁷

Table Footnotes

- ¹ Most firms outsource cafeteria/food services; therefore, a good data set does not exist for this category.
- ² "Other" service or support functions includes Telephone Operators, Word Processing/Document Production, Finance-Related Employees, Security and Taxi Desk employees.
- ³ If a firm stated that they considered different degrees for different job categories, they were included in both categories.
- ⁴ A few firms did not answer this question with a simple "yes" or "no." Therefore, a "Depends" category was added.
- ⁵ The firm that said "no" stated that it would not hire an individual with a criminal history into its Security Department.
- ⁶ Responses included "depends on the nature of the conviction" and "stability, dependability, reliability."
- ⁷ One firm described the experience as "somewhat successful" and noted that it "required substantial supervisory time and commitment." Another described the experience as having "pluses" and "minuses."

Appendix 4 Protecting Yourself when Using Criminal Background Checks

The National HIRE Network recognizes that employers have legitimate concerns about hiring job applicants with criminal records. We also understand that although a job applicant may be highly qualified, a conviction history may make the applicant appear to be more of a liability than an asset. Below is information to provide you with guidance when reviewing a job applicant's criminal record. Adhering to this guidance will help ensure you are compliant with relevant federal and New York State law and will minimize liability risks. It will assist you in developing fair and appropriate hiring practices.

Laws Governing an Employer's Use of Criminal Background Checks in the Hiring Process

May an employer use a background check when evaluating a job applicant in New York State?

YES. New York State allows employers to use background checks for employment purposes. Background check companies and the production and use of these reports are governed by New York State's Fair Credit Reporting Act (N.Y. GEN. BUS. L § 380) and the federal Fair Credit Reporting Act (15 U.S.C. § 1681).

May a background check contain records of criminal convictions (misdemeanors or felonies) in New York State?

It depends. If the position an applicant is seeking has an annual salary of less than \$25,000, then the background check may only report criminal convictions that occurred in the previous seven years. If the position has an annual salary equal to or greater than \$25,000, then all criminal convictions may be reported.

May a background check contain only a record of arrests or charges in New York State?

NO, unless the charges are still pending when the background check is conducted. However, if the record includes a criminal conviction, the background check can include the initial arrest charges that led to that conviction. See N.Y. Gen. Bus. L §380-j.

May a background check contain records of non-criminal convictions (violations) in New York State?

NO. A background check MAY NOT report non-criminal convictions regardless of how long ago they occurred. It is also illegal for a background check to include information about dismissed cases.

Does an employer need to notify a job applicant before running a background check?

YES, if the employer will be using a commercial background check company, or if the employer is a government agency entitled to receive a report from the Division of Criminal Justice Services, the agency that maintains rap sheets for New York State.

What type of notice to the applicant is required when an employer intends to order a commercial background check?

The applicant must be informed in writing, or in the same manner in which the application is made, that the employer intends to request a consumer report in connection with the application.

What information must be included in this notice?

The applicant must be informed that: (1) the applicant's background check may be requested from a reporting agency and (2) the applicant may request to be notified whether or not the background check was requested, and that if it was requested, then the applicant will be informed of the name and address of the reporting agency that provided the background check.

Why should an applicant be notified that an employer is conducting a background check?

Applicants are legally entitled to review their commercial background check reports because reports are often inaccurate. This is often true for record of arrests and prosecution (RAP sheets). For example, in a study the Legal Action Center conducted in 1995 ("Study of Rap Sheet Accuracy and Recommendations to Improve Criminal Justice Recordkeeping"), 87% of all records contained at least one mistake or omission. Also, many background checks are only based on name and date of birth instead of fingerprints. Since many people share the same name and birth date, their records may be switched. Applicants have the right to dispute and correct records.

Appendix 4, *continued*

Protecting Yourself when Using Criminal Background Checks

Laws Governing Employers' Inquiries About Applicants' Arrests

What may an employer ask about an applicant's prior arrests?

NOTHING. Under New York State and City law, it is illegal to ask: "Have you ever been arrested?"

What may an employer ask about an applicant's past criminal charges that were dismissed or terminated in the applicant's favor?

NOTHING. Under New York State and City law, it is illegal to ask: "Have you ever been charged with a crime?"

What may an employer legally ask about an applicant's criminal background?

New York State law expressly prohibits employers from asking: "Have you ever been convicted of an offense?" New York City law is interpreted the same way.

When are criminal charges "favorably terminated"?

- When a criminal action is terminated in favor of the accused, the arrest and prosecution of that individual is deemed a nullity, and he or she is restored to the legal status occupied before the arrest or prosecution.
- There are many ways in which a criminal action can be favorably terminated:
 - The complaint, accusation or charges were dismissed;
 - The individual was acquitted by a jury;
 - A guilty verdict was set aside by the court;
Example: The trial court determines—after a guilty verdict has been rendered, but before sentencing—that new evidence or a new legal ground warrants dismissal of the charges against the defendant and does not order a new trial.
 - An unfavorable judgment was vacated by the court;
Example: The trial court determines—after a finding of guilt has been officially rendered—that the defendant's constitutional rights were violated, new evidence has come to light, evidence was misrepresented during trial, etc., and the judge dismisses the charges and does not order a new trial.
 - Prior to filing a complaint in court, the prosecutor chooses not to prosecute the individual; or
 - The arresting police agency elects not to proceed further.

May an employer ask about an applicant's arrest record or past criminal charges that were favorably terminated if it does not *act upon* this information?

NO. New York State and City law state that an employer *may not inquire about and may not act upon adversely* information pertaining to an applicant's prior arrests or criminal charges that were terminated favorably.

May an employer ask about an applicant's *out-of-state* arrest record or past criminal charges that were favorably terminated?

NO.

May an employer inquire about the arrest or prosecution that resulted in the filing of criminal charges that were eventually terminated in the applicant's favor?

NO.

Appendix 4, *continued*

Protecting Yourself when Using Criminal Background Checks

Laws Governing Employers' Consideration of Conviction Records

Can I refuse to hire or promote an individual, or can I fire that individual, simply because he or she has a criminal record?

NO. Article 23-A of the New York Correction Law prohibits employers from denying an individual employment or terminating a person from a current job simply because he or she was previously convicted of one or more criminal offenses. This means that it is *illegal* for an employer to have a flat policy that it will not hire a person with a criminal record, period. There are a few areas of employment where Article 23-A does not apply, such as some positions in law enforcement agencies. Otherwise, all private employers with ten employees or more are subject to this law.

Are there any instances where I could use an individual's criminal record to deny employment?

An employer must look at each applicant, and his or her conviction history, individually. Having done this individual evaluation, an employer may only deny employment based on an applicant's conviction history in two circumstances.

- First, employment may be denied if there is a direct relationship between the criminal offense committed and the employment sought. A "direct relationship" exists if the nature of the criminal conduct directly bears on the fitness or ability of the applicant to perform the duties or responsibilities of the job.
- Second, employment may be denied if the applicant would pose an unreasonable risk to property or the safety or welfare of others. This includes a risk to specific individuals or the general public.

How do I determine whether either of these exceptions apply?

Article 23-A requires that employers consider several factors in determining whether an individual may be denied employment based on past criminal convictions. The employer must consider:

- The state's public policy of encouraging the employment of individuals previously convicted of criminal offenses.
- The duties and responsibilities related to the job sought.
- What bearing, if any, the criminal offense or offenses for which the individual was convicted has on his or her fitness or ability to perform these duties or responsibilities.
- The amount of time that has elapsed since the occurrence of the criminal offense or offenses. This refers to how long it has been since the individual committed the offense, not how long it has been since the applicant was convicted. In some instances, the date of the conviction may be years after the person actually committed the offense.
- The applicant's age at the time of the criminal offense or offenses.
- The seriousness of the offense or offenses.
- Any information produced by the individual, or on his or her behalf regarding rehabilitation and good conduct.
- The interest in protecting property, and the safety and welfare of specific individuals or the general public.

Also, if the person being considered has been issued a certificate of relief from disabilities or a certificate of good conduct, the employer must take that into consideration. The certificate creates a presumption of rehabilitation, meaning that the employer must take it as evidence that the applicant has been rehabilitated.

What is the difference between a certificate of relief from disabilities and a certificate of good conduct?

- Individuals who have no more than one felony conviction (and any number of misdemeanor convictions), may apply for a certificate of relief from disabilities. Each certificate applies to only one offense, so an applicant may have more than one certificate of relief from disabilities.
- Individuals who have two or more felony convictions (and any number of misdemeanor convictions) may apply for a certificate of good conduct. An applicant will not have more than one certificate of good conduct, as it applies to all previous convictions. In order to receive this certificate, the individual must have remained out of prison for at least 3 to 5 years.

Appendix 4, *continued*

Protecting Yourself when Using Criminal Background Checks

- Both types of certificates are granted only after a probation or parole officer (depending on the individual's criminal record) conducts an investigation and determines that the individual has been rehabilitated.

How do I weigh the factors?

Past employment discrimination cases provide guidance for weighing the Article 23-A factors. Examples from these cases demonstrate that a greater number of convictions, or convictions of criminal offenses that sound more serious, do not necessarily disqualify a job applicant. Instead, greater consideration is often given to the amount of time that has elapsed since the offense occurred. However, it is important to remember that the employer must consider each applicant on a case-by-case basis.

- *A court found that the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) was wrong to deny applicant a house manager job at one of its regulated agencies simply because he had a 1985 conviction for attempted possession of a firearm. The court found that OMRDD failed to consider the Article 23-A factors in evaluating the applicant, stating that the rejection of the applicant “suggests to this Court that in the view of the OMRDD, there is no such thing as rehabilitation, or overcoming a conviction, and that the notion that one with a conviction can benefit from this state’s public policy of affording jobs to the once-convicted is illusory.” (Boatwright v. OMRDD, 2007)*
- *A woman with nine drug possession/prostitution convictions, and one manslaughter conviction, was held to be properly employed as an eligibility specialist with the Human Resources Administration. The drug possession/prostitution convictions were over ten years old and she had since completed a detoxification program and college courses. While the manslaughter conviction was more recent, she received the minimum sentence, was considered a model parolee, and had relevant prior work experience. The judge found that had the employer properly considered the factors under Article 23-A, he could not have reasonably concluded that she should be disqualified from employment. (City of New York v. City Civil Service Commission, 1988)*
- *An applicant for a firefighter position was found to be an unreasonable risk to property and the welfare and safety of the general public based on his drunken driving convictions and disciplinary actions received in past employment. The court held that he was properly denied employment. (Grafter v. New York City Civil Service Commission, 1992)*
- *A court found that an applicant’s nine-year old manslaughter conviction was not directly related to the position of housing caretaker, and that based on this conviction the applicant did not pose a risk to property or public safety. However, when considered in light of the applicant’s three-year old convictions for criminal possession of a narcotic drug with intent to sell and criminal possession of a controlled substance, the court held that the applicant had demonstrated a lack of rehabilitation and that his involvement in drugs and violence posed an unacceptable risk to the housing tenants. (Soto-Lopez v. New York City Civil Service Commission, 1989).*

What if I consider all the factors and decide not to offer the applicant a job?

If the employer is relying, in whole or in part, on a commercial background report as the reason for denying the applicant the job, the employer must give the applicant a copy of the background report **in advance**, along with a Federal Trade Commission brochure listing an applicant’s rights under the Fair Credit Reporting Act. This gives the applicant a chance to see the report and to point out mistakes and/or explain the contents. Commercial background reports contain errors, just like rap sheets.

If, after considering the required factors, providing the applicant with a copy of the background report and giving him or her a chance to explain it, the employer chooses to deny the individual employment, the applicant is entitled to a written statement giving the reasons for this denial. The employer must provide this statement within 30 days of the applicant’s request.

If I do offer the applicant a job, can I later be held liable for negligent hiring?

Of all the negligent hiring claims previously filed in the State of New York, less than ten percent were based on the hiring of persons with criminal records. In such cases, the plaintiff won about half the time. However, a “win” is counted as any time the court denied the defendant’s motion to dismiss; it does not mean that the plaintiff was necessarily awarded damages.

Appendix 4, *continued*

Protecting Yourself when Using Criminal Background Checks

If a negligent hiring claim was filed against me, how could I effectively defend myself?

The legal standard for all negligent hiring claims in New York is the same; it does not matter whether the employee was previously convicted of a criminal offense. Thus, in reviewing any negligent hiring claim, the judge will be trying to determine whether the employer knew of the employee's propensity for the alleged acts, or whether the employer should have known of the employee's propensity had the employer conducted an adequate hiring procedure. In other words, the judge will evaluate whether the alleged acts of the employee were foreseeable by the employer.

What is an adequate hiring procedure?

Past negligent hiring decisions suggest that if the employer offers evidence that basic hiring techniques were employed, and the plaintiff is unable to refute this evidence, the judge will grant the employer's motion to dismiss the claim. While New York state courts have noted that the depth of the inquiry required varies in proportion to the level of responsibility the job entails, courts have found that if the employer checked an employee's references and took into account the employee's prior relevant work experience, the employer conducted an adequate hiring procedure.

However, keep in mind that prior case law also suggests that once hiring procedures are developed, they must be followed. New York state courts are more likely to find for the employer if that employer properly implemented its own hiring policies.

What if, after conducting a background check, I find that an applicant has falsified his/her job application or has lied?

It is our opinion that lying is an unacceptable practice and you are within your rights to not hire or terminate individuals who based on the questions you ask, have lied, omitted, or misrepresented themselves on an application or in an interview. We do, however, caution that when you are evaluating a person's job application against information you obtain from a criminal background check, you must be sure that you have accurate and complete data. Among other things, you should review the background check with the applicant to see if it is accurate. Remember that federal law requires that you provide the applicant with a copy of the background check and an opportunity to explain it before you deny him or her the job based on conviction history. Remember, too, that you should only be considering convictions, not arrest charges. As you know, the fact that a person was arrested for a given charge does not mean that he or she is guilty of that charge.

Although we do not condone lying and we understand that it is the responsibility of the job seeker to know his/her rights and responsibilities, we have learned through our assistance of thousands of individuals with criminal records and practitioners who serve them that many job seekers have been ill-advised about completing employment applications and disclosing relevant criminal record information. Therefore, as long as someone has responded "yes" to an application question about having a criminal history, it is wise to give the individual an opportunity to explain the circumstances of the criminal record verbally or in writing.

Are there resources my company could utilize if I hire someone with a criminal record?

YES:

- Under the **Work Opportunity Tax Credit** program, employers who hire individuals convicted of a felony can reduce their federal income tax liability by up to \$2,400 per qualified new worker.
- **Empire Zone and Zone Equivalent Area Tax Credits:** Employee Wage Tax Credits that are applied against a business's state tax liability. An Empire Zone employer, paying employees at least 135% of minimum wage, may be entitled to a \$3,000 credit for targeted employees or \$1,500 credit for all non-targeted employees. Both credits may be taken for up to five consecutive years, beginning with the first tax year in which Empire Zone wages are paid.
- The **Federal Bonding Program** provides individual fidelity bonds of \$5,000 to employers at no cost for six months insuring employers against employee dishonesty or theft. The bond is immediately available with no paperwork or deductible.
- **Third party intermediaries:** There are several workforce development programs in New York City that can help you immediately access qualified individuals who can help meet your businesses' needs while also helping you access financial incentives. These organizations provide free human resource support that can ultimately reduce your staffing expenditures, help fund support for on-the-job training, support recruitment, training and retention, reduce your hiring risks, and get you motivated employees.

Appendix 4, *continued*

Protecting Yourself when Using Criminal Background Checks

Useful Definitions and Additional Legal Information

What is an “arrest”?

An arrest is the taking or keeping of a person in custody by the police on probable cause or without a warrant.

- When someone is arrested, it does not mean that he or she has committed a crime or has been found guilty of an offense.
- Law enforcement officials only need a reasonable belief that an individual has committed or is committing a crime to place him or her under arrest. This reasonable belief is less than the proof and certainty necessary to convict someone in court.

What is a “conviction”?

A conviction is a final judgment (by a guilty verdict after a trial OR by a plea) that a person is guilty of committing an offense.

What is a “criminal charge”?

New York defines *criminal* offenses as “misdemeanor” or a “felony”:

- Misdemeanor: An offense for which a sentence of imprisonment to more than 15 days and not more than one year may be imposed.
- Felony: An offense for which a sentence of imprisonment in excess of one year may be imposed.
An individual in New York may also be charged with a non-criminal offense, including a “violation”:
- Violation: An offense for which a person may be sentenced to imprisonment for no more than 15 days.

Federal Fair Credit Reporting Act: 15 U.S.C. § 1681

New York’s Fair Credit Reporting Act: N.Y. GEN. BUS. LAW § 380 et seq.

Regarding convictions and arrests reported in background checks see § 380-j; regarding employers’ notification obligations when conducting background checks see § 380-b; and regarding job applicants’ rights to review and dispute records: §§ 380d-f.

Article 23A of New York’s Correction Law: N.Y. CORRECT LAW §§ 750-754

Certificates of Relief from Disabilities and Good Conduct: N.Y. CORRECT LAW §§ 700-703

New York State Human Rights Law: N.Y. EXEC. LAW § 296 (16)



Center for Employment Opportunities

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CEO (Center for Employment Opportunities) is dedicated to offering effective and comprehensive employment services to men and women returning home from prison and jail to New York City. CEO believes that anyone returning from prison who wants to work should have the preparation and support needed in order to find a job and keep it. Our highly-structured, tightly-supervised programs help participants regain the skills and confidence needed for a successful transition to a stable, productive life. CEO offers immediate, paid, time-limited employment and job coaching to formerly incarcerated individuals to ease their way back into the workforce and gain the essential work experience that employers value. At the same time, CEO works with private employers to place participants in permanent employment. During the past decade, CEO has made over 10,000 full time job placements.

CEO acts as a full service human resources provider for employers to find reliable and dependable workers. CEO provides its services at no cost to employers. We offer in-depth assessment of our participants and a full human resources team to ensure that our pool of workers is trained and ready. Some other benefits we offer to employers of CEO participants: job developers to solve any conflicts or issues on the job; well-screened applicants who are willing to work; a \$2,400 tax credit on a pro-rated basis; federal bonding program for up to \$10,000 at no cost to employers for the first 6 months, and over 30 years of experience.



ComALERT

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The ComALERT (“Community and Law Enforcement Resources Together”) program was designed by District Attorney Charles J. Hynes to act as a bridge between prison and the community for returning parolees. ComALERT assists formerly incarcerated individuals to make a successful transition from prison to home by providing drug treatment and counseling, mental health treatment and counseling, GED, and transitional housing and employment. ComALERT also provides permanent job placement assistance to those parolees who have marketable skills upon their release. ComALERT services begin almost immediately upon release from prison, increasing the success rate for its clients compared to the non-treated re-entry population.

ComALERT’s goal is to reduce criminal recidivism by providing the formerly incarcerated with the tools and support they need to remain drug-free, crime-free, and employed. Most ComALERT clients have substance abuse issues, and many are actively abusing illegal drugs and alcohol. This abuse places them in direct contradiction of standard conditional release mandates and increases the likelihood that they will engage in illegal behaviors and return to prison. Thus, substance abuse treatment and counseling form the basic framework for ComALERT’s initial three-month enrollment. In addition to drug counseling and treatment, most clients will receive a referral to, and preferential placement in, the ComALERT “Ready, Willing & Able” program, which provides transitional employment through the Doe Fund. Thereafter, ComALERT assists graduates with permanent employment placement.



The Doe Fund

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The Doe Fund's mission is to develop and implement cost-effective, holistic programs that meet the needs of a diverse population working to break the cycles of homelessness, addiction, and criminal recidivism. All of The Doe Fund's programs and innovative business ventures ultimately strive to help homeless and formerly incarcerated individuals achieve permanent self-sufficiency.

Ready, Willing & Able is The Doe Fund's holistic, residential, work and job skills training program which helps homeless individuals in their efforts to become self-sufficient, contributing members of society. Ready, Willing & Able has helped more than 3,000 men and women become drug-free, secure full-time employment, and obtain their own self-supported housing. The program targets the segment of the homeless population considered the hardest to serve: single, able-bodied adults, the majority of whom have histories of incarceration and substance abuse. Criteria for acceptance into the program is that the applicant be ready, willing and able, both physically and mentally, to work and maintain a drug-free lifestyle. In 2001, The Doe Fund, in partnership with the Kings County District Attorney's Office, adapted the Ready Willing & Able program to meet the needs of former prisoners who were not homeless. This program, now called Ready, Willing and Able - DAY, offers paid transitional work, case management, education, vocational training and job placement for parolees and has recently expanded to accommodate more former prisoners.



The Fortune Society

The Fortune Society

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The Fortune Society is working to create a world where all who are incarcerated or formerly incarcerated can become positive, contributing members of society. We do this through a holistic, one-stop model of service provision that includes: substance abuse treatment, counseling, career development, education, housing, recreation and lifetime aftercare. Our service model is based on nearly forty years of experience in working with this unique population – we’ve found that without a solid base in core skill areas, too many clients will continue the self-destructive behaviors that result in crime and incarceration. Our continuum of care, informed and implemented by professionals with similar cultural backgrounds and life experiences as our clients, helps ensure their success.

Fortune serves approximately 4,000 men and women annually via our four New York City-area locations – offices on 19th and 23rd Streets in Manhattan, the Fortune Academy in West Harlem and the Drop-In Center in Queens – and our program models are frequently recognized for their quality and innovation. The U.S. Department of Housing and Urban Development (HUD) and Substance Abuse and Mental Health Services Administration (SAMHSA) have cited our housing and substance abuse treatment services as model programs, and the National Institute for Justice (NIJ) is currently evaluating our programs with an eye toward replication.



The Osborne Association

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The Osborne Association provides a broad range of treatment, education, family and vocational services to people affected by incarceration, including those who are currently or formerly incarcerated, their children and other family members. For more than 70 years, Osborne has been securing jobs for people leaving jail and prison, ranging from 300 - 800 per year. Osborne's Employment and Training Services (ETS) offer comprehensive vocational services including assessment, testing, career and educational counseling, job training and post-employment support in adjusting to the demands of the workplace and staying employed. Osborne's job readiness program addresses the full range of needs from resume preparation to cognitive skills training. Job training and/or direct employment is offered in janitorial maintenance and culinary arts.

The employers who utilize ETS receive cost-free services, reducing their recruiting costs. Osborne's wage subsidy program offers employers direct subsidies during the initial training period, and we assist employers in accessing tax credits and other incentives. ETS assists employers by pre-screening candidates--which lowers turnover costs--and by immediately replacing any employee who doesn't work out with another well-qualified ETS client. Osborne's Janitorial Maintenance Services provides services to public facilities throughout New York City, and also contracts with private employers to provide cleaning services, offering formerly incarcerated individuals an opportunity for training and experience, and providing employers with a well-trained workforce.



STRIVE

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The founding principle behind STRIVE is to address, head-on, the adverse factors that impact communities and the potential success of their residents — including homelessness, substance abuse, crime, teen pregnancy, domestic violence, and the lack of health and child care. People living in poor neighborhoods often face isolation, lacking personal networks, role models and access to job information. Self-defeating attitudes, spotty work histories, and poor self-presentation skills often compound these circumstances. STRIVE is a recognized leader in securing jobs for the chronically unemployed, supporting them in taking the critical first step towards achieving self-reliance. Our job-readiness training program combines attitudinal training with fundamental job skills, and long-term participant follow-up. Graduate job-retention rates surpass those achieved by governmental workforce programs and other agencies.

First introduced in New York City in 1984, our program model has been widely adopted in partnership with affiliated non-profit organizations throughout the U.S. and beyond. STRIVE serves the most neglected, yet able, unemployed and under-served people — the formerly incarcerated, public-assistance dependent, homeless, and recovering drug abusers. Participants are guided from a smile and a handshake through job placement and into a variety of subsequent supportive services. As they make the life-changing transition into self-reliance, program graduates begin to gain the respect of their families and their communities. And with newly-born self-respect coupled with active support systems, STRIVE graduates take incremental steps towards true responsibility and achievement.

