

REDUCING THE RISK OF A CRIMINAL RECORD: THE EMPLOYER'S PERSPECTIVE

Findings from the Georgia Justice Project's inaugural policy forum to identify ways to improve employment outcomes for people with criminal records in Georgia

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Sponsored in part by:

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INTRODUCTION

As many as 1 in 3 Georgians have a criminal record and each year the state spends over \$1 billion taxpayer dollars on over half a million Georgians who are under correctional control. Moreover, about 95% of those who are incarcerated will be released and nearly 1 in 3 is expected to return within three years. The overwhelming research indicates that the most important predictor of recidivism is the ability to secure stable employment but Georgia is one of the hardest states for people with criminal records to get jobs.

Since 1986, the Georgia Justice Project (GJP) has represented low-income individuals involved in the criminal justice system in the Metropolitan Atlanta area. Through the Coming Home Program, developed in 2008, GJP provides legal representation to people denied opportunities because of a criminal record, educates stakeholders in Georgia about the negative impact of having a criminal record, and advocates for positive legislative and administrative reforms.

In 2009, GJP began advocating for policy reforms to improve employment outcomes for people with criminal records in Georgia and in the years since, the General Assembly has passed laws that restrict access to certain criminal records, limit access and online use of law enforcement booking photos (i.e., mug shots), allow certain people to keep their drivers' license after a drug conviction, and offer liability protection to employers that hire people with criminal records who have received certain documentation from the state.

Over the years, GJP has built an advocacy base of supporters, non-profit partners, and people denied employment due to their criminal histories. GJP's experiences have made evident the need to increase engagement with members of the state's business community in discussions about policy reforms – particularly because there are no stakeholders more important to improve employment outcomes for people with criminal records than those who make the hiring decisions, and their legal advisors.

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THE CONCEPT

Recently nonprofits all over the country have hosted events to convene employers, policymakers, and criminal justice professionals and identify challenges and realistic solutions to improve employment outcomes for people with criminal records. Building on the momentum of these events, including an [‘employer best practices’ event](#) co-hosted by Legal Action Center/National H.I.R.E. Network, a [business leaders’ summit](#) co-hosted by the National Employment Law Project (NELP) and a [national event](#) co-hosted by the Council of State Governments Justice Center (CSG), GJP planned the first event of its kind in Georgia and hosted its inaugural policy forum on November 19, 2014 entitled, “Reducing the Risk of a Criminal Record: The Employer’s Perspective.”



GJP Board Chair Joel M. Neuman (Coca-Cola Company) welcomes forum participants

The forum had three goals: 1) increase the knowledge of participants about the issues and related governmental efforts, 2) discuss strategies for improving employment outcomes for people with criminal records, and 3) develop deeper relationships with participants so that they may provide feedback on GJP’s legislative objectives.

THE PARTICIPANTS

Attendance to the forum was by invitation only, and invitations were extended to GJP supporters from the business community, non-profit partners and state and local policymakers working on these issues.

Nearly 50 people were in attendance including three state judges, a state senator and people from nine businesses, ten law firms, six state agencies, three academic institutions and two national funders.

Pre-Forum Survey

In order to get a better understanding of the attendees’ thoughts about the employment of people with criminal records and to inform the evening’s discussion, GJP asked registrants to respond to a [five-question multiple-choice survey](#) prior to the forum.

Background Resources

To maximize the time spent in dialogue with participants, GJP developed an extensive [list of resources](#) and made it available for forum participants on the organization’s website one week before the event.



THE EMPLOYER'S PERSPECTIVE

Several studies find that a strong majority of employers say that a candidate's qualifications are more important than whether or not they have a criminal record, but most also ask about criminal history on the initial application and admit that knowing about an arrest, even if the person was not convicted, negatively affects their hiring decisions. Thus, applicants with criminal records are faced with hiring policies that do not seem to allow opportunities for meaningful consideration of skills and experiences.

So that forum participants could learn about the concerns, challenges and possible solutions to improving employment outcomes for this population from the perspective of employers, GJP comprised a panel of employers and employment lawyers with experience considering applicants with criminal records in Georgia.*

THE USE OF CRIMINAL RECORDS

The hiring process for applicants with criminal records is not always made clear and most often are unsure about which criminal records concern employers, when background checks are conducted or where employers get criminal history information. This lack of clarity and consistency makes conducting successful job searches extremely challenging for applicants with criminal records and for policymakers trying to improve employment outcomes for this population.

Criminal Records that Concern Employers. Participants learned that usually employers are reluctant to hire applicants convicted of a crime related to violence, sex, theft, or children, regardless of the position or the time that has passed. "Most employers though," a panelist who represents employers said, "are not really that concerned about nonviolent property or drug crimes unless the applicant lies about it." "Something else to consider," the panelist added "is the use of criminal records also depends on labor demands and the state of the economy."



The panel was moderated by the **Honorable Michael Boggs** and included panelists pictured above right to left: **Derek Bottoms** (The Home Depot), **Peter deKok**, (P.T. Enterprises), **Myra Creighton** (Fisher & Phillips) and **Yendelela Anderson** (Kilpatrick Townsend).

***GJP agreed that statements would not be attributed to any individual panelist by name, nor any reference made to the specific policies of any panelist's business or client.**

**FORUM HIGHLIGHT:
Employers are most concerned about convictions related to violence, sex, theft and children, and less about nonviolent property or drug crimes**

**FORUM HIGHLIGHT:
Criminal records concerns by employers are related to labor demands and the economy**



THE EMPLOYER’S PERSPECTIVE (Continued)

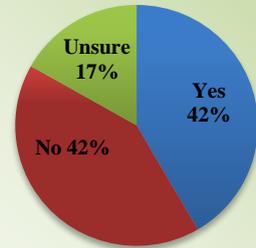
Another panelist added that criminal records may also be relevant for employers if the offense is related to the position, “if a person is applying to be a driver for a company, the employer would of course be concerned about a DUI conviction.”

Timing of the Criminal Background Check. The panelists also agreed that while most job applications ask about criminal history, most employers do not actually conduct a criminal background check until an employment offer has been extended. This is consistent with recent studies revealing that more than 65% of employers require prospective employees to self-report criminal convictions on the job application though more than 90% wait until after an interview or a contingent job offer to conduct the check. This practice of waiting until later in the hiring process to check an applicant’s criminal background results in savings for employers since the cost of a reliable background check is usually slightly less than a day’s pay of the position being hired.

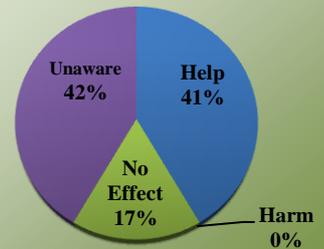
Source of Criminal Background Checks. Panelists said that usually criminal background checks are purchased through contracts with third party companies, instead of through the Georgia Crime Information Center (GCIC) or the Federal Bureau of Investigation (FBI). “We know our business and what we do well,” one panelist explained. “And what we don’t do is investigate criminal backgrounds, so we leave that to those who do this better than we can.”

Impact of the Equal Employment Opportunity Commission (EEOC) Guidelines. Federal case law establishes that due to the negative impact on applicants of color, Title VII of the Civil Rights Act of 1964 prohibits employers from using blanket bans to screen job applicants with criminal records. Instead, the rulings hold that an employer must perform an individualized assessment and find a justified business necessity before denying an applicant because of a criminal record.

Pre-Forum Registration Question: Does your employer ask about criminal history on the initial application?



Pre-Forum Registration Question: Do EEOC Guidelines Help or Harm?



THE EMPLOYER'S PERSPECTIVE (Continued)

Based on the case law, in [1987](#) and [1990](#) the EEOC issued policy guidelines (the Guidelines) to employers stating that in order to comply with Title VII when a job applicant has a criminal record, the employer must consider whether there is a justifiable business necessity to deny based on: 1) the nature and the gravity of the offense or conduct, 2) the time that has passed since the offense, conduct and/or completion of the sentence, and 3) the nature of the job held or sought.

The EEOC updated and reissued the Guidelines in [2012](#) in response to significant technological advances making criminal records information more widely available and more often considered in making hiring decisions. The effectiveness of the Guidelines, however, is questionable considering that GJP and [other advocates](#) across the country are still reporting experiences with employers using blanket criminal record bans to exclude applicants and those that do not make a finding of business necessity.

Judge Boggs asked panelists about the effect of the 2012 guidelines, particularly in light of two recent losses by the EEOC against [Kaplan Higher Education Corporation](#) and [Freeman Companies](#). "When the guidelines first came out employers were scared and wanted to make sure they were conducting the individualized assessments and strictly following the EEOC Guidelines," a panelist recalled, "but not now that they think that the agency won't or can't enforce their own guidelines." The panelists agreed that while these cases have not yet seemed to cause employers to reassess their policies, they did caution that the regulatory effectiveness of the Guidelines has been seriously challenged and similar decisions will only lessen impact of the Guidelines on employers.



Judge Michael Boggs moderating employer panel

FORUM HIGHLIGHT:
New Georgia Evidence Code supports 10 year 'look back' period for convictions

Forum Participant Says New Georgia Law Supports a 10 Year 'Look-Back' Period

In 2011, Georgia [adopted](#) the federal evidence rule prohibiting a prior conviction older than ten years from being used against a witness in court.

"If the General Assembly thinks that after ten years a criminal conviction should no longer be used to consider the credibility of a witness in a criminal trial," one forum participant suggested, "it seems there is legislative intent to restrict the use of criminal records for applicants seeking employment."

FORUM HIGHLIGHT:
Court losses by the EEOC may weaken the effectiveness of the Guidelines on hiring policies

THE EMPLOYER'S PERSPECTIVE (Continued)

Accuracy of Criminal Records. Panelists also said that the accuracy and timeliness of criminal background reports is another challenge for employers. “The second we get into the individualized assessments,” one panelist admitted, “we are already slowing down the company.” Process delays caused when applicants dispute the accuracy of their criminal background make them less attractive prospects. “The effect is worse for smaller employers without an HR department,” another panelist offered, “the added steps to fill a position sometimes just aren’t worth the cost.” Another problem identified by a panelist was, “sometimes the system doesn’t expunge those things that need to be expunged and you can’t just unring the bell once the employer has seen it.”

THE DIFFERENCES BETWEEN LARGE AND SMALL EMPLOYERS

Often, advocates and policymakers try a one-size-fits-all approach to proposing reforms to improve the employment outcomes of people with criminal records. One of the biggest lessons of the forum, however, was that successful approaches must be tailored to the size and public visibility of the company.

Several panelists said that larger companies are not inclined to change their hiring policies because of tax incentives or hiring liability protection. “It is more an issue of protecting the corporate brand than it is the bottom line,” a panelist clarified. “Large companies assume a certain amount of litigation each year and therefore do not base decisions on the possibility of a lawsuit,” the panelist continued, “but they do spend a fair amount of time crafting their brand, and there is nothing policymakers can do about that.” Another panelist, who represents both large and small employers added, “A lot of times the larger employer can handle the liability risk because they have insurance, what they don’t want is the media attention that makes them look like they put their customers at risk.”



Panelist Yendelela Anderson responds to a question from Judge Boggs

**FORUM HIGHLIGHT:
Hiring someone with a criminal
record can be costly and time-
consuming for employers**

**FORUM HIGHLIGHT:
Larger companies are more
concerned about brand and bad
media attention than a potential
law suit**

THE EMPLOYER'S PERSPECTIVE (Continued)

Another issue the panel highlighted for policymakers is that the hiring policies of larger employers are not likely to be impacted by Georgia legislative reforms. "National employers usually want a hiring policy," a panelist who represents employers said, "that will comply with the laws in every state where they conduct business." There are many states around the country with more limitations on the use of criminal records in hiring decisions than Georgia. For example, some states do not allow employers to ask about arrests that did not result in conviction, or about offenses that have been expunged or sealed.

Conversely, the panel agreed, the hiring policies of smaller employers are likely to be impacted by state policy reforms. The additional time and expense of conducting background checks and paying increased insurance premiums along with the exposure to hiring liability are of great concern to smaller employers. "Small business owners are not on the public's lips so they aren't concerned about branding," one panelist explained, "but they are concerned about their bottom line."

A panelist who represents employers suggested that if policymakers want employers to be less concerned about lawsuits and to relax their hiring policies, they should consider reforms that include "fee-shifting provisions" where the losing party pays the winner's legal fees in addition to their own. "Policies that offer rebuttable presumptions are not necessarily very attractive to employers because if sued, they still have to pay their attorney to respond and defend the action," the panelist told participants.

Panelists also explained that due to these concerns, smaller employers are more interested in ways to save money and limit their exposure to liability than larger employers. "If there were legal protections and a fiscal incentive," a panelist said, "that would go a long way to encourage small business owners to hire people." Another panelist reminded participants, however, that "employers are looking for people who are most qualified, so offering a tax break for people with convictions doesn't change that."



FORUM HIGHLIGHT:
Hiring policies of larger employers are not likely to be impacted by Georgia reforms

FORUM HIGHLIGHT:
Financial incentives and protections are more attractive to smaller employers

FORUM HIGHLIGHT:
Fee-shifting provisions are attractive to employers concerned about hiring liability

FORUM HIGHLIGHT:
Employers are most concerned with finding the most qualified candidate

STATE & LOCAL EFFORTS

In response to the significant costs of correction and the need to reduce recidivism, state and local government officials in Georgia are working to address the challenges to employment for those within the criminal justice system. To ensure participants, particularly employers, were informed about state and local efforts to improve employment outcomes for the population, GJP comprised a panel of leadership from several agencies working on these issues.

GEORGIA'S COMMITMENT TO IMPROVED EMPLOYMENT OUTCOMES

Since he took office in 2011, Governor Nathan Deal has been an advocate for a more efficient and effective criminal justice system in Georgia. Under his leadership, the Council on Criminal Justice Reform (the Council) and the Governor's Office of Transition, Support and Reentry (GOTSR) have been established, and Georgia has already begun to see improvement in the administration of the criminal justice system in Georgia.

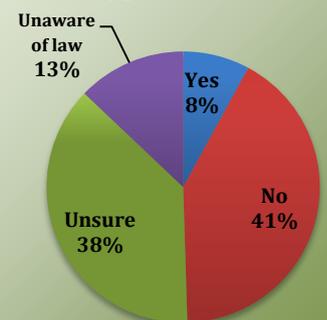
When asked about how the Council has worked to improve employment outcomes for Georgians with criminal records, Judge Boggs explained, "The Council launched the Georgia Prisoner Reentry Initiative (GA-PRI) in November of 2013 with a five-year goal that every person released is equipped with the tools and support necessary to succeed in their community, including being able to find a job." He further explained to participants that the Council, "has made several legislative recommendations intended to encourage the employment of this population, some of which have been passed by the General Assembly, including the elimination of the automatic six-month drivers' license suspension for some drug offenses and liability protection for employers who hire people with a Program and Treatment Completion Certificate or a Pardon."

"In the sixteen months since it was created," Ms. Snead told the participants, "GOTSR has led the reentry implementation efforts and supported the organizational structure of the GA-PRI's implementation



The Government Panel was moderated by **Mr. Henry A. Kelly (Georgia Power)** and pictured from right to left above included the **Honorable Michael P. Boggs (Georgia Council on Criminal Justice Reform)**, **Commissioner Brian Owens (Georgia Department of Corrections)**, **Ms. Renee Snead (Governor's Office of Transition, Support & Reentry)**, **Chairman John Eaves (Fulton County Board of Commissioners)** and **Mr. Michael Sterling (Atlanta Workforce Development Agency)**.

Pre-Forum Registration Question: Have new GA laws affected your company's hiring policies?



STATE & LOCAL EFFORTS (Continued)

in six pilot cities with a plan to expand into twelve more by 2018.” Ms. Snead also said that in August of 2014 the Council approved a recommendation by the GA-PRI Policy & Oversight Committee to also hire six Employment Coordinators in each site next year.

The unfortunate reality is that people in the criminal justice system typically have less work experience, less education and fewer marketable skills than the rest of the population. As mentioned in the employer panel, and confirmed in a recent study, 85% of employers say the reason they are reluctant to hire people with criminal records is because of a lack of education, skill and experience.

Approximately 7 of every 10 inmates in Georgia do not have a high school diploma or general education degree (GED), educational requirements increasingly necessary to secure gainful employment. Commissioner Owens told participants about the Performance Incentive Credit (PIC) Program explaining that, “an inmate who receives their high school diploma or GED while incarcerated can earn time off of their sentence.” He also discussed the recent partnership with a charter school to provide high school courses at a state prison to help inmates complete their high school educations and receive diplomas. The Commissioner also noted that vocational training is provided on a variety of topics including air conditioning, welding and construction.

FULTON COUNTY’S COMMITMENT TO IMPROVE EMPLOYMENT OUTCOMES

Mr. Kelly, acknowledging that in recent years the recidivism rate at the Fulton County Jail has been estimated to be as high as 70%, and that more released inmates return to Fulton County than any other county in the state, he asked Chairman Eaves to explain the efforts by policymakers in Fulton County to stem the tide. Chairman Eaves began by providing further context to the problem, explaining though the Metropolitan Atlanta area has the ninth largest population in the country; it has the fifth highest rate of incarceration – approximately 40,000 people annually.



Henry Kelly (Georgia Power) moderates the Government Panel

Fulton County “Banned the Box”

In October of 2014, Fulton County Board of Commissioners passed a county ordinance to “ban the box” on the county’s employment application, removing questions about criminal history until applicants have the opportunity to demonstrate qualifications and explain any criminal history information.

STATE & LOCAL EFFORTS (Cont.)

In October, the Fulton County Smart Justice Advisory Council, appointed by Chairman Eaves, [issued recommendations](#) to reduce recidivism and increase opportunity for the residents of Fulton County. Chairman Eaves told participants that one of these recommendations was suggested by GJP Executive Director and Smart Justice Council member Douglas Ammar. Chairman Eaves recalled, “At one of the Advisory Council’s first meetings, Doug told us about a new and innovative government funding concept, called social impact bonds, first used in England in 2010 and recently in New York City (NYC) to fund prisoner rehabilitation programs. Chairman Eaves said that in the time since, he has traveled to NYC to see the program and talk to the policymakers.”

ATLANTA WORKFORCE DEVELOPMENT’S COMMITMENT TO IMPROVED OUTCOMES

Michael Sterling, former Senior Advisor to Mayor Kasim Reed and the recently appointed Executive Director of the Atlanta Workforce Development Agency (ADWA), told participants that in his first two month of leadership he made a decision to, “focus on Atlanta residents who have the most difficulty finding employment, including people with criminal records.”

Recognizing the gap in skills for this population, Mr. Sterling explained that AWDA, “through federal funding from the Workforce Investment Act, can place people in college and technical college programs.” Mr. Sterling also told participants that the AWDA has a weekly reentry program and about a seventeen-week subsidized on-the-job training program. “We have also hired a full-time staff person committed exclusively to addressing the barrier to employment caused by a criminal record.”

Mr. Sterling acknowledged that the ADWA hasn’t always done a good job on tracking data, but said he and his staff are committed to improving the agency’s recordkeeping. “We also have mobile career centers where we send staff into communities in need of employment support.” he told participants, “but a challenge has been to generate sufficient interest in at-risk communities.”



Chairman Eaves responds to a question about Fulton County’s commitment to employment for people with records

What are social impact bonds?

Social impact bonds are contractual agreements between public and private sectors when private entities invest in evidence-based programming that will yield cost savings for the public sector. These cost savings are paid to the private entities in addition to their original investment amount.

City of Atlanta “Banned the Box”

In January of 2013, the City of Atlanta removed questions about an applicant’s criminal history from the city’s employment application and in October of this year passed a [city ordinance](#) that formalized the City’s commitment to this fair hiring policy through legislation.

FORUM HIGHLIGHTS & ACTION ITEMS

HIGHLIGHT #1: Hiring someone with a criminal record can be costly and time-consuming for employers and recent court losses by EEOC may have a negative impact on compliance with the Guidelines.

GJP ACTION ITEM:

1. *Develop and disseminate resources that will help employers in Georgia comply with related laws and fairly consider applicants with criminal records, including model policies/practices and sample documents.*

HIGHLIGHT #2: Larger employers are concerned about their corporate brand and bad media and their hiring policies are not likely to be affected by Georgia policy reforms.

GJP ACTION ITEM:

1. *Work with policymakers and large employers in Georgia to identify ways to help protect corporate brands and implement fair hiring policies for applicants with criminal records.*
2. *Encourage Georgia policymakers to consider reforms that are already being implemented by larger employers to encourage smaller employers to implement fairer hiring policies for applicants with criminal records*

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FORUM HIGHLIGHTS & ACTION ITEMS

HIGHLIGHT #3: Tax incentives and liability protections are more attractive to smaller employers and liability protections are more effective with fee-shifting provisions.

GJP ACTION ITEM:

1. *Advocate for reforms that will reduce the concerns of smaller employers in Georgia and encourage the implementation of fair hiring policies for applicants with criminal records.*

HIGHLIGHT #4: Employers are most concerned about convictions related to violence, sex, theft and children, and less about nonviolent property and drug crimes.

GJP ACTION ITEMS:

1. *Continue to advocate for policy reforms that allow easier access to jobs and other opportunities for people with nonviolent property or drug convictions in Georgia rather than treating all convictions the same.*
2. *Partner with policymakers and employers to recommend hiring policies that do not exclude applicants with criminal records considered less relevant to employers.*

HIGHLIGHT #5: Employers are most interested in finding the most qualified candidate.

GJP ACTION ITEM:

1. *Continue to advocate for efforts by state and local government agencies to help people with criminal records increase education, skills and experience.*



GJP's Upcoming Events

January 24, 2015

GJP's Legislative
Launch Event
Click [here](#) to register

January 30, 2015

CLE on Criminal
Records and Collateral
Consequences at GJP
Click [here](#) to register

March 6, 2015

Service Provider
Training at GJP

March 12, 2015

“Enhance the Chance”
Day at the Capitol