



Thank you for joining us this morning.
The webinar will start in one minute.



Getting Georgians Back to Work

Addressing the Labor Shortage Through Second Chance Hiring



Friday, Dec. 3rd | 8:30AM

Co-sponsored by Georgia Justice Project and the Georgia Chamber of Commerce

TODAY'S AGENDA

The Webinar will start in one minute.

- **Welcome/Introduction:** Charlie Bingham, Microsoft & GJP Board of Directors & Chris Clark, Georgia Chamber of Commerce
- **Georgia Justice Project & Employers: past collaborations & context:** Doug Ammar, GJP
- **Understanding & Using Criminal Records:** Brenda Smeeton, GJP
- **Employer Perspective:** Meg Taylor, Delta Airlines
- **Employer Liability Protections:** Wade Askew, GJP
- **Partnerships & Practical Considerations:** Zandria Redding, GJP
- **Q & A with Second Chance Employer:** Lloyd Martin, CKS Packaging
- **Public Policy related to Employment & Criminal Records:** Doug Ammar, GJP
- **Audience Q & A**

TODAY'S SPEAKERS

GEORGIA
JUSTICE
PROJECT

Charlie Bingham



Attorney –
Commercial Global
Partner Solutions
& GJP Board of
Directors

Chris Clark



President & CEO

Doug Ammar



Executive Director

TODAY'S SPEAKERS

GEORGIA
JUSTICE
PROJECT

Brenda Smeeton



Legal Director

Meg Taylor



Vice President –
Chief Litigation &
Employment
Counsel

Wade Askew



Supervising Attorney

TODAY'S SPEAKERS

GEORGIA
JUSTICE
PROJECT

Zandria Redding



Social Worker
& Reentry
Employment
Specialist

Lloyd Martin



Sr. VP of
Manufacturing

All Speakers

Audience Q & A

Welcome

Charlie Bingham, Microsoft & GJP Board of Directors

Chris Clark, Georgia Chamber of Commerce

GJP & EMPLOYERS:

past events & engagement

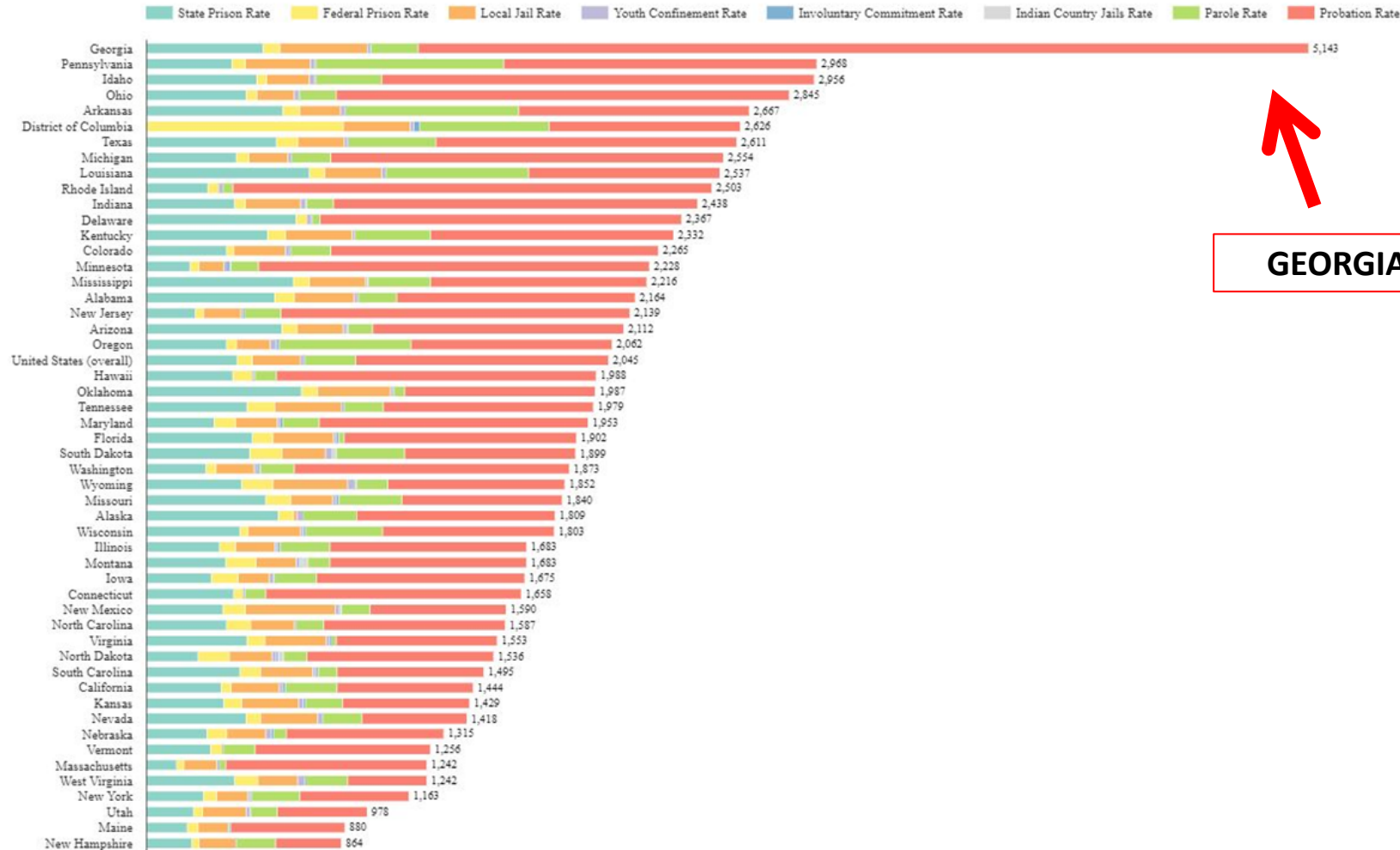
Doug Ammar, GJP's Executive Director

GEORGIA'S CRIMINAL JUSTICE SYSTEM



GEORGIA HAS THE HIGHEST RATE OF CORRECTIONAL CONTROL IN THE NATION

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"Correctional control" includes federal prisons, state prisons, local jails, youth confinement, Indian Country jails, involuntary commitment, parole and probation. Rates are per 100,000 total population in that state, D.C., or, for all 50 states and D.C. combined.

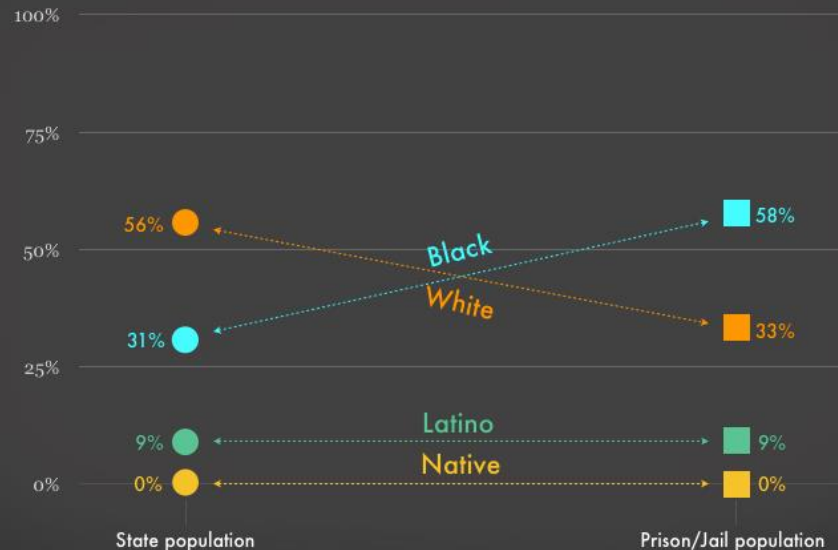
RACIAL DISPARITIES exist at every step in the process

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Disparities in policing, decisions regarding arrest, diversion opportunities, charging decisions, sentencing options, probation, parole, etc. all lead to more severe long-term collateral consequences for people of color

Racial and ethnic disparities in prisons and jails in Georgia

Whites are underrepresented in the incarcerated population while Blacks and Latinos are overrepresented.



PRISON
POLICY INITIATIVE

Compiled from 2010 Census, Summary File 1.

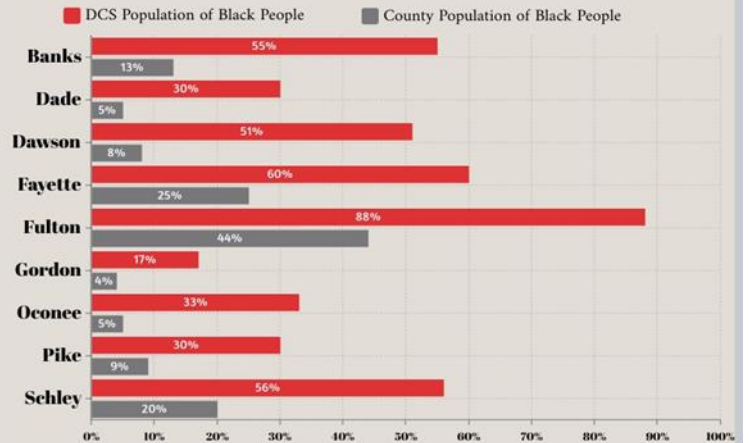
Racial Disparities in Georgia's Probation System

203,463 Georgians
are on probation

Black people make up
1/3 of Georgia's population

50% of Georgians
on probation are Black

IN EVERY SINGLE COUNTY, BLACK PEOPLE
ARE OVERREPRESENTED IN GEORGIA'S
PROBATION POPULATION.



On average, Black people are twice as likely to be supervised on probation than White People

- 9x more likely in Dawson and Oconee
- 8x more likely in Fulton
- 5x more likely in Banks, Dade, Fayette, Gordon, Pike and Schley

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* The information above reflects data current as of 2020
* <https://dcs.georgia.gov/dcspopulation>
* <https://www.census.gov/quickfacts/fact/table/GA/PST045219>

GEORGIA JUSTICE PROJECT'S INTERVENTION

HOLISTIC CRIMINAL DEFENSE

- Legal representation with social services
- Long-term support for clients

POLICY/21 LAWS CHANGED

- Expanded expungement – impacts 1.5 million Georgians
- Early probation termination – impacts up to 48K Georgians

PRISON SUPPORT/REENTRY

- Reentry lawyering – Metro Reentry Facility (MRF)
- Fines & fees reform
- Probation termination

RECORD RESTRICTION/EXPUNGEMENT

- Legal representation
- Restriction summits
- Expungement help desks



GJP: Committed to Engaging Employers

Employment = Antidote to Recidivism

- **Employer Events:**
 - **Learn Private Sector Perspectives**
 - **Listen to Policy Solutions & Feedback**
 - **Provide Training on New Laws & Expungement**
- **Gov. Deal's Criminal Justice Reform Council:**
 - **Reduce Barriers to Employment & Reentry**
- **Chambers of Commerce & Companies Helped Pass Laws:**
 - **2020 Expungement & 2021 Probation Reform**
- **Volunteer Lawyers – Over 150 private sector attorneys / year**

Lessons from August 2021 Second Chance Hiring Event with *Federal Reserve Bank of Atlanta*

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- **High Workforce Participation → Stronger Economy**
- **Second Chance Hiring Can Address Labor Shortages**
- **Desistance Research – Focuses on *Future Conduct* vs. Past Mistakes**
- **Non-profit Workforce Partners help 2nd Chance Employees Succeed**
- **Racism Impacts Criminal Justice → Impacts Racial Equity in Hiring**

A recording of this webinar can be found at:
[GJP.org/advocacy/employers/](https://gjp.org/advocacy/employers/)

UNDERSTANDING & USING CRIMINAL RECORDS IN GEORGIA

Brenda Smeeton, Legal Director, Georgia Justice Project

Criminal Background Basics

Records

Arrest records

Jail records

Court records

Department of Corrections records

Unofficial records

- **Mugshot website**
- **Media/News articles**

Reports

Official databases

- **GCIC/NCIC**
- **Fingerprintable offenses**

Private background checks

- **Conducted by Consumer Reporting Agencies (CRA)**
- **Governed by Fair Credit Reporting Act**
- **Right to know/Right to dispute**
- **“Reasonable” steps to ensure accuracy**

Reading a Criminal History

What appears on a report

- ❖ **When a person was arrested**
- ❖ **What agency arrested them**
- ❖ **What they were charged with**
- ❖ **How the case was resolved (disposition)**
 - Pending cases – open cases, dead docket, deferred adjudication, diversion
 - Non-convictions – NPGJ, nolle prossed, dismissed, acquitted, First Offender completed, Conditional Discharge completed
 - Convictions – Felony, misdemeanor, violation, nolo contendere
- ❖ **What was the sentence**

Note: But what about expungement?

Employers should know...

...backgrounds vary widely

There is a wide range of what you will see on a background check report

- Age of arrests
- Nature of charge
- Scope of history

Georgia (February 2020 numbers)

- 4.3 million people with a record
- 49% arrested once
- 1,100,000 have just one misdemeanor conviction
- 602,800 have a felony conviction
- 62,700 have a serious violent felony or serious sexual conviction

Employers should know...

...backgrounds are hard to understand

- ❖ **Even for the person who has the record**
- ❖ **They may have been told they don't have to report**
- ❖ **They may think a charge is "expunged"**
- ❖ **Do not use as an honesty test**

...backgrounds are frequently wrong

- ❖ **Missing information**
- ❖ **Mistakes (identity, severity, charge)**
- ❖ **Misleading arrest information**
- ❖ **May include "expunged" info**
- ❖ **Make sure you use a good CRA (but none are great)**
- ❖ **Consider corrected records**

Employers should know...

...what you can ask

- ❖ Can ask about arrests & convictions in Georgia (some states limit)
- ❖ No time limits in Georgia
- ❖ No prohibition on asking about “expunged” cases
- ❖ CRAs can only report non-convictions for 7 years
- ❖ You control what is on the report your background check company produces

...what you can use

- ❖ No general prohibition but federal limits on the use of records in hiring
- ❖ Title VII of the Civil Rights Act of 1964 (EEOC enforces)
 - Have to treat applicants/employees the same
 - Can’t have policies that have a different impact based on race or ethnicity
 - EEOC has issued guidance to help employers navigate impact (business necessity)
 - Individualized assessment
- ❖ Employers may set limits on what they see – may have multiple sets of criteria for different positions

Employers should know...

...the record may not give the full picture

- ❖ Differences in how conduct is charged from state to state
- ❖ You are an “adult” in Georgia at 17 for justice purposes
- ❖ Charges may sound a lot worse than they are
- ❖ Georgia sentences are long
- ❖ “Know your felony”
- ❖ The non-violent/violent distinction is not as easy as it sounds
- ❖ Record doesn’t tell you everything you need to know, review unsatisfactory background reports

What Senate Bill 288 did...

...For People with a Record

- **Recognized their rehabilitation** - Up until January of this year most convictions could not be **“expunged”** in Georgia
- Greatly expanded what **misdemeanor convictions** can be **restricted & sealed**
- Made most **felony convictions** that have been **pardoned** eligible for restriction & sealing

...For Employers

- **Limited what employers see on a background** (they generally can't see a record if it has been restricted & sealed)
- **Provided liability protection for employers** by limiting the admissibility of evidence

How people with a record can limit what employers see

Non-convictions

- ❖ Restrict & seal

First offender cases

- ❖ Discharge & seal (if successful completion)

Misdemeanor convictions

- ❖ Resentence, discharge & seal under Retroactive First Offender
- ❖ Restrict & seal (lifetime limit of 2)
- ❖ Vacate & restrict or restrict & seal under Survivors First Act

Felony convictions

- ❖ Resentence, discharge & seal under Retroactive First Offender
- ❖ Restrict & seal pardoned convictions
- ❖ Vacate & restrict or restrict & seal under Survivors First Act

Pending cases

- ❖ Restrict & seal dead dockets

Employers should know...

...many records will still appear

- ❖ Georgia's law is still limited
- ❖ Long sentences mean delayed eligibility
- ❖ The process to clean up your records is difficult – jurisdictional differences
- ❖ Nothing goes away automatically in Georgia
- ❖ Sealed records may show up
- ❖ Some records are just not eligible

Employers should know...

...Ban the Box may not be enough

Many companies have “Banned the Box”

Review your job listings and your applications

Get on “the list”

Connect with non-profit reentry organizations

Consider people on probation and parole and make accommodations for them

Don’t let pending charges be an absolute barrier

Make sure your process is intentional & consistent with your values

When an unsatisfactory background check comes back let it be the beginning of the conversation, not the end

EMPLOYER PERSPECTIVE

on second chance hiring

**Meg Taylor, Vice-President, Chief Litigation & Employment Counsel,
Delta Air Lines, Inc.**

LIABILITY PROTECTIONS FOR EMPLOYERS

Wade Askew, Supervising Attorney, Georgia Justice Project

SECOND CHANCE HIRING

Common Employer Concerns

- **Liability**
- **Reputation**
- **Bottom Line for the Business**

Liability: Negligent Hiring

What is Negligent Hiring?

- **Employers must exercise ordinary care when hiring and retaining employees**

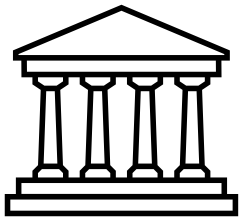


- **A negligent hiring lawsuit can happen when:**
 1. An employer does not exercise ordinary care in hiring/retention
 2. The employee causes a foreseeable type of damage to someone else in the course of their employment
- **Key question: Is it foreseeable that a certain employee would cause the certain type of harm suffered by a plaintiff?**
 - **Example: employee with a prior conviction for shoplifting physically attacks a customer. Physical attack not reasonably foreseeable based on the employee's history, so very unlikely to be negligent hiring.**

Negligent Hiring: Employer Protections

Senate Bill 288

- In a civil lawsuit, the criminal history of an employee or former employee cannot be admitted as evidence if any of the following apply:



1. The conviction was either restricted or sealed (“expunged”) or pardoned
 2. The record was an arrest that did not lead to a conviction
 3. Non-expunged and non-pardoned convictions: The nature of the criminal history is not relevant to the facts that led to the lawsuit (see next slide for guidance)
- Bottom line: neither 1) an expunged/pardoned conviction, 2) an arrest that didn’t lead to conviction, nor 3) irrelevant criminal history, can be a factor in a negligent hiring lawsuit

What is a Relevant Conviction?

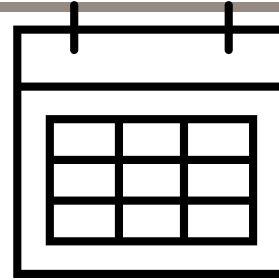
EEOC Guidance (2012)



- **I found a conviction that has not been expunged or pardoned. Is it relevant?**
 - **EEOC Guidance says to consider:**
 1. Nature and gravity of the crime
 2. Time that has passed since the offense or completion of the sentence (see next slide)
 3. Relationship of the offense to the worker's ability to perform the job
- **Other EEOC recommendations for hiring:**
 - **Do not ask about criminal record on initial application**
 - Industry examples: Butterball, Target, Walmart, Home Depot, Koch Industries
 - **Only consider convictions and pending prosecutions**
 - Remember: GA law protects against expunged/pardoned convictions

Time Passed, Relevance, and Risk

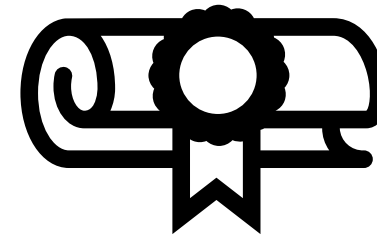
Time Since the Offense



- **Most recidivism happens within 3 years of an arrest. Almost all recidivism happens within 5 years.**
- **At a certain point, people with records are no more likely than the general population to be arrested again.**
 - **Multiple factors relevant, such as age at time of offense and type of offense.**
 1. Example: 18-year-old arrested for burglary is no more likely to be arrested again than the general population if 3.8 years pass without new arrest
- **Individuals with jobs are twice as likely to avoid arrest than their unemployed counterparts.**

Negligent Hiring: Employer Protections

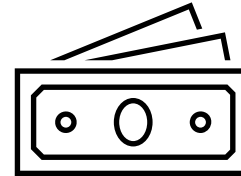
Program and Treatment Completion Certificates



- **What are they?**
 - Certificates issued by DCS or DOC that demonstrate program participation and efforts toward rehabilitation.
- **Effect on Negligent Hiring**
 - Creates a presumption of due care in hiring, retaining, licensing, admitting to school/program, etc.
 - This means it is presumed that the employer was NOT negligent with respect to conviction(s) related to a Certificate.

Reputation and Bottom Line

Public Perception and Benefit



- **Many corporations now promote the fact they are second chance employers**
- **Example: a group of major employers and national organizations launched the Second Chance Business Coalition (SCBC) in April 2021**
 - **See the list at secondchancebusinesscoalition.org**
- **Benefits: better retention, less turnover, evidence that people with records are more motivated to do better in their job**

PARTNERSHIPS & PRACTICAL CONSIDERATIONS

**Zandria Redding, Social Worker & Reentry Employment Specialist,
Georgia Justice Project**

GJP and Employment

A bridge between clients and employment

- **New Horizon Landscaping**
- **GJP Work Matters Program**
- **Connecting employers to second chance hires**
- **Georgia Department of Corrections**
 - **Metro Reentry Facility**
 - **Transitional Centers**



What's Working?

Recruiting and retaining new hires

- Supportive Employment Practices
- Offering employment opportunities with career paths that offer economic mobility
- Understanding skill gaps for those reentering the workforce
- Partnering with nonprofits and specialized staffing agencies



Who's Doing The Work?

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First Step Staffing



Center for Employment Opportunities



Worksource Georgia



Incentives and Protections

Federal Bonding Program

- The Federal Bonding program provides limited liability coverage to employers when they hire job applications who cannot be bonded.
- The program insures employers against theft, forgery, or embezzlement by the bonded employee for up to \$5,000 for a six-month period.

Work Opportunity Tax Credit

- The Work Opportunity Tax Credit (WOTC) is a federal tax credit available to employers for hiring individuals from certain targeted groups that have consistently faced barriers to employment
- This tax credit can range from \$1,200 to \$9,600 per qualified employee

Q & A with a Second Chance Employer

Lloyd Martin, VP of Manufacturing, CKS Packaging

Two Policy Victories in 2020-21 with Bipartisan & Business Community Support

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SB 288: Expungement

- Previously, convictions stayed on a person's record for life

IMPACT:

- 1.5 million Georgians newly eligible
- Misdemeanors & pardoned felony convictions
- Liability protections for employers

CORPORATE SUPPORT:

Coca-Cola, Home Depot, McKenney's, Metro Atlanta Chamber, Newell Brands, UPS, Verizon

SB 105: Early Termination of Probation

- Georgia probation sentences 2x longer than national average
- 40% of GA probation sentences < 10 yrs

IMPACT:

- 48,000 people qualify immediately
- Incentive and hope for people serving a long probation sentence
- Saves Georgia \$34 million per year

GJP 2022 POLICY PRIORITIES:

Getting Georgians Back to Work

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Opening Access to Occupational Licensing



- **Any** criminal record can be used to deny someone a license
- **50** licensing boards with different standards

Reducing Driver's License Suspensions



- **100,000** suspended licenses each year for FTA
- **80%** of Georgians drive to work
- **~50%** of people with a suspended driver's license lose their job

Expanding Access to Expungement



- **4.3** million Georgians have a criminal history
- Felonies biggest barrier to employment

STAYING CONNECTED WITH GJP

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We can help you:

Employer Resource List
Information & Training
Connections



Support GJP:

Volunteer
Donate financially



Help GJP make Policy Change:

Driver's License Suspensions
Occupational Licensing
Expungement



Reach Out:

Zandria@GJP.org
Brenda@GJP.org
Wade@GJP.org
404-827-0027




GJP.org/advocacy/employers/

A white rectangular sign with a gold border, mounted on a wall. The sign features the text "GEORGIA JUSTICE PROJECT" in a serif font, with horizontal lines separating the words. The background of the image shows a blurred interior space with shelves containing various objects.

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THANK YOU.

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