



***Unlocking Employment Opportunity
for Previously Incarcerated Persons in
the District of Columbia***



Council for Court Excellence

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Photos used in this report are of real DC residents, with their families and in work settings, taken during or after their incarceration. They are courtesy of the Alliance of Concerned Men, Gabriela Bulisova, Gelberg Signs, and the AYT Institute. On the cover: upper left, Gelberg Signs; upper right, Gabriela Bulisova; lower left and right, Alliance of Concerned Men.



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Council for Court Excellence

About the Council for Court Excellence

Formed in Washington, DC in January 1982, the Council for Court Excellence (“CCE” or “the Council”) is a nonprofit, nonpartisan civic organization. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area and in the nation. The Council accomplishes this goal by: identifying and promoting justice system reform, improving public access to justice, and increasing public understanding and support of our justice system.

The Council is governed by a volunteer Board of Directors composed of members of the legal, business, civic, and judicial communities. The Council is unique in bringing together all of those communities in common purpose to address court reform and access to justice needs. The Board accomplishes the work of CCE through direct participation in Council committees. The Council employs a small staff to assist the Board in meeting the objectives of the organization. Financial support comes from the members of the Board, businesses, law firms, individuals, foundations, and occasionally government.

The Council for Court Excellence has built a substantial record of success in the major justice system reform initiatives it has undertaken. The Council has been the moving force behind adoption of the one day/one trial jury system in the DC Superior Court, modernization of trial jury and grand jury systems, reform of the District of Columbia probate laws and procedures, reform of the DC administrative adjudication system, improvement in handling of child neglect and abuse cases, expansion of crime victim rights, proposing methods to speed resolution of criminal cases, and proposing methods to speed resolution of civil cases by the DC trial and appellate courts. To improve the public’s access to justice and increase their understanding of our justice system, CCE over the years has published and distributed over 350,000 copies of plain-language booklets and other materials explaining a wide variety of court systems.

Since 2005, CCE has been addressing policy issues related to the collateral consequences for persons with criminal records. In 2006, after a year of study, CCE proposed the DC Criminal Record Sealing Act, adopted by the DC Council and now District law. This was the first

comprehensive proposal in the District to address sealing records of arrest without a conviction and for certain low-level misdemeanor convictions. In 2008, CCE held a widely attended public forum about the effects of the “Revitalization Act,” which mandated major changes in the DC criminal justice system.¹ The Council’s DC Prisoner Reentry Initiative, and this report, are direct outcomes of the 2008 program.



CCE’s 2008 Revitalization Act panel. L to r: Avis Buchanan, Public Defender Service; then Covington & Burling partner Eric Holder; Philip Fornaci, DC Prisoners’ Project; Isaac Fulwood, US Parole Commission; Harley Lappin, then Director Federal Bureau of Prisons; Paul Quander, then Director Court Services and Offender Supervision Agency; Judge Frederic Weisberg, DC Superior Court.

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Executive Summary

In the District of Columbia today a criminal record is an enormous impediment to employment. Nearly half of previously incarcerated persons in the city may be jobless with little prospect of finding consistent work. Without a job, the path toward rehabilitation and economic security is far more challenging, increasing the likelihood of repeat offenses that keep individuals trapped in a revolving cycle of incarceration.

This problem has implications for our city as a whole. At a time when the unemployment rate in the District's lowest-income wards has soared as high as 25%, joblessness among the previously incarcerated is exacerbating overall employment problems and threatening the long-term economic health and security of our neighborhoods. A steady flow of individuals into our communities who are short on skills and face barriers to getting a job is likely to create unemployment challenges for years to come. The possibility of criminal behavior related to lack of opportunity could present ongoing challenges in preserving public safety.

An estimated 60,000 people in the District have criminal records and about 8,000 of them return to the city each year after serving sentences in prison or jail. After just three years, some 4,000 will be back behind bars. While the lack of a job is only one factor leading to recidivism, research shows that when the previously incarcerated have stable employment they are less likely to return to crime and public safety improves.

The Council for Court Excellence (CCE) surveyed 550 previously incarcerated persons in the District of Columbia to assess the employment challenges facing them upon leaving prison or jail. Among the key findings:

- Forty-six percent of those surveyed said they were unemployed.
- Seventy-seven percent said they received no assistance from “anyone at the facility” in helping them look for a job.
- Eighty percent of respondents said they were asked “all the time” about their criminal records when looking for a job.
- Just 50 percent of those who received an education or training certificate while they were incarcerated said it helped them find work after their release.
- There was little or no difference in employment rates for those who earned a GED or job certificate before or after prison and those who did not earn a GED or job certificate.

CCE also conducted surveys and in-depth interviews with a diverse group of nearly 20 District employers ranging in size from 15 to nearly 700 employees, and also with representatives of DC business associations. Their responses indicate that a variety of obstacles stand in the way of hiring previously incarcerated persons. Most (80%) said they do not have a policy in place for hiring previously incarcerated persons and instead rely on application forms that ask about criminal history. Although one-third of respondent employers said they had hired a previously incarcerated person in the past or would do so if the opportunity arose, more than 50% said factors such as legal liability protection, certificates of good standing or rehabilitation and industry-specific skill training would “significantly increase or influence hiring.”

There is no single legislative fix for the employment challenges facing those with a criminal record. However, a series of “5 percent solutions” taken together will increase opportunities in the job market for thousands of previously incarcerated persons and alleviate many of the risks employers face when hiring them. The District of Columbia should take action on the following recommendations as part of an overall policy to improve employment prospects for the previously incarcerated:

- **The Council of the District of Columbia should enact liability protection for employers that hire previously incarcerated persons.** This would help minimize the risk of negligent hiring lawsuits when businesses employ those with a criminal record.
- **The DC criminal justice system agencies should consider establishing a “certificate of good standing” program to promote licensing and hiring of previously incarcerated persons.** Such a certificate, indicating that the individual has completed his or her sentence and is in good standing with conditions of release, would increase employer comfort level when considering whether to hire a previously incarcerated person.
- **The DC Government Justice Grants Administration should annually review the performance of DC Government contracts and grants related to reentry and develop a compendium of best practices to better direct future reentry funding.** There are currently no such published evaluations of DC-funded reentry programs.
- **The Federal Bureau of Prisons and, if necessary, Court Services and Offender Supervision Agency and the US Parole Commission, should regularly review and revise the employment programming available to District of Columbia residents based on current employment trends and job forecasts.** At present there are too few job training opportunities in prison for in-demand jobs in the District, including office clerks, customer service representatives and food preparers. Computer technicians are also in high-demand but these jobs typically require education beyond high school. Such training should be more readily available to those who are in prison or recently released.
- **The DC Superior Court should not establish a reentry court.** This additional restorative justice solution would not make sense given that the Superior Court of the District of Columbia already has several specialized courts that provide social services to low-level offenders in an effort to reduce recidivism. The most recent national studies suggest that reentry courts have had little to no impact on recidivism, while demonstrating a **negative** impact on the number of parolees returning to prison.

CCE urges immediate action on these recommendations. Most require minimal upfront financial investment but will pay significant dividends for the District and for previously incarcerated persons trying to rebuild their lives. Our neighborhoods will be safer if those who have served time are in stable jobs. The city will benefit economically as well: The unemployment rate will drop and growing numbers of previously incarcerated persons will become contributing, tax-paying members of our community.

Introduction

“Reentry is the process by which persons who are convicted of crimes in our judicial system return to the community.”

**- James Berry
DC Public Defender
Service**

This report has two purposes: (1) to educate the DC community about the effects of a criminal record on obtaining employment, and (2) to inform DC policy makers and business leaders about specific policy recommendations intended to promote better employment outcomes for previously incarcerated persons while reflecting employer and public safety considerations. This report does not attempt to evaluate the myriad existing DC social service programs that assist previously incarcerated persons, nor does it evaluate similar programs in other jurisdictions. Rather, it is an attempt to balance the sometimes divergent interests of previously incarcerated persons, employers, and law enforcement and corrections agencies into specific actions that will promote employment opportunities for previously incarcerated persons. Everyone in the community benefits when previously incarcerated persons are successful in reentering civil society.

The report is based on the consensus of the diverse project committee, but the research findings and recommendations do not necessarily reflect the official positions of the agencies or organizations represented on the committee. The project committee met over the past two years to guide the research contained in this report and formulate recommendations. Two subcommittees separately developed the surveys of previously incarcerated persons and DC employers. Input was sought from DC non-profit service providers, including Alliance of Concerned Men, Catholic Charities of the Archdiocese of Washington, DC Central Kitchen, DC Employment Justice Center, Our Place DC, Project Empowerment/DC Department of Employment Services, and STRIVE DC, Inc.

There are an estimated 60,000 persons with a criminal record living in the District,² about 10% of the current population. This number is not decreasing – about 8,000 people a year return to the District after serving a sentence in prison or jail.³ Statistics suggest that, within three years, about 4,000 of them will be reincarcerated.⁴ Taking into account the families of this population, reentry touches the lives of many people⁵ but is a topic that has only recently started to receive popular attention.

The national figures about reentry are staggering. In the United States, about 2.3 million people are confined in federal, state, or county prisons or jails.⁶ The Pew Center on the States reports that “our nation has just five percent of the world’s population, but confines over 23 percent of the world’s prisoners.”⁷ More than 5.1 million people are reported to be under some form of correctional control.⁸ Recent estimates are that between 12.3 and 13.8 million people have a felony conviction.⁹ Even more startling is the estimated 92.3 million people in the United States who have a state criminal record, which includes arrests that do not result in a conviction.¹⁰



Photo: Alliance of Concerned Men

Persons with an arrest or conviction record encounter significant barriers to reentering society that persist long after their criminal sentence is completed. Previously incarcerated persons are affected disproportionately by unemployment, lack of available housing, substance abuse, and physical and mental health problems, among many others. Incarceration disproportionately affects the poor and minority populations, yet a criminal record restricts one's eligibility for public assistance and food stamps in some jurisdictions. Taken together, these lingering penalties are called *collateral consequences*.

Research shows that securing meaningful employment can have positive effects on reducing recidivism and, as a corollary, enhancing public safety. Employment is perceived by previously incarcerated persons to be the major step to getting “back on track,” supporting one's family, and becoming a productive and contributing member of society. However, a focus on employment does not discount the importance of having stable housing, addressing and better controlling addictions, or acquiring medication to relieve physical or mental health symptoms. Nor does a focus on employment discount the importance of a correctional system that mitigates the risk to public safety.

Meaningful employment of previously incarcerated persons can alleviate the public safety risk posed by their recidivism. Several studies show that stable employment lessens the chances of



Photo: Gabriela Bulisova

reoffending following release from prison.¹¹ Research shows that higher wages lessen even further the likelihood of re-offense.¹² Other studies suggest that, at minimum, employment increases the amount of time that previously incarcerated persons spend crime-free before returning to prison.¹³ One study shows that reducing the unemployment period of previously incarcerated persons by three months would decrease recidivism rates by five percent.¹⁴

“If incarceration were randomly distributed, over half of the people in the country would have a close relative who had been under supervision of criminal justice at one point in their lives.”

**- Richard Freeman
Herbert Ascherman
Chair in Economics,
Harvard University**

A Word About Terminology

Recently in the District, there has been an effort in the community to refer to previously incarcerated persons as “returning citizens,” connoting the return of a former offender from jail or prison back to his or her community. The DC Government is starting to endorse the phrase “returning citizens.” Recently the DC Council has passed legislation that incorporates the phrase “returning citizen” (see page 27 of this report); another bill (B19-0138) proposes to re-name the DC Office on Ex-Offender Affairs as the Office on Returning Citizens Affairs. There is good reason to support a change in terminology to help minimize the stigma often associated with a criminal record. However, because the term “returning citizens” is somewhat ambiguous (potentially raising immigration concerns) and because the main focus of this report is those who served a prison sentence, this report refers to those with a prior criminal history as “previously incarcerated persons.” This phrase is not intended to exclude those with only an arrest record or those who served a jail or prison sentence but were not incarcerated. This report recognizes the terminology in this area is in flux.

How the Previously Incarcerated Fare in Today's Job Market

“I need a stable place to rest, a home. You can excel at finding work if you don’t have to worry about where you’re going to sleep at night.”

“I took every class the facility had to offer and I still don’t have a permanent job.”

“You don’t get an even chance and if you do, minimum wage work cannot pay your rent, so you end up in a shelter.”

“All I need is a chance to prove myself.”



Photo: Alliance of Concerned Men

These are comments from District of Columbia residents about the challenges of securing employment after being released from a period of incarceration. Those challenges are significant.

The Council for Court Excellence undertook an in-depth survey and analysis of more than 550 previously incarcerated persons in DC¹⁵ and found a devastatingly high unemployment rate of 46%. (A 2008 estimate by *The Washington Post* put the rate at approximately 50%.¹⁶)

It is very difficult to get steady employment with a criminal record, in good economic times or bad. About 90% of all survey respondents were on government supervision through probation, parole, or supervised release, which demonstrates that government agencies experience difficulties in facilitating employment for previously incarcerated persons, even though employment is typically a mandatory condition of their release.

**\$15,000 to \$32,000:
The yearly salary of
60% of the previously
incarcerated in DC
who are employed.**

The unemployment rate among survey respondents was about the same after incarceration as it had been prior to incarceration, even among those who used their time in prison productively to increase their skills. Over 30% indicated that they received a GED or higher in prison and 35% indicated receiving a job training certificate of some kind. CCE’s sample showed little or no difference in the unemployment rate for those who had earned a GED or job certificate in or after prison compared with those who had not. The tables below compare the employment rates for those who did or

did not: receive employment assistance from their prison facility (Table 1), participate in training programs while incarcerated (Table 2), and participate in training programs after incarceration (Table 3).

Table 1: Employment rate of previously incarcerated persons who received in-prison employment assistance

Employment assistance while incarcerated?	Number employed	Number unemployed	Employment rate
Yes	67	45	60%
No	218	168	56%

Table 2: Employment rate of previously incarcerated persons who participated in training programs while incarcerated

Training program while incarcerated?	Number employed	Number unemployed	Employment rate
Yes	197	166	54%
No	96	74	56%

Table 3: Employment rate of previously incarcerated persons who participated in training programs after incarceration

Training program after incarceration?	Number employed	Number unemployed	Employment rate
Yes	123	109	53%
No	159	128	55%

Consistent with the unemployment rate for the previously incarcerated person population, only about 50% of survey respondents who received an education or training certificate indicated that it was helpful after their release from prison. What is available in terms of educational, work, and vocational programming is likely to depend on the institution(s) where they were previously housed. For example, about 15% of survey respondents indicated the need for computer training or computer access while in prison or after their release, but only 10% indicated that they took a class or received a certificate in computer technology while in prison or after release. What is clear from the surveys is that many respondents, including those who are employed and those who are not, are eager for more opportunities to be offered in prison that will lead them to employment opportunities post-release.

*Photo: AYT Institute*

Surprisingly, nearly 80% of the respondents said they received no assistance from “anyone at the facility” in helping them look for a job. Another 80% said they were asked “all the time” about their criminal backgrounds by potential employers.

The survey produced some positive news. A small percentage of respondents reported that they received every opportunity offered during their term of incarceration and, through hard work, have been gainfully employed. Of those who found steady employment, 75% reported finding a job within seven months of their release and just over 60% reported that there was opportunity for them to move up in their company. One-third of respondents indicated that employment assistance was available to them following their release.

Given that the employment rate of respondents is 54%, it is noteworthy that many previously incarcerated persons were able to secure employment without apparent assistance. Employment ranked fifth in the CCE survey among types of assistance available to previously incarcerated persons after their release. The list in order is: Medical Care, Public Benefits (food stamps, SSI, etc.), Family Support, Obtaining Identification, and Employment.



Photo: Alliance of Concerned Men

The six most frequent types of jobs held by DC previously incarcerated persons, shown in Table 4 below, are Vehicle Operator/Delivery; Manager/Supervisor; Food Preparation; Janitor/Cleaner; Laborer/Material Mover; and Receptionist/Information Clerk. The latter four job types appear on a 2010 ranking by the DC Department of Employment Services of the “Top 30 High Demand

Occupations in D.C.”¹⁷ These six job types comprise 50% of the occupations held by employed previously incarcerated respondents. With the exception of the Manager/Supervisor category, the other categories appear to have low skill and low educational requirements. Perhaps surprisingly, 35% of persons in the Manager/Supervisor category reported convictions involving crimes of violence or breaches of trust, a rate consistent with the entire respondent population.



Photo: AYT Institute

Table 4: Most commonly reported jobs held by respondents to the CCE previously incarcerated person survey

Employment by Job Title, Summer 2010 ¹⁸	Number (%)
Motor vehicle operator/Bus Driver/Transport/Delivery	37 (14%)
Manager/Supervisor/Foreman	28 (10%)
Food Preparation Workers	23 (9%)
Janitors & Cleaners	22 (8%)
Laborers & Material Movers	14 (5%)
Receptionists & Information Clerks	12 (5%)

The profiles of two previously incarcerated persons follow.

James L.

“I was convicted of armed robbery and sentenced to serve 3 to 9 years. I was released in 2003 but returned to prison after a positive drug test. When released in 2007 I made up my mind to change and participated in a spiritual transformation program. I got a job with Starbuck’s because at the time they didn’t ask about whether I had a criminal background. Despite their offer to promote me to manager, the work became stale and they offered too few hours to earn a meaningful salary. I volunteered with a group that assists in the transition for previously incarcerated persons called The Reentry Network and then was offered an opportunity to work with a cleaning company. The owner is training me to start my own business and **I hope to provide the same opportunity for previously incarcerated persons that I had.**”

Louis S.

“In 2010, I was paroled from prison after serving 25 years of incarceration. During my time in prison, after much reflection, I saw the need to offer hope to the many hopeless in prison. Not long afterwards, I co-founded an in-prison mentoring group called Men of Principles, a faith-based mental health mentoring initiative that promotes good character and conduct, and conversation. After getting out and returning to DC, I applied for lots of jobs and volunteered my time and expertise with local churches and non-profits. I now have found my calling as a full-time peer advocate for previously incarcerated persons and to advocate for those needing a hand-up and not a hand-out. **Previously incarcerated persons can live productive lives when given the support and the services to do so.**

Employers' Perspectives on Hiring the Previously Incarcerated

The Council for Court Excellence also surveyed DC employers about their experiences hiring previously incarcerated persons. A small but diverse group of nearly 20 District employers responded to the survey and CCE supplemented their responses with in-depth interviews of employers.¹⁹ The size of these businesses ranged from 15 to almost 700 employees in a DC-based office. The median number of employees was 250.

Almost 80% of respondent employers did not have a policy or practice regarding hiring previously incarcerated persons, but instead relied on application forms that asked about criminal history.

One-third of respondent employers had hired a previously incarcerated person or would do so if given the opportunity. However, more than 50% indicated several factors that would “significantly increase or influence hiring,” including legal liability protection, certificates of rehabilitation, and industry-specific skill training. About half of the employers surveyed noted that the positions in their companies typically require a college degree or higher – an additional hurdle for previously incarcerated persons seeking employment.

The DC business community appears to be highly concerned about the risks of liability and claims of negligent hiring when considering hiring previously incarcerated persons. While CCE

was able to find only five examples of negligent hiring lawsuits filed against DC employers over the past several decades, the lawsuits’ impact on a private employers’ risk management calculus is likely significant.

The experiences of two employers with hiring or training previously incarcerated persons are provided on the following page.



CCE reentry panel discussion. L to r: Rodney Mitchell; Margaret Singleton, DC Chamber of Commerce; Charles Thornton, DC Office on Ex-Offender Affairs; Cedric Hendricks, Court Services and Offender Supervision Agency.



Luc Brami, Owner Gelberg Signs

“I registered to become a Certified Business Enterprise in order to be eligible to receive sub-contracts from publicly funded projects. In exchange, we have committed to hiring DC residents. In my case, I established local workforce training programs which included former offenders. **Prior to becoming a CBE, less than 1% of my business came from the District. Now it’s between 15-20%.** It’s been a win-win experience for my business and the District. We get people who are screened; we also save on job advertising costs and get income supplements. One of our trainees eventually became a department manager in my company. In return, District residents get concrete job experience and meaningful opportunities.”

Anonymous Employer

“**I hired a receptionist after learning he had been convicted** of breaking and entering. He told me himself. I decided to hire after talking to him and learning about his skills, interests and background. He had been an administrative assistant for over 10 years at a ‘Big 4’ accounting firm, which suggested he had it together, until he hooked up with a bad group of guys and starting doing drugs. **He was the best receptionist I had in 10 years.** Four weeks later he told me that he might be arrested for failing to take a drug test. He was, and I vouched for him at the revocation hearing, saying that I’d be willing to give him a job. He was revoked and had to serve his remaining 14 months in prison.”

A Need for Action

The CCE survey found that a significant segment of respondents were eager to go to work and turn their lives around. Many of them have sought and achieved additional education and work training as part of their prison sentence and release conditions. Some DC private sector employers appear to be interested in hiring previously incarcerated persons, but they are concerned about the risks that might be associated with hiring a person with a criminal record.

There appears to be no one single legislative or policy solution that will “solve” unemployment challenges for previously incarcerated persons. Rather, there is a series of “5% solutions” that, taken together, could have a significant positive impact on employment prospects of previously incarcerated persons in the District of Columbia and a related positive impact on public safety. These solutions are spelled out below. No judicial member of the Initiative or the Council for Court Excellence participated in the discussion or formulation of the legislative recommendations.

1. Finding: **Private sector employers in the District of Columbia willing to hire a previously incarcerated person would be more likely to do so if they could minimize the risks of negligent hiring lawsuits.**

Recommendation: **The District of Columbia Council should enact liability protection for employers that hire previously incarcerated persons.**

Rationale: Legal liability protection legislation excludes certain criminal record evidence from trial when a civil negligent hiring or related claim has been filed against an employer for a criminal act committed by an employee in the course of his or her duties. Such laws are designed to encourage employers who might be willing to hire a previously incarcerated person but are concerned about the potential liability risks that could be associated with hiring a person with a criminal record.

There was consensus among the Council for Court Excellence’s DC Prisoner Reentry Initiative that protections against negligent hiring and related claims for private employers would increase the likelihood of District employers hiring previously incarcerated persons. Such liability protection would address the concerns that are sometimes expressed by private employers about the potential liability risks associated with hiring previously incarcerated persons.

CCE recommends that DC should adopt liability protection legislation that draws upon elements of similar legislation adopted by New York (NY Exec. Law § 296(15) (McKinney 2009)) and by Minnesota (Minn. Stat. Ann. § 181.981 (2009)), drawing from each to construct a statute that will both offer protection to

employers and encourage employers to hire previously incarcerated persons.

A review of the New York and Minnesota statutes, provided in Appendix 2, suggests that liability protection legislation has two components. First, it specifies what evidence is inadmissible and in what types of cases employers can exclude evidence. Second, the legislation requires employers to comply with a set of conditions—steps employers must take in hiring, retaining, and supervising employees—in order for such evidence to be excluded.

The Minnesota statute provides the most security from liability for employers by excluding the entire criminal history record, including arrests that did not result in conviction, rather than just prior incarceration or conviction history. By contrast, under the New York law, an arrest record can be introduced as evidence against the employer and can be used to demonstrate that the employer “should have known” the employee was dangerous or incompetent and failed to exercise reasonable care in hiring, supervising, and retaining the employee. The Minnesota language is thus preferable to the New York provision, and the District should adopt a statute that similarly provides for the exclusion of an employee’s entire criminal record history in a civil negligent hiring proceeding.

With respect to the prerequisites for exclusion of evidence, the Council for Court Excellence recommends a hybrid approach by blending the multi-factor assessment in the New York statute with the broad scope of the Minnesota statute which applies to all criminal records. The legislative goal should be to minimize the burden placed on employers. Although the Minnesota law appears to ask less of employers, in practice employers may find that the New York model offers more guidance and clarity in evaluating potential employees. The New York multi-factor assessment model was recently incorporated into legislation passed by the DC Council that prohibits the DC Government from asking about a person’s criminal history for certain jobs on an application form – the Returning Citizens Public Employment Inclusion Act of 2010 (DC Code § 1-620.41-44 (2011)).

The Council for Court Excellence proposal follows:

Information regarding a criminal history record of an employee or former employee shall not be introduced as evidence in a civil action against a private employer or its employees or agents that is based on the conduct of the employee or former employee if the employer has made a reasonable, good faith determination that the below factors favor the hiring or retention of that applicant or employee:

- (1) The specific duties and responsibilities of the position sought or held;
- (2) The bearing, if any, that an applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities;
- (3) The time that has elapsed since the occurrence of the criminal offense;
- (4) The age of the person at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense;
- (6) Any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and
- (7) The public policy that it is generally beneficial for ex-offenders to obtain employment.

The determination whether the employer has satisfied these criteria and is thus entitled to enjoy the benefit of the evidentiary exclusion would presumably be made by the court on the basis of a pretrial motion *in limine* or similar procedure.

- 2. Finding:** Private employers in the District of Columbia who are willing to hire a previously incarcerated person would be more likely to do so if they receive formal written verification that a previously incarcerated person has completed his or her sentence or is in good standing with the terms of release.
- Recommendation:** The stakeholder agencies of the DC criminal justice system should consider establishing a “certificate of good standing” program to promote licensing and hiring of previously incarcerated persons.
- Rationale:** A “certificate of good standing,” also known as a “certificate of relief from disabilities” (in New York and Illinois) or a “certificate of rehabilitation,” is an official recognition that a criminal offender has demonstrated reliability and good character over time and deserves to regain certain legal rights and status lost as a result of a conviction.²⁰ There was conceptual support within the Initiative for the notion of a “certificate of good standing” program in the District of Columbia. However, the Initiative found that there was insufficient interest on the part of the relevant criminal justice agencies to implement such a program, under the rationale that the implementation costs were likely to exceed any benefit.

The Initiative urges a longer-term perspective. Public safety for the community and the workloads of agencies of the DC criminal justice system are profoundly affected by current rates of recidivism. Employment is strongly correlated with reducing or delaying recidivism. The DC criminal justice agencies may be able to reduce recidivism and thus their workloads over time by further developing the certificate of good standing concept based on the experiences of New York and Illinois. CCE's survey of private employers provides some support for this notion, as private employers who were inclined to hire a previously incarcerated person would be more likely to do so if that individual came to an interview with a certificate issued by a court, parole commission, or supervision agency.

Therefore, we recommend that the details of such a program are best to be determined by an inter-agency group that minimally includes the DC Superior Court, the Court Services and Offender Services Agency, the US Parole Commission, the DC Public Defender Service, the US Attorney's Office for DC, and the DC Office on Returning Citizens Affairs. We also recommend that the group, should one be formed, include a discussion about the most appropriate terminology to describe the program. Among the Initiative, there was discussion about the terms "certificate of rehabilitation" and "certificate of good standing." In the minds of some, the aim of corrections should be "rehabilitation," and all the positive meanings that term connotes, while others preferred "good standing" because it represented a concrete outcome that a government agency could endorse, rather than an abstract concept.

Below is CCE's analysis of the major policy issues involved in a certificate of good standing program. It is based on a review of the statutes from New York and Illinois. Because the New York statute is the model emulated by Illinois, CCE suggests that it should serve as a model for the District of Columbia. The New York legislation is provided at Appendix 3 for reference.

At least eight major policy issues arise from analysis of the New York and Illinois statutes:

- a. Scope:** What should be the scope of employment and licensing relief offered to previously incarcerated persons? The New York statute removes any bar to employment imposed by law, including automatic forfeiture of any license, permit, or employment. However, it does not alter employer discretion.
- b. Agency that issues the certificate:** Which agency or agencies should have the authority to issue a certificate of good standing? New York offers two forms of the certificate, one

that can be issued by the courts and one issued by the parole board. The New York court-issued certificate is for “lesser” offenders – misdemeanants, first-time felony offenders, and those whose sentence does not involve a term of service in a correctional institution. The New York Department of Corrections and Community Supervision (“DCCS”) issued certificate is for persons with not more than one felony conviction. Were the District to create a certificate program similar to New York, the DC agencies that likely would have to be involved are the DC Superior Court, the Court Services and Offender Supervision Agency, and the US Parole Commission.

- c. **Eligible offenses:** What types of criminal convictions should be eligible or ineligible for a certificate? In New York, all convictions are eligible, but the applicant must not have been convicted of more than one felony. Illinois limits eligibility to no more than two non-violent felony convictions. Depending on the seriousness of the offense, a waiting period, discussed below, may be appropriate.
- d. **Waiting period:** Should the certificate be issued only after a waiting period to demonstrate good conduct? In New York, the certificate is available immediately when issued by the court. When issued by the DCCS, a certificate can have a minimum waiting period of between 1 to 5 years depending on the seriousness of the offense.²¹ Illinois has a structure similar to that of New York: when issued by the courts, the certificate is available immediately; when issued by the parole board, the waiting period is 1 to 3 years depending on the seriousness of the offense.²²
- e. **Conditions of certificate validity / process for revocation:** The certificate is considered temporary while the applicant is under the jurisdiction of the court or DCCS. The certificate becomes permanent upon conclusion of the court or parole board’s jurisdiction. Revocation is permitted upon notice to the certificate holder with an opportunity to be heard. A revoked certificate is surrendered to the issuing agency; use of a revoked certificate is a misdemeanor offense.

The final three policy issues do not arise from the statute but rather from the New York implementation process:

- f. **Gainful employment as a prerequisite:** The New York DCCS requires applicants to submit three years of income tax returns and a W-2.

- g. Ensuring sufficient resources to process certificate applications:** In New York, it takes 12 to 18 months to process an application.
- h. Insufficient public awareness:** Even in New York, which developed the concept of a certificate several decades ago, too few previously incarcerated persons apply. An interview with a New York State employment lawyer suggests that too few employers are aware of the program.²³

- 3. Finding:** **The Council for Court Excellence finds no published evaluations of DC-funded reentry programs.**

Recommendation: **The DC Government Justice Grants Administration should annually review the performance of DC Government contracts and grants related to reentry and develop a compendium of best practices, so as to better to direct future reentry funding.**

Rationale: After several years of public funding of DC reentry programs through grants and contracts, CCE finds no published evaluations of these DC-funded programs. It is time for the District to better focus its investment of future public funds through an analysis of reentry programs that can demonstrate measurable programmatic success, especially those programs that can reduce recidivism. The District must begin to assess what makes local programs successful and begin to promote their replication.

A corollary to this recommendation is that there should be more coordination between public funders of reentry programs and private foundations that often fund the same types of services. The DC government and private foundations often require program operators to track and report similar performance measures. To maximize the effectiveness of such investments, it is time for there to be greater public – private sector collaboration and information sharing on key measures of performance for successful reentry programs.
- 4. Finding:** **There are too few job training opportunities in prison for in-demand jobs in the District.**

Recommendation: **The Federal Bureau of Prisons and, if necessary, Court Services and Offender Supervision Agency and the US Parole Commission, should regularly review and revise the employment programming available to District of Columbia residents based on current employment trends and job forecasts.**

Rationale: Among the most common concerns from previously incarcerated persons surveyed were that they are not given sufficient help or information about employment. Some of the most frequently available jobs in the DC labor market – office clerks, customer service representatives, and food preparation workers, for example – are available to previously incarcerated persons. However, survey results suggest that there is too little job training available in federal prison to prepare such persons for these popular DC area jobs. Computer technicians are also in high demand but these jobs typically require education beyond high school. Such training should be more readily available to those who are in prison or recently released.

5. Finding: **The Superior Court for the District of Columbia has established several specialized courts that provide social services to certain low-level offenders in an effort to reduce recidivism.**

Recommendation: **The Superior Court of the District of Columbia should not establish a reentry court.**

Rationale: According to the Bureau of Justice Assistance, “Reentry courts are specialized courts for ex-offenders leaving incarceration through probation or parole and use judicial oversight to monitor and guide the reentry process.”²⁴ The overarching goal of these courts is to prevent parolees from re-offending by having them take responsibility for their actions and assisting them in finding jobs.²⁵ In 2000, nine pilot reentry courts were established around the country through technical assistance provided by the Reentry Court Initiative, launched by the Office of Justice Programs.²⁶ The nine pilot courts were in counties or cities in California, Colorado, Delaware, Florida, Iowa, Kentucky, New York, Ohio, and West Virginia.²⁷

The most recent national studies suggest that reentry courts have had little to no impact on recidivism, while demonstrating a **negative** impact on the number of parolees returning to prison.²⁸ Most of those who participated in the reentry court program and were re-incarcerated were sent back because of technical parole violations.²⁹ It is suggested that because of the increased supervision and oversight of parolees, technical violations that generally go unnoticed under traditional parole are more easily spotted and provide grounds for re-incarceration.

This recommendation originated from the concern that the possible availability of funding for reentry court implementation might promote the establishment of a reentry court in the Superior Court of the District of Columbia. In the District, the Court Services and Offender Supervision Agency provides a high degree of case

management that may obviate the need for such increased supervision through the DC Superior Court. Perhaps most important, establishing a reentry court would be duplicative, as the DC Superior Court already operates several specialized courts that provide social services similar to those offered by reentry courts.³⁰ The recommendation did not consider the possibility of establishing a reentry court in the US District Court for DC.

Conclusion

Most of the solutions recommended above require minimal upfront financial investment, but will pay enormous dividends for the District and for previously incarcerated persons trying to rebuild their lives. Our neighborhoods will be safer if those who have served time are in secure jobs that offer hope for a more prosperous future. The city will benefit economically as well: The unemployment rate will drop and growing numbers of previously incarcerated persons will become contributing, tax-paying members of our communities. Higher employment for these individuals will also lead to more stable families, a more skilled workforce and better use of criminal justice resources.

It is unreasonable to expect previously incarcerated persons to navigate today's challenging job market without significant support. Given the city's high unemployment rate, particularly in the lowest-income neighborhoods, targeted job training for those serving time in prison is essential. These efforts must be combined with policies that minimize risk for employers who hire previously incarcerated persons.

By taking immediate action on the recommendations laid out in this report, our city can begin to unlock employment opportunities for thousands of residents and help them win the second chance they deserve.



Photo: Alliance of Concerned Men

Appendix 1: Information for Employers and Former Offenders

The following information summarizes major federal and local legislation affecting the employment of previously incarcerated persons in DC, to promote better understanding by DC employers and previously incarcerated persons themselves. Programs and organizations that provide services to DC's previously incarcerated persons are not listed, which are numerous and whose existence may vary depending on available funding. For more information about these programs and organizations, please contact the DC Office on Ex-Offender Affairs, <http://oeoa.dc.gov/>.

Federal Income Tax Credit

The Work Opportunity Tax Credit (WOTC) is a federal tax credit that is available to private businesses that hire ex-felons. Any person who “has been convicted of a felony under any statute of the United States or any state” and “has a hiring date which is not more than one (1) year after the last date on which he/she was . . . convicted or was released from prison” is eligible for the WOTC program.³¹ An individual who is placed on probation without a finding of guilty may also be considered an ex-felon for the purposes of the WOTC, as long as the state court considers such probation to be a conviction.³² Ex-felons who are taking part in a transitional program, such as work release,³³ are also eligible for the WOTC program, as are individuals convicted of a felony during military service. However, ex-felons who are relatives or dependents of the employer, former employees, or majority owners of the employer are ineligible.³⁴ Employers can receive as much as \$2,400 in tax credit through the WOTC program.³⁵ Ex-felons must work, at a minimum, 120 hours over the course of one year to qualify their employers for the tax credit; the employer cannot receive the WOTC until the ex-felon has completed one year.³⁶ The WOTC program is set to expire December 31, 2011, unless reauthorized.³⁷

Federal Bonding Program

The Federal Bonding Program (FBP) is the second initiative designed to encourage employers to hire previously incarcerated persons. The FBP attempts to tackle one barrier to reentry—namely, that “insurance companies usually will not cover at-risk persons under commercially purchased Fidelity Bonds.”³⁸ These Fidelity Bonds indemnify employers for loss of money or property due to the dishonest acts of employees; because of their criminal history, previously incarcerated persons are perceived by employers to be especially likely to commit dishonest acts such as theft, forgery, larceny, and embezzlement.³⁹ Consequently, previously incarcerated persons are “routinely denied jobs due to being confronted with bonding as a barrier to employment.”⁴⁰ The FBP attempts to reduce this barrier by offering Fidelity Bonds free-of-charge to employers⁴¹ and reaching out to organizations that offer job placement services. Any organization that “provides job placement services to ex-offenders . . . can purchase a bond package on condition that the Fidelity Bonds will be used as a job placement tool without charge to any employer or job applicant.”⁴² Employers can also request bonds directly.

The FBP is available to full and part-time employees, as well as employees hired by temporary agencies.⁴³ Previously incarcerated juveniles are also eligible, as long as they meet the legal minimum age for employment.⁴⁴ To receive a bond for an employee, the employer must officially make a job offer and set a start date for employment.⁴⁵ The Fidelity Bond instantly takes effect on the first day of employment and self-terminates after six months. Previously incarcerated persons who demonstrate “job honesty” (for whom no claims of employee dishonesty have been filed) can become “commercially bondable” after this time—employers can purchase bonds for these persons following the six month period at a regular commercial rate.⁴⁶

UNICOR Bonding Program

The Federal Prison Industries (trade name UNICOR),⁴⁷ runs its own bonding program for federal inmates who have recently completed their residence in a Residential Reentry Center (half-way house).⁴⁸ Previously incarcerated persons are eligible for the bonding program if they worked in UNICOR for at least six months while incarcerated and are applying for employment within one year of release. The Federal Prison Industries also has a work opportunity tax credit that is available to inmates who are hired into a business or trade.⁴⁹ Employers can receive a tax credit of 35% of the first \$6,000 in wages for new hires who they retain for at least 180 days or 400 hours.

Licensing⁵⁰

An applicant for a DC license, certification or registration generally is not eligible if he or she has been convicted of an offense “which bears directly on the fitness of the person to be licensed.” **However, this restriction does not apply to the following occupations:**

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|--------------------------------|------------------------|--|
| 1. Asbestos worker | 5. Electrician | 9. Refrigeration and air conditioning mechanic |
| 2. Barber | 6. Funeral director | 10. Steam engineer |
| 3. Cosmetologist | 7. Operating engineer | |
| 4. Commercial bicycle operator | 8. Plumber / gasfitter | |

The following are occupations for which a criminal conviction can be considered:

- | | | |
|-----------------------------------|----------------------------------|---|
| 1. Architect | 12. Land surveyor | 23. Security alarm agent |
| 2. Attorney | 13. Notary public | 24. Special police officer |
| 3. Boxer / wrestler | 14. Principal (public school) | 25. Taxicab / Limousine operator |
| 4. Certified public accountant | 15. Private correctional officer | 26. Teacher and other instructional personnel (public school) |
| 5. Clinical laboratory director | 16. Professional engineer | 27. Veterinarian |
| 6. Clinical laboratory technician | 17. Property manager | 28. Elevator mechanic |
| 7. Commercial driver | 18. Real estate appraiser | 29. Elevator contractor |
| 8. Insurance agent | 19. Real estate broker | 30. Elevator inspector |
| 9. Insurance broker | 20. Real estate salesperson | |
| 10. Interior designer | 21. Securities agent | |
| 11. Investment advisor | 22. Securities broker – dealer | |

Similar to the above, a license is required to practice the following health care professions, for which a criminal conviction can be considered:

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|-------------------|-----------------------------|-------------------|
| 1. Acupuncture | 3. Chiropractic | 5. Dental hygiene |
| 2. Audiology care | 4. Counseling, professional | 6. Dentistry |

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|---------------------------------|------------------------------------|-------------------------|
| 7. Dietetics | 14. Nursing, registered | 21. Physical therapy |
| 8. Marriage and family therapy | 15. Nutrition | 22. Physician assistant |
| 9. Massage therapy | 16. Occupational therapy | 23. Podiatry |
| 10. Medicine | 17. Occupational therapy assistant | 24. Psychology |
| 11. Naturopathic medicine | 18. Optometry | 25. Respiratory care |
| 12. Nursing home administration | 19. Pharmacy | 26. Social work |
| 13. Nursing, practical | 20. Pharmaceutical detailing | |

Returning Citizen Public Employment Inclusion Amendment Act of 2010⁵¹

This law, which became effective on March 31, 2011, amends the DC Government's Merit Personnel Act to restrict the District of Columbia Government's ability, as a public employer, to ask about the criminal history of job applicants, as well as to fire or discipline someone in a current government position.

The law permits criminal background checks to be conducted only for "covered positions," which are determined by the District of Columbia Government. For covered positions, the DC Government can inquire about an applicant's criminal background history at any time. The vacancy announcement for covered positions will now include the statement "This position requires a criminal background check. Therefore, you may be required to provide information about your criminal history in order to be considered for this position."

For positions that are not "covered positions," the DC Government cannot ask about an applicant's criminal history on the application form. However, the DC Government may ask about an applicant's criminal history after the initial screening of applications. The applicant is allowed to explain his or her criminal history if asked.

For positions that are not "covered positions," an applicant may not be disqualified unless the DC Government considers the factors listed below.

For current DC Government employees who are not in "covered positions," an employee may not have an adverse action taken against him or her unless the DC Government considers the same factors listed below.

1. The specific duties and responsibilities of the position sought or held;
2. The bearing, if any, that an applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities;
3. The time that has elapsed since the occurrence of the criminal offense;
4. The age of the person at the time of the occurrence of the criminal offense;
5. The frequency and seriousness of the criminal offense;
6. Any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and
7. The public policy that it is generally beneficial for ex-offenders to obtain employment.

Appendix 2: Minnesota and New York Employer Liability Protection Legislation

MINNESOTA STATUTES 2010 181.981

181.981 EMPLOYMENT OF INDIVIDUAL WITH CRIMINAL HISTORY; LIMITATION ON ADMISSIBILITY OF EVIDENCE.⁵²

Subdivision 1. **Limitation on admissibility of criminal history.** Information regarding a criminal history record of an employee or former employee may not be introduced as evidence in a civil action against a private employer or its employees or agents that is based on the conduct of the employee or former employee, if:

- (1) the duties of the position of employment did not expose others to a greater degree of risk than that created by the employee or former employee interacting with the public outside of the duties of the position or that might be created by being employed in general;
- (2) before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case or the employee or former employee received a pardon; or
- (3) the record is of an arrest or charge that did not result in a criminal conviction.

Subd. 2. **Relation to other law.** This section does not supersede a statutory requirement to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

History: 2009 c 59 art 5 s 6

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Human Rights Law, NY State Executive Law, Art. 15, § 296 (15)⁵³

There shall be a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any person, in a case alleging that the employer has been negligent in hiring or retaining an applicant or employee, or supervising a hiring manager, if after learning about an applicant or employee's past criminal conviction history, such employer has evaluated the factors set forth in section seven hundred fifty-two of the correction law, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant or employee.

[Section 752 of the Correction Law says that no employment or license may be denied or adversely acted on because of a previous conviction for one or more criminal offenses, or a lack of “good moral character,” when based on a criminal conviction, unless (1) there is a direct relationship between criminal offense(s) and the specific license/employment sought/held; or, (2) issuance/continuation of license or granting/continuing employment would involve unreasonable risk to property or safety/welfare of specific individuals or the general public.]⁵⁴

Appendix 3: New York Relief from Disabilities Legislation

NEW YORK

New York Correction Law Article 23 -- Discretionary Relief From Forfeitures and Disabilities Automatically Imposed By Law⁵⁵

Section 700. Definitions and rules of construction.

701. Certificate of relief from disabilities.

702. Certificates of relief from disabilities issued by courts.

703. Certificates of relief from disabilities issued by the department of corrections and community supervision

703-a. Certificate of good conduct.

703-b. Issuance of certificate of good conduct.

704. Effect of revocation; use of revoked certificate.

705. Forms and filing.

706. Certificate not to be deemed to be a pardon.

§ 700. Definitions and rules of construction

1. As used in this article the following terms have the following meanings

(a) "Eligible offender" shall mean a person who has been convicted of a crime or of an offense, but who has not been convicted more than once of a felony.

(b) "Felony" means a conviction of a felony in this state, or of an offense in any other jurisdiction for which a sentence to a term of imprisonment in excess of one year, or a sentence of death, was authorized.

(c) "Revocable sentence" means a suspended sentence or a sentence upon which execution was suspended pursuant to the penal law in effect prior to September first, nineteen hundred sixty-seven; or a sentence of probation or of conditional discharge imposed pursuant to the penal law in effect after September first, nineteen hundred sixty-seven.

2. For the purposes of this article the following rules of construction shall apply:

(a) Two or more convictions of felonies charged in separate counts of one indictment or information shall be deemed to be one conviction;

(b) Two or more convictions of felonies charged in two or more indictments or informations, filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction; and

(c) A plea or a verdict of guilty upon which sentence or the execution of sentence has been suspended or upon which a sentence of probation, conditional discharge, or unconditional discharge has been imposed shall be deemed to be a conviction.

§ 701. Certificate of relief from disabilities

1. A certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender of all forfeitures, disabilities and bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.

2. Notwithstanding any other provision of law, except subdivision five of section twenty-eight hundred six of the public health law or paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, other than a license issued pursuant to section 400.00 of

the penal law to a person convicted of a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, permit, employment, or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by the certificate; provided, however, that a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law; and provided further, however, that a conviction for a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, shall impose a disability to apply for or receive a license or permit issued pursuant to section 400.00 of the penal law. A certificate of relief from a disability imposed pursuant to subparagraph (v) of paragraph b of subdivision two and paragraphs i and j of subdivision six of section five hundred ten of the vehicle and traffic law may only be issued upon a determination that compelling circumstances warrant such relief.

3. A certificate of relief from disabilities shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege.

§ 702. Certificates of relief from disabilities issued by courts

1. [As added by L.2011, c. 62, pt. C, subpt. B, § 32. See, also, subd. 1 below.] Any court of this state may, in its discretion, issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court, if the court either (a) imposed a revocable sentence or (b) imposed a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of corrections and community supervision. Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures, as well as from disabilities, or (ii) at any time thereafter, in which case it shall apply only to disabilities.

1. [As added by L.2011, c. 488, § 1. See, also, subd. 1 above.] Any court of this state may, in its discretion, issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court, if the court either (a) imposed a revocable sentence or (b) imposed a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of corrections and community supervision. Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures, as well as from disabilities, or (ii) at any time thereafter, in which case it shall apply only to disabilities. Where such court either imposes a revocable sentence or imposes a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of corrections and community supervision, the court, upon application and in accordance with subdivision two of this section, shall initially determine the fitness of an eligible offender for such certificate prior to or at the time sentence is pronounced.

2. Such certificate shall not be issued by the court unless the court is satisfied that:

- (a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred;
- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and
- (c) The relief to be granted by the certificate is consistent with the public interest.

3. Where a certificate of relief from disabilities is not issued at the time sentence is pronounced it shall only be issued thereafter upon verified application to the court. The court may, for the purpose of determining whether such certificate shall be issued, request its probation service to conduct an investigation of the applicant, or if the court has no probation service it may request the probation service of the county court for the county in which the court is located to conduct such investigation. Any probation officer requested to

make an investigation pursuant to this section shall prepare and submit to the court a written report in accordance with such request.

4. Where the court has imposed a revocable sentence and the certificate of relief from disabilities is issued prior to the expiration or termination of the time which the court may revoke such sentence, the certificate shall be deemed to be a temporary certificate until such time as the court's authority to revoke the sentence has expired or is terminated. While temporary, such certificate (a) may be revoked by the court for violation of the conditions of the sentence, and (b) shall be revoked by the court if it revokes the sentence and commits the person to an institution under the jurisdiction of the state department of corrections and community supervision. Any such revocation shall be upon notice and after an opportunity to be heard. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the court's authority to revoke the sentence.

5. Any court that has issued a certificate of relief from disabilities may at any time issue a new certificate to enlarge the relief previously granted, provided, however, that the provisions of subdivisions one through four of this section shall apply to the issuance of any such new certificate.

6. Any written report submitted to the court pursuant to this section is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court. However, upon the court's receipt of such report, the court shall provide a copy of such report, or direct that such report be provided to the applicant's attorney, or the applicant himself, if he or she has no attorney. In its discretion, the court may except from disclosure a part or parts of the report which are not relevant to the granting of a certificate, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. The action of the court excepting information from disclosure shall be subject to appellate review. The court, in its discretion, may hold a conference in open court or in chambers to afford an applicant an opportunity to controvert or to comment upon any portions of the report. The court may also conduct a summary hearing at the conference on any matter relevant to the granting of the application and may take testimony under oath.

§ 703. Certificates of relief from disabilities issued by the department of corrections and community supervision

1. The department of corrections and community supervision shall have the power to issue a certificate of relief from disabilities to:

(a) any eligible offender who has been committed to an institution under the jurisdiction of the state department of corrections and community supervision. Such certificate may be issued by the department at the time the offender is released from such institution under the department's supervision or otherwise or at any time thereafter;

(b) any eligible offender who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.

2. Where the department has issued a certificate of relief from disabilities, the department may at any time issue a new certificate enlarging the relief previously granted.

3. The department shall not issue any certificate of relief from disabilities pursuant to subdivisions one or two, unless the department is satisfied that:

(a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and

(c) The relief to be granted by the certificate is consistent with the public interest.

4. Any certificate of relief from disabilities issued by the department to an eligible offender who at time of the issuance of the certificate is under the department's supervision, shall be deemed to be a temporary certificate

until such time as the eligible offender is discharged from the department's supervision, and, while temporary, such certificate may be revoked by the department for violation of the conditions of community supervision. Revocation shall be upon notice to the releasee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the department's jurisdiction over the individual.

5. In granting or revoking a certificate of relief from disabilities the action of the department shall be deemed a judicial function and shall not be reviewable if done according to law.

6. For the purpose of determining whether such certificate shall be issued, the department may conduct an investigation of the applicant.

7. Presumption based on federal recommendation. Where a certificate of relief from disabilities is sought pursuant to paragraph (b) of subdivision one of this section on a judgment of conviction rendered by a federal district court in this state and the department is in receipt of a written recommendation in favor of the issuance of such certificate from the chief probation officer of the district, the department shall issue the requested certificate, unless it finds that the requirements of paragraphs (a), (b) and (c) of subdivision three of this section have not been satisfied; or that the interests of justice would not be advanced by the issuance of the certificate.

§ 703-a. Certificate of good conduct

1. A certificate of good conduct may be granted as provided in this section to relieve an individual of any disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated disabilities or bars, or may relieve the individual of all disabilities and bars.

2. Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of good conduct shall not be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by the certificate; and provided, however, that a conviction for a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, shall impose a disability to apply for or receive a license or permit issued pursuant to section 400.00 of the penal law.

3. A certificate of good conduct shall not, however, in any way prevent any judicial administrative, licensing or other body, board or authority from considering the conviction specified therein in accordance with the provisions of article twenty-three-a of this chapter.

§ 703-b. Issuance of certificate of good conduct

1. The department of corrections and community supervision shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in this state, when the department is satisfied that:

- (a) The applicant has conducted himself or herself in a manner warranting such issuance for a minimum period in accordance with the provisions of subdivision three of this section;
- (b) The relief to be granted by the certificate is consistent with the rehabilitation of the applicant; and
- (c) The relief to be granted is consistent with the public interest.

2. The department shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in any other jurisdiction, when the department is satisfied that:

- (a) The applicant has demonstrated that there exist specific facts and circumstances, and specific sections of New York state law that have an adverse impact on the applicant and warrant the application for relief to be made in New York; and
- (b) The provisions of paragraphs (a), (b) and (c) of subdivision one of this section have been met.

3. The minimum period of good conduct by the individual referred to in paragraph (a) of subdivision one of this section, shall be as follows: where the most serious crime of which the individual was convicted is a misdemeanor, the minimum period of good conduct shall be one year; where the most serious crime of which the individual was convicted is a class C, D or E felony, the minimum period of good conduct shall be three years; and, where the most serious crime of which the individual was convicted is a class B or A felony, the minimum period of good conduct shall be five years. Criminal acts committed outside the state shall be classified as acts committed within the state based on the maximum sentence that could have been imposed based upon such conviction pursuant to the laws of such foreign jurisdiction. Such minimum period of good conduct by the individual shall be measured either from the date of the payment of any fine imposed upon him or her or the suspension of sentence, or from the date of his or her unrevoked release from custody by parole, commutation or termination of his or her sentence. The department shall have power and it shall be its duty to investigate all persons when such application is made and to grant or deny the same within a reasonable time after the making of the application.

4. Where the department has issued a certificate of good conduct, the department may at any time issue a new certificate enlarging the relief previously granted.

5. Any certificate of good conduct by the department to an individual who at time of the issuance of the certificate is under the department's supervision, shall be deemed to be a temporary certificate until such time as the individual is discharged from the department's supervision, and, while temporary, such certificate may be revoked by the department for violation of the conditions of community supervision. Revocation shall be upon notice to the releasee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the department's jurisdiction over the individual.

§ 704. Effect of revocation; use of revoked certificate

1. Where a certificate of relief from disabilities is deemed to be temporary and such certificate is revoked, disabilities and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the issuing court or board.

2. A person who knowingly uses or attempts to use, a revoked certificate of relief from disabilities in order to obtain or to exercise any right or privilege that he would not be entitled to obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.

§ 705. Forms and filing

1. All applications, certificates and orders of revocation necessary for the purposes of this article shall be upon forms prescribed pursuant to agreement among the state commissioner of corrections and community supervision, the chairman of the state board of parole and the administrator of the state judicial conference. Such forms relating to certificates of relief from disabilities shall be distributed by the office of probation and correctional alternatives and forms relating to certificates of good conduct shall be distributed by the commissioner of the department of corrections and community supervision.

2. Any court or department issuing or revoking any certificate pursuant to this article shall immediately file a copy of the certificate, or of the order of revocation, with the New York state identification and intelligence system.

§ 706. Certificate not to be deemed to be a pardon

Nothing contained in this article shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

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Endnotes

¹ The DC “Revitalization Act,” formally titled the National Capital Revitalization and Self-Government Act of 1997, became law of August 5, 1997. The Act’s effects on the DC criminal justice system included: closing the DC prison – the Lorton Correctional Complex in Lorton, VA – on December 31, 2001; transferring to the Federal Bureau of Prisons the responsibility for all DC felons sentenced to a term of confinement; abolishing the DC Board of Parole and transferring authority for parole matters to the US Parole Commission; transferring funding authority of the DC Superior Court, DC Court of Appeals, DC Pretrial Services Agency and the Public Defender Service to the federal government; re-writing DC sentencing laws to eliminate parole and to require sentences of a fixed term rather than a range of years; and establishing the DC Court Services and Offender Supervision Agency within the federal government to provide supervision of DC offenders on probation, parole, and supervised release.

² Pierre, Robert. “Ex-Offenders Protest Dearth of Jobs, Services.” *The Washington Post*. July 2, 2008: B4.

³ Each year in the District, about 2,400 people return from the Federal Bureau of Prisons and just over 5,600 are released from the DC Department of Corrections. An additional 4,100 are released from DOC to the custody of another jurisdiction; another 2,500 to 3,000 are released by the DOC to the custody of the Federal Bureau of Prisons. DC Department of Corrections statistics upon request. March 14, 2011. See also Court Services and Offender Supervision Agency for the District of Columbia. *Offender Reentry in Washington, D.C.* Washington, DC: Court Services and Offender Supervision Agency Fact Sheet. 2010. <<http://www.csosa.gov/newsmedia/factsheets/reentry-2010.pdf>>.

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⁵ According to Richard Freeman, “if incarceration were randomly distributed, over half of the people in the country would have a close relative who had been under supervision of criminal justice at one point in their lives.” Freeman, Richard. “Can We Close the Revolving Door?: Recidivism vs. Employment of Ex-Offenders in the U.S.” New York: New York University Law School. Urban Institute Reentry Roundtable. May 19-20, 2003: 5. <http://www.urban.org/uploadedpdf/410857_freeman.pdf>.

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⁸ Clement, Marshall, Matthew Schwarzfeld, and Michael Thompson. *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending*. Council of State Governments Justice Center, Washington, DC. 2011: 2. <<http://justicereinvestment.org/summit/report>>.

⁹ This does not include those who may have had a misdemeanor conviction. Schmitt, John and Kris Warner. *Ex-Offenders and the Labor Market*. Washington, DC: Center for Economic and Policy Research. November 2010: Page 4, Table 1. See <<http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>> See also, Travis, Jeremy. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. Washington, DC: Urban Institute Press, 2005.

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¹² Visser, Christy A. and Pamela K. Lattimore. *Major Study Examines Prisoners and Their Reentry Needs*. National Institute of Justice Journal. 258. 2007: 30-34.

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¹⁵ Respondents were either those who, in Summer and Fall 2010, voluntarily appeared at the DC Office on Ex-Offender Affairs seeking assistance or were under the supervision of the US Probation Office and responded to a letter request from a probation officer. Respondents were on probation, parole, supervised release or had completed the obligations of their criminal sentence and post-sentence obligations.

¹⁶ Pierre, *supra* endnote 2.

¹⁷ "Top 30 High Demand Occupation in D.C." Chart was included in the "Labor Market Trends" newsletter (February 2010) published by DC Department of Employment Services. Its sample size was 4,000.

¹⁸ The sample size of the respondents in this particular question was 269 people.

¹⁹ Industry sectors represented include "agriculture, food or natural resources;" "education and training;" "human services;" "information technology;" and "law, public safety or security." Industry sectors in the CCE DC Employers Survey were based on categories developed by the DC Department of Employment Services, Office of Labor Market Research & Information, *Labor Market Trends*. Washington, DC. 2010: 14.
<http://www.does.dc.gov/does/frames.asp?doc=/does/lib/does/117547_Trends_web.pdf>.

²⁰ Love, Margaret Colgate and April Frazier. *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws*. American Bar Association. 2006: 2.

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²² Love, *supra* endnote 20, at 4.

²³ New York State Bar Association Special Committee on Collateral Consequences of Criminal Proceedings, *Reentry and Reintegration: The Road to Public Safety*. 2006: 104-105. This was discussed in conversations with John Shyer, a partner at Latham & Watkins in New York, who specializes in Labor and Employment law, in June and July 2010.

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<http://www.ojp.usdoj.gov/BJA/j_today/JT_07_10.pdf>.

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³⁴ *Id.* at III-12 (Majority owners of the employer may mean an individual who is self-employed, a “shareholder who owns more than fifty percent of the value of the outstanding stock,” “a beneficiary, grantor, or fiduciary of the employing estate or trust,” “a member of an employing partnership,” or “a shareholder in a Subchapter S corporation that is the employer.” Additionally, “an employee of an estate or trust is not eligible for the credit if he or she is a grantor, beneficiary or fiduciary of the estate or trust.”)

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⁴⁰ *Program Background*, *supra* endnote 36.

⁴¹ *Highlights*, *supra* endnote 37. (“The bond insurance issued ranges from \$5,000 to \$25,000 coverage . . . with no deductible amount.”).

⁴² The McGlaughlin Co., *The Federal Bonding Program: Bond Package Availability and Purchase*, available at <<http://bonds4jobs.com/bond-pkg-availability-purchase.html>> (last visited July 5, 2011) [herein after *Availability*].

⁴³ *Program Background*, *supra* endnote 36.

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⁴⁵ US Department of Labor, Answers to Questions about Fidelity Bonding, 7, available at <<http://bonds4jobs.com/assets/brochure.pdf>> (last visited July 6, 2011).

⁴⁶ *Availability*, *supra* endnote 12.

⁴⁷ Federal Bureau of Prisons, *FPI General Overview FAQs*, (“Federal Prison Industries is a government corporation that employs federal inmates and provides them with job training skills.”), available at <<http://www.unicor.gov/about/faqs/faqsgeneral.cfm>> (last visited July 6, 2011).

⁴⁸ Federal Bureau of Prisons, UNICOR Bonding Program, available at <http://www.unicor.gov/about/about_fpi_programs/inmate_transition/ippfbprogram.cfm> (last visited July 6, 2011).

⁴⁹ Federal Bureau of Prisons, Work Opportunity Tax Credit, (“Maids, chauffeurs and other household employees do not qualify for this credit.”), available at <http://www.unicor.gov/about/about_fpi_programs/inmate_transition/ippwotcredit.cfm> (last visited July 6, 2011).

⁵⁰ The Public Defender Service for the District of Columbia. *Collateral Consequences of a Criminal Record in the District of Columbia: A Guide for Criminal Defense and Civil Legal Services Lawyers*. Washington, DC. June 30, 2010: 11-17.

⁵¹ DC Code §§ 1-620.41-44 (2011).

⁵² Minn. Stat. Ann. § 181.981 (West 2009).

⁵³ NY Exec. Law § 296(15) (McKinney 2010).

⁵⁴ NY Corr. Law § 752 (McKinney 2007).

⁵⁵ NY Corr. Law §§ 700-706 (McKinney 2011).



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