NELP Criminal Records Bulletin December 2012

FEDERAL

Your Comments Needed for the US Commission on Civil Rights Briefing

The U.S. Commission on Civil Rights held a briefing on Dec. 7th on the new EEOC Guidance regarding the use of criminal background checks in employment. The Commission intends to publish a report. We urge your comments and/or your organization’s sign-on to the forthcoming testimony from civil rights, workers’ rights, and criminal justice advocates. Comments will be circulated next week with time to sign-on before the Jan. 6th deadline. If the deadline is extended to Jan. 21st, template comments will be shared. Comments should be submitted directly to publicaffairs@usccr.gov. Link here to testimony from U.S. Dept. of Justice and press release.

STATE UPDATE

Fairer Background Checks In Green Jobs In California

The Greenlining Institute (Greenlining) and Pacific Gas and Electric (PG&E), one of California's biggest utility companies, reached an agreement this December to implement a fairer background check policy for energy efficiency contractors. Concerned about PG&E's proposed policy, which may have excluded qualified jobseekers and discriminated against Latino and African American applicants, Greenlining filed a petition with the California Public Utilities Commission seeking review and a stay of PG&E's proposed policy. Working with Greenlining, PG&E agreed not to screen for misdemeanor drug convictions and agreed to institute an appeals process. Greenlining will also work with California's other investor-owned utilities on this issue: Southern California Edison, Southern California Gas Company, and San Diego Gas & Electric Company. Contact Noemí O. Gallardo at noemig@greenlining.org for information.

BAN THE BOX
**Wilmington, DE Administration Supports Ban the Box**

On Dec. 6th, the Wilmington City Council passed a resolution to urge the administration to adopt ban the box for the City’s employment applications, citing the significant barriers to employment that people with records face. On Dec. 10th the Mayor of Wilmington signed an executive order that removes the question about criminal convictions from city job applications unrelated to public safety. See news stories, [City Council encourages “banning the box”](#) and [Baker gets rid of box](#). Link here to the [City Council Resolution](#) and [Mayor’s Order](#).

**Pittsburgh, PA City Council Passes Ban the Box Ordinances**

On Dec. 17th, the City Council of Pittsburgh, PA passed two ordinances; one that applies to city employment and another ordinance that applies to contractors. Dean Williams, director of the [Formerly Convicted Citizens Project](#), worked on the ban the box campaign for two years. City Council President Darlene Harris stated that “We as a council are pleased to pass this bill. Everyone deserves a second chance. They’ve already paid their debt to society.” See [article](#).

**REPORT**

**Prisoners in 2011**

The U.S. Bureau of Justice Statistics reported that twenty-six state departments of corrections decreased their prison population during 2011, while the federal prison population increased. California reported the largest decline (down 15,493), while New Jersey, New York, Michigan, Florida, and Texas each had population decreases of more than 1,000 prisoners in 2011. Tennessee and Kentucky both added more than 1,000 inmates in 2011. The reduction in California’s prison population under its “public safety realignment” policy (AB 109) accounted for 72 percent of the total decrease in state prisoners. See [report](#).

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney

National Employment Law Project | 405 14th Street, Suite 1400 | Oakland California 94612

(510) 663-5705 tel | (510) 663-2028 fax | mrodriguez@nelp.org

[www.nelp.org](http://www.nelp.org)
STATE UPDATE

Restoring Voting Rights for People with Felonies in Iowa

Thousands of Iowans convicted of crimes were ineligible to vote this Election Day under a policy imposed by Gov. Terry Branstad, who signed an order last year reversing a 2005 policy by Gov. Tom Vilsack in which people with felonies automatically regained their voting rights once they were discharged. The reversal made Iowa one of four states where people with felonies must apply to have voting rights restored. See article. Leaders of the NAACP said they were encouraged by discussions with Branstad that they hope will lead to changes. Jotaka Eaddy of the NAACP stated,“It’s about civil and human rights and we hope that Iowa can remove itself from being so tied to the vestiges of Jim Crow.” See article.

Impact of Pennsylvania’s New Law Mandating Lifetime Employment Bans in Schools

At a community center, Art Johnson helps young fathers learn how to be men. He was able to get a job there due to the prior law that allowed people with criminal records to work in schools after five years. His boss shared that,“He is an outstanding employee.” In January, state officials told Johnson’s boss she had to fire him because of a new state law mandating lifetime employment bans for certain criminal offenses. Others fighting the new law include a Mercer County school bus driver convicted of selling drugs in 1986, a Harrisburg teacher who was 20 years old when convicted of corruption of minors in 1993 and a York janitor convicted of aggravated assault in 1994. See article.

University of California, State of California, and County Face Lawsuit Over Arrest Record Law

The University of California Police Department along with the state of California, the University of California, Santa Barbara County and Sheriff and California Highway Patrol of Santa Barbara are all facing class-action lawsuits for their alleged non-compliance in enforcing the laws set forth in California Penal Code Section 851.6. The law in question requires that any arrest record in which a person is detained but not charged with any offense be deleted. Plaintiffs allege that this information is ending up in federal law.
enforcement databases such as the FBI criminal index and is widely available to a number of entities including employers, government agencies and the media. See article.

Petition Asks California Agency to Regulate Background Checks for Energy Efficiency Workers

In a petition filed Tuesday with the California Public Utilities Commission (CPUC), the Greenlining Institute is asking the CPUC to consider policies regarding background checks for workers in CPUC-funded energy efficiency programs. Greenlining says it’s concerned that without CPUC guidance, utility companies could unilaterally implement policies that exclude qualified, responsible workers and discriminate against workers of color. See press release, see article.

REPORT

Blumstein’s and Nakamura’s Report on Redemption Times

The authors focus on "redemption time," the time when an individual with a prior arrest record has stayed clean of further involvement with the criminal justice system sufficiently long to be considered "redeemed." The study examines the robustness of prior redemption time estimates and finds them reasonably robust. The study also examines the relationship between the first crime and the crime type of a possible second arrest and the relationship between race and longer-term recidivism risk. See report.

ARTICLES

Criminal Justice Reform in President Obama’s Second Term

Glenn Martin, Vice President of Development and Public Affairs and Director of the David Rothenberg Center for Public Policy at The Fortune Society, Inc., provides a criminal justice reform agenda for President Obama in his second term. See blog. Another area advocates are focusing on is the President’s strikingly low record for granting pardons. Obama is more frugal than any modern presidents, granting only 22 pardons and one commutation of sentence. Obama's record is even more striking if you compare the number of pardons he's granted with those he's rejected: Ronald Reagan: 1 in 8; George H.W. Bush: 1 in 19; Bill Clinton: 1 in 16; George W. Bush: 1 in 55; Barack Obama: 1 in 290. See NPR story, featuring Margaret Colgate Love.

Inaccurate Background Checks Cost Applicants Job Opportunities
When you apply for a job, most employers will do a criminal background check. You may think it’s nothing to worry about if your record is clean, but experts are saying background companies are causing innocent people to lose their jobs. See the Today Show’s Jeff Rossen’s story. See Demos blog commenting on the report and the National Association of Professional Background Screeners’ response. In Pennsylvania another case of mistaken identity is found. Sharon Dietrich comments that since the 9/11 attacks, hundreds of companies offering background checks have popped up across the country. See article. In Arizona, Darlene Martinez, who had no criminal record, was confused with Darlene Foster Ramirez, who was found guilty of drug possession and Martinez lost her job offer. Martinez filed a lawsuit against the Phoenix-based company that did the search, Universal Background Screening. See article.

School volunteer's criminal record keeps him from helping in Georgia

Henry Oakman is a free man but still a prisoner of his past. In 2009, he started his new life volunteering at a K-8 school, determined to reach at-risk kids. By the end of the 2009-10 year, he had racked up 917 hours of service, earning him the school’s Volunteer of the Year award. Recently the school system discovered his convictions and determined that he can no longer volunteer. The district’s rules are the same for volunteers and employees. People with serious offenses, such as manslaughter and rape, cannot be hired. Some crimes mean disqualification if they were committed within 10 years, others within five years, and some are reviewed on a case-by-case basis. In Oakman’s situation, a vehicle burglary charge from 2007, aggravated assault from 2000 and a burglary and drug charge from 1991 disqualify him. See article.

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney
National Employment Law Project | 405 14th Street, Suite 1400 | Oakland California 94612

(510) 663-5705 tel | (10) 663-2028 fax | mrodriguez@nelp.org

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RESOURCE FOR ADVOCATES AND POLICYMAKERS

NACDL Launches Restoration of Rights Database

The National Association of Criminal Defense Lawyers (NACDL) launched today a new resource of individual downloadable documents that profile the law and practice in each U.S. jurisdiction relating to relief from the numerous civil rights and other consequences of criminal conviction, including obtaining a pardon, expungement and the restoration of civil rights. There is a short summary and a full profile detailing each jurisdiction’s law relating to both the loss and restoration of civil rights and firearms privileges and discussing any provisions on non-discrimination in employment and licensing. Congratulations to Margaret Colgate Love on this new update and expansion of her prior work. The profiles and charts included here will be released in a new treatise—the first of its kind on collateral consequences: Margaret Colgate Love, Jenny Roberts & Cecelia M. Klingele, Collateral Consequences of a Criminal Conviction: Law, Policy and Practice (NACDL/West 2012) (forthcoming).

FEDERAL UPDATE

New FCRA Forms Available but No Substantive Changes; Employers Required to Use New Forms by January 1st

New Fair Credit Reporting Act forms are now available in Appendices K, M, and N to 12 CFR part 1022. The only changes made were non-substantive, technical changes such as replacing appropriate nomenclature to reflect the transfer of authority from the Federal Trade Commission to the Consumer Financial Protection Bureau. Updated forms include the Summary of Rights for consumers, the “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA” and the “Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA.” Updated forms must be used by January 1, 2013. Community Legal Services and NELP provided substantive comments on notices in September 2010 (see all comments).

EEOC Scrutiny of Dollar General Corp.’s Criminal Background Check Policy
Dollar General Corp. indicated in a recent SEC filing that the Equal Employment Opportunity Commission (EEOC) may be filing a lawsuit against the company because its criminal background check policies, which exclude from employment individuals with certain criminal convictions for specified periods, have a disparate impact on African-American candidates and employees in violation of Title VII of the Civil Rights Act of 1964. The SEC filing reports that in September 2011, the Chicago EEOC regional office notified Dollar General of a cause finding. The EEOC notified Dollar General on July 26, 2012 of its view that conciliation had failed. See article.

STATE UPDATE

People with Felonies Loss of Voting Rights

Approximately 5.8 million have had their voting rights taken because of a felony conviction. Florida, with 1.5 million disenfranchised people with felonies, leads the nation among the states. In response, the NAACP launched its campaign in Tallahassee on Oct. 2nd against felony disenfranchisement, which includes billboards and ads on public transportation. See “States Deny Millions of Ex-Felons Voting Rights.” In Wyoming, Rep. Zwonitzer (R) introduced a bill that would ease the burden of recovering voting rights, yet it has not passed. Zwonitzer said he’ll try again in 2013. See “Wyoming is One of the Toughest States for Ex-Felon Voting Rights.” Gov. McDonnell (R) of Virginia, since announcing a streamlined, more efficient program in May 2010, has restored the rights of more than 3,800 people with felonies. However, critics argue that with an estimated 350,000 Virginians unable to vote, McDonnell could do more. See “McDonnell on Pace to Restore Voting Rights to Record Number of Felons.”

BAN THE BOX

Newark Adopts Nation’s Most Comprehensive Ban the Box Ordinance

On September 19th, the City of Newark adopted the nation’s most comprehensive ban-the-box ordinance to date. The ordinance applies to the City and private employers, local occupational licensing, and housing applications. Inquiries into an applicant’s criminal history are delayed until a conditional offer of employment is made by the employer, and there is a limited “lookback” period for offenses. The New Jersey Institute for Social Justice and the Integrated Justice Alliance worked closely with the sponsor of the ordinance. Newark’s milestone is included in NELP’s newly-updated ban the box resource guide.

Another North Carolina Municipality Adopts Ban the Box

On October 16, 2012, the Carrboro Board of Alderman voted unanimously to ban the
box on the Town of Carrboro job applications. The Orange County Partnership to End Homelessness initially proposed the measure. See article.

REPORTS

OIG Releases Report on Nursing Aides

On October 5th, the Office of Inspector General (OIG) submitted an interim report to Congress on nursing aides who received substantiated findings of abuse, neglect, and/or misappropriation of property during 2010. The report found that 19% of nurse aides with substantiated findings had at least one conviction in their criminal history records prior to their substantiated finding; or conversely 81% of nurse aids with substantiated findings did not have a conviction. The purpose of the interim report was to set a baseline for the OIG’s mandated assessment of the extent to which the Affordable Care Act’s state background check program may reduce the number of incidents of neglect, abuse, and misappropriation of resident property. Last year NELP commented on the background check protections for long term care workers in the Affordable Care Act.

New York City Releases Young Men’s Initiative First Year Results

On October 4th, Mayor Bloomberg’s office released the Young Men’s Initiative first annual report, which details the progress of the initiative, including the adoption and implementation of Close to Home legislation; the selection of schools to participate in the Expanded Success Initiative; the launch of the nation’s first social impact bond; and a city-wide effort to lift the barriers to employment by eliminating questions about criminal record on initial employment application forms and connect young men with identification. An update on Executive Order 151 (Ban the Box) indicates that all 35 non-exempt Mayoral agencies have removed the question about criminal records on employment application forms (p.34).

Report Demonstrates States’ Success in Reducing Recidivism

On September 25th, the Council of State Governments (CSG) Justice Center’s National Reentry Resource Center (NRRC) released a policy brief highlighting a number of states that are reporting significant reductions in recidivism. The states profiled in the report show significant declines in their three-year recidivism rates based on data tracking individuals released from prison in 2005 and 2007. Texas and Ohio reported reductions of 11 percent, while the Kansas rate fell by 15 percent and Michigan’s rate dropped by 18 percent.

SURVEY
CareerBuilder Survey Finds that Half of Employers Have Hired Someone with a Criminal Record

Released on September 27th, a CareerBuilder survey indicates that fifty-one percent of Human Resource managers reported that their organizations have hired someone with a criminal record. The study included more than 2,000 hiring managers nationwide and looked at what job seekers can do to improve their chances of being hired.

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney
National Employment Law Project | 405 14th Street, Suite 1400 | Oakland California 94612
(510) 663-5705 tel | (10) 663-2028 fax | mrodriguez@nelp.org
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RESOURCES FOR ADVOCATES AND POLICYMAKERS

New ABA and Justice Department Collateral Consequences Website

The American Bar Association and a Justice Department unit have launched a new website that allows users to search federal and state laws that hinder people with criminal records. Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) noted how vital it is to understand what these "collateral consequences" can mean for those convicted. For now, the website includes Vermont, Minnesota, Iowa, Nevada, Texas, Wisconsin, South Carolina and New York. The rest of the states will be entered over the next 18 months. Congratulations to Margy Colgate Love, director of the project, and Daryl Atkinson, a staff attorney with the Southern Coalition for Social Justice. See blog.

Webinar: State Reforms Reducing Collateral Consequences for People with Criminal Records

Sign up for this webinar on Tuesday, Sept. 25th at 3-4pm ET. Panelists from the ACLU, Crossroads Bible Institute, the National H.I.R.E. Network, NELP, and the Sentencing Project will preview the soon-to-be released legislative roundup of 2012 of state reforms reducing collateral consequences. Topics covered include: (1) “ban the box;” (2) employer negligent hiring protections; (3) expungement and sealing of criminal records; (4) federal public benefits opt-out legislation; (5) felony enfranchisement; and (6) Uniform Collateral Consequences of Conviction Act legislation. Hosted by the National H.I.R.E. Network.


Sign up for this webinar on Tuesday, Sept. 25th at 2-3:30pm ET which will help advocates understand the new EEOC guidance, how to enforce worker rights, the challenges and opportunities for employers, and what the guidance means for local implementation. Hosted by PolicyLink, with an emphasis on California protections.

Opportunity for State Advocacy: Ensure Workforce Development Programs are Complying with Civil Rights Laws that Apply to People with Criminal Records
We recently reported on the new DOL guidelines issued by the U.S. Department of Labor Employment and Training Administration (ETA) and Civil Rights Center (CRC), which apply to Workforce Investment Act (WIA) funded workforce development programs throughout the United States. California’s Employment Development Department distributed its own directive to the state’s workforce development providers, requiring them to comply with the federal Labor Department and EEOC criminal records guidances. **Take this opportunity to request that your state’s Workforce Investment Board issue a similar directive.**

**FEDERAL UPDATE**

**The Child Protection Improvements Act passed out of the Senate Judiciary Committee**

The Child Protection Improvement Act (S.645), sponsored by Senator Chuck Schumer, passed the Judicial Committee on Sept. 13th. The bill allows for employers to have complete access to FBI criminal record information—including arrests and all offenses—for a broad range of volunteers and employees who have contact with children, and with a new amendment, it would apply to the burglar and fire alarm industry. Advocates have raised concerns regarding the bill’s limited worker protections. The bill is not expected to pass this session of Congress, but it will likely be brought up again next year.

**STATE UPDATES**

**Illinois: Law allows sharing of juvenile criminal records**

School officials and law enforcement authorities in Illinois will be allowed to share juvenile criminal records under a new law that will go into effect next year. Law enforcement records can be shared orally but can’t become a part of the student’s records or public records. Authorities can provide information to schools "only if the agency or officer believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds." See article.

**Indiana: Criminal background check providers threaten to challenge Indiana shielding law**

Private companies that buy and sell court records used in background checks are threatening to challenge a state law that allows people with years-old, low-level arrests to shield their criminal histories from employers. They contend the law violates constitutional protections on free speech and oversteps FCRA. State Rep. Jud McMillen,
R-Brookville, and strong supporter of the “second chance” law, said he thinks the Legislature will move toward a stronger law, that would allow expungement— totally erasing offense from the record, not just shielded from public view. See article.

BAN THE BOX

NELP Releases Update on City and County Ban the Box Guide

This month NELP released its newest update on the city and county ban the box guide. It summarizes the 41 local jurisdictions across the United States that have adopted “ban the box” in the past seven years. Just in 2011-2012, 13 cities and counties across the nation have adopted these policies. Of special significance, ten cities and counties now extend the ban the box policy to private contractors or in the case of Philadelphia, to private employers, as well. Last month NELP released its update on statewide ban the box policies.

Seattle Proposes to Ban the Box for Private Employers

City Councilman Bruce Harrell of Seattle has proposed expanding the City’s ban the box to private employers. The law would also prohibit employers from denying jobs based solely on an applicant’s criminal history. The rules wouldn’t apply to jobs where employees work around vulnerable people or senior citizens, and there would be exceptions were public safety issues would trump the law. Coverage of the proposal has included positive feedback from some private employers, see video and article.

San Francisco: Want Real Safety? Try Jobs and Housing

San Francisco banned the box for public employment and now, a growing number of formerly incarcerated people, activists and supporters at City Hall are pushing for an expansion of these “ban the box” policies. If they succeed, San Francisco will be the first U.S. city where the ban would also apply to private business hiring practices, government vendors, as well as housing applications. See blog.

RESEARCH

New York City will be First in U.S. to Test Social Impact Bonds

New York City will be the first in the United States to test “social impact bonds,” also called pay-for-success bonds, which are an effort to find new ways to finance initiatives that might save governments money over the long term. The City is allowing Goldman Sachs to invest nearly $10 million in a jail program to reduce the recidivism of young men at Rikers Island. MDRC is the social services provider and the Vera Institute will be
evaluating the project. See article, press release, and factsheet about the project.

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney
National Employment Law Project | 405 14th Street, Suite 1400 | Oakland California 94612
(510) 663-5705 tel | (10) 663-2028 fax | mrodriguez@nelp.org

www.nelp.org

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FEDERAL UPDATE

FTC Charges HireRight for FCRA Violation Highlighting Inaccuracy of Background Reports

On August 8th, the Federal Trade Commission filed its first complaint against a background screening firm for violating the Fair Credit Reporting Act, and settled for $2.6 million. HireRight had failed to use reasonable procedures to assure maximum possible accuracy, to give consumers copies of reports, and to reinvestigate consumer disputes. The FTC also released new consumer education materials: "What to Know When You Look for a Job," and "Employment Background Checks and Credit Reports," and a new video, "What to Know When Looking for a Job." A New York Times Editorial commented on the settlement and the need for the FTC and the Consumer Financial Projection Bureau to step up scrutiny of background screening companies.

STATE UPDATES

Indiana: Criminal records shield law doesn’t stop release of information

In 2011, the bipartisan bill, HB 1211, allowed expungement of certain arrests, misdemeanors, and low-level felonies and has resulted in 1,700 requests for removal. The legislature passed a subsequent law barring consumer reporting agencies from releasing criminal records that have been shielded by the court. Implementation has been delayed until 2013. See article.

New Jersey: Bill to Mandate Background Checks for Volunteers

After passing the Assembly, A2706 will be considered in the Senate; it would require background checks for unpaid volunteers who have regular contact with students. See article.

North Carolina: New law would give people with low-level offenses a second chance

Gov. Bev Perdue in late July signed HB 1023 that allows for anyone with nonviolent
misdemeanors or felonies to expunge their records after 15 years. The bill was signed after a two-month wait. It passed after being amended four times, and was a victory for Rep. Leo Daughtry (R), a sponsor of the bill. The bill had failed in 2009-10. Daughtry attempted to reduce the 15-year wait time, but was unable to find consensus. See article.

BAN THE BOX

NELP Releases Update on State Ban the Box Guide

This month NELP released its update on statewide ban the box policies. The guide highlights legislation introduced this year and summarizes current law. NELP is currently updating its county and city ban the box guide; please contact Michelle at mrodriguez@nelp.org if there are any local jurisdictions missing from the guide that should be included.

Detroit Extends Ban the Box to Vendors; Background Check Company Founder Supports Ban the Box

In May, the City of Detroit finalized a new hiring policy requiring city vendors and contractors to remove the question about criminal records from job applications by July 1st in order to qualify for future contracts. See local news coverage. In an article commenting on ban the box, Attorney Lester Rosen, founder of the background check firm Employment Screening Resources states, “[w]e are suggesting to private employers that they also consider a ‘ban the box’ approach” noting that asking the question early “really does not accomplish that much.” See article.

Group urges employers to consider people with records in Marion, Ohio

Marion Matters, a non-profit organization that helps people escape the cycle of poverty, is seeking out local business leaders and human resource professionals to give people with records a fair chance. The group has spoken to the Marion Rotary Club, League of Women Voters, Marion Area Chamber of Commerce, and area employers. Its push is to convince businesses to not automatically disqualify a job applicant with a record. See article.

ARTICLES

People with Records move past records with Urban League project in Columbus, Ohio

A new partnership between the Columbus Housing Authority and Urban League provides full-time, above minimum wage jobs to people with criminal records. The
“green salvage project” begins with 15 employees. See article.

SURVEY

New SHRM Survey on Background Checking

In July, SHRM released a new survey on the use of criminal background checks in hiring decisions. Some major findings include: 68% of organizations report conducting background checks on all their job candidates and 14% do not conduct checks on any candidates. Organizations reported conducting criminal checks on job candidates 1) to reduce legal liability for negligent hiring (52%) and 2) to ensure a safe work environment for employees (49%).

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney
National Employment Law Project | 405 14th Street, Suite 1400 | Oakland California 94612
(510) 663-5705 tel | (10) 663-2028 fax | mrodriguez@nelp.org

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FEDERAL UPDATE

Training on New Department of Labor Guidelines offered by NELP and the National Reentry Resource Center

On July 18th NELP partnered with the National Reentry Resource Center to provide a webinar on new guidelines issued by the U.S. Department of Labor Employment and Training Administration (ETA) and Civil Rights Center (CRC). Over 400 attendees joined the webinar which featured panelists from the U.S. Department of Labor: Jane Oates, Assistant Secretary, Employment Training Administration; Naomi Barry-Peréz, Director, Civil Rights Center; and Laura Moskowitz, Office of Solicitor. From the Oakland Private Industry Council, Inc., Charles Turner, Adult Career Services Re-Entry Manager, joined the line-up. Click here for the webinar presentation.

STATE UPDATES

Hawaii: New Law Allows Trafficking Victims to Vacate Prostitution Convictions

Intended to help sex trafficking victims, SB 2576 passed in Hawaii to allow removal of prostitution convictions from criminal records, becoming the sixth state to do so. Some critics question how useful the bill would be. They argue that many victims are too afraid of their traffickers to testify against them to prove their victim status. See article.

Expungement Legislation: In Missouri Supported as a Gun Rights Effort; Tennessee Allows Expungement for One-Time Convictions

An initial step with expungement was made in Missouri with HB 1647. People would need to wait 20 years for a felony and 10 years for a misdemeanor and have completed their prison terms, probation and parole, before seeking expungement. The sponsor said it is an attempt to help people regain firearm rights and was supported by the National Rifle Association. See article. In Tennessee, HB 2865 passed to allow people with one conviction to petition to expunge certain misdemeanors and low-level felonies. See article.
North Carolina’s New Collateral Consequence Tool, C-CAT

The UNC’s School of Government launched the Collateral Consequences Assessment Tool (C-CAT) in June 2012. C-CAT is a web-based tool that centralizes the collateral consequences imposed under North Carolina law for a criminal conviction. C-CAT was created to help attorneys, policymakers, service providers, and affected individuals identify, assess, and compile the collateral consequences that may be triggered by a criminal conviction. Congratulations to Daryl Atkinson, staff attorney at the Southern Coalition for Social Justice, who helped spearhead the effort.

Conference Call on Advancing Reentry in the States: Sharing 2011-2012 Accomplishments in Ohio and North Carolina

On July 10th, the National H.I.R.E. Network hosted a conference call for elected officials and advocates to learn more about legislative reform campaigns’ successes. Co-hosts included The Sentencing Project and NELP. Materials for the call available here.

Oklahoma: People with Records are Struggling with Employment, yet some Employers are Willing to Hire; DOL funds awarded to Local Reentry Efforts

One article highlights the efforts of one business owner in Oklahoma who once served time. He’s providing people with records a second chance. He comments that his employees’ appreciation for the job often means they’re more dedicated workers. In another article, a small business owner in Tulsa notes that “if anything, we’ve had more success with the [hires] with felonies.” The article also highlights the U.S. Department of Labor’s recent award of grant money to a local effort tentatively called Tulsa Reentry One-Stop, which will help people with records find work.

BAN THE BOX

Newport News Becomes First City in State of Virginia to Adopt Ban the Box

According to a July 13 memo by Newport News City Manager and Human Resources Director, the "box" question will soon be moved closer to the end of the hiring process instead of on the initial job application form. The change comes about after the city was petitioned in May by Good Seed, Good Ground, a local non-profit group that helps residents who have difficulties finding employment. See article.

Councilmembers Interest In Ban the Box in Indianapolis

City Councilmember Vop Osili expressed his concern that many people in his district are affected by criminal records and unable to find jobs as a result. "All that stands in the
way is that little check box," Osili told the Indianapolis Business Journal. "How long do you have to live like that?" The councilmember has not proposed ban the box, but wants to put together a study committee to look at re-entry policies and recidivism. See article.

REPORT

The Sentencing Project Releases Report on State-Level Estimates of Felon Disenfranchisement

The report documents that a record 5.85 million people are disenfranchised as a result of a felony conviction and will not be able to vote in the November elections. Shockingly, one of every 13 African Americans of voting age is disenfranchised, and in three states—Florida, Kentucky, and Virginia—the figure is one in five. The report is authored by Christopher Uggen and Sarah Shannon of the University of Minnesota, and Jeff Manza of New York University.

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney
National Employment Law Project | 405 14th Street, Suite 1400 | Oakland California 94612

(510) 663-5705 tel | (10) 663-2028 fax | mrodriguez@nelp.org

www.nelp.org

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FEDERAL UPDATES

Department of Labor Releases Guidance on Criminal Records Restrictions in Job Placements

DOL’s Employment and Training Administration (ETA) released a guidance on May 25, 2012 regarding criminal records restrictions in job advertisements and job placement. The guidance applies to Workforce Investment Act (WIA) funded workforce development programs throughout the U.S., and draws upon the new EEOC guidance to promote the civil rights protections that apply to people with criminal records. Click here to access the new guidance and supporting materials.

A webinar providing information on the new guidance will be offered by NELP and other partner organizations on July 18, featuring Assistant Secretary Jane Oates as well as state and local entities implementing the new guidance. More information to follow.

Training on Updated EEOC Guidance offered by NELP, CLS, and the National Reentry Resource Center

On May 30, NELP partnered with Community Legal Services of Philadelphia (CLS) and the National Reentry Resource Center to provide a webinar on the EEOC’s “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decision Under Title VII.” Nearly 700 attendees joined the webinar which featured, among others, Carol Miaskoff of the EEOC’s Office of Legal Counsel and Pamela Paulk, Vice President of Human Resources at the Johns Hopkins Health System and Johns Hopkins Hospital. Click here for the webinar presentation and here for the recording of the webinar.

What Works in Reentry Clearinghouse Website Launched

Launched in collaboration with the National Second Chance Act Conference on May 22, the What Works in Reentry Clearinghouse is a collaboration between the National Reentry Resource Center, the Urban Institute, and the John Jay College of Criminal Justice. Click here to access the website and here for comments from Mary Lou Leary,
STATE LEGISLATION

Ohio Senate Bill 337 Reduces Collateral Consequences and Offers Negligent Hiring Protections

Ohio Senate Bill 337 reduces barriers to employment for people with criminal records and provides protection against negligent hiring claims for employers who hire people with criminal records. While the bill does not completely remove all collateral consequences, it does provide for additional discretion in maintaining and granting occupational licenses. Having passed both the House and the Senate, the bill is expected to be signed by the Governor on July 1. The Ohio Justice and Policy Center and the National H.I.R.E. Network are organizing a conference call on the context and advocacy strategy supporting SB 337. The call is tentatively scheduled for July 10th at 2pm EDT. More information to follow soon.

Next phase of Massachusetts CORI Reform Law—iCORI Reporting—Now Active

Continuing to implement its comprehensive CORI reform law, Massachusetts now provides an online system for employers to check the criminal history of job applicants and employees. While the system provides access to employers, it also limits the time period for which convictions will be reported (10 years for felonies, 5 for misdemeanors). Unfortunately, the new CORI regulations do not include incentives for commercial reporting agencies (CRAs) to use the same limitations for the information they disseminate. The regulations permit applicants to challenge the accuracy of their CORI, but remove language giving applicants the right to challenge the relevancy of their CORI. Despite the urging of a strong coalition of advocates, the final regulations do not include incentives for CRAs and do not reestablish the right to challenge the relevancy of a CORI. Click here for the regulations.

Despite Massachusetts' comprehensive reform, including ban the box, people with criminal records continue to face difficulties in the job market as not all employers have implemented the law.

BAN THE BOX

Buffalo, NY City Council Considers Ban the Box Ordinance for Public and Private Employers

In a move that would make it the first city in New York to apply a ban the box ordinance
to private employers, the Buffalo City Council is considering the proposed "Fair Employment Screening Ordinance." While the proposal would prohibit inquiry into most convictions on an initial job application, exception is made for companies involved with youth and seniors. Click [here](#) for WGRZ.com article and [here](#) for a Buffalo News article.

**Advocates in Newport News, VA Encourage City Council to Ban the Box**

Good Seed, Good Ground, a Newport News-based non-profit that helps low income job seekers acquire skills, has taken the lead in urging the city to ban the box. The City Council is expected to consider the issue in late summer. A rally is planned for June 24 from 2-6pm at King Lincoln Park in Newport News. Click [here](#) for WDBJ7.com article.

**Springfield, MO Continues to Work on Ban the Box**

A subcommittee of the Springfield Mayor's Commission on Human Rights has presented a report recommending that the city ban the box and require the same of its vendors. Although there was no vote on the recommendation, the Commission urged the subcommittee to continue working on the issue. City Council member Doug Burlison attended the meeting and gave support for implementing ban the box through the Council. Click [here](#) for article.

**REPORTS**

**Analysis of Reentry Programs Shows Reduced Recidivism for Participants**

A study submitted to the U.S. Department of Justice found that participation in Serious and Violent Offender Reentry Initiative (SVORI) programs were associated with less arrests and reincarceration after participation as well as longer times until rearrest and reincarceration. Click [here](#) to access the study, *Prisoner Reentry Services: What Worked for SVORI Evaluation Participants?*

**NEWS**

**Cross-Sector Collaboration to Lower Employment Barriers for People with Criminal Records Announced**

The Conference Board, Fedcap, and Cornell ILR have announced a new cross-sector collaboration to lower employment barriers for people with criminal records. The Conference Board will offer member companies contracts with Fedcap for services, Fedcap will recruit, employ, and manage individuals with and without criminal records,
and Cornell ILR will lead a research effort to assess outcomes for people with criminal histories. Click here to learn more.

For more information contact:

Madeline Neighly | Staff Attorney
National Employment Law Project | 75 Maiden Lane, Suite 601 | New York, NY 10038
(212) 285-3025 ext 328 | (212) 285-3044 fax | mneighly@nelp.org

www.nelp.org

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It’s Here! EEOC Votes 4-1 to Issue Guidance on Arrest and Conviction Records

The EEOC issued its long-awaited “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decision Under Title VII” at its April 25th meeting with a bipartisan vote of 4-1. Q&A is available as well. Community Legal Services and NELP have issued a brief analysis with highlights of the new guidance. The April 25th meeting was the last attended by Commissioner Stuart J. Ishimaru, who announced his retirement earlier this month. The Commissioner was a stalwart supporter of clarifying and updating the 25-year-old guidance. Link to NELP briefing, AP story, The New York Times, The National Law Journal, Kansas City Star, The Root, msnbc.com. See Jesse Jackson, Chicago Sun-Times, April 23.

LAWSUITS

Census Class Action Moves Forward

A New York federal court ruled that the lawsuit alleging U.S. Census Bureau unlawfully screens job applicants with arrest records – regardless of whether they were charged, prosecuted or convicted – can proceed on behalf of a class of job applicants. The ruling ensures that the case will go forward for a putative class of thousands of African American and Latino job applicants who were denied Census Bureau employment because of its criminal background check policy. Press Release, April 4, 2012.

Ohio Supreme Court Strikes Down Lifelong Registration for Juveniles with Sex Offenses

Automatically making juvenile sex offenders register with law-enforcement agencies for life and putting their names and photos on the Internet are cruel and unusual punishments, the Ohio Supreme Court found in a 5-2 decision. Columbus Dispatch, April 4, 2012.

LexisNexis (Esteem service) Can’t Escape Claims It Misreported Workers’ Info

A federal judge has ruled against LexisNexis on its motion to dismiss allegations that its
retail industry background-check service violates the Fair Credit Reporting Act (FCRA). According to the article in Law360 (March 27, 2012), the service called Esteem, classified retail workers as thieves. Plaintiffs allege that Esteem distributed damaging information without complying with FCRA.

GREEN JOBS

Removal of Background Check Requirements from Prerequisites for Green Job Certifications

Responding to industry feedback regarding criminal background check requirements for four new Home Energy Professional certifications in the weatherization and home performance workforce, the Building Performance Institute, Inc. (BPI) removed criminal background check requirements from prerequisite criteria, which was proposed as part of a national Department of Energy initiative. BPI Press Release, April 19, 2012.

STATE AND LOCAL LEGISLATION IN THE NEWS

Some States Take Steps Toward Reform, Others Expand Access to Criminal Records

Troubled by harsh sex offense registry requirements, Rep. Schad in Missouri created legislation so that only people with the most serious offenses are listed publicly. Missouri is not the only state to push back against strict sex offender registry requirements. Stateline, April 19, 2012. In New Jersey, lawmakers are introducing a bill to expunge criminal records of nonviolent offenders in New Jersey’s Drug Court Program. NJToday.com, April 9, 2012. Gov. Scott Walker of Wisconsin signed into law a bill that provides police officers, judges, and prosecutors access to juvenile criminal records. Mystateline.com, April 10, 2012. Gov. Terry Branstad signed a bill to mandate criminal background checks for all school bus drivers upon hiring and every five years thereafter. Stnonline.com, April 11, 2012.

South Carolina Limited Expungement Bill Receiving Opposition from Victim’s Group

A bill that’s being heard in subcommittee would allow for expungement for people that have already received pardons. Representative Rutherford, the sponsor, says there’s no reason someone who committed a minor offense when he was 18 and hasn’t been in trouble since should be prevented from getting a job now, when he’s 40 years old, because of that offense. A victim’s group objected to the bill because they argue it is too broad. WJBF, April 16, 2012. Wausau Daily Herald, April 12, 2012.

Next phase of Massachusetts CORI Reform Law—iCORI Reporting
HireRight, a background screening company, comments on the next phase of the Massachusetts CORI Reform law—on May 4, 2012 employers will have access to the state’s database through iCORI. [HireRight Blog](#), April 13, 2012.

**Building on Ban the Box in New Haven, CT**

The Collateral Consequences Ordinance passed in New Haven requires the City to compile and publish online all local laws allowing from the consideration of criminal convictions in decisions regarding jobs, contracts, licenses, and other benefits. [Press Release](#), April 2, 2012 and [New Haven Independent](#), April 2, 2012.

**REPORTS**

**National Consumer Law Center Releases Report on Errors in Background Check Reports**

NCLC released [Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses](#) on April 11th. NCLC’s research reveals that background screening companies routinely mismatch people, omit crucial information, reveal expunged information, provide misleading information, and misclassify offense. The report received extensive coverage including in the [LA Times](#) and [MSNBC](#).

**LexisNexis Releases Report Analyzing Volunteer Background Checks**

The study by the background screening giant noted that of the more than 5.4 million background checks by nonprofits from 2007 to 2011, about 479,000 individuals had criminal convictions. The report touts LexisNexis background checks as a means to prevent people with records from volunteering and working at nonprofits. [NonProfit Times](#), April 11, 2012.

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney

National Employment Law Project | 405 14th Street, Suite 1400 | Oakland, California 94612

(510) 663-5705 | (510) 663-2028 fax | mrodriguez@nelp.org

[www.nelp.org](http://www.nelp.org)
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The new program, designed for prisoners 45 and older who have been imprisoned for at least 15 years, provides transitional reintegration services to accepted prisoners who have “behaved well, acknowledged their crimes, and shown remorse.” Pre-release services include skills training, how to address one’s criminal history with a potential employer, and interacting with parole officers, as well as counseling and transition planning. Further steps involve a work-release program that assists with job searching and mentorship from former prisoners. Link to article “Overcrowded Prisons Giving Old Inmates New Life,” Feb. 21, 2012.

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Law Review Article Addresses FEPA’s Role in Criminal Record Discrimination

Often lost in the debate about employer discrimination against individuals with criminal records has been the potential availability of disparate impact claims under state law and the under-enforcement of such claims by state Fair Employment Practices Agencies (FEPAs). This article proposes a set of presumptions that would enable FEPAs to limit their attention to complaints provable at trial without resort to costly statistical analysis and concludes that, although disparate impact’s ultimate potential contribution to the reentry process is limited, “FEPA involvement would bring significant advantages over current Title VII-based litigation and should be encouraged.” Click here for the article “Employer Discrimination Against Individuals with a Criminal Record: The Unfulfilled Role of State Fair Employment Agencies.”

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National Employment Law Project
75 Maiden Lane, Suite 601
New York, NY 10038
(212) 285-3025 ext 328 tel
(212) 285-3044 fax
mneighly@nelp.org
www.nelp.org
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FAIR CREDIT REPORTING ACT

FTC Warns Marketers That Mobile Apps May Violate Fair Credit Reporting Act

The Federal Trade Commission warned marketers of six mobile applications that provide background screening apps that they may be violating the Fair Credit Reporting Act. If the marketers have reason to believe the background reports they provide are being used for employment screening, housing, credit, or other similar purposes, then they must comply with the Act. The companies that received the letters are Everify, Inc., InfoPay, Inc., Intelligator, Inc., Criminal Records Search, Investigate and Locate Anyone, and People Search and Investigator apps. Link to FTC letter, Jan. 25, 2012; FTC press release, Feb. 8, 2012.

Class Action Against Domino’s Pizza for FCRA Violations Survives Motion to Dismiss

On January 25, 2012, the federal district court ruled against Dominos’ Pizza motion to dismiss in a Fair Credit Reporting Act putative class action. Plaintiffs allege Dominos’ Pizza violated FCRA by (1) running background checks on employees without proper authorization; and (2) “systematically” failing to provide employees with copies of their background checks prior to taking adverse employment action against them. Link to press release for Singleton, et al., v. Domino’s Pizza, LLC, 8:11-cv-01823-DKC (D. Md.).

STATE REFORM

Republican Ohio Governor’s Efforts to Ease Collateral Consequences

Ohio Governor Kasich has indicated that “for people who've paid their debt and rehabilitated themselves, we want to give them a chance.” Ohio prisons Director Gary C. Mohr said he is working with state lawmakers in both parties on legislation to lift some sanctions such as driver license revocations. See “State tries to ease job hunts of ex-cons,” Feb. 22, 2012. The state has been hosting workshops focused on collateral consequences, license suspension and fees, certificate of civic restoration, fair hiring practices, and child support practices. See “State Examining Convicted Felons’ Road To Re-Entry,” Feb. 22, 2012. See also, editorial, “Pointless Roadblocks,” Feb. 25, 2012.
New Jersey Bill to Reduce Certain Job Barriers

In New Jersey, S876, would permit certain persons convicted of a crime involving moral turpitude to be employed by alcoholic beverage licensees, so long as they are not involved in the serving, selling, soliciting, mixing or handling of alcoholic beverages. See “N.J. Senate committee approves bill to expand job opportunities for ex convicts,” Feb. 6, 2012.

Virginia Gov. McDonnell leads way in restoring people with convictions’ rights

In Virginia Republican Gov. Bob McDonnell has restored the voting rights of more than 2,500 people with convictions. A former prosecutor and state attorney general, the Governor has been living up to his pledge to enact the “fastest and fairest” rights restoration process in Virginia history. His office makes decisions on applications within 60 days and fully briefs prisoners on the requirements to apply. “We’re a nation of second chances,” he said. “Everybody makes mistakes. But if you want to fix your problem and be a productive citizen, we want to help.” See article, Jan. 22, 2012.

RELEVANT NEWS ARTICLES

Increase in background checks in recent years and mistaken identity cases

The article, “More companies use services to check job applicants’ pasts,” notes the increase of background checking in recent years. A spokesperson from Validity Screening Solutions comments that a criminal conviction—or even a misdemeanor—puts a candidate in the reject pile. See article, Feb. 21, 2012. The news story “When the Only Crime is Having a Common Name...” highlights the case of mistaken identity—a Chicago man was associated with a criminal record by the company Info Track and Wisconsin’s Department of Justice has erroneously attributed a criminal record to another man. See news story, Feb. 22, 2012.

SHRM Article Highlights Benefits of Hiring People with Records

Featured in HR Magazine, this article highlights several employers who have had positive experiences hiring people with criminal records. Mark Washington, human resources director for the City of Austin in Texas, notes that since the city decided to "ban the box," more qualified candidates with criminal backgrounds—candidates who previously may have opted against completing the application due to the background questions—have applied. "There are extremely talented and qualified people who happen to be ex-offenders," Washington adds. "They are just as productive as people who do not have criminal records. See “Consider the risks—and rewards—of hiring ex-offenders,” Feb. 2, 2012 (SHRM subscription required).
Grand Rapids, Michigan companies encourage employers to hire people with records

Two companies are leading an effort to encourage Grand Rapids-area companies to hire formerly incarcerated people with a goal of convincing 30 area employers to each take on two returning citizens and track their progress and retention over a two-year period. President of Butterball Farms says, “We have found that these employees genuinely appreciate the opportunity to participate in the workforce and often end up being some of the most productive members of our team.” A 2-year study of West Michigan companies that hire formerly incarcerated has been commissioned. See article, Jan. 29, 2012.

REPORTS

Long-Term Care Administrators’ Views on Background Check Impact on Applicant Pool

The Department of Health and Human Services' Office of the Inspector General released a report on January 19, 2012 with the purpose of determining the extent to which conducting background checks leads to a reduction in the available workforce for long-term-care facilities or providers. The report was based on a survey of long-term care administrators in ten states. Twenty-three percent of administrators believed that their organization’s current background check procedures reduced the pool of prospective employees, yet eighty-one percent of administrators believed they had a sufficient pool of applicants for job vacancies. See article, “Survey: Most nursing home administrators say background checks are helpful, efficient,” Feb. 10, 2012.

Evaluation of the Center for Employment Opportunities (CEO) Transitional Jobs Program

This report (Jan. 2012) presents the final results of the evaluation of the Center for Employment Opportunities (CEO). The study compares outcomes for individuals assigned to CEO’s comprehensive employment program for former prisoners with the outcomes for those assigned to the control group, who were offered basic job search assistance. The three-year evaluation found that CEO substantially increased employment early in the follow-up period but that the effects faded over time. CEO was found to significantly reduce recidivism. The evaluation includes a benefit-cost analysis.

A Signaling Perspective on Employment-Based Reentry Programming: Training Completion as a Desistance Signal
Graduates of employment training programs have lower rates of recidivism and better performance in the labor market than non-graduates. Yet authors Bushway and Apel argue that comparing graduates with nongraduates in a nonrandomized setting leads to biased inferences and thus does not prove that the employment-based training program itself is a cause of desistance. However, using signaling theory, the researchers nonetheless argue that “these programs serve an important role in the reentry process” as “voluntary enrollment, active participation, and successful completion of prison- and community-based employment programs . . . are excellent candidates for desistance signals.” See abstract, Feb. 1, 2012.

Resource: NY Booklet on Collateral Consequences

Judge Harold J. Baer Jr. and Jacqueline Harrington compiled a booklet, “Consequences of Conviction: A Reminder of Some Possible Civil Penalties” that collects the federal and New York state legislation on collateral consequences of criminal convictions. The purpose is to provide criminal defense attorneys with an overview of this information so that, when appropriate, it can easily be conveyed to clients.

For more information contact:

Michelle Natividad Rodriguez | Staff Attorney
National Employment Law Project | 405 14th Street, Suite 1400 | Oakland, California 94612

(510) 663-5705 | (510) 663-2028 fax | mrodriguez@nelp.org

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