To: The Michigan Prisoner Reentry Initiative State Policy Team  
From: Miriam Aukerman & Terri Stangl, Working Group on Reentry  
Re: Barriers to the Employment of People with Criminal Records  
Date: September 11, 2006

**Executive Summary**

Employment of former offenders is critical to reducing recidivism. In order to promote the employment of people with criminal records, Michigan should reduce the legal and practical barriers that they confront. Specifically, Michigan should:

1. Review statutory and administrative barriers to employment.
2. Eliminate or modify statutory and administrative barriers that create unjustified barriers to the employment of former offenders.
3. Promote individualized decision-making in hiring decisions.
4. Require that criminal records be reviewed at the end, not the beginning, of the hiring process.
5. Simplify, publicize and enhance employer incentives for hiring former offenders.
6. Remove disincentives to hiring former offenders.
7. Ensure that former offenders can get a driver’s license in order to get to work.
8. Ensure the parolees have valid identification at the time of release.
9. Ensure that child support arrearages do not become a disincentive to lawful employment.
10. Adjust reporting requirements for individuals who work during the day.
11. Expand access to expungements.
12. Provide a documented means for former offenders to demonstrate rehabilitation and employability.
13. Modify criminal record reporting to promote employability.
14. Conduct a public education campaign about “no-felon” policies; work with employers and industry associations to develop model equal employment policies.
15. Review restrictions placed on people with sex offenses and permit more individualized consideration of appropriate restrictions.
Introduction

The Working Group on Reentry is a state-wide initiative, co-convened by the Center for Civil Justice, the University of Michigan Clinical Law Program, and Legal Aid of Western Michigan, that brings together policymakers, advocacy groups, and service providers to address reentry policy issues at the state level. We have been meeting since July 2003. A major focus of our work has been on barriers to the employment of people with criminal records. We therefore particularly appreciate the invitation to submit this report.1

Most people in the criminal justice system were hard to employ at the time of conviction, with limited education and few job skills. After incarceration, they reenter the community even harder to employ, with a gap on their resume and the added stigma of a criminal record. In addition, even if job opportunities are available, ex-offenders often face practical barriers to employment, such as lack of transportation or identification. Moreover, laws and policies restricting the employment of former offenders make thousands of jobs unavailable. Even where former offenders can surmount these practical and legal challenges, two-thirds of employers will refuse to hire them.2 Given these huge obstacles, it is not surprising that only 37% of parolees participating in the Michigan Prisoner Reentry Initiative are employed.3

Because employment is strongly correlated with lower rates of recidivism, ensuring that former offenders can find and keep jobs is critical for public safety. Research has consistently shown that parolees who find decent jobs shortly after release are less likely to reoffend and return to prison.4 According to one estimate, a 10 percent decrease in an individual’s wages is associated with a 10-20 percent increase in criminal activity and likelihood of incarceration.5 Another study found that those who are unable to find employment are three times more likely to return to prison than those who get a steady job.6 Employment support services, such as skills training and job search assistance, can be invaluable in helping former offenders find employment. Instead of simply calling for expanded employment services, however, we will focus here on the structural framework within which such programs operate. The recommendations below seek to remove

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1 This report was prepared by Miriam Aukerman and Terri Stangl, and does not necessarily reflect the views of each member of the Working Group. It is informed, however, by issues that have been identified and discussed by the group.
unnecessary obstacles to the employment of people with criminal records, while protecting the public.

**No. 1: Review Statutory and Administrative Barriers To Employment**

By law many former offenders are barred from huge segments of the labor market, including many government jobs, the military, transportation, healthcare, private security, aviation, financial services, daycare, and schools and school services. Some of these barriers are carefully tailored to protect the public. For example, law prohibiting pedophiles from working in daycare centers are clearly appropriate. Other restrictions, however, are arbitrary or overbroad. For example, anyone with a felony, no matter the nature or age of the offense, is barred for life from working as a security guard in Michigan. In many cases, Michigan’s laws are more restrictive than those in other states. See Appendix A, National Employment Law Project, Michigan’s Occupational Restrictions Based on Criminal History.

A comprehensive review of these statutory and administrative restrictions is needed in order to determine how many jobs are off-limits to former offenders, and whether a less restrictive approach could protect the public while preserving employment opportunities. Governor Jeb Bush recently ordered such a review in Florida, where it is estimated that approximately 1/3 of jobs are off-limits. The Re-Entry Policy Council has called on states to conduct “review[s] of employment laws that affect employment of people based on criminal history, and eliminate those provisions that are not directly linked to improving public safety.” Similarly, the American Bar Association’s Justice Kennedy Commission has urged policy makers to “limit situations in which a convicted person may be disqualified from otherwise available benefits, including employment, to the greatest extent consistent with public safety.”

In addition to cataloging barriers, a review of statutory and administrative restrictions should assess the effectiveness of exemption mechanisms, which allow record-based disqualifications to be lifted on a case-by-case showing of rehabilitation. Such exemptions are available in some fields (e.g. education and transportation), but not in others (e.g. long-term care and private security), even though the jobs in question require similar levels of trust and responsibility. Finally, a comprehensive review should compare the restrictions imposed in different fields. For example, an individual with a felony record can become a lawyer, but cannot work as a nurse aid. Such a distinction makes little sense.

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7 The Department of Corrections, Wayne State University Law, and the Working Group on Reentry have all begun cataloging statutory barriers to the employment of former offenders. These efforts could form a useful starting point for the efforts proposed here, but cannot provide the level of information which would be obtained through a comprehensive review, where regulatory agencies compile the requested data.


Recommendations:

- Require each executive agency to produce a report describing the criminal record-based restrictions for each occupation under that agency’s jurisdiction, including employment within the agency; employment in facilities that are licensed, regulated or funded by the agency; employment pursuant to contracts with or grants from the agency; and employment in occupations that the agency licenses or for which it provides certification. The reports should also cover access to training or certification programs run by, funded by, or regulated by the agency. The reports should specify:
  - The job title, occupation, or job classification, and the number of jobs affected.
  - The source of the disqualification (statutory, regulatory, policy or practice).
  - The terms of the disqualification, including a listing of the disqualifying offenses and the duration of the disqualification.
  - The year the disqualification was adopted and its rationale.
  - Any criteria the agency has adopted to apply the disqualification to individual cases.
  - The exemption, waiver, or review mechanisms available to seek relief from the disqualification, based on a showing of rehabilitation or otherwise.
  - The stage of the hiring/licensing process during which criminal history is considered, and any questions asked on employment/licensing applications about criminal history.

- Require all executive agencies to collect data to determine the impact of disqualifications on the employment opportunities for former offenders in Michigan, and the effectiveness of case-by-case review mechanism that lift disqualifications. Data should include, for the preceding two-year period:
  - The number and percentage of individuals who underwent a criminal background check.
  - The number and percentage of individuals who were required to disclose their criminal history, without a criminal history background check.
  - The number and percentage found disqualified based on criminal records.
  - The number and percentage who sought review or exemption; the number and percentage who were found qualified for an exemption after an initial review; and the number and percentage who were found qualified after any additional level of review.

No. 2: Eliminate or Modify Statutory and Administrative Barriers that Create Unjustified Barriers to the Employment of Former Offenders

Former offenders who pose little or no risk to the public should not be shut out of jobs merely because they have a criminal record. Rather, statutory and administrative barriers to employment or licensure should only be used where the conviction is substantially related to the particular employment or license, or where the person presents a threat to public safety. Blanket bans on the hiring of people with records (such as “no felon” policies) are almost always overbroad, and exclude many people who could safely work in the field in question. Lengthy or lifetime restrictions are similarly overbroad, especially given recent research demonstrating that, after seven years of crime-free
behavior, individuals with criminal records have essentially the same risk of committing crimes as those with no records.\textsuperscript{10} The comprehensive review of barriers proposed in Recommendation Number 1, above, should help identify laws and policies that unnecessarily deny former offenders employment.

Recommendations:

- Based on the comprehensive review of barriers, identify those statutory and administrative disqualifications which are not substantially related to the occupation in question, or which do not further public safety.
- Eliminate or modify such disqualifications “to the greatest extent consistent with public safety.”\textsuperscript{11}

\textbf{No. 3: Promote Individualized Decision-Making in Hiring Decisions}

Individualized decision-making is one of the best ways to ensure that people with criminal records are not denied employment in occupations where they can safely work. Instead of being categorically denied employment based on their conviction history, individuals should have the opportunity to demonstrate rehabilitation, or show that their offense is not related to the job in question. In some fields (particularly higher-income, licensed professions), Michigan does provide an individualized assessment of a person’s ability to work without endangering the public. Unfortunately, in many fields (particularly lower-income, unlicensed jobs, which are more typically available to former offenders) there is no such individualized consideration. In states where former offenders are allowed to apply for exemptions from a ban on employment, many former offenders are granted exemptions. For example, in Florida and Illinois, which both allow exemptions from the general ban on employment of former offenders in long-term care, 70\% and 72\%, respectively, of those who request exemptions are found eligible to work.\textsuperscript{12} In California, 67\% of exemptions are granted by the state’s “community care” licensing division.\textsuperscript{13} If similar percentages hold true in Michigan, then many former offenders who are currently disqualified from particular jobs would be able to demonstrate their fitness to work, if given the opportunity to do so.

Recommendations:

- Where statutory or administrative barriers exist, provide for a case-by-case exemption or waiver process that allows people with criminal records to demonstrate their fitness for employment.

\textsuperscript{12} Information on Florida and Illinois waivers was provided by Linda Mills, consultant, Annie E. Casey Foundation.
\textsuperscript{13} Letter from Dianne L. Kryter, Deputy General Counsel, California Department of Social Services, to Maurice Emsellem, National Employment Law Project (Sept. 28, 2004).
In fields where training or certification is required, enable individuals with records to seek an exemption or waiver prior to investing time and resources in a training program.

No. 4: Require that Criminal Records Be Reviewed at the End, not the Beginning, of the Hiring Process

Too often, employers toss job applications from former offenders directly into the reject pile, as soon as they see that the applicants have a criminal record. In order to ensure that people with criminal records are considered for employment, rather than summarily rejected, Michigan should remove questions about conviction history from the initial job application for state employment. This would ensure that applicants are first considered for employment based on their actual skills and experience, before the presence or absence of a criminal record is taken into account. Several cities have already adopted such policies. See Appendix B, National Employment Law Project, “Major U.S. Cities Adopt New Hiring Policies Removing Unfair Barriers to Employment of People with Criminal Records.” In these cities, an individual’s past convictions are not considered until later in the hiring process, when the applicant has been identified as a serious candidate for the position. Some cities also have similar requirements for all vendors who have city contracts. The only exception is for those jobs where laws expressly bar people with convictions from employment. Thus, job applications do not ask about whether someone has a felony record unless a person with such a record is barred by law from employment in that job. If no law prohibits a person with a felony record from working in that job, the initial job application does not contain questions about applicants’ criminal records.

Recommendations:

- Modify state agency and contractor hiring policies to limit the inquiry into an individual’s criminal history until the final stages of the hiring process.
  - Remove questions about conviction history from the initial applications for employment with state agencies, except questions that ask about convictions which bar a person, as a matter of law, from employment in that job.
  - Require that vendors seeking state contracts remove questions about conviction history from initial applications for employment, except questions that ask about convictions which bar a person, as a matter of law, from employment in that job.
  - Consider criminal history at the final stages of the hiring process, and require that offense conduct be substantially related to the job before excluding an applicant on account of a criminal record.

No. 5: Simplify, Publicize and Enhance Employer Incentives for Hiring Former Offenders

Several programs exist to encourage the hiring of former offenders, including the Federal Bonding Program (which protects employers against theft or dishonesty by employees), the Work Opportunity Tax Credit (which provides tax incentives to hire individuals with
felonies), and the Welfare-to-Work Tax Credit (which provides tax incentives to hire long-term family assistance recipients). Unfortunately, too few employers know about these programs, and more employer education would be helpful. Research on employers’ experiences with these programs is also needed. Some employers report that the paperwork for these programs, particularly the tax credit, can be exceedingly complex, and that they therefore do not want to bother with it. These programs will only be effective if employers find them easy to use.

In addition to simplifying and publicizing existing programs, Michigan should develop additional employer incentives for hiring people with criminal records. For example, state tax credits could be created, as has been done in five other states. Similarly, a company’s record of hiring former offenders could be considered in assessing bids for state contracts.

Finally, the state should actively market the idea of hiring former offenders. In places like Grand Rapids where such efforts are underway, employers have been very receptive. The state should make use of opportunities like bidding, contracting, and licensing, to inform employers about the benefits of hiring people with records.

Recommendations:

- Research employers’ experiences with and usage of existing incentives for hiring people with criminal records. Modify procedures to make them more employer-friendly.
- Publicize existing incentives for hiring people with criminal records, including the Federal Bonding Program, the Work Opportunity Tax Credit, and the Welfare-to-Work Tax Credit. Post information or links at sites that are likely to be used by employers such as the DLEG site, the Talent Bank site, etc.
- Consider creating state tax credits for employers that hire former offenders.
- Consider making the employment of former offenders a factor in assessing bids for state contracts.
- Market the idea of hiring former offenders to employers and business associations.
  - Develop informational materials targeted at employers.
  - Use state bidding, contracting, and licensing as opportunities to inform employers about the benefits of hiring people with criminal records.

No 6: Remove Disincentives to Hiring Former Offenders.

Many employers justify their unwillingness to hire former offenders by claiming that they fear negligent hiring lawsuits or that their insurance rates will increase. While these fears may be overblown, they present a major obstacle to employment. Employers who responsibly hire individuals with records deserve immunity. Immunity could be tied to hiring individuals who have obtained certificates of rehabilitation or certificates of

employability. (See No. 12 below). Michigan should also examine whether insurers are charging higher rates to employers who hire former offenders, and determine whether there are policy reforms in the insurance area that would promote the employment of people with criminal records.

Recommendations:

- Develop a statutory mechanism to immunize employers who responsibly hire individuals with criminal records from claims of negligent hiring based on an employee’s criminal record.
- Ask DLEG’s Office of Financial and Insurance Services to review insurance practices. The review should:
  - Assess whether insurers are charging higher rates to employers who hire former offenders.
  - If so, make recommendations about whether such rate differentials should be prohibited.
  - Make recommendations for policy reforms in the insurance area that would promote the employment of people with criminal records.

No. 7: Ensure that Former Offenders Can Get a Driver’s License in Order to Get to Work

Because there is limited public transportation in much of the state, and because many available jobs are not located in the communities where former offenders reside, many offenders must drive in order to get to work. For those unable to get a driver’s license, it may be impossible to work because it is impossible to get to work. In many cases it is the lack of income with which to pay fines that keeps parolees from getting a license, and hence from getting a job. And without a job, these parolees do not have the income to pay the fees that would enable them to get their licenses back. This vicious circle can be broken if payment plans and restricted licenses were readily available and made a part of a former offender’s post-release case plan. Michigan should also review all laws which automatically suspend a driver’s license upon conviction, including automatic license suspensions for drug offenders whose offenses were not related to driving. License suspensions are appropriate if the underlying conviction raises concerns about a person’s ability to drive. They are not appropriate as punishment for an offense, and they make it more difficult for offenders to find jobs and housing that help them succeed.

Recommendations:

- Ensure that the inability to pay fines does not prevent low-income individuals, including former offenders, from getting to work.
  - Allow individuals who are making payments under a payment plan to get their licenses provisionally restored, with or without restrictions on how the license can be used. Payment amounts should be set based on ability to pay.
  - Allow individuals who owe fines to get restricted licenses to drive to and from work, school, and treatment.
• Review laws that automatically suspend driver’s licenses due to a criminal conviction, and eliminate or modify laws where the underlying offense is not related to the person’s ability to drive.

• Work with the Secretary of State to develop an administrative process where the SOS could review MDOC and MPRI recommendations on when and how a license should be issued to parolees, and establish conditions for a parolee’s use of a driver’s license prior to or within a short time after release.

**No. 8: Ensure that Parolees Have Valid Identification at the Time of Release**

Individuals who do not have either a state identification card or a driver’s license may be unable to work. It can take weeks or months for an individual who lacks I.D. to obtain the documents necessary to obtain I.D. from the Secretary of State. Although this problem has been recognized for some time, the Department of Corrections and Secretary of State have been unable to reach agreement on the issuance of I.D., in large part because of concerns about verifying inmate identity. While issuance of I.D. is complicated for the small fraction of individuals whose true identities are unknown, this should not hold up issuance of I.D. in cases where DOC is willing to vouch for the individual’s identity.

Recommendation:

• Ensure that all individuals whose true identity is known to the Department of Corrections can obtain a state I.D. at the time of release, or shortly thereafter.

**No 9: Ensure that Child Support Arrearages Do Not Become a Disincentive to Lawful Employment**

On average, Michigan prisoners owe $28,000 in child support, a debt that many find impossible to repay. In many cases this debt accrued during incarceration, when the prisoner had no ability to pay. Child support garnishment often causes former prisoners to lose 50-65% of their paycheck. Because the main way to avoid garnishment is to work in the underground economy, excessive child support payments are a major disincentive to lawful employment.\(^{15}\) While former prisoners, like all parents, should pay support when able, they should not be responsible for child support debt that accrues during incarceration, unless they have income or assets while in prison.

Because a court cannot eliminate support retroactively once it has accrued, it is critical that support amounts be adjusted at the time an individual is first incarcerated. By law, the Friend of the Court is required to review a person’s support obligation upon learning that the individual is incarcerated for a year or more. In practice, however, the Friend of the Court may not be informed of the incarceration, or may not undertake support reviews. Friend of the Court offices can forgive arrearages owed to the state (but not to

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the other parent). While some offices have “incarceration credit” programs to forgive incarceration-related arrears owed to the state, this practice is not uniform throughout the state.

Recommendations:

- MDOC should work with DHS and SCAO to develop a mechanism to ensure that the appropriate Friend of the Court offices are given the names, at the time of admission, of all individuals who are entering the correctional system, and ensure that these offices perform support reviews which are effective as of the date the Friend of the Court receives notice of the admission.
- Michigan (through DHS) should develop a standing policy of waiving child support arrears owed to the state that were accumulated during incarceration, unless there is proof that the prisoner had income or assets with which to pay support.
- This policy of waiving incarceration-related, state-owed arrears could be implemented through “incarceration credit” programs in local Friend of the Court offices.

No. 10: Adjust Reporting Requirements for Individuals who Work During the Day

For individuals on parole or probation who have frequent reporting requirements, or who must also attend a variety of treatment programs, it can be difficult to maintain employment. Parole officers should, where appropriate, modify reporting schedules or treatment requirements to accommodate a parolee’s work schedule, rather than expecting that an employer will accommodate the parolee’s schedule. Where possible, evening reporting hours should be available for parolees who work or are in job-training programs.

Recommendation:

- Modify reporting and treatment schedules to accommodate parolees’ work and job training schedules.

No. 11: Expand Access To Expungements

Over the last year, there has been a dramatic 60% increase in the number of expungement petitions in Michigan, reflecting the increasing difficulty of finding employment with a criminal record.16 An expungement allows first time offenders to seal their records after five years. Certain offenses, including most sex offenses, are not expungeable. Expungements not only lift statutory barriers to employment, but also remove the conviction from the individual’s public record, thereby dramatically increasing the chances that the individual will be hired. Unfortunately, individuals who have a second conviction – even if it arises out of the same offense or even if it is for something as minor as leaving a driver’s license at home – are ineligible. The benefits of expungement

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should be available to at least some individuals with multiple convictions who have demonstrated rehabilitation.

Recommendation:

• Expand access to expungement, by, for example, developing a tiered system, under which individuals with multiple convictions would be eligible for expungement after a longer time period (e.g. 5 years for 1 offense; 10 years for 2 offenses; 15 years for 3 offenses).
• Permit expungement for two offenses if they arise from the same event.

No 12: Provide a Documented Means for Former Offenders to Demonstrate Rehabilitation and/or Employability

Individuals who are not eligible for expungement but who have been rehabilitated, need a way to demonstrate rehabilitation. In Arizona, Illinois, Nevada, New York, New Jersey, and California, “certificates of rehabilitation” are used to lift statutory bars to certain jobs or licenses. Employers then have the discretion to consider each applicant individually, rather than being forced to reject applicants under a categorical exclusion. A certificate of rehabilitation, unlike an expungement, does not eliminate the criminal record, but simply removes certain civil consequences of a conviction, such as record-based disqualifications from employment or licensing.

An alternative approach would be to establish a centralized review board, which would issue certificates of employability. Based on a case-by-case assessment of each individual, the board would determine whether the individual is eligible for all employment or whether particular occupations should be off-limits. Such certificates would lift statutory barriers to employment, and could also be used to immunize employers who hire certified individuals in an approved field.

Recommendations:

• Establish a judicial or administrative process to certify the rehabilitation and/or employability of individuals with records.
• Lift statutory barriers to employment for individuals who obtain such certificates, and require that information about the certificate be included on the person’s criminal history record.

No 13: Modify Criminal Record Reporting to Promote Employability

Although criminal records have always been an obstacle to employment, over the last decade criminal background screening has increased exponentially, making it much harder than in the past for people with records to obtain employment.17 One recent

survey found that between 1996 and 2003, the number of employers conducting criminal background checks rose from 51% to 80%. Unfortunately, employers often do not understand how to interpret criminal history reports correctly. For example, employers sometimes fail to understand that the “arrest” and “charge” columns in ICHAT are not separate convictions, and therefore erroneously conclude that a job applicant has three felonies, where there is actually one.

Including arrest data on criminal records is particularly problematic, given both the constitutional presumption of innocence and Michigan law which prohibits employers from considering misdemeanor arrests that did not result in conviction. Although employers are not permitted to ask applicants questions about or deny employment based on arrests that did not lead to convictions, the ease with which employers can obtain arrest information undermines these laws.

Criminal records are frequently incomplete or incorrect, making job applicants appear to have more serious records than they actually do. Just as an employer must give an applicant a copy of a credit report before using that report to make an adverse employment decision, so too should employers be required to give job applicants an opportunity to correct criminal history information before making an adverse decision. Applicants should be given a copy of their records, so that they can check for and correct errors.

Michigan should also consider whether some old convictions should drop off of criminal records after a specified period of time, just as old debts and bankruptcies drop off of credit reports. In California, background screening firms are prohibited from reporting convictions that are more than seven years old. Criminal record information is retained for law enforcement purposes, but only convictions within the last seven years are available to employers. In addition to the California model, there are a number of other ways in which reporting restrictions could be crafted. For example, serious offenses could remain available to the public indefinitely, with only minor offenses dropping off. Or employers in sensitive fields could have access to a full criminal history, while employers in other industries would receive only conviction information within the specified time frame. Or the reporting restriction could apply to private screening companies, but not the Michigan State Police. This approach would limit excessive dissemination of old conviction information, while still providing a mechanism to obtain it if employers wish to do so.

Finally, widespread, free access to criminal history information through OTIS undermines reentry. Job counselors report that some employers would be more willing to hire former offenders if information about their employees’ criminal records were not publicly available.

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19 MCL 37.2205a.
Recommendations:

- Make criminal history records easier for employers to understand by requiring that publicly available printed and on-line reports include only conviction information, and do not include arrest and charge data.
- Automatically seal the record where an arrest did not result in conviction.
- Require employers who run criminal record checks to provide a copy of the record to the applicant, and allow the applicant to dispute its accuracy, before any employment decisions are made.
- Consider whether, after a period of time, information about less serious convictions should drop off of criminal history reports that are used for employment purposes.
- Do not allow public access to information on OTIS about individuals who have completed probation or parole.

No. 14: Conduct a Public Education Campaign About “No-Felon” Policies; Work With Employers and Industry Associations to Develop Model Equal Employment Policies

When employers adopt “no-felon” policies, or other broad record-based employment restrictions, this frequently violates federal anti-discrimination law. Because such policies have a disparate impact on African-Americans and Hispanics, such policies are only permissible if they are justified by “business necessity,” which requires consideration of the nature of the offense, the age of the offense, and the nature of the job sought. Thus, an employer could establish “business necessity” to exclude embezzlers from bank jobs, but not from a factory assembly line. Many employers are not aware that their “no-felon” policies may be illegal. Moreover, many job search centers – including government-supported programs like Michigan Works! – routinely post advertisements specifying “no felons.” More public education about and enforcement of the laws prohibiting such overbroad policies are needed. Finally, many employers lack a tailored equal employment opportunity policy with respect to people with records, and therefore default to denying employment to anyone with a felony record. The state should assist employers to develop appropriate equal employment opportunity policies that address legitimate business concerns, but do not unnecessarily limit employment for people with records.

Recommendations:

- Work with the Michigan Department of Civil Rights and the Equal Employment Opportunity Commission to publicize and enforce federal anti-discrimination law, as it applies to people with criminal convictions.
- Work with employers and industry associations to develop appropriate equal employment opportunity policies with respect to people with criminal records, and/or

ask the MDCR and the EEOC to develop model equal employment opportunity policies for major industries.

- Prohibit government-funded job centers, including Michigan Works!, from posting job advertisements that specify “no felons,” unless state or federal law prohibits employers from hiring people with felony convictions for that job. Use employer questions about this policy to educate employer about federal anti-discrimination law, and to distribute public education materials and model equal employment opportunity policies.

**No. 15: Review Restrictions Placed on People with Sex Offenses and Permit More Individualized Consideration of Appropriate Restrictions**

Among the most difficult individuals to employ are those with sex offenses. Such individuals are prohibited from working within 1000 feet of a school, regardless of the type of job. They are also barred by law from many occupations, and, if on parole, are generally not allowed access to computers. When sex offenders do identify a job for which they are eligible, many discover that employers are rarely willing to hire them. Public safety demands that dangerous sex offenders be kept out of jobs where they could harm others. At the same time, public safety also demands that sex offenders find work.

Many legal prohibitions affecting sex offenders turn on whether someone is listed on the registry. However, there are huge differences in the level of risk presented by registered sex offenders. While many other states have tiered sex offender registries, which classify offenders based on the severity of their crimes and likely future risk, Michigan lumps all individuals with sex offenses together. Some are rapists. Others are teens who slept with an underage partner. So long at Michigan’s registry does not categorize offenders by risk level, job restrictions which are tied simply to registration as a sex offender, rather than being based on the actual underlying convictions, will exclude rapists, “Romeo-and-Juliet” offenders, and everyone in between. To be effective and fair, job restrictions should be tailored to reflect real levels of risk.

Recommendation:

- Review the restrictions imposed on people with sex offense convictions, including whether statutory restrictions should be based on the nature of the offense, rather than on the person’s status as a registered sex offender, and whether and when exemptions should be available.
APPENDIX A

Memorandum

To: Michigan Prisoner Reentry Initiative State Policy Team

From: Maurice Emsellem, National Employment Law Project

Re: Michigan’s Occupational Restrictions Based on Criminal History

The National Employment Law Project (NELP) appreciates this opportunity to offer recommendations for reform of Michigan’s occupational laws to help reduce unnecessary barriers to employment of people with criminal records. Supplementing the report submitted by Miriam Aukerman and Terri Stangl of the Working Group on Reentry, the following memo compares selected Michigan laws that regulate large numbers of entry-level workers with alternative practices adopted by other state and federal laws.

As described by the Working Group on Reentry’s report, a successful “reentry” strategy requires close scrutiny of state occupational laws to determine if they go too far in denying critical job opportunities to people with criminal records. The bi-partisan Re-Entry Policy Council, representing the nation’s leading experts and policy makers working on reentry, also expressed serious concern about the role of employment barriers in federal and state occupational laws. The Council recommended that policy makers “review the employment laws that affect employment of people based on criminal history, and eliminate those provisions that are not directly linked to improving public safety.”

For this analysis, NELP reviewed the specific Michigan laws that regulate the state’s schools, as well as long-term care and private security. Given the reentry challenge facing Michigan - with about 14,000 individuals released each year from the state’s prisons and another 1 million individuals who have a serious misdemeanor or felony record on file with the state – it is instructive to evaluate the legal barriers to employment in these industries because they employ such large numbers of entry-level workers.

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1 Reentry Policy Council, *Charting the Safe & Successful Return of Prisoners to the Community* (2004), at page 299 (emphasis added).
3 According to the Bureau of Justice Statistics, in 2001 there were 1,372,300 individuals with fingerprints listed on the state’s crime files. Bureau of Labor Statistics, *Survey of State Criminal History Information Systems, 2001* (Table 2). Adjusting this figure downward to 1 million to account for repeat entries and deceased individuals, roughly 15% of all adults in the Michigan have a criminal record (a serious misdemeanor or felony arrest or conviction) that will show up on a routine criminal background check.
These industries also employ an especially diverse workforce, including large numbers of minorities who are more likely to have had contact with the criminal justice system.\(^4\)

**Findings & Recommendations**

As set forth in the Appendix, NELP documented the following features of Michigan’s occupational laws regulating the schools, long-term care facilities and private security:

- the scope of the state’s disqualifying offenses;
- the presence or absence of a process to “waive” disqualifying offenses; and
- the presence or absence of reasonable age limits on disqualifying offenses.

Based on these factors, the recommendations detailed below apply the Reentry Policy Council’s standard, while taking into account that the occupations selected for this analysis raise special safety and security concerns.

- **Michigan’s occupational laws denying employment to people with criminal records fail to adequately account for the age of an individual’s offense.**

Of special significance, Michigan imposes a *lifetime* disqualification for all felony offenders seeking employment as private security officers or in any of the state’s schools (covering all school employees, not just instructional staff). Lifetime felony disqualifications also apply in the case of selected crimes to long-term care workers (which broadly covers food service workers, maintenance workers and others who have more limited contact with clients). All other felonies for long-term care employment are disqualifying for at least 10 years (effectively 12 years or more, because the period begins after the individual completes probation or parole).

The absence of reasonable age limits on Michigan’s disqualifying crimes conflicts with the latest research documenting the reduced likelihood that individuals will commit new crimes if they have not have not been arrested over a prolonged period of time. Indeed, according to a recent longitudinal study, those offenders who have not committed a crime for five to seven years are statistically no more likely than others their same age to be re-arrested.\(^5\) In addition to the empirical evidence supporting more reasonable age limits on Michigan’s disqualifying offenses, these reforms are critically important to encourage and reward rehabilitative behavior consistent with the major goals of the reentry initiative.

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\(^4\) Nationally, 40% to 50% of the workers employed in each of these industries are African American and Latino. See Power Point Presentation by the National Employment Law Project to the Congressional Black Caucus Foundation (September 24, 2005), at page 7 (available on-line at http://www.nelp.org/docUploads/CBCForum%2Epdf).

**Recommendation:** Michigan should remove lifetime felony disqualifications from its occupational screening laws and adopt more limited time frames suitable to the individual occupations. For example, Tennessee and North Carolina have adopted a five-year limit on disqualifying felony offenses that apply to private security guards.\(^6\) With regard to school employees, Indiana’s law lists more specific disqualifying offenses for their local districts, while including a 10-year limit on a number of felonies.\(^7\) With regard to long-term care workers, not unlike Michigan, Kansas and Indiana have adopted selected felonies that result in “permanent” disqualification. However, for other felony offenses (which are limited in these states to selected offenses, not all felonies), the disqualification period is 5 years, not 10 years as required in Michigan.\(^8\)

- **Michigan’s disqualifying offenses are not adequately tailored to the regulated occupations.**

Michigan’s occupational restrictions on school employees, private security officers and long-term care workers treat all felony offenders as equally unsuitable for employment. This is a serious concern, especially given the disproportionate numbers of people who are convicted of lesser non-violent felonies, such as drug possession and welfare fraud.

African-Americans and Latinos are often the hardest hit by these blanket felony bars to employment. Thus, EEOC has concluded that “an absolute bar to employment based on the mere fact that an individual has a conviction record is unlawful under Title VII.”\(^9\) The EEOC requires that employment decisions that involve criminal records adequately evaluate the “the nature of the job held or sought.”\(^10\)

Recognizing these fundamental concerns, several courts have questioned the legality of blanket disqualifications in other occupational licensing laws. For example, a Connecticut law denying a security guard license to all those convicted of any felony was ruled unconstitutional in *Smith v. Fussenich*,\(^11\) under the “rationality standard of review” of the 14th Amendment’s Equal Protection Clause. The court concluded that “the statute’s across-the-board disqualification fails to consider probable and realistic circumstances in a felon’s life, including the likelihood of rehabilitation, age at the time


\(^7\) Indiana Code Sections 20-5-2-7, 20-5-2-8.

\(^8\) Indiana Code Section 16-28-13 to 16-28-4; Kansas Code Sections 39-923, 39-970.


\(^10\) 11 EEOC Compliance Manual Section 604.

of conviction, and other mitigating circumstances related to the nature and degree of participation.”

**Recommendation:** Depending on the occupation, other states are much more balanced in applying felony disqualifications. These states often incorporate the EEOC’s “job related” standards in their licensing laws. In the case of school employees specifically, several states are far more narrow than Michigan is defining their disqualifying offenses. In contrast to Michigan, California disqualifies those convicted of a “violent or serious felony” as well as certain sex crimes and drug offenses. While regulating long-term care employment, several states have adopted limited disqualifying offenses, in contrast to the blanket felony rule that applies in Michigan. With regard to private security, California takes into account only those felonies that are “substantially related” to the job.

- **Michigan’s laws fail to evaluate an individual’s rehabilitation.**

A fair screening process requires an opportunity for those with a criminal history to make their case that they have paid their debt to society and no longer pose a realistic threat on the job to anyone’s personal safety or property. That is especially true of those who have been convicted of crimes that took place long ago and have since steered clear of any contact with the criminal justice system.

However, no such protections exist for those seeking employment in Michigan’s long-term care facilities or as private security officers. And while local school districts in Michigan have the authority to exempt workers who have disqualifying convictions, the procedures may vary from school district to school district and require such high level sign-off that schools are unlikely to hire new employees with felony records.

**Recommendations:** Michigan should provide effective procedures that waive disqualifying offenses when the individual has documented his or her rehabilitation. As described in the Working Group on Reentry’s report, waiver procedures have been successfully implemented in several states, including California, Florida and Illinois.

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12 In Illinois, a private detective licensing law was upheld on equal protection grounds in part because the state law included a 10-year limitation on the age of the felony offense after which time the individual is considered “presumptively rehabilitated.” *Schanuel v. Anderson*, 708 F.2d 316, 320 n. 3 (7th Cir. 1983).

13 Margaret Colgate Love, “Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide,” (July 2005), at page 9. The report documents that more than half the states have similar language prohibiting a refusal to hire and/or issue a professional or occupational license unless the offense is “directly related” (or “substantially related” or “rationally related”) to the occupation.


15 California Education Code, Title 2, Div. 3, Part 25, Sections 45122.1,45125.1.


17 California Code of Regulations, Title 16, Section 602.

18 Illinois Health Care Worker Background Check Act (225 ILCS 46/25); Florida Statutes, Chapter 435.07; California Health & Safety Code, Div. 2, Chap. 3, Section 1522(g).
addition, the recent federal terrorism security laws, which now apply to millions of port workers and truck drivers, also include waiver procedures that protect those individuals with otherwise disqualifying felony records.\textsuperscript{19} 

In addition to these waiver procedures, we urge Michigan to adopt a policy that “presumes” an individual has been rehabilitated after a specified period of time has passed since the termination of probation or parole. These procedures, which have been adopted in several states,\textsuperscript{20} provide a clearer pathway to employment that strongly encourages rehabilitation. It also eliminates the procedural barriers that can reduce reliance on waiver procedures, especially by those individuals who have difficulty navigating an appeals process and advocating effectively in writing or in-person before government agencies.


\textsuperscript{20} Arkansas Code Ann. Section 17-1-103(e) (“prima facie” evidence of rehabilitation after completion of parole or 5 years after release from incarceration); New Mexico Stat. Ann Sections 28-2-4 (“presumed” rehabilitated after completion of probation or parole, or within a 3-year period following release from incarceration); North Dakota Cent. Code Section 12.1-33-02.1 (“prima facie” evidence of rehabilitation 5 years after completion of final discharge, parole or probation).
# Michigan’s Criminal History Disqualifications for Selected Occupations Employing Large Numbers of Entry-Level Workers

<table>
<thead>
<tr>
<th>Positions</th>
<th>Does the law require criminal background checks?</th>
<th>Are workers denied employment due to specific disqualifying offenses?</th>
<th>If so, can the disqualification be waived in individual cases as part of the review process?</th>
<th>Is there a limit on the age of the offenses considered?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Long-Term Care Workers</strong></td>
<td>Yes. A state and FBI criminal background check are required of applicants for employment if they provide “direct services” or have “direct access” to individuals receiving long-term care.</td>
<td>Yes. Individuals are disqualified if they have been convicted of any felony and a large number of misdemeanor offenses (including most misdemeanor theft and assaults).</td>
<td>No.</td>
<td>Yes, in some cases. Certain felonies and selected offenses related to abuse and neglect result in a lifetime disqualification. All other felonies are disqualifying for 10 or 15 years after the individual completes probation or parole (or effectively 12 or 17 plus years). Other misdemeanor convictions result in a 10, 5, 3 or 1-year disqualification depending on the severity of the offense.</td>
</tr>
<tr>
<td><strong>School Employees</strong></td>
<td>Yes. All new hires and current school employees are required to complete a state and FBI criminal background.</td>
<td>Yes. All felony convictions, as well as all sex offenses requiring registration on the sex offender registry (both felony and misdemeanor), are disqualifying. Selected misdemeanor convictions (other than sex offenses) are also disqualifying with respect to certain positions.</td>
<td>Yes. Except for disqualifying sex offenses, the local school districts have the authority to exempt workers who have been convicted of felony and misdemeanor offenses.</td>
<td>No.</td>
</tr>
</tbody>
</table>
| **Private Security Officers**  
(MCLS Sections 338.1051-338.1068) | Yes. Individuals employed by a licensed private security guard company must submit to a state and FBI criminal background check. | Yes. An individual convicted of any felony is disqualified from being employed as a private security guard. In addition, anyone convicted of misdemeanors involving “dishonesty”, assault, and certain drug offenses are disqualified if the conviction occurred within the past five years. | No. | No, not in the case of a felony conviction. For misdemeanors, a period of five years must have elapsed since the conviction. |
Several major cities across the United States, including Boston, Chicago and San Francisco, have adopted significant new policies to limit discrimination in city jobs against people with criminal records. As Mayor Richard Daley explained when he announced Chicago's new hiring policy, "Implementing this new policy won't be easy, but it's the right thing to do. . . . We cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches."

U.S. cities are ground zero for the record numbers of people with a criminal record who are now struggling to find work and contribute to their communities. More cities are taking on this "reentry" challenge by adopting a new "smart on crime" agenda which promotes public safety by creating more employment, housing and drug treatment opportunities. In the process, more cities are also evaluating local policies that create unnecessary barriers to employment of people with criminal records. As summarized below, several major U.S. cities have also taken the critical first step by removing unfair barriers to employment in their city hiring policies.

**Boston City Council Ordinance**

Of special significance, Boston's City Council ordinance (which takes effect July 1, 2006) applies not only to hiring in city jobs, but also to the hiring decisions of an estimated 50,000 private vendors who do business with the City. The successful campaign to reform Boston's hiring policy was backed by broad community coalition called the Massachusetts Alliance to Reform CORI (MARC).

According to the ordinance, the City of Boston and its vendors cannot conduct a criminal background check as part of their hiring process until the job applicant is found to be "otherwise qualified" for the position. This critical protection ensures that everyone is first considered for employment based on their actual skills and experience before the employer takes into account the presence or absence of a criminal record. The ordinance also requires that the final employment decision, which includes information about the individual's criminal record, also considers the age and seriousness of the crime and the "occurrences in the life of the Applicant since the crime(s)." In addition, the Boston ordinance creates important appeals rights for those denied employment based on
a criminal record and the right to present information related to the "accuracy and/or relevancy" of the criminal record.

City of Chicago Hiring Policy

In May 2004, Chicago Mayor Richard Daley created the Mayoral Policy Caucus on Prisoner Reentry, bringing together government and community leaders to address the challenges facing 20,000 people each year who return to Chicago after being released from prison. In January 2006, the Caucus issued a major report calling for broad ranging reforms of City policy. With regard to city hiring, the report recommended that the Mayor "Adopt internal guidelines for the City of Chicago's personnel policies regarding criminal background checks, and advocate for fair employment standards."

At the same time that the report was released, Mayor Daley announced several major "reentry" initiatives, including reform of the City's hiring policies as recommended by the Caucus. The Mayor's press release described a new hiring policy requiring the City to "balance the nature and severity of the crime with other factors, such as the passage of time and evidence of rehabilitation . . . . Put more simply, this change means that City hiring will be fairer and more common sense." The Mayor added, "Implementing this new policy won't be easy, but it's the right thing to do . . . We cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches."

Implementing the Mayor's new hiring policy, the City Department of Human Resources has issued guidelines imposing standards on all city agencies regulating hiring decisions related to people with criminal records. For the first time, the City of Chicago now requires all agencies to take into account the age of an individual's criminal record, the seriousness of the offense, evidence of rehabilitation, and other mitigating factors before making their hiring decisions.

San Francisco "Ban the Box" Policy

The campaign to "ban the box" on San Francisco's applications for public employment was led by All of Us or None, a community-based organization of formerly-incarcerated people and their families.

Like most government employers, the City and County of San Francisco required all job applicants to check off a box on their initial job application indicating whether they have been "convicted by a court." In addition, job applicants were required to list all their convictions, no matter the age or seriousness of the offense. All of Us or None's investigation of this hiring policy revealed that it unfairly discriminated against people with criminal records because it discouraged them from even applying for City and County jobs. The policy was also found to limit the hiring pool of qualified candidates for public employment.

In October 2005, the San Francisco Board of Supervisors approved a resolution initiated
by All of Us or None which called on the City and County of San Francisco to eliminate hiring discrimination against people with criminal records by removing the requirement that criminal history information be provided as part of the initial job application for public employment. A new hiring policy has since been adopted by the Civil Service Commission of the City and County of San Francisco and the Department of Human Resources.

Like Boston's ordinance, San Francisco's new policy (which took effect in June 2006) seeks to prevent discrimination on the basis of a criminal record by removing conviction history information from the initial application. Instead, an individual's past convictions will not be considered until later in the hiring process when the applicant has been identified as a serious candidate for the position. The only exception is for those jobs where state or local laws expressly bar people with convictions from employment. These applicants will still be required to submit conviction history information at the beginning of the hiring process. Unlike the Boston ordinance, San Francisco's policy only applies to public employment, not to private vendors that do business with the City or County of San Francisco.

**Proposed Initiatives & City Hiring Studies (pending as of July 25, 2006)**

**City & County of Philadelphia**

On June 15, 2006, a bill was introduced in Philadelphia's City Council to strictly limit hiring discrimination against people with criminal records. Modeled after the Boston ordinance, the Philadelphia bill would require the employer to "first review the qualifications of an applicant and determine that an applicant or current employee is otherwise qualified for the relevant position before the Employer may conduct a criminal record check." The Philadelphia bill also goes further than the Boston ordinance by applying not only to city agencies and private vendors that do business with city, but also to all private companies employing more than 10 people within the City of Philadelphia.

**City of Newark, New Jersey**

On July 10, 2006, Newark's newly-elected Mayor, Cory A. Booker, released his 100-day plan which prominently featured a "prisoner re-entry initiative" to "reduce legal restrictions in municipal hiring and contracting for residents with criminal records, where appropriate." Like the Boston ordinance, the initiative would authorize criminal background checks "only after an individual is determined to be otherwise qualified for a position for which certain kinds of convictions are deemed relevant."

**City of Indianapolis & Marion County**

On March 27, 2006, the City-County Council of Indianapolis passed a resolution calling on the Department of Administration and Equal Opportunity to "initiate a study that leads
to a hiring policy for the Consolidated City and County for the employment, when appropriate job opportunities arise, of Marion County residents who are also previously incarcerated persons." The resolution also directed the Department to evaluate how best to coordinate employment services offered by the local corrections department and other agencies. The report, which was issued in June, and is pending before the Council’s Public Policy Committee.

County of Los Angeles

On May 23, 2006, the Los Angeles County Board of Supervisors held a meeting on the subject of the county's hiring policies with regard to people with criminal records. As a result of the public forum, the county's Department of Human Resources was directed to conduct a study of current hiring practices by the county agencies and make recommendations for further action by the Board. The study is scheduled to be completed by August 2006.

Additional Resources

New York Times Editorial (Excerpted below)
"Cities That Lead the Way" (March 31, 2006)

"Three cities -- Boston, Chicago and San Francisco - have taken groundbreaking steps aimed at de-emphasizing criminal histories for qualified applicants for city jobs, except in law enforcement, education and other sensitive areas where people with convictions are specifically barred by statute. . . . Taken together, the recent developments in Boston, Chicago and San Francisco symbolize a step forward in terms of fairness for law-abiding ex-offenders, who are often barred from entire occupations because of youthful mistakes and minor crimes committed in the distant past."

National League of Cities Weekly Newsletter
"Cities Adopt Hiring Policies to Facilitate Prisoner Reentry" (May 22, 2006)

"Major cities, including Boston, Chicago and San Francisco, have recently adopted new hiring policies that would reduce barriers to municipal employment for former prisoners. While former offenders would still be kept out of certain occupations, the policies align with a new public safety agenda in which cities are creating opportunities for employment, housing and drug treatment to reduce recidivism. By focusing on crime prevention, this 'smart on crime' approach responds to the disproportionate number of former offenders re-entering society through large U.S. cities. Polls show widespread support across America for rehabilitation as a public safety strategy."
Technical Assistance

For more information about city hiring policies that limit discrimination against people with criminal records, or for help developing similar policies for other cities, contact:

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