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**TESTIMONY 2016**  
**House Economic & Small Business Development**

Dear Members of the Committee,

Thank you for this opportunity to testify about methods to improve workforce development for formerly incarcerated individuals, as well as initiatives and incentives to promote the employment of individuals following release from incarceration. As you will see from the data below, a record of incarceration or criminal involvement can have a significant and lasting negative impact on employment opportunities. These collateral consequences can negatively impact economic development, particularly in low-income communities and those communities with a high percentage of racial minorities. There are also public safety implications when employment opportunities are limited. We believe your attention to this issue is timely and necessary and, with the implementation of new solutions, you can help create more stable families and thriving communities.

### THE IMPACT OF A CRIMINAL RECORD ON EMPLOYMENT OPPORTUNITIES

In Texas, nearly 12 million individuals have a criminal record,<sup>1</sup> with more than 150,000 people currently in prison, 390,000 on community supervision, and 114,000 on parole.<sup>2</sup> Individuals with a criminal record have greater challenges finding employment than those without one. **One study showed that employer callbacks for entry-level positions dropped 50 percent if applicants had a criminal history.**<sup>3</sup> The challenges are multiplied for people of color: Black men without a criminal record are even less likely to get a callback for an interview than white men with a criminal record.<sup>4</sup> Given that more than two-thirds of Texas' incarcerated population is composed of racial minorities,<sup>5</sup> limited employment opportunities for people with criminal records can exacerbate the disadvantages facing people of color in the workplace.<sup>6</sup>

### THE IMPACT OF DIMINISHED EMPLOYMENT OPPORTUNITIES ON PUBLIC SAFETY

The Texas Department of Criminal Justice releases more than 70,000 people from corrections facilities every year,<sup>7</sup> which is more than 1,300 people every week. A significant percentage of individuals return to larger metropolitan areas, but the massive number of people released each year ensures that every community in Texas faces the challenge of helping people find employment and housing. This is critical, because **re-employment following incarceration reduces the likelihood of re-arrest;**<sup>8</sup> however, the same study emphasized the need for *rapid* re-employment following release. People convicted of either violent or nonviolent crimes are much more likely to re-offend if they are unemployed following release from prison.<sup>9</sup>

### THE IMPACT ON ECONOMIC DEVELOPMENT

Research is very clear on this point: Decreased employment opportunities for people with criminal records have a negative impact on economic development, especially in communities with a high percentage of individuals with criminal records.

- A study by the Center for Economic and Policy Research estimated that the Gross Domestic Product shrunk by \$57 to \$65 billion per year as a result of lowered employment among formerly incarcerated individuals.<sup>10</sup>
- **One study demonstrated that hiring 100 formerly incarcerated people would increase income tax contributions by \$1.9 million, boost sales tax revenue by \$770,000, and save \$2 million annually by reducing criminal justice costs associated with recidivism.**<sup>11</sup>
- Evidence suggests that the large number of people with past felony convictions actually decreases the male employment rate by 1.5 to 1.7 percent<sup>12</sup>

## EXISTING INCENTIVES FOR HIRING SOMEONE WITH A CRIMINAL RECORD

Given what we know from research, employers who hire formerly incarcerated individuals increase public safety, improve economic development, and save the state and local community significant taxpayer dollars that otherwise might have gone toward county jail and prison operations. There are a number of incentives available to employers to encourage them to hire formerly incarcerated individuals, including:

- **The Work Opportunity Tax Credit**, administered by the U.S. Department of Labor: people with felony convictions are a target group, and the Maximum Tax Credit is \$2,400 for hiring individuals from this group.<sup>13</sup>
- **The Federal Bonding Program**, administered by Texas Workforce Commission and Workforce Development Boards: This program allows individuals with criminal records (including arrest records) to obtain a bond, which offers coverage of \$5,000 to the employer to insure against employee acts of dishonesty, larceny, embezzlement, and theft.<sup>14</sup>
- **Texas Legislation:** In 2013, the Legislature passed HB 1188 (Senfronia Thompson, Perry, and Miles); it removes the threat of civil liability when employers knowingly hire individuals with criminal records.

## HOW FAIR CHANCE HIRING CAN REDUCE BARRIERS TO EMPLOYMENT AND PROTECT BUSINESSES FROM LIABILITY

Despite the incentives listed above, employers may still fail to hire people transitioning from prison to the community. This is why the Equal Employment Opportunity Commission (EEOC) asks employers to remove the criminal background question from initial applications, and separately make hiring decisions based on an assessment of the crime and what the person has done to correct past mistakes.<sup>15</sup>

“Fair Chance” hiring is a common-sense approach that recognizes the limited employment opportunities for fully qualified and rehabilitated candidates, and the resulting, smaller applicant pool available to businesses. It provides an opportunity for each applicant to receive individualized consideration while still allowing business owners and hiring managers to maintain autonomy and discretion.

Additionally, Fair Chance hiring legislation serves to protect businesses from litigation stemming from potentially discriminatory hiring policies that completely ban any person with a criminal record. Employers that consider criminal history before making a conditional offer of employment are vulnerable to civil litigation based on civil rights violations when their practices have a discriminatory effect.<sup>16</sup>

## SOLUTIONS

- **Texas employers should adopt comprehensive Fair Chance hiring policies to protect themselves from discrimination-based lawsuits and ensure individuals with criminal records have the freedom to compete for jobs.** Fair Chance hiring provides for an individualized assessment of each applicant, including the nature of the crime at issue, the time elapsed since the commission of the crime, and the nature of the job. It will ensure that employers can demonstrate that excluding an individual based on a specific criminal offense is a bona fide business necessity, as defined in the Labor Code, and consistent with business necessity.
- **State agencies should delay background checks for applicants until those applicants are promised an interview or extended a conditional position, thus allowing job-seeking individuals to present their relevant qualifications for employment without fear of automatic denial.** Employers will benefit from having a larger pool of qualified applicants for available positions, while retaining the choice to run criminal history checks. Combined with HB 1188 (effective 2013), which extended protection to employers hiring certain people with criminal records, such a policy will greatly increase employment opportunities for individuals with criminal histories, thus leading to more stable families and safer communities.

## Citations

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- <sup>3</sup> D. Pager, 2003. As cited by Maurice Emsellem and Michelle Natividad Rodriguez, "Advancing a Federal Fair Chance Hiring Agenda – Background Check Reforms in Over 100 Cities, Counties, & States Pave the Way for Presidential Action," *National Employment Law Project*, January 2015, 2, <http://www.nelp.org/page/-/SCLP/Report-Federal-Fair-Chance-Hiring-Agenda.pdf?nocdn=1>.
- <sup>4</sup> Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology*, 108(5), 937-975.
- <sup>5</sup> TDCJ, Fiscal Year 2014 Statistical Report.
- <sup>6</sup> Amy Solomon, "In Search of a Job: Criminal Records as Barriers to Employment," National Institute of Justice,
- <sup>7</sup> TDCJ, Fiscal Year 2014 Statistical Report.
- <sup>8</sup> Peter Cove & Lee Bowes, "Immediate Access to Employment Reduces Recidivism," June 11, 2015, [http://www.realclearpolitics.com/articles/2015/06/11/immediate\\_access\\_to\\_employment\\_reduces\\_recidivism\\_126939.html](http://www.realclearpolitics.com/articles/2015/06/11/immediate_access_to_employment_reduces_recidivism_126939.html).
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- <sup>11</sup> Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia, ECONOMY LEAGUE OF GREATER PHILADELPHIA (2011), [http://economyleague.org/files/ExOffenders\\_-\\_Full\\_Report\\_FINAL\\_revised.pdf](http://economyleague.org/files/ExOffenders_-_Full_Report_FINAL_revised.pdf).
- <sup>12</sup> John Schmitt & Kris Warner, "Ex-Offenders and the Labor Market," Center for Economic and Policy Research (November, 2010), 1, <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>.
- <sup>13</sup> Texas Workforce Commission, Work Opportunity Tax Credit, <http://www.twc.state.tx.us/businesses/work-opportunity-tax-credit>
- <sup>14</sup> Texas Workforce Commission, Fidelity Bonding, <http://www.twc.state.tx.us/jobseekers/fidelity-bonding>
- <sup>15</sup> U.S. Equal Employment Opportunity Commission (EEOC), *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, 915.002 (April 25, 2012), 13-14, [http://www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf).
- <sup>16</sup> Texas Workforce Commission, *Especially for Texas Employers*, by Ruth R. Hughes, TWC-10 (0815) (2015) 15. "A hiring standard that results in exclusion of an applicant on the basis of race, color, religion, age, gender, national origin, disability, or genetic information is suspect and presents a risk of an EEO claim or lawsuit unless there is a bona fide occupational qualification (BFOQ) dictating that one type of person be favored over other types of people for a position . . . . The burden of proving that a BFOQ exists is on the employer."