

# Eliminating Barriers to Jobs and Housing

## Addressing the Impacts of Arrests and Conviction Records

### Fact sheet

In 2009, residents of Sojourner Place Transitional Housing and other community groups asked the Seattle Office for Civil Rights and the Seattle Human Rights Commission to explore creating an ordinance similar to laws in New York and Wisconsin that would prohibit discrimination on the basis of a conviction and arrest record when the record does not relate to the job or housing or pose a threat to the safety of others. This fact sheet provides more information on the issue.

### A barrier to gaining employment and housing

Across the country, people are experiencing the impact of their record on finding work in an already tough economy. In 2009, Florida judges reported the number of requests made by individuals to have their record sealed or expunged spiked by 51% over the course of one year. Attorneys working on behalf of many of these clients attributed the increase to job seekers who found their old records becoming a problem when looking for work<sup>1</sup>.

In Seattle we have heard similar reports from social service providers working with clients with records and from individuals who are unable to find a place to live or a job due to their own or a family member's conviction record. In many cases, restrictive policies or practices categorically bar anyone with a prior record from housing or employment without reviewing individual applicants.

- Between 2000 and 2010 the American Civil Liberties Union (ACLU) of Washington received 441 complaints in the category "records." The majority of these complaints involved people who experienced barriers to housing and employment due to their criminal record. From 2009-2010 the national ACLU received 17 complaints from Washington residents about criminal records discrimination in employment.
- A study by a Princeton sociologist found that former offenders are only one-half to one-third as likely as non-offenders to be considered by employers<sup>2</sup>. Another study found that 65% of all employers in five major U.S. cities would not knowingly hire a person with a criminal record, regardless of the offense<sup>3</sup>.

When people who have committed a crime and done their time leave prison, it is often a huge challenge to find housing and employment. Adding protections to end discrimination based solely on arrest or conviction records is one strategy to help support people's re-entry, and to decrease the likelihood of their re-offending.

### What would this proposal do?

The proposal would amend the City of Seattle's current anti-discrimination laws (SMC SMC 14.04, 14.08 and 14.10) to limit the ways an employer or housing provider can use arrest or conviction records when deciding to hire, fire, promote or take other employment actions, or when deciding to rent, evict or take other housing actions.

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<sup>1</sup> *Unemployment driving up demand to get criminal records expunged or sealed.* Colleen Jenkins and Andy Boyle. St. Petersburg Times, in print Nov 30, 2009, extracted from the web on Feb 4, 2011. <http://www.tampabay.com/news/courts/unemployment-driving-up-demand-to-get-criminal-records-expunged-or-sealed/1055220>

<sup>2</sup> *The Mark of a Criminal Record*, Devah Pager, *Northwestern University, American Journal of Sociology*, *AJS* Volume 108 Number 5 (March 2003): 937–75

<sup>3</sup> Holzer, Harry J. 1996. *What employers want: Job prospects for less-educated workers*. New York: Russell Sage Foundation.

The goal is to end discrimination against people whose past record does not relate to their tenancy or employment, nor pose a threat to public safety. Employers and landlords would still be able to ask about applicants' criminal history. If a landlord or employer found that an applicant's record poses a threat to the safety of others, s/he would still have the discretion to deny housing or employment.

Employers and landlords would not be able to impose a blanket, across-the-board "no criminal backgrounds / no felons" policy. Employers and housing providers would consider applicants on a case-by-case basis.

Protections would not apply in situations where there is:

- A direct relationship between a conviction and the employment or housing sought (such as a record of embezzlement for someone applying to work as an accountant); or
- Unreasonable risk of substantial harm to property or the safety of others (such as a record of DUIs for someone applying to work as a driver).

Employers and landlords would consider additional factors such as: evidence of rehabilitation, the time that has elapsed since the conviction occurred, and/or the age of the person at the time the conviction occurred.

The proposal would not affect:

- Existing state and federal laws regarding criminal background checks;
- Law enforcement agencies or positions that involve working with children and vulnerable adults when the criminal history pertains to sexual abuse, neglect, exploitation of children or vulnerable adults, etc.

The proposal also does not protect **current** criminal behavior. A landlord would still be able to conduct unit inspections to ensure tenants are complying with nuisance or drug laws.

Protections of this sort exist in other parts of the country, including in New York, Kansas, Hawaii, Wisconsin, Pennsylvania, Massachusetts, Illinois and Wisconsin.

### **How would these protections be implemented?**

The Seattle Office for Civil Rights (SOCR) enforces the city's anti-discrimination laws. SOCR investigates charges brought to our office by individuals who feel they have been discriminated against. If this proposal becomes law, a person with a conviction or arrest record who feels they have been discriminated against in employment or housing because of their record could file a charge of discrimination with SOCR. SOCR's services are free, and language and disability accommodations are available upon request.

When someone files a charge of illegal discrimination with SOCR, we conduct an investigation and issue a finding based on the evidence. Whenever possible, we work to negotiate a settlement that all sides can agree to. Negotiated settlements help everyone involved find solutions that fit their specific situations. As part of a settlement, respondents often receive training that helps them avoid similar issues in the future.

SOCR does not take sides in a case. We do not speak for the Charging Party; nor do we represent the Respondent. We are fair and impartial. The process is administrative; it is straightforward and does not require attorneys.

Civil rights law requires a preponderance of evidence to show that discrimination did occur; in other words, the evidence must show that it is likelier than not that illegal discrimination took place. The average length of an SOCR investigation is less than six months. Each case is different, and cases may take more or less time depending on the circumstances.

### **How many residents have a conviction record?**

- The Bureau of Justice Statistics has estimated the number of people with prior records to be 30% of the adult population.<sup>4</sup>
- Arrest records alone are not an adequate indicator that a person has committed a crime. Nearly 1/3 of all felony arrests never lead to a conviction according to the Bureau of Justice Statistics<sup>5</sup>.

### **Compounding effect for people of color**

A 2003 study<sup>6</sup> reported that a criminal record proved to be 40% more detrimental in employment to Black candidates than their white counterparts. Employers called back white applicants with felony records 17% of the time versus a rate of just 14% for a Black candidate who had no record at all. The study reports, “While employers may have learned to keep their racial attributions in check through years of heightened sensitivity around employment discrimination, when combined with knowledge of a criminal history, negative attributions are likely to intensify.” Racial disparities persist throughout the criminal justice system due to racial disparities in arrest rates, conviction rates and sentencing terms.

- In Washington State African Americans comprise only a little more than 3% of the population yet account for over 19% of those in prison. Native Americans make up only 1.4% of the state’s population yet comprise 4.6% of those in prison
- Nearly two-thirds of people released from prison served time for non-violent offenses and 2 out of 3 non-violent offenders released from prison each year are people of color (48% African-American, 25% Latino).
- The U.S. Equal Employment Opportunity Commission (EEOC) has issued employment guidance that recognizes racial disparities in the criminal justice system. Because criminal background checks have a disparate impact on people of color, Title VII regulates employer decisions based on a criminal record. According to the EEOC, employer decisions based on arrests alone routinely violate Title VII and employer decisions based on convictions must be “job-related”, taking into account the age and severity of the offense and evidence of rehabilitation.

### **Jobs and housing – key ingredients for successful re-entry and rehabilitation**

Ninety-seven percent of people serving time in Washington State prisons are released after serving their sentence<sup>7</sup>. In 2009, over 17,000 people were released from prisons in Washington State; nearly 730,000 people were released from federal and state prisons across the country<sup>8</sup>. Stable jobs and housing are critical factors for people’s successful return to the community.

- About half of all offenders entering the state prison system were unemployed at the time the offense was committed.
- A study in New York reported that a person without stable housing was 7 times more likely to re-offend after returning from prison.
- Increased employment is associated with positive public safety outcomes. Researchers have found that from 1992 to 1997, a time when the unemployment rate dropped 33 percent, “slightly more than 40 percent of the decline [in the overall property crime rate] can be attributed to the decline in unemployment.”<sup>9</sup>

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<sup>4</sup> U.S. Department of Justice Office of the Attorney General, “The Attorney General’s Report on Criminal History Background Checks.” (June 2006) at 51.

<sup>5</sup> Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties*, 2004 (April 2008) as cited in Testimony of Maurice Emsellem, National Employment Law Project Before the U.S. Congress, House of Representatives, Judiciary Committee, Subcommittee on Crime, Terrorism & Homeland Security Hearing on Collateral Consequences of Criminal Convictions: Barriers to Reentry for Formerly Incarcerated, June 9, 2010

<sup>6</sup> The Mark of a Criminal Record, Devah Pager, *Northwestern University, American Journal of Sociology*, *AJS* Volume 108 Number 5 (March 2003): 937–75

<sup>7</sup> Washington State Department of Corrections, Causes of Criminal Behavior, DOC Reentry Initiative, <http://www.doc.wa.gov/goals/reentry.asp>

<sup>8</sup> Source: BJS, Bulletin, Prisoners in 2009, Heather C. West, Ph.D. and William J. Sabol, Ph.D. *BJS Statisticians*, and Sarah J. Greenman, *BJS Program Assistant*, December 2010, NCJ 231675

<sup>9</sup> Aliya Maseelall, Amanda Petteruti, Nastassia Walsh, Jason Ziedenberg, “Employment, Wages and Public Safety” (Justice Policy Institute: November 2007).

### **Does a prior record predict success in employment or housing?**

- A 2009 Seattle-based study revealed that a criminal history alone does not predict if a person will be a successful housing resident<sup>10</sup>.
- Other studies show the propensity to re-commit a crime is not automatic. Rather, after 4 to 7 years where no re-offense has occurred, a former offender is no more likely than a non-offender to commit a crime<sup>11</sup>.
- Further studies indicate that those who have been employed even for a year or less also are far less likely to commit another crime. According to a study in Illinois that followed 1,600 individuals recently released from state prison, only 8% of those who were employed for a year committed another crime, compared to the state's 54% average recidivism rate<sup>12</sup>.

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<sup>10</sup> Daniel K. Malone, **Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders**, *Psychiatr Serv*, Feb 2009; 60: 224 – 230.

<sup>11</sup> Kurlychek, et al. "Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?" (2006) and "'Redemption' in an Era of Widespread Criminal Background Checks," *NIJ Journal*, Issue 263 (June 2009), at page 10 - preliminary study with group of first-time 1980 arrestees in New York- the findings depend on the nature of the prior offense and the age of the individual.

<sup>12</sup> American Correctional Association, 135th Congress of Correction, Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study (August 8, 2005).