

BULLETIN

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EMPLOYMENT WITH A CRIMINAL RECORD

Employment is one of the strongest predictors of criminal desistance. Researchers and practitioners agree that being a productive and engaged member of society helps to generate positive life outcomes and decreases the likelihood of future criminal activity, which improves public safety and reduces taxpayer expense. However, the Bureau of Justice Statistics reports an estimated 60% of formerly incarcerated people are unemployed,ⁱ a rate nearly five times higher than the rate of the general United States population.ⁱⁱ

Roughly 8 million Californians have some form of a criminal record, which means just over 20% of the state population likely contends with their history when searching for employment.ⁱⁱⁱ Of this 8 million, over half a

million people in 2019 were currently involved with California's carceral system, including prison, jail, parole, and probation. The largest share of this population (~60%) are individuals on probation or parole who have either served a prison or jail sentence and are under supervised release or who were sentenced to supervision in lieu of incarceration. Regardless of whether an individual is arrested but not convicted, convicted and sentenced to supervised release (e.g. probation or parole), or is convicted and incarcerated, they must contend with the mark of their criminal record when seeking employment.

This high unemployment is partially due to justice-involved job-seekers being less likely to have the education and training needed in

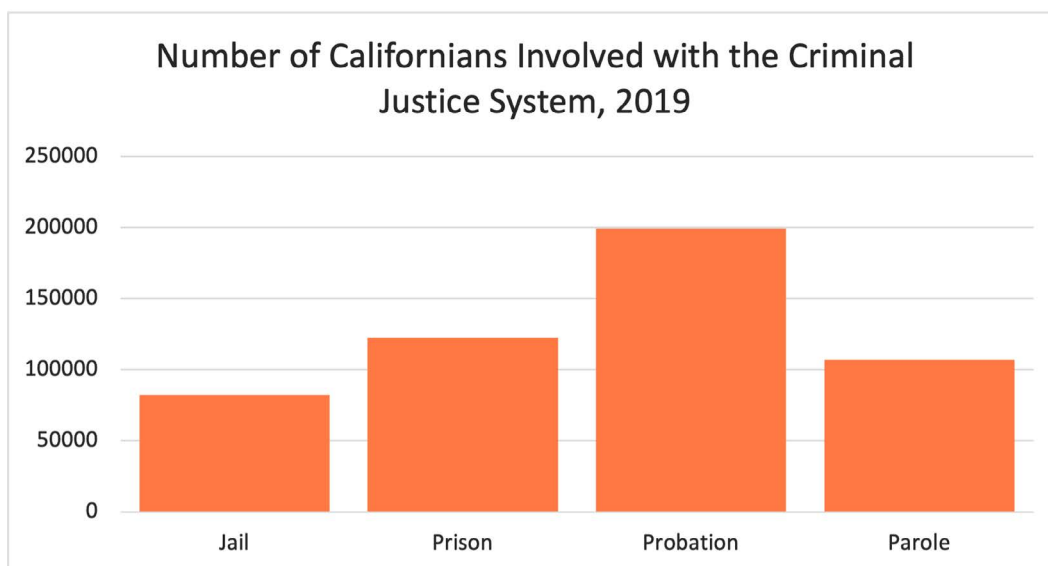


FIGURE 1 | Source: National Institute of Corrections

today's job market and to employers being reluctant to hire someone with a criminal history because of their record, regardless of their qualifications. There is recent investment by federal, state, and regional agencies and nonprofits to combat the mismatch between skills and job requirements, and employers' general aversion to those with records. Programs, like the CA Prison to Employment Initiative, provide interview training and other preparatory services to individuals with records to ready them for the job market. Policy interventions, like the CA Fair Chance Act (2018), attempt to give applicants a fair shot at a job for which they are qualified by restricting when and how employers can conduct background inquiries. However, the effect of these recent efforts has yet to be seen and unemployment for those with records remains high.

This bulletin continues with a profile of seminal studies on employer attitudes toward hiring those with records, how justice-involved individuals contend with their history while on the job market, and a summary of recent policy efforts in CA to improve employment outcomes.

THE EMPLOYER PERSPECTIVE: AVERSION TOWARD HIRING INDIVIDUALS WITH RECORDS

Ample research dissects why companies are reluctant to hire justice-impacted individuals and generally finds that stigma, concerns about recidivism, the applicant's level and type of contact with the justice system, and overall labor market trends have the greatest impact on employers' willingness to hire this

population.

STIGMA

When a group is stigmatized they are marginalized or otherwise excluded from 'mainstream' society because their group label is associated with diminished social status, which creates a discriminatory impact. Here, research finds that job seekers with criminal records are stigmatized during the job search and that having any contact with the justice system—regardless of whether it results in a conviction or time served—significantly disadvantages applicants. For example, applicants who are arrested for, but not convicted of a drug crime, are perceived as more likely to engage in criminal behavior on-the-job, less trustworthy, and less hireable than an applicant with a history of drug use, but no arrest or conviction.^{iv} This underscores that it is contact with the justice system and not the crime itself (i.e. illegal drug use) that systematically disadvantages individuals, regardless of whether they are ever charged or found guilty of a crime.

The effects of stigma associated with justice-system contact are exacerbated when the applicant is a member of a racial minority group. A second experimental study compared the callback rates for white and African-American male applicants who disclosed varying levels of contact with the justice-system. African American applicants with a misdemeanor arrest and no resulting charge were called back 23.5% of the time, while white applicants with an identical record received callbacks 34.7% of the time.^v The interaction between race and involvement with the justice-system amplifies the effects

of stigma and results in harsher discrimination toward those with records who are members of historically marginalized groups.

However, there is a bright spot in that stigma appears to be less prevalent or less persuasive as workplaces become more diverse. Workplaces with higher percentages of non-white employees and those which have hired those with records are more likely to hire individuals with records in the future.^{vi} When a workplace is more diverse, employers may have a better understanding of justice-impacted individuals and are less likely to view contact with the justice system as inherently disqualifying.

REPETITION RISK

Whereas stigma toward those with records is rooted in generalized avoidance of the group because they are viewed as “less than” for having any contact with the system, repetition risk is based on employers’ concrete concerns about the potential liability of hiring someone with a record. Many employers and some legal scholars believe it is important to consider the possibility that an employee with a criminal history may be more likely to commit a crime that could create a financial risk for the company.

For this reason, employers may be motivated to avoid hiring someone with a record out of concern for negligent hiring lawsuits. Although relatively uncommon, companies have been sued by other employees or customers when one of their employees causes harm to others. These claims are successful if the employer “should have known of the individual’s potential to cause harm and did not take

steps to mitigate the risk.”^{vii} This precedent is often used to argue in favor of background checks early in the hiring process to proxy risk of future harmful behaviors and to help companies avoid being found liable for the potential criminal actions of their employees.^{viii} However, there is not evidence that individuals with records are more likely to commit crimes against their coworkers than those without, so the line between repetition risk and stigma is blurred; employer aversion appears to be driven more by generalized stigma than concern about specific future behavior that is concretely related to an applicant’s record.^{ix}

LEVEL OF CONTACT WITH CARCERAL SYSTEM

Regardless of whether aversion is born of stigma or specific concern about future behavior, research finds some employers differentiate between the type of crime committed (e.g. misdemeanor versus felony) and the level of contact with the justice system (arrest, conviction, incarceration). Companies are most reluctant to hire individuals with a history of sexual offenses or a history of violent offenses, with employers reporting the level of stigma associated with these types of crimes and fear of losing customer support as their primary justifications for not extending job offers.^x Applicants with these records are frequently viewed as less hireable than applicants without similar history, even if they have more skills, experience, and training relevant to the position so it is difficult for this population to compensate and find gainful employment.^{xi} The length of time that has passed since the offense also factors into some employers’ hiring decisions, which

is consistent with the Equal Employment Opportunity Commission's guideline that an individual's likelihood of reoffending decreases with each year that passes since conviction.^{xii}

It is also important to note that some jobs—especially those that require interaction with children, patients, and other vulnerable populations—do not allow individuals with a history of felony conviction to be hired per third-party licensing guidelines. In these cases, it is important for employers to have access to reliable information about applicants' criminal history to make the determination as to whether they are legally able to hire them and assess how the individual's record is relevant to the position they would hold.

LABOR MARKET TRENDS

Finally, the health of the overall economy and labor market impacts justice-involved individuals' likelihood of finding work. Over 95% of job postings for entry-level/unskilled roles require high school diplomas, work experience, or job-ready skills, and it is increasingly common these positions to prefer a college degree.^{xiii} This poses an additional barrier to employment as justice-involved individuals who serve time in jail or prison are significantly less likely to have a high school diploma and any time spent in jail or prison creates the additional hardship of being removed from society, which makes it difficult to maintain the skills and training employers look for when hiring. Although jails and prisons in California offer employment-readiness services through career technical education, GED, and (in some facilities) college degrees, many individuals with records find

they do not meet the minimum requirements for full-time, high quality jobs in their region and struggle to find low-wage, low-skill positions. This is particularly problematic as research has shown that job quality is often more important than job quantity in terms of discouraging criminal activity. Having well-paying, steady employment with benefits is key to reducing recidivism.^{xiv}

Certain industries, like construction and manufacturing, are more willing to hire individuals with records for well-paying jobs, so many reentry programs focus on preparing and placing their justice-impacted clients in these positions.^{xv} Additionally, there is some evidence that higher education helps make individuals with records more competitive for more stable positions with higher wages and protects against unemployment.^{xvi} Although these are bright spots, employers-at-large remain reluctant to hire individuals with records and often cite their perception that these candidates lack the hard- and soft-skills to qualify for roles with their organization.^{xvii} This underscores the importance of policies and programs that foster marketable skills to increase the number of high-quality opportunities available to this population.

Further, the characteristics of the regional labor market also impact individuals with records likelihood of obtaining employment. Employers in suburban areas are less likely to extend offers to justice-impacted individuals than those in densely populated cities, which often have a higher percentage of positions that do not require formal education and training.^{xviii}

The disadvantaged linked to this mismatch between skills, education, and geography become especially pronounced during times

of major labor market upheaval, like the Great Recession. Although the recession affected all Americans, justice-impacted individuals were significantly disadvantaged relative to their counterparts with similar skills and education levels but no history of encounters with the justice system.^{xxix} Individuals with records had a slower and smaller economic recovery than those without who possessed similar skills and training, and they were more likely to remain unemployed after 2009.^{xx}

THE JOB-SEEKER PERSPECTIVE: STRATEGIES TO OVERCOME EMPLOYER AVERSION

Keenly aware of the challenges to securing employment, people with records engage in tactics to proactively combat employers' concerns. Although justice-involved applicants contend with the mark of their record throughout their careers, the stakes and barriers to employment are highest soon after the offense, so there are a variety of services provided by government agencies and nonprofits to help prepare job-seekers. For example, a nonprofit organization in the Inland Empire provides dedicated mentorship that counsels individuals with records to reframe their record in a manner that is palatable to employers. Research conducted at this nonprofit finds that repackaging their experience helps to distance the applicant from the stigma of a criminal record and to develop a narrative that involves contextualizing their own personal responsibility, remorse, and steps taken toward rehabilitation.^{xxxi}

It is common for applicants—regardless of whether they have a criminal history—to

engage in impression management strategies during an interview to influence how they are perceived by the interviewer. However, these specific strategies—taking responsibility, expressing contrition, and outlining why they are a changed person—can be particularly helpful in combating employers' preconceived notions about individuals with records, and are especially persuasive if the job seeker has a prior personal connection with someone at the company or if the company has prior experience hiring those with records. While these efforts may encourage employers to be more willing to hire applicants with records, they are still not perceived as equally employable as those without a criminal history.^{xxii}

As noted in the discussion of stigma, the mark of a criminal record is not experienced equally across all justice-impacted job-seekers. The job-seekers' race, gender, and age play a role in amplifying or minimizing the level of stigma the individual faces on the job market. For example, it takes a white male applicant an average of 5 months post-release from prison to find their first job, but it takes an African-American male with a comparable record, education, and work experience 8 months.^{xxiii} Further, African-American and Hispanic men and women have lower total reported earnings post-incarceration than their white counterparts with the same levels of education, health, and other relevant job-readiness factors.^{xxiv} In another large study of reentry experiences, Black women were the least likely to secure a quality, full-time job with livable wages.^{xxv} The disparate impact of being labeled “justice-involved” across demographic groups is well-supported in scholarly research and is referred to as the experience of “racialized

reentry”, where the economic opportunities available to individuals with records differ greatly depending on their race.^{xxvi}

A FAIR CHANCE AT EMPLOYMENT IN CALIFORNIA

California has long struggled with an overcrowded justice system, which has encouraged efforts to improve employment opportunities for those with records by addressing the barriers highlighted above.

One proposed method of accomplishing this is through fair chance policies, which aim to minimize the effect of stigma by delaying employers’ access to criminal history information until late in the hiring process, so the applicant has an opportunity to make an impression before their record is known. California’s Fair Chance Act (CFCA) was enacted on January 2, 2018 and attempts to ease the burden on job applicants with records by preventing employers from asking about criminal history early in the application process. The CFCA applies to companies with 5+ employees and, among its many provisions, prohibits any consideration of criminal history prior to a conditional offer of employment being extended. If a background check uncovers criminal history, the CFCA requires the employer to complete an individualized assessment of the applicant’s conviction history—considering whether their criminal history is relevant to the specific job they are being considered for, among other factors—before making a decision to rescind the offer. If an employer revokes an offer due to criminal history, the applicant has five days to appeal the employer’s decision

and advocate for why they should be hired.

While there is no peer-reviewed, published research on the efficacy of the CFCA to-date, evidence from prior research on “Ban the Box” laws and policy advocates provides some preliminary insight into its shortcomings. Ban the Box laws prohibit questions about criminal history from being asked on job applications, which is a component of the CFCA. Studies conducted in cities and states that implemented these policies have found an increase in statistical discrimination against minority job-seekers; without any information on criminal history at the front-end of the hiring process, employers make assumptions about whether a candidate is likely to be justice-impacted based on information that can be inferred from their job application and interview.^{xxvii} This, in turn, disproportionately penalizes African-American men with and without records, who employers perceive as more likely to have had contact with the justice-system. Further, organizations that work in the reentry space in California note many employers continue to ask questions about criminal history prior to an offer of employment, which suggests the policy may not be implemented as intended without further enforcement mechanisms.

In an attempt to combat shortcomings of the 2018 bill and expand opportunities for individuals with records, the California Senate has introduced SB 809, a revision to the California Fair Chance Act (2023). This policy would allow job seekers to present evidence that challenges the accuracy of their conviction history as reported in background checks and notifies applicants whose offers are rescinded due to their record that they

may provide evidence of their rehabilitation as part of an appeal. These changes would, in theory, enhance applicants' knowledge of the process and help to reinforce that employers should be making individualized assessments about the relevance of each applicant's record to the job they are applying for. As with the 2018 policy, this bill also applies only to organizations with more than 5 employees and provides carve outs for some government employers and those who are mandated to run background checks by other laws. Finally, should it be passed and enacted, the 2023 Fair Chance Act would allocate funds to the Department of Fair Employment and Housing to support the implementation of the law, including fining companies whose hiring policy or practice violates the standard.

Encouraging inclusive hiring of individuals with records is a complicated issue, rooted in stigma and employers' concerns about recidivism (especially at the workplace) and there is no silver-bullet policy that can expand opportunities for job-seekers with records overnight. However, the California Fair Chance Act (2018) and proposed update (2023) may be a step in the right direction, helping to decrease the stigma of a criminal background and serving as an example of inclusive policy with the potential to provide a second-chance at work.



REFERENCES

- i. Wang , L., & Bertram, W. (2022, February). *New Data on formerly Incarcerated People’s employment reveal labor market injustices*. Prison Policy Initiative. <https://www.prisonpolicy.org/blog/2022/02/08/employment/>
- ii. Couloute , L., & Kopf , D. (2018, July). *Out of prison & out of work*. Out of Prison & Out of Work | Prison Policy Initiative. <https://www.prisonpolicy.org/reports/outofwork.html>
- iii. Karlamangla, S. (2022, November 28). *California will soon have the nation’s most expansive record-clearing law*. The New York Times. <https://www.nytimes.com/2022/11/28/us/california-criminal-record-law.html#:~:text=Eight%20million%20people%20in%20California,national%20criminal%20justice%20reform%20group>.
- iv. Sugie, N. F., Zatz, N. D., & Augustine, D. (2019). Employer aversion to criminal records: An Experimental Study of Mechanisms. *Criminology*, 58(1), 5–34. <https://doi.org/10.1111/1745-9125.12228>
- v. Uggen, C., Vuolo, M., Lageson, S., Ruhland, E., & K. WHITHAM, H. I. L. A. R. Y. (2014). The edge of stigma: An experimental audit of the effects of low-level criminal records on employment. *Criminology*, 52(4), 627-654.
- vi. Uggen, C., Vuolo, M., Lageson, S., Ruhland, E., & K. WHITHAM, H. I. L. A. R. Y. (2014). The edge of stigma: An experimental audit of the effects of low-level criminal records on employment. *Criminology*, 52(4), 627-654.
- vii. Society of Human Resources . “Negligent Hiring.” SHRM, 23 July 2021.
- viii. Society of Human Resources . “Negligent Hiring.” SHRM, 23 July 2021.
- ix. Sugie, Naomi F., Noah D. Zatz, and Dallas Augustine. “Employer aversion to criminal records: An experimental study of mechanisms.” *Criminology* 58.1 (2020): 5-34.
- x. Obatusin, O., & Ritter-Williams, D. (2019, February 14). *A phenomenological study of employer perspectives on ...* Taylor & Francis Online. <https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1571730>; Cerda, J. A., Stenstrom, D. M., & Curtis, M. (2014, May 15). *The role of type of offense and work qualifications on perceived employability of former offenders - american journal of criminal justice*. SpringerLink. <https://link.springer.com/article/10.1007/s12103-014-9244-8>
- xi. Marlow. (2019). *Re-Entry Barriers: Employing Formerly Incarcerated People*. ProQuest Dissertations Publishing.
- xii. U.S. Equal Employment Opportunity Commission. (n.d.). *Enforcement guidance on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act*. US EEOC. <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>
- xiii. Holzer, H. J., Raphael, S., & Stoll, M. A. (2003, May 19). *Employment Barriers Facing Ex-Offenders* . urban.org. <https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF>
- xiv. Schnepel, K. (2018). Good Jobs and Recidivism. *The Economic Journal* (London), 128(608), 447–469. <https://doi.org/10.1111/ecoj.12415>
- xv. Schnepel. (2018). Good Jobs and Recidivism. *The Economic Journal* (London), 128(608), 447–469. <https://doi.org/10.1111/ecoj.12415>
- xvi. Quach, Cerda-Jara, M., Deverux, R., & Smith, J. (2022). *Prison, College, and the Labor Market: A Critical Analysis by Formerly Incarcerated and Justice-Impacted Students*. *The Annals of the American Academy of Political and Social Science*, 701(1), 78–97. <https://doi.org/10.1177/00027162221112772>
- xvii. Uggen, C., Vuolo, M., Lageson, S., Ruhland, E., & K. WHITHAM, H. I. L. A. R. Y. (2014). The edge of stigma: An experimental audit of the effects of low-level criminal records on employment. *Criminology*, 52(4), 627-654.
- xviii. Holzer, H. J., Raphael, S., & Stoll, M. A. (2003, May 19). *Employment Barriers Facing Ex-Offenders* . urban.org. <https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF>
- xix. Finlay, K., & Mueller- Smith, M. (2021). *Justice-involved individuals in the labor market since the great ...*[journals.sagepub.com. https://journals.sagepub.com/doi/10.1177/00027162211024532](https://journals.sagepub.com/doi/10.1177/00027162211024532)
- xx. Finlay, K., & Mueller- Smith, M. (2021). *Justice-involved individuals in the labor market since the great ...*[journals.sagepub.com. https://journals.sagepub.com/doi/10.1177/00027162211024532](https://journals.sagepub.com/doi/10.1177/00027162211024532)
- xxi. Burch. (2022). *Scripting the Conviction: Power and Resistance in the Management of Criminal Stigma*. <https://doi.org/10.1111/aman.13613>
- xxii. Ali, A., Lyons, B., & Ryan, A. M. (2017). Managing a perilous stigma: Ex-offenders’ use of reparative impression management tactics in hiring contexts. *Journal of Applied Psychology*, 102(9), 1271–1285.
- xxiii. Carson, E. A. (2021, December). *Employment of persons released from Federal Prison in 2010*. <https://bjs.ojp.gov/content/pub/pdf/eprfp10.pdf>
- xxiv. Western, B, & Solis, C. (2019). *Racialized Re-entry:*

- Labor Market Inequality After Incarceration, *Social Forces*, Volume 97, Issue 4, pages 1517–1542, <https://doi.org/10.1093/sf/soy096>
- xxv. Couloute , L., & Kopf , D. (2018, July). *Out of prison & out of work*. *Out of Prison & Out of Work* | Prison Policy Initiative. <https://www.prisonpolicy.org/reports/outofwork.html>
- xxvi. Western, B., & Solis, C. (2019). Racialized Re-entry: Labor Market Inequality After Incarceration, *Social Forces*, Volume 97, Issue 4, pages 1517–1542, <https://doi.org/10.1093/sf/soy096>
- xxvii. Raphael, S. (2021). The Intended and Unintended Consequences of Ban the Box. *Annual Review of Criminology*, 4(1), 191–207.

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