

# Fair Chance Project Quantitative Results

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Presented by: Yvonne Yen Liu for the Insight Center

September 27, 2018



# Our Agenda for Today





# Executive Summary

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# Key Findings

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- Individuals with felony records comprise 8 percent of the working age population in the Bay Area (Alameda, Contra Costa, and Solano)
- Almost one out of three Blacks of working age have felonies and close to a quarter of Latinos of working age have felonies
- Close to half of Blacks with felonies are either unemployed or not in the labor force
- Fewer Blacks with felonies owned a car as compared with other racial groups
- Almost 40 percent of Blacks and Latinos lived below 200 percent of the federal poverty line
- For every one dollar earned by a white individual with felony records, Blacks earned 51 cents and Latinos 74 cents
- On average, 14 percent of individuals with felony records rely on food stamps.
- A quarter of Latinx with felony records lack health care coverage.
- More than half of individuals with felony records have a high school degree or equivalent.
- More than a third of Blacks with felony records live in a family household with a female householder, no husband present.



# Methods

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# Methods

8% felony records  
(Shannon et al 2017)

Select using Prisoner Demographics  
(Schmitt & Warner 2010)

161,971

Working Age Population  
(18-64)  
2 million

**TABLE 2**  
**Estimated Prisoner Demographics, 1960-2008**  
(percent)

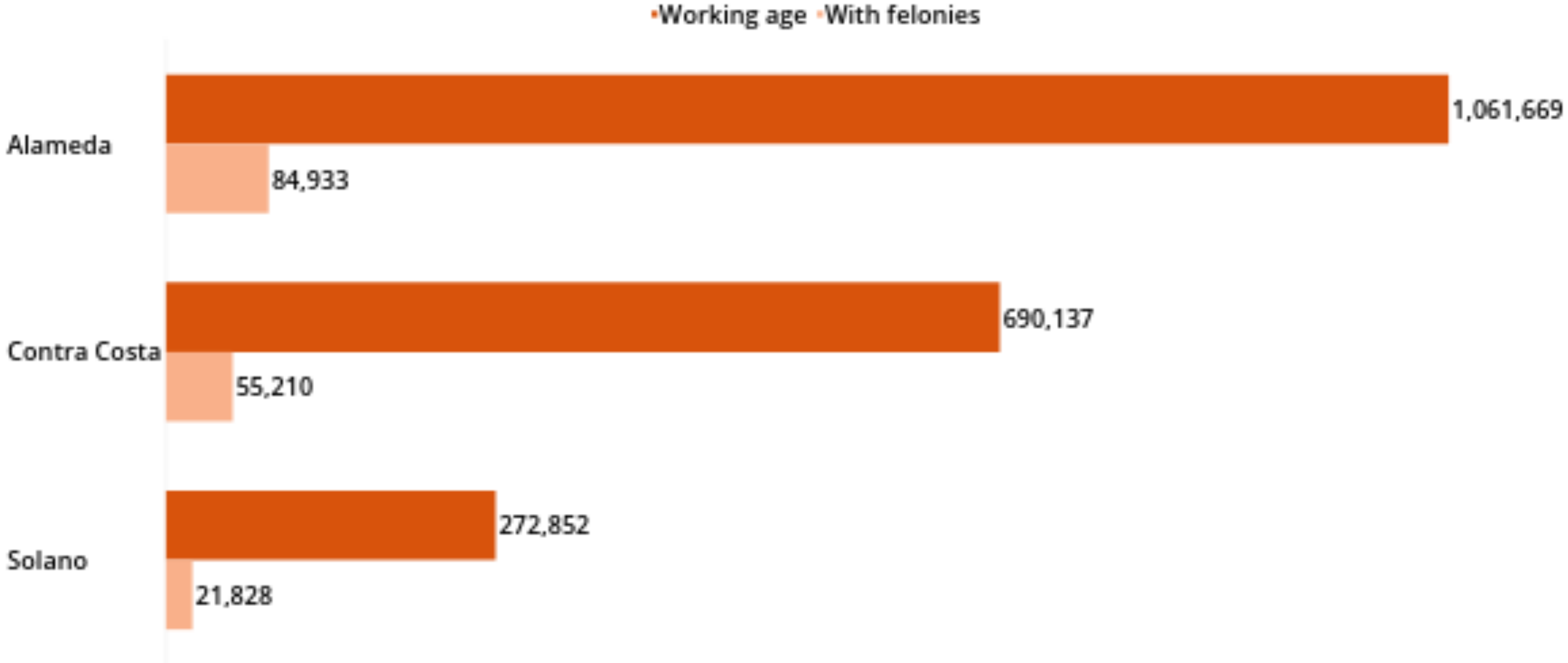
	1960	c. 1980	c. 2000	c. 2008
Female	3.8	4.0	6.7	8.5
Male	96.2	96.0	93.3	91.5
<b>Men only</b>				
Less than high school	85.5	51.0	39.6	36.6
High school	10.6	35.0	49.3	52.0
Any college	3.9	14.0	11.1	11.4
<b>Race</b>				
White	62.3	42.9	35.3	33.3
Black	36.1	42.5	46.3	39.2
Latino	—	12.3	16.7	20.6
Other	1.6	2.2	1.7	6.9
<b>Age</b>				
18-19	6.3	4.9	2.7	1.7
20-24	19.7	22.7	16.1	14.5
25-29	18.2	19.7	18.8	17.2
30-34	16.2	15.6	18.9	16.6
35-39	12.7	12.9	17.2	15.8
40-44	8.6	9.6	12.1	14.1
45-49	6.2	5.8	6.7	9.5
50-54	4.2	3.4	3.7	5.3
55-59	2.8	1.9	1.8	2.7
60-64	1.4	1.0	0.9	1.3
<b>18-64</b>	<b>96.4</b>	<b>97.6</b>	<b>98.9</b>	<b>98.7</b>



# Demographics

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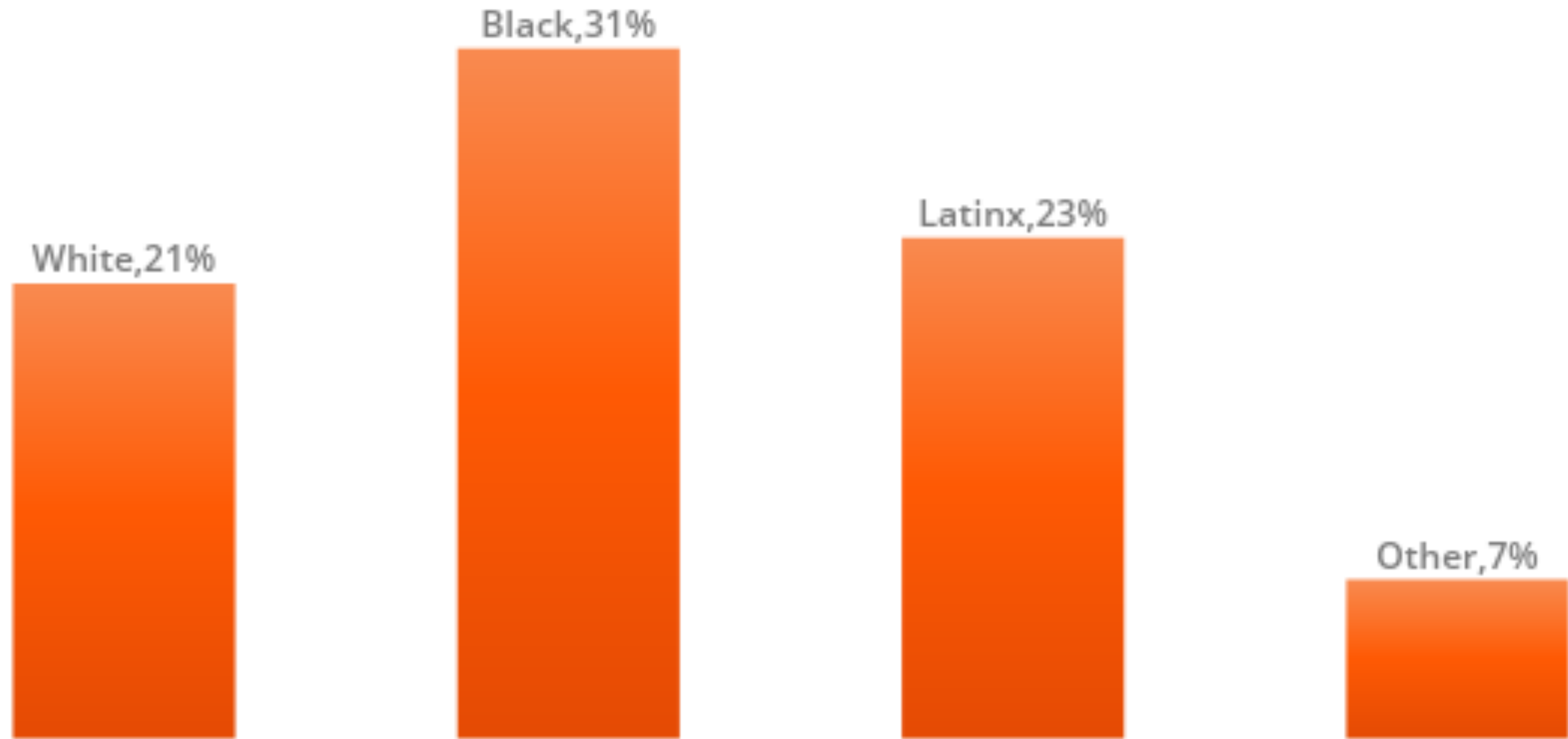
# Individuals with felony records comprise 8 percent of the working age population in the Bay Area (Alameda, Contra Costa, and Solano)



Source: American Community Survey, 2016, 5-year estimates



# Almost one out of three Blacks of working age have felonies and close to a quarter of Latinos of working age have felonies



# Close to half of Blacks with felonies are either unemployed or not in the labor force

Employment status	Working age	With felonies	White w/felonies	Black w/felonies	Latinx w/felonies	Other w/felonies
Employed	71%	69%	69%	52%	76%	73%
Unemployed	6%	8%	7%	13%	7%	7%
Not in labor force	23%	23%	24%	35%	17%	19%

Source: American Community Survey, 2016, 5-year estimates



# Commute time is under a half hour for individuals with felony records

County	Working age	With felonies
Alameda	20	17
Contra Costa	24	23
Solano	19	19

Race	Working age	With felonies
White	22	20
Black	18	15
Latinx	20	22
Other	22	21

Source: American Community Survey, 2016, 5-year estimates



# Fewer Blacks with felonies owned a car as compared with other racial groups

Mode	Working age	With felonies	White w/felonies	Black w/felonies	Latinx w/felonies	Other w/felonies
Auto, truck, or van	78%	86%	86%	79%	89%	90%
Motorcycle	0%	0%	1%	0%	0%	0%
Bus	3%	3%	1%	7%	2%	2%
Subway	7%	3%	2%	5%	2%	2%
Railroad	1%	0%	0%	0%	0%	0%
Ferryboat	0%	0%	1%	0%	0%	0%
Bicycle	1%	1%	1%	1%	1%	0%
Walked only	3%	2%	2%	2%	2%	1%
Other	1%	1%	1%	2%	1%	1%
Worked from home	5%	3%	5%	3%	2%	2%

# Almost 40 percent of Blacks and Latinos lived below 200 percent of the federal poverty line

Poverty level	Working age	With felonies	White w/felonies	Black w/felonies	Latinx w/felonies	Other w/felonies
100% or below	11%	13%	11%	22%	13%	10%
200% or below	24%	30%	22%	38%	38%	24%
250% or below	30%	38%	28%	44%	51%	31%

For every one dollar earned by a white individual with felony records, Blacks earned 51 cents and Latinos 74 cents

Race	Working age	With felonies	With felonies
White	115,404	88,515	\$1.00
Black	55,759	45,518	0.51
Latinx	70,885	65,200	0.74
Other	110,808	95,998	1.08

Source: American Community Survey, 2016, 5-year estimates

County	Working age	With felonies	White w/felonies	Black w/felonies	Latinx w/felonies	Other w/felonies
Alameda	98,947	68,994	98,846	72,253	73,570	91,137
Contra Costa	104,259	77,758	98,918	77,163	73,158	--
Solano	82,688	78,986	98,605	87,796	74,125	104,536

Insufficient data available for Other w/felonies in Contra Costa

For every one dollar earned by a white individual with felony records, Blacks earned 51 cents and Latinos 74 cents

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Latinx	70,885	65,200	0.74
Other	110,808	95,998	1.08

Source: American Community Survey, 2016, 5-year estimates



On average, 14 percent of individuals with felony records rely on food stamps.

County	Working age	With felonies	White w/felonies	Blacks w/felonies	Latinx w/felonies	Other w/felonies
Alameda	9%	14%	22%	16%	15%	3%
Contra Costa	8%	14%	18%	21%	12%	--
Solano	11%	12%	--	--	--	--

Race	Working age	With felonies
White	5%	9%
Black	21%	21%
Latinx	15%	16%
Other	6%	8%

Insufficient data available for food stamps reciprocity among Other w/felonies in Contra Costa and for all racial groups in Solano.

Source: American Community Survey, 2016, 5-year estimates

# A quarter of Latinx with felony records lack health care coverage.

County	Working age	With felonies	White w/felonies	Blacks w/felonies	Latinx w/felonies	Other w/felonies
Alameda	11%	21%	21%	27%	19%	5%
Contra Costa	12%	20%	20%	25%	15%	--
Solano	13%	14%	--	--	--	--

Race	Working age	With felonies
White	7%	12%
Black	12%	15%
Latinx	22%	25%
Other	9%	14%

Insufficient data available for health care coverage for Other w/felonies in Contra Costa and for all racial groups in Solano.

# More than half of individuals with felony records have a high school degree or equivalent.

<b>Educational attainment</b>	<b>Working age</b>	<b>With felonies</b>	<b>White w/felonies</b>	<b>Black w/felonies</b>	<b>Latinx w/felonies</b>	<b>Other w/felonies</b>
N/A or no schooling	1%	1%	1%	1%	2%	1%
Nursery school to grade 4	1%	0%	0%	0%	1%	0%
Grades 5, 6, 7, or 8	3%	3%	1%	1%	7%	1%
Grade 9	1%	1%	1%	1%	2%	1%
Grade 10	1%	2%	1%	2%	2%	1%
Grade 11	2%	4%	3%	8%	3%	2%
Grade 12	28%	62%	59%	56%	73%	53%
1 year of college	18%	12%	13%	16%	6%	15%
2 years of college	7%	5%	6%	6%	2%	6%
4 years of college	24%	8%	10%	7%	2%	16%
5+ years of college	13%	3%	5%	2%	0%	4%

Source: American Community Survey, 2016, 5-year estimates

# More than a third of Blacks with felony records live in a family household with a female householder, no husband present.

Household type	Working age	With felonies	White w/felonies	Black w/felonies	Latinx w/felonies	Other w/felonies
<b>Family Households:</b>						
Married-couple family household	67%	64%	66%	40%	72%	72%
Male householder, no wife present	5%	8%	6%	9%	7%	9%
Female householder, no husband present	13%	14%	11%	31%	12%	11%
<b>Nonfamily Households:</b>						
Male householder, living alone	5%	7%	8%	9%	4%	4%
Male householder, not living alone	3%	4%	5%	4%	4%	2%
Female householder, living alone	5%	2%	2%	4%	0%	0%
Female householder, not living alone	2%	1%	2%	2%	1%	1%

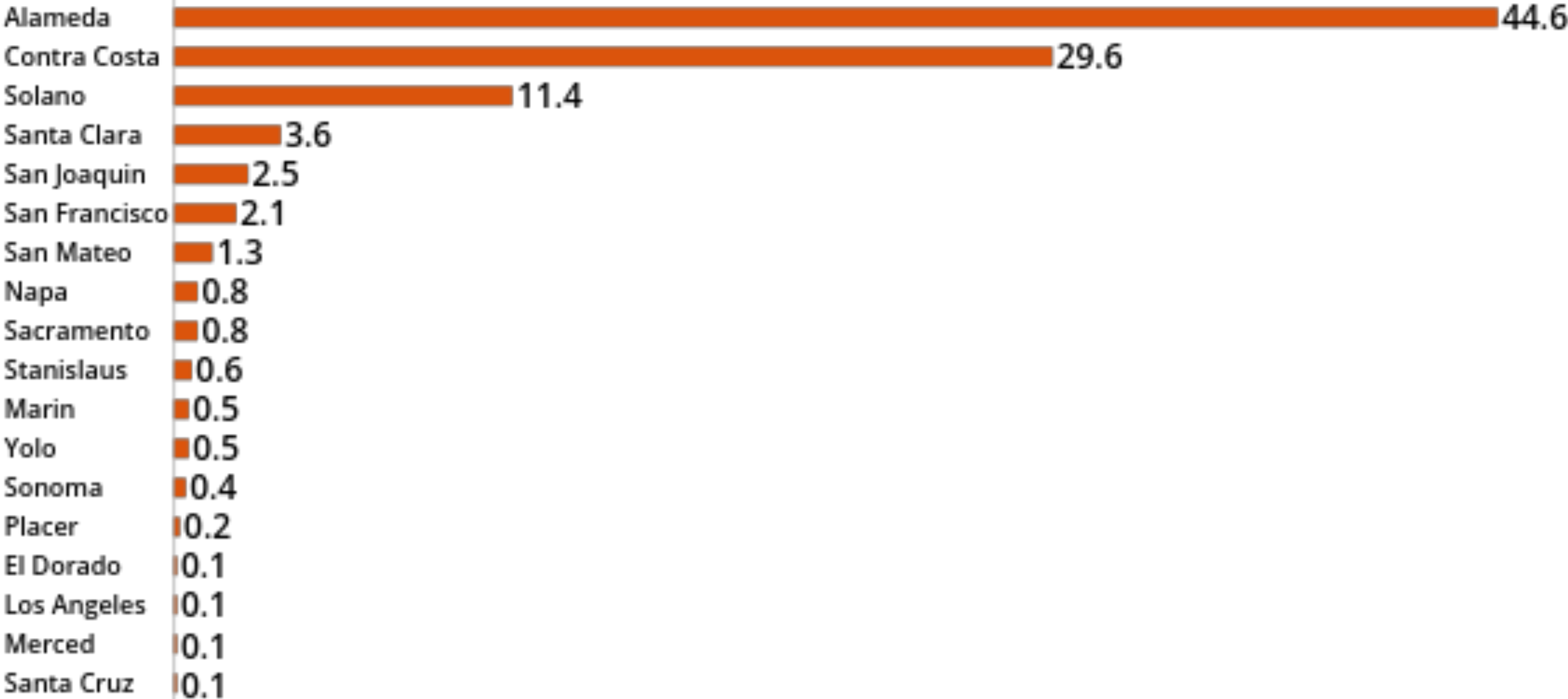
Source: American Community Survey, 2016, 5-year estimates



# Commuting Characteristics

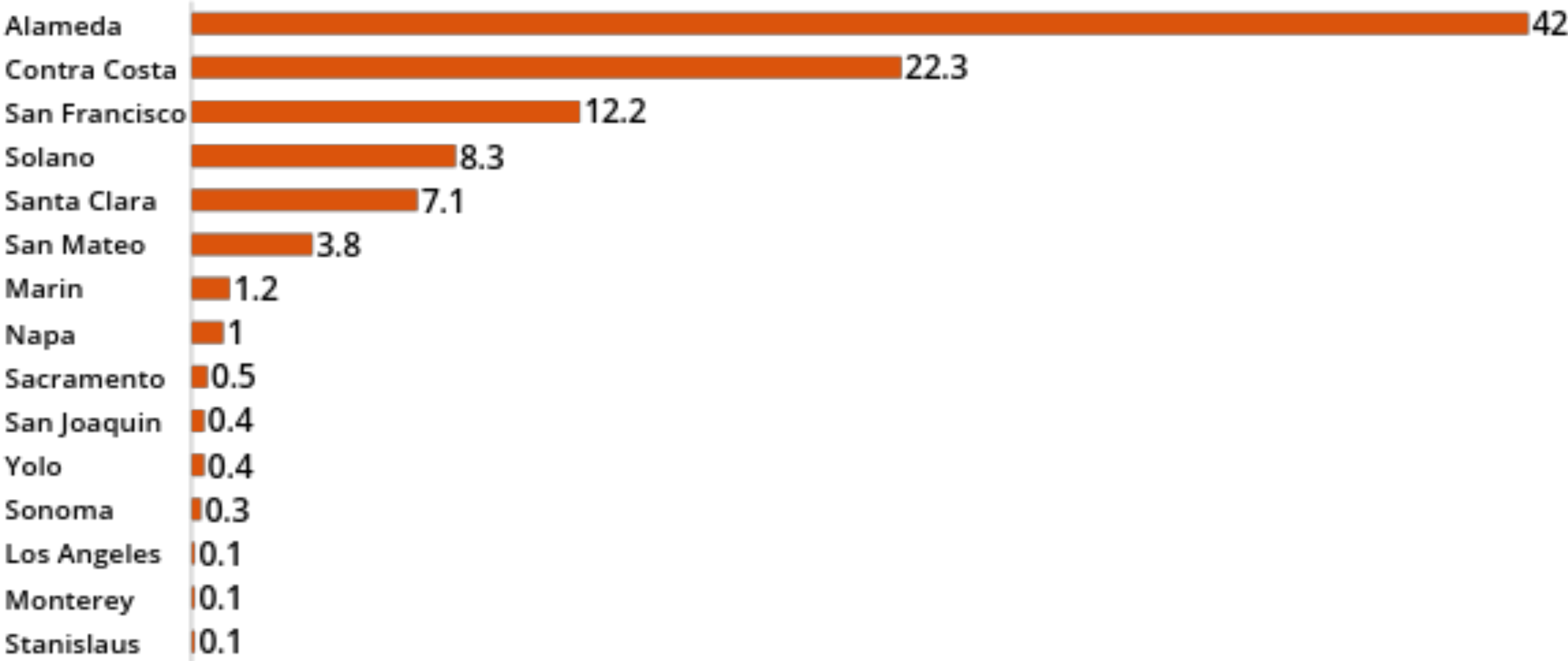
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# Where individuals with felony records commute from to work in Bay Area (%)



Source: American Community Survey, 2016, 5-year estimates

# Where individuals with felony records living in Bay Area commute to for work



Source: American Community Survey, 2016, 5-year estimates

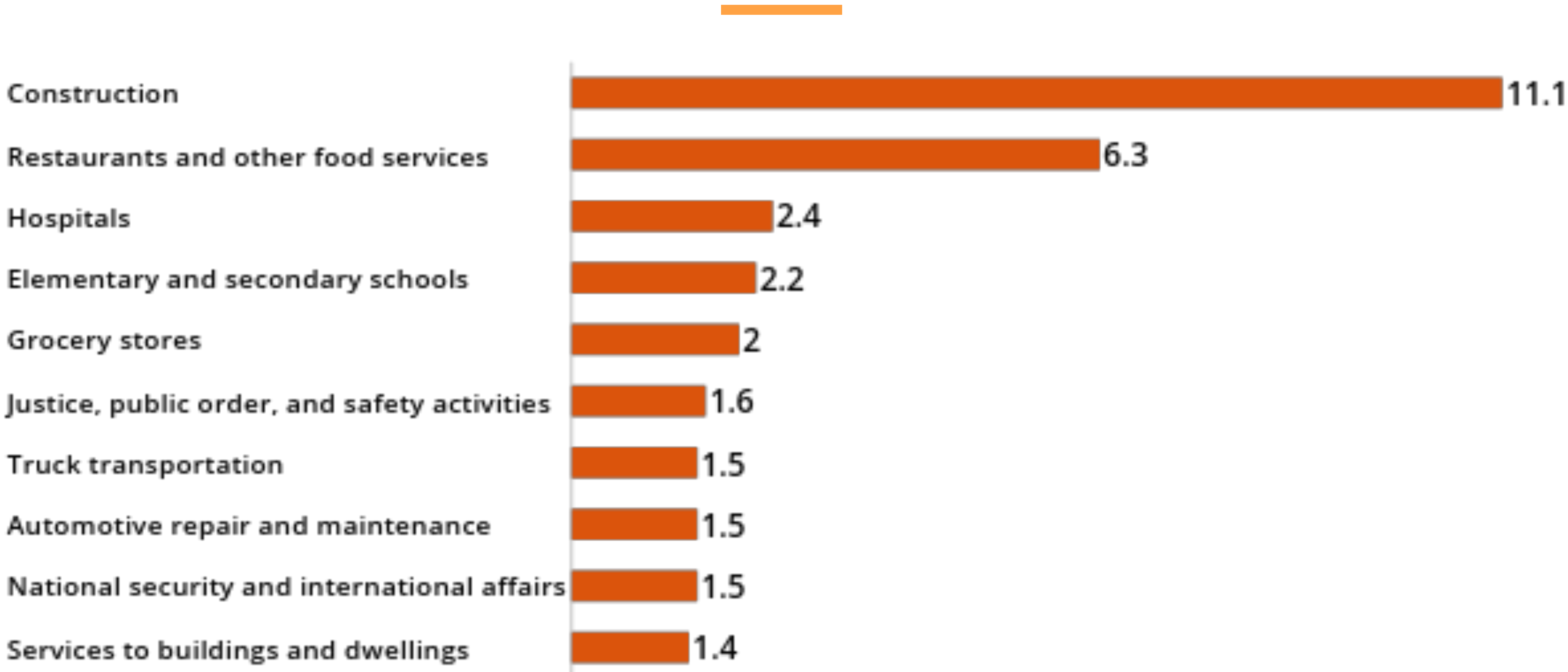


# Labor Market Analysis

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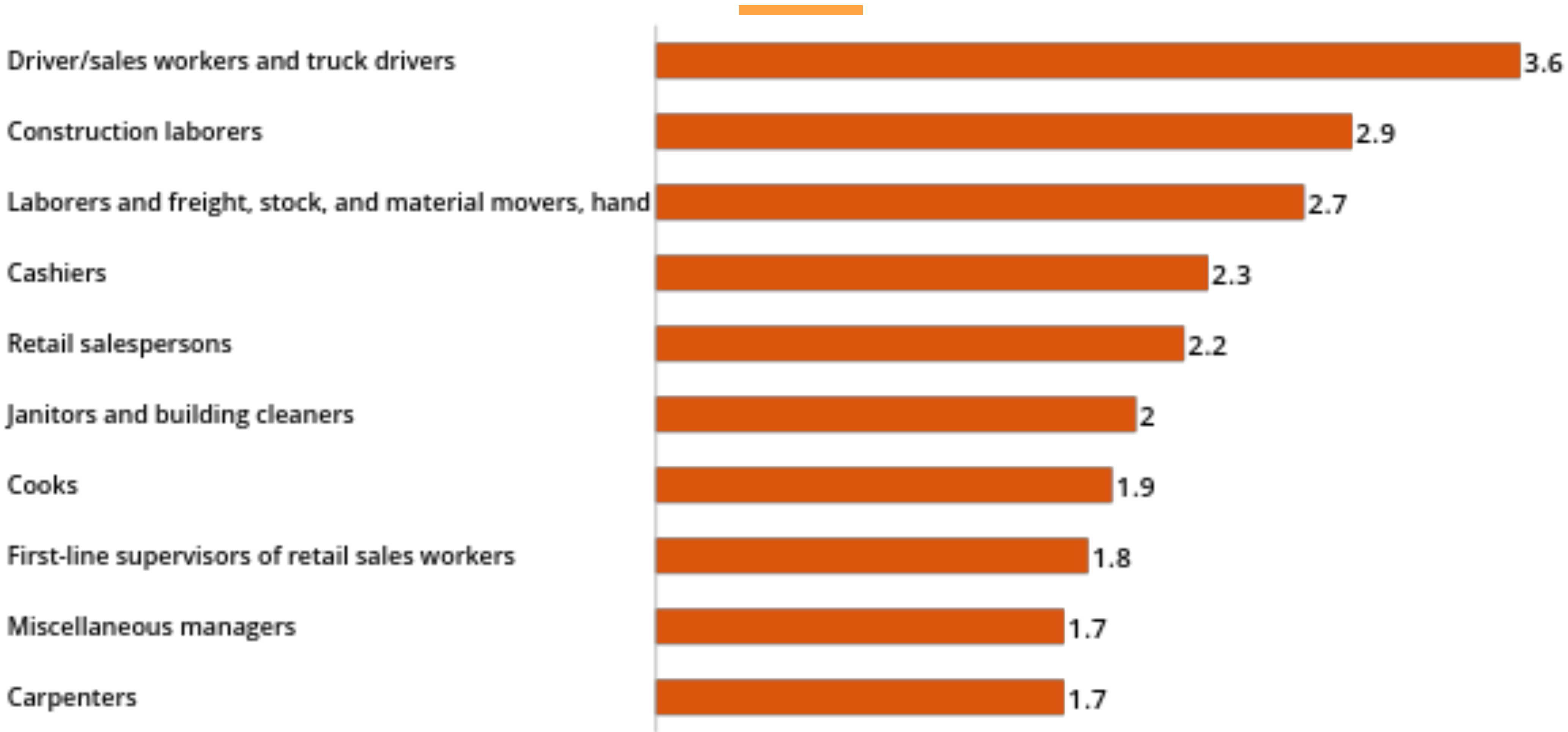


# Top ten industries employing individuals with felony records



Source: American Community Survey, 2016, 5-year estimates

# Top ten occupations employing individuals with felony records



Source: American Community Survey, 2016, 5-year estimates

# Historical growth for top ten industries employing individuals with records in Alameda, Contra Costa, and Solano

Industries	2014	2015	2016	2017	Percent change
Total Nonfarm	1,312,100	1,352,900	1,404,200	1,432,000	9%
Accommodation and Food Service	97,100	101,800	107,200	110,100	13%
Administrative and Support and Waste Services	63,200	66,600	70,000	71,600	13%
Educational and Health Services	196,500	201,700	211,200	218,200	11%
Government	193,500	196,900	201,300	202,800	5%
Natural Resources, Mining and Construction	65,800	69,900	77,300	78,600	19%
Other Services	42,100	42,100	43,300	44,500	6%
Retail Trade	125,200	128,800	131,200	132,500	6%
Transportation, Warehousing and Utilitie	38,200	40,800	42,900	44,000	15%

Source: Current Employment Statistics, 2014-2017

# Historical growth for top ten occupations employing individuals with records in Oakland-Hayward-Berkeley Metro Division

Occupations	2009	2010	2011	2012	2013	2014	2015	2016	2017	Percent Change
Total, All Occupations	2074080	1981140	1902300	1904460	1942720	2007720	2052300	2107900	2168680	5%
Carpenters	20880	14140	12100	9140	10500	12480	13740	15420	16960	-19%
Cashiers	50840	50460	49840	46680	48160	53920	52600	51600	50300	-1%
Construction Laborers	21920	18000	15360	13860	13940	14920	13580	13860	16740	-24%
Cooks, All Other	300	440	420	700	520	620	460	420	520	73%
Cooks, Fast Food	14400	12940	11160	10420	11880	12300	12520	11660	12080	-16%
Cooks, Institution and Cafeteria	2260	2360	2400	2760	3040	3140	3640	3640	3700	64%
Cooks, Restaurant	11360	10660	11600	12920	13360	14660	15640	16520	17220	52%
Cooks, Short Order	1140	0	3120	3860	2500	2760	2660	3000	2500	119%
Driver/Sales Workers	5240	4060	5380	5500	7000	6600	6780	7080	4600	-12%
First-Line Supervisors/Managers of Retail Sales Workers	16540	14940	14820	15100	15720	17220	16520	16300	15960	-4%
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	25760	22300	22320	20240	22420	23900	25140	27800	28860	12%
Laborers and Freight, Stock, and Material Movers, Hand	33260	32200	30760	28080	29880	31840	34800	33220	37240	12%
Managers, All Other	6560	6080	5580	4760	4740	5380	6040	7380	7460	14%
Retail Salespersons	59940	58000	55440	57820	55220	56740	57840	56980	57940	-3%
Truck Drivers, Heavy and Tractor-Trailer	17420	14940	13240	13720	13020	15800	16380	16780	15940	-8%
Truck Drivers, Light or Delivery Services	14500	14340	14500	13740	12700	12900	13700	14700	17140	18%

# Projected growth for top ten industries employing individuals with records in Oakland-Hayward-Berkeley Metro Division (2014-2014)

Industries	Base Year Employment Estimate	Projected Year Employment Estimate	Numeric Change	Percentage Change
Total Employment	1,136,100	1,295,900	159,800	14%
Construction	58,600	75,800	17,200	29%
Food Services and Drinking Places	79,300	97,300	18,000	23%
Government	166,500	167,500	1,000	1%
Hospitals (Private)	25,400	28,800	3,400	13%
Repair and Maintenance	10,700	11,200	500	5%
Services to Buildings and Dwellings	14,000	15,500	1,500	11%
Truck Transportation	6,800	6,600	-200	-3%

Source: Long-Term Industry Employment Projections, 2014-2024

# Projected growth for top ten occupations employing individuals with records in Oakland-Hayward-Berkeley Metro Division (2014-2024)

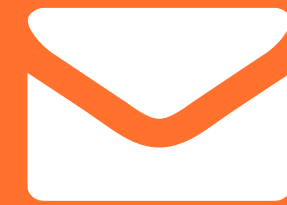
Occupations	Base Year Employment Estimate	Projected Year Employment Estimate	Numeric Change	Percentage Change
Total Nonfarm	1,062,300	1,210,500	148,200	14%
Carpenters	11,210	14,090	2,880	26%
Cashiers	25,610	26,950	1,340	5%
Construction Laborers	9,020	11,430	2,410	27%
Cooks, All Other	210	260	50	24%
Cooks, Fast Food	5,650	5,570	-80	-1%
Cooks, Institution and Cafeteria	1,840	2,210	370	20%
Cooks, Restaurant	7,980	10,700	2,720	34%
Cooks, Short Order	1,440	1,560	120	8%
Driver/Sales Workers	3,660	4,430	770	21%
First-Line Supervisors of Retail Sales Workers	10,220	10,300	80	1%
Heavy and Tractor-Trailer Truck Drivers	8,710	9,150	440	5%
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	14,350	15,880	1,530	11%
Laborers and Freight, Stock, and Material Movers, Hand	16,140	18,150	2,010	13%
Light Truck or Delivery Services Drivers	7,710	8,450	740	10%
Managers, All Other	9,490	10,810	1,320	14%
Retail Sales Workers	60,770	62,430	1,660	3%

Source: Long-Term Occupational Employment Projections, 2014-2024

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Q & A

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# Contact

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## FAIR CHANCE HIRING QUANTITATIVE SUMMARY

### I. Introduction

For Alameda, Contra Costa, and Solano Counties, Insight Center produced: i) a labor market analysis of the size, scope, and changes in leading occupations and industries and ii) a demographic analysis of industries and occupations for people with felony records. Findings are arranged into 18 data tables (see attached Excel sheet, “Fair Chance Final Results”) and summarized below. An additional overview of key findings and the research methodology are included in [this](#) Google presentation.

### II. Methodology

- For purposes of this research, “Bay Area” refers to 1) Alameda, 2) Contra Costa, and 3) Solano Counties. “Working age” individuals are between age 18 and 64.
- Estimates of those with felony records were based on calculations by Shannon et al (2017). See [Slide 6](#) of the Google presentation for more information on this calculation.
- A full list of data sources used in this research is found on the “START HERE” tab of the Excel sheet.
- Notes on Data Tables:
  - Tables 8-10 disaggregated by race (when data is sufficient);
  - Tables 11-12 on educational attainment and household type, respectively;
  - Tables 13-14 on where individuals with felonies commute to and from in the Bay Area; and
  - Tables 15-18 on the historical and projected growth of the top ten industries and occupations employing individuals with records.

### III. Data Tables & Observations (see attached Excel sheet and Google Presentation):

These local findings mirror themes noted in the literature and landscape review, particularly in the differences in earnings by race and the occupational crowding of those criminal records into physically demanding labor. Key findings are summarized in the [Google presentation](#), and additional observations are included (and listed by data table) below:

1. **TABLE 1: Individuals of working age and with felony records in the Bay Area (by county and by race) (SLIDE 15)**
  - Individuals with felonies comprise approximately 8 percent of the working population in the Bay Area (Alameda, Contra Costa, Solano). ([SLIDE 8](#))
  - Across the three counties, i) nearly one out of three Blacks of working age and ii) nearly a quarter of Latinx of working age have felonies.
2. **TABLE 2: Employment status for individuals with felony records in the Bay Area (employed, unemployed, and not in labor force)**
  - Almost half of Blacks with felonies are either unemployed or not in the labor force. ([SLIDE 9](#))
    - This finding parallels observations from the Fair Chance Literature Review and Landscape:
      - *Employers are more likely to perceive that Black and Latinx applicants have a criminal record, compared to White applicants. This is particularly the case for younger Black and Latinx men (ages 25 to 34), even if they have no criminal record. Because of employer perceptions that men of color are more likely to be criminals compared to White men, some researchers conclude that Black and Latinx men are most hurt by*

*current fair chance hiring policies and the least likely to get job callbacks, despite recent reforms in the law.<sup>1</sup> Insight FCH Landscape, 4.*

**3. TABLE 3: The top 10 industries employing individuals with felonies in the Bay Area**

- Construction is, by far, the top industry employing people with felony records in the Bay Area, followed by restaurant/food service and hospitals. ([Slide 24](#))

**4. TABLE 4: The top 10 occupations employing individuals with felonies in the Bay Area**

- The top three occupations employing those with felony records are: i) sales/truck drivers, ii) construction laborers, and iii) freight and material movers. ([SLIDE 26](#))
  - These occupational patterns align with Insight’s literature review and landscape findings:
    - *There is a prevailing belief among employers that those with criminal records are more prone to deviant qualities – for instance, that they are violent and more likely to commit theft.<sup>2</sup> Other common employer fears about workers with criminal records include a lack of “oral character,” work ethic, ability, or some combination thereof.<sup>3</sup> Many pathways to economic security involve these “soft skills”; however, as with licensing restrictions, barriers flowing from employer assumptions or stigma can lead justice-involved applicants to pursue and remain in low-paying, less desirable, or more temporary work. – Insight FCH Landscape, 9.*

**5. TABLE 5: Average commute time for individuals of working age and with felonies in the Bay Area**

- Commute time is under half an hour for individuals with felony records. ([SLIDE 11](#))
- With the exception of Latinx workers, individuals with felonies have slightly shorter commute time to work. This could be due to a number of factors, including:
  - i. High cost of living and transportation limiting the geographic scope of where one can work (e.g., one cannot afford a personal vehicle or bus tickets);
  - ii. Economic or familial responsibilities (e.g., caretaking for older or younger relative) requiring those with felonies to stay closer to home; and/or
  - iii. Probation or parole requirements, including travel limitations, preventing or deterring those with felonies from obtaining work that is not relatively close to their home or county.

**6. TABLE 6: Means of transportation for individuals with felonies in the Bay Area (including disaggregation by race)**

- Fewer Blacks with felonies own a car when compared to other racial groups. ([SLIDE 12](#))
  - Related systemic issues: A personal vehicle can be essential to not only getting to work, but to work itself. This data point is particularly impactful for Blacks with felonies in more rural, isolated areas, as a car would be critical to accessing work opportunities not available in their community. Interrelated issues such as transportation licensing barriers may also contribute to this finding.

**7. TABLE 7: Individuals with felonies living below poverty in the Bay Area**

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<sup>1</sup> Doleac and Hansen. 2017. *The Unintended Consequences of ‘Ban the Box’: Statistical Discrimination and Employment Outcomes When Criminal Histories Are Hidden.*

<sup>2</sup> Lundquist, et al., 2016, 1 (citing Holzer, 1999; Pager 2007).

<sup>3</sup> Ibid.

## Appendix A

- Almost 40 percent of Blacks and Latinx with felonies live below 200% or more below the poverty line – nearly twice the percentage rate for Whites with felonies. ([SLIDE 13](#))
- 8. TABLE 8: Median households income for individuals with felonies in the Bay Area (by race and by county) ([SLIDE 14](#))**
- Across all three counties, the median income of those without felonies is \$95,298; by comparison, those with felonies earn approximately \$20,000 less. This gap is more pronounced in Alameda and Contra Costa Counties, where those with felonies earn about \$30,000 less. **In sum, for every one dollar earned by a White individual with a felony record, Blacks earn 51 cents and Latinx earn 74 cents.**
- 9. TABLE 9: Food stamp reciprocity among individuals with felonies in the Bay Area (by race and by county)**
- On average, 14 percent of those with felonies rely on food stamps, with a greater proportion of Whites with a felony record receiving food stamps in comparison to Blacks and Latinx with felonies. ([SLIDE 17](#))
- 10. TABLE 10: Lack of health care coverage for individuals with felonies in the Bay Area (by race and by county)**
- About 1 in 4 Latinx with felony records lack health insurance coverage. ([SLIDE 18](#))
- 11. TABLE 11: Educational attainment of individuals with felonies in the Bay Area**
- More than half of those with felony records have a high school degree or equivalent. ([SLIDE 19](#))
- 12. TABLE 12: Household type of individuals with felonies in the Bay Area**
- More than a third of Blacks with felony records live in a family household with a female householder, no husband present. ([SLIDE 20](#))
- 13. TABLE 13: Where individuals with felonies commute from to work in the Bay Area ([SLIDE 22](#))**
- 14. TABLE 14: Where individuals with felonies living in the Bay Area commute to and for work ([SLIDE 23](#))**
- 15. TABLE 15: Historical growth for top ten industries employing individuals with records in the Bay Area ([SLIDE 27](#))**
- *The top two fields in Alameda, Contra Costa, and Solano with the greatest percent increases in employing people with criminal records are 1) natural resources, mining, and construction (+19%) and 2) transportation, warehousing, and utilities (+15%) – sectors filled with physically demanding jobs not traditionally associated with “soft skills.”<sup>4</sup> Insight FHC Landscape, 9.*
- 16. TABLE 16: Historical growth for top ten occupations employing individuals with records in the Bay Area ([SLIDE 28](#))**
- 17. TABLE 17: Projected growth for top ten industries employing individuals with records in the Bay Area ([SLIDE 29](#))**
- Construction (+29%) and food services (+14%) are expected to see the most growth.

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<sup>4</sup> Insight Fair Chance Project Quantitative Results (October 2018).

Appendix A

18. **TABLE 18: Projected growth for top ten occupations employing individuals with records in the Bay Area** ([SLIDE 30](#))

- Echoing the other occupational and industry findings (data tables 3, 4, 16, 17), construction laborers, restaurant cooks, drivers, and carpenters are all expected to experience high growth (+20% or more).

*Insight would like to thank Yvonne Yen Liu for her work in: i) generating the attached data, ii) presenting key findings, and iii) providing support for this project.*

## FAIR CHANCE HIRING LANDSCAPE

### I. Introduction

From the Gold Rush Era to Silicon Valley’s rise, the San Francisco Bay Area has enjoyed historic prosperity and growth. At the same time, the region is part of the largest state criminal justice system in the nation – a stark contrast to the Bay Area’s legacy of civil rights and individual freedom. For centuries, the justice system has disproportionately targeted and harmed people of color: Due to systemic over-policing, Black men are arrested at a greater proportion compared to all other racial groups,<sup>1</sup> and women of color are the fastest growing segment of the incarcerated population.<sup>2</sup> Nationwide, more than 60 percent of incarcerated people are people of color.<sup>3</sup>

Outside of prison, **one in three** Americans grapples with the impact of the criminal justice system, even if they have never been convicted or incarcerated, or have had their record expunged.<sup>4</sup> Of the 70 million Americans with a criminal record, over 1 in 10 live in California.<sup>5</sup> **In the Bay Area alone, approximately 814,000 people across Contra Costa, Alameda, and Solano Counties have a criminal or arrest record.**<sup>6</sup>

**Today, 8 million Californians and more than 1 in 10 Bay Area residents have a prior arrest or conviction; a disproportionate number of these are people of color.**<sup>7</sup> In communities of color, arrest rates are higher, and over-policing is rampant. Many arrests – and most juvenile arrests – do not end in adjudication, conviction, or imprisonment; however, hiring and employment practices can make the arrest itself an impediment to one’s education, career, and ability to earn a living, regardless of the legal outcome. Some short-term and long-term impacts flowing from arrest

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<sup>1</sup> Brennan Center for Justice. November 2015. “Just Facts: As Many Americans Have Criminal Records as College Diplomas.” “According to those numbers, Black males are arrested most often (48.9 percent arrest rate), followed by Hispanic males (43.8 percent) and white males (37.9 percent.) This means that Hispanic males were about 15.6 percent more likely to be arrested when compared to white males, and black males were 29 percent more likely to face arrest compared to white men.” <https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas>

<sup>2</sup>Executives’ Alliance for Boys and Men of Color. October 2016. “Fair-Chance Hiring in Philanthropy.” <http://www.bantheboxphilanthropy.org/wp-content/uploads/2016/02/Fair-Chance-Hiring-Philanthropy-Guide.pdf>

<sup>3</sup>Roosevelt Institute. June 2016. “Rewrite the Racial Rules,” 44.

<sup>4</sup>Each year, over 135,000 people are incarcerated across the state, and many more pick up a criminal or arrest record. Gardiner and Mallicoat. 2012. “California’s Criminal Justice System.” <https://cap-press.com/pdf/2362.pdf> ; see also California Department of Corrections and Rehabilitation: Offender Data Points. December 2017. <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/07/Offender-Data-Points-as-of-December-31-2017-1.pdf>

<sup>5</sup>Approximately 8 million Californians have a criminal record. Lagos, Marisa. “Criminal Convictions Hamper 8 Million Californians’ Prospects – Often for Life.” KQED. Published September 13, 2018. <https://www.kqed.org/news/11692123/criminal-convictions-vex-8-million-californians-advocates-see-hope-for-relief>

<sup>6</sup>No clear, standardized definition of “criminal record” exists (e.g., some sources include arrests or juvenile records, others do not). As such, my calculation of estimated people with criminal records is based on NELP’s estimate that 1 in 4 people have a criminal record nationwide. Other sources (e.g., The Sentencing Project) estimate that 1 in 3 Americans has a criminal record; for this landscape, the more conservative number (1 in 4) was used. See [http://www.nelp.org/page/-/SCLP/2011/65\\_Million\\_Need\\_Not\\_Apply.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1) and <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

<sup>7</sup>“Bay Area” includes Contra Costa, Alameda, and Solano counties only. <http://www.bantheboxphilanthropy.org/wp-content/uploads/2016/02/Fair-Chance-Hiring-Philanthropy-Guide.pdf> See also California Workforce Development Board (CWDB). “Unified Strategic Plan, 2016-2019,” 50. “Data from the Bureau of Justice Statistics’ Survey of State Criminal History Information Systems indicates that 27.8 percent or roughly 8 million Californians 18 years or older had a criminal record on file with the state in 2012.”

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include increased likelihood of repeated interaction with the juvenile and criminal justice system, job instability, long periods of unemployment, lower levels of earning, greater work instability, and lower levels of educational attainment.<sup>8</sup> When an arrest is coupled with formal court appearances, the likelihood of these outcomes increases.<sup>9</sup>

It is important to note that having a criminal record is not proof of “criminality.” It means that someone has had a prior interaction with the law, which can include: a simple arrest with initial charges; an arrest with a non-conviction or dropped charges; a finding of “not guilty”; or an arrest with a conviction. In addition, although they are often not accounted for in government criminal record data, juvenile records, misdemeanors, and expungements can affect hiring and employment; as such, any mention of “criminal or arrest record” in this Landscape may also refer to these items.<sup>10</sup>

***When justice-involved people are hired, they perform just as – if not better than – their workplace peers: Economic and employment research confirm that employees with records have better retention rates, more loyalty, and lower turnover (ACLU/Trone, 2017).<sup>11</sup> In a 2017 employment study, for example, those with criminal records had much longer job tenure and were less likely to quit their jobs voluntarily than other workers (Minor, Persico, and Weiss). Despite these potential gains for employers, huge barriers to employment and economic security persist for justice-involved workers and applicants.***

**Our Fair Chance Hiring Project covers Contra Costa, Alameda, and Solano Counties.** Across this area, individuals with felony records make up approximately 8 percent of the working age population.<sup>12</sup> Estimates of these counties’ respective criminal record, arrest, and probation populations are as follows:

County (2017)	People with Criminal Records <sup>13</sup>	Felony Arrests <sup>14</sup>	Misdemeanor Arrests <sup>15</sup>	Active Probation Caseload <sup>16</sup>
Alameda	415,797 <sup>17</sup>	11,592	28,917	6,747

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<sup>8</sup> Returning residents’ exclusion from educational and career opportunities can begin even before their release: According to an October 2018 report, for example, **GEDs earned in prison lead to fewer and more limited professional opportunities for returning residents, when compared to those who earn their GEDs outside prison.** See Prison Policy Initiative. “Getting Back on Course: Educational Exclusion and Attainment among Formerly Incarcerated People. October 2018. <https://www.prisonpolicy.org/reports/education.html>

<sup>9</sup> LeadersUp. July 2018. “Just Opportunity: Creating Fairer Employment Practice for Justice-Involved Young Adults,” 6 (quoting Sweeten, 2006).

<sup>10</sup> An arrest for a felony charge or even a misdemeanor (if the arrest was reported by a state criminal justice agency to the FBI national database) can result in having a criminal record. LeadersUp Report, 8.

<sup>11</sup> ACLU and Trone Private Sector and Education Advisory Council. 2017. “Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company,” 4.

<sup>12</sup> Insight Fair Chance Project Quantitative Results, October 2018.

<sup>13</sup> Number based on NELP calculation that 1 in 4 people have a criminal record nationwide; other sources (e.g., The Sentencing Project) estimate that 1 in 3 Americans has a criminal record; for this landscape, the more conservative number (1 in 4) was used. See <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf> and [http://www.nelp.org/page/-/SCLP/2011/65 Million Need Not Apply.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2011/65%20Million%20Need%20Not%20Apply.pdf?nocdn=1)

<sup>14</sup> OpenJustice. “Data Highlights 2017: Arrests.” <https://openjustice.doj.ca.gov/2017/arrests>

<sup>15</sup> Ibid.

<sup>16</sup> OpenJustice. “Data Highlights 2017: Probation.” <https://openjustice.doj.ca.gov/crime-statistics/adult-probation>

<sup>17</sup> United States Census. 2017. “Quick Facts: Alameda County.”

<https://www.census.gov/quickfacts/fact/table/alamedacountycalifornia,ca/PST045217>

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Contra Costa	286,859 <sup>18</sup>	8,682	16,326	3,264
Solano	111364 <sup>19</sup>	4,480	10,413	2,763
Total	814,020	24,754	55,656	12,774

### Criminal Records and the Job Market

For decades, California pioneered some of the harshest criminal justice policies, from Three-Strikes and other “tough on crime” laws to employment restrictions for people with arrest and criminal records. These policies – and the narratives, stigma, and economic barriers that accompany them – can set up roadblocks for individuals who have already lost and sacrificed so much through incarceration, probation, parole, and other criminal justice interactions.

**Returning residents have an unemployment rate that is five times higher than that of the United States’ general population.**<sup>20</sup> Of the 640,000 people who return to the workforce after incarceration each year, nearly half will be unable to find a job one year after their release.<sup>21</sup> The costs of barriers to employment for people with a criminal or arrest record are stunning: **In addition to losing an estimated \$87 billion per year in gross domestic production nationwide, more than half a million capable, qualified people are left out of the national workforce.**<sup>22</sup> These prospective workers are shut out at a critical point in their lives, especially because having a job is a key, if not the top, factor in preventing economic insecurity, homelessness, and other negative outcomes.<sup>23</sup> Recidivism risk is highest within the first two years after one is released from prison:<sup>24</sup> Two-thirds of returning residents will end up back in prison within three years of their release – making this a period when the need for a job is greatest.<sup>25</sup>

Research also suggests that applicants with criminal and arrest records have an even harder time finding employment during economic downturns:

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<sup>18</sup>United States Census. 2017. “Quick Facts: Contra Costa County.”

<https://www.census.gov/quickfacts/fact/table/contracostacountycalifornia/ca/PST045217>

<sup>19</sup>United States Census. 2017. “Quick Facts: Solano County.”

<https://www.census.gov/quickfacts/fact/table/solanocountycalifornia/PST045217>

<sup>20</sup> Of working-age returning residents (25-44) nationwide, 27.3% are unemployed. In comparison, 5.2% of similarly aged general public peers – and 4.2 percent of Californians within the general population – are unemployed. Prison Policy Initiative. July 2018. “Out of Prison and Out of Work: Unemployment Among Formerly Incarcerated People.”

<https://www.prisonpolicy.org/reports/outofwork.html>

<sup>21</sup> National estimate. Lundquist, et al. 2016. *Does a Criminal Past Predict Worker Performance? Evidence from America’s Largest Employer*, 3 (quoting Sabol 2007; Visher et al. 2001; Petersilia, 2003).

<sup>22</sup> Root & Rebound. California Employers’ Fair Chance Hiring Toolkit. See ACLU. 2017. “Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company,” 4. See also Associated Press, “Ex-cons Face Tough Path Back Into the Work Force: Advocates Hope Federal Program Will Encourage Employers to Take a Chance.” July 30, 2009.

[http://www.nbcnews.com/id/32208419/ns/business-careers/t/ex-cons-face-tough-pathback-work-force/#.V\\_V1dY8rJhE](http://www.nbcnews.com/id/32208419/ns/business-careers/t/ex-cons-face-tough-pathback-work-force/#.V_V1dY8rJhE)

<sup>23</sup>Uggen and Staff. 2001. *Work as a Turning Point for Criminal Offenders*.

[http://users.soc.umn.edu/~uggen/Uggen\\_Staff\\_CMQ\\_01.pdf](http://users.soc.umn.edu/~uggen/Uggen_Staff_CMQ_01.pdf)

<sup>24</sup> Robust research suggests that employment can substantially reduce the risk of people with criminal records encountering – or re-encountering – incarceration. Yang, Crystal S. May 2016. *Local Labor Markets and Criminal Recidivism*. [http://scholar.harvard.edu/files/cyang/files/labor\\_recidivism\\_may2016.pdf](http://scholar.harvard.edu/files/cyang/files/labor_recidivism_may2016.pdf)

<sup>25</sup>Rich, Lisa A. 2016. *A Federal Certificate of Rehabilitation Program: Providing Federal Ex-Offenders More Opportunity for Successful Reentry*. <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1869&context=facscholar>

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- The unemployment rate for returning residents was seven times higher than the general population during the Recession.<sup>26</sup> (Aside from justice-impacted individuals, Black and Latinx Recession-era workers also experienced particularly high hikes in unemployment across racial groups.)<sup>27</sup>
- Before September 11, about 12 percent of employers said they were open to hiring people with a criminal record. After 9/11, this number dropped by half, and a higher percentage of employers responded that they “always” checked applicants’ criminal backgrounds.<sup>28</sup>

**The first few years after release from prison are often when employment is most needed; and yet, the time immediately following conviction or release is the most scrutinized by potential employers.**<sup>29</sup> The result of this scrutiny and stigma is far-reaching, presenting employment barriers to both people with a criminal record and those merely *perceived* by employers to have one. For instance:

- Employers report that they are most reluctant to hire applicants who were recently incarcerated, compared to applicants with more time passed after their release.<sup>30</sup>
- Youth and young adults (under 30) are more likely to experience recidivism compared to other justice-impacted age groups.<sup>31</sup>
- **In addition, employers are more likely to *perceive* that applicants in this age group have a criminal record. This is particularly the case for younger Black and Latinx men (ages 25 to 34), even if they have no criminal record.** Because of employer perceptions that men of color are more likely to be criminals compared to White men, some researchers conclude that Black and Latinx men are most hurt by current fair chance hiring policies and the least likely to get job callbacks, despite recent reforms in the law.<sup>32</sup>

## Collateral Consequences

If having a job is critical to prevent recidivism, obtaining supports and basic needs is critical to find and maintain employment. **A fair chance at housing, employment, health care and other necessities determines one’s ability to**

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<sup>26</sup>In comparison, returning residents’ unemployment rate post-Recession is around five times higher than that of the United States’ general population. (See Footnote 19). During the Recession, this rate increased by about 40 percent. Nally and Lockwood. 2014. *Post-Release Recidivism and Employment Among Different Types of Released Offenders: A 5-Year Follow-up Study in the United States*, 13.

<sup>27</sup> Though all demographic groups were negatively impacted during the recession, Black and Latinx workers experienced the worst hikes in unemployment (9.8 and 9.2 percentage points, respectively). By contrast, Asians and Whites experienced the smallest unemployment rate increases (6.0 and 7.3 percentage points, respectively). CWDB Strategic Plan, 22.

<sup>28</sup> Holzer, et al. 2004. *How Willing Are Employers to Hire Ex-Offenders?*, 4. Authors also note that before 9/11, the use of background checks amongst employers was on the rise.

<sup>29</sup> Under current laws, employers can consider the period of time between the job application and the offense committed in determining whether the “relevancy” of an offense is enough to have it count against the applicant. Thus, a more recent offense would generally weigh more heavily on an application. EEOC Enforcement Guidance. April 2012. [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm#sdendnote91anc](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#sdendnote91anc)

<sup>30</sup> Holzer et al., 2004. *How Willing Are Employers to Hire Ex-Offenders?*

<sup>31</sup> Nally and Lockwood, 2014. Recidivism is defined as “a conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction.” [https://www.acgov.org/probation/documents/Y6RealignmentStatusUpdate\\_PublicProtectionCommittee5-10-18revised.pdf](https://www.acgov.org/probation/documents/Y6RealignmentStatusUpdate_PublicProtectionCommittee5-10-18revised.pdf)

<sup>32</sup> Doleac and Hansen. 2017. *The Unintended Consequences of ‘Ban the Box’: Statistical Discrimination and Employment Outcomes When Criminal Histories Are Hidden*.



**provide for themselves and their family – to live.** Innumerable collateral consequences of having a criminal record, however, can keep many from this “fair chance”:

- Under federal law, individuals with certain convictions are automatically banned from participating in the country’s two biggest housing assistance programs (Public Housing and Section 8). Those with arrest or convictions records who do apply – and legitimately qualify – for housing can still experience widespread discrimination from landlords and housing authorities.<sup>33</sup> For example, the Public Housing Authority (PHA) has wide discretion in banning individuals for public safety reasons; however, research on the Oakland Housing Authority’s practices (and OHA application denials) reveal that the majority of people initially “screened out” because of conviction history are law-abiding and not a threat to neighbors.<sup>34</sup> **These blanket bans and other exclusionary housing policies faced by people with criminal records also disproportionately harm Black and Latinx applicants.**<sup>35</sup>
- In addition to the individual effects of incarceration and justice system contact, people with criminal records can encounter barriers in obtaining health benefits, child care, and other resources needed to support themselves and their loved ones. These barriers are often intensified through mounting debts to cover fines and fees, as individuals and families sacrifice rent, food, or other basic needs to pay off criminal justice debt.<sup>36</sup> According to the 2018 Californians for Safety and Justice Survey of over 2,000 Californians with a criminal conviction, more than half of survey respondents struggle to find a job and pay off fines and fees.<sup>37</sup>
- Per Insight’s research, a quarter of Bay Area Latinx with felony records lack health care coverage, compared to 12 percent of Whites with felony records.<sup>38</sup>

## II. Fair Chance Policy Landscape

### A. Background Checks

Nationwide, over 70 percent of companies perform background checks, and of those companies, over 8 out of 10 screen potential employees for criminal histories.<sup>39</sup> Over 40 percent of all private-sector firms and virtually all government agencies run background checks as part of their hiring process.<sup>40</sup> As technology advances and the availability of online personal data increases, so, too, has the ease of performing a background search. **More than ever, arrest information,**

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<sup>33</sup>National Low Income Housing Coalition. “Advocates’ Guide 2017: A Primer on Federal Affordable Housing and Community Development Programs.” [http://nlihc.org/sites/default/files/2017\\_Advocates-Guide.pdf](http://nlihc.org/sites/default/files/2017_Advocates-Guide.pdf)

<sup>34</sup>Tesfai and Gilhuly. 2016. *The Long Road Home: Decreasing Barriers to Public Housing for People with Criminal Records*, 6. <https://humanimpact.org/wp-content/uploads/OHA-HIA-Final-Report.pdf>

<sup>35</sup>ACLU. “Letter to Richmond City Council.” December 5, 2016. [https://www.aclunc.org/sites/default/files/20161205\\_letter\\_to\\_richmond\\_city\\_council\\_fair\\_chance\\_housing\\_ordinance.pdf](https://www.aclunc.org/sites/default/files/20161205_letter_to_richmond_city_council_fair_chance_housing_ordinance.pdf)

<sup>36</sup>deVuono-powell, et al. Ella Baker Center, 2015. *Who Pays? The True Cost of Incarceration on Families*, 14. <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>

<sup>37</sup>Californians for Safety and Justice (CSJ). September 2018. *Repairing the Road to Redemption in California*, 2.

<sup>38</sup>Contra Costa, Alameda, and Solano Counties. Insight Fair Chance Project Quantitative Results, October 2018.

<sup>39</sup>LeadersUp Report, 11; Lundquist, et al. (2016).

<sup>40</sup>Connerley et al. 2001. Criminal Background Checks for Prospective and Current Employees: Current Practices Among Municipal Agents.

**conviction records, and even mug shots are readily available to employers via online repositories and private companies – some of which obtain and publish information through legally questionable or unlawful means.<sup>41</sup>**

Background checks can be inaccurate, incomplete, or otherwise flawed – making this common process a huge barrier to employment.

- According to the Department of Justice, over half of all federal employee background checks result in at least one error.<sup>42</sup>
- Some states have a higher error rate, while others routinely report the outcome of one’s arrest – regardless of whether an applicant has been convicted or incarcerated.<sup>43</sup>
- Background checks may erroneously include: information about a different person other than the applicant; reports on dismissed, sealed, or expunged records;<sup>44</sup> incomplete records (e.g., records that have no disposition); misleading displays of information (e.g., report a single charge multiple times or in multiple sections of the report); reporting inactive, “quashed” warrants and outcomes of arrests; and misclassifications of the type of offense.<sup>45</sup>

## **B. Policies and Practices: A Brief History**

Background checks repeat a lengthy policy history of deterring people with criminal and arrest records from employment and stability. From colonial “civil death” punishments<sup>46</sup> to contemporary wealth extraction (i.e., placing the burden of paying defendant fines and fees on an individual and their family), the criminal justice system has shaped present-day stigmas, stereotypes, and treatment around justice-impacted people – as well as what opportunities and supports they do or do not get access to.

The policies and practices summarized below are inseparable from a conversation around race, and in particular, their impact on people and communities of color:

- As California’s population and economy grew in the 1980s, so, too, did its tough-on-crime stance – exhibited through harsher sentencing laws, expanded capacity of prisons and jails, and more government funds allocated

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<sup>41</sup>Nayar, Anjali. “When Your Arrest Photo Appears on a Mugshot Website.” June 23, 2018.

[https://motherboard.vice.com/en\\_us/article/qvx7pm/when-your-arrest-photo-appears-on-a-mugshot-website](https://motherboard.vice.com/en_us/article/qvx7pm/when-your-arrest-photo-appears-on-a-mugshot-website)

<sup>42</sup>ACLU and Trone Private Sector and Education Advisory Council. 2017. “Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company,” 8.

<sup>43</sup> Ibid.

<sup>44</sup> The Bureau of Justice Statistics estimates that over one third of arrest records in the FBI’s database have insufficient or inaccurate case disposition information. Duane, et al. Justice Policy Center, 2017. “Criminal Background Checks: Impact on Employment and Recidivism.”

[http://www.urban.org/sites/default/files/publication/88621/2017.03.01\\_criminal\\_background\\_checks\\_report\\_finalized.pdf](http://www.urban.org/sites/default/files/publication/88621/2017.03.01_criminal_background_checks_report_finalized.pdf)

<sup>45</sup>Root & Rebound Employer Toolkit, 33.

<sup>46</sup> Practiced in the U.S. through colonial times and into the mid-twentieth century, civil death was a legal status where individuals convicted of certain crimes were deprived of all legal rights. Saunders, Henry D. William and Mary Law Review. *Civil Death –A New Look at an Ancient Doctrine*.

<http://www.welcometothefoundation.com/documents/CIVIL%20DEATH%20-%20A%20NEW%20LOOK%20AT%20AN%20ANCIENT%20DOCTRINE.pdf>

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to the criminal justice system. Between 1984 (the year of former California governor Ronald Reagan's successful presidential bid) and 1991, the state passed over 1,000 new felony sentencing laws and enhancements.<sup>47</sup>

- In the 1990s, authors of California's **Three-Strikes** claimed that the policy would put rapists, killers, and child molesters behind bars; in actuality, laws like Three-Strikes increased policing of communities of color and led to the drastically disproportionate imprisonment of, and life sentences for, Black men. Prison costs skyrocketed, and by the 2000s, over half of those incarcerated under Three-Strikes were in prison for low-level offenses.<sup>48</sup>
- By 2005, California's state prison population had grown three times faster than the general adult population since 1990, making it the largest prison population in the country.<sup>49</sup> **Three out of every four incarcerated men was nonwhite – a racially disproportionate trend that continues today, with Black men and women at far greater risk of incarceration compared to other groups.**<sup>50</sup>
- **At the same time that tough-on-crime policies kept more people in prison for longer periods of time, background checks rose in popularity throughout the 1980s and 1990s – contributing to increasing numbers of returning residents, many of them people of color, remaining unemployed or facing limited job prospects.** Background checks became common practice across employer sectors, particularly in large establishments, and throughout the service industry, nonprofits, and those with collective bargaining agreements. Employers would routinely (and often, automatically) discard the applications of people who "checked the box" to indicate a criminal record.<sup>51</sup> Notably, companies with higher numbers of Black applicants were also among those that were more likely to use background checks.<sup>52</sup> **This suggests that that background checks were used to rule out not only people with criminal records, but specifically, Black applicants, from job opportunities.**

### C. Prison Reform Sets the Stage for Ban The Box

With prisons at maximum capacity and costs rising, a counter-movement to reform the state's criminal justice system took root:

- In 2005, the U.S. District Court ordered a federal receiver to manage California's \$1.1 billion-per-year prison system, citing inhumane conditions and preventable death.<sup>53</sup> **As the state grappled with reducing costs of the prison system, an unprecedented number of working-age Californians were, or would soon be, returning from prison and entering the job market in need of transitional supports.**
- In 2011, Governor Brown signed **Public Safety Realignment (AB 109 and AB 117)** into law. Realignment sought to reduce prison overcrowding, costs, and recidivism by diverting people with low-level offenses to county jail, rather than state prison. AB 109 created a funding structure for Realignment, whereby a portion of vehicle

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<sup>47</sup> Little Hoover Commission. 2007. *Solving California's Correctional Crisis: Time is Running Out*, 34.

<https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/185/Report185.pdf>

<sup>48</sup> Staples, Brent. New York Times. "California Horror Stories and the Three-Strikes Law." November 24, 2012.

<https://www.nytimes.com/2012/11/25/opinion/sunday/california-horror-stories-and-the-3-strikes-law.html>

<sup>49</sup> By 2005, the state prison population was 167,698. Bailey and Hayes. Public Policy Institute of California. August 2006. *Who's In Prison? The Changing Demographics of Incarceration*.

[http://www.ppic.org/content/pubs/cacounts/CC\\_806ABCC.pdf](http://www.ppic.org/content/pubs/cacounts/CC_806ABCC.pdf)

<sup>50</sup> Bailey and Hayes, 4.

<sup>51</sup> Holzer, et al., 2004.

<sup>52</sup> Ibid.

<sup>53</sup> Bailey and Hayes, 3.

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license fees and state taxes would go to local health, public safety, and benefits programs – cementing a framework of county-driven program implementation that continues today.<sup>54</sup>

- **Realignment also coincided with the end of the statewide and national Recession, thus merging criminal justice reform with a drive to boost the workforce.<sup>55</sup> The rise of fair chance hiring policies, discussed below, can be seen as the intersection of both objectives.**

### D. Fair Chance Hiring

In the last two decades, national, state, and local advocates have rallied around Ban the Box (BTB) and other fair chance hiring policies.<sup>56</sup> While supporters of these initiatives may vary in primary motive, top reasons for endorsing BTB include: Bypassing unnecessary, costly, and erroneous background check protocols; emphasizing a job applicant's skills and qualifications over their involvement with the criminal justice system; and curbing racial disparities in hiring, particularly for Black and Latinx men.

Effective in January 2018, California's statewide Ban the Box law (AB 1008 or "BTB") follows the efforts of several Bay Area cities, including Alameda and San Francisco, in promoting fair chance hiring policies.<sup>57</sup> **BTB delays any use of a background check or inquiry into conviction history until later in the hiring process – after a candidate has met job qualifications.**<sup>58</sup> Most California employers, including public and private entities, must fully abide by BTB.<sup>59</sup> The law states that a job offer may be revoked only after the employer:

- a) Determines that the nature and age of the conviction directly relates to the job duties;
- b) Gives the applicant written notice of the employer's intent to revoke the job offer, attaches a copy of the background check report, and allows five business days for the applicant to respond; and
- c) Reviews any response from the applicant and provides additional written notice to confirm the decision to not hire them.<sup>60</sup>

If an employer violates BTB, one has one year to file a report with the state Department of Fair Employment and Housing (DFEH).<sup>61</sup> Under current laws, employers possess substantial discretion in determining whether a criminal record or conviction is enough to deny a job applicant. For example, the Equal Employment Opportunity Commission

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<sup>54</sup> Governor's Budget Summary 2011-12. Realignment, 4. <http://www.ebudget.ca.gov/2011-12-EN/pdf/BudgetSummary/Realignment.pdf>

<sup>55</sup> California's Great Recession cost 1.3 million jobs from 2007 to 2010 and a statewide loss of \$88 billion in economic activity in just one year (2008 to 2009). Black and Latinx workers, as well as unskilled workers, were the groups that experienced the worst unemployment hikes. CWDB Strategic Plan, 22.

<sup>56</sup> In 1998, Hawaii became the first state to "Ban the Box" across both public and private employers. See HRS § 378-2.5.

<sup>57</sup> In 2007, Alameda County removed "the box" from applications for county positions. In 2015, the City of San Francisco began implementing BTB for public and private employers. Alameda County Human Resource Services Letter. March 28, 2012. <https://www.nelp.org/wp-content/uploads/2015/03/AlamedaCountyHumanResourcesLetter3.28.12.pdf>

<sup>58</sup> In general, AB 1008 applies to convictions, not to arrests for which one is out on bail or released pending trial. California Department of Fair Employment and Housing (DFEH). "California Fair Chance Act (AB 1008) – 'Ban the Box' Frequently Asked Questions." <https://www.dfeh.ca.gov/resources/frequently-asked-questions/criminalhistoryinfoinemploymentfaqs/>

<sup>59</sup> Limited exceptions include employers with less than five employees, and if another law requires employers to run background checks for a position. BTB also does not apply to certain positions at health care facilities, farm labor contractors, or state criminal justice agencies. Hernandez, Phil. NELP. Fair Chance Hiring in the Golden State: 10 "Best Practices" for Employers. February 23, 2018. <https://www.nelp.org/blog/fair-chance-hiring-golden-state-10-best-practices-employers/>

<sup>60</sup> Ibid.

<sup>61</sup> DFEH, "California Fair Chance Act (AB 1008) – 'Ban the Box' Frequently Asked Questions."

(EEOC) recently issued clarifications on discriminatory hiring practices; courts, however, frequently interpret these guidelines to favor an employer's decision to refuse to hire or interview an applicant.<sup>62</sup>

### III. EMPLOYMENT BARRIERS

Despite increased protections for applicants with an arrest or criminal record, barriers to employment persist. The obstacles faced by these applicants, as well as interconnected racial biases and presumptions around race and criminal records, are discussed below.

#### A. Categorical Exclusion and Licensing Issues

At virtually every stage of the hiring process, justice-impacted people can be ruled out from a job based on their record alone – either through employer practice, licensing restrictions, or both. According to the 2018 CSJ survey, about 40 percent of Californians with a criminal record have difficulty obtaining an occupational license.<sup>63</sup> The childcare, healthcare, banking, insurance, and security professions all have licensing restrictions categorically blocking, or making the job screening process more difficult, for applicants with a record. Such restrictions have been on the rise since the 1970s, and today, about 32,000 laws in the U.S. include some type of limitation on hiring people with criminal records.<sup>64</sup> Across the country, over 1 out of every 4 workers requires a state license for their occupation – particularly in the healthcare, legal, and education fields.<sup>65</sup>

**In California, over 4,800 laws impose collateral consequences on people with arrest or criminal records, most of which have no benefit or relationship to public safety.**<sup>66</sup> Many of these laws exist solely to make it harder for people to get good jobs, or any job at all. Various types of licensing restrictions exist for those with criminal records, including blanket bans that automatically disqualify people with records. Nationwide, there are 19,000 “permanent” disqualifications (bans that could last a lifetime) and over 11,000 “mandatory” disqualifications (when licensing agencies are required by law to deny a license based on one's criminal record). Of these policies, about 12,000 pertain to individuals with any type of felony nationwide, and over 6,000 apply to those with misdemeanors.<sup>67</sup>

Many occupations with licensing restrictions are well-paying jobs that could provide pathways to economic security. With access to these desirable professions blocked or limited, justice-impacted applicants are often forced into lower paying, lower-skill jobs. In the health field, for example, California's nursing licensing board requires the reporting of (and possible disciplinary actions related to) convictions, including misdemeanor charges and pleas of no contest.<sup>68</sup> These requirements may deter justice-impacted people from pursuing nursing and rather, working as home health aides or other lower paying positions.

#### B. Stigma and Perception Barriers

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<sup>62</sup> Lundquist et al., 5. Per the 2012 EEOC guidelines, employers should apply a case-by-case analysis to consider factors related to a conviction or record, such as amount of time that has lapsed since the offense and/or evidence of rehabilitation.

<sup>63</sup> 2018 CSJ Report, 2. Based on 2,000 Californians with a criminal record surveyed.

<sup>64</sup> NELP. *The Consideration of Criminal Records in Occupational Licensing*. December 2015.

<sup>65</sup> *Ibid.*

<sup>66</sup> 2018 CSJ Report, 1.

<sup>67</sup> Rodriguez and Avery. NELP. April 2016. “Unlicensed and Untapped: Removing Barriers to State Occupational Licenses for People with Records.” <https://nelp.org/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>

<sup>68</sup> California Board of Registered Nurses. “License Discipline and Convictions.” 2018.

<https://www.rn.ca.gov/enforcement/convictions.shtml>

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Applicants with a criminal record are half as likely to get a call back or job offer compared to equally qualified applicants with no record.<sup>69</sup> Despite policy reforms like BTB and the proven success of hiring justice-involved workers, employers and workforce system stakeholders continue to hold deep, pervasive stigma against applicants with arrest or criminal records. In a study of 600 California employers, the majority of businesses reported that they refused, on principal, to hire an applicant with a “serious” criminal offense.<sup>70</sup>

**The “Soft Skills” Problem:** Employers may have misconceptions about workers with criminal records lacking “oral character,” work ethic, ability, or some combination thereof.<sup>71</sup> Many pathways to economic security involve these “soft skills,” such as HR positions, front end service jobs, and management. A 2011 survey on Bay Area health professionals, for example, showed that “knowledge of community resources, digital literacy, interpersonal skills, and team work were the most reported entry-level skills that employers will need.” As with licensing restrictions, barriers flowing from employer assumptions or stigma can lead justice-impacted applicants to pursue and remain in low-paying, less desirable, or more temporary work. **For example, per Insight’s research, the top two fields in Alameda, Contra Costa, and Solano with the greatest percent increases in employing people with criminal records are 1) natural resources, mining, and construction (+19%) and 2) transportation, warehousing, and utilities (+15%) – sectors filled with physically demanding jobs not traditionally associated with “soft skills.”**<sup>72</sup>

**It is critical to note that employers may hold stigma against Black and Latinx applicants, *period* – regardless of whether or not they have a criminal record and/or when compared to White applicants with the same criminal record.**

- a. In one study, Black applicants were half as likely to receive a callback or job offer relative to equally qualified whites.<sup>73</sup> Other research shows that Black applicants are between 50 and 500 percent less likely to be considered for a job compared to Whites with the same skillset and background.<sup>74</sup> In another study, Black and Latinx applicants with no criminal history fared no better than a White applicant just released from prison.<sup>75</sup>

Similarly, felony convictions disadvantage Black applicants more than similarly skilled White applicants with identical criminal records.<sup>76</sup> **Per Insight’s research, in Alameda, Contra Costa, and Solano, Blacks with felony convictions experience unemployment rates nearly twice as high as Whites with felony convictions.**<sup>77</sup> **For every one dollar earned by Whites with a felony record, Blacks earned 51 cents and Latinx earned 74 cents.**<sup>78</sup>

### **MECHANISMS OF INJUSTICE: HOW STIGMA AND BIAS PLAY OUT IN WORKPLACE HIRING**

**Three examples of discriminatory treatment – categorical exclusion, shifting standards, and downward channeling – can involve exclusion, bias, and unequal treatment based on an applicant’s race and/or criminal record.**

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<sup>69</sup> Pager, Devah. 2006. *The Mark of a Criminal Record*.

<sup>70</sup> Holzer, et al., 2004.

<sup>71</sup> Ibid.

<sup>72</sup> Insight Fair Chance Project Quantitative Results (October 2018).

<sup>73</sup> Pager, et al., 2009. *Discrimination in a Low-Wage Labor Market: A Field Experiment*.

<sup>74</sup> Duane, et al. Justice Policy Center. November 2017. “Criminal Background Checks and Access to Jobs,” 13.

[https://www.urban.org/sites/default/files/publication/91456/2001377\\_criminal\\_background\\_checks\\_and\\_access\\_to\\_jobs\\_dc\\_case\\_study\\_0.pdf](https://www.urban.org/sites/default/files/publication/91456/2001377_criminal_background_checks_and_access_to_jobs_dc_case_study_0.pdf)

<sup>75</sup> Ibid.

<sup>76</sup> Pager, et al. 2007. *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3583356/pdf/nihms-439026.pdf>

<sup>77</sup> Insight Fair Chance Project Quantitative Results, October 2018.

<sup>78</sup> Ibid.

*Due to decades of over-policing, racialized policies, and other forms of discrimination, it is important to acknowledge and understand the underlying bias(es) that both people of color and justice-impacted applicants may encounter. Because workers and applicants of color frequently face the same or similar discrimination encountered by those with records, racial equity is inseparable from criminal justice and workplace reform.*

## 1. Categorical exclusion

### ▪ *What is it?*

- The immediate or automatic rejection of a person of color or justice-impacted candidate in favor of a White or non-justice-impacted applicant, such that the rejection happens before the candidate can demonstrate their qualifications. This occurs early in the application process and involves little negotiated interaction. Based on the “uncompromising” nature of these decisions, it appears that race or criminal record (even merely perceived criminal record) is the sole or top criterion.

### ▪ *What does it look like?*

- In one New York-based study, Black applicants were half as likely to receive a callback or job offer relative to equally qualified Whites. Moreover, Black and Latinx applicants with no criminal record fared no better than a White applicant just released from prison (Pager, Western, and Bonikowski, 2009).
- In another study involving entry level positions, researchers found that Blacks with *and without* criminal records were far less likely to receive callbacks than Whites (with all applicants having similar skills and education)<sup>79</sup> (Pager, 2003).

## 2. Shifting Standards

### ○ *What is it?*

- Employers’ observations of applicants appear actively shaped with a racial lens or bias related to criminal record. In these instances, similar qualifications or deficits take on varying relevance depending on racial identity or record (e.g., work experience, education). This bias is more subtle compared to automatic exclusion, where seemingly objective factors are re-interpreted through the lens of race or criminal record (both actual or perceived).

### ○ *What does it look like?*

- In Pager’s 2009 study involving applicants with the same professional backgrounds and education, one Black tester was rejected due to “lack of experience” while a White tester was offered the job (even though the employer told him that “absolutely nothing” in his resume qualified him for the position.) In the same study, another employer shared that a White candidate’s storage company experience was related to moving experience (and thus, that candidate received a call-back); however, that employer conveyed that a Black candidate’s delivery company experience was not experience at all.

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<sup>79</sup> The “audit methodology” used by Pager combined “experimental methods with real-life context” and is often used to study discrimination. In Pager’s study, identically skilled Black and White “testers” applied in-person to the same job openings, then reported back.

- Pager’s research also demonstrated that employers sought higher qualifications from Blacks compared to Whites (and those with criminal records compared to those without), even after increased personal contact in the hiring and interview process.

### 3. Downward Channeling

- **What is it?**

- Downward channeling happens after the hiring decision, with focus on where to *place* a hiree: Employers steer non-white or justice-impacted applicants toward particular job types, often with greater physical demands, lower pay, and/or reduced customer contact.
- Workers or applicants move: i) from a job involving contact with customers to a job without; ii) from a high-skill position to manual position; and/or iii) along a downward hierarchy (e.g., supervisor to line worker).

- **What does it look like?**

- Examples from the Pager, Western, and Bonikowski study include: i) Candidate applied for a store front position, but Employer told them to apply for a stock boy position, instead; ii) Employer pushed candidate to apply as a bus boy, as opposed to the open server position.

In the same study, Black candidates experienced downward channeling more frequently than similarly experienced White and Latinx candidates.

- A 2018 study by Lundquist, Pager, and Strader, “one of the first systematic assessments of ex-felons’ workplace performance,” examined a U.S. military initiative that regularly hires and recruits people with felony records.<sup>80</sup> To test employers’ alleged belief that applicants with records are dangerous or undesirable, the researchers examined administrative data of 1.3 million U.S. military enlistees from 2002 to 2009, comparing those with a criminal record and those without. Their findings demonstrated the impact and potential harms of downward channeling:
  - Looking at workplace performance, researchers found that in a number of ways, those with criminal records performed “as well as or better” than counterparts with no record. For example, **on average, those with felony records were promoted faster and to higher ranks than other enlistees.**
  - On average, recruits with felony records experienced an 80% **higher rate of work-related deaths**, likely due to their more frequently receiving combat-involved positions when compared to peers without felony records. Refuting the idea that those with felony records have a higher death rate due to characteristics (e.g., recklessness), the researchers found that **recruits with felonies are three times more likely to receive a higher-risk infantry assignment compared to those without.**

#### The “Soft Skills” Problem:

- Categorical exclusion, standard shifting, and downward channeling can also occur when employers determine that candidates lack the “soft skills” needed for a position. “Soft skills” may generally

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<sup>80</sup> In this initiative, the military can grant “moral character waivers” to applicants convicted of a felony – an exception to the U.S. federal legal code, which bans those convicted of a felony to serve in any military branch.



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include “traits that pertain to personality, attitude, and behavior rather than formal or technical knowledge” (Moss and Tilly, 1996). According to Moss and Tilly, soft skills fall in two general categories: “i) ability to interact with customers, coworkers, supervisors (interaction), and ii) enthusiasm, positive work attitude, commitment, dependability, integrity, and willingness to learn.”

- In a study by Zamudio and Lichter (2008), hotel industry employers were far less likely to hire Blacks due to a perception that they lacked soft skills – even when the Black applicants had the same or *greater* work and education backgrounds compared to other applicants. Zamudio and Lichter conclude that the ambiguity of “soft skills” (e.g., a “good attitude”) can become a tool for discrimination: Employers may use “soft skills” as a “vener of legitimacy” to screen out workers who 1) perceive themselves to have employment rights and 2) are likely to resist workplace abuses or harsh working conditions because they lack friendliness, “people skills,” or motivation.

Over a decade after Zamudio’s study, justice-impacted applicants still disproportionately work in manufacturing, construction, and transportation sectors, where short-term, physically demanding, and low-paying jobs are common. (Insight, 2018). On the other hand, employers in businesses where “soft skills” are emphasized, such as the hospitality and service industries, have reported the least willingness to hire applicants with criminal records. (Holzer, Raphael, and Stoll, 2004).

### IV. WORKFORCE LANDSCAPE

Historically, there has been no cohesive pathway to employment for individuals exiting incarceration or justice system involvement.<sup>81</sup> Workforce services are provided to justice-impacted individuals in an ad hoc fashion; thus, one’s success in a workforce program may depend on their county’s existing resources and partnerships.<sup>82</sup> State, regional, and local workforce stakeholders are taking some new or updated measures to serve justice-impacted individuals. A summary of these efforts is below.<sup>83</sup>

#### A. National & Statewide Workforce Efforts

Established in 1998 through the federal Workforce Investment Act (WIA), **California’s Workforce Development Board (CWDB)** oversees statewide workforce training and education programs.<sup>84</sup> In 2014, the **Workforce Innovation and Opportunity Act (WIOA)** replaced WIA, creating the foundation of today’s workforce system. Under WIOA, CWDB must coordinate with regional and local stakeholders to develop programs that serve workforce participants. America’s Job Center of California (AJCC) locations act as a local “one stop” service, training, and education point for workforce participants. In the East Bay, for example, 14 AJCCs serve over 80,000 job seekers and over 2,000 employers annually.

In conjunction with partners including the Departments of Education, Rehabilitation, and Labor, the CWDB develops a [Unified Strategic Plan](#) to drive policy and program objectives. The Plan lays out strategies for greater regional connections, aligning rising industries and occupations with workforce programs (“demand-driven skills attainment”),

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<sup>81</sup> A theme reinforced during Rise Together’s September 2018 Solano County fair chance hiring listening session.

<sup>82</sup> “Workforce services are typically provided to [the reentry community] in an ad hoc fashion, with a broad range of program and service availability depending on funding and the existence of local and regional partnerships, which have generally been formed independent of state-level partner agencies.” “EDD and CWDB Regional and Local Plans PY 17-21 – Two Year Modifications.” July 27, 2018 Directive (“WSD18-01”), 7.

<sup>83</sup> Ibid.

<sup>84</sup> CWDB Organizational Chart. February 2018. <https://cwdb.ca.gov/wp-content/uploads/sites/43/2018/02/FEBRUARY-2018-Org-Chart.pdf>

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and overall, helping to ensure upward economic mobility for “all Californians, including populations with barriers to employment.”<sup>85</sup>

The 2016-19 CWDB Strategic Plan calls for building an “integrated pathway” for “disadvantaged workers”<sup>86</sup> that includes the reentry community.<sup>87</sup> The Plan’s recommendations to better serve people with records, returning residents, and other “disadvantaged workers” include: implementing shared case management; building coordination between parole and probation officers and workforce case managers; improving regional connections to provide more holistic supports, including trauma-informed healing, substance use treatment, housing assistance; and maximizing access to basic skills training and education.<sup>88</sup>

### B. Regional and Local Workforce Efforts

#### 1. East Bay (Alameda, Oakland, Contra Costa)

Along with the City of Oakland, Alameda and Contra Costa belong to the “EASTBAYWorks” regional partnership, formally established in 1997. Additional protocols for East Bay collaboration began after the Recession, when the region lost 10 percent of all jobs.

During the Recession, the East Bay’s **construction, manufacturing, and retail industries** were among those hardest hit; these sectors are also: 1) among the industries that East Bay workforce stakeholders have focused on in recent years due to high rates of job growth, and, per Insight’s research, 2) among the top ten industries employing individuals with felony records.<sup>89</sup> Given the employment barriers discussed above, further examination of these industries and how people with criminal records are able to access them seems warranted (e.g., the impact of licensing requirements in accessing manufacturing and construction jobs; the impact of employer “soft skills” perceptions on retail jobs).

County-specific workforce statistics:

##### a. Alameda County:

- In Alameda, an estimated 34 percent of all non-working men ages 25-34 have a criminal record.<sup>90</sup> Per the Alameda County Workforce Development Board (ACWDB), people with criminal records and those recently

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<sup>85</sup> Regional and local Workforce Development Boards must coordinate with other programs to cross-walk and identify shared needs of participants in the workforce development and other systems and programs (e.g. CalFRESH, child support). CWDB ‘16-19 Strategic Plan, 2.

<sup>86</sup> The specificity of workforce development plans can be lacking, including around which people are targeted for services. Frequently, rather than naming specific groups, workforce plans use ambiguous terms like “dislocated worker” or “disadvantaged communities” to describe participants. Also, while returning residents (“ex-offenders”) are sometimes named in workforce plans, categories specifically including people with criminal or arrest records are not.

<sup>87</sup> Local residents, those with disabilities, homeless individuals, and those with criminal records are generally considered “disadvantaged workers” and thus, a WIOA priority group, meaning that workforce stakeholders must make substantial efforts to serve and connect them to job training skills, supports, training, and employment. Alameda County Workforce Development Board. Meeting Notice, May 20, 2018. “Industry Sector and Occupational Framework (ISOF) Extension,” 14. [http://alamedasocialservices.org/acwib/info-research/documents/display.cfm?folder=documents&filename=ACWDB\\_Agenda\\_Packet\\_-\\_May\\_10\\_20181.pdf](http://alamedasocialservices.org/acwib/info-research/documents/display.cfm?folder=documents&filename=ACWDB_Agenda_Packet_-_May_10_20181.pdf)

<sup>88</sup> “EDD and CWDB Regional and Local Plans PY 17-21 – Two Year Modifications,” 7.

<sup>89</sup> Insight Fair Chance Project Quantitative Results, October 2018.

<sup>90</sup> Alameda County Workforce Development Board. Meeting Notice, May 20, 2018. “Industry Sector and Occupational Framework (ISOF) Extension,” 14. [http://alamedasocialservices.org/acwib/info-research/documents/display.cfm?folder=documents&filename=ACWDB\\_Agenda\\_Packet\\_-\\_May\\_10\\_20181.pdf](http://alamedasocialservices.org/acwib/info-research/documents/display.cfm?folder=documents&filename=ACWDB_Agenda_Packet_-_May_10_20181.pdf)

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released from incarceration are classified as “reentry.” Many of those re-entering come from Santa Rita Jail and settle in Hayward, Ashland, and Oakland.<sup>91</sup>

- The reentry community is a WIOA priority group; as such, Alameda’s Board of Supervisors launched a Reentry Program in 2016 to improve employment outcomes for justice-impacted people.<sup>92</sup> More specifically, the Program aimed to provide 1,400 county jobs for people with criminal records. Through the program, justice-impacted individuals would first be referred to employment services; then, after successful enrollment, moved into employment with one of the county’s employer partners.<sup>93</sup> Other recent transition programs include Alameda County Probation’s Vision 2026, which gives reentry support to individuals accessing probation services.<sup>94</sup> **Despite these initiatives, as of June 2017 (a year after the Reentry Program began), the county had only helped 6 of an anticipated 1,400 people find jobs.**<sup>95</sup>
- Although the county unemployment rate is relatively low (3 percent as of December 2017), the reentry community continues to experience employment barriers.<sup>96</sup> **In 2014/15, of the 13,718 people on Alameda County probation, only 259 were enrolled in employment services; of those 259, only 7 kept employment for 6 months.**<sup>97</sup>
- **Blacks make up 12 percent of the county population but nearly half of the probation population.<sup>98</sup> Over 20 percent of the probation population is Latinx.**<sup>99</sup>

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<sup>91</sup> Alameda County Workforce Development Board. Meeting Notice, May 20, 2018. “Industry Sector and Occupational Framework (ISOF) Extension,” 14. [http://alamedasocialservices.org/acwib/info-research/documents/display.cfm?folder=documents&filename=ACWDB\\_Agenda\\_Packet\\_-\\_May\\_10\\_20181.pdf](http://alamedasocialservices.org/acwib/info-research/documents/display.cfm?folder=documents&filename=ACWDB_Agenda_Packet_-_May_10_20181.pdf)

<sup>92</sup> Alameda’s BOS voted unanimously for the Reentry Hiring Program in June 2016. Ella Baker. “Justice Reinvestment Coalition Wins 1,400 Jobs for Formerly Incarcerated People in Alameda County.” June 28, 2016. <https://ellabakercenter.org/in-the-news/justice-reinvestment-coalition-wins-1400-jobs-for-formerly-incarcerated-people-in>

<sup>93</sup> Still, Wendy. Alameda County Probation. “Year Six Status Update: Public Safety Realignment in Alameda County,” 32. [https://www.acgov.org/probation/documents/Y6RealignmentStatusUpdate\\_PublicProtectionCommittee5-10-18revised.pdf](https://www.acgov.org/probation/documents/Y6RealignmentStatusUpdate_PublicProtectionCommittee5-10-18revised.pdf)

<sup>94</sup> Still, Wendy. “Public Safety Realignment in Alameda County,” 39.

<sup>95</sup> Gafni, Matthias. San Jose Mercury. “Alameda County Had Hoped to Hire 1,400 People with Criminal Records – They’ve Hired 6.” June 28, 2017. <https://www.mercurynews.com/2017/06/28/alameda-county-had-hoped-to-hire-1400-felons-for-jobs-theyve-hired-6/>

<sup>96</sup> “Perceptions on the demand side of the labor market regarding specific risks associated with an applicant’s criminal record, whether justified or not, certainly limit the employment opportunities available to individuals with criminal records, compounding the effects of the barriers created by low levels of education, little or no previous work experience, and long gaps in unemployment.” Alameda County Workforce Development Board. Meeting Notice, May 20, 2018. “Industry Sector and Occupational Framework (ISOF) Extension,” 15.

<sup>97</sup> Alameda’s BOS voted unanimously for the Reentry Hiring Program in June 2016. Ella Baker. “Justice Reinvestment Coalition Wins 1,400 Jobs for Formerly Incarcerated People in Alameda County.” June 28, 2016. <https://ellabakercenter.org/in-the-news/justice-reinvestment-coalition-wins-1400-jobs-for-formerly-incarcerated-people-in>

<sup>98</sup> East Bay Community Law Center and Berkeley Law School Policy Advocacy Clinic. Fact Sheet on Adult Fees, 2. May 2, 2018. [http://www.acgov.org/probation/documents/EBCLC\\_ACAdultFeesFactSheet.pdf](http://www.acgov.org/probation/documents/EBCLC_ACAdultFeesFactSheet.pdf), 2

<sup>99</sup> Alameda County Probation Department. “Final Budget Work Session.” June 27, 2017. [https://acgov.org/MS/OpenBudget/pdf/FY17-18/Probation%20Final%20Presentation%20Budget%20FY%2017-18\\_06\\_27\\_17.pdf](https://acgov.org/MS/OpenBudget/pdf/FY17-18/Probation%20Final%20Presentation%20Budget%20FY%2017-18_06_27_17.pdf)

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Following San Francisco, Alameda’s Board of Supervisors approved the abolishment of significant fees faced by criminal defendants in 2018.<sup>100</sup> In doing so, \$21 million in past debts (consisting of criminal justice administrative fees) was discharged. Furthermore, the county will absorb the costs of probation supervision, public defender services, and other criminal justice programs.

### b. Contra Costa County

- **Contra Costa** is the third largest county in the Bay Area. Nearly a quarter of the population is “foreign-born” and 34 percent of the population (over age 5) speaks a language other than English.<sup>101</sup> Under WIOA, Contra Costa must take measures to serve “disadvantaged workers” – including, per its workforce development plan, farmworkers, Limited English Proficiency speakers (LEP), and “ex-offenders.”<sup>102</sup>
- Contra Costa’s workforce, health, housing, mentorship, and employment training stakeholders collaborate through the **Contra Costa Reentry Network** – a coalition of services and providers focused on the reentry community.<sup>103</sup>
- In December 2016, Richmond approved a Fair Chance Affordable Housing ordinance to guard against blanket bans to housing faced by people with criminal records.<sup>104</sup>
- **Fair Chance Summit (May 2018):** In May 2018, the Contra Costa WDB and Office of Reentry hosted a Fair Chance Employer summit to update employers on Ban The Box and financial incentives related to hiring people with criminal records; a similar convening will take place in November 2018.<sup>105</sup>

### 2. North Bay (Solano County)

- Solano is in the North Bay Regional Planning Unit (RPU) with Lake, Marin, Napa, Mendocino, and Sonoma.
- Although not all industries have recovered fully from the Recession, Solano health care and retail jobs are cited as particularly thriving areas in its workforce plans. **Of the county’s top 10 occupations, personal care aides are the most popular (average earnings of \$11.80/hour; 5-year growth of +181%), followed by retail salespersons (average \$13.72/hour; 5-year growth of +4%).**

## V. OTHER REFORMS

### 1. Laws and Policies

Under WIOA, each workforce development region must have a **Prison to Employment Plan** to coordinate reentry and workforce services for “the formerly incarcerated and other justice-impacted individuals.”<sup>106</sup> Regional partners include local workforce development boards, Department of Corrections and Rehabilitation, Adult Parole, CBOs serving justice-impacted people, and “other stakeholders, as specified by the board.”<sup>107</sup> Under WIOA, these plans must sufficiently serve justice-impacted participants, including through the provision of “Earn and Learn” (approaches that provide

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<sup>100</sup>Cassidy, Megan. SF Chronicle. “Alameda County Looks to Eliminate Fines, Fees for Defendants.” September 15, 2018. <https://www.sfchronicle.com/crime/article/Alameda-County-looks-to-eliminate-fines-fees-for-13233067.php>

<sup>101</sup> CWDB Strategic Plan, 41.

<sup>102</sup> Contra Costa Workforce Development Board. “County Local Plan 2017-20,” 53. <http://wdbccc.com/docs/default-source/wdb-documents/ca-wdbccc-localplan-final-v4.pdf?sfvrsn=2>

<sup>103</sup>“Contra Costa Service Providers.” <http://www.co.contra-costa.ca.us/5301/Service-Providers>

<sup>104</sup> <https://www.aclunc.org/blog/victory-richmond-ca-passes-new-affordable-housing-law-formerly-incarcerated-people>

<sup>105</sup>Notes from the Contra Costa summit can be found here:

<https://docs.google.com/document/d/18RMUfZMuz0tXYaBXK5HMFcWeFGN2CrHalMU04Nseqc/edit?usp=sharing>

<sup>106</sup>The Prison to Employment plan can be found within each regional workforce plan. California Department of Finance. “Prison to Employment Program Trailer Bill,” 2. March 18, 2018.

[http://www.dof.ca.gov/Budget/Trailer\\_Bill\\_Language/documents/PrisonToEmploymentProgram.pdf](http://www.dof.ca.gov/Budget/Trailer_Bill_Language/documents/PrisonToEmploymentProgram.pdf)

<sup>107</sup> Ibid.

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participants with education, skills, and knowledge as well as real-life work activities and paid opportunities). **In July 2018, additional requirements to serve the reentry population were released by the state’s Employment Development Department and CWDB.**<sup>108</sup>

To fulfill WIOA obligations, the State allocates a portion of its budget to reentry workforce and related support initiatives:

- In June 2018, the state legislature approved the Prison to Employment Program Trailer Bill (**SB 866**) as part of the FY 2018-19 Budget.<sup>109</sup> Through **SB 840**, the State Budget appropriated a first round of State SB 66 funds to build regional partnership development and planning.<sup>110</sup>
- Per WIOA requirements, a portion of 2018-19 State Budget funding was allocated to other organizations and programs serving the reentry community, including the **Berkeley Underground Scholars** (BUS) Initiative (\$150,000)<sup>111</sup> – a UC Berkeley program to support formerly incarcerated and system-impacted individuals in higher education.<sup>112</sup> The BUS funds are part of a larger \$50,000,000 line item reserved for community-based organizations (CBOS) serving “offenders formerly incarcerated in state prison” in transitioning back into their communities.<sup>113</sup>

## REFORM EFFORTS

### Ban the Box: Comparing the Research

With the spread of Fair Chance policies across the U.S., researchers are increasingly looking at how such policies affect hiring and employment. The articles discussed below explore how BTB affects applicants with a criminal record – and, because of the disproportionate incarceration and criminalization of Blacks and Latinx, how BTB helps or hurts applicants of color, whether or not they have a criminal record. Though research on the effectiveness of BTB has yielded mixed results, researchers generally agree that more policies and actions are needed to fulfill the promise of Fair Chance hiring for all applicants.

### Ban the Box Critiques

Some research (Agan and Starr, 2016; Doleac and Hansen, 2017) finds that because BTB promotes the withholding of information on criminal records, employers discriminate against applicants in other ways – namely, based on race. In these studies, researchers noted that after the passage of BTB, **the race gap in callbacks grew dramatically**. These researchers conclude that even if stigma associated with a criminal record is eliminated, the racial disparities in hiring would be exacerbated. Their findings show that BTB more favorably benefits White applicants with a criminal record, compared to their Black counterparts. Finally, the

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<sup>108</sup> “EDD and CWDB Regional and Local Plans PY 17-21 – Two Year Modifications.”

<sup>109</sup> SB 866. June 27, 2018. [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB866](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB866) ; Prison to Employment Program Trailer Bill.” March 18, 2018.

[http://www.dof.ca.gov/Budget/Trailer\\_Bill\\_Language/documents/PrisonToEmploymentProgram.pdf](http://www.dof.ca.gov/Budget/Trailer_Bill_Language/documents/PrisonToEmploymentProgram.pdf)

<sup>110</sup> Funds include support for existing programs serving the reentry population.

<sup>111</sup> “SB 840,” 500. [http://extranet.cccco.edu/Portals/1/CFFP/Fiscal/Budget%20News/2018-19/Chapter29\\_2018-19\\_SB840.pdf](http://extranet.cccco.edu/Portals/1/CFFP/Fiscal/Budget%20News/2018-19/Chapter29_2018-19_SB840.pdf)

<sup>112</sup> “Berkeley Underground Scholars.” <https://undergroundscholars.berkeley.edu/about/>

<sup>113</sup> Funding will be allocated by a steering committee formed through the Board of State and Community Corrections; committee members will represent expertise in housing, workforce development, rehabilitative treatment, and other departments working with the reentry community.

[http://extranet.cccco.edu/Portals/1/CFFP/Fiscal/Budget%20News/2018-19/Chapter29\\_2018-19\\_SB840.pdf](http://extranet.cccco.edu/Portals/1/CFFP/Fiscal/Budget%20News/2018-19/Chapter29_2018-19_SB840.pdf)

researchers note that beyond BTB, larger employment reform is needed to achieve more equitable racial and economic workplace outcomes.

### **Ban the Box Support**

Other studies (Shoag and Veuger, 2016; Emsellem, 2016) write in favor of Ban the Box while critiquing Agan, Doleac, and others who find that BTB harms the employment prospects of Blacks and Latinx. They suggest that critiquing BTB shifts blame away from systemic barriers (e.g., racial discrimination in hiring, employer bias against people with criminal records) and onto Ban the Box. Rather than viewing BTB as the solution to racial and record bias, the researchers treat it as one of several anti-discriminatory protections that can work in tandem (alongside clean slate programs and expungement laws, discussed below).

In addition, the researchers predict that *spill-over effect*, or increased social acceptance, of BTB will further strengthen the policy's efficacy as it expands across businesses and geography. **Today, three-fourths of the country is in a BTB jurisdiction – an increasing presence that is significantly greater than even four years ago, when much of the initial BTB-focused research began.**<sup>114</sup> Emsellem and Avery (2016) point out that “the more time a new enforcement policy is given to take hold, the greater the impact it has on employer behavior.” This applies to BTB and to other anti-discrimination guidelines, which cumulatively “continue to have a growing impact on employers’ hiring practices.”<sup>115</sup>

#### **1. Laws and Policies**

**In addition to Ban the Box, the following California laws and policies were recently passed to improve the employment and economic outcomes for justice-impacted applicants and workers:**

- **Prop 47 (2014):** Approved by voters, the Reduced Penalties for Some Crimes Initiative (Prop 47) reclassified non-violent, non-serious felonies into misdemeanors – with the overall goal of reducing mass incarceration rates due to low-level, non-violent crime.<sup>116</sup> Examples of reclassified crimes include grand theft, shoplifting, forgery, and other property crimes under \$950, as well as personal use of most illegal drugs.
- **Marijuana Legalization (Prop 64) and AB 1793 (2018):** After the statewide legalization of adult use marijuana in January 2018, local governments grappled with how to reduce sentencing and expunge records related to marijuana possession. In September 2018, Governor Brown signed **AB 1793**, a bill on Cannabis resentencing that created a process for retroactive expungements.<sup>117</sup>
- **AB 2138 (2018):**<sup>118</sup> In September 2018, Governor Brown signed into law **AB 2138**, a bill to reduce occupational licensing barriers. When an individual with a record applies for an occupational license, the board must consider the nature of their criminal history, the time passed since crimes were committed, and whether the nature of the occupation or industry is sufficiently related to the individual's past

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<sup>114</sup>NELP Ban the Box Toolkit, April 2019.

<sup>115</sup> Emsellem and Avery, 2016.

<sup>116</sup> LeadersUp Report, 10.

<sup>117</sup> AB 1793. “Cannabis Convictions: Resentencing.”

<sup>118</sup>East Bay Community Law Center. “For Immediate Release: Governor Brown Signs Landmark Legislation to Remove Barriers to Licensing and Decrease Recidivism.” October 1, 2018.

conviction(s). This change in policy should reduce barriers for many and bring greater transparency and consistency to this decision making process.

## 2. Employer Incentives

The following initiatives, resources, and financial incentives seek to bolster the impact of fair chance hiring laws:

- a) **Work Opportunity Tax Credit:** A federal tax credit (up to \$9,600 per worker) for employers who hire and retain employees with significant barriers to employment, including people with felony convictions.<sup>119</sup>
- b) **Federal Fidelity Bonding:** In collaboration with the California Employment Development Department, the U.S. Department of Labor can issue free “bonding insurance” for employers hiring workers with prior felony convictions (for acts involving employee dishonesty). Although only 1% of these bonds are claimed, they appear to give employers increased peace of mind through the coverage of unlikely employee misconduct.<sup>120</sup>
- c) **California New Employment Tax Credit:** Run by the Governor’s Office of Business and Economic Development (GO-BIZ), this state tax credit rewards employers who pay a livable wage in parts of California with high poverty and unemployment rates. Portions of Alameda (Oakland), Contra Costa (Bay Point, Richmond), and Solano (Vallejo) are among qualifying areas
- d) **Bay Area Fair Chance Hiring Pledge:** By signing the pledge (part of a national campaign started by the Obama administration), Bay Area employers make a public commitment to Fair Chance hiring policies and strategies (e.g. abiding by Ban the Box, hosting a Fair Chance job fair, using a quality background check provider).
- e) **Employer-focused Resources:** The ACLU and Root & Rebound recently developed resources for employers on the benefits of hiring individuals with a criminal record and how to implement Ban the Box. Emphasizing that “doing good is good for business,” these resources present data on why embracing Fair Chance hiring economically helps employers.

## 3. Clean Slate Programs:

Selbin, McCrary, and Epstein (2018) analyzed unmarking (“clean slate”) programs that provide record-clearing assistance. Such programs are generally available to people with infractions, misdemeanors, and low-level felonies, so that they may qualify for licensing, employment, promotions, or other professional opportunities. After studying several hundred Bay Area Clean Slate participants, the researchers found that **record-clearing services boosted participants’ employment rates and average earnings:** 1) On average, employment rates grew from 75% to 85%; and 2) within three years of the Clean Slate program, average earnings increased significantly. However, most program participants only sought out record-clearing services after a period of “suppressed earnings” (e.g., while underemployed and underpaid).

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<sup>119</sup> Root and Rebound Employer Toolkit, 18.

<sup>120</sup> Ibid.

## Appendix B

Thus, the researchers stressed the importance of expanding unmarking programs and connecting more justice-impacted people with Clean Slate intervention. Finally, the researchers suggest that in addition to legal aid programs, other interventions could include **record-clearing by operation of law** that transfer the “onus of unmarking” away from the individual and to the government. In California, such a record-clearing law (AB 1793) was passed in September 2018 to create a process for retroactive marijuana expungements.



### Fair Chance Workforce Project Focus Group Summary

Three focus groups with returning residents and individuals with a criminal record were hosted to inform the report and recommendations, co-hosted by Center for Employment Opportunities in Alameda County, Safe Return Project in Contra Costa County and Justice Now in Solano County. A total of 43 participants provided information via an on-site anonymous survey and a facilitated group discussion. Every participant was invited to engage in the subsequent Fair Chance Workforce Task Force to help determine the final recommendations. Each Focus Group was audio recorded and transcribed for accuracy.

**The following summarizes responses to a written demographic survey completed before the focus group dialogue:**

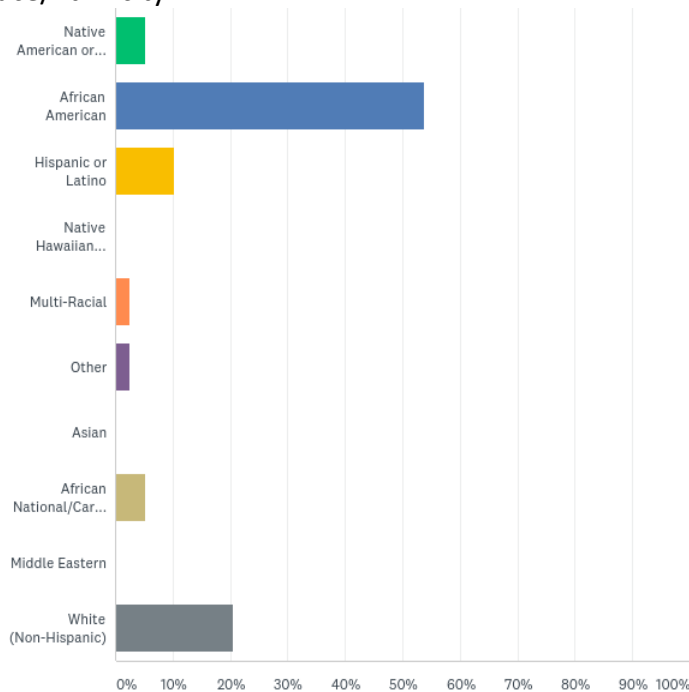
#### Criminal Justice Status:

- 98% had been incarcerated
- 80% had a felony record, nearly 20% had a misdemeanor, nearly 20% had an arrest record
- 45% were currently on parole, 18% on probation, 33% had completed their requirements, 8% had their record cleared

#### Demographics & Income:

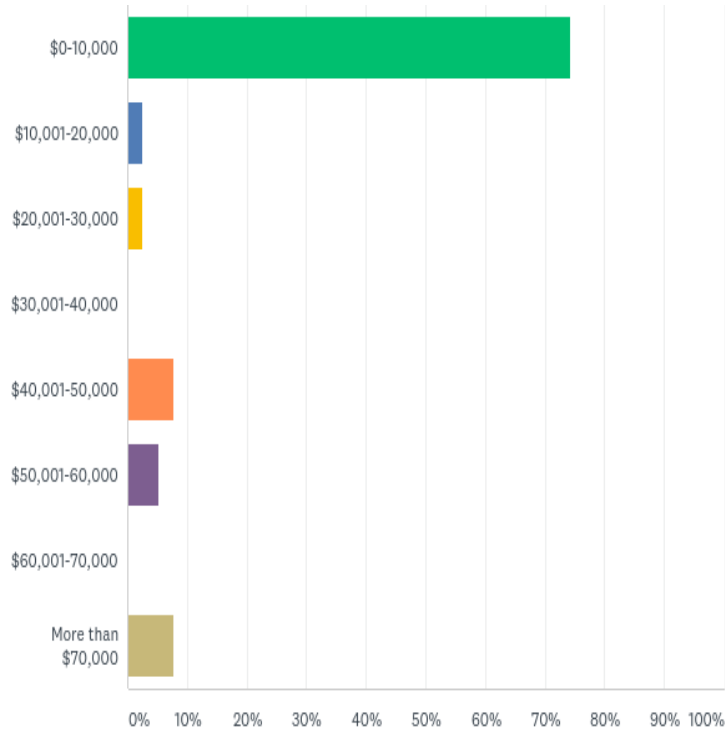
- Gender: 70% male, 30% female

#### Race/Ethnicity

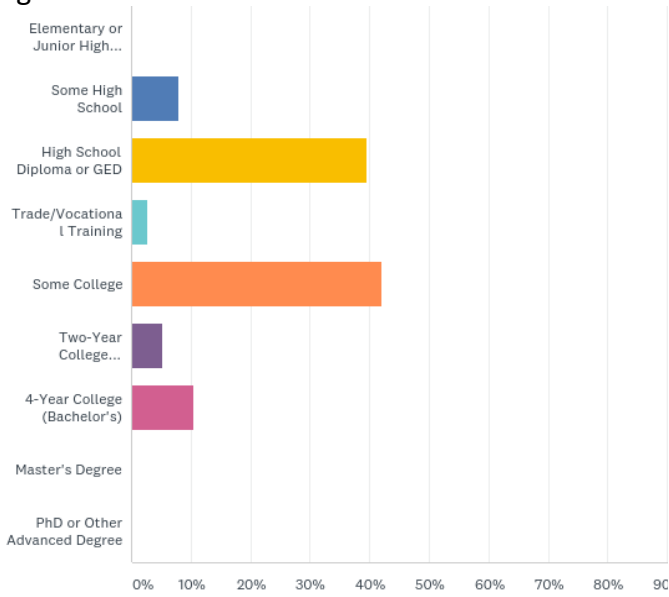


## Appendix C

### Estimated Personal Income

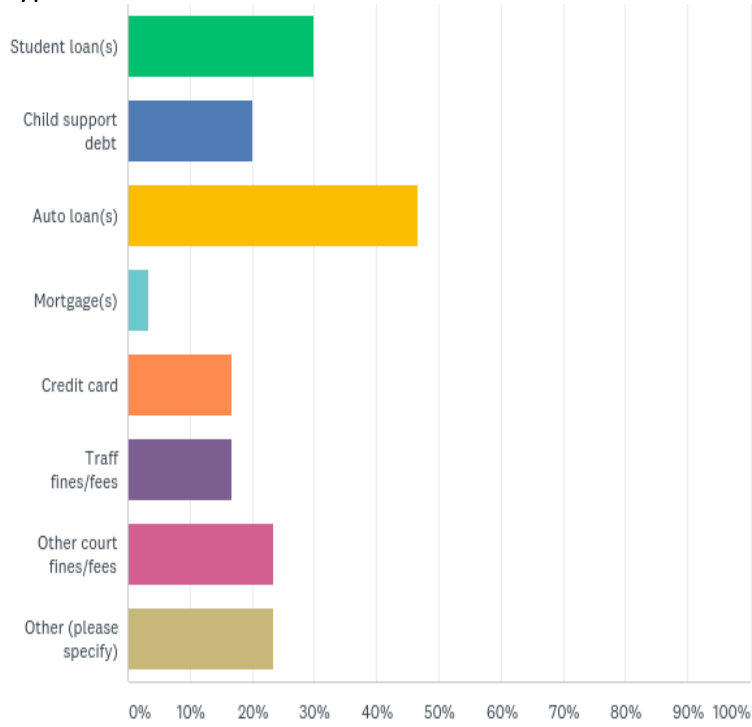


### Highest Level of Education

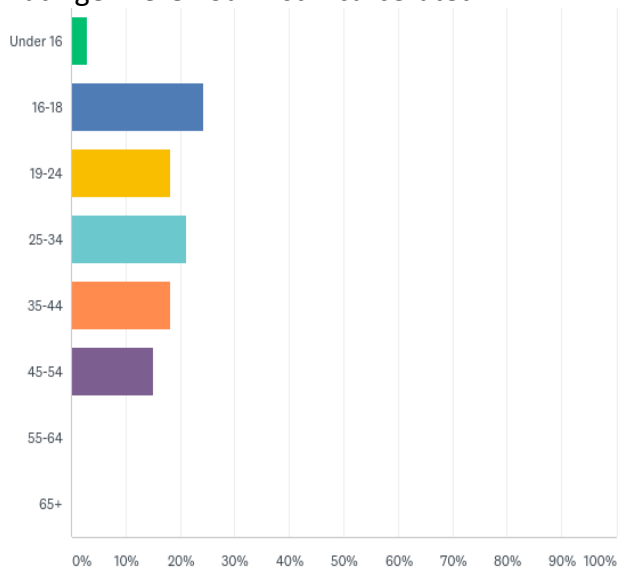


## Appendix C

### Types of Current Debt



### At What Age Were You First Incarcerated



Appendix D

**Fair Chance Workforce Project  
Key Informant Interviews**

The following list represents the organizations that participated in key informant interviews for this project. To protect anonymity, we did not list individual names or titles of those representatives who participated.

Employer
Workers.com
Surplus Service
Big House Beans
Michael's Transportation
Whole Foods
Health Care Industry Employer
Checkr
Social Imprints
AC Transit
Contra Costa County Human Resources
Service Provider
Bay Area Legal Aid
JobTrain
70 Million Jobs
5 Keys School
Code for America
Reentry Solutions Group
National Employment Law Project
Rubicon
Safe Return Project
REDF
Justice NOW
Urban Strategies Council
East Bay Alliance for a Sustainable Economy (EBASE)
Building Opportunities for Self-Sufficiency (BOSS)
Center for Employment Opportunities (CEO)
County Government/Workforce System
Workforce Development Board, Alameda County
Workforce Development Board, Contra Costa County
Workforce Development Board, Solano County
Concord's America's Job Center of California, Contra Costa County
Contra Costa County Public Defender's Office
County Administrator Office, Contra Costa County
Workforce Development Expert Consultant
East Bay Economic Development Alliance

Appendix E

**Fair Chance Workforce Project  
Task Force Membership**

Bay Area Legal Aid
BOSS
Checkr
Center for Employment Opportunities
Code for America
County Administrative Office, Contra Costa County
Health Right 360
Justice Now
Concord's America's Job Center of California, EDD, Contra Costa Contra Costa County
Contra Costa County Interfaith Council
East Bay Works
Fremont Family Resource Center
Initiate Justice
Justice Now
National Employment Law Project
Reentry Success Center
Root & Rebound
Rubicon
Safe Return Project
Social Imprints
70 Million Jobs
Urban Strategies Council
Whole Foods
Workforce Development Board, Alameda County
Workforce Development Board, Contra Costa County
Workforce Development Board, Solano County

## In Their Words: Employers on Hiring Individuals with a Criminal Record

The following are quotes and tips collected during our interviews with Bay Area employers who have hired individuals with criminal records.

### Employer expectations

- “It’s a wonderful thing, but it has its challenges. You do it on a case-by-case basis.”--  
**Food industry**
- “We love their passion. They may be a little rough around the edges. We sometimes have to spend more time on the soft skills and job interview skills.”—**Transportation industry**
- “We’re not a job readiness program. They need to have been out of jail or prison for at least a year to succeed in our jobs.”--**Wholesale distributor**
- “Build relationships, go the extra mile, listen to the applicant’s needs, values and goals. Make sure there is an opportunity to grow in the job or organization.”—**Food industry**
- “Give ‘em a chance. You don’t know everything about their background.”—**Industrial employment agency**
- “Hiring people with criminal records opens up an entirely new population to recruit from.”--**Healthcare provider**

### Hiring mindset

- “Identify out of the 260 possible criminal charges, which ones that really matter to the position you are hiring for. What few are an instant disqualifier? Which need review? The best thing to do is to set adjudication criteria up front.”--**Background check service**
- “We learned from our mistakes. Set your parameters or boundaries and stick with them. When we don’t, it usually results in trouble.”--**Wholesale distributor**
- “I don’t care about what they’ve done in the past but what they can do in the future.”—  
**Recycling service**

### The Interview

- “We look at the candidate from the perspective of the job description. If we extend the offer, we ignore the fact that they were incarcerated.”—**Recycling service**
- “Look at their skills, attitude and behavior”—**Transportation**
- “If applicants are violent or have a temperament or other red flags, I really listen to the language and body language. I listen very carefully to how they refer to what happened. Do they shrug it off? Do they say they made a mistake?—**Food industry**
- “We look for those who are ready to change. I’ve been here four years, and you learn from experience. Are they interested and attentive? Are they open to

## Appendix F

corrections/directions? I can usually tell in 5-10 minutes of talking.”--**Industrial employer**

### The Hire

- “The first position is usually an entry-level job where it’s easy for them to be in a role where they interface with the community. Don’t base it on their past; you look at their skillset and where you have available jobs. Will they show up on time and be dependable? Once they prove themselves initially, they can get promoted quickly.”—**Food industry**
- “We work with Goodwill and other agencies to do a program of temporary-to-permanent. It gives us a no-commitment timeframe to get to know the applicant and see if they are essentially ready.”—**Food industry**
- “Don’t hire someone with a fraud conviction in accounting, but they can do well in sales.”—**Wholesale distributor**

### On the Job

- “We generally don’t talk about anyone’s record.”--**Industrial employer**
- “We changed our drug testing because of one employee. One test can tell if you smoked marijuana in the last three months. I don’t care about that. So, we changed the test (to a shorter period) to accommodate the employee.” --**Recycling service**
- “If they’re on parole, they have to take time to meet their parole officer. We make accommodations; sometimes the parole officers come to our business to meet.”--**Recycling service**

### Follow-up

- “Talk to community organizations and learn to partner. Understand the mission and how to match with their mission. Look for opportunities to get involved on an ongoing basis on curriculum and training.”—**Food industry**

### Other advice

- “A job alone can’t provide everything. Community is huge; they need support groups, maybe they have no family or a family that is toxic. Everyone needs to feel that they belong and are loved.”—**Food industry**
- “They’re ready to work. Sometimes they have gained skills while incarcerated. They have a sense of freedom and a high family orientation. [The formerly incarcerated] are the most untapped population. People are getting out of prison need a sense of hope and have a need to learn.”—**Transportation**

## Appendix F

- “It takes being attentive to strengths and weaknesses.”—**Food industry**
- “They tend to be more loyal since the employer gave them a chance. They have less ‘entitlement’ attitudes than employees without criminal records.”--**Wholesale distributor**
- “The key to mentoring the re-entry population internally is to create an opportunity for everyone to learn together and have it happen naturally/organically.”—**Background check service**
- “We hold cap and gown graduations because we want them to have the most positive experience possible. Many of them have never had a cap ‘n gown graduation ceremony before.”—**Transportation**
- “Fair Chance hiring shouldn’t be viewed as a huge barrier, as if businesses don’t deal with implementing new systems every day.”—**Background check service**