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*“This could be the moment for us to make an ideological shift – for employers to see fair chance hiring as a source of pride rather than shame.”*

- Fair Chance Employer

# Opportunity for Every Worker:

**Toward a Fair Chance Workforce  
in the Bay Area**



We are deeply grateful to the funders  
and key partners who made this project possible,

# Thank You

and who believe in the right of every individual to  
secure quality sustainable employment.

## This project is supported by:

Kaiser Permanente Northern California Community Benefit Programs

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Safe Return Project

Justice Now



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to this report, please visit:

 [RiseTogetherBayArea.org/FairChance](https://RiseTogetherBayArea.org/FairChance)

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# Executive Summary

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The Fair Chance Workforce System project was initiated by Rise Together, the Insight Center for Community Economic Development, and Urban Strategies Council through a shared commitment to ensuring all people in the Bay Area have the opportunity to provide for themselves and their family regardless of race, gender, or status.



# Fair Chance Workforce Facts

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**8**  
Million

## California RESIDENTS

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More than 8 million Californians have criminal records. Approximately 814,000 people across Contra Costa, Alameda, and Solano counties have a criminal or arrest record.



## What does this mean LOCALLY?

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Across these three counties, nearly 1 of 3 Blacks of working age and nearly a quarter of Latinx of working age have felony records. Those with felony records earn about \$30,000 less than those without.



## Race matters IN THE BAY AREA

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When comparing the average earnings of individuals with felony records in Bay Area, for every one dollar earned by Whites, Blacks earn 51 cents and Latinx earn 74 cents. Justice-involved Black applicants are 40 percent less likely to get a job interview when compared to Whites with similar histories.



## The struggle for SERVICES

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In addition to the individual effects of incarceration and justice system contact, people with criminal records encounter barriers to accessing health benefits, child care, and other resources needed to support themselves and their loved ones.



## Barriers to HOUSING

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The country's two biggest housing assistance programs, Public Housing and Section 8, automatically ban individuals with certain convictions. Blanket bans and other exclusionary housing policies faced by people with criminal records disproportionately harm Black and Latinx applicants.



## Impact on EMPLOYMENT

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Due to barriers like these, justice-impacted people's unemployment rate is five times higher than that of the United States' general population.



**The Fair Chance Workforce** report examines what is currently working both locally and nationally to improve employment outcomes for individuals with criminal records, where these individuals are currently situated in the local workforce, where gaps exist in local systems, and what workforce development, employer and client stakeholders recommend to improve outcomes.

# Fair Chance Workforce Recommendations

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## SYSTEMS & POLICIES

- Support statewide occupational licensing reform to reduce barriers to employment opportunities
- Build awareness and support for the implementation of existing Fair Chance policies
- Address barriers to getting Transportation Worker Identification Credential (TWIC)
- Advocate for CA to expand, streamline, and make automatic the criminal record clearance process to remove a significant barrier to jobs, housing and education for millions statewide
- Pursue clear and sensible probation and parole standards that support employment
- Address the stigma of having a criminal record and mass incarceration of communities of color by formally identifying individuals with a criminal record as a protected class
- Mobilize at the local level to reduce or eliminate mandated fees and fines and discretionary wage garnishment
- Engage philanthropy to prioritize and support long term strategies to increase employment opportunities for individuals with a criminal record

## SERVICES

- Work with employers, community colleges, labor programs, and industry leaders to match employment, training, and certification available during incarceration with optimal post-release employment (e.g., jobs with clear pathways to advancement)
- Work with Courts, Parole and Probation to provide individualized and flexible reporting requirements
- Expand peer networks and peer counseling to build social capital, share information about opportunities and provide mutual support and mentoring
- Increase professional development for workforce development service providers on the specific needs, obstacles, legal rights, and opportunities for serving individuals with a criminal record as a critical population
- Integrate criminal justice-informed housing assistance into all services and programming, and scale Fair Chance Housing policy
- Expand Know Your Rights training and outreach for returning residents to know their rights regarding employment, programs and services (e.g., Clean Slate)
- Increase access to affordable transportation options to expand employment opportunities
- Invest in intensive workforce services and paid transitional jobs for the highest risk individuals

## EMPLOYERS

- Scale pre-release training programs and post-release outreach and relationship-building between returning residents, service providers and employers in high growth sectors
- Scale industry-specific Fair Chance Employer Networks to serve as peer-to-peer support
- Increase employer training on Ban the Box, racial and justice-involvement bias, and how to change hiring practices to get in compliance. Consider strategies and assessments for employers to go above and beyond compliance to become a true Second Chance Employer
- Increase employers' knowledge and use of hiring incentives, bonding, and other resources
- Partner strategically with Consumer Reporting Agencies (CRAs) to conduct fair assessments of candidates during the background check process
- Encourage internal employer programs to accommodate individuals with probation, parole or other special requirements related to having a criminal record
- Pilot a pro-bono legal aid program for employers on compliance with changing labor laws in relation to criminal records and the benefits of hiring people with barriers



## WORKFORCE DEVELOPMENT

- Increase information and training for workforce development programs, stakeholders, and employers on the specific needs of individuals with a criminal record
- Improve coordination and communication among leadership and program staff across agencies and service providers
- Expand focus on labor apprenticeship programs and community college districts as a pathway for living wage employment in high-growth sectors
- Address the financial and performance disincentives of current workforce development program outcomes reporting requirements
- Require that contracts for funded workforce development programs focus on evidence-based services in order to obtain and sustain employment

*"The judge never said, 'There are things in your sentence that could mess up your 7-year-old son's life.' I can't coach my son's team, I can't go on the field trip or be on the tour. My son wonders, 'Why isn't dad there....' I have fear for my son's future."*

- Focus Group Participant


# Project Overview

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The Fair Chance Workforce System project was initiated by Rise Together, the Insight Center for Community Economic Development and Urban Strategies Council through a shared commitment to ensuring all people in the Bay Area have the opportunity to provide for themselves and their family, regardless of race, gender or status. Identified as a priority by Rise Together's Opportunity for Every Worker workgroup, the project focuses on increasing the availability and accessibility of *proven workforce development and employment opportunities for individuals with a criminal record in order to improve their economic stability and well-being*, with a focus on Alameda, Contra Costa, and Solano Counties. The resulting report and recommendations are designed to be a guide for philanthropy, government, and local communities seeking to increase employment for individuals with a criminal record.

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As Root & Rebound's 2018 Employer Toolkit notes, "Fair Chance employment raises competing concerns for employers: banning all people with records makes it almost impossible to meet the growing need for capable employees and exposes employers to serious liability under the new CA Fair Chance Act and risks liability under federal laws as well, but hiring people with records may expose employers to risks that warrant assessment. There are also great potential rewards and incentives to hiring people with records." Despite a groundswell of dedicated, well-organized activism and advocacy for improving outcomes for justice-impacted Bay Area residents, much work still needs to be done to reach our collective goals. Returning residents remain five times more likely to be unemployed than those without a criminal record.



*"Once you've done your time, you've completed your penal obligation, you shouldn't be held hostage for a lifetime with this dark cloud over your head."*

- Returning Resident





Enacted in 2018, California's statewide Ban the Box (BTB) policy 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. Despite the passage of BTB, and even with the Bay Area's currently low unemployment rate of 3 percent, persistent obstacles to stable employment remain for people with criminal records. At virtually every stage of the hiring process, justice-impacted applicants can be denied a job based on their record alone – either through employer practice, licensing restrictions, or both. 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. Many of these laws exist solely to make it harder for people to get good jobs, or any job at all.

*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 Black and Latinx men, age 25 to 34 – even if they have no criminal record.*

- Insight Center Fair Chance  
Hiring Landscape

The report examines: 1) what is currently working both locally and nationally to improve employment outcomes for individuals with criminal records; 2) where these individuals are currently situated in the local workforce; 3) where gaps exist in local programs and policies; and 4) what workforce development, employer, advocacy, and client stakeholders recommend to improve outcomes.

### **This research was structured around three areas:**



#### **COLLECTING DATA**

about how individuals with criminal records are currently situated in the Bay Area workforce.



#### **REVIEWING EXISTING LITERATURE**

to synthesize research into reducing barriers to sustainable employment for people with records.



#### **COLLECTING QUALITATIVE INFORMATION**

from a range of employer, workforce development, and justice-impacted stakeholders with regards to best practices, challenges, and gaps in current policy and practice.

Through community-driven qualitative and quantitative research, this report recommends: 1) scaling best practices to successfully serve and employ workers with a criminal record, and 2) strengthening policies and practices within local jurisdictions to help build an equitable workforce system. Encompassing a broad range of strategies and tools, the recommendations in this report are first steps. Together with the task force convened to inform this project, we will support employers, workforce development service providers, impacted individuals, and advocates to implement change. We hope you will join us in this effort.

## A SNAPSHOT OF THE BAY AREA FAIR CHANCE WORKFORCE

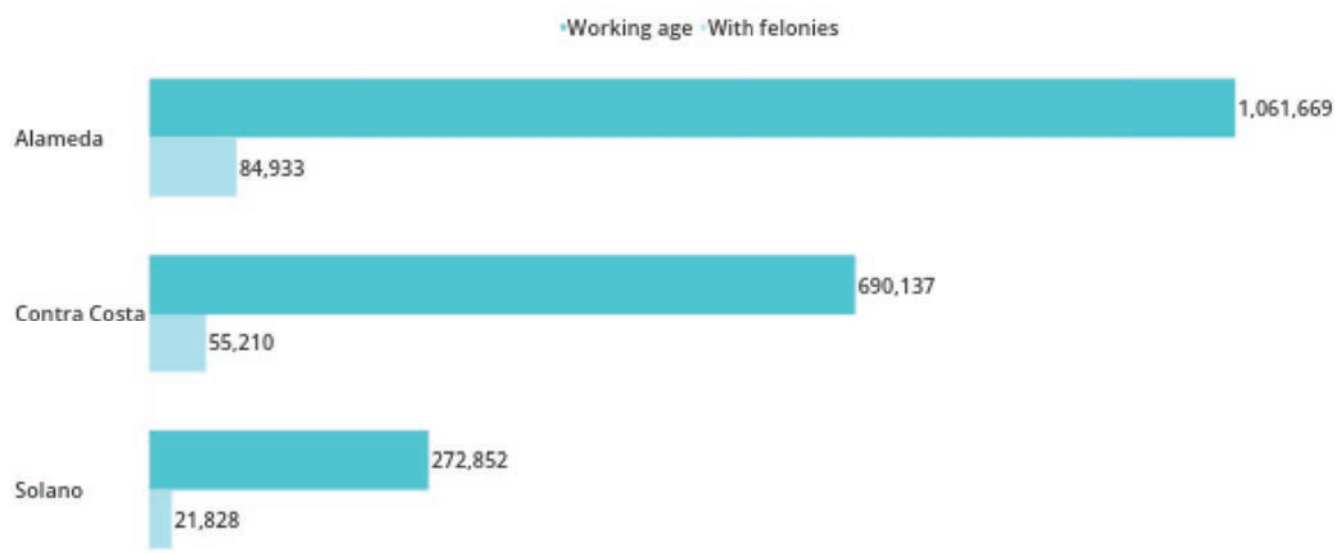
For Alameda, Contra Costa, and Solano counties, the Insight Center produced: i) a labor market analysis of the size, scope, and changes in leading occupations and industries and ii) a demographic analysis of industries and occupations for people with felony records. These findings are arranged into 18 data tables summarized below. Additional overview of the key findings of this secondary research and the research methodology can be found in **Appendix A**.

**TABLE 1: Individuals of working age and with felony records in the Bay Area (by county and by race)**

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

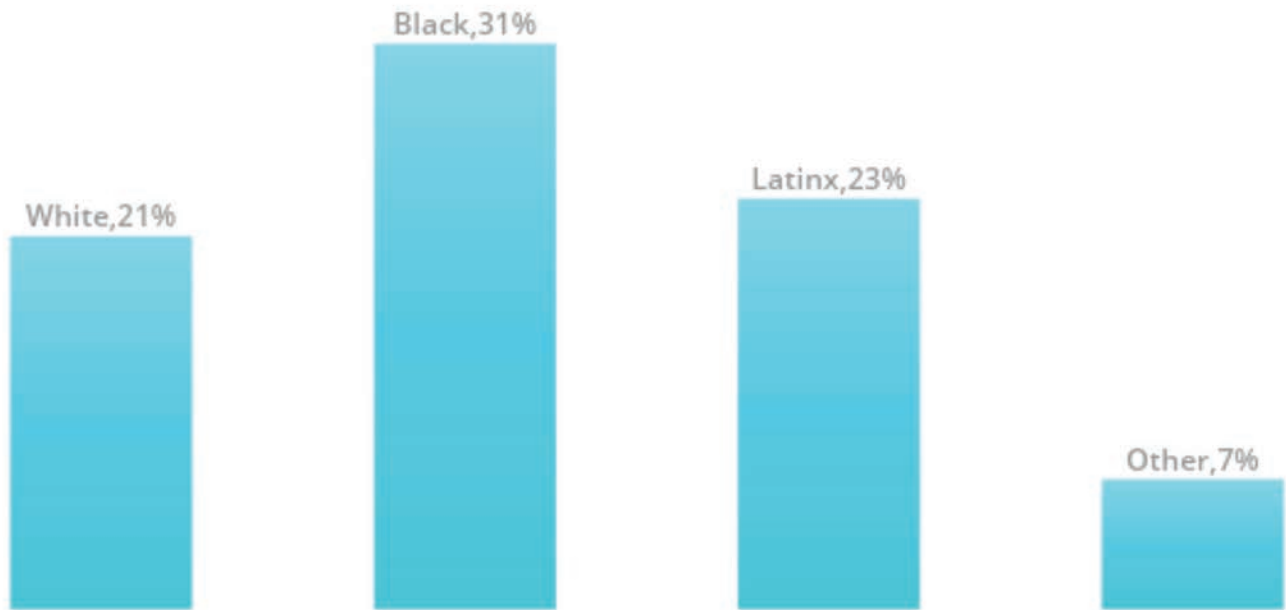
Insufficient data available for Other w/felonies in Contra Costa

- Individuals with felonies comprise approximately 8 percent of the working population in the Bay Area (Alameda, Contra Costa, Solano counties)
- 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.

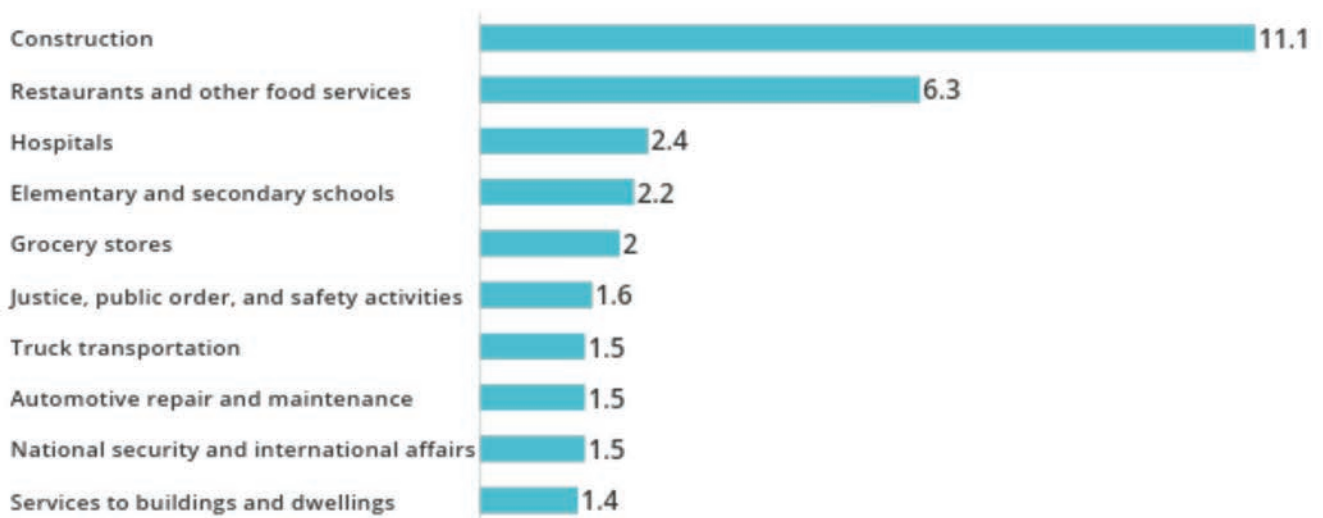


**TABLE 2: Employment status for individuals with felony records in the Bay Area (employed, unemployed, and not in labor force)**

- Almost half of Blacks with felonies are either unemployed or not in the labor force.



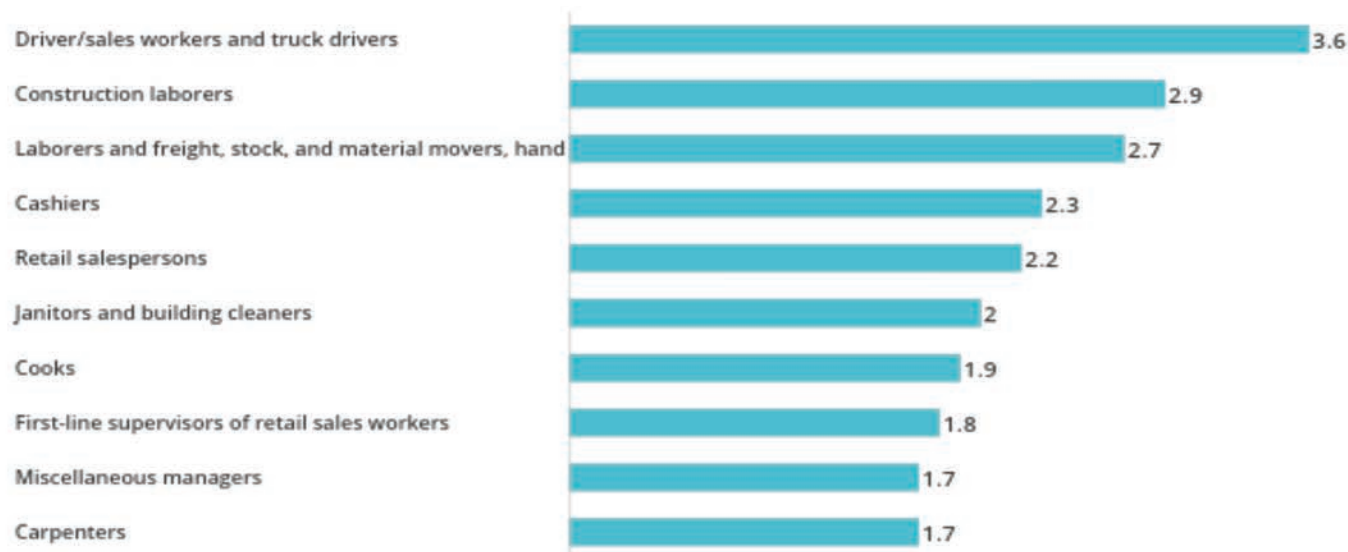
**TABLE 3: The top 10 industries employing individuals with felonies in the Bay Area**





**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



**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.

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

- 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:
  - High cost of living and transportation limiting the geographic scope of where one can work (e.g., one cannot afford a personal vehicle or transit tickets);
  - Economic or familial responsibilities (e.g., caretaking for older or younger relative) requiring those with felonies to stay closer to home.
  - 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.

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

- Fewer Blacks with felonies own a car compared to 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%

- 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 or 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.

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

- Almost 40 percent of Blacks and Latinx with felonies live 200 percent or more below the poverty line – nearly twice the percentage rate for Whites with felonies.

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%

**TABLE 8: Median household income for individuals with felonies in the Bay Area (by race and by county)**

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

- 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.

**TABLE 9: Food stamp recipients 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.

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.



**TABLE 10: Lack of health care coverage for individuals with felonies in the Bay Area (by race and by county)**

- An estimated 1 in 4 Latinx with felony records lack health insurance 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.

**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

Educational attainment	Working age	With felonies	White w/felonies	Black w/felonies	Latinx w/felonies	Other w/felonies
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%

**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.

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%

**TABLE 13: Historical growth for top ten industries employing individuals with records in the Bay Area**

- The top two fields in Alameda, Contra Costa, and Solano with the greatest percentage 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.”# Insight FHC Landscape, 9.

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%

**TABLE 14: Projected growth for top ten industries employing individuals with records in the Bay Area**

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%

- Construction (+29%) and food services (+14%) are expected to see the most growth.

**TABLE 15: Projected growth for top ten occupations employing individuals with records in the Bay Area**

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

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%



# The Fair Chance Hiring Landscape

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From the Gold Rush Era to Silicon Valley's rise, the San Francisco Bay Area has enjoyed historic prosperity and growth. And yet, the region is part of the largest state criminal justice system in the nation. **Today, one in three Americans, including 8 million Californians, have a prior arrest or conviction; over 60 percent are people of color.**<sup>1</sup> Due to systemic over-policing, Black men are arrested at a greater proportion compared to all other racial groups,<sup>2</sup> and women of color are the fastest growing segment of the incarcerated population.<sup>3</sup>

## Criminal Records and the Job Market

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>4</sup> Access to housing, employment, health care, and other necessities determines one's ability to provide for themselves and their family – to live. Pervasive discrimination and collateral consequences accompanying a criminal record, however, can keep many from this “fair chance.”

*A criminal record does not equal “criminality”; it merely indicates that someone has had a prior interaction with the law. Many arrests do not end in adjudication, conviction, or imprisonment; and yet, 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.*

- When race is taken into account, the impact of a record is even more severe: **Justice-involved Black applicants are 40 percent less likely to get a job interview when compared to Whites with similar histories.**<sup>5</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. For instance, 1 in 4 of Bay Area Latinx with a felony record do not have any health care coverage (Insight, 2018).
- Consequences of justice involvement can be 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>6</sup> According to a 2018 Californians for Safety and Justice survey, more than half of those with a criminal record struggle both to find a job and pay off fines and fees.<sup>7</sup>
- **Due to barriers like these, justice-impacted people's unemployment rate is five times higher than that of the United States' general population.**<sup>8</sup> The cost of these barriers is 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 and are thus more susceptible to poverty, homelessness, and cycles of debt.<sup>9</sup>
- Research suggests that applicants with criminal and arrest records have an even harder time finding employment during economic downturns. The unemployment rate for returning people was seven times higher than the general population during the Recession – with Black returning people's unemployment rates twice as high as Whites (Nally and Lockwood, 2014)<sup>10</sup>.

# The Fair Chance Policy Landscape

California has pioneered some of the most far-reaching and harshest criminal justice policies, from Three-Strikes and “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 – set up additional roadblocks for individuals already impacted by criminal justice interactions.

## 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. As technology advances and the availability of online personal data increases, so, too, has the ease of performing a background search. **Arrest information, 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 questionable or unlawful means.***

*Background checks can be inaccurate, incomplete, or otherwise flawed – making this 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. Common errors may include: information about a different person other than the applicant; reports on dismissed, sealed, incomplete, misclassified, or expunged records; and other misleading information (e.g., reporting a single charge multiple times or in multiple sections of the report).*

<sup>1</sup> California Workforce Development Board (CWDB). “Unified Strategic Plan, 2016-2019,” 50.

<sup>2</sup> Brennan Center for Justice. November 2015. “Just Facts: As Many Americans Have Criminal Records as College Diplomas.”

<sup>3</sup> Executives’ Alliance for Boys and Men of Color. October 2016. “Fair-Chance Hiring in Philanthropy.”

<sup>4</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.

<sup>5</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>6</sup> deVuoono-powell, et al. Ella Baker Center, 2015. Who Pays? The True Cost of Incarceration on Families, 14.

<sup>7</sup> Californians for Safety and Justice (CSJ). September 2018. Repairing the Road to Redemption in California, 2.

<sup>8</sup> Prison Policy Initiative. July 2018. “Out of Prison and Out of Work: Unemployment Among Formerly Incarcerated People.”

<sup>9</sup> Root & Rebound. California Employers’ Fair Chance Hiring Toolkit. See ACLU and Trone, 4. See also Associated Press, “Ex-cons Face Tough Path Back Into the Workforce: Advocates Hope Federal Program Will Encourage Employers to Take a Chance.” July 30, 2009.

<sup>10</sup> 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>11</sup> LeadersUp Report, 11; Lundquist, et al. (2016).

<sup>12</sup> ACLU and Trone, 8.

<sup>13</sup> Root & Rebound Employer Toolkit, 33.

## Policies and Practices: A Brief History

Background checks are part of a larger policy narrative deterring justice-impacted people from employment and stability. From colonial “civil death” punishments<sup>14</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 stigma and stereotypes for 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.



1980s

California’s tough-on-crime movement expands sentencing laws and increases capacity of prisons and jails. Between 1984 and 1991, the state passes over 1,000 new felony sentencing laws and enhancements.<sup>15</sup>



1990s

Passage of **Three-Strikes** law results in increased policing of communities of color and the drastically disproportionate imprisonment of, and life sentences for, Black men. Of those convicted under Three-Strikes, over half are imprisoned for low-level offenses.<sup>16</sup>



2000s

By 2005, California has the largest state prison population, and one of the fastest-growing.<sup>17</sup> **Three out of every four incarcerated men is nonwhite – a racially disproportionate trend that continues today, with Black men and women at greater risk of incarceration compared to other racial groups.**<sup>18</sup>

- With prisons at maximum capacity and costs rising, a counter-movement to reform the state’s criminal justice system takes root. In 2005, the federal government intervenes in California’s \$1.1 billion-per-year prison system, citing inhumane conditions and preventable deaths.<sup>19</sup>



2010s

Passed in 2011, **Public Safety Realignment** seeks to reduce prison overcrowding, costs, and recidivism by diverting people with low-level offenses to county jail, rather than state prison. **Realignment coincides with the end of the statewide and national recession, thus merging criminal justice reform with a drive to boost the workforce.**<sup>20</sup> **The rise of Fair Chance hiring policies like Ban the Box can be seen as the intersection of both objectives.**

- In 2018, California’s statewide Ban the Box law (AB 1008 or “BTB”) follows the efforts of several Bay Area jurisdictions, including Alameda County and San Francisco, to promote Fair Chance hiring policies.<sup>21</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.** Most California employers, including public and private entities, must fully abide by BTB.<sup>22</sup>



## Employment Barriers

When justice-impacted 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>23</sup> In a 2017 employment study, those with criminal records had much longer job tenure and were less likely to quit their jobs voluntarily compared to other workers (Minor, Persico, and Weiss). Despite these potential gains for employers, systemic barriers to employment and economic security persist for justice-impacted workers and applicants.

### A. STIGMA AND PERCEPTION BARRIERS

Despite policy reforms like BTB, many 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 (Holzer, 2004). Largely due to this stigma, applicants with a criminal record are about half as likely to get a call back or job offer compared to equally qualified applicants with no record.<sup>24</sup>

**The “Soft Skills” Problem:** Employers may have misconceptions about workers with criminal records lacking “oral character,” work ethic, ability, or some combination thereof. 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 teamwork 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. **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>26</sup>



<sup>14</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.

<sup>15</sup> Little Hoover Commission. 2007. Solving California’s Correctional Crisis: Time is Running Out, 34.

<sup>16</sup> Staples, Brent. New York Times. “California Horror Stories and the Three-Strikes Law.” November 24, 2012.

<sup>17</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.

<sup>18</sup> Ibid., 4.

<sup>19</sup> Ibid., 3.

<sup>20</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>21</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.

<sup>22</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.

<sup>23</sup> ACLU and Trone, 4.

<sup>24</sup> Pager, Devah. 2006. The Mark of a Criminal Record.

<sup>25</sup> Pager, Devah. 2006. The Mark of a Criminal Record.

<sup>26</sup> Insight Fair Chance Project Quantitative Results (October 2018).

## B. LICENSING BARRIERS

Across the country, over 1 out of every 4 workers requires a state license for their occupation.<sup>27</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>28</sup> Many of these laws exist solely to make it harder for people to get good jobs, or any job at all. 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.<sup>29</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>30</sup>

Occupations with licensing restrictions are often jobs that could provide pathways to economic security. 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>31</sup> These requirements may deter justice-impacted people from pursuing nursing and instead force them into lower paying, temporary, or less desirable positions.

## C. RACIAL INEQUALITY AND DISCRIMINATION

**In some instances, an employer may hold stigma against Black and Latinx applicants, period – regardless of whether or not the applicant has a criminal record and/or when compared to White applicants with the same criminal record.** As observed by a 2017 ACLU report, “**pervasive racial disparities in the criminal justice system exacerbate bias in the employment arena.**”<sup>32</sup> In one study, Black and Latinx applicants with no criminal history fared no better than a White applicant just released from prison.<sup>33</sup> In another, felony convictions disadvantaged Black applicants more than similarly skilled White applicants with identical criminal records.<sup>34</sup>



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<sup>27</sup> Ibid.

<sup>28</sup> 2018 CSJ Report, 1.

<sup>29</sup> Ibid., 2. Based on 2,000 Californians with a criminal record surveyed.

<sup>27</sup> Ibid.

<sup>28</sup> 2018 CSJ Report, 1.

<sup>29</sup> Ibid., 2. Based on 2,000 Californians with a criminal record surveyed.



“Licensure is the last step of the process of entering a profession – so people might have to go through an entire training program or education program and then, at the very last step after investing time and effort, find out that the licensing board won’t recognize them.”

- Workforce Development  
Service Provider



<sup>30</sup> NELP. The Consideration of Criminal Records in Occupational Licensing. December 2015

<sup>31</sup> California Board of Registered Nurses. “License Discipline and Convictions.” 2018.

<sup>32</sup> ACLU and Trone, 4.

<sup>33</sup> Ibid.

<sup>34</sup> Pager, et al. 2007. Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records.



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

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.

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.

### 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. 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).

### 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).

**What does it look like?** In a 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 (Pager, 2009).

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### 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 (e.g., discouraging applicant to apply for a supervisory role, and instead offering them a line worker job).

**What does it look like?** 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>35</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.

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<sup>35</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.

# Voices Informing the Fair Chance Workforce Project

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The Fair Chance Workforce project included multiple perspectives from stakeholders operating within or impacted by the Bay Area workforce ecosystem.

## Stakeholder Listening Sessions

Before beginning the formal qualitative research process, potential questions and interviewees were vetted by key partner organizations to help inform and shape the process. Two listening sessions were held in Alameda and in Solano Counties. The following organizations were represented in the initial listening sessions: Building Opportunities for Self-Sufficiency, Center for Employment Opportunities, East Bay Alliance for a Sustainable Economy, Insight Center for Community Economic Development, JobTrain, Justice Now, REDF, Rubicon, Safe Return Project, 70 Million Jobs, Urban Strategies Council, and the Workforce Development Board of Solano County.

## Focus Groups

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. For a summary of the survey results and more information about participants, please see Appendix C.



*“When there’s a problem, my first question is, have you asked the people you are serving? Including them and their ideas would be transformative.”*

- Workforce Development Expert



### Stakeholder Interviews

A total of thirty-one stakeholder interviews were conducted with representatives from workforce development systems, employers and service providers in Alameda, Contra Costa and Solano Counties. A full list of organizations represented in the stakeholder interviews can be found in Appendix D.

### Fair Chance Workforce Task Force

The Fair Chance Workforce Task Force was convened to help further inform and shape the recommendations in this report. The Task Force is made up of individuals representing employers, county government, workforce development, service providers, returning residents and other individuals impacted by a criminal record. The Task Force met three times to review and edit the recommendations for a Fair Chance Workforce and will continue to work together to implement the recommendations in their communities. A full list of Task Force members can be found in Appendix E.

*“You have to jump through so many hoops to where you wanna just give up – do this, do that, go here, see this person, go to this orientation. I feel if it was just a little easier, especially when its someone who has made a positive correction in their life and wants to go a different way, they should be met halfway.”*

- Returning Resident





# Recommendations for a Fair Chance Workforce Ecosystem

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The recommendations in this report are based on the synthesis of our landscape review, quantitative and qualitative research and analysis, and input from multiple stakeholders, including the Fair Chance Workforce Task Force.



## SYSTEMS & POLICIES

A key leverage point for building a Fair Chance Workforce in the Bay Area is to address the current systems and policies that perpetuate obstacles to Fair Chance employment. Recommendations quickly emerged throughout our research to implement existing laws, support legislative change, and reform local systems and processes that raise unnecessary barriers to individuals with a criminal record gaining and sustaining employment.

### 1. Support statewide occupational licensing reform to reduce barriers to quality employment opportunities.

In many states, laws and regulations create obstacles for certain workers looking for occupational licenses, but individuals with a criminal record can face additional challenges when pursuing a license. California ranks as having some of the “most burdensome licensing laws nationwide.”<sup>36,37</sup> Nationally, more than 15,000 regulatory and statutory codes limit occupational licensing opportunities for individuals with a criminal record. In some cases, qualified returning residents are banned completely from obtaining certain licenses. Across the nation, almost 30 percent of jobs require occupational licensing – meaning individuals must seek permission from the state to work in that field. This includes career paths from nursing to tree trimming; from cosmetology to veterinarian work. People with a criminal convictions face discrimination when seeking licensure at multiple stages in the process and can be barred from their profession for life, limiting career opportunities and wage growth. The severity and lack of uniformity of occupational licensing regulations can carry significant costs to individuals with criminal records, to public safety, and to the economy in the forms of lost talent, lost hours of labor, and higher crime rates.

The statewide Occupational Licensing Reform Coalition, which has many Bay Area organizations included, seeks to make entrance into licensed professions more equitable, fair, and accessible for individuals with criminal records who are trained and qualified to do the work. Current efforts around this issue, in addition to the implementation of AB 2138, include the following two bills on caregiving and EMS licensure:

**AB 1608 (Holden):** The Coalition seeks a fair hiring chance for people with arrest and conviction records to access caregiving and other jobs governed by the Department of Social Services (DSS). DSS requires any applicant who has ever been convicted of any crime other than a minor traffic violation to obtain a criminal record “exemption” from DSS before they can work in a facility. Low-income women of color are hit especially hard by DSS’s restrictive criminal record screening rules, given the disproportionate rate of arrests and low-level criminal convictions in communities of color. These women often seek caregiver and related work based on past experience and success in those roles, as well as a desire to give back to their communities.

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<sup>36</sup> The National Inventory of Collateral Consequences of Conviction

<sup>37</sup> Californians for Safety and Justice: Repairing The Road to Redemption in California

**AB 1211 (Reyes):** EMS and Fire Fighting Licensure. Around 4,500 incarcerated people make up approximately 30 percent of the forest firefighters in California by way of CDCR's California Conservation Camps through voluntary participation. Once their sentences are complete, however, it is nearly impossible for these individuals to gain employment with the California Department of Forestry and Fire Protection (CalFire) or other fire departments around the state, because they are unable to get the mandatory EMS license.

## 2. Build awareness and support for the implementation of existing Fair Chance policies:

### **Support the implementation of statewide Ban the Box laws**

Approximately one in three Californians has an arrest record or conviction that may appear on a background check.<sup>40</sup> A conviction record can reduce the likelihood of job interview call back by 50 percent. California's Fair Chance Act, or "Ban the Box," prohibits most employers with more than five employees from asking about conviction history before offering a job. This reform gives individuals an opportunity to demonstrate their skills and qualifications without the shadow of their previous conviction. Additionally, "Ban the Box" requires that each employer conduct an individualized assessment on any applicant's past convictions, provide a copy of the background check to the applicant, and honor the applicant's right to appeal if the job offer is withdrawn due to their history.

We recommend targeting outreach and education efforts to employers and to returning residents, providing information about the rights and the duties that arise from California's current Fair Chance hiring laws.

### **Strengthen and scale local Fair Chance ordinances in additional communities**

Local jurisdictions can strengthen fair hiring policy and implementation requirements beyond state laws. National Employment Law Project provides an excellent Fair Chance Ban the Box Toolkit for advocates who want to pursue effective fair hiring policies in their community.<sup>41</sup>

In 2011, the City of Richmond passed a Ban the Box (BTB) policy before statewide legislation passed, removing the question about criminal record from the application for city employment. This existing policy could be strengthened by following San Francisco County's 2018 amendment, which expands its "Ban the Box" policy to include private employers with five or more employees. San Francisco's amendment adds new, harsher monetary fines of up to \$2,000 for employers who violate the BTB. Due to recent reforms, BTB violations can be pursued by the impacted applicant, and fines collected from those violations may go directly to that impacted person, instead of the city of jurisdiction.<sup>42</sup> In addition, applicants are protected against inquiries regarding history that has since been decriminalized (e.g., some marijuana offenses) and/or convictions more than seven years old.

### **Ban the Box and "Spillover Effect"**

*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.**<sup>38</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>39</sup>*



### **3. Address barriers to getting Transportation Worker Identification Credential (TWIC), including length of waiver process.**

Since 2009, truck drivers and other workers at oil refineries and ports – two major employers in Contra Costa and Alameda Counties – must obtain a Transportation Worker Identification Credential (TWIC). TWIC requires a criminal background check, and disqualifying offenses include felony convictions within seven years of the application or release from incarceration within five years. Although some disqualifications can be waived, the process uses FBI records checks, which are commonly incomplete and out of date.<sup>43</sup> In addition, an application can take up to four months, and the waiver application can take six to eight months. As a result, applicants have been wrongfully denied a TWIC license and denied work. Reform of the TWIC program should address accuracy of data and timeliness, eliminate drug offenses as disqualifying offenses, and add translation services at TWIC enrollment centers.

### **4. Advocate for California to expand, streamline, and make automatic the criminal record clearance process to remove a significant barrier to jobs, housing, and education for millions of Californians.**

Advocate for District Attorneys' offices to utilize Code for America's tool to expeditiously review marijuana convictions, pursuant to HS 11361.9 as amended by AB 1793.

The current petition-based process fails to serve all who are eligible because it can be costly, slow, and confusing. In Alameda County, for example, the wait to have a record clearance petition heard was as long as nine months. Moving from a petition-based process to an automatic process will help clear records expeditiously and at scale. California can leverage technology to provide record relief automatically to millions of Californians. San Francisco partnered with Code for America to provide automatic relief for more than 9,000 marijuana convictions, and recently, Code for America announced similar partnerships with Los Angeles and San Joaquin Counties.<sup>44</sup> See Code for America for additional resources.

#### ***Support state legislative efforts to expedite, streamline, and make automatic criminal record relief, such as:***

AB 972 (Bonta): In 2014, the Reduced Penalties for Some Crimes Initiative (Prop 47) reclassified non-violent, non-serious felonies to misdemeanors – with the overall goal of reducing mass incarceration rates due to low-level, non-violent crime. AB 972 I builds on Prop 47 by creating a mechanism to proactively (without individual petitions to) reclassify most Prop 47 criminal records. If passed, AB 972 could change the records of over a million Californians, making it unnecessary for them to navigate complex government and legal processes to gain relief.<sup>45</sup>

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<sup>38</sup> NELP Ban the Box Toolkit, April 2019.

<sup>39</sup> Emsellem and Avery, 2016.

<sup>40</sup> National Employment Law Project

<sup>41</sup> NELP Fair Chance Ban the Box Toolkit, <https://s27147.pcdn.co/wp-content/uploads/NELP-Fair-Chance-Ban-the-Box-Toolkit.pdf>

<sup>42</sup> SF GOV

<sup>43</sup> National Employment Law Project, <https://www.nelp.org/wp-content/uploads/NELP-TWIC-Update-June-2008.pdf>,

<sup>44</sup> Code for America

<sup>45</sup> The Los Angeles regional Reentry Partnership

AB 1076 (Ting): Criminal records, automatic relief: This bill would require that the California Department of Justice review records and identify persons who are eligible for relief by having their arrest record or conviction withheld from disclosure without a petition or motion.

**5. Pursue clear and reasonable probation and parole standards that support employment, including:**

***Annual reviews, sensible standards, and fee elimination for electronic monitoring.***


The California Board of State and Community Corrections (BSCC) has the authority to assess electronic monitoring, require counties to provide data, and issue standards for its use, including verification that county Boards of Supervisors are adequately reviewing these programs annually as required by statute. Since BSCC is also a pass-through for distributing money to counties, this money could possibly be tied to compliance to put some extra force behind its interventions. Currently, there is a lack of data regarding the demographics of people under electronic monitoring, related fees and fines, and rates of failure. Electronic monitoring is likely to be used disproportionately for people with low income when it is a program offered in lieu of bail.

***Address discretionary court, probation, and parole-ordered practices that hamper access to employment opportunities and decrease employee performance.***

Many interviewees shared how the limitations of certain reporting, curfew, geographic limitations, and other requirements hampered access to employment opportunities. In the words of one focus group participant, “I had to make four meetings a week for two years when I came home on parole, and my job allowed that...I couldn’t have held that job if they hadn’t said, ‘okay.’ The consequences of some of the things parole requires are really depressing.”

***Scale programs that reduce unnecessary jail time.***

One example of such a program is Contra Costa County’s Early Representation program, a partnership between the public defender’s office and police. According to the Justice Management Institute, the Early Representation



*“Electronic monitoring is almost entirely unregulated and unmonitored. People have to pay to participate and are hassled by collections and threatened with remand to custody, even though they are legally entitled to an Ability to Pay assessment, have a right to appeal that assessment, and can’t be threatened with re-incarceration for inability to pay. People are forced to pay to participate and comply with ridiculous mandates, [like] charge ankle bracelet every two hours, avoid sleep while charging, have a landline and continuous service, can’t go out on your front porch or backyard, can’t take the bus to work one day and ride a bike the next. Violations bring you back in front of a judge. You surrender medical privacy, employment privacy, home privacy. This applies to anyone you live with. All of this interferes with effective self-sufficiency.”*

- Legal Services Stakeholder



Program (EarlyRep) began in Antioch in 2016 and has been replicated in Richmond, with both cities located in Contra Costa County. It is designed “to provide immediate representation for persons with misdemeanor offenses – before their cases are heard in court – in order to avoid arrests and jail time for indigent defendants and prevent the many associated collateral consequences, such as loss of employment, interruption in medical care, and lack of supervision for their children”.<sup>46</sup> The program has reduced failure to appear rates by 24 percent.

**6. Address the stigma of having a criminal record and mass incarceration of communities of color by formally identifying individuals with a criminal record as a protected class.**

In the last two decades, national, state, and local advocates have rallied around Ban the Box (BTB) and other fair chance hiring policies. 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. **Discrimination, however, remains a major barrier to opportunity.** While Ban the Box and other reforms are a step toward working to reduce discrimination, there remain limitations to these policies and their implementation. As with licensing restrictions, barriers flowing from employer and community assumptions or stigma can lead justice-impacted applicants to pursue and remain in low-paying, less desirable, or more temporary work. 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. And yet, 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. In addition, racial bias



*“It doesn’t matter how much money I have or don’t, I still face the same stigma...ripple effects that weren’t explained in my sentence.”*

- Focus group participant with criminal record

<sup>46</sup> [www.jmijjustice.org](http://www.jmijjustice.org)

factors into access to employment opportunities.

Safe Return Project, All of Us or None, and other advocates are calling for individuals with a criminal record to be formally identified as a protected class – so that criminal justice history is treated on forms related to employment, housing and other services the same way that disability, age, gender and other specific designations are addressed.

#### **7. Mobilize at the local level to reduce or eliminate mandated fees and fines, including discretionary wage garnishment:**

Criminal Justice related fees and fines have a significant impact on the economic stability of individuals and families. These costs are even harder to pay due to systemic employment barriers and the high cost of living in the Bay Area. The average adult on probation in Alameda County is charged over \$6,000 in probation fees alone, according to the East Bay Community Law Center. EBCLC's report, Pay or Prey, a finds that "because of long-standing and pervasive racial bias at every juncture of the criminal justice system, criminal justice fees fall disproportionately on residents of color."<sup>47</sup> While each jurisdiction has the purview to conduct ability to pay determinations, this is not regularly occurring. Issues related to consistency in fees and fines, lack of process for fee waivers and inability to pay assessments, and low collections rates are among many systemic impediments to an equitable fee program. The Fair Chance Workforce Project Task Force recommends the following:


#### **Scale San Francisco and Alameda County's eradication of fees and fines.**

In 2018, San Francisco repealed all county-authorized fees and waived over \$30 million in outstanding criminal justice debt owed by 21,000 mostly low-income San Franciscans. In 2019, Alameda County eliminated county-authorized criminal fees after a two-year grassroots advocacy effort led by the East Bay Community Law Center (EBCLC). Los Angeles County eliminated its public defender registration fee in 2017, and other counties, including Contra Costa, are considering similar actions.

#### **Support state legislation to address fees and fines:**

Debt Free Justice California (DFJC) is a statewide advocacy coalition chaired by East Bay Community Law Center and driven by movement-building organizations of directly impacted people. The coalition is working to pass the following legislation in 2019:

SB 144 (Mitchell and Hertzberg): In 2016, California enacted legislation ending juvenile administrative fees. Senate Bill 144 ("Families Over Fees") would end adult fees statewide, which San Francisco and Alameda County have done on a county basis.



*"There was a public lynching, it felt like, when they opened the Day Reporting Center in my community. It's where people go to get services, to check in, to accommodate our overpopulated prison system and help them transition. People were really opposed to that. The one thing I couldn't understand: If you're a taxpayer and didn't think we're worthy to be your neighbors...we were always here!"*

- Focus group participant  
with criminal record

AB 1091 (Jones-Sawyer): According to The Payback Problem, a new report calling for reforms to the state's child support system, "inequitable public assistance payback policies take money away from children in poverty, set low-income parents up to fail, and discourage parents from making payments at all." AB 1091 would extend and clarify existing law relating to child support arrearages accumulated by incarcerated noncustodial parents with little or no income.

**8. Engage philanthropy to prioritize and support long term strategies to increase employment opportunities for individuals with a criminal record.**

Philanthropy can and should play a critical role in generating systemic change toward a Fair Chance workforce system. Specific initiatives could include acting as a supplement to public funding for the reentry workforce, which is often piecemeal and not oriented to systemic change, and temporarily backfilling public dollars when local communities are working to eradicate fees and fines.

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<sup>47</sup> [https://ebclc.org/wp-content/uploads/2018/10/EBCLC\\_CrimeJustice\\_WP\\_Fnl.pdf](https://ebclc.org/wp-content/uploads/2018/10/EBCLC_CrimeJustice_WP_Fnl.pdf)







## SERVICES

Service providers are often a key point of contact for individuals with criminal records seeking employment, and they vary widely in their capacity to serve the specific needs of this critical population. In addition to input from the multi-sector Task Force, a total of nine service providers representing reentry, legal and social services were interviewed to inform the following recommendations.

**1. Work with employers, community colleges, labor programs, and industry leaders to match skill-building during incarceration (employment and training opportunities) with post-release work (realistic employment opportunities in high-growth sectors, in the communities people will return to).**

Access to quality immediate employment after release is an effective way to reduce recidivism and build stability and self-sufficiency.<sup>48</sup> However, in many instances, returning residents are barred for years from specific employment opportunities based on their offense, even when they have completed relevant training.<sup>49</sup> By matching these training programs to real employment opportunities, returning residents can enter their community ready to build a new start.

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<sup>48</sup> Californians for Safety and Justice: Repairing The Road to Redemption in California

<sup>49</sup> SHOUSE California Law Group

*The top two fields in Alameda, Contra Costa, and Solano with the greatest percentage increases in employing people with criminal records are 1) natural resources, mining, and construction (+19%) and 2) transportation, warehousing, and utilities (+15%). These sectors are filled with physically demanding jobs not traditionally associated with “soft skills.”*

- Insight FHC Landscape



**2. Work with Courts, Parole, and Probation to provide individualized and flexible reporting requirements** that take into account the type of employment being sought and the travel or scheduling requirements of that occupation. Identify and adopt practices that would allow agents to conduct outreach along with requiring individuals to report to agency offices (See Systems and Policies recommendation #6).

**3. Expand peer networks and peer counseling to building social capital, share information about opportunities, and provide mutual support and mentoring.**

Many focus group participants with criminal records identified peer support from fellow returned residents as their strongest resource for accessing opportunities and trusted guidance when needed. As one participant said, “I was trained by the staff to come back and orient others as a peer counselor. That training that led me to my career. It’s all of us sticking together and advocating for one another.”


**4. Increase professional development for service providers on the specific needs, obstacles, legal rights, and opportunities for serving individuals with a criminal record as a critical population.**

A Fair Chance in housing, employment, health care, and other necessities can determine one’s ability to provide for oneself and one’s family. In addition to the individual effects of incarceration and justice system contact, people with criminal records encounter barriers in obtaining health benefits, child care, and other resources needed to support themselves and their loved ones. Per Insight’s research, for example, a quarter of Bay Area Latinx with felony records lack health care coverage, compared to 12 percent of Whites with felony records.

Service providers and workforce development stakeholders identified the need for training and information specific to serving this critical population. Many services are currently tailored for other critical populations, without specific information for serving individuals with a criminal record. Training must be consistent for individuals working in the community, as well as those working “behind the wall” in facilities that house individuals destined to return to our communities. Center for Employment Opportunities, in partnership with East Bay Works, currently provides this type of training and can be considered as an example.

**5. Integrate criminal justice informed housing assistance into all services and programming and scale Fair Chance Housing policy.**

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



*“I wish they had more training on how to better assist individuals in this target group to be better included. We have training on groups such as veterans, youth, [and] seniors – returning residents are not the foremost in people’s minds, if I can be frank. They just aren’t tracked.”*

- Focus group participant  
with criminal record

*“I feel low self-esteem when you can’t get housing with a criminal case, you have a drug charge. It’s an everlasting offense when you can’t get low-income housing.”*

- Workforce Development Stakeholder

still experience widespread discrimination from landlords and housing authorities. For example, the Public Housing Authority (PHA) has wide discretion in banning individuals for public safety reasons; however, recent research from the ACLU on the Oakland Housing Authority’s practices (and OHA application denials) revealed that the majority of people initially “screened out” because of conviction history are law-abiding and not a threat to neighbors. These blanket bans and other exclusionary housing policies faced by people with criminal records also disproportionately harm Black and Latinx applicants.

Our recommendation includes scaling Richmond’s Fair Chance Housing ordinance. In 2016, the City of Richmond passed a Fair Chance Housing ordinance that limits how owners of affordable housing in Richmond may consider a potential tenant’s criminal record in rental decisions. The landlord may not consider arrests that do not result in convictions, participation in diversion or deferral of judgment programs, convictions that have been expunged or voided, juvenile convictions, or any conviction older than two years from the date of sentencing. Applicants cannot be required to disclose convictions. Landlords for affordable units cannot ask about criminal convictions or run background checks until an applicant is qualified on other criteria and been offered a conditional lease. The law requires individualized assessment and provides an appeal process for tenants denied housing based on criminal record.



## 6. Scale Know Your Rights training and outreach for returning residents to know their rights regarding employment, programs, and services.

Legal services, service providers, and individuals with criminal records identified the need for more information for individuals impacted by the justice system about their rights as residents and employees. This should include information about Clean Slate Clinics and new policies as they are enacted. In addition, resources such as the National Employment Law Project's Fair Chance Act Know Your Rights guide should be easily accessible in central locations, such as churches, hospitals, community colleges, schools, and counseling centers (including within jails and prisons).

### **Clean Slate Programs: Proven Effectiveness**

*Unmarking ("cleanslate") programs provide record-clearing assistance 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, researchers found that **record-clearing services boosted participants' employment rates and average earnings**: 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) (Selbin, McCrary, and Epstein, 2018). Thus, it is vital to expand unmarking programs and connect more justice-impacted people with Clean Slate intervention as soon as possible. Other interventions could include **record-clearing by operation of law**, which transfers the "onus of unmarking" away from the individual and to the government. In 2018, a narrower record-clearing law (AB 1793) was passed to create a process for retroactive marijuana expungements for Californians.*



## 7. Increase access to transportation funding and options in order to access employment opportunities.


Across all focus groups, participants overwhelmingly indicated transportation as a barrier to employment opportunities, training programs, and support services. The problem is compounded in jurisdictions that have less public transportation infrastructure, such as Solano County. Participants and service providers specifically recommended the following:

- Provide funds to purchase ID/DMV services, independent of whether fees such as child support are owed.
- Increase DMV services for individuals while still incarcerated.
- Provide bus passes for returning residents as part of any workforce development program.
- Engage Lyft, Uber, and similar companies to partner with Probation, Parole, and service providers and provide discount codes for clients to use for shared ride services, especially in areas with less public transportation infrastructure.

## 8. Invest in Intensive Workforce Services and Paid Transitional Jobs for the Highest Risk Individuals.


People in Reentry are not a monolithic population. Some people will need only minimal support and can access what they needs through their personal networks or short-term job center services, but others will need more intensive programs and additional wrap-around supports. Investment in reentry employment programs should reflect this continuum of need, with the greatest investments being made in programs that target services towards people with the most barriers.<sup>50</sup> Examples include Rubicon, Center for Employment Opportunities (CEO), and other social enterprises that have an explicit focus on this population and provide the support people need to navigate the labor market while the same time as building confidence, skills, and work experience.

For the populations with the greatest needs after release, many are in need of immediate income with stable employment and opportunities for paid training. Paid Transitional Jobs is an evidence based model that provides an immediate job and pay, job readiness training, work



*“San Francisco and Oakland are paying good wages, but it’s just so far for us to get there”*

- Solano County focus group participant with a criminal record



*“Many people reentering the workforce do not have the funds to purchase an ID, or in some cases, pay for their DMV printout, birth certificate, or driver’s license. I also realize that funds cannot be made available if they owe money in fines, but sometimes that five or ten dollars can make a huge impact.”*

- Solano County Workforce Development Stakeholder



experience and access to vocational and support services. Transitional jobs, an allowable activity under WIOA, support individuals in the reentry process helping to develop job readiness which, in addition to coaching and work experience, can include a supportive environment while individuals work to address life circumstances such as housing, child care, transportation, and supervision requirements, before they start full time employment.<sup>51,52</sup>

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<sup>50</sup> California Workforce Development Board Case study on Transitional Jobs/CEO  
<https://cwdb.ca.gov/wp-content/uploads/sites/43/2018/04/Transitional-Jobs-CEO.pdf>

<sup>51</sup> [http://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp\\_.pdf](http://csgjusticecenter.org/wp-content/uploads/2013/09/Final.Reentry-and-Employment.pp_.pdf)

<sup>52</sup> [https://www.mdrc.org/sites/default/files/ETJD\\_STED\\_Final\\_Impact\\_Report\\_2018\\_508Compliant\\_v2.pdf](https://www.mdrc.org/sites/default/files/ETJD_STED_Final_Impact_Report_2018_508Compliant_v2.pdf)





## EMPLOYERS |

Of the various organizations interviewed for this research, private and public employers are critical, for without them, there are no jobs for people with criminal records. This initiative interviewed a total of ten employers in key industries such as transportation, retail, recycling, warehousing, business services, sales and the public sector. Virtually all of these employers had experience hiring individuals with a criminal record. Throughout this research, a number of key best practices and tips were shared by employers about hiring individuals with criminal records. These are captured in Appendix F.

*In addition to the priority recommendations listed here based on our local conversations and research, Root & Rebound offers an excellent up-to-date California Fair Chance Hiring Toolkit designed specifically for employers and workforce development stakeholders:*

👉 [www.rootandrebound.org/ca-fair-chance-toolkit](http://www.rootandrebound.org/ca-fair-chance-toolkit)

*“I don’t care about what they’ve done in the past but what they can do in the future.”*

- Bay Area Employer

### **1. Scale pre-release training programs and post-release outreach and relationship building between returning residents, service providers and employers in high growth sectors that offer career pathways and living wage employment.**

The time to begin job training and jobs skills for returning residents and future employers is before their release. Training, events, and education should be tailored to the specific needs of each industry (see Service Provision #1 for more information). They must also take into account the unique operating environment of each individual prison and jail. Efforts will target facilities housing individuals likely to return to Alameda, Contra Costa, and Solano counties.


**2. Scale industry specific Fair Chance Employer Networks to serve as peer-to-peer support and learning.** Dave’s Killer Bread Foundation Second Chance Business Coalition serves as an example, with several Bay Area members, of an employer network focused on the Fair Chance workforce. Several Bay Area companies and unions work at San Quentin prison in the Prison to Employment program. These two networks can offer both support and recruitment for Fair Chance employers and could be leveraged as an advisory council to Fair Chance workforce efforts.

**3. Increase knowledge and use among employers of EDD Fidelity Bonding, Work Opportunity Tax Credit, short-term Goodwill contracts and other hiring incentives as well as the implementation of required policies such as Ban the Box (see Fair Chance Landscape in Appendix B for further details about these incentives).**

Employers and workforce development stakeholders noted that many existing employer incentive programs are not widely known among employers, and some require egregiously complex paperwork. It is recommended that the process be streamlined and simplified, and to pilot an intermediary organization to apply for incentives for employers and help navigate the process for them (see Employer recommendation #6). Additionally, individuals in reentry and workforce development providers report that many employers are out of compliance with Ban the Box requirements. Further education and awareness for HR departments, hiring managers, and business leaders is critical.

**4. Partner strategically with Consumer Reporting Agencies (CRAs) to conduct fair assessments of candidates during the background check process.**

Many of the over 260 California crimes that may show up on a background check aren't relevant to actual job descriptions. Successful Fair Chance employers recommended that where possible, employers set adjudication criteria that filter out charges that are not relevant to the role, rather than blanket bans.



*"The best thing we can possibly do is to set adjudication criteria up front, then employers are Fair Chance employers and don't even know."*

- Background Check Service

**5. Encourage internal employer programs to accommodate individuals with probation/parole requirements, transitional housing, rehabilitation programs and other related special circumstances related to having a criminal record.**

Individuals with criminal records may need to meet with probation or parole officers during work hours. Others may have family issues that require flexibility or holistic supports, such as mental health care or substance use programs. An emerging best practice for employers is to provide space at work sites for an employee to meet with a parole or probation officer. One employer recommended rolling these accommodations into existing HR policy, such as sick or parental leave policies, as an employee benefit.

**6. Pilot a pro-bono legal aid program for employers on employment law compliance with changing labor laws in relation to criminal records and benefits of hiring people with barriers.**

A legal aid program for employers could lower perceived barriers for companies interested in hiring individuals with records, but uncertain or reluctant because of potential legal issues. It also could publish advice to employers on the shifting legal landscape on hiring people with records and help streamline paperwork for incentive programs for employers to hire justice-impacted workers and prepare sample paperwork for employer incentive programs.





## **WORKFORCE DEVELOPMENT**

The workforce development system in each jurisdiction is a key nexus between service providers, employers, and job candidates; it can play a key role in educating partners and improving services to meet the needs of individuals with a criminal record seeking employment. In addition to the input of the multi-sector task force, a total of 12 workforce development stakeholders were interviewed to help inform these recommendations, representing eight workforce development related agencies.

**1. Increase access to transportation options and funds to purchase ID/DMV services needed**

(see Service Provision Recommendation #7).

**2. Increase information and training for workforce development programs, stakeholders and employers about current self-sufficiency standards, employment law and best practices in serving individuals with a criminal record**

(see Service Provision #4 for more information). One example of an existing scalable program is by Center for Employment Opportunities, which has led two full-day trainings for East Bay Works Workforce Development Board leadership, board members, and AJCC staff on “Understanding the Context of Community Supervision”. The trainings included an overview of criminal justice system terminology and various pathways of justice involved individuals, a discussion of the barriers encountered by people going to work with a record, recommendations for building relationships with employers, and understanding the California legal context. The training also included a panel conversation and Q&A with returning residents and employers.

**3. Improve coordination and communication across corrections agencies, workforce development agencies and service providers, going beyond what is required by traditional funding streams**

Workforce development stakeholders and individuals with criminal records identified the need for greater collaboration across workforce development initiatives by workforce development boards, community college districts, probation, district attorney, public defender, and other service providers. One Stop Centers were lifted up numerous times as an example of how to incentivize and strengthen collaboration across partners. Funding to conduct collaboration and increase outreach about services was also highly recommended. As one workforce development stakeholder stated, “There is a lack of collaboration. If you’re not funded to collaborate, there is no incentive. That also leads to a gap between services and how we can tell people about them.” Helping to address this, new state funding streams (Prison to Employment and AB 1111) provide resources for system alignment and initiatives like Oakland Unite. Reforms like these can encourage organizations and nonprofits to collaborate in a more intentional way to leverage more resources. This can lead to co-location or co-enrollment in services.

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“There are organizational barriers for working together. People have to get together to figure out how to make it easier to get education or training. People put in a lot of work to work together, and you need to have willing leadership and the relationships to do it.”

- Workforce Development Stakeholder

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#### **4. Expand focus on labor apprenticeship programs and community college districts as a pathway for living wage employment in high-growth sectors.**

A pain point for many individuals with criminal records and other interviewees was the lack of a clear pathway to living wage employment, and the focus, instead, on entry-level jobs that “lead to nowhere” and do not build skills for advancing one’s employment prospects. Participants recommended a shift toward scaling apprenticeship and community college pathways specifically to employment with high-growth industries, living wages, and unions. One example provided was the Laborers’ Training Center in Alameda County, which provides Construction Laborers with comprehensive, high-quality training to increase their marketability and value to themselves, the Signatory Contractors and the Construction Industry.” The recent Prison to Employment program by the State of California can also be leveraged to strengthen apprenticeship programs at the local level.

Insight Center’s updated Family Needs Calculator can help each jurisdiction determine what a living wage is for their community. In the Bay Area, the top industries currently employing people with felonies are construction and food services. The top two fields in Alameda, Contra Costa, and Solano with the greatest percentage increases in employing people with criminal records are 1) natural resources, mining, and construction and 2) transportation, warehousing, and utilities — fields where workers often receive low or minimum wage.

#### **5. Address the financial and performance disincentives of current workforce development program outcomes reporting requirements by:**

***Including a focus on outcomes and funding for sustained employment, post-employment support and a long-term employment strategy, not just job placement.***

Some workforce development stakeholders noted that most resources are focused on pre-employment training and preparation, while some of the key capacities required to sustain employment are not met. This creates frustration for employers and instability for employees. As one workforce development stakeholder stated, “A lot of grants are for pre-employment counseling, but post-employment support is the big seller for employers. It gives them confidence. They know that person has someone to turn to for support. In turn, companies want to invest in that individual”.

***Require terms of service for workforce development programs be focused on evidence-based services for support to sustain employment.***

Workforce development and service provider interviewees stated a need to focus terms of service requirements on proven programs and service dosage for sustained employment. An example involved contract requirements for supported work currently being set at 80 hours in some locations, whereas evidence shows it needs to be 120 for ideal service provision. Requiring that terms of service match current research and evidence-based practice would align contracts with immediate and long-term outcomes.




A woman with dark hair, wearing a blue lab coat over a plaid shirt, is looking down at a tablet computer she is holding. The background is a blurred industrial or laboratory setting with shelves and equipment.

# The Next Steps

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Individuals with a criminal record face collateral consequences that often do not allow them to adequately provide for themselves and their family. And yet, throughout the research and input performed to inform this report, our task force was able to lay out practical and realistic solutions that can help generate economic opportunity for the millions of individuals with a criminal record in the Bay Area.

The insights and recommendations in this report are designed to be a step toward implementation of systemic and legislative change at the local, regional, and state level to ensure every individual has access to quality employment. We are emboldened by the committed individuals working toward this change in the Bay Area and beyond. We look forward to partnering with impacted individuals, employers, workforce development boards, service providers, and other stakeholders who want to move these recommendations into action in their communities. We invite you to join us.

Learn more and join the task force:  
 [www.RiseTogetherBayArea.org/FairChance](http://www.RiseTogetherBayArea.org/FairChance)

# Opportunity for Every Worker:

## Toward a Fair Chance Workforce in the Bay Area

