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R STREET POLICY STUDY NO. 171

April 2019

THE FUTURE OF PRISON WORK: PRIVATE EMPLOYMENT BEHIND BARS

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INTRODUCTION

For many of America's prisoners, life after prison can mean perpetual unemployment, as approximately 600,000 return home each year—many without job prospects.¹ In fact, a study published in 2018 found that almost half of formerly incarcerated individuals reported no earnings within the first three years after release.² For those who were able to secure work, earnings were dismal: the median individual earned only \$10,090 in the first full calendar year after release.³ Such data clearly demonstrates that there is a disconnect between the work offered in prisons and meaningful, sustaining employment outside their walls.

1. Ann Carson, "Prisoners in 2016," Bureau of Justice Statistics, January 2018, p. 10. <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

2. Adam Looney and Nicholas Turner, "Work opportunity before and after incarceration," The Brookings Institution, March 2018, p. 7. https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

3. Ibid.

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This is particularly stark, as the public safety effect of unemployment for the formerly incarcerated is profound. Faced with a life of low wages, high rates of unemployment and the inability to support themselves or their families, about two-thirds of individuals released from prison will be rearrested within three years.⁴ By contrast, studies suggest quality employment is an important determinant in decreasing recidivism rates.⁵ And most importantly, high quality employment also helps to secure human dignity and keep families together.

Currently, prison work too often consists of non-transferable skills that are of little use upon reentry. In light of this, it is time to reimagine what prison work can and should consist of, and the role that private employers can play during the period of incarceration and after a person's release. Ideally, prison employment could be transformed to mean that individuals are paid prevailing wages, and that they form a strong relationship with a private employer and have an

4. Mariel Alper et al., "2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)," Bureau of Justice Statistics, May 23, 2018, p. 1. <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>. NOTE: This Bureau of Justice Statistics survey data only includes those sentenced to a year or more in prison.

5. While it is generally accepted that employment is associated with reduced likelihood for recidivism, recent research demonstrates that quality employment—marked by job stability and higher earnings—is the key to truly reducing recidivism rates. See, e.g., Kevin Schnepel, "Do post-prison job opportunities reduce recidivism?," IZA World of Labor, November 2017, pp. 1-8. <https://wol.iza.org/uploads/articles/399/pdfs/do-post-prison-job-opportunities-reduce-recidivism.pdf>; Stephen Tripodi et al., "Is Employment Associated with Reduced Recidivism?: The Complex Relationship between Employment and Crime," Florida State University, 2010, pp. 12-18. <https://pdfs.semanticscholar.org/7faa/128a89b2c3c4c3ad60f566a4042d709ecfa8.pdf>; Anke Ramakers et al., "Not Just Any Job Will Do: A Study on Employment Characteristics and Recidivism Risks After Release," *International Journal of Offender Therapy and Comparative Criminology* 61:16 (2017), pp. 1809-12. <https://journals.sagepub.com/doi/pdf/10.1177/0306624X16636141>; Megan Denver et al., "A New Look At Employment and Recidivism Through the Lens of a Background Check," *Criminology* 55:1 (2017), pp. 174-204. https://economics.handels.gu.se/digitalAssets/1584/1584825_paper-12_criminology-background-check-recidivism.pdf; Crystal Yang, "Local Labor Markets and Criminal Recidivism," *Journal of Public Economics* 147 (2017), pp. 16-29. http://scholar.harvard.edu/files/cyang/files/labor_recidivism_sept2016.pdf.

opportunity to continue with that employer after their term of incarceration.⁶ This “continuous employment” model is designed such that continuous in-prison to post-release employment with the same employer is not only possible but probable. However, it also is flexible enough to acknowledge that sometimes individuals may need to move away from their current employer or may acquire even better opportunities outside of prison.

By definition, reentry is a major life upheaval; almost every element of an individual’s life changes and barriers automatically exist even to the most basic goals such as housing and family reunification. If employees could work both in and out of prison with the same employers, however, multiple benefits would result. For example, an existing relationship with an employer could ease the transition by improving job prospects, which can also help boost the local economy and community. To this end, the present study reviews current practices and proposes a new vision of employment behind bars that can lead to real work opportunities in the private sector that continue upon release. It also discusses barriers and obstacles to such programs and finally concludes with an agenda to better promote continuous employment opportunities.

CURRENT OPPORTUNITIES FOR EMPLOYMENT

The current employment options within prison fall into four categories: prison support work, traditional prison industries, public-private partnerships and work-release programs. With a few exceptions, usually with respect to those who are physically or mentally unable to work, employment is a requirement for all those sentenced and imprisoned within the federal system.⁷ In some state systems, those sentenced and imprisoned are also required to “pursue work,” which may be more broadly defined as programming, with similar exceptions.⁸

The first two categories we touch upon briefly (prison support work and traditional prison industries) are work

opportunities wherein individuals typically do not interact with private employers. Accordingly, we spend the majority of this section discussing public-private partnerships and work release, both of which directly involve private employers and better allow for opportunities after incarceration.

Prison Support Work

Prison support work is classified generally as tasks that contribute directly to day-to-day prison operations: cooking meals, doing laundry and cleaning the facilities. This type of work pays the least, but is the most likely type of employment a person will be able to secure while incarcerated.⁹ Given the very little focus on skill development in these positions and the lack of interaction with private employers, these jobs are the least likely to provide the skills and work experience that make individuals appealing to private employers after release.¹⁰

Traditional Prison Industries

Traditional industry positions refer to jobs in state- or federal government-owned businesses. This type of work has existed in prisons for over 150 years.¹¹ Individuals working within the traditional industries often manufacture items including signs, furniture, mattresses and garments, as well as the stereotypical license plates. They also may provide services such as data entry, printing and bindery.¹²

Studies that evaluate federal and state prison industries suggest positive employment outcomes may follow for those who participate, including an increased likelihood of employment, increases in the number of hours worked during post-prison employment and increases in total wages

6. A prevailing wage is generally defined as “the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area.” See Department of Industrial Relations, “Frequently Asked Questions—Prevailing Wage,” State of California Labor Commissioner’s Office, 2019. https://www.dir.ca.gov/dlse/FAQ_PrevailingWage.html.

7. See 28 C.F.R. pt. 545.11. (p. 678). <https://www.govinfo.gov/content/pkg/CFR-2018-title28-vol2/pdf/CFR-2018-title28-vol2.pdf>.

8. It is important to note that work is also defined differently in various states. For example, in Minnesota, it is defined as “education, treatment or other programs.” See e.g., “Adult Facilities Offender Handbook,” Minnesota Department of Corrections, 2012. [https://www.law.umich.edu/special/policyclearinghouse/Documents/Minnesota%20Inmate%20Handbook%20\(from%20State\).pdf](https://www.law.umich.edu/special/policyclearinghouse/Documents/Minnesota%20Inmate%20Handbook%20(from%20State).pdf); Washington State Legislature RCW 72.09.460. <https://apps.leg.wa.gov/RCW/default.aspx?cite=72.09.460>; “Inmate Handbook,” Arkansas Department of Corrections, 2017, p. 2. https://adc.arkansas.gov/images/uploads/Inmate_Handbook_2017.pdf; [https://www.law.umich.edu/special/policyclearinghouse/Documents/Minnesota%20Inmate%20Handbook%20\(from%20State\).pdf](https://www.law.umich.edu/special/policyclearinghouse/Documents/Minnesota%20Inmate%20Handbook%20(from%20State).pdf).

9. Kevin Ring and Molly Gill, “Using Time to Reduce Crime: Federal Prisoner Survey Results Show Ways to Reduce Recidivism,” FAMM, June 2017, p. 6. https://famm.org/wp-content/uploads/Prison-Report_May-31_Final.pdf.

10. Amy Solomon et al., “From Prison to Work: The Employment Dimensions of Prisoner Reentry,” Urban Institute Justice Policy Center, 2004, pp. 16-17. <https://www.urban.org/sites/default/files/publication/58126/411097-From-Prison-to-Work.PDF>.

11. Marilyn Moses and Cindy Smith, “Do Prison ‘Real Work’ Programs Work?,” *National Institute for Justice Journal* 257 (June 2007), p. 1. <https://www.ncjrs.gov/pdffiles/nij/221897.pdf>.

12. “Bringing Jobs Home: Investing in America,” UNICOR, accessed April 1, 2019, p. 12. https://www.unicor.gov/publications/corporate/CATC6300_C.pdf.

earned.¹³ However, whereas individuals employed with private companies are then able to form relationships with employers to aid their chance of employment upon release, those who participate in state industries have limited opportunities to continue working.¹⁴ Thus they face many of the same barriers to employment as others reentering society and are often limited to the few jobs that might utilize the same skillsets developed in prison. And given the fact that individuals employed in state prison industries are paid, at most, a few dollars per hour for their work, such employment also does very little to financially prepare individuals for their return to society.¹⁵

Such low wages have also added to criticism of the prison industry's mandatory sourcing policies, which require the federal government to purchase products from prison industries rather than facilitate an open competitive bidding process, if the prison's products are of a comparable quality, price and delivery.¹⁶ A number of states also have mandatory sourcing policies.¹⁷ According to critics, such policies harm free markets and American businesses¹⁸ and thus these topics have continued to make labor within prison a point of debate.

13. Recent studies have found prison industry employment to be associated with increased chance for post-release employment. However, studies have found mixed results when it comes to recidivism. See, e.g., Grant Duwe, "The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes," U.S. Dept. of Justice, 2017, pp. 8-10. <https://www.ncjrs.gov/pdffiles1/nij/250476.pdf>; Grant Duwe and Susan McNeely, "The Effects of Prison Labor on Institutional Misconduct, Post-Prison Employment and Recidivism," Michigan Department of Corrections, December 2017, pp. 22-26. https://www.researchgate.net/profile/Susan_Mcneely2/publication/321953443_The_Effects_of_Prison_Labor_on_Institutional_Misconduct_Postprison_Employment_and_Recidivism/links/5a4d0a39aca2729b7c8b2702/The-Effects-of-Prison-Labor-on-Institutional-Misconduct-Postprison-Employment-and-Recidivism.pdf; Faith Lutze et al., "Washington State Correctional Industries: An Outcome Evaluation of Its Effect on Institutional Behavior, Employment, and Recidivism," Washington State University, Dec. 10, 2015, pp. 18-20. <http://www.washingtonci.com/skin/frontend/WACI/primary/docs/content/about-ci/wsu-research-report.pdf>; Kerry Richmond, "The Impact of Federal Prison Industries on the Recidivism Outcomes of Female Inmates," Justice Quarterly 31:4 (August 2014), pp. 719-45. <https://www.tandfonline.com/doi/abs/10.1080/07418825.2012.668924>.

14. Some prison industries may be receptive to hiring individuals with a criminal record for a role in industry management. For example, Maryland Correctional Enterprises states that they have hired several "ex-offenders" to help run the prison industry. See Stephen Shiloh, "FY 2018: Annual Report," Maryland Correctional Enterprises, September 2018, p. 12. <https://www.mce.md.gov/Portals/0/PDF%202017/MCE%20Annual%20Report%202018.pdf>.

15. Wendy Sawyer, "How much do incarcerated people earn in each state?," Prison Policy Initiative, April 10, 2017. <https://www.prisonpolicy.org/blog/2017/04/10/wages/>; "UNICOR: Program Details," Federal Bureau of Prisons, accessed March 2019. https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp.

16. "Mandatory Source Frequently Asked Questions," UNICOR, Accessed April 1, 2019. https://www.unicor.gov/FAQ_Mandatory_Source.aspx.

17. See, e.g., Kansas Annotated Statutes K.S.A. 75-5276. https://www.ksrevisor.org/statutes/chapters/ch75/075_052_0076.html; Legislative Analyst's Office, "The 2017-18 Budget," California Dept. of Corrections and Rehabilitation, March 1, 2017. <https://lao.ca.gov/Publications/Report/3595>; The New York State Senate, "Section 163: Purchasing services and commodities," accessed April 12, 2019. <https://www.nysenate.gov/legislation/laws/STF/163>; Jessie Balmert, "Profits from Ohio's prison products pick up," Coloradoan, April 2, 2014. <https://www.coloradoan.com/story/news/2014/04/02/profits-from-ohios-prison-products-pick-up/7235785>.

18. Sean Higgins, "Fed-owned prison labor company has unfair advantage," *Washington Examiner*, April 4, 2016. <https://www.washingtonexaminer.com/fed-owned-prison-labor-company-has-unfair-advantage-lawmakers-say>.

Public-Private Partnerships

Many incarcerated individuals who participate in public-private partnerships at the federal or state level do so through the Prison Industry Enhancement (PIE) certification program.¹⁹ In many states and under federal law, private businesses are restricted from selling goods produced by prisoners in the open, interstate market, which greatly limits the opportunity for public-private employment partnerships.²⁰ Yet businesses who meet certain criteria and establish joint ventures with state or federal prison industries through the PIE certification program are exempted from these restrictions.²¹ As of Sept. 30, 2018, PIE certificate holders employed over 5000 individuals through a PIE-certified program.²² Prisoners who participate are paid the prevailing wage for that sector and the program can deduct part of those wages for taxes, room and board, family support and victim compensation.²³ These wages are some of the highest that prisoners can get paid and, perhaps most importantly, this work introduces inmates to the private industry.

Currently, there is little aggregate information about whether individuals readily continue working with the same private employer upon release. This is because managers of PIE-certified programs often find that collecting such data is difficult.²⁴ However, some state programs boast that private partners continue to employ individuals after release.²⁵ And, according to fiscal year 2016 data from the Tennessee Rehabilitation Initiative In Corrections (TRICOR) program, about two-thirds of PIECP workers were employed within 60 days of release compared to a little over half of traditional

19. "Prison Industry Enhancement Certification Program," Bureau of Justice Assistance, August 2018, p. 1. https://www.bja.gov/Publications/PIECP-Program-Brief_2018.pdf.

20. In addition, private businesses could not employ incarcerated individuals to fulfill contracts to an agency of the U.S. government exceeding \$10,000 worth of goods. When these restrictions faced constitutional challenges, the Supreme Court upheld them. Later regulations delineated that federal restrictions on prison-made goods under the Ashurt-Sumners Act are not applicable to prisoner-provided services. See, e.g., 18 U.S.C. § 1761 (2019); 41 U.S.C. § 6502(3) (2019); *Kentucky Whip & Collar Co. v. Illinois Central R.R. Co.*, 299 U.S. 334, 352-53 (1937); 64 Fed. Reg. 17000, p. 17009 (April 7, 1999); Tenn. Code Ann. § 41-22-116 (2018); Cal. Pen. Code 2891.

21. Some restrictions, particularly those that seek to minimize the impact on the local labor market, remain. For example, Tennessee statute specifies that goods produced by a PIECP endeavor "shall not cause the loss of jobs for Tennessee prison employees," if the business is employing individuals in Tennessee. See Tenn. Code Ann. § 41-22-116 (2018); "Contract Manufacturing Opportunities," UNICOR, accessed April 1, 2019. <https://www.unicor.gov/pieprogram.aspx>.

22. "Prison Industry Enhancement Certification Program: Certification and Cost Accounting Center Listing," National Correctional Industries Association, 2018, p. 1. <https://nationalcia.org/wp-content/uploads/2018/12/Third-Quarter-2018-Certification-Listing-Report.pdf>.

23. "Prison Industry Enhancement Certification Program," p. 1. https://www.bja.gov/Publications/PIECP-Program-Brief_2018.pdf.

24. Personal email communication with Julius Dupree, Policy Advisor, U.S. Dept. of Justice, Bureau of Justice Assistance, Feb. 28, 2019.

25. For example, PIE-certified programs in Iowa, Kansas and California hire incarcerated workers after their release. See "Prison Industry Enhancement Certification Program," p. 3. https://www.bja.gov/Publications/PIECP-Program-Brief_2018.pdf.

prison industry workers.²⁶ Further, a number of studies do indicate that those in a PIE-certified program or employed under public-private ventures had lower rates of recidivism and better prospects for post-prison employment.²⁷

As services provided by those in prison are traditionally less regulated than prison-produced goods, they present a more fruitful avenue for public-private partnership, particularly given technological advances. Private companies can choose to partner with prison industries through a PIE-certified program to provide services or depending on the state, may alternatively work with the department of corrections to develop a new employment program.

A technology sales company, Televerde is an example of this type of partnership. By partnering with state corrections agencies in Arizona and Indiana, the company currently employs approximately 400 women at their in-prison call centers and has worked with over 3,000 women in prison since the company's inception.²⁸ While performing this work, the women earn market wages and are able to use the money to take care of their own personal needs, pay child support, restitution, fines, legal fees and contribute to the cost of their incarceration. What remains constitutes a savings account that can be used upon release.²⁹ Moreover, many continue their employment and fill the ranks of Televerde's headquarters—in fact, almost half of the corporate office staff is comprised of women who began their career for Televerde behind bars.³⁰

Since its foundation, the company has produced tremendous benefits. Coined the “Televerde Effect,” the women it employs have only a 7 percent return-to-prison rate, which creates an estimated \$25 million in annual savings due to the reduced rate of incarceration alone.³¹ For greater context, about 26 percent of females released from Indiana's Dept. of Corrections in 2014 were re-incarcerated within three years.

³² And just under 40 percent of those incarcerated in Arizona return to prison within three years of release, although when broken down by gender, the female recidivism rate is traditionally lower.³³ Televerde continues to create an increasing number of jobs for women in prison and to assist them in their search for post-prison employment.³⁴

Another example of service-based employment is the Last Mile Works, a web development shop housed in California's San Quentin State Prison. Through the Last Mile's computer programming program, individuals receive 2000 hours of training in coding and those who graduate can join the shop, which is a PIE-certified program.³⁵ The company has developed websites for Coalition for Public Safety and Airbnb, and pay \$16.79 an hour thus allowing individuals to save money for release. While it is not a perfect example of a continuous employment program since individuals do not continue with the same private employer upon release—Last Mile Works does allow individuals to build productive, marketable skills. For example, Steve Lacerda worked on the Airbnb project.³⁶ He was thus able to list the work on his LinkedIn page and as a result, he is now employed by Data Stax as a Technical Support Engineer.³⁷

A third successful model exists in Ohio: In 2011, the Ohio Dept. of Corrections developed the Office of Enterprise and Development, which helps to provide a pipeline for inmates into permanent employment after incarceration.³⁸ Private-sector businesses provide training and employment to incarcerated individuals so that they develop transferable job skills and have employment opportunities upon release. In order to qualify to work with inmates, businesses must submit a proposal, in which they promise to provide hired individuals with certification and must demonstrate that they

26. Personal email communication with Julius Dupree.

27. C.J. Smith et al., “Correctional Industries Preparing Inmates for Re-entry: Recidivism and Post-release Employment,” U.S. Dept. of Justice, May 10, 2006, pp. 79-81. www.ncjrs.gov/pdffiles1/nij/grants/214608.pdf; “Prison Industry Enhancement Certification Program,” p. 2. https://www.bja.gov/Publications/PIECP-Program-Brief_2018.pdf; Robynn Cox, “The Effect of Private Sector Work Opportunities in Prison on Labor Market Outcomes of the Formerly Incarcerated,” *Journal of Labor and Research* 37:4 (2016), pp. 412-40. <https://link.springer.com/article/10.1007/s12122-016-9229-0>. It should be noted that Smith et al. was unable to perfectly match studied individuals and thus selection bias may affect their results.

28. Personal telephone communication with Michelle Cirocco, Chief Social Responsibility Officer, Televerde, Feb. 11, 2019.

29. Ibid.

30. “Our Model,” Televerde, accessed April 1, 2019. <https://www.televerde.com/who-we-are/model>.

31. Personal telephone communication with Michelle Cirocco.

32. “Indiana Department of Corrections 2017 Adult Recidivism Rates,” Indiana Dept. of Corrections, accessed April 15, 2019, p. 1. <https://www.in.gov/idoc/files/2017%20Adult%20Recidivism%20Summary.pdf>.

33. Kevin Wright, “Re-entry and Recidivism,” Arizona Town Hall, 2018, p. 55. <http://www.aztownhall.org/resources/documents/11%20Criminal%20Justice%20in%20Arizona%20background%20report%20web.pdf>; “Arizona Inmate Recidivism Study: Executive Summary,” Arizona Department of Corrections, May 2005, p. 6. https://corrections.az.gov/sites/default/files/documents/PDFs/adc-5-yr-stratplan-fy2018-fy2022_final-010617.pdf.

34. “Our Model.” <https://www.televerde.com/who-we-are/model>.

35. “About Us,” The Last Mile Works, accessed April 20, 2019. <https://tlmworks.org/about-us>; “Prison Industry Enhancement Certification Program: Certification and Cost Accounting Center Listing,” p. 3. <https://nationalcia.org/wp-content/uploads/2018/12/Third-Quarter-2018-Certification-Listing-Report.pdf>.

36. Issie Lapowsky, “San Quentin's Web Development Shop Gives Inmates a Future-Ready Fresh Start,” *Wired*, July 25, 2017. <https://www.wired.com/story/san-quentin-tlm-works-dev-shop>.

37. “Steven Lacerda,” LinkedIn, accessed Apr. 20, 2019. <https://www.linkedin.com/in/steven-lacerda-00aa496b>.

38. See, e.g., “Enterprise Development,” Ohio Dept. of Corrections, 2019. <https://drc.ohio.gov/enterprise-development>.

are actually hiring individuals with convictions.³⁹ As of Jan. 8, 2019, there are 34 partnerships with private businesses.⁴⁰

These types of public-private partnerships increase public safety, post-prison employment and economic security, but they also have the added benefit of providing for human dignity. By investing in those in prison and paying individuals a fair wage, incarcerated individuals can acquire the technical skillset and financial means to sustain quality employment and self-sufficiency upon release.

Work-Release Programs

Another way that inmates can work with private employers is through work-release programs, which were introduced to reduce recidivism, decrease the costs of incarceration and improve the employability of those in prison.⁴¹ In work-release programs, individuals generally work in the community during the day and return to a secure facility or a halfway house in the evening.

In some instances, work-release positions can lead to permanent employment. Last year, for example, *The Advocate* recounted the story of John Trahan, who was employed by Collis Temple Contractors as part of the East Baton Rouge Parish Sheriff's Office's work-release Program.⁴² After his release, Trahan continued his job, which included a full-time job, a company vehicle and help with an apartment to rent nearby.⁴³ Similarly, Jordan Forseth, formerly incarcerated at Oregon Correctional Center outside Madison, Wisconsin, worked with Stoughton Trailers while incarcerated, where he earned \$14 an hour.⁴⁴ He continued to work there after release, and because of his work in prison, was able to afford the car he now drives to get to and from work.⁴⁵

What's more, anecdotal examples such as these are supported by research. Indeed, studies suggest that work-release programs generally bring positive gains for post-release

employment, total earnings or hours worked.⁴⁶ And, other similar programs that allow individuals to leave prison to work in the community have seen positive improvements in post-release employment when individuals completed the program.⁴⁷

Despite such success, one community concern with respect to work-release programs might be the possible public safety risk that those on work release might pose. However, given that individuals on work release—indeed about 95 percent of those incarcerated in state prison—will one day be released, such programs allow the opportunity to forge bonds with employers and give individuals a greater chance at successful reentry.⁴⁸ And, in fact, recent studies have demonstrated that in general, individuals who participate in work release are less likely to be arrested or convicted of a new offense.⁴⁹

In addition to public safety concerns, work-release programs must address other challenges. For example, some provide employment opportunities in sectors marked by stagnant earning potential, or do not lead to employment with the same employer or even within the same sector after release. Additionally, few prisoners qualify, as programs are often only available to individuals who are close to their release date and are convicted of nonviolent, non-sex offenses.⁵⁰

BARRIERS TO CONTINUOUS EMPLOYMENT

Irrespective of the category of work in which an individual is able to engage, most inmate jobs do not directly lead to

39. Personal telephone communication with William Eleby, Administrator and Advisory Board Chair, Ohio Dept. of Rehabilitation and Correction, Oct. 18, 2018.

40. Ibid.

41. See, e.g., William Bales et al., "An Assessment of the Effectiveness of Prison Work Release Programs Post-Release Recidivism and Employment," Florida Dept. of Corrections and Florida State University, Dec. 1, 2015, pp. 4-6. <https://www.ncjrs.gov/pdffiles1/nij/grants/249845.pdf>.

42. Grace Toohey, "'I thank God for everything:' John Trahan, 53, letting faith, work ethic guide his new life," *The Advocate*, Feb. 4, 2018. https://www.theadvocate.com/baton_rouge/news/courts/article_6a06a6a4-0a28-11e8-b874-bb498b6a4a3e.html.

43. Ibid.

44. Ben Casselman, "As Labor Pool Shrinks, Prison Time is Less of a Hiring Hurdle," *The New York Times*, Jan. 13, 2018. <https://www.nytimes.com/2018/01/13/business/economy/labor-market-inmates.html>.

45. Ibid.

46. See, e.g., Bales et al., pp. 35-36. <https://www.ncjrs.gov/pdffiles1/nij/grants/249845.pdf>; Grant Duwe, "An Outcome Evaluation of a Prison Work Release Program: Estimating Its Effects on Recidivism, Employment and Cost Avoidance," *Criminal Justice Policy Review* 26:6, (2015), pp. 531-54. <https://journals.sagepub.com/doi/abs/10.1177/0887403414524590>; Richard P. Seiter and Karen R. Kadela, "Prisoner Reentry: What Works, What Does Not, and What is Promising," *Crime and Delinquency* 49:3 (2003), pp. 373-74. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.917.9453&rep=rep1&type=pdf>; Jillian Berk, "Does Work Release Work?," Brown University, 2007, p. 2. https://www.colgate.edu/portaldata/imagegallerywww/2050/imagegallery/berk_wr_jobmarket.pdf.

47. Miriam Bohmert and Grant Duwe, "Minnesota's Affordable Homes Program: Evaluating the Effects of a Prison Work Program on Recidivism, Employment and Cost Avoidance," *Criminal Justice Policy Review* 23:3, (2012) p. 338-40. https://s3.amazonaws.com/academia.edu.documents/30473053/NorthcuttBohmert_Duwe_2011_CJPR.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=155-3623845&Signature=YdFTPIgF19NfjBEY1R%2BIeRzok%3D&response-content-disposition=inline%3B%20filename%3DMinnesota_s_Affordable_Homes_Program_Eva.pdf.

48. Timothy Hughes and Doris Wilson, "Reentry Trends in the U.S.," Bureau of Justice Statistics, April 4, 2019. <https://www.bjs.gov/content/reentry/reentry.cfm>.

49. See, e.g., Bales et al., pp. 8-10 and 29-31. <https://www.ncjrs.gov/pdffiles1/nij/grants/249845.pdf>; Duwe, pp. 533-34 and 544-45. <https://journals.sagepub.com/doi/abs/10.1177/0887403414524590>. The studies did find that those on work release might have a greater likelihood of technical violations, but these are typically not related to public safety.

50. For example, see the work-release eligibility criteria of Fairfax County, Virginia and York County, Pennsylvania, respectively: "Work Release Eligibility," Fairfax County, Va., accessed Feb. 25, 2019. <https://www.fairfaxcounty.gov/sheriff/work-release-eligibility>; "Work Release and Qualifying Criteria," York County, Pa., accessed Feb. 25, 2019. <https://yorkcountypa.gov/courts-criminal-justice/prison/work-release-policy-and-qualifying-criteria.html>; and Berk, pp. 3-5. https://www.colgate.edu/portaldata/imagegallerywww/2050/imagegallery/berk_wr_jobmarket.pdf.

employment after release. In fact, a survey by the Ella Baker Center for Human Rights found that over three-quarters of released individuals said finding work was “difficult or nearly impossible,” with two-thirds unemployed or underemployed within five years of release.⁵¹ Similarly, a recent report by the Prison Policy Initiative found that the rate of unemployment in 2008 among formerly incarcerated individuals surpassed the unemployment rate during the Great Depression and was almost five times that of the general population.⁵² Without reform, there are a number of barriers that will continue to thwart efforts to make an employment pipeline from prison to release feasible, the most significant of which are detailed in the following sections.

The Stigma of a Criminal Record

Perhaps the most obvious barrier to convincing employers to employ those in prison and hire them upon release is an individual’s criminal record. Study after study has shown that employers discriminate on the basis of justice involvement and that the employment prospects of individuals of color are even more likely to suffer as a result.⁵³ This demonstrates the need to educate potential employers on the benefits of employing incarcerated and formerly incarcerated individuals. It is also necessary to reduce harmful, inaccurate stereotypes that formerly incarcerated individuals make less-valuable employees.⁵⁴

To make matters worse, most individuals currently held in or returning from prison present different résumés when compared to their competition on the outside. This is because stints in prison or jail lead to obvious gaps in work history, and a 2014 national survey shows that incarcerated individu-

als report low levels of educational attainment and employment prior to their time behind bars.⁵⁵ It is thus all the more important that employment while incarcerated helps fill-in these gaps to equip individuals with skills that prepare them for the job market upon release.

When employers are willing to take a chance on investing in those in prison, a continuous employment model may actually serve to overcome the stigma of hiring someone with a criminal record, as employers know (and actively may be seeking) such individuals and have an ability to shape the skills needed for their workforce during the period of incarceration. Meanwhile, individuals in prison are given an opportunity to prove themselves to be quality employees. By investing in these individuals early on, those in prison become a known entity and some of the discrimination that the formerly incarcerated face when re-entering the workforce may be mitigated.

Threat of Stigma to Potential Employers

When considering employing those behind bars or, more broadly, those with criminal records, businesses may worry about how they will be perceived and the associated risks. Understandably, employers do not want to hire those with an embezzlement conviction to manage accounts or those with a child abuse record to be teachers, but they can also be wary of less serious or relevant criminal records. Employers may deem these prospective employees to be potentially harmful or dangerous, and must manage their customers’ expectations in order to retain their reputation as a trustworthy organization.

Indeed, a 2018 survey conducted by the Charles Koch Institute (CKI) and Society for Human Resource Management (SHRM) revealed that the biggest hurdle for managers to overcome when considering hiring an individual with a criminal record was concerns regarding how customers would react.⁵⁶ Similarly, a small qualitative study based in Baltimore, Maryland, found that employers were very concerned about “backlash from customers’ perception of ex-offenders.”⁵⁷ As long as society stigmatizes those with records, employers may be discouraged from employing those in prison and embracing fair- chance hiring policies, which aim to promote the hiring of the highest quality candidate regardless of their criminal record. However, a 2019 sur-

51. Saneta deVuono-powell et al., “Who Pays? The True Cost of Incarceration on Families,” Ella Baker Center, 2015. <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.

52. Lucius Couloute and Daniel Kopf, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” Prison Policy Initiative, July 2018. <https://www.prisonpolicy.org/reports/outofwork.html>.

53. Even when individuals of color do not have a criminal background, this record may be assumed by employers who do not specifically ask. See, e.g., Harry Holzer et al., “Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers,” *Institute for Research on Poverty Discussion Paper No. 1254-02*, pp. 1-27. <https://www.irlp.wisc.edu/publications/dps/pdfs/dp125402.pdf>; Devah Pager, “The Mark of Criminal Record,” *American Journal of Sociology* 108:5 (2003), pp. 937-75. https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf; Devah Pager et al., “Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records,” *The Annals of the American Academy of Political and Social Science* 623:1 (2009), pp. 195-213. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3583356>.

54. A number of studies have found that those with felony convictions are as productive as the general population and perform well at work. See, e.g., Jennifer Hickey Lundquist et al., “Does a Criminal Past Predict Worker Performance? Evidence from One of America’s Largest Employers,” *Social Forces* 96:3 (2018), pp 1039–68. <https://doi.org/10.1093/sf/sox092>; and Christy Visher et al., “Employment after Prison: A Longitudinal Study of Releasees in Three States,” *Urban Institute*, 2008. <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF>. Despite these studies, in order to demonstrate the potential benefits of a continuous-employment program, data should be collected on workforce performance for individuals who gain employment in prison and continue it afterward.

55. Bobby Rampey et al., “Highlights from the U.S. PIAAC Survey of Incarcerated Adults: Their Skills, Work Experience, Education and Training,” U.S. Dept. of Education, November 2016, pp. 9-10. <https://nces.ed.gov/pubs2016/2016040.pdf>.

56. “Workers with Criminal Records,” Charles Koch Institute and Society for Human Resource Management, 2018. <https://www.charleskochinstitute.org/news/shrm-second-chances-survey>.

57. Oluwasegun Obatusin and Debbie Ritter-Williams, “A phenomenological study of employer perspectives on hiring ex-offenders,” *Cogent Social Sciences* 5:1 (2019). <https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1571730>.

vey by CKI and SHRM suggests customer opinions regarding fair-chance hiring policies are changing for the better, as an estimated 75 percent of Americans “feel comfortable if the business they are buying goods or services from is known to give those who have a criminal record a second chance by giving them a job.”⁵⁸

Increased Employer Liability

Depending on state statutes and case law, employers of individuals in prison or on work release may be held liable for criminal acts committed during the course of their employment. For example, if an individual commits a criminal act during their time at work and an employer was aware of previous criminal activity or should have been aware, employers may be held liable for the person’s actions and subsequently sued.⁵⁹ Thus the criminal histories of those in prison present a potentially large liability to employers and may discourage continuous employment. In fact, a 2012 survey conducted by the Society for Human Resource Management (SHRM) found that more than half of employers report using criminal background checks for the express purpose of limiting negligent hiring liability, and depending on the results, employers may decide not to hire an individual.⁶⁰ Indeed, several recently publicized lawsuits alleging negligent hiring of individuals with a criminal record have continued to bring this issue to the forefront of employer concerns.⁶¹

For these reasons, even if employees are able to prove themselves hard workers during their time in prison, an employer may decide the liability outweighs the benefits of retention. However, some states have enacted policies to address employer liability concerns, and a more recent SHRM survey suggests that legal liability is becoming less of a concern

among human resources professionals today, though it is still a significant one.⁶²

Occupational Licensing Restrictions

In other cases, employers may refrain from training and employing those in prison due to state licensing restrictions, which bar those with a criminal record from participating in the licensed field. According to estimates provided by the Bureau of Labor Statistics, in 2018, approximately 21 percent of Americans in the civilian labor force had an occupational license.⁶³ And the Council of State Governments’ “National Inventory of Collateral Consequences of Conviction” reports that individuals with a criminal record face almost 14,000 occupational or professional licensing and certification restrictions.⁶⁴

In some circumstances, denying an individual a license due to a recent conviction for an offense substantively related to the licensed occupation is reasonable policy. However, in many instances, this policy needlessly restricts the ability for employers to develop and secure otherwise qualified talent. And many individuals are denied an occupational license for reasons that fail to demonstrate an improvement in public safety. For example, in some states, “good moral character” clauses allow licensing boards to deny individuals a license solely because of their criminal record.⁶⁵ These laws discourage the formation of continuous employment opportunities, and hurt the community at-large by shrinking the employment opportunities for the formerly incarcerated.

The Need for Flexible Employment Schedules

Upon release, many justice-involved individuals continue to have ongoing supervisory requirements as part of their sentence, including probation and/or parole. Community supervision often includes in-person reporting requirements, and sometimes includes treatment or educational programming,

58. “NEW SURVEY: Consumers Overwhelmingly Endorse Businesses that Employ People with Criminal Records,” Charles Koch Institute, April 1, 2019. https://www.charleskochinstitute.org/news/new-survey-consumers-endorse-businesses-employ-people-criminal-records/?utm_source=t.co&utm_medium=social&utm_campaign=cjr_News&utm_content=20190401_SHRMRelease.

59. Harry Holzer et al., p. 3. <https://www.irp.wisc.edu/publications/dps/pdfs/dp125402.pdf>.

60. “Background Checking—The Use of Background Checks in Hiring Decisions,” Society for Human Resource Management, July 19, 2012. <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/criminalbackgroundcheck.aspx>.

61. See, e.g., Dee DePass, “Trial date set on Schwan’s Food lawsuit in connection with sexual assault case in California,” *Star Tribune*, Feb. 11, 2019. <http://www.startribune.com/trial-date-set-on-schwan-s-food-lawsuit-in-connection-with-sexual-assault-case-in-california/505689582>; Philip Gonzales, “Employee alleges seafood restaurant operator’s negligent hiring led to beating,” *Florida Record*, Feb. 13, 2019. <https://flarecord.com/stories/511766819-employee-alleges-seafood-restaurant-operator-s-negligent-hiring-led-to-beating>.

62. See, e.g., “Criminal Records and Employment: Legislative Trends,” National Conference of State Legislatures, 2016, pp. 1-2. https://comm.ncsl.org/product-files/83136608/second_chance_handout.pdf; “Workers with Criminal Records: A Survey by the Society for Human Resource Management and the Charles Koch Institute,” 2018, p. 5. <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/SHRM-CKI%20Workers%20with%20Criminal%20Records%20Issue%20Brief%202018-05-17.pdf>.

63. “Household Data Annual Averages: Certification and licensing status of the civilian noninstitutional population 16 years and over by employment status, 2018 annual averages,” Bureau of Labor Statistics, Jan. 18, 2019. <https://www.bls.gov/cps/cpsaat49.htm>.

64. “Collateral Consequences Inventory,” CSG Justice Center, accessed Feb. 26, 2019. https://niccc.csjusticecenter.org/database/results/?jurisdiction=&consequence_category=377&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1.

65. For more information on the history of “good moral character” laws, see Jonathan Haggerty, “How Occupational Licensing Laws Harm Public Safety and The Formerly Incarcerated,” *R Street Policy Study* No. 143, May 2018, pp. 1-7. <https://2o9ub0417chi2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/05/Final-No.-143-for-posting.pdf>.

all of which can occur during the typical work day. Making matters more difficult, probation and parole hours are generally set through a central office and are 9am-5pm, Monday through Friday.⁶⁶ These ongoing requirements can interfere with employee schedules and act as a disincentive to retaining employees in a continuous-employment model. At the same time, most individuals on probation or parole are required to be employed (or seek work). In order to ensure they are not in violation of their probation or parole conditions and to support themselves, they must attempt to find full-time employment but counterproductively, may be practically unable to work full-time because of supervision requirements.

Flexible work arrangements do exist, but for most individuals exiting incarceration, these positions sometimes equate to underemployment with low-wages, no benefits and little opportunity for advancement.⁶⁷ In fact, a study published in 2018 found that “among those who do find work, half earn less than \$10,090 a year or less than a full time job at minimum wage.”⁶⁸ By contrast, highly skilled jobs, and professional and technical positions are more likely to accommodate flexible schedules and provide greater pay, but these are often inaccessible to the formerly incarcerated because of lacking skills and training.⁶⁹

Geographical Distance of Prisons from Home

Finally, a model that encourages continuous employment assumes that individuals are incarcerated close to their homes and families, so they can have the support system necessary to continue the employment initiated in prison. Unfortunately, this is not always the case, as many prisoners are housed far away. For example, a 2004 survey found that 63 percent of state prisoners are locked up over 100 miles away from their families and homes.⁷⁰ In Washington D.C., individuals find themselves in federal prisons all over the country due to the National Capital Revitalization and Self-Government Improvement Act of 1997,⁷¹ which required

the D.C. prison to shut down and transferred custody of its convicted prisoners to the Federal Bureau of Prisons. Other states currently facing bed shortages are also transferring individuals to other states.⁷²

When individuals are incarcerated far from home, they are not only away from their families and support systems, but are also separated from opportunities to begin working with the employers in their community while behind bars. This makes their chances of finding continuous employment that is also near their support system very slim. However, those employed by larger employers with offices in many localities or those who offer remote work might be able to overcome this barrier.

POLICY SOLUTIONS FOR A PRISON-TO-WORK PIPELINE

Expand access to private employment in prison—The first step to promoting continuous employment for those in prison is to reform laws and policies that prevent employers from hiring individuals in prison in the first place. In the meantime, laws must also ensure that private-public partnerships actually result in quality employment for those in prison by guaranteeing prevailing wages and maintaining the right to occupational licensing and certifications, where applicable.

Currently, a patchwork of laws and policies prevent many incarcerated individuals from accessing PIECP, other public-private work opportunities and work-release programs. For example, at the federal level, there are caps on the number of jurisdictions that can be certified to participate in private employment through PIECP. However, given the fact that the program has been shown to be effective at encouraging positive employment outcomes, federal policymakers should remove the current 50-site cap⁷³ and work to encourage more jurisdictions to implement a PIE-certified program. Furthermore, policymakers in states that currently do not have an active PIE-certified program should work with local business leaders to pass legislation that complies with federal law and results in greater PIECP participation. And those states that preclude the services of those in prison from being offered by any entity other than the prison corporation or through a PIE-certified program—restrictions which are over and above that required by federal law—should amend

66. Joe Russo et al., “Building a High-Quality Correctional Workforce: Identifying Challenges and Needs,” Priority Criminal Justice Needs Initiative, 2018, p. 12. https://www.rand.org/content/dam/rand/pubs/research_reports/RR2300/RR2386/RAND_RR2386.pdf.

67. Elena Holodny, “‘It still haunts me’: What it’s like to get a job after prison in America,” *Business Insider*, July 30, 2017. <https://www.businessinsider.com/finding-job-after-prison-2017-7>.

68. Adam Looney, “5 facts about prisoners and work, before and after incarceration,” Brookings Institution, March 14, 2018. <https://www.brookings.edu/blog/up-front/2018/03/14/5-facts-about-prisoners-and-work-before-and-after-incarceration>.

69. See, e.g., Tara Siegel Bernard, “For Workers, Less Flexible Companies,” *The New York Times*, May 19, 2014. <https://www.nytimes.com/2014/05/20/business/for-workers-less-flexible-companies.html>.

70. Bernadette Rabuy and Daniel Kopf, “Separation by Bars and Miles: Visitation in State Prisons,” Prison Policy Institute, Oct. 20, 2015. <https://www.prisonpolicy.org/reports/prisonvisits.html>.

71. P.L. 105-33, Title XI (“National Capital Revitalization and Self-Government Improvement Act of 1997”) §§ 11201(a), as attached to Balanced Budget Act.

72. Christopher Zoukis, “Prison Systems Solve Bed Space Problems by Using Out-of-State Facilities,” *Prison Legal News*, Dec. 5, 2018. <https://www.prisonlegalnews.org/news/2018/dec/5/prison-systems-solve-bed-space-problems-using-out-state-facilities>.

73. “Prison Industry Enhancement Certification Program,” p. 1. https://www.bja.gov/Publications/PIECP-Program-Brief_2018.pdf.

their laws to allow private employers to more easily hire individuals behind bars.⁷⁴

Even when continuous-employment opportunities are available, other laws or policies may serve to restrict the eligible population. Some of these restrictions bear a rational relationship to public safety, for example, preventing work release of those convicted of certain violent offenses, but other policies do not. One example of the latter case is laws or policies that only permit individuals to secure work release near the end of their sentence.⁷⁵ The benefits of work release can be realized much earlier, and more time involved in such a program might actually mean a stronger employer-employee relationship, as well as the accrual of a longer, more meaningful work history prior to release. In other cases, prison policies—such as bans on internet access—may prevent potential employers willing to develop employment programming behind bars from being able to do so.⁷⁶

At any rate, with both PIECP and work-release partnerships, the goal should be continuous employment. Thus, policies should be shaped to encourage employers to retain individuals after release (and at the very least, collect data on this metric). Further, for those programs that operate outside of PIECP, changes to departmental policy or regulation should stipulate that employers hiring those in prison to provide services must still pay a prevailing wage and prove they are retaining individuals upon release. This is not to say employers should be required to hire everyone, but rather that they should demonstrate that they are providing a feasible opportunity to employees for continued employment.

Encourage proximate placement of individuals to their communities—When incarceration is required, laws can favor limiting the distance individuals are from their homes and families as much as possible. Although recent laws such as the First Step Act of 2018 have attempted to do this, both states and the Bureau of Prisons can continue to improve policies to prioritize close-to-home initiatives.⁷⁷ Moreover, because fewer women are incarcerated, the female population is particularly affected and are often housed in facilities

74. For example, under Mississippi statute, prisoner services or goods are only to be offered by the prison corporation, unless the individual is employed through a certified PIE program. See Miss. Code Ann § 47-5-571 (2018).

75. For example, in Florida, individuals participating in community work release must be within two to three years of release. See “Annual Report: Fiscal Year 17-18,” Florida Department of Corrections, 2018, p. 14. http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.

76. According to a 2013 survey, those in prison in 26 states lacked internet technology. Lois M. Davis, “How Effective Is Correctional Education, and Where Do We Go from Here? The Results of a Comprehensive Evaluation,” RAND Corporation, 2014, p. 69. <https://www.bja.gov/publications/rand-howeffectiveiscorrectionaleducation.pdf>.

77. For example, under the First Step Act of 2018, prisoners are to be placed: “as close as practicable to the prisoner’s primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence.” However, 500 driving miles is still a prohibitive distance for many families. Consider, for example, that even going 60 mph, it would take over eight hours to reach a relative 500 miles away. See S. 756, First Step Act of 2018, 115th Cong.

far away from their families, even when proximity is prioritized. These are not easy challenges to address. However, in the cases in which a closer placement is not possible, laws can also generally encourage the quicker release of individuals to halfway homes or other community solutions that would make working in the community more feasible. When individuals serve their sentence close to their homes and local businesses, they are more likely to have the same opportunities provided by the continuous-employment model.

Remove unnecessary licensing hurdles—Quality employment often requires occupational licensing and certifications, which can be difficult, if not impossible, to acquire while in prison. State and local policymakers can address this problem by reforming licensing provisions that needlessly restrict the employment options of those with convictions and discourage employers in licensed fields from creating a prison-to-work pipeline. Indeed, states are beginning to do just this by reforming these laws as well as notoriously nebulous ‘good moral character’ provisions that often prevent employment.⁷⁸

States can also improve communication and establish memorandums of understanding (MOUs) between departments to ensure that individuals are not trained in jobs they cannot perform outside of prison and that in-prison training is counted toward licensure. For example, Michigan’s Department of Corrections coordinates efforts with the Department of Licensing and Regulatory Affairs to ensure in advance that a person will be able to obtain a license before they begin training through Michigan’s Vocational Village, a skilled-trades training program behind bars.⁷⁹ State vocational programs should also provide individuals the ability to take any tests associated with licensure. In many cases, these forms and tests can be accessed online. But in many states, incarcerated individuals completely lack access to any Internet technology, making access all the more difficult.⁸⁰ By reforming laws and regulations that prevent individuals from obtaining licenses or that make obtaining licenses unnecessarily difficult, states can ensure that quality employment is accessible to all.

Make continuous employment an attractive option for private employers—Governments can combat stigma and encourage continuous employment by removing disincentives to hiring and retention. As discussed earlier, a major barrier is the risk employers take (or perceive) when they hire the incarcerated or formerly incarcerated. States have

78. See, e.g., Haggerty. <https://www.rstreet.org/2018/05/31/how-occupational-licensing-laws-harm-public-safety-and-the-formerly-incarcerated>.

79. Michigan Former Governors, “Gov. Snyder: State government is going ‘Outside the Box,’” Press Release, Sept. 7, 2018. https://www.michigan.gov/formergovernors/0,4584,7-212-90815_57657-476952--,00.html.

80. See, e.g., Davis. <https://www.bja.gov/publications/rand-howeffectiveiscorrectionaleducation.pdf>.

been exploring three ways to address this problem. The first aims to restrict employer liability by changing statutes governing liability, so that employers are not liable (with a few exceptions) for negligent hiring solely because an individual has a past conviction. On this front, a recent bill passed in Arizona,⁸¹ as well as statutes in Texas and Colorado.⁸² Another solution is to combine certificates of relief (also called certificates of rehabilitation or employability) with a release of liability. These certificates are issued by the state or federal government and signal that the person has taken steps to be rehabilitated. In some states, certificates may also include protections from negligent hiring or failure-to-supervise suits in order to encourage fair-hiring practices.⁸³ For example, a certificate program in Ohio, which does include negligent-hiring protection, has resulted in some impressive gains to employees. For example, one study found that to hold a certificate increased the chances of receiving an interview or offer of employment “more than threefold.”⁸⁴

Finally, the federal government and some states offer a “bonding program” for the recently released, which is essentially insurance to cover the possible cost of future crimes.⁸⁵ The federal bonding program protects employers for the first six months after release with no cost to the employer or employee.⁸⁶

Policymakers have also tried to encourage continuous employment through policies that increase incentives—for example, tax breaks and credits for hiring justice-involved individuals. At the federal level, the Work Opportunity Tax Credit (WOTC) provides a credit for private employers who

hire those with felony convictions,⁸⁷ and some states and cities also offer their own tax credits.⁸⁸

There is little evidence regarding whether or not these tax credits actually increase long-term employment prospects for the formerly incarcerated and for this reason, further evaluation is necessary. However, the research that is available suggests that the WOTC has had mixed results in increasing employment and earnings among the disadvantaged.⁸⁹ For example, in one study, short-term earnings positively increased among the population certified for the WOTC; however, long-term employment rates among the eligible population did not.⁹⁰ The mixed success of this tax credit may be due to the fact that employers are often not aware of the credit and, even when they are aware, the paperwork and other measures necessary to ensure receipt may discourage employer use.⁹¹ These problems may be addressed through better advertising, a streamlined paperwork process or a larger tax credit. Indeed, a more recent study published in 2018 found that employers would be more likely to consider hiring an individual with a nonviolent felony conviction if the tax credit was increased.⁹²

Although a larger tax credit or fewer administrative requirements might encourage the hiring of a greater number of justice-involved individuals, other mechanisms promise to be more effective. For example, the same study suggested that, employers were even more likely to consider hiring an employee if the individual had a post-conviction certificate verifying their work-performance history.⁹³ Other interventions, such as guaranteeing to replace a worker if they are not a suitable fit for the company, may also increase employers’

81. Arizona Rev. Statutes 12-558.03; Arizona H.B. 2311, 53rd Legislature, Second Regular Session, 2018.

82. See, e.g., “Policy Options: Limiting Employer Liability When Hiring Individuals Formerly Incarcerated,” Philadelphia Works, 2015. https://www.philaworks.org/wp-content/uploads/2016/04/LimitingEmployerLiability_final_forwebsite.pdf; Texas Civ. Prac. and Rem. Code 6 §142.002; Texas H.B. 1188, “Relating to limiting the liability of persons who employ individuals with criminal convictions,” 83rd Legislature, 2014; Colorado H.B. 10-1023, 67th General Assembly, Second Regular Session, 2010; Col. Rev. Statute 8-2-201.

83. “Criminal Records and Employment: Legislative Trends,” National Council for State Legislatures, 2016, pp. 1-2. https://comm.ncsl.org/productfiles/83136608/sec-ond_chance_handout.pdf.

84. Peter Leasure and Tia Stevens Andersen, “The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study,” *Yale Law and Policy Review Inter Alia* (Fall 2016). https://ylpr.yale.edu/inter_alia/effectiveness-certificates-relief-collateral-consequence-relief-mechanisms-experimental.

85. For example, Washington state has a bonding program. See, e.g., “Washington State Bonding Program Guidebook,” Employment Security Dept., 2017. <http://web-cache.googleusercontent.com/search?q=cache:nSnL7NOJ-EJ:media.wpc.wa.gov/media/WPC/adm/policy/WASHINGTON-STATE-BONDING-PROGRAM-HAND-BOOK-2017.doc+&cd=2&hl=en&ct=clnk&gl=us&client=safari>.

86. “The Federal Bonding Program,” U.S. Dept. of Labor, 2016. <https://www.bonds-4jobs.com>.

87. “Work Opportunity Credit,” Internal Revenue Service, March 20, 2019. <https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>.

88. “State Tax Credits,” National Hire Network, accessed April 15, 2019. <https://hirenetwork.org/content/state-tax-credits>. See also, Revenue Administration Division, “Subject: Long-Term Employment of Qualified Ex-Felons Tax Credit,” *Administrative Tax Release* No. 39, August 2012. https://taxes.marylandtaxes.gov/Resource_Library/Tax_Publications/Administrative_Releases/Income_and_Estate_Tax_Releases/ar_it39.pdf; “Tax Credits—Hiring & Training,” City of Chicago, 2019. https://www.chicago.gov/city/en/depts/bacp/sbc/tax_credits_-_hiringtraining.html; “Fair Chance Hiring Initiative,” City of Philadelphia, accessed April 2019. <https://business.phila.gov/fairchance>.

89. See, e.g., Sarah Hamersma, “Why Don’t Eligible Jobs Claim Hiring Subsidies,” *Economic Inquiry* 49:3 (2011), pp. 916-34. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1874495; Sarah Hamersma, “The Effect of an Employer Subsidy on Employment Outcomes: A Study of the Work Opportunity and Welfare-to-Work Tax Credits,” *Journal of Policy and Analysis* 27:3 (2008), p. 501-02. <https://onlineibrary.wiley.com/doi/pdf/10.1002/pam.20354>.

90. “The Effect of an Employer Subsidy on Employment Outcomes,” pp.509-10, 518. <https://onlineibrary.wiley.com/doi/pdf/10.1002/pam.20354>.

91. Priscilla Hunt et al., “Breaking Down Barriers: Experiments into Policies that Might Incentivize Employers to Hire Ex-Offenders,” RAND Corporation, 2018, p. 7. https://www.rand.org/pubs/research_reports/RR2142.html; Priscilla Hunt et al., “Incentivizing Employers to Hire Ex-Offenders,” RAND Corporation, 2018, p. 4. https://www.rand.org/pubs/research_briefs/RB10003.html.

92. “Incentivizing Employers to Hire Ex-Offenders,” p. 4. https://www.rand.org/pubs/research_briefs/RB10003.html.

93. Ibid.

willingness to hire individuals with a criminal record.⁹⁴ Thus, while tax breaks or credits seem to currently have little effectiveness at increasing employment long-term, certificates of employability and staff-replacement programs might prove better able to meet employers' needs.

CONCLUSION

The ultimate goal of incarceration is to improve public safety and ensure successful reentry to society. Employment behind bars has long been considered integral to these goals. However, in practice, prison work has often failed to connect individuals to private employers or to promote the kind of high-quality employment that best reduces risks to public safety and increases financial prosperity. Accordingly, by creating a prison-to-work pipeline in which individuals begin private employment while incarcerated and have an opportunity to work with the same employer following release, policymakers and businesses will promote more successful outcomes for those exiting prison.

However, there is still much we do not know about reentry and for this reason, it is of paramount importance that implementers collect data and evaluate the impact of prison-to-work programs along the way. Other problems—like being placed far from home—may be mitigated by locating individuals in smaller, community-based facilities, but must contend with the ability to provide the necessary resources (like treatment providers). Still, legislative and regulatory changes can only fix one part of the problem. Problems like stigma are only going to be mitigated by broader cultural change in which individuals exiting prison are deemed worthy of second chances and companies who hire them are celebrated. The good news is that some of these cultural changes have begun to occur. Companies like Slack, Dave's Killer Bread and MOD Pizza are investing in individuals in prison or hiring them when they are out.⁹⁵ But much remains to be done. In sum, reentry is a complicated process, and prison-to-work programs are just one piece of a larger puzzle.

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94. Ibid.

95. Alexis Madrigal, "Big Tech's Newest Experiment in Criminal Justice Reform," *The Atlantic*, Aug. 29, 2018. <https://www.theatlantic.com/technology/archive/2018/08/big-techs-newest-experiment-in-criminal-justice-reform/568849/>; Erika Kincaid, "Dave's Killer Bread Continues to Rise with Help of Ex-Felons," *Food Dive*, Aug. 9, 2017. <https://www.fooddive.com/news/daves-killer-bread-continues-to-rise-with-help-of-ex-felons/448747/>; and Clint Carter, "Why MOD Pizza Loves Hiring Ex-Felons," *Entrepreneur*, Sept. 5, 2018. <https://www.entrepreneur.com/article/317779>.