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Written Statement for the U.S. Commission on Civil Rights

“Briefing on the Impact of Criminal Background Checks and the EEOC’s Conviction Records Policy on the Employment of Black and Hispanic Workers”

December 7, 2012

My name is Amy Solomon and I am a Senior Advisor to the Assistant Attorney General in the Office of Justice Programs at the Department of Justice (DOJ). I have worked on prisoner reentry issues and a broad range of public safety initiatives for more than 20 years in government, research, and service provider settings. In my current role, I co-chair the Federal Interagency Reentry Council staff working group, which supports the Cabinet-level Reentry Council and is now comprised of 20 federal agencies. I also represent DOJ in interagency efforts focused on urban policy, public safety, and place-based strategies.

I appreciate the opportunity to present this statement¹ on behalf of the Department of Justice in connection with the Commission’s consideration of the important issue of the need to address employment barriers based on criminal history. This statement focuses on:

- the characteristics of the criminal justice population, in terms of demographics and the types of crimes for which individuals are arrested;
- the substantial challenges and barriers faced by these individuals; and
- the national focus on prisoner reentry – specifically, the Federal Interagency Reentry Council, chaired by the Attorney General, which is working to reduce barriers to successful reintegration.

A Substantial Share of the U.S. Population Has Arrest Records

A new study shows that nearly one-third of American adults have been arrested by age 23.² Given that criminal background checks on those entering the job market are now common

practice,³ it is clear that a broad swath of the U.S. population is affected by criminal background checks when they apply for a job. A criminal record will keep many people from obtaining employment – even if they have paid their dues, are qualified for the job and are unlikely to reoffend. At the same time, the research shows that stable employment is an important predictor of successful reentry and desistance from crime.⁴

Criminal records run the gamut from one-time arrests, where charges are dropped altogether, to lengthy, serious, and violent criminal histories. Most arrests are for relatively minor, nonviolent offenses. Among the more than 12 million arrests recorded in 2011, only 4 percent were considered very serious violent crimes (which include murder, rape, robbery, and aggravated assault).⁵ Another 10 percent of all arrests were for simple assault, which do not involve a weapon or aggravated injury but do often include arrests for domestic violence and intimate partner violence. The remainder of arrests in 2011 were for:

- property crimes, which account for 13 percent of arrests, and include burglary, larceny-theft, motor vehicle theft, arson, vandalism, stolen property, forgery and counterfeiting, fraud, and embezzlement;
- drug offenses, which account for 12 percent of arrests, and include production, distribution, and/or use of controlled substances; and
- other offenses, which account for 61 percent of all arrests, and include public order offenses (such as disorderly conduct, drunkenness, prostitution, liquor law violations, vagrancy, loitering), driving under the influence, weapons violations, and many other violations of state or local law not specifically identified above.

What is often forgotten is that many people who have been arrested – and therefore technically have a “criminal record” that shows up on a background check -- have never been convicted of a crime. This is true not only for those charged with minor crimes, but also for individuals arrested for serious offenses. A snapshot of felony filings in the 75 largest counties, for example, shows that one-third of felony arrests never lead to conviction.⁶

People of Color Are Disproportionately Impacted

The impact of having a criminal record can be exacerbated for African-Americans, who may already experience racial discrimination in the labor market and who are more likely than whites to possess a criminal record. Two prominent studies in Milwaukee and New York City – funded by the DOJ’s National Institute of Justice (NIJ) – found that a criminal record reduces the likelihood of a job callback or offer by about 50 percent (28 percent vs. 15 percent). This criminal record “penalty” was substantially greater for African Americans than it was for white applicants. The second study included Latinos in the test pool and showed they too suffer similar “penalties” in the employment market.⁷ This research is particularly important in a criminal justice system where people of color are overrepresented.

Demographics

Nearly 75 percent of the arrestees are male; 25 percent are female. The following two tables provide a snapshot of the 2011 arrestee population, by race and age group. Most notably, African Americans account for less than 13 percent of the U.S. population,⁸ but 28 percent of all arrests. As discussed further below, they are even more highly represented in the incarcerated population, comprising about 40 percent of those behind bars.⁹

Arrests by Age, 2011

<u>Age range</u>	<u>Under 18</u>	<u>18-24</u>	<u>25-39</u>	<u>40-49</u>	<u>50-64</u>	<u>65 and over</u>
Percentage	11.8%	29.4%	34.7%	14.6%	8.86%	.8%

Source: FBI Uniform Crime Reports, 2011

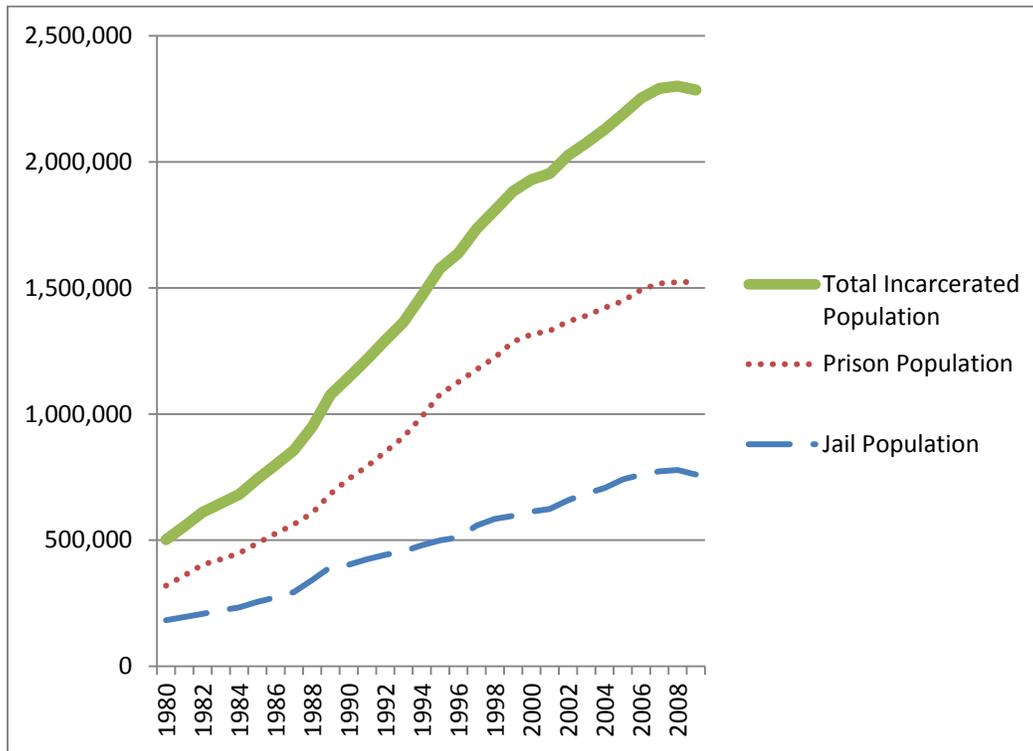
Arrests by Race, 2011

<u>Race</u>	<u>White</u>	<u>Black</u>	<u>American Indian or Alaskan Native</u>	<u>Asian or Pacific Islander</u>
Percentage	69.2%	28.4%	1.5%	0.9%

Source: FBI Uniform Crime Reports, 2011

Many arrests do not result in convictions, yet the number of people who are incarcerated for criminal offenses is substantial. Each year there are nearly 12 million people admitted to local jails¹⁰ and more than 700,000 are admitted to state and federal prisons.¹¹ Incarceration rates in the United States are higher than any other country in the world. The United States has less than five percent of the world's population but almost a quarter of the world's prisoners.¹² Over the last 30 years, the incarcerated population has more than quadrupled.¹³ Today, more than 2.2 million men and women are held in prisons and jails.¹⁴

Adult Prison and Jail Populations, 1980-2009



Source: Bureau of Justice Statistics Correctional Surveys

In 2008, the Pew Center on the States brought heightened public attention to the nation’s incarceration rate when it reported that “one in 100” U.S. adults was behind bars on any given day.¹⁵ But one in 100 – a figure which, taken alone, puts us on notice – is an average. We know this rate doesn’t hold evenly across all populations. One in 54 men is incarcerated compared to one in 265 women. Looking just at men, we see that one in 106 white men is behind bars, compared to one in 36 Hispanic men and one in 15 African American men. When we consider young black men (ages 20-34), the ratio lowers further to one in nine. And young black male high school dropouts have higher odds of being in jail than being employed.¹⁶ As these numbers make clear, incarceration is heavily concentrated among men, particularly young men of color.

There’s an intergenerational component at work also. Forty-six percent of jail inmates have a family member who was incarcerated.¹⁷ And on any given day, one in 28 children has a parent behind bars. Again, communities of color are most acutely affected; one in nine African American children has an incarcerated parent.¹⁸ One recent study estimates that 25 percent of African Americans born after 1990 will witness their father being sent to prison by their 14th birthday.¹⁹

Incarceration is also a geographically concentrated phenomenon. A large number of prisoners come from – and return to – a relatively small number of already disadvantaged neighborhoods.²⁰ In many urban neighborhoods around the country, incarceration is no longer an unusual occurrence but a commonplace experience, especially for young men of color.

Incarcerated Populations Face a Broad Set of Challenges

The corrections population in particular consists largely of men who have for many years exhibited a consistent pattern of criminal involvement, lack of attachments to mainstream institutions of social integration, and a multiplicity of interconnected problems. A snapshot of jail inmates indicates:

- 68 percent meet the criteria for substance abuse or dependence;²¹
- 60 percent do not have a high school diploma or general equivalency diploma;²²
- 30 percent of inmates were unemployed in the month before arrest — and almost twice as many were underemployed;²³
- 16 percent are estimated to have serious mental health problems;²⁴ and
- 14 percent were homeless at some point during the year before they were incarcerated.²⁵

The need for treatment, training, and assistance is acute.²⁶ It is critical that individuals entering prisons and jails be screened to determine their criminogenic risks and needs, and that appropriate evidence-based interventions are applied during incarceration and after release to produce the best outcomes.²⁷

Collateral Consequences Create Additional Barriers

In addition to these significant and often overlapping challenges, an extra set of barriers – often referred to as “collateral consequences” – is imposed on individuals as a direct result of their criminal convictions. NIJ is funding a “[National Inventory of the Collateral Consequences of Conviction](#),” conducted by the American Bar Association’s Criminal Justice Section (ABA). The online database was launched this fall, populated with about 8,000 laws and rules from nine states and the federal system. The website is user-friendly and should be helpful to a broad set of stakeholders who can search and sort by state, consequence type, triggering offense category, and a number of other salient characteristics. The ABA projects that the complete database will contain about 40,000 statutes that impose collateral consequences on people convicted of crimes, creating barriers to housing, benefits, and voting.²⁸ About half of the statutes operate as a denial of employment opportunities.

Last year, U.S. Attorney General Eric Holder wrote to every state Attorney General, with a copy to every Governor, asking them to assess their state’s collateral consequences and determine if any should be eliminated “so that people who have paid their debt to society are able to live

and work productively.”²⁹ The [Attorney General’s letter](#) also said the federal government will assess the federal collateral consequences – and an interagency group, organized by DOJ’s Office of Civil Rights, has begun that review.

Regardless of the legal restrictions, the majority of employers indicate that they would “probably” or “definitely” not be willing to hire an applicant with a criminal record, according to a study by Harry Holzer and colleagues.³⁰ In fact, a 2011 report by the National Employment Law Project (NELP) found that many major corporations have blanket “no-hire” policies applicable to persons with criminal backgrounds, as evidenced by online job ads posted on Craigslist.³¹ The employer motivation is understandable. Employers do not want to hire individuals who might commit future crimes and who may be a risk to their employees’ and customers’ safety. The assumption, of course, is that a prior record signals higher odds that the individual will commit more crimes in the future. A key question is: if a person who’s been arrested stays *arrest-free* for some period of time, do the odds of further criminal activity go down? A recent study, funded by NIJ, sheds light on just this issue.

The “Redemption” Study

The NIJ “Redemption” study, as it’s referred to, was conducted by Professors Alfred Blumstein (testifying today) and Kiminori Nakamura. They were looking for a way to empirically determine when it is no longer pertinent and relevant for an employer to be concerned about a criminal offense in a prospective employee’s past.³² The researchers examined the criminal records of everyone who was arrested for the first time in 1980 in the state of New York. Then they tracked those criminal records forward to find who was arrested again, who wasn’t, and how long people “stayed clean.” In general, once an individual had stayed clean for a few years, his chances of being arrested for a new crime just about disappeared. This point is what the researchers refer to as the “point of redemption” – when a prior arrest no longer distinguishes the risk of future criminal arrests for that person compared to a similar person in the general population.

For individuals who commit their first crime at a very young age or who are first arrested for a more serious crime, it takes longer – about eight years -- to reach the point of redemption; but for other individuals who are older when first arrested or who commit less serious crimes, redemption can come in as little as three or four years. After staying clean for this relatively short period of time, these individuals were no more likely than anyone else to have another arrest in the future. In order to test the general applicability of their results, Professors Blumstein and Nakamura have conducted additional research in two other states (Florida and Illinois) and with two other sampling years of first arrest (1985 and 1990). The results of this second study show there is some variation during the first five years after initial arrest – when recidivism is most likely to occur – but findings are consistent after the five year mark.

This research has important practical implications.³³ Blumstein and Nakamura suggest that “forever rules be replaced by rules that provide for the expiration of a criminal record.” They continue, in an op-ed published by *The New York Times*, that “it is unreasonable for someone to be hounded by a single arrest or conviction that happened more than 20 years earlier — and for many kinds of crimes, the records should be sealed even sooner.”³⁴ Some states are taking steps in exactly this direction.³⁵ Thirteen states enacted laws in their 2010–2011 legislative sessions to expunge and seal low-level offenses after a discrete number of years. Three states passed laws to limit the liability of employers that hire people with criminal records.³⁶

The Role of Background Checks

This is not to say that criminal background checks serve no purpose. They give employers a tool — albeit an imperfect one — for helping assess risk to their employees, customers, assets, and reputations when making hiring decisions. In fact, some of the same research cited above also indicates the use of criminal history records and the practice of performing background checks can, in some cases, reduce racial discrimination in hiring. The Holzer study in particular suggests that employers who perform background checks may end up hiring more black workers (especially black men) than those who do not perform them. This is because some employers may assume young black men have a criminal record, and a background check may actually dispel that assumption and increase their chances of being hired.

To ensure that the use of criminal background checks to screen applicants does not become a tool for magnifying discrimination in hiring, employers must be cognizant of the legal framework for using criminal records. An employer risks violating federal civil rights laws when its use of criminal background checks results in disparate impact upon a racial group and, importantly, when the employer cannot articulate an objective and well-supported reason for why the use of a criminal record to disqualify an applicant is related to the functions of the job.

Justifying the nexus between an applicant’s criminal history and the functions of a job is complicated by the fact that criminal records are often incomplete and inaccurate. A previous Department of Justice report states that “no single source exists that provides complete and up-to-date information about a person’s criminal history.”³⁷ It is worth noting that DOJ’s Bureau of Justice Statistics and Bureau of Justice Assistance are investing in projects to improve the accuracy, timeliness, and completeness of criminal records. But the fact remains that currently, even the best maintained records systems are incomplete, often lacking final disposition information in a large share of the records.³⁸ Therefore, employers who use criminal background checks should develop best practices that include, at a minimum, verifying the accuracy of criminal records and avoiding blanket policies that fail to consider whether the functions of a particular job justify exclusions based on convictions (discussed in more detail, below).

The Federal Interagency Reentry Council Works to Reduce Barriers to Successful Reentry

More than 2.2 million people are incarcerated in federal and state prisons and local jails at any given time, and the reality is that most -- more than 95 percent -- will be released back to their home communities.³⁹ When reentry fails, the costs—both societal and economic—are high. Statistics indicate that more than two-thirds of state prisoners are rearrested within three years of their release and half are reincarcerated.⁴⁰ High rates of recidivism mean more crime, more victims, and more pressure on federal, state and municipal budgets. In the past 20 years, state spending on corrections has grown at a faster rate than nearly any other state budget item. The United States now spends more than \$74 billion on federal, state, and local corrections.⁴¹

Because reentry intersects with issues such as health and housing, education and employment, family, faith, and community well-being, many federal agencies are focusing on the reentry population with initiatives that aim to improve outcomes in each of these areas. Congress has supported reentry efforts as well. The Second Chance Act was passed by Congress with strong bi-partisan support and then signed into law by President Bush in 2008.⁴² Reentry efforts also have strong bi-partisan support in state houses, city halls, and community forums around the country.

In January 2011, the Attorney General convened a Cabinet-level [Federal Interagency Reentry Council](#), representing a significant executive branch commitment to coordinating reentry efforts and advancing effective reentry policies. At its first meeting, the Council adopted a mission statement to (1) make communities safer by reducing recidivism and victimization, (2) assist those who return from prison and jail in becoming productive citizens, and (3) save taxpayer dollars by lowering the direct and collateral costs of incarceration. The Council has empowered staff — now representing 20 federal departments and agencies — to meet a number of goals to coordinate and leverage federal reentry resources; remove federal barriers to reentry; and use the bully pulpit to dispel myths and to educate key stakeholders about federal policies, resources and effective reentry models.

Regarding employment and reentry, the Council has an active working group of staff from the Department of Labor (DOL), DOJ, the Office of Personnel Management, the Equal Employment Opportunity Commission (EEOC), the Federal Trade Commission (FTC) and the Small Business Administration, among others. These agencies are engaged in these issues in many ways. For example, the Council has developed public education materials, a website and a set of “Reentry MythBusters” to clarify federal policy on a number of issues. Five MythBusters focus on employer responsibilities and incentives as well as worker rights. On the incentives side, DOL has offered tax credits and federal bonding protection for employers that hire ex-offenders. On the employer-responsibility and worker rights side, the MythBusters focus on how employers

should consider a criminal record in their hiring decisions, and protections for job seekers when it comes to background checks.⁴³

The EEOC has long-standing guidance on this issue and is doing extensive training and outreach. In July 2011, the Commission held a meeting focused exclusively on arrest and conviction records as barriers to employment. After substantial consideration of the information presented both at the meeting and during the public comment period, the EEOC voted 4-1 in April to issue updated enforcement guidance. "The ability of African-Americans and Hispanics to gain employment after prison is one of the paramount civil justice issues of our time," said Commissioner Ishimaru in a statement at the April 25th meeting.⁴⁴

The revised [EEOC guidance](#) – under discussion today – calls for employers to assess applicants on an individual basis rather than excluding everyone with a criminal record through a blanket policy. And it provides new detail and direction for employers in how to consider three key factors – (1) the nature of the job; (2) the nature and seriousness of the offense; and (3) the length of time since it occurred – both in writing a hiring policy and in making a specific hiring decision. The updated guidance also emphasizes that employers should not simply reject a candidate because of an arrest alone without a conviction, as arrests are not proof of criminal conduct.

In May 2012 the Department of Labor issued a [Training and Employment Guidance Letter](#) to the entire public workforce system. This guidance provides explicit steps that the public workforce system – like American Job Centers – should take to ensure compliance with the EEOC guidance and other nondiscrimination laws, to educate their employer customers, and, importantly, to promote employment opportunities for people with criminal records. As Secretary Hilda L. Solis stated at a 2010 roundtable on workforce development and employment strategies for people with criminal records, "When someone serves time in our penal system, they shouldn't face a lifetime sentence of unemployment when they are released. Those who want to make amends must be given the opportunity to make an honest living."⁴⁵

The FTC is playing an important role too. They recently published an employer education brochure, "[Using Consumer Reports: What Employers Need to Know](#)," which outlines employer obligations when using reports, including criminal histories, for employment decisions such as hiring, promotion, reassignment, and retention. And in August 2012, the FTC announced a \$2.6 million civil penalty in a settlement agreement with a nationwide employment background screening company, for allegedly violating the Fair Credit Reporting Act (FCRA). The FTC alleged that the company failed to ensure criminal history information was accurate and up to date. The background screening company also failed to give consumers copies of their reports and to investigate consumer disputes.

Working together, we will continue to expand education and outreach to the varied stakeholder communities about the use of criminal records in the area of employment.

Conclusion

The issues under discussion impact an increasingly large share of our population. In some distressed communities, arrest and incarceration are commonplace occurrences and a fact of daily life. Getting a job is arguably the most important step towards successful reentry for people who have broken the law and paid their debt to society. Yet many people are barred from job opportunities and thus denied a critical chance to succeed.

The argument here is not about giving preference to this population when it comes to jobs; employers should hire people who will help them carry out their mission and contribute to their bottom line. And employers certainly have a right to consider a person's criminal history in making a hiring decision. The concern is that some employers cast an overly broad net banning this population altogether. What is important is that people have an opportunity to apply and be considered for jobs for which they are qualified and for which their criminal record is not relevant or occurred sufficiently long ago that it is no longer a significant factor in predicting future behavior.

It is critical that we, as a society, provide a path for individuals who have served their time and paid their debts to compete for legitimate work opportunities. It is, in fact, our only choice if we want people with past criminal involvement to be able to support themselves and their families, pay their taxes, and contribute to our communities. The EEOC guidance is an important step in this direction and serves as a valuable tool for ensuring that the use of criminal backgrounds records does not unnecessarily bar qualified job applicants from reentering the workforce.

¹ This written statement is an adaptation of my [July 26, 2011, testimony](#) before the Equal Employment Opportunity Commission and a related article, "[In Search of a Job: Criminal Records as Barriers to Employment](#)," published in the NIJ Journal in June 2012.

² Barnes, Robert, Michael G. Turner, Raymond Paternoster, and Shawn D. Bushway, "Cumulative Prevalence of Arrest from Ages 8 to 23 in a National Sample," *Pediatrics* (January 2012): 21-27, <http://pediatrics.aappublications.org/content/129/1/21.abstract>.

³ According to the NELP report, a 2010 survey by the Society for Human Resources Management found that 92 percent of employers conduct criminal background checks. Michelle N. Rodriguez and Maurice Emsellem, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment* (New York: National Employment Law Project, March 2011). [http://www.nelp.org/page/-/65 Million Need Not Apply.pdf?nocdn=1](http://www.nelp.org/page/-/65%20Million%20Need%20Not%20Apply.pdf?nocdn=1)

⁴ Christy A. Visher, Laura Winterfield, and Mark B. Coggeshall, "Ex-Offender Employment Programs and Recidivism: A Meta-analysis." *Journal of Experimental Criminology* 1.3 (2005): 295-316. See also John H. Laub, and Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1, 17-24 (2001).

⁵ According to the FBI's Uniform Crime Reporting Program (UCR), law enforcement made 12,408,899 arrests in 2011, not including traffic violations. *Crime in the United States, 2011*, (Washington, D.C.: U. S. Department of Justice, Federal Bureau of Investigation). <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/persons-arrested>.

⁶ Thomas H. Cohen, Ph.D. & Tracey Kyckelhahn, *Felony Defendants in Large Urban Counties, 2006* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 2010). <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf>.

⁷ Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108.5 (2003): 957-60.

http://www.princeton.edu/~pager/pager_ajs.pdf; Devah Pager, Bruce Western, & Bart Bonikowski, "Discrimination in a Low Wage Labor Market: A Field Experiment," *American Sociological Review* 74 (October, 2009): 777-779. http://www.princeton.edu/~pager/ASR_pager_etal09.pdf

⁸ U.S. Census Bureau, Population Estimates Program. <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>

⁹ William J. Sabol, Ph.D, Todd D. Minton, & Paige M. Harrison, *Prison and Jail Inmates at Midyear 2006* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 2011). <http://bjs.ojp.usdoj.gov/content/pub/pdf/pjim06.pdf>

¹⁰ Todd D. Minton, *Jail Inmates at Midyear, 2011* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 2012). <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim11st.pdf>.

¹¹ Paul Guerino, Paige Harrison, and William J. Sabol, *Prisoners in 2010* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 2011). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>.

¹² Roy Walmsley, *World Prison Population List*, 8th ed. (London: King's College, 2008). Web. http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppl-8th_41.pdf.

¹³ Lauren Glaze and Erika Parks, *Correctional Populations in the US, 2011* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 2012). <http://www.bjs.gov/content/pub/pdf/cpus11.pdf>

¹⁴ Ibid.

¹⁵ *One in 100: Behind Bars in America 2008*. The Pew Center on the States, 2008. Web. <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf>

¹⁶ In fact, more young African American men without high school diplomas/GED are incarcerated (37%) than employed (26%). The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Washington, DC: The Pew Charitable Trusts, 2010).

¹⁷ Doris J. James, *Profile of Jail Inmates, 2002* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics 2004). <http://bjs.ojp.usdoj.gov/content/pub/pdf/pji02.pdf>

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- ²⁵ Doris James, "Profile of Jail Inmates, 2002."
- ²⁶ *Reentry in Brief: A Product of the Federal Interagency Reentry Council*. Federal Interagency Reentry Council, May 2011, available at http://www.nationalreentryresourcecenter.org/documents/0000/1059/Reentry_Brief.pdf.
- ²⁷ For a more thorough discussion of the challenges facing the incarcerated population and reentry models to address these challenges, see, A. Solomon, J.W. Osborne, S.F. LoBuglio, et al, *Life After Lockup: Improving Reentry From Jail to the Community* (Washington, D.C.: Urban Institute, 2008) available at http://www.urban.org/UploadedPDF/411660_life_after_lockup.pdf.
- ²⁸ Available at "Adult Collateral Consequences Project," American Bar Association. Web. 18 July 2011. <http://isrweb.isr.temple.edu/projects/accproject/>.
- ²⁹ Eric H. Holder, Jr., Attorney General, Letter. 18 Apr. 2011. *National Reentry Resource Center*. Web. http://www.nationalreentryresourcecenter.org/documents/0000/1088/Reentry_Council_AG_Letter.pdf
- ³⁰ Harry J. Holzer, Steven Raphael, & Michael A. Stoll, "Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers," *The Journal of Law and Economics* 49.2 (2006): 451, 453-4.
- ³¹ Rodriguez & Emsellem.
- ³² Alfred Blumstein, and Kiminori Nakamura, "'Redemption' in an Era of Widespread Criminal Background Checks," *NIJ Journal* 263 (2009).
- ³³ Additionally, some would argue that hiring people closer to the time period of their arrest, sentencing, or release from prison is a reasonable investment because they may be under probation or parole supervision and participating in other structured programs. In these situations, individuals are often being drug tested and closely monitored. Some agencies also provide referrals for social services and resources for concrete supports, such as transportation, child care, clothing, and food, so that problems in these areas do not interfere with the individual's ability to continue working. Further, employers express a greater willingness to hire former prisoners when there is a third party intermediary agency, such as those described above, to provide ongoing support and supervision. See Solomon, A., Johnson, K., Travis, J., and E. McBride. (2004). *From Prison to Work: The Employment Dimensions of Prisoner Reentry*. Washington, DC: The Urban Institute; Welfare to Work Partnership. 2000. "Member Survey: Taking the Next Step." Washington, DC: The Welfare to Work Partnership; and "Ex-Cons Make Great Employees" at <http://www.hawaiibusiness.com/Hawaii-Business/July-2011/Ex-Cons-Make-Great-Employees/>.
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- ³⁵ National Employment Law Project, *State Reforms Promoting Employment of People With Criminal Records: 2010-11 Legislative Round-Up*, Legislative Update, December 2011, <http://www.nelp.org/page/-/SCLP/2011/PromotingEmploymentofPeoplewithCriminalRecords.pdf?nocdn=1>.
- ³⁶ Ibid.
- ³⁷ *The Attorney General's Report on Criminal History Background Checks* (Washington, D.C.: U.S. Department of Justice, Office of the Attorney General. June 2006). http://www.justice.gov/olp/ag_bgchecks_report.pdf. The

report states that approximately 50 percent of the records in the FBI's criminal history record repository are missing final disposition information. More recent arrest records, however, have a higher rate of completeness.

³⁸ Also note that even after a criminal record has been expunged, the record can still appear in private data base searches. See *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information, 2005* (Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 2005).

www.search.org/files/pdf/RNTFCSCJRI.pdf.

³⁹ T. Hughes & D.J. Wilson, *Reentry Trends in the United States* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance, 2002) bjs.ojp.usdoj.gov/content/pub/pdf/reentry.pdf

⁴⁰ Patrick Langan and David Levin. 2002. *Recidivism in Prisoners Released in 1994*. Washington, DC: Bureau of Justice Statistics.

⁴¹ *BJS Expenditure and Employment Data Collections* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics) <http://bjs.ojp.usdoj.gov/content/glance/tables/exptyptab.cfm>

⁴² Since FY 2009, the Office of Justice Programs (through the Bureau of Justice Assistance and the Office of Juvenile Justice and Delinquency Prevention) has awarded \$230 million in competitive grants under the Administration-supported Second Chance Act to support over 440 state, local, and tribal prisoner reentry programs. These programs provide a wide range of services aimed at reducing recidivism, including employment assistance, substance abuse treatment, housing, and mentoring for adults and juveniles. Second Chance funding has also established the National Reentry Resource Center, and a What Works in Reentry Clearinghouse. Together, these resources provide a "one stop shop" for state-of-the-art information and assistance.

⁴³ Reentry MythBusters and additional information about the Reentry Council are available at http://www.nationalreentryresourcecenter.org/documents/0000/1424/Reentry_Council_Overview_one-pager_v2.pdf.

⁴⁴ Additionally, in January 2012, the EEOC announced an important [settlement agreement](#) with Pepsi regarding its use of arrest and conviction records in employment. The company's policy excluded applicants arrested for any crime — even if they had never been convicted of any offense — from permanent employment. The EEOC found that the criminal background check policy discriminated against African Americans in violation of Title VII of the Civil Rights Act of 1964. This was the first public conciliation concerning the use of arrest and conviction records and is already raising awareness among employers. During FY 2010 and FY 2011, the Commission received more than 1200 charges alleging job discrimination involving criminal background checks.

⁴⁵ Remarks of Hilda L. Solis, Secretary of Labor, "Workforce Development and Employment Strategies for the Formerly-Incarcerated," June 21, 2011, https://www.dol.gov/sec/media/speeches/20110621_EX.htm.