

The Pipeline Crisis

**Winning Strategies
For
Young Black Men**

Draft Report of the
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Working Group

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THE PIPELINE CRISIS: WINNING STRATEGIES FOR YOUNG BLACK MEN

REPORT ON THE CRISIS FACING YOUNG BLACK MEN SEEKING EMPLOYMENT AFTER PRISON

INTRODUCTION

Young black men (and particularly poorly educated young black men) have little or no access to meaningful work opportunities, and a stint in prison makes this situation even worse. Employment rates among young black men lag dramatically behind those of white and Hispanic men.¹ This gap, which has been steadily widening since the 1980s,² shows no signs of narrowing unless both private and public entities intervene in a substantial and significant way. Indeed, the rates of employment among young black men lag even farther behind those of young black women.³

There are a number of factors accounting for this growing employment gap, including: weak skills from poor schooling; “spatial mismatches” between jobs located in distant suburbs and continued concentration of black residences in segregated inner city neighborhoods; weak networks between workers and jobs; persistent employer discrimination; consequences of growing up in neighborhoods with concentrated poverty and in families with absent fathers; popular culture and its effects on the attitudes, values, and behavior of young black men; and high rates of criminal activity, arrests and

¹ See, e.g., PETER EDELMAN, HARRY J. HOLZER & PAUL OFFNER, RECONNECTING DISADVANTAGED YOUNG MEN 13 (2006); Harry Holzer & Paul Offner, *Trends in the Employment Outcomes of Young Black Men, 1979-2000*, in BLACK MALES LEFT BEHIND 15 (Ronald B. Mincy ed., 2006).

² EDELMAN ET AL., *supra* note 1, at 15.

³ See *id.* at 15, 18; Holzer & Offner, *supra* note 1, at 32.

incarceration, which generate very large populations of young men with criminal records.⁴

Among those with criminal records the situation is even more dismal.⁵ Prison not only reduces the wage level for people with criminal records, but it slows wage growth over his lifetime and limits the types of jobs he might find; it redirects his life from the usual path of steady jobs which enhance skills and increase earnings over time, leaving him to become a “permanent labor market outsider[] finding only temporary or unreliable jobs that offer little economic stability.”⁶

Formerly incarcerated people are less often employed and earn less than comparably unskilled people with no criminal background, reflecting employers’ strong aversion to hiring people with criminal records—especially when they are black men.⁷ The growing presence of formerly incarcerated people in the population also appears to be one of the major reasons for the continuing decline in the employment of young black

⁴ EDELMAN ET AL., *supra* note 1, at 19; Holzer & Offner, *supra* note 1, at 33.

⁵ Well over a third of all young black men are under the supervision of the criminal justice system at any given time. *See* EDELMAN ET AL., *supra* note 1, at 19. As of June 30, 2006, more black men were in custody than white or Hispanic men, black men comprised 41% of the more than 2 million men in custody, black men age 20 to 29 comprised 15.5% of all men in custody, and more than 11% of black men age 25 to 34 were incarcerated. *See* Bureau of Justice Statistics, U.S. Dep’t of Justice, Prison Statistics (Jun. 2007). Worse yet, upon their release, black men have a 67% chance of being rearrested within three years. *See* Amy L. Solomon, Kelly Dedel Johnson, Jeremy Travis, & Elizabeth C. McBride, Urban Institute. *From Prison to Work: Employment Dimensions of Prisoner Re-entry*, (Oct. 2004).

⁶ BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 113 (2006).

⁷ EDELMAN ET AL., *supra* note 1, at 25.

men—the high rates of crime and incarceration among young black men are likely to reduce the employment prospects of those with no criminal backgrounds.⁸

Race is only one of barriers to employment that formerly incarcerated people face. Other barriers include their lack of skills and experience, their lack of employment networks, employers' reluctance to hire them, and needless and counterproductive laws restricting their integration.⁹

SPECIFIC BARRIERS FACED BY THE FORMERLY INCARCERATED

Research has shown a clear connection between crime or incarceration and the employment of young black men.¹⁰ The incentive to engage in criminal activity lessens as formerly incarcerated men are able to find stable and adequate source of income.¹¹ Unfortunately, many find the prospects of obtaining legitimate employment limited by a number of barriers, including: (1) government-imposed occupational obstacles, (2) lack of soft and hard skills, (3) racism, (4) lack of incentives to hire, and (5) lack of incentives to enter the workforce.

⁸ Harry J. Holzer, Stephen Raphael & Michael A. Stoll, *How Do Employer Perceptions of Crime and Incarceration Affect the Employment Prospects of Less-Educated Young Black Men*, in *BLACK MALES LEFT BEHIND* 67-68 (Ronald B. Mincy ed., 2006) (noting that this type of “statistical discrimination” leads employers who cannot distinguish between those who do and do not have criminal records to avoid hiring those they suspect of having criminal records—primarily young black men with poor education and relatively little work experience). The ability of employers to conduct criminal background checks, however, may improve employment prospects for non-offenders.

⁹ *Id.*; see also EDELMAN ET AL., *supra* note 1, at 109.

¹⁰ See Michelle Waul, Amy L. Solomon, Ashley Van Ness, & Jeremy Travis, Urban Institute Justice Policy Center, *Outside the Walls: A National Snapshot of Community-Based Prisoner Re-entry Programs*, at 13 (Jan. 2004); see also Harry J. Holzer, Stephen Raphael & Michael A. Stoll, *How Do Employer Perceptions of Crime and Incarceration Affect the Employment Prospects of Less-Educated Young Black Men*, in *BLACK MALES LEFT BEHIND* 80 (Ronald B. Mincy ed., 2006).

¹¹ Waul et al., *supra* note 10, at 13.

1) Government-Imposed Occupational Barriers

Formerly incarcerated people are often barred from working in particular fields by federal and state laws and policies, and while some exclude this population from public employment altogether, most limit the restriction to certain professions and economic sectors, depending on the type of conviction. For example:

- **Medicine:** Persons convicted of certain crimes are prohibited from providing healthcare services paid for through Medicare.¹²
- **Insurance:** Persons with criminal records who have been involved in fraudulent or dishonest practices are prohibited from working as insurance adjusters.¹³
- **Law Enforcement:** Convicted felons are restricted permanently from pursuing careers as police officers.¹⁴
- **Transportation:** Convicted felons are barred from working as bus or taxi drivers.¹⁵
- **Real Estate:** Felony convictions also disqualify people with criminal records from working as real estates broker or salespersons.¹⁶
- **Banking:** The Federal Deposit Insurance Act prohibits any person who has been convicted of a “crime of dishonesty,” “breach of trust,” or money laundering from working for institutions insured by the Federal Deposit Insurance Corporation (“FDIC”) (i.e., banks) unless he receives a written consent (waiver) from the FDIC.¹⁷ This ban includes certain drug offenses, and applies to non-financial positions, including clerical, maintenance, service, or administrative jobs.

Formerly incarcerated people are also restricted access to drivers’ licenses, student loans, public housing, and public benefits, each of which can play an important

¹² See 42 U.S.C. § 1320a-7 (2000).

¹³ See N.Y. INS. LAW §§ 2108(d)(3), (4) (Consol. 2007).

¹⁴ See N.Y.C. ADMIN. CODE § 14-109 (2007).

¹⁵ See N.Y. VEH. & TRAF. LAW §§ 509-c, 510 (Consol. 2007).

¹⁶ See N.Y. REAL. PROP. LAW § 440-a (Consol. 2007).

¹⁷ See 12 U.S.C. § 1829 (2000).

role in reintegrating them by adding stability at a crucial time in their transition. With limited options for employment and assistance, formerly incarcerated people often find it difficult to reintegrate back into society.

3) *Lack of “Soft” and Hard Skills*

Upon their release, the majority of people are ill-prepared to transition into the competitive workforce primarily due to their lack of non-cognitive or “soft skills” (attitudinal and behavioral skills such as punctuality, accountability, and the ability to get along with supervisors and colleagues),¹⁸ poor educational background, limited work experience, and substance abuse problems.

- **Education:** More than 70% of formerly incarcerated people are high school dropouts and close to 50% are functionally illiterate.¹⁹ A high school diploma is required to hold 95% of all unskilled jobs.²⁰
- **Work Experience:** Approximately one-third of all inmates were unemployed prior to their incarceration²¹ and pre-incarceration rates are especially low for black prisoners.²² Moreover, the average time spent behind bars for prisoners has increased in the past two decades from 22 months to 29 months.²³ This longer incarceration period means greater exposure to prison culture and erosion of positive prior work habits and knowledge.²⁴
- **Substance Abuse:** Four out of every five state prisoners has a history of drug and/or alcohol abuse.²⁵ More than half of state prison inmates admit that they

¹⁸ EDELMAN ET AL., *supra* note 1, at 25; *see also* Independent Committee on Re-entry and Employment, *Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People* 16 (2006).

¹⁹ Jeremy Travis, Amy Solomon, & Michelle Waul, Urban Institute Justice Policy Center, *From Prison to Home: The Dimensions and Consequences of Prisoner Re-entry* 12 (Jun. 2001).

²⁰ Solomon et al., *supra* note 5, at 12.

²¹ *Id.* at 9.

²² *See* WESTERN, *supra* note 6 at 110.

²³ *Id.* at 12.

²⁴ *Id.*

²⁵ Travis et al., *supra* note 19, at 25.

were using drugs or alcohol when they committed the offense that landed them behind bars.²⁶ Failure to address this issue, either during or after incarceration, could impede the transition of the prisoner into the labor force.

While most people have work assignments during their incarceration, the experience gained from these jobs rarely appeals to outside employers—general institution maintenance jobs, which include janitorial and laundry work, are held by the bulk of the prison population. While a small percentage of inmates find work in prison (government) industries, such as making license plates, printing, and agriculture, there are a variety of restrictive policies which discourage private sector employers from hiring prisoners.²⁷ The result is that upon re-entry, people lack the skills employers want, making it even more difficult for them to obtain meaningful employment.

3) Racism

A 2001 study on the effect of race in employers' decision to hire people with criminal records revealed that 5% of black men with a criminal record received a callback after a screening interview as compared to 17% of white men, and 14% of black men without a criminal record received callbacks as compared with 34% of white men.²⁸ The results of the study suggest that the effect of a criminal record is more pronounced for blacks than whites. The data also indicates that a felony conviction reduces the likelihood of a white male receiving a callback by 50%, while for blacks, this figure is 64%. More troubling is the finding that black men with no criminal record are less likely to receive a callback than even white men with a criminal record who have comparable

²⁶ *Id.*

²⁷ JEREMY TRAVIS, *THEY ALL COME BACK* 156-57 (2005).

²⁸ Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 957 (Mar. 2003).

skills and experience, which supports the view that many employers are unwilling to hire young black men, often perceiving them as threatening and untrustworthy.

4) Lack of Incentives to Hire

Employers are reluctant to hire formerly incarcerated people mainly because of the following:

- **Stigma Attached to Incarceration:** Most employers tend to associate convictions with extreme behaviors and view people with convictions as untrustworthy.
- **Instability of the Formerly Incarcerated:** Upon their release, formerly incarcerated people must support themselves and provide for their own needs while resisting the temptation to return to their previous lifestyles. Many also struggle with substance abuse problems and mental health conditions that can hinder their transition.
- **Education and Skill Level:** Even low-paying jobs require hard and soft skills, which many formerly incarcerated people do not possess.
- **Fear of incurring liability for negligent hiring.**²⁹

Federal law, however, discourages employers from discriminating against people with criminal records and the Equal Employment Opportunity Commission encourages employers to make individualized assessments of job applicants, considering the following: (1) the severity of the offense; (2) the amount of time that has passed since the applicant's conviction; and (3) the type of job sought.

While there are also a number of tax credits,³⁰ subsidies, and insurance programs³¹ available to employers who hire individuals with criminal records,

²⁹ Harry J. Holzer, Stephen Raphael & Michael A. Stoll, *How Do Employer Perceptions of Crime and Incarceration Affect the Employment Prospects of Less-Educated Young Black Men*, in *BLACK MALES LEFT BEHIND* 75 (Ronald B. Mincy ed., 2006); see also Stephen Raphael, Harry J. Holzer, & Michael A. Stoll, Urban Institute Justice Policy Center, *Employment Barriers Facing Ex-Offenders*, at 8-9 (May 2003).

conventional wisdom suggests that most are not significant enough to convince employers to take on the risk. Moreover, the application process for these incentives can be quite burdensome.

Most job opportunities for people with criminal records rest in blue collar manufacturing jobs, but these have been diminishing in recent years. And while there has been an expansion in the retail and service industries, many employers are reluctant to put formerly incarcerated people in positions that require a variety of skills and direct contact with customers.³² The result is that there are fewer of the traditional “good jobs” available to this population, and the jobs that exist in the new economy are currently out of reach.

5) *Lack of Incentives to Enter Workforce*

Prison weakens people’s access to networks that could be useful in finding jobs.³³ In addition, people are usually released back to their original neighborhoods, which are typically challenged by poverty and crime, are ill-prepared to support reintegration, and tend to offer little in the way of job opportunities, which are needed to stall the temptation to return to criminal activity.

³⁰ The Work Opportunity Tax Credit (“WOTC”) is one example; it is a federal tax credit to reduce the federal tax liability of private for profit employers to be used as an incentive for employers to hire individuals from eight targeted groups, including ex-felons. *See* <http://www.doleta.gov/business/Incentives/opptax/>.

³¹ The federal bonding program provides fidelity bonding insurance coverage to individuals with criminal histories and other high-risk job applicants who are qualified but fail to get jobs because regular commercial bonding is denied due to their backgrounds. *See* http://www.hirenetwork.org/admin/clearinghouse.php?state_id=NY.

³² Harry J. Holzer, Stephen Raphael & Michael A. Stoll, *How Do Employer Perceptions of Crime and Incarceration Affect the Employment Prospects of Less-Educated Young Black Men*, in *BLACK MALES LEFT BEHIND* 75 (Ronald B. Mincy ed., 2006).

³³ TRAVIS, *supra* note 27, at 165-66.

The biggest challenge for a formerly incarcerated person is managing to construct all aspects of his life simultaneously—from housing to back child support payments—with limited income and public assistance options available to him.

Researchers estimate that a criminal record reduces a man’s earning potential by 30 to 40%.³⁴ Low pay is one of three reasons people with criminal records choose illegal opportunities over traditional work, the others being a lack of benefits and career advancement prospects.³⁵ Confronted with this reality, the majority choose the alternative.

ROLE OF WINNING STRATEGIES

The ability of a person to obtain quality employment following his release from prison is one of the chief determinants of whether or not he will be able to successfully reintegrate himself back into society. For most—usually hampered by myriad problems, including substance abuse, a lack of hard or soft skills, low education levels, and the stigma that comes along with having been incarcerated—this can prove to be a daunting task. These problems are only compounded for an increasing number of black men, many of whom have a difficult time finding meaningful employment without a criminal record.

Winning Strategies is uniquely positioned to assist in the implementation of successful re-entry efforts because it partners individuals from various industries and sectors—bankers, lawyers, academics, public officials, etc.—all of whom are dedicated to finding concrete solutions to the pipeline crisis.

³⁴ See WESTERN, *supra* note 6, at 120.

³⁵ Solomon et al., *supra* note 5, at 13.

There have been a number of solutions proposed by the Independent Committee on Re-entry and Employment, the Coalition for Criminal Justice Reform, and the New York City Re-entry Roundtable, including:

- ***Examine State Policies*** to ensure that they are advancing the Penal Law’s new goal, “the promotion of [convicted persons’] successful and productive re-entry and reintegration into society” and the policy of the New York State, as expressed by the Corrections Law, to encourage the licensure and employment of individuals with criminal records.
- ***Enact Legislation*** that would protect employers from negligent hiring claims if they comply with the law protecting individuals with criminal records from discrimination. Shielding employers from liability if they comply with this law will help formerly incarcerated people find employment and successfully integrate.
- ***Enact Legislation*** that would permit the conditional sealing of certain nonviolent criminal records, and give qualified people a true “second chance” to become employed, responsible members of society.
- ***Amend Article 23-A of New York Corrections Law*** (regarding the licensure and employment of people with criminal records) so that individuals who are already employed, as well as job applicants, are protected from unfair discrimination.
- ***Amend Article 23-A of New York Corrections Law*** to include a private right of action and attorney’s fees for individuals denied employment because of an arrest.
- ***Create a Taskforce*** comprised of state and community-based organizations to examine the utilization of Certificates of Relief from Disabilities and Good Conduct and make recommendations regarding legislative and/or administrative changes to improve and increase their use. Certificates are extremely valuable but underutilized tools that provide a way for qualified people with criminal records to demonstrate rehabilitation and lift bars to employment and licensure. The taskforce could examine the process of obtaining certificates, review the authorizing statutes and make specific recommendations for improving the availability and utilization of certificates.
- ***Create a \$25 Million Wage Subsidy Program*** specifically for qualified people with criminal records, which can be similar to the Office of Temporary Disability Assistance wage subsidy program which offers time-limited subsidies to employers for wages and fringe benefit costs and reimburses community-based organizations that facilitate the employment of eligible recipients for non-wage subsidy costs on the basis of performance/results.

Winning Strategies can play an important role in reconnecting formerly incarcerated people and implementing a few of the proposals above by: (1) expanding opportunities for employment of formerly incarcerated people; (2) advancing policy change at federal, state (in particular New York)³⁶ and local levels, perhaps by pursuing changes in laws that bar people with criminal records from working in many professions and industries where no rational reason exists; and (3) creating financial support for and expanding transitional work and job training programs.

Expansion of Opportunities

Getting employers involved in re-entry initiatives is critical because their need for skilled workers will have a positive effect on political support for policies addressing their concerns. The following are examples of the ways in which Winning Strategies can assist in expanding employment opportunities for formerly incarcerated people:

- Set-aside jobs in mailrooms, cafeterias, and other support or clerical services where some of the leading non-profits dedicated to training and transitional employment may place formerly incarcerated constituents; and
- Work with New York City's leading developers and construction trade to create apprenticeships and placement opportunities.

Advancing Policy Change

Some laws regarding employability of people with criminal records are generally vague and fail to give employers instructive guidance on hiring. Not surprisingly, employers seeking to avoid the risk of liability are simply unwilling to hire this population, and as noted by Holzer and others, at times engage in what has been described as “statistical discrimination.” Other laws place outright bans on hiring people

³⁶ New York has one of the highest prison populations in the U.S., totaling approximately 63,000. See Bureau of Justice Statistics, U.S. Dep't of Justice, Prison Statistics (Nov. 2006).

with criminal records. Yet others attempt to offer incentives for hiring people with criminal records, but may not be effective.

Winning Strategies can:

- Offer to work with New York State to create guidelines on interpreting the applicable laws, for example New York Corrections Law Article 23-A, which addresses the licensure and employment of people with criminal records but is too vague to be of value – the guidelines could, among other things, clarify the extent of employer liability for acts committed by an employee with a criminal record;
- Seek to eliminate constraints imposed by the Federal Deposit Insurance Act's on banking institutions hiring formerly incarcerated people in positions unrelated to their terms of incarceration and which no threat to the safety and soundness of banking operations;
- Seek to expand the federal bonding program, which currently insures employers only up to \$25,000 in losses that may be attributable to theft or related acts committed by an employee who has a criminal record;
- Seek to expand tax credits like the Work Opportunity Tax Credit (“WOTC”) to encourage hiring formerly incarcerated people;
- Seek to loosen restrictions on private sector employers interested in hiring people while still behind bars, which will enable them to obtain some of the “hard” skills needed upon re-entry;
- Seek to establish a task force in New York to review all occupational and licensing bars in state law for rationality, with a focus on expanding wage subsidy programs, and establishing civil service set-asides for formerly incarcerated people;
- Work with the advertising community to develop a public information campaign to combat the stigma associated with a criminal record;
- Under the auspices of the organized bar association, develop an initiative for legal employers to expand employment opportunities for formerly incarcerated people; and
- Propose and support draft legislation to create job opportunities in communities with a high concentration of residents returning home from prison.

Training and Transitional Opportunities

There are a number of organizations dedicated to reintegrating formerly incarcerated people by providing them with job training and experience to help them develop basic fundamental workplace skills. Below are a few examples of such organizations:

- **STRIVE**: a non-profit employment and job training organization, which employs an intensive 3-4 week course emphasizing attitudinal development and readiness skills. Participants engage in role-playing and perform tasks in a simulated work environment to learn how to follow instructions, accept criticism, and function as team members. In addition, the participants receive training in dressing and speaking appropriately.³⁷
- **Center for Employment Opportunities (CEO)**: CEO's goal is to provide immediate, comprehensive, and effective employment services for men and women returning from prison and detention facilities and others under community supervision in New York City. CEO provides rigorous pre-employment training, paid short-term work crew experience, and long-term job development services leading to support through the first year of permanent employment. CEO's services are offered immediately upon release from prison and jail.³⁸
- **Doe Fund**: Ready, Willing and Able Day program offers 35 hours a week of paid transitional work, case management, education, vocational training and mentoring. It also provides job training, preparation and placement, as well as long-term follow-up services to ensure that participants make a lasting transition to personal responsibility and self-sufficiency.

Winning Strategies could garner more financial support for these organizations by establishing a trust in which contributions are made to support the transitional work and job training programs of these organizations. In addition, one of the major hurdles expressed by these organizations is their difficulty in appealing to big businesses with

³⁷ See STRIVE, <http://www.strivenewyork.org>.

³⁸ See CEO, <http://www.ceoworks.org>.

large human resources department. Winning Strategies can use its influence to encourage larger, more well-established employers to respond to the job development efforts of these workforce intermediaries.

CONCLUSION

For a formerly incarcerated person, finding a job is a way of securing income, establishing a positive role in the community and keeping a distance from negative influences and opportunities for illegal behavior.³⁹ The severe barriers to employment that formerly incarcerated people face, however, presents a significant challenge to their reintegration. Implementation of a few of the efforts above will increase their employment opportunities, and help in overcoming one of the many challenges to reintegration.

³⁹ TRAVIS, *supra* note 27, at 162.