

STUDY OF
EMPLOYMENT
COLLATERAL
CONSEQUENCES
IN NORTH CAROLINA

JUNE
2018





STUDY OF
EMPLOYMENT
COLLATERAL
CONSEQUENCES
IN NORTH CAROLINA

JUNE
2018



**NC SENTENCING AND POLICY ADVISORY COMMISSION
MEMBERSHIP**

Hon. Charlie Brown, Chairman
Chief District Court Judge

Frances Battle
NC Victim Assistance Network

Hon. Darren Jackson
State Representative

Art Beeler, Jr.
NC Lieutenant Governor's Appointee

Susan Katzenelson
Private Citizen, Governor's Appointee

Hon. Danny Britt, Jr.
State Senator

Hon. Maureen Krueger
NC Conference of District Attorneys

Sheriff James Clemmons, Jr.
NC Sheriffs' Association

Hon. Floyd McKissick, Jr.
State Senator

Lisa Costner
NC Bar Association

Dr. Harvey McMurray
Academic Member

Hon. Warren Daniel
State Senator

Hon. Allen McNeill
State Representative

Louise Davis
NC Community Sentencing Association

Luther Moore
NC Retail Merchants' Association

Danielle Marquis Elder
NC Attorney General's Office

Hon. Fred Morrison, Jr.
Justice Fellowship

Hon. Robert Ervin
NC Conference of Superior Court Judges

Hon. June Ray
NC Association of Clerks of Superior Court

Hon. John Faircloth
State Representative

Hon. Thomas Thompson
NC Association of County Commissioners

Christopher Fialko
NC Advocates for Justice

Jim Toms
Commission Chairman's Appointee

Willis Fowler
NC Post-Release Supervision & Parole Commission

Hon. Reuben Young
NC Department of Public Safety

Hon. Keith Gregory
NC District Court Judges' Association

Hon. Valerie Zachary
NC Court of Appeals

Chief Tammy Hooper
NC Association of Chiefs of Police

**NC SENTENCING AND POLICY ADVISORY COMMISSION
STAFF**

Michelle Hall

Executive Director

John Madler

Associate Director for Policy, Staff Attorney

Ginny Hevener

Associate Director for Research

Tamara Flinchum

Senior Research & Policy Associate

Rebecca Dial

Research & Policy Associate

John King

Research & Policy Associate

Jennifer Wesoloski

Research & Policy Associate

Becky Whitaker

Research & Policy Associate

Shelley Kirk

Administrative Secretary

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND	2
What are collateral consequences?	2
Historical Context	2
Balance Between Public Safety and Reintegration	4
North Carolina Employment Collateral Consequences	5
<i>Figure 1: Type of Consequence</i>	5
<i>Figure 2: Location of Consequence</i>	5
Data	6
Employment and Recidivism: Findings from Sentencing Commission Recidivism Reports	7
<i>Figure 3: Employment Rates</i>	7
<i>Figure 4: Estimated Effect of Being Employed Upon Probation Entry on the Probability of Rearrest</i>	8
North Carolina Department of Commerce	8
<i>Figure 5: Individuals Self-Identifying as Having a Criminal Record, NCWorks</i>	9
Survey Results: Probation and Parole Officer Impressions of Offender Employment	9
<i>Figure 6: Population Density of PPO Districts</i>	10
<i>Figure 7: Length of Service as PPO in NC</i>	10
<i>Table 1: PPO Caseloads Seeking, Obtaining and Maintaining Employment by Caseload Type</i>	10
<i>Figure 8: Type of Employment Obtained</i>	11
<i>Figure 9: Financial Supplement to Income</i>	12
<i>Figure 10: Barriers Selected as Most Significant by Population Density</i>	13
Literature Review	13
Scope of Collateral Consequences	14
Background Checks	15
Gaining Employment	16
Effects of Conviction on Employment	18
III. KEY AREAS OF FOCUS	20
Offender Lens	20
Key Findings	20
Offenders with certain offenses may fare better	20
Type of punishment may affect probability of being hired	21
Skills and training may lead to higher likelihood of employment	21
<i>Figure 11: Trends in Prison Courses and Student Registrations</i>	22
<i>Figure 12: Counts of Prison Courses and Student Registrations</i>	23
Logistical barriers affect ability to obtain employment	23
Mixed results for employment if no disclosure on application	23
Summary	24
Employer Perspectives	25
Key Findings	25
Federal guidelines' effect on employment decisions related to offenders is unclear	25
Occupational Safety and Health Act	25

Title VII of the Civil Rights Act	26
Employers are concerned about workplace safety and company reputation	27
Truthful disclosure may lead to a greater likelihood of being hired	28
Certain industries are more willing to hire offenders	28
Risk-mitigating programs and incentives for hiring exist but are under-utilized.....	29
Federal Bonding Program.....	29
Federal Work Opportunity Tax Credit	30
North Carolina Work Opportunity Tax Credit	30
Employer Awareness and Utilization of Risk-Mitigating Programs.....	30
Summary	31
Legal Landscape.....	32
Key Findings.....	32
Federal law addresses some employment collateral consequences	32
North Carolina has taken steps to address collateral consequences.....	34
Controlling collateral consequences: NC G.S. 93B-8.1. Use of criminal history records.....	34
Providing Relief from Collateral Consequences	35
Certificates of Relief	35
Expunction.....	36
Pardon	37
Not all employment collateral consequences are reviewed once in place.....	37
Consequences Subject to Formal Review Process	38
Consequences Not Subject to Formal Review Process	40
Summary	40
IV. CONCLUSIONS.....	41
APPENDICES	43

I. INTRODUCTION

On September 4, 2016, Commissioner Art Beeler submitted a letter to Judge W. Erwin Spainhour, then the Chairman of the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission or Commission), requesting the Commission study the effects of the indirect civil penalties an individual in North Carolina faces as the result of a criminal conviction, known as collateral consequences (*see* Appendix A for the letter request).

Mr. Beeler cited the work of the Collateral Consequences Resource Center and the University of North Carolina School of Government (SOG) in documenting the consequences themselves and the hundreds of broad categories of collateral consequences as indication of the breadth of the issue. His letter raised concern that many defendants are not aware of the collateral consequences they face at conviction. This and the lack of available information on how collateral consequences affect recidivism, particularly for those offenders released from state prison, prompted Mr. Beeler to request the Commission to study the topic. During its September 9, 2016 meeting, the Commission referred the topic to the Research and Policy Study Group (the Study Group) because of the group's focus on exploring criminal justice research findings with the ultimate goal of reducing recidivism.

The Study Group discussed the different categories of collateral consequences (e.g., employment, housing, public benefits, etc.) and prioritized employment for the focus of its study. The Study Group agreed, in keeping with its mandate of exploring policy options that could reduce recidivism, employment collateral consequences were potentially the most closely related with that mandate. In recognition of the broader scope of challenges facing offenders seeking employment, the Study Group went beyond codified collateral consequences to consider other factors, such as an offender's lack of skills and employer concerns. Finally, the Study Group grouped all its findings on barriers affecting offender employment into three different perspectives: offender, employer, legal. Based on the key findings in each area, the Study Group developed proposals to be presented to the full Commission; the Commission reviewed and approved several of the Study Group's proposals (*see* Appendix B).

The information contained in this report comes from agency reports and data, a conducted survey, literature pertaining to collateral consequences, organizations and individuals who work in the field, and federal and North Carolina statutes. This publication would not have been possible without the overwhelming consideration and attention given to this project by the various stakeholders consulted, for which the Commission and its staff offer their thanks. In particular, the Commission would like to thank the Department of Public Safety's Division of Adult Correction and Juvenile Justice (DACJJ) for its collaboration and partnership with Commission staff in developing and disseminating the Probation and Parole Officer (PPO) Impressions of Offender Employment survey (PPO survey), described in Section II.

Section II of this report provides background on collateral consequences, available data, and supporting research from an extensive literature review. Section III presents key findings from the overall study, organized by three focus areas - offender, employer, and legal. Section IV summarizes the key findings within a broad societal context.

II. BACKGROUND

What are Collateral Consequences?

Collateral consequences are legal and regulatory sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities.¹ Such sanctions and restrictions are beyond the conditions imposed by the court at the time of sentencing. Some examples of collateral consequences include:

- *Housing consequences*: Federal law requires the denial of admission to Section 8 public housing for household members with criminal histories related to certain drug crimes and sex offenses.²
- *Political and civic participation consequences*: The North Carolina Constitution bars convicted felons from voting³ or from holding elective or public office.⁴
- *Education consequences*: In North Carolina, a local public school board may deny admission to a student who has been convicted of a felony.⁵
- *Government benefits consequences*: Federal law prohibits individuals who have been convicted of a drug-related felony from receiving assistance pursuant to Temporary Assistance for Needy Families (TANF) or food stamp programs.⁶

For greater context as to how these civil penalties originated, the following sections describe the history of collateral consequences in the United States. Before narrowing to employment collateral consequences, this section first provides a general history of all collateral consequences.

Historical Context

In ancient Greek and Roman societies, persons convicted of certain crimes were declared to be in a status of “infamy,” which entailed the loss of rights of citizenship such as voting, participation in assemblies, and holding public office.⁷ This practice of “infamy” evolved into the concept of “civil death” in Medieval Europe.⁸ Civil death effectively terminated all civil rights of a person convicted of a crime. Among other things, a person subject to civil death could not vote, enter into legally binding contracts, or inherit or pass on property. Such a person had no rights under the law and was not protected by the law.⁹

¹ National Inventory of Collateral Consequences of Conviction, Council of State Governments, <https://niccc.csgjusticecenter.org/description/>

² 24 C.F.R. §§ 982.553(a)(1), (a)(2)(i) (2017).

³ N.C. Const. art. VI, § 2; N.C. Gen. Stat. (hereinafter G.S.) 163A-841(a)(2) (2017). Note: Voting rights are automatically restored upon completion of an offender’s sentence, including active time, probation, and post-release supervision. G.S. 13-1 (2017).

⁴ NC Const. art. VI, § 8.

⁵ G.S. 115C-366(a5) (2017).

⁶ 21 U.S.C. § 862a (2017).

⁷ Gabriel Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, UC Davis Legal Studies Research Paper Series, Research Paper No. 308, August 2012, fn 25.

⁸ Chin.

⁹ Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 Stan. L. & Pol’y Rev. 153 (1999).

The United States carried over the concept of civil death from English common law.¹⁰ The framers of the United States Constitution authorized Congress to enact attainder, the English version of civil death,¹¹ as a punishment but limited its effects to the lifetime of the person attained.¹² The First Congress later abolished estate forfeiture, one of the elements of attainder, as a punishment for felony convictions.¹³

By the 20th Century, civil death as a punishment for crime was diminishing.¹⁴ Instead, Congress and state legislatures were enacting a growing number of laws which limited specific civil rights and privileges for persons convicted of a crime. This raised the question of whether such restrictions were in fact additional criminal punishments. If they were, the defendant was constitutionally entitled to due process protections like notice of the consequence. If not, they were civil penalties and not subject to due process protections.

Courts addressed this issue in several cases. In 1963, the Supreme Court established a seven-factor test to determine whether a sanction is a criminal punishment or a civil penalty. If the sanction is determined to be a civil penalty, it is considered collateral to the punishment imposed at judgment.¹⁵ Lower courts have distinguished that a sanction is considered part of the actual punishment for a crime if it “definitely, immediately, and automatically follow(s)” the criminal conviction.¹⁶ These opinions attempted to clarify the difference between a sanction that is a criminal penalty and one that is collateral to the conviction. A result of a sanction being a collateral consequence, however, is that defendants may not be aware of it attaching to their criminal conviction.

In the early 1980s, the American Bar Association (ABA) suggested that society was moving in a direction that would result in the decline and eventual obsolescence of collateral consequences.¹⁷ The ABA predicted that the number of collateral consequences would diminish over time and that their imposition would become “more rationally based and restricted in coverage.”¹⁸ However, the federal Sentencing Reform Act of 1984 ushered in a new “tough on crime” policy era that valued retribution and the incapacitation of offenders over deterrence and rehabilitation.¹⁹ Rather than decrease as predicted, collateral consequences increased both in number and scope in the years following the Sentencing

¹⁰ Chin.

¹¹ “Attainder” extinguished a person’s civil rights when that person was sentenced to death or declared an outlaw for committing a felony or treason. *See Attainder, Black’s Law Dictionary* (10th ed. 2014).

¹² U.S. Const. art. III, § 3.

¹³ Chin.

¹⁴ *Id.*

¹⁵ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 9 L.Ed.2d 644 (1963); *but see Padilla v. Kentucky*, 559 U.S. 356, 176 L.Ed.2d 284 (2010) (holding that deportation is an “integral part” of the penalty that may be imposed on noncitizen defendants and, as such, cannot be “categorically removed from the ambit of the Sixth Amendment right to counsel”).

¹⁶ *Davis v. Russell*, 2011 WL 1770932, *5 (E.D. Mo. May 10, 2011) (finding that while both the court and the defendant’s counsel have a duty to discuss with the defendant the direct consequences of his plea, neither the court nor defense counsel have any such duty with regard to collateral consequences).

¹⁷ Margaret C. Love, “Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act,” *Howard Law Journal*, vol. 54, no. 3, 2011, pp. 753-793, citing ABA Standards for Criminal Justice: Legal Status of Prisoners Standard 23-8.1-8.8 (Supp. 1986).

¹⁸ *Id.*

¹⁹ *Id.*

Reform Act, including consequences being extended to misdemeanants that were previously only applied to felons.

As collateral consequences increase, they vary in form. They are triggered based on the severity of an offense (i.e. felony or misdemeanor), a specific element or category of an offense (e.g., violent crime, sex offense, crime involving moral turpitude), or a combination of the two.²⁰ Collateral consequences based on severity alone are often criticized as being overly broad, while collateral consequences stemming from a crime involving moral turpitude are particularly tricky as there is no universally accepted definition of the phrase.²¹ Today, offenders face a complex array of collateral consequences, most of which they are not aware of when they are sentenced for a crime.

Balance Between Public Safety and Reintegration

Ideally, corrections policy strikes an appropriate balance between advancing public safety while supporting an offender's successful reintegration into society.²² A collateral consequence is "entirely permissible if the underlying reason is to protect public safety or to promote some other aspect of the public interest."²³ Thus, some collateral consequences have a clear connection to the goal of increasing public safety.²⁴ There often is a rational relationship, or nexus, between the nature of an offense and a collateral consequence that results from conviction of such an offense.²⁵ For example, a law that disqualifies sex offenders from employment as school bus drivers is designed to protect children. Likewise, a law that disqualifies domestic violence offenders from owning firearms is likely a logical restriction on those who have shown violent tendencies. However, other collateral consequences are considerably less germane to the objective of public safety and are, therefore, the subject of criticism.²⁶

Collateral consequences often have the effect of making it more difficult for an offender to successfully reintegrate into society.²⁷ Certain collateral consequences can impair an offender's ability to obtain employment, which can in turn increase the offender's chances of reoffending.²⁸ A criminal record is a well-documented barrier to obtaining employment.²⁹ Unemployment and underemployment may be correlated with increased recidivism rates.³⁰ The ultimate goals of increasing public safety and

²⁰ University of North Carolina School of Government, "What Does C-CAT Do?," <https://ccat.sog.unc.edu/about/what-does-ccat-do>.

²¹ University of North Carolina School of Government, "Explanation of common terms in C-CAT," <https://ccat.sog.unc.edu/about/terms>.

²² Nora V. Demleitner, "Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences."

²³ Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction."

²⁴ Id.

²⁵ Nora V. Demleitner, "Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences."

²⁶ Id.

²⁷ Le'Ann Duran, et al., "Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness," The Council of State Governments, Sept. 2013, <https://www.bja.gov/publications/csg-reentry-and-employment.pdf>.

²⁸ Duran et al., "Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness."

²⁹ Id.

³⁰ Id.

promoting reintegration can sometimes compete with one another when it comes to collateral consequences.

North Carolina Employment Collateral Consequences

The National Inventory of Collateral Consequences of Conviction (NICCC) is a grant-funded project of the Council of State Governments Justice Center, which catalogs and analyzes the collateral consequences for each jurisdiction in the United States.³¹ According to the NICCC, North Carolina has 695 collateral consequences related to “employment” and “occupational and professional license and certification.”³² That number does not include consequences that may stem from background check requirements to which no specific consequences are attached (see below, Background Checks).

Of those 695, mandatory imposition is required for 279, and 270 are implemented on a discretionary basis (see Figure 1).³³ Mandatory, or automatic, collateral consequences, are those that are imposed by operation of law as a result of a criminal conviction. Discretionary collateral consequences, on the other hand, may be implemented against a particular individual on the basis of a criminal conviction. In such a case, the decision maker is authorized, but not required, to impose the consequence.³⁴

Figure 1: Type of Consequence

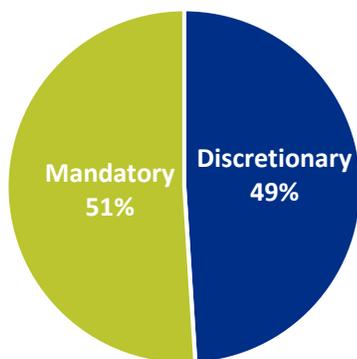
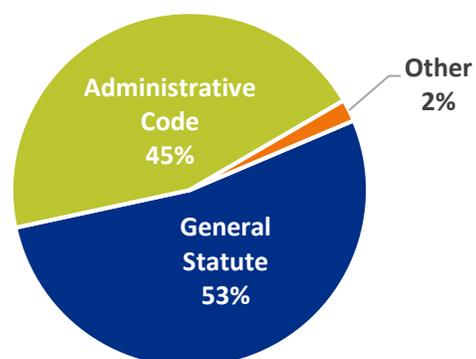


Figure 2: Location of Consequence



Source: Staff analysis of North Carolina data contained in the National Inventory of Collateral Consequences of Conviction, Council of State Governments, <https://niccc.csjusticecenter.org/search/?jurisdiction=36>.

Standards for imposition of discretionary consequences do not always exist³⁵ and can be varied and inconsistent when they do. With regard to discretionary consequences that apply to professional and occupational licensing and certification, a criminal conviction may be considered along with a number of factors, including the level and seriousness of the offense, the age of the person at the time of the

³¹ Council of State Governments, National Inventory of Collateral Consequences of Conviction, <https://niccc.csjusticecenter.org/description/>

³² Council of State Governments, National Inventory of Collateral Consequences of Conviction, <https://niccc.csjusticecenter.org/search/?jurisdiction=36>

³³ Id.

³⁴ University of North Carolina School of Government, “What Does C-CAT Do?,” <https://ccat.sog.unc.edu/about/what-does-ccat-do>.

³⁵ Seeking Employment with a Criminal Conviction: A National Perspective, Presented by Joshua Gaines, Deputy Director, Collateral Consequences Resource Center, Presented to the Research and Policy Study Group, June 23, 2017.

commission of the offense, how much time has elapsed since the date of offense, and the nexus between the criminal conduct, and the prospective duties of the applicant.³⁶

Authority for the imposition of collateral consequences is drawn from a number of sources. In North Carolina, the primary sources of collateral consequences are the North Carolina Constitution, the North Carolina General Statutes, and the North Carolina Administrative Code (see Figure 2). The General Statutes are enacted by the General Assembly and the Administrative Code is comprised of regulatory rules promulgated by various state agencies. Collateral consequences that apply to employment in North Carolina are scattered throughout these authorities. Without coordination between authoritative sources, identification of all applicable consequences to a particular individual or scenario is decidedly onerous. Projects such as the NICCC, as well as the Collateral Consequences Assessment Tool (C-CAT) have compiled and continue to update information on collateral consequences in an attempt to maintain exhaustive online resources that are user-friendly and easily-navigable for the public.³⁷ C-CAT is a database created by the SOG that catalogs collateral consequences in North Carolina and is searchable by consequence and crime type. This database and the NICCC assist those who want to understand the potential collateral consequences a person may be subjected to following a criminal conviction.

Compilation of the consequences in these databases allows comparison of North Carolina's codified consequences to other states. North Carolina ranks in the top third of U.S. states with the most collateral consequences; it ranks thirteenth out of 50 states with regard to total collateral consequences and twelfth with regard to collateral consequences specifically related to employment.³⁸

Data

Per the study request's directive regarding collateral consequences and the potential impact on recidivism, Commission staff sought empirical data examining the relationship between collateral consequences and offenders' potential for reoffending. However, data on the effect of collateral consequences on recidivism is limited. It is difficult to measure the effect of a negative outcome (i.e., the effect on public safety that occurs when an individual *cannot* gain employment), and even more difficult to measure the likelihood of a criminal justice outcome (e.g., recidivism) that could be attributed to a specific legal restriction preventing an individual from becoming employed. Defining the affected population is also a challenge, as the number of offenders restricted from occupational licensure or from specific occupations due solely to their convictions is unknown.

Although there are limited data on the relationship between collateral consequences and recidivism, some studies examine the relationship between employment and recidivism. As this report includes information related to barriers in gaining employment for offenders beyond codified collateral consequences, empirical studies examining the relationship between employment and recidivism provide important context for the findings. However, it should be noted that much of the research examining employment and recidivism is limited in its ability to control for other factors (e.g., criminal history, experiences with the correctional system, program participation) that are also strongly correlated with recidivism.

³⁶ G.S. 93B-8.1(b) (2017).

³⁷ University of North Carolina School of Government, "About C-CAT," <https://ccat.sog.unc.edu/about>.

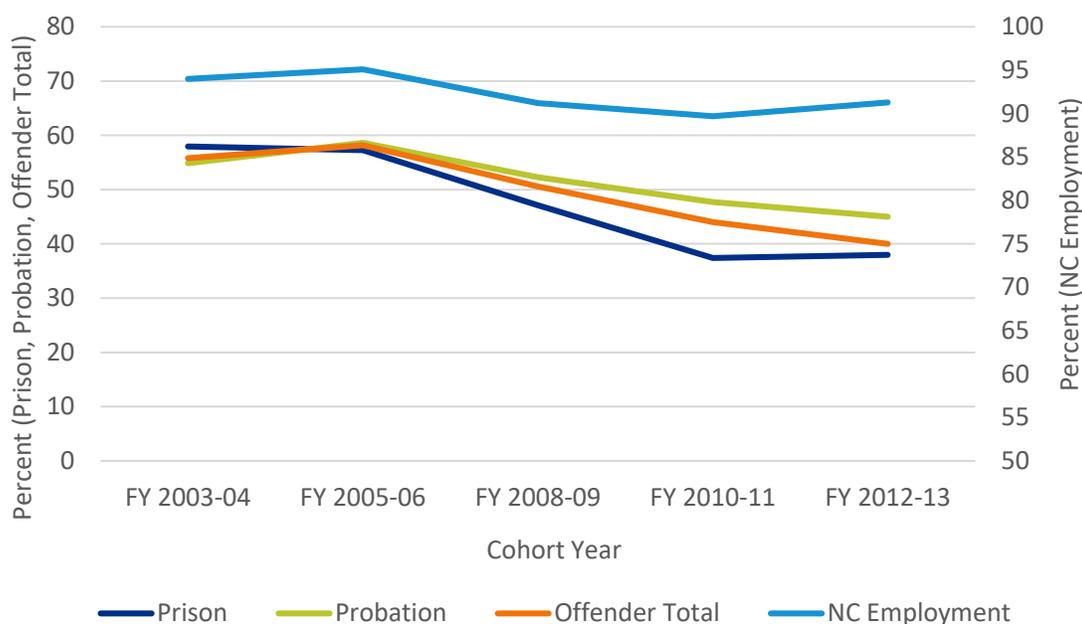
³⁸ Staff analysis of North Carolina data contained in the National Inventory of Collateral Consequences of Conviction, Council of State Governments, <https://niccc.csjusticecenter.org/search/?jurisdiction=36>.

Data presented below include findings from existing Sentencing Commission studies on recidivism rates for adult probationers and prisoners. The NC Department of Commerce also collects information on former offenders and employment, detailed in this section. Last, survey results from a collaborative project between Commission staff and the DACJJ on PPO impressions of offenders and employment are reviewed.

Employment and Recidivism: Findings from Sentencing Commission Recidivism Reports

One of the Sentencing Commission’s directives is to evaluate the effectiveness of North Carolina correctional programs through its biennial adult recidivism reports.³⁹ Its studies examine recidivism for Structured Sentencing Act offenders (probationers and prisoners) and include personal characteristics of offenders, such as age, marital status, and employment. Figure 3 shows the percentage of probationers and prisoners with employment compared to the overall employment rate in North Carolina.⁴⁰

Figure 3: Employment Rates



Source: North Carolina Sentencing and Policy Advisory Commission, *Correctional Program Evaluation: Offenders Placed on Probation or Released from Prison*, April 2008–April 2016; Federal Bureau of Labor, North Carolina statistics, FY 2004 – FY 2014.

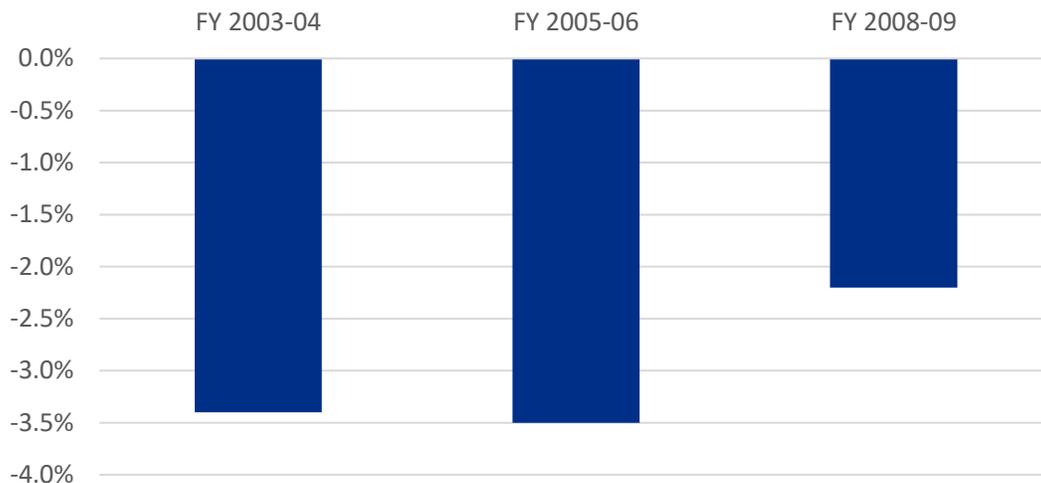
Examination of employment for probationers and prisoners reveals a mostly downward trend from FY 2004 to FY 2013. Since FY 2006, probationers have had higher rates of employment than prisoners. Although the percentages are significantly lower, the trends in the employment rate of offenders tend to track the overall employment rate trend for North Carolina. This comparison is helpful in informing the differences in offenders’ employment levels compared to the general population in North Carolina.

³⁹ G.S. 164-47 (2017).

⁴⁰ The definition of employment that is captured in the “Personal Characteristics” section of the Sentencing Commission reports represents an offender’s employment status at the time of arrest or prison intake for prisoners or at the time of probation entry for probationers.

Other available data from Sentencing Commission recidivism reports includes findings from multivariate analysis. Multivariate analysis examines how multiple factors, taken together, affect the probability of recidivism. While a relationship does not necessarily mean one factor causes a recidivist event, it does show whether or not there is a statistical association. When multivariate analysis was conducted in FY 2004, FY 2006, and FY 2009, there was a negative estimated effect for employed probationers on the probability of rearrest, meaning the probability of rearrest was lower for those who were employed upon entering probation (see Figure 4) compared to those without employment. While not definitive, these consistent findings over multiple analyses could indicate that employment lowers an offender’s likelihood of reoffending.

Figure 4: Estimated Effect of Being Employed Upon Probation Entry on the Probability of Rearrest



Source: North Carolina Sentencing and Policy Advisory Commission, *Correctional Program Evaluation: Offenders Placed on Probation or Released from Prison*, April 2008–April 2012.

North Carolina Department of Commerce

The North Carolina Department of Commerce’s Division of Workforce Solutions (DWS) assists people in finding jobs and businesses in finding the workforce they need.⁴¹ DWS’s Former Offender Initiative (FOI) helps individuals with a criminal record by providing additional services to those former offenders, such as referrals to community organizations that assist former offenders and with help writing a letter of explanation about their criminal history.⁴² According to DWS, Regional FOI staff are responsible for providing technical assistance and training to NCWorks Career Center Staff, providing one-on-one services, building a network of community resources, and encouraging employers to hire former offenders. FOI staff also discuss incentives for employers that hire former offenders, including the Federal Bonding Program and the Work Opportunity Tax Credit.

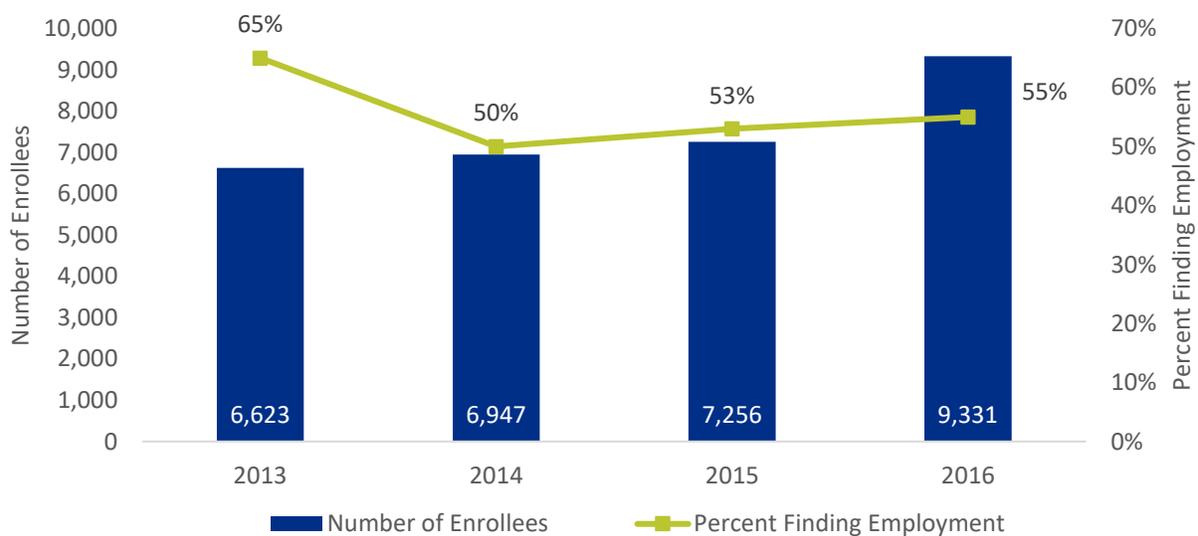
NCWorks Online is an online portal for job seekers to search for employment and apply to jobs. As a recipient of federal funding for workforce training services, certain quarterly data and metrics are tracked and reported by the DWS. Participants must self-identify to Career Center staff or select in

⁴¹ “About Us,” NC Department of Commerce. <https://www.nccommerce.com/workforce/about-us>

⁴² “Job Seekers: Former Offenders,” NC Department of Commerce. <https://www.nccommerce.com/workforce/job-seekers/former-offenders>

NCWorks Online as having a criminal record in order to be included in the accounting of former offenders.⁴³ DWS determines the percentage obtaining employment by cross-referencing participant information with occupational employment and wage information in North Carolina. The employment and wage information is also collected by the North Carolina Department of Commerce, and is based on employers who pay unemployment insurance tax. There are some businesses that are exempt from this tax, meaning the figure presented below may underestimate the true number of employed individuals. Figure 5 shows the reported number of enrollees who self-identified as having a criminal record and the percent of trackable job seekers finding employment. In 2016, DWS provided services to 9,331 job-seeking individuals who self-identified as having a criminal record; 6,368 individuals were seeking employment and 55% (or 3,478) entered employment.

Figure 5: Individuals Self-Identifying as Having a Criminal Record, NCWorks



Source: North Carolina Department of Commerce, Division of Workforce Solutions, Former Offender Initiative, FY 2014 – FY 2016

Survey Results: Probation and Parole Officer Impressions of Offender Employment

To bolster the limited available empirical data, Commission staff collaborated with the DACJ to survey PPOs about their impressions of challenges offenders face related to employment. PPOs monitor offender compliance with conditions of supervision for both probationers and post-release supervisees (individuals recently released from state prison). One of the standard conditions of supervision⁴⁴ in North Carolina requires supervisees to maintain employment or pursue a course of study, making PPOs uniquely suited to weigh in on issues facing their supervisees in complying with that condition of supervision. Beyond compliance, PPOs work directly with offenders, therefore, their firsthand experience makes their perspectives especially valuable. Key findings are detailed below. It should be noted that the findings are based on PPO officer *impressions* – officers were not asked to pull any data

⁴³ Because offenders must self-identify as having a criminal record, the estimated number of former offenders represented in the figures from NCWorks may be understating the true number falling into that category.

⁴⁴ G.S. 15A-1343(b)7, 15A-1368.4(d)(1) (2017).

from their information management system to respond to the questions. (For a full list of the survey questions and a presentation of all findings from the survey, see Appendices C and D.)

The survey was structured to determine if there are any differences in challenges facing probationers compared to post-release supervisees (also referred to as PRS offenders). After Commission staff developed the survey questions, they were reviewed by DACJJ; feedback from DACJJ was incorporated into the final version. The survey was sent to 1,808 PPOs; 653 officers responded (a 36% response rate) from 94 counties, with 86% completing all of the questions. Figure 6 shows the population density of PPO districts. Figure 7 shows the length of service of officers who responded. Some differences in responses emerged based on whether an area was rural or urban and based on officer length of service.

Figure 6: Population Density of PPO Districts

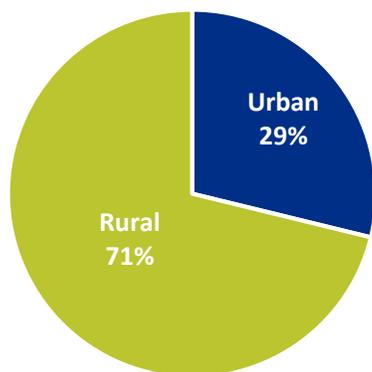
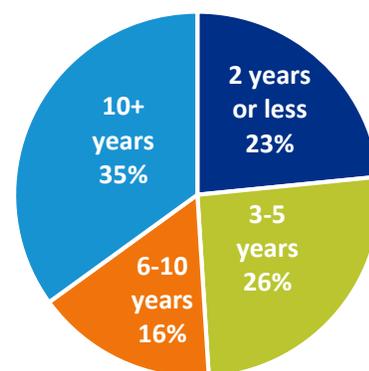


Figure 7: Length of Service as PPO in NC



Source: NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

PPOs were first asked for the percent of offenders actively seeking employment, and successfully finding and maintaining employment. PPOs reported that 61% of their caseloads are seeking employment (i.e., are not pursuing a course of study or of vocational training). On average, PPOs thought PRS offenders sought employment at a slightly higher rate than probationers (61% and 56% respectively). One possible reason for this difference could be that probationers do not lose their jobs (PPOs thought 27% of probationers lose their job due to their conviction), while prisoners do lose their jobs. Another possible explanation could be that PRS offenders have high levels of motivation coming out of prison to find work. In terms of actually obtaining and maintaining employment, PPOs responded that both probationers and PRS offenders achieved these measures at similar rates. However, PPOs reported that *less than half* of their caseloads obtain employment. Table 1 shows the breakdown of PPO caseloads seeking, obtaining and maintaining employment.

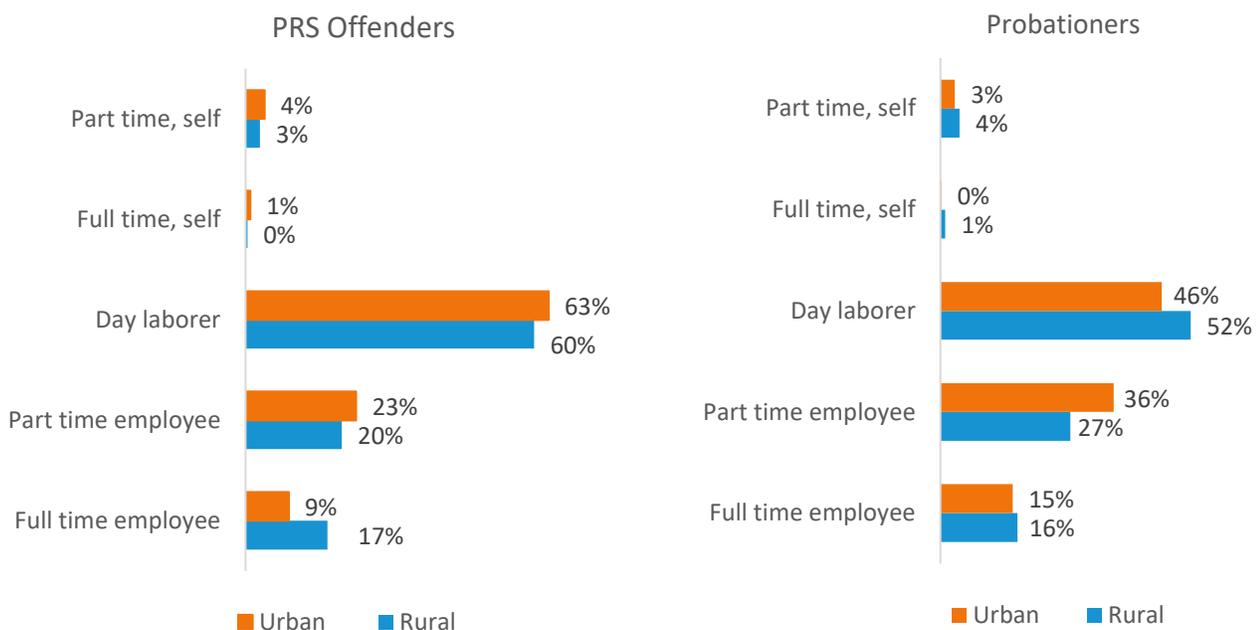
Table 1: PPO Caseloads Seeking, Obtaining, and Maintaining Employment by Caseload Type

	Average of PPO Caseload		
	Seeking Employment	Obtaining Employment	Maintaining Employment
PRS Offenders	61%	43%	39%
Probationers	56%	45%	37%

Source: NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

Next, the survey focused on questions related to the type of employment (e.g., full time, part time, etc.) offenders obtain. Overall, few offenders obtain full-time employment. The most common response for type of employment obtained was informal work (defined as temporary work by the day or by the job), indicating limited stability in the offender’s employment. Figure 8 shows the type of employment obtained by supervisee type, and by population density. PRS offenders in rural and urban areas have similar rates of employment types, except for “full time employee,” with a greater percentage reported of full-time employees in rural districts. This could be due to more personal connections with potential employers for offenders from rural districts. Probationers in urban districts were more likely to be part-time employees than probationers in rural districts.

Figure 8: Type of Employment Obtained



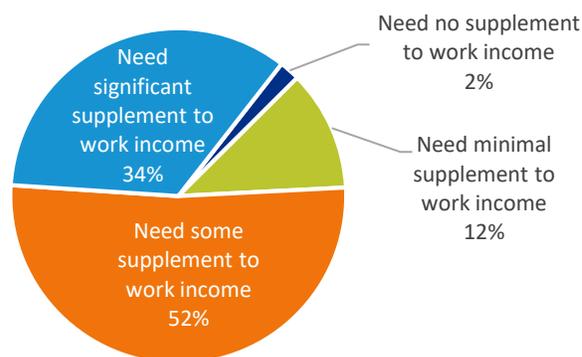
Source: NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

PPO officers were then asked what industries employ offenders most frequently. Construction was most commonly selected, followed by food service, landscaping, and maintenance. The most common industries employing offenders were the same for both probationers and PRS offenders.

As noted throughout this report, the presence of a criminal conviction can lead to a variety of restrictions including limits to, or outright exclusion from, obtaining an occupational license for specific professions. The overwhelming majority of PPOs responded that very few offenders have occupational licenses or attempt to get one while on supervision. On average, PPOs said 9% of PRS offenders came onto PRS supervision with an occupational license and 10% of probationers entered supervision with an occupational license. While this suggests occupational licensing is not a major barrier for offenders seeking employment, is still unknown how many offenders may not seek such a license because they know they would be disqualified due to their conviction or how many offenders are prevented from being hired due to not having a specific license.

Next, the survey asked about the level of assistance employed probationers and PRS offenders need from other sources of income (e.g., federal assistance programs, family, and friends). This question attempts to understand if offenders who are working can subsist on the earnings from their employment. Almost no PPOs responded that employed offenders could support themselves fully (see Figure 9). Over three-quarters of supervisees were said to need some or a significant supplement to their work income (87% of PRS offenders and 86% of probationers). There were slight differences in the need for supplemental income by population density. More urban district PPOs responded that PRS offenders need significant supplement to their work income compared to rural district PPOs who responded (41% urban, 35% rural). Relatedly, when asked whether offenders engage in informal work (i.e., not on the official payroll), PPOs responded that on average, over half of PRS offenders and probationers do informal work. This could be to supplement work earnings, due to an inability to meet background check requirements, to avoid wage garnishment, or, although less likely, due to lacking a required occupational license.

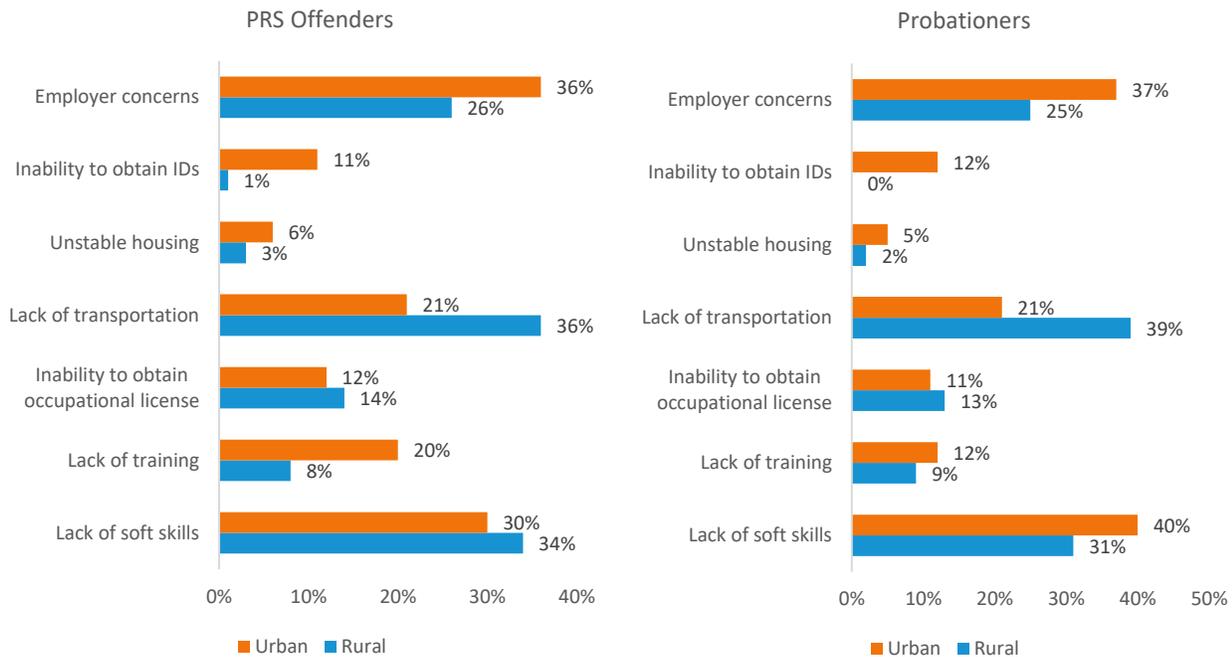
Figure 9: Financial Supplement to Income



Source: NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

PPOs were asked to select barriers for offenders in gaining employment and could select as many options as they felt were barriers for offenders. For both types of supervisees, lack of transportation was selected most frequently, followed by lack of soft skills, employer concerns, and lack of training. As shown in Figure 10, when examined by population density, significant differences emerged. Rural county PPOs selected lack of transportation more frequently for both types of supervisees than urban county PPOs. For PRS offenders, urban county PPOs selected employer concerns, inability to obtain IDs, and lack of training more frequently than rural county PPOs. Urban county PPOs selected employer concerns, inability to obtain IDs, and lack of skills more frequently than rural county PPOs for probationers.

Figure 10: Barriers Selected as Most Significant by Population Density



Source: NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

The last question of the survey asked the PPOs what factor, in their opinion, is most important for preventing supervisees from reoffending. Overwhelmingly, PPOs responded that it is having employment, with a number including that the job needed to be “full time,” provide “gainful” employment, or pay a “decent” wage. Environment was the second most common factor, with PPOs noting that physical place and peer or family relationships were most significant, followed by stability. The consensus from PPOs points to the importance of employment in preventing recidivism; however, PPOs also noted that less than half of their caseloads obtain employment and those that do obtain employment find mostly temporary work.

Literature Review

Commission staff undertook a review of relevant research on issues related to collateral consequences, focusing first on the breadth of its effects and then on any intersections with employment. Until recently, a comprehensive list of collateral consequences and their place in statute and administrative code throughout the United States was not available. The ABA identified at least 35,000 collateral consequences in its NICCC database of federal and state regulations and sanctions. North Carolina has just over one thousand, and almost 80% are related to employment or occupational licensing.⁴⁵ Most research focuses on employment, the area most affected by collateral consequences. There is almost no research directly examining the relationship between collateral consequences and recidivism; however, there have been attempts to examine the relationship between employment and recidivism. Because of the limited research available to understand the relationship between employment collateral

⁴⁵ Staff analysis of North Carolina data contained in the National Inventory of Collateral Consequences of Conviction, Council of State Governments, <https://niccc.csgjusticecenter.org/search/?jurisdiction=36>.

consequences and public safety, coupled with to the Study Group's decision to expand its study to other employment barriers beyond collateral consequences, the literature review encompassed both the intersection of collateral consequences and employment, as well as the intersection between public safety and employment more generally. Research findings, including any limitations in methodologies and application are described below.

Scope of Collateral Consequences

To understand the scope of people potentially affected by collateral consequences, it is important to understand the potential number of people with a criminal conviction in the United States. Approximately one in five adults has a criminal conviction; however, there are no exact data on the number of people in the United States with a criminal conviction.⁴⁶ The 2012 report of the "Survey of State Criminal History Information Systems" totaled over 100 million criminal records, more than double the number in 1993.⁴⁷ However, this number could be inaccurate, because an individual may have one or more records in more than one state, a final disposition may not have been reported, and not all misdemeanors are fingerprinted.⁴⁸ Due to these factors, estimates range from 60 million to 100 million people in the United States with a criminal conviction; an estimated just under 20 million people have a felony conviction; and between 6.1 and 6.9 million people are former prisoners.^{49,50} As the number of individuals with a criminal record increases, more people are exposed to the associated collateral consequences.

As the number of people with a criminal conviction has grown, so too have the number of consequences. At the same time, collateral consequences have become harder to mitigate or avoid.⁵¹ States differ in their restrictions and trigger offenses.⁵² Over time, more occupations have added restrictions that preclude some individuals with convictions from a license or job. As discussed earlier, employment-related collateral consequences are scattered throughout statute and administrative code, making it extremely difficult to determine the implications of a conviction.

⁴⁶ Love, "Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act." Cherrie Bucknor and Alan Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research, June 2016, <http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5>.

⁴⁷ Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012*, United States Department of Justice, January 2014, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 1993*, United States Department of Justice, 1994, <https://www.bjs.gov/content/pub/pdf/Schis93.pdf>.

⁴⁸ Id.; and Love, "Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act." Bucknor and Barber, "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies."

⁴⁹ These estimates relied on Bureau of Justice Statistics data on prison releases, prison population demographics, census data, and other data on recidivism rates.

⁵⁰ Sarah Shannon, et al. "Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948 to 2010," Population Association of America, 2011, <http://paa2011.princeton.edu/papers/111687>. Bucknor et al., "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies."

⁵¹ Nora V. Demleitner, "Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences."

⁵² Christy Visher, et al., "Employment after Prison: A Longitudinal Study of Releasees in Three States," Urban Institute, Oct. 2008, www.urban.org/research/publication/employment-after-prison-longitudinal-study-releasees-three-states.

The collateral consequences continue long after the sentence or probation has expired.⁵³ Some literature suggests the effects of collateral consequences can be more pronounced on those with a lower level offense.⁵⁴ An individual convicted of a misdemeanor serving no prison time is more likely to be affected by being barred from public housing or being unable to obtain an occupational license, compared to someone sentenced to twenty years in prison. While an offender serving a prison sentence may be more disadvantaged when trying to reintegrate into the community, an offender who served no time may be dealing with restrictions on available work or losing their job as a result of his or her conviction for a longer period of time. This creates tension with the notion that an individual's sentence is proportional to the crime committed, when a lower level offender continues to face collateral consequences much longer than their sentence.

Background Checks

One of the ways it is difficult to avoid collateral consequences is the prevalence of background checks, which are conducted by the vast majority of employers – recently an estimated 87%.⁵⁵ Background checks are conducted in three situations: where a check is required and there is guidance on how to use the resulting information; where a check is required and there is no guidance for considering the results of the check; and, where a background check is not required, but is done as a matter of practice. An example of the first situation would be a job that involved working with a vulnerable population, such as children. A child care provider cannot have been convicted of a felony or misdemeanor involving child neglect or child abuse and there is a criminal history check every three years to ensure the provider remains in compliance with this prohibition.⁵⁶ An example of a required check that lacks guidance is for admission to the Bar. The statute governing admission to practice requires applicants to be fingerprinted to determine whether the applicant has a record of criminal conviction; however, there is no set way the Board of Law Examiners must take this information into account. The only guidance is that applicants must “possess the qualifications of character and general fitness requisite for an attorney.”⁵⁷ The final scenario is when employers who are not required to run background checks, choose to do so anyway and are primarily concerned about negligent hiring and workplace safety.⁵⁸ If an employee causes harm and the employer should have known it was likely, the employer could be liable for the damage.⁵⁹ The desire to protect and maintain the reputation of the company is also a consideration.⁶⁰

The two main sources for these background checks are the Federal Bureau of Investigation (FBI) and commercial vendors. The FBI uses fingerprint identification to connect an individual to any records from federal, state, and local law enforcement agencies. Commercial vendors match information such as a Social Security number, and take less time to get results back than FBI background checks. Both

⁵³ Jain, “Prosecuting Collateral Consequences.”

⁵⁴ Id.

⁵⁵ Rebecca Vallas and Sharon Dietrich, “One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records,” Center for American Progress, Dec. 2014, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

⁵⁶ G.S. 110-90.2(a1)-(b) (2018).

⁵⁷ G.S. 84-24 (2018).

⁵⁸ Fahey, et al., “Employment of Ex-Offenders: Employer Perspectives,” Crime and Justice Institute, Oct. 2006, http://www.antonioacasella.eu/nume/Fahey_2006.pdf.

⁵⁹ Michael Carlin and Ellen Frick, “Criminal Records, Collateral Consequences, and Employment: the FCRA and Title VII in Discrimination Against Persons with Criminal Records,” Seattle Journal for Social Justice, Vol. 12, no. 1, 2013, 109-163, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1724&context=sjsj>.

⁶⁰ Fahey et al., “Employment of Ex-Offenders: Employer Perspectives.”

methods have significant weaknesses in accuracy; often the final case outcome is not reported and arrests with no conviction may be included. FBI inconsistencies arise primarily from state reporting issues for court case dispositions and expunged records. Commercial vendors have to match identifiers and may not make the correct pairing or the vendors may not have the most updated information.⁶¹ The Fair Credit Reporting Act (FCRA) regulates background checks from commercial vendors because they are considered consumer reports.⁶² Vendors are to provide up-to-date information (e.g., no expunged records) and to not release arrest records over seven years old. Employers who plan to take an adverse hiring decision are supposed to give the applicant a copy of the report on which the decision was based. This would allow an applicant the opportunity to correct any inaccuracies; however, applicants may not be given the opportunity or may not have time before the employer makes a final hiring decision.⁶³

While background checks can be a valid tool to prevent negligent hiring or to ensure safety, if nothing else is taken into account besides the criminal record, it can increase the difficulty for a former offender to be hired. The Equal Employment Opportunity Commission (EEOC) issued guidance in 2012 regarding Title VII of the Civil Rights Act that certain factors should be taken into account, such as the nexus of the offense to the job, the amount of time passed, and the severity of the offense.⁶⁴ However, the EEOC guidelines are not binding and enforcement still requires proving a racially disparate impact.⁶⁵

Gaining Employment

The prevalence of using background checks to make hiring decisions is borne out by studies showing applicants without convictions have higher callback rates than those with criminal records. Agan and Starr found that job applicants without criminal records receive callback rates that are 5.2 percentage points higher than similar applicants with a nonviolent felony.⁶⁶ Holzer, Raphael, and Stoll's study relayed that over 60% of employers are unwilling to hire applicants with criminal records.⁶⁷ Surveyed employers have responded that of hard-to-employ individuals (e.g. welfare recipients, individuals with long gaps in employment), those with criminal justice involvement were viewed as least likely to be hired.⁶⁸

⁶¹ Marina Duane, et al., "Criminal Background Checks: Impact on Employment and Recidivism," Urban Institute, March 2017, https://www.urban.org/research/publication/criminal-background-checks-impact-employment-and-recidivism/view/full_report.

⁶² Id.

⁶³ Carlin and Frick, "Criminal Records, Collateral Consequences, and Employment: the FCRA and Title VII in Discrimination Against Persons with Criminal Records."

⁶⁴ Vallas and Dietrich, "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records."

⁶⁵ Carlin and Frick, "Criminal Records, Collateral Consequences, and Employment: the FCRA and Title VII in Discrimination Against Persons with Criminal Records."

⁶⁶ Amanda Agan and Sonja Starr, "Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment," University of Michigan Law & Econ Research Paper No. 16-012, June 2016, https://law.yale.edu/system/files/area/workshop/leo/leo16_starr.pdf.

⁶⁷ Harry J. Holzer, et al. "Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers," *The Journal of Law and Economics*, Vol. 49, no. 2, Oct. 2006, pp. 451-480, https://gspp.berkeley.edu/assets/uploads/research/pdf/Holzer,_etal-PerceivedCriminality-oct2006.pdf.

⁶⁸ Id.; and Scott H. Decker, et al., "Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment," National Institute of Justice, 2014, <https://www.ncjrs.gov/pdffiles1/nij/grants/244756.pdf>.

The type of offense committed also affects likelihood of being hired, with some offenders faring better than others. Studies show that dramatically more employers would be willing to hire someone convicted of a misdemeanor offense rather than a felony.⁶⁹ This study found that this number of employers dropped to less than 1% for a violent felony.⁷⁰ Along those lines, prior prison involvement increases difficulty finding employment.⁷¹ Decker, et al., noted that employers desired more job experience from a previously imprisoned applicant; however, this creates a “catch-22” for offenders who have been in prison and out of the workforce, who will not have the longer history of employment.⁷² While a higher standard may make sense for an employer to see more appeal in a former offender, that desire combined with employers not wanting to be the first employer right after a period of incarceration makes it difficult for a recently released individual to gain employment.⁷³ As may be expected, individuals with stronger pre-employment history were more likely to be employed after release from prison.⁷⁴

The type of offense and whether an individual spent time in prison also factors into which industries will hire these individuals. The most willing industries are those with less direct contact with customers (e.g., construction and manufacturing).⁷⁵ When Decker, et al., asked employers who would consider hiring an ex-offender, how many years would have to have passed for them to hire an individual who had been in prison, offenders convicted of a property crime had the longest average number of years to wait (2.92 years), compared to drug (2.39 years) or violent crimes (2.78 years).⁷⁶ This points to concern employers have about theft from the workplace. It is important to note that employers were most willing to hire those charged with a drug offense, then property offense, and significantly less likely to hire an offender with a violent offense.⁷⁷ Employers more likely to hire applicants with criminal backgrounds included larger firms, those with more turnover, and those with a large portion of unskilled jobs.⁷⁸

Offenders with more skills and training have a higher likelihood of gaining employment, as it may separate them from other candidates for the same position. Decker, et al., employer respondents almost all responded that they would be more likely to interview an applicant who had previously been in prison if that individual had more experience in a similar position.⁷⁹ Employers in Massachusetts noted that soft skills (e.g., showing up for work, timeliness) were most important in the selection process, even above technical skills.⁸⁰ Of former offenders studied from Illinois, Ohio, and Texas, those

⁶⁹ Fahey et al., “Employment of Ex-Offenders: Employer Perspectives.”

⁷⁰ Id.

⁷¹ Decker et al., “Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment.”

⁷² Id.

⁷³ Fahey et al., “Employment of Ex-Offenders: Employer Perspectives.”

⁷⁴ Chin, “The New Civil Death: Rethinking Punishment in the Era of Mass Conviction.”

⁷⁵ Fahey et al., “Employment of Ex-Offenders: Employer Perspectives.” Harry J. Holzer, et al. “Employer Demand for Ex-Offenders: Recent Evidence from Los Angeles.” Urban Institute, March 2003, <https://www.urban.org/sites/default/files/publication/59286/410779-Employer-Demand-for-Ex-Offenders.PDF>.

⁷⁶ Decker et al., “Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment.”

⁷⁷ Holzer et al., “Employer Demand for Ex-Offenders: Recent Evidence from Los Angeles.”

⁷⁸ Id.

⁷⁹ Decker et al., “Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment.”

⁸⁰ Fahey et al., “Employment of Ex-Offenders: Employer Perspectives.”

who held a prison job and participated in job training in prison were more likely to be employed eight months after release.⁸¹

In addition to the more traditional demand and supply side barriers, logistical barriers also pose a difficulty for offenders. The same longitudinal study in the three aforementioned states reported that those with a photo ID were employed a higher percentage of time following their release.⁸² The job search process itself and computer literacy can also be issues. Individuals who used a previous employer to find work had the most success in their job search.⁸³

Effects of Conviction on Employment

Studies examining the effects of a conviction on employment center on two main areas: economic impacts and recidivism. Offenders experience a reduction in earnings. Previously imprisoned males work nine fewer weeks per year and see 40% less take-home pay annually.⁸⁴ A potential broader impact is felt not only by the offender, but also by the United States economy. The increasing number of individuals with felony convictions or who have spent time in prison has affected the U.S. labor market and Gross Domestic Product (GDP). By one estimate for 2014, the overall employment rate was between 0.9 and 1.0 percentage points lower and GDP was 0.45 to 0.5 percentage points lower as a result of this employment effect.⁸⁵

Employment may reduce recidivism rates of offenders. While most studies indicate a relationship between employment and recidivism, there are limitations in the application of the research.⁸⁶ There are two main factors that contribute to the limited research. First, methodologies used in studies have generally not fully accounted for factors that could have influenced outcomes, limiting the application of any findings. In *A Meta-Analysis of Corrections-Based Education, Vocation, and Work Programs for Adult Offenders*, program participant groups were found to have lower recidivism rates than nonparticipants; however, it is not clear that the program was the reason for this.⁸⁷ Instead, lower recidivism rates could be a result of differential characteristics of offenders, such as motivation to change behavior, or self-selection bias.⁸⁸ Second, research has focused on overall outcomes rather than specific elements of programs.⁸⁹ In other words, studies have been “examining the effect of employment *programs* on

⁸¹ Chin, “The New Civil Death: Rethinking Punishment in the Era of Mass Conviction.”

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Vallas and Dietrich, “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.”

⁸⁵ Bucknor and Barber, “The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies.”

⁸⁶ David B. Wilson et al., “A Meta-Analysis of Corrections-Based Education, Vocation, and Work Programs for Adult Offenders,” *Journal of Research in Crime and Delinquency*, vol. 34, no. 4, Nov. 2000, pp. 347-368. John H. Tyler et al., “Correctional Programs in the Age of Mass Incarceration: What Do We Know About “What Works”,” Brown University, Nov. 2007. Duran et al., “Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness.” Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology*, Vol. 108, no. 5, March 2003, pp.937-975. https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf.

⁸⁷ Wilson et al., “A Meta-Analysis of Corrections-Based Education, Vocation, and Work Programs for Adult Offenders.”

⁸⁸ *Id.*

⁸⁹ Duran et al., “Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness.”

recidivism, not the effect of employment.”⁹⁰ Many reentry programs now incorporate cognitive-behavioral therapy pieces or other components that are then looked at together for whether recidivism declined.

In sum, it appears more research is needed to better understand the relationship between employment and recidivism, especially in the context of additional factors (e.g., criminal history) strongly correlated with reoffending. While the research is limited, it appears as though evaluations are becoming more rigorous. More rigorous evaluations coupled with the increased availability of administrative data may better inform questions about the relationship between employment and recidivism.⁹¹

⁹⁰ Suzanne Baker et al., “Chapter 5: Education, Employment, and Recidivism: A Review of the Literature,” Juvenile Justice Educational Enhancement Program, Center for Criminology and Public Policy Research, 2006, <http://criminology.fsu.edu/wp-content/uploads/Education-Employment-and-Recidivism-a-Review-of-the-Literature-Ch-5-2006-Annual-Report.pdf>.

⁹¹ Tyler et al., “Correctional Programs in the Age of Mass Incarceration: What Do We Know About “What Works.””

III. KEY AREAS OF FOCUS

As the Research and Policy Study Group studied employment collateral consequences, three areas of focus emerged: offender, employer, and legal. Each area of focus, detailed below, includes the questions explored within each topic, as well as the key findings. The key findings ultimately led to the development of the Sentencing Commission's proposals (see Appendix B). As mentioned previously, the information included in this report, including the key findings, were informed by the literature, empirical data where available, the PPO survey, and discussions with organizations and individuals in the field.

Offender Lens

Much of the consideration regarding offender barriers came from questions about what is known about offenders and employment and how it relates to recidivism. PPOs overwhelmingly think employment is the way to prevent offenders from reoffending; however, offenders often struggle to gain employment. This section explores questions related to the offender perspective on gaining employment, including: 1) What is the impact of a criminal conviction on employment?; 2) What are the biggest factors or barriers affecting offender ability to get a job?; 3) What are the biggest factors contributing to an offender being hired?; and 4) What types of jobs are offenders able to obtain?

The key findings that emerged related to the offender lens, detailed below, included:

- Offenders with certain offenses may fare better
- Type of punishment may affect probability of being hired
- Skills and training may lead to higher likelihood of employment
- Logistical barriers affect ability to obtain employment
- Mixed results for employment if no disclosure on application is required

Key Findings

Offenders with certain offenses may fare better

Offenders' likelihood of becoming employed is dependent upon the type of their offense, the severity of offense, and the industry within which they are seeking employment. As mentioned in the Literature Review, significantly more employers are willing to hire an individual with a misdemeanor conviction than a felony conviction.⁹² This matches the perspective of stakeholders, who agreed that those offenders with older and less severe offenses can be placed or hired faster than those with newer and more serious offenses. Offenders with a recent felony, particularly a violent felony, are likely to have the most difficulty finding employment and are least likely to be hired.⁹³

While broader considerations about type and severity of offense exist, likelihood of an offender being hired depends on industry specific concerns as well. Of employers willing to consider hiring an offender, those with a property offense had the longest average number of years to wait before an employer would be willing to hire them, which demonstrates the concerns employers reported regarding the risk

⁹² Fahey et al., "Employment of Ex-Offenders: Employer Perspectives."

⁹³ Id.

of employee theft.⁹⁴ Field experts agreed that offenders who have committed theft will be less likely hired in hospitality and retail industries than offenders who have not committed theft. Separately, individuals noted that an increasing number of companies may have shifting attitudes toward drug offenses, though medical fields may be an exception.

Type of punishment may affect probability of being hired

An offender's punishment depends on the type and severity of his or her offense, as well as his or her prior record level. North Carolina's sentencing structure prioritizes prison resources for violent and repeat offenders. Violent and repeat offenders are more likely to receive a prison sentence and to serve longer prison terms than nonviolent or first-time offenders. Those offenders not receiving a prison sentence are sentenced to a community-based punishment (i.e., probation). Probation sentences can include supervised or unsupervised probation.⁹⁵

Probationers may fare better, in terms of gaining and/or retaining employment, compared to prisoners – probably due to the lack of incarceration. Even short stays in prison likely result in a job loss, meaning most offenders with a period of incarceration will exit prison without a job. In contrast, PPOs thought that on average, less than a third of their probation caseload lost a job as a result of his or her conviction. Interestingly, PPOs estimated similar percentages of supervisees (i.e., probationers and PRS offenders) obtained and maintained employment.

In addition to losing their job due to incarceration, individuals recently released from prison are likely to have increased difficulty finding employment compared to probationers.⁹⁶ Employers prefer to see an established employment history following an offender's release rather than being the first to employ the offender. Previously incarcerated individuals will have workforce gaps and therefore will be less likely to have the experience employers require to hire them.⁹⁷ Because probationers avoid incarceration, they encounter these barriers to a lesser extent and if they were able to continue employment through their probationary period, they would not have the gap in work that increases employers' reticence to hire former offenders. Of those released from prison, offenders with stronger pre-employment history, and with better skills and training (*see below*) were more likely to be employed.⁹⁸

Skills and training may lead to higher likelihood of employment

While offenders who have spent time in prison are likely to have difficulty finding employment, almost all employer respondents indicated that they would be more likely to interview a previously-incarcerated applicant if that individual had experience in a similar position.⁹⁹ When asked about the biggest challenge for an offender in gaining employment, many of those who work with offenders often cited skills, training, communication skills, and soft skills, such as punctuality or work ethic. Lack of soft

⁹⁴ Decker et al., "Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment."

⁹⁵ NC Sentencing and Policy Advisory Commission, *Correctional Program Evaluation: Offenders Placed on Probation or Released from Prison in FY 2013*, pg. 2.

⁹⁶ Decker et al., "Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment."

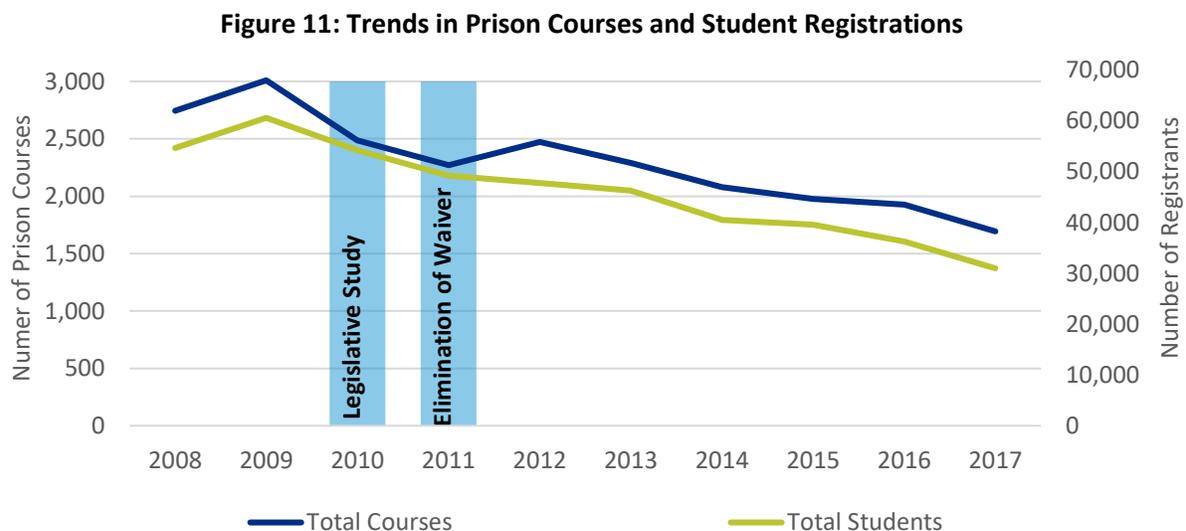
⁹⁷ Id., and Fahey et al., "Employment of Ex-Offenders: Employer Perspectives."

⁹⁸ Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction."

⁹⁹ Decker et al., "Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment."

skills was the second most frequently selected barrier to offender employment on the PPO survey; lack of training was also within the top five barriers. These findings highlight the importance of skills and training for offenders.

To assist offenders in their search for employment upon release, the NC Department of Public Safety (DPS) has developed several in-prison training programs. These programs work to develop life skills, job readiness, and industry-specific skills training that can assist them in having a higher likelihood of gaining employment. Originally, the State Board of Community Colleges had the authority to waive tuition and registration fees for certain groups to participate in classes, including prison inmates.¹⁰⁰ In 2011, the General Assembly reduced the availability of the tuition waiver by removing several groups, including prison inmates, from the list of persons eligible for waiver.¹⁰¹ This resulted in an estimated 25% reduction in the number of courses provided to inmates (e.g., short-term workforce training, adult basic education and literacy) and a 37% reduction in the number of registrations between 2011 and 2017 (see Figures 11 and 12).¹⁰²



Source: Training Programs data: 2008-2017, NC Community College System, February 2018

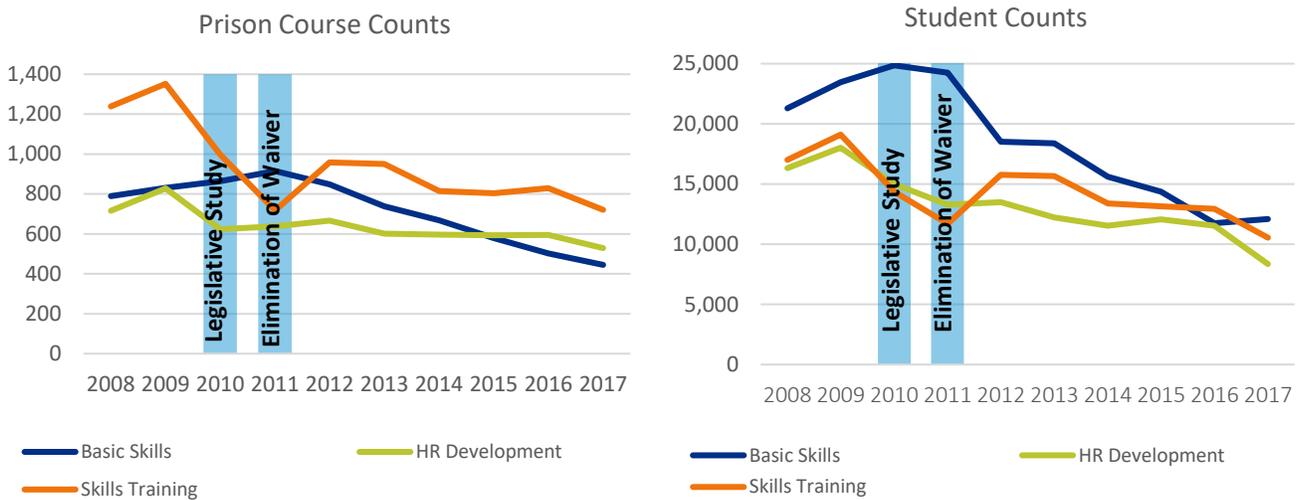
Figure 12 further examines the prison course and student counts by the type of course provided. DPS works with the Community Colleges system to determine which programs to offer at each prison facility. Based on the changes made to tuition waivers and the possible effect on participation in prison training programs, the Sentencing Commission endorses further study of community college tuition waivers and its effectiveness.

¹⁰⁰ G.S. 115D-5(b)(14) (2017).

¹⁰¹ N.C. Session Law (hereinafter S.L.) S.L. 2011-145, s. 8.12.

¹⁰² Data provided by NC Community College System. This data reflects only the reporting to the System Office from the Colleges.

Figure 12: Counts of Prison Courses and Student Registrations



Source: Training Programs data: 2008-2017, NC Community College System, February 2018

Logistical barriers affect ability to obtain employment

An offender could have skills and training but face logistical barriers that make gaining employment more challenging. Lack of transportation was most commonly selected as a barrier to offender employment. Experts in the field noted that offenders often do not have their own means of transportation to and from work, and were reliant on public transit options, which could still be expensive to use on a regular basis. For those offenders in rural areas, lack of transportation was even more of an issue, as seen in the survey results and heard in discussions with those who work with offenders. Rural areas are more spread out and tend to have fewer, or no, public transportation options, making commuting to work more difficult.

In addition to transportation, there are other logistical barriers with varying significance based on where offenders live. Unstable housing was in the top 10 most-selected barriers for offenders. Not having a permanent address makes applying for work or an ID difficult, as well as increases uncertainty for an offender, as compared to someone with a permanent address. Inability to obtain an ID was a barrier frequently selected by PPOs, and almost all PPOs who selected it were in urban areas. Difficulty securing an ID could result from an offender not having a permanent address, needing other documents to verify their identity, or cost. The NC Division of Motor Vehicles (DMV) and DPS are collaborating to bring mobile DMV units to prison facilities to help offenders obtain an identification card or license. This recent effort by DPS and DMV to mitigate this specific barrier is promising; because the effort is so new, it is not possible to determine its overall effect at this stage.

Mixed results for employment if no disclosure on application

Ban-the-Box (BTB) policies prevent employers from asking about criminal history on a job application. Employers are still able to inquire or conduct background checks later in the hiring process. Advocates assert it allows the applicants a chance to be evaluated based on qualifications rather than their record.

BTB policies are often seen as a way to increase employment, specifically among black men.¹⁰³

Building on Devah Pager’s work from 2003 finding black applicants may be more strongly affected by a criminal record than white applicants, Agan and Starr found that while BTB “effectively eliminated criminal record effects on employer callback rates for identical applicants,” white applicants received 23% more callbacks than identical black applicants.¹⁰⁴ In the absence of information about criminal records, biases tend to emerge in hiring decisions. The type of test, whether audit (matched pairs of similar candidates of different races) or correspondence (no face to face interaction) used in a study have sometimes differed in finding whether there is statistical discrimination based on race.¹⁰⁵ The differing findings highlight a tension among BTB policy goals that must be considered.

The overarching goal of BTB policies is for individuals to gain employment; however, there has not been much study undertaken on whether BTB policies lead to an increase in job offers. Those attempts to examine effectiveness are unclear as to whether BTB policies are the reason for increased job offers to those with criminal records.¹⁰⁶ A few case studies show increased hiring rates for individuals with criminal history after BTB implementation for public employment, but it is not clear if that is in part due to the priority placed by these localities on hiring individuals with criminal records.¹⁰⁷

Summary

As noted throughout this section, offenders face a number and variety of barriers when seeking employment. Their success in securing employment may depend in part upon the type and severity of their offense, type of punishment imposed (i.e., prison or probation), skills and training, and by employer willingness and industry. Employment seems to be a key factor—if not the most important factor—for offenders to successfully rejoin society following a criminal conviction and/or incarceration. For incarcerated individuals, recent efforts by DPS to start release planning and the reentry process (including job seeking and job readiness) at the beginning of incarceration are expected to assist offenders’ transition into the community, which in turn may reduce recidivism.¹⁰⁸ DPS also has recently funded five local reentry councils (with plans to expand), which are “networks of community-based

¹⁰³ Agan and Starr, “Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment.” Decker et al., “Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment.”

¹⁰⁴ Pager, “The Mark of a Criminal Record.” Agan and Starr, “Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment.”

¹⁰⁵ Decker et al., “Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment.”

¹⁰⁶ Christina Stacy and Mychal Cohen. “Ban the Box and Racial Discrimination: A Review of the Evidence and Policy Recommendations.” Urban Institute, Feb. 2017,

https://www.urban.org/sites/default/files/publication/88366/ban_the_box_and_racial_discrimination_2.pdf.

¹⁰⁷ Id.

¹⁰⁸ The DPS’s reentry initiative for the prison system, “Pathways to Successful Reentry,” focuses on three phases: institutional, transitional, and community. The institutional phase focuses on evidence-based programs and pre-release planning for incarcerated offenders. The transitional phase draws on collaboration with Community Corrections to streamline the process for offenders as they exit prison. Institutional PPOs are based at reentry prison facilities to have a team approach with the case manager and coordinate release planning with the supervising officer in the home county. The community phase seeks to connect offenders with resources in their home community. Along with this initiative, DPS is repurposing some facilities to specialize in certain areas, such as reentry.

organizations” that “develop and coordinate resources” for offenders to assist them in reintegrating.¹⁰⁹ The North Carolina General Assembly also created the State Reentry Council Collaborative to study the needs of recently released offenders and to increase the effectiveness of local reentry councils.¹¹⁰ Reentry councils provide assistance (including job training and job seeking) to any offender (probationers and formerly incarcerated individuals); their efforts are also anticipated to assist with community transition and in reducing reoffending. All these efforts, along with the efforts of the DWS to match former offenders with jobs, are designed to address the broad problem of reintegrating offenders.

Employer Perspectives

There are few requirements both public and private employers must consider when hiring employees, discussed below. Outside of those requirements, employers are mostly in control of their own hiring policies and who and how they hire. “Employer concerns” was one of the most frequently selected barriers for offenders gaining employment, according to the PPO survey. This section explores questions related to the employer perspective¹¹¹ on hiring offenders, including: 1) What are the concerns employers have about hiring offenders?; 2) What industries are most willing to hire offenders?; and 3) What options are there for employers to mitigate the risk of hiring an offender?

The key findings that emerged related to employer perspectives, detailed below, included:

- The effect of federal guidelines on employment decisions related to offenders is unclear
- Employers’ values of maintaining workplace safety and company reputation affect their hiring decisions related to offenders
- The truthful disclosure of a criminal record may lead to a greater likelihood of being hired
- Certain industries are more likely to hire offenders
- Employers are generally not aware of existing programs or options to mitigate the risk associated with hiring an offender

Key Findings

Federal guidelines’ effect on employment decisions related to offenders is unclear

There are federal laws employers must consider when making employment decisions regarding offenders. The laws discussed below require the employer to treat offenders fairly and not allow their criminal history to unduly influence employment decisions, while at the same time to be aware of any implications those decisions might have for their other employees and their business.

Occupational Safety and Health Act

The Occupational Safety and Health Act (OSHA) governs workplace safety.¹¹² It was enacted in 1970 and applies to most private employers and some public employers. The Act imposes a general duty

¹⁰⁹ Department of Public Safety, “DPS awards contracts to establish four new reentry councils,” January 20, 2017, <https://www.ncdps.gov/dps-awards-contracts-establish-four-new-reentry-councils>.

¹¹⁰ G.S. 143B-604 (2017).

¹¹¹ While much of the information contained in this section likely applies to both public and private employers, it is worth noting the perspectives of stakeholder groups primarily represent private employers.

¹¹² 29 U.S.C. Chapter 15 (2017).

on the employer to furnish to each of its employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.¹¹³ An employer violates that duty if a recognized serious hazard exists in the workplace and the employer does not take reasonable steps to prevent or abate the hazard. Liability would depend on the facts, including whether the hazard is recognized, and the employer still failed to act.¹¹⁴ Employers who are found to have violated this provision are subject to a civil fine.

An employer may view hiring a person with a criminal conviction as increasing the risk of another person getting harmed in the workplace and thereby exposing the employer to an OSHA violation. However, it could also expose them to negligent hiring and workers' compensation claims. It is not known what impact this Act has on such employment decisions versus other considerations.

Title VII of the Civil Rights Act

Title VII of the Civil Rights Act of 1964 addresses employment discrimination.¹¹⁵ It applies to private and public employers with fifteen or more employees. The Act prohibits employment discrimination based on race, color, religion, sex, or national origin.¹¹⁶ It does not prohibit an employer from considering a prior criminal conviction when hiring; however, how he or she uses that information may result in a violation of the Act.

An employer who includes criminal history in the hiring process must be aware of two different concerns under the Act. First, the employer may violate the Act if he or she engages in disparate treatment. Disparate treatment is treating criminal history information differently for different applicants, based on race, national origin, color religion or sex. This may occur when the employer requests criminal history information more often for individuals of a certain race, or treats two similarly qualified applicants who are of different races differently in the hiring process. Second, the employer may violate the Act if a policy results in disparate impact. Disparate impact occurs if an employer has a facially neutral criminal history policy or practice that, in effect, has a disproportionate impact on some individuals. This occurs when an employer excludes applicants of one race and data shows that members of that race have higher arrest and incarceration rates.

When a person files a discrimination claim, the burden is on the claimant to demonstrate that the practice causes a disparate impact. If they are successful, the burden shifts to the employer to demonstrate that the challenged practice is "job related for the position in question and consistent with business necessity."¹¹⁷ If the employer can demonstrate that, the claimant may still challenge the practice by showing that there is a less discriminatory "alternative employment practice" that serves the employer's legitimate goals as effectively as the challenged practice, but that the employer refused to adopt.¹¹⁸

¹¹³ 29 U.S.C. § 654(a)(1) (2017).

¹¹⁴ US Department of Labor, Occupational Safety and Health Administration, "OSHA Standard Interpretation Letter," December 18, 2003, (https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=interpretations&p_id=24784).

¹¹⁵ 42 U.S.C. § 2000e to e-17 (2017).

¹¹⁶ 42 U.S.C. § 2000e-2(a).

¹¹⁷ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

¹¹⁸ 42 U.S.C. § 2000e-2(k)(1)(A)(ii).

The EEOC is charged with enforcing Title VII. If it finds probable cause that a violation has occurred, it may invite the parties to take part in an informal process called conciliation. If that fails, the EEOC may file a lawsuit. Remedies may include hiring the person, payment of attorneys' fees, expert witness fees, and court costs. Under most EEOC-enforced laws, compensatory and punitive damages may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference. Punitive damages are not available against the federal, state, or local governments.

To avoid such complaints, the EEOC recommends employers eliminate policies or practices that exclude people from employment based on a criminal conviction and instead develop narrowly tailored written policies for screening. The policies should identify the essential job requirements and the specific offenses that would exclude an applicant from performing the job.¹¹⁹

Employers face few requirements under federal law. Under OSHA they must provide employees with a safe workplace and under Title VII of the Civil Rights Act they must not discriminate in their employment practices. Neither law specifically mentions people who have criminal convictions, but their criminal history can have implications under both laws. What is not known is how and to what extent these laws affect employment decisions for offenders.

Employers are concerned about workplace safety and company reputation

Two notable concerns for employers in hiring former offenders related to workplace safety (e.g., the potential increased risk of harm to another person) and company reputation (e.g., the potential risk of an incident with an employee altering public perception of the company). Employers noted their desire to achieve a balance between the risk of hiring an otherwise qualified person with a criminal record and protecting their companies.

The possible risk of hiring someone with a criminal record has several implications to employers. Studies have found, understandably, employers do not want to hire someone with a violent felony conviction out of concern for the safety of other employees and customers.¹²⁰ Any incident involving a former offender could lead to liability concerns for employers. As noted above, if an employee causes harm and the employer should have known it was likely (e.g., in the case of hiring an individual with a criminal record), the employer could be liable for the damage (putting the company at financial risk).^{121,122}

While the liability that could arise from the negligent hiring of a former offender is a financial concern, stakeholders representing employers reported greater concern regarding the lasting public perception of their companies. Employers do not want to put themselves at risk of an incident that could alter the public's perception of the company. A negative incident could have a lasting effect on employee recruitment and/or customer retention, both of which could affect the financial stability of an

¹¹⁹ EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

¹²⁰ Fahey et al., "Employment of Ex-Offenders: Employer Perspectives."

¹²¹ Carlin and Frick, "Criminal Records, Collateral Consequences, and Employment: the FCRA and Title VII in Discrimination Against Persons with Criminal Records."

¹²² For a full description of one option to limit exposure for employers hiring offenders as it relates to negligent hiring, see below, Legal Landscape "Certificates of Relief."

organization. This desire to protect and maintain the reputation of the company is supported by existing research; some employers felt reputation and customer retention and perception are of even more concern than legal liability.¹²³

Truthful disclosure may lead to a greater likelihood of being hired

The disclosure of criminal history in the employment process can come about either through self-disclosure on an application or through a criminal background check. For a variety of reasons (improved technology, reduced costs, concerns over disclosure, etc.), the prevalence of employers using criminal background checks as part of their hiring processes has increased over time.¹²⁴ How employers react to the results of a criminal background check may be influenced by whether the information contained was disclosed by the applicant, prior to the record check. This finding relates to truthful disclosure on a job application that requires disclosure of any criminal history and does not address circumstances where an application does not include a section requiring disclosure.

Stakeholders interviewed reported a greater willingness to take a chance on hiring an individual with a criminal record, if that record was disclosed up front. Falsifying a job application, or failing to reveal a criminal record, was damaging to the employers' views of an applicant in terms of his or her honesty—in some cases, more damaging than the presence of the criminal record itself. Due to the low rate of callbacks for applicants with criminal history, offenders may feel motivated to omit criminal history information from an application; however, as noted above, this omission ultimately has a negative effect on employer impressions.¹²⁵

Relatedly, and because employers value disclosure and the availability of full information regarding an applicant when making hiring decisions, it is not surprising that employers are generally not in favor of BTB initiatives.¹²⁶ Opposition to BTB initiatives on the part of employers has been found both in studies examining the effectiveness of the initiatives and was reported by interviewed stakeholder groups representing employer groups.¹²⁷

Certain industries are more willing to hire offenders

Some clear patterns emerged related to industries willing to hire offenders, with the most notable related to the level of customer contact within an industry. Industries with little customer contact are more likely to hire offenders.¹²⁸ According to the PPO survey, construction, food service, and landscaping were the three industries most likely to employ offenders – all industries with minimal customer contact. Large companies with a significant number of unskilled positions and/or are larger firms or have high turnover (hire more than 20 workers annually) were also reported to be willing to hire

¹²³ Fahey et al., "Employment of Ex-Offenders: Employer Perspectives."

¹²⁴ Harry J. Holzer et al., "Employment Barriers Facing Ex-Offenders," Urban Institute, May 2003, <https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF>.

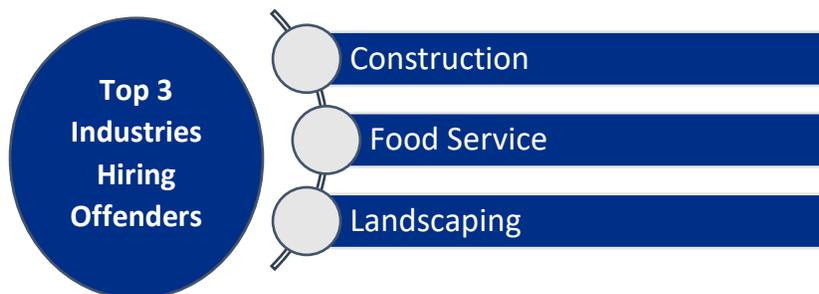
¹²⁵ Holzer et al., "Employer Demand for Ex-Offenders: Recent Evidence from Los Angeles."

¹²⁶ Agan and Starr, "Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment."

¹²⁷ Id.

¹²⁸ Holzer et al., "Employer Demand for Ex-Offenders: Recent Evidence from Los Angeles."

offenders.¹²⁹ The PPO survey also indicated certain types of companies (e.g., poultry processing plants) as being willing to hire offenders.



Source: NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

Employer organizations reported, not surprisingly, concerns differed between industries – retail operations are unwilling or less willing to hire an offender with a history of larceny offenses, while one of the health care industry’s top concerns was a criminal history that included drug offenses. PPO survey responses indicated

probationers are employed more frequently in retail than offenders on PRS, suggesting also that severity of the crime may also affect an offender's ability to be hired by retail employers.

Risk-mitigating programs and incentives for hiring exist but are under-utilized

There are many existing federal and state programs designed to incentivize employers to hire offenders and/or mitigate the risk associated with hiring offenders.

Federal Bonding Program

The Federal Bonding Program (FBP) was established by the US Department of Labor in 1966 to provide bonds for “at-risk,” hard-to-place job seekers.¹³⁰ The bonds issued by the FBP cover the first six months of a selected individual’s employment – a period of time intended to allow the individual to demonstrate trustworthiness. The bonds are issued at no cost to the applicant or the employer; the value of the bonds ranges from \$5,000 to \$25,000. The FBP will reimburse an employer for any loss due to employee theft of money or property. Reimbursement (100% coverage) can occur for any employee dishonesty committed either on or away from the work site.¹³¹

One of the populations targeted by the FBP are “justice-involved citizens,” which are recognized by the US Department of Labor as “individuals whose backgrounds can pose significant barriers to securing or retaining employment.”¹³² Bonds are available in every state in the US, are available for both public and private employers (with no restrictions based on organizational size), and can cover any full or part-time employee who has federal taxes deducted from his or her paycheck.¹³³ The securing of bonds is typically facilitated through state “Bonding Coordinators” – often state agencies in the areas of labor, employment services, or commerce.

¹²⁹ Id.

¹³⁰ US Department of Labor, “2016 - Federal Bonding Program,” bonds4jobs.com.

¹³¹ Id.

¹³² Other targeted populations covered by the Federal Bonding Program include individuals in recovery from substance use disorders; welfare recipients; individuals with poor credit records; economically disadvantaged youth and adults who lack work histories; and individuals dishonorably discharged from the military.

¹³³ Self-employed individuals are not eligible for the FBP.

Unofficial figures from the DWS of the NC Department of Commerce (the agency serving as Bond Coordinator in the state, *see below*) estimate that between 25 and 50 North Carolina employers apply for the FBP, annually.

Federal Work Opportunity Tax Credit

The Federal Work Opportunity Tax Credit (WOTC) is another incentive program created and administered by the US Department of Labor. The WOTC is a federal tax credit available to employers who hire individuals from eligible target groups, including offenders with felony records.^{134,135} The amount of the credit depends upon the target group of the individual hired, the wages paid to that individual in the first year of employment, and the number of hours that individual worked. For ex-felons, the credit is equal to the 25% of first-year wages if the individual works at least 120 hours and 40% of first-year wages if the individual works at least 400 hours. While there is no limit on the number of individuals an employer can claim for the tax credit, there is a maximum tax credit that can be earned. For ex-felons, the maximum tax credit amount is \$1,500 if the individual worked between 120 and 399 hours and \$2,400 if the individual worked 400 hours or more. The credit is only available for the first year of the individual's employment.

Employers seeking the tax credit must hire the ex-felon within one year after conviction or release from prison. The WOTC (available in every state), is facilitated by state "WOTC Coordinators," usually the same agencies serving as the Bonding Coordinators for the FBP. This is the case in North Carolina; the DWS of the NC Department of Commerce serves as both the Bond Coordinator and the WOTC coordinator. Employers are responsible for completion and submission of certain forms at the time the job offer is made and after the applicant is hired.

According to the most recent figures available, in the 2010-2011 program year, 843 employers claimed the federal WOTC for ex-felons.¹³⁶

North Carolina Work Opportunity Tax Credit

From 2007 to 2014, the North Carolina Department of Commerce administered a state WOTC. The tax credit was available to employers who claimed a federal WOTC for hiring individuals from target populations, including former offenders (*see above*, Federal WOTC). The tax credit was equal to 6% of the amount allowed under the federal WOTC. In tax year 2013, the amount was reduced to 3% of the federal WOTC.

Employer Awareness and Utilization of Risk-Mitigating Programs

Two explanations emerged regarding the utilization of existing risk-mitigating programs. Program administrators reported that generally, employers are not aware of potential benefits available to

¹³⁴ US Department of Labor, "Work Opportunity Tax Credit," January 2017, doleta.gov/business/incentives/opptax/wotcEmployers.cfm.

¹³⁵ Other target populations include veterans, TANF recipients, SNAP recipients, supplemental security income recipients, summer youth employees and qualified long-term unemployment recipients.

¹³⁶ North Carolina General Assembly, Revenue Laws Study Committee, *Work Opportunity Tax Credit*, 2011.

them, either through bonds or tax credits if/when they hire qualified individuals. Research has also found employers tend to be unaware of their options related to hiring “hard-to-hire” individuals.¹³⁷

Conversely, stakeholders representing employer associations reported being aware of some programs but noted the cost—in terms of time and effort to apply and claim a bond or a tax credit—exceeded the actual benefit. While both the FBP and WOTC are designed to minimize the burden on employers taking advantage of the provided benefits,¹³⁸ employers perceived the processes to be too cumbersome, the amount of the potential benefit too small, and the timeframe of the benefit too short to motivate them to dedicate necessary resources to apply.

Summary

It is not surprising that employers might hesitate at hiring ex-offenders for a variety of reasons. Someone who has been convicted of a criminal offense may pose a certain level of risk to an organization. Federal guidelines and safety concerns are factors to weigh when considering hiring an offender. Ultimately, an employer’s goal is to hire the best candidate; with the risk of litigation and reputation considerations, offenders are at a disadvantage. However, one employers’ association observed employer views on hiring offenders have begun shifting over the past two decades, with employers becoming more accepting of employing people with criminal records, and noted these shifting views are especially true of offenders convicted of drug offenses. Recently, law enforcement hiring standards surrounding marijuana use have relaxed, supporting this impression of a possible shift in viewpoint. Maryland state standards were eased in 2017, changing from disqualifying police applicants who had used marijuana either 20 times or more total, or 5 times since turning 21, to disqualifying only those applicants who used marijuana in the past 3 years.¹³⁹ While this example relates to drug usage and not drug convictions, it still may be a small indication of evolving attitudes.

While some risk-mitigating programs exist to incentivize employers to hire former offenders, utilization is low, either due to lack of employer awareness or employer estimation that the cost-to-utilize outweighs the benefit (or some combination of those two factors). DWS and employer associations reported engaging in outreach to inform employers of available options; however, greater awareness of the programs may not increase utilization if the perceived benefit is too low.

Given the considerations and perceived risks on behalf of employers in hiring individuals with criminal records, employers reported evaluating applicants on an individual basis – considering the severity of any past crime, when it occurred, and the nexus of the offense to the responsibilities of the job.

¹³⁷ Holzer, et al., “Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers.”

¹³⁸ According to the FBP website (see <http://bonds4jobs.com/about-us>), the FBP is “simple” and requires “no special application form for job seeker to complete, no bond approval process, no federal regulations covering bonds issued, no papers for employers to submit or sign, no follow-up or required termination actions, no deductible in bond insurance amount if employee dishonesty occurs, no bondee age requirements (other than legal working age in State).” According to the WOTC website, the application requires submission of three forms (see <https://www.doleta.gov/business/incentives/opptax/wotcEmployers.cfm#HowDoIApply>).

¹³⁹ Rector, Kevin, “Maryland regulators ease restrictions on past marijuana use by prospective police officers,” *The Baltimore Sun*, April 19, 2017, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-marijuana-rule-20170419-story.html>.

Legal Landscape

Both federal and state laws have been enacted which can help offenders seeking employment following a conviction. These laws strive to balance the desire to help offenders successfully reenter society, with the needs of employers to ensure a safe working environment for their employees and their customers. As discussed below, these laws exist but are limited for a variety of reasons. Possible modifications could increase their usefulness, but must still strike a balance with the aforementioned public safety concerns. This section explores the factors influencing that balance, including: 1) What is known about the effects of collateral consequences? and 2) What is available to mitigate the effects of collateral consequences?

The key findings that emerged related to the legal landscape, detailed below, included:

- Federal law addresses some employment collateral consequences
- North Carolina has taken a number of steps to address collateral consequences
- Not all employment collateral consequences are reviewed once in place

Key Findings

Federal law addresses some employment collateral consequences

As previously mentioned, many employers use criminal history reports to assess an applicant's character and reputation to determine eligibility for employment purposes.¹⁴⁰ A criminal history report contains information about a person's history of arrests and convictions, among other things. When disseminated by a consumer reporting agency, these reports fall within the purview of the FCRA, as mentioned in the Literature Review section. FCRA establishes rights for all consumers with regard to the information maintained and disseminated by consumer reporting agencies,¹⁴¹ and therefore plays an important role in protecting the rights of offenders seeking employment. Associated with consumer rights are duties incumbent upon providers of information and consumer reporting agencies, described below.¹⁴²

An employer may use a criminal history report when considering an applicant, but FCRA requires the employer to inform the applicant that he or she may be subject to a criminal history check.¹⁴³ Before an employer may obtain a criminal history report for hiring or employment purposes, the applicant or employee must consent to the procurement of such a report.¹⁴⁴ If adverse action¹⁴⁵ is to be taken based on the information contained in a criminal history report, the applicant is entitled to notification of that fact and to a copy of the report, contact information for the agency which produced the report, and a

¹⁴⁰ 15 U.S.C. § 1681a(h) (2017) ("The term 'employment purposes' when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.").

¹⁴¹ Fair Credit Reporting Act, 15 U.S.C. § 1681 (2017).

¹⁴² 15 U.S.C. § 1681a(f) ("The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.").

¹⁴³ 15 U.S.C. § 1681b(b)(2).

¹⁴⁴ *Id.*

¹⁴⁵ 15 U.S.C. § 1681a(k)(1)(B)(ii) (Adverse action is defined in relevant part as "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.").

summary of his or her rights.¹⁴⁶ In the event of adverse employment action, the individual is entitled to a copy of the report from the reporting agency, free of charge.¹⁴⁷

The person has the right to dispute with the reporting agency the accuracy or completeness of the information contained in the report. When someone initiates such a dispute, the agency is obligated to conduct a reasonable investigation to determine whether the disputed information is inaccurate and to correct the information contained in the individual's file.¹⁴⁸ The agency generally has 30 days to complete its investigation and, if necessary, make corrections or deletions to the file.¹⁴⁹ Additionally, the reporting agency must provide notification of the dispute to any person who provided any item of information in dispute.¹⁵⁰ If disputed information remains in a person's file, any subsequent reports containing the disputed information must clearly note that the information is disputed.¹⁵¹

People or entities who provide information to consumer reporting agencies are also bound by FCRA. Providers of information may not give information to a reporting agency if such information is known to the provider to be inaccurate, or if the provider has reason to believe that such information is inaccurate.¹⁵² Providers of information are also obligated to notify reporting agencies if information already given to such agencies is discovered to be incomplete or inaccurate, and to provide agencies with corrected, updated, or additional information as appropriate.¹⁵³ Once a provider becomes aware that information is inaccurate, the provider is barred from giving such incorrect information to reporting agencies.¹⁵⁴

FCRA requires reporting agencies to maintain complete and up-to-date public record information that is likely to have an adverse effect on an offender's ability to obtain employment, including arrests, indictments, and convictions.¹⁵⁵ Some of the information is subject to time limits. Records of arrest may not remain in an offender's file for more than 7 years,¹⁵⁶ although criminal convictions may stay in an offender's file indefinitely.¹⁵⁷ In instances of both willful and negligent noncompliance with the requirements imposed by FCRA, the law provides civil remedies for aggrieved individuals¹⁵⁸ and tasks the Federal Trade Commission with compliance enforcement.¹⁵⁹

While FCRA does provide a measure of protection to offenders searching for employment, it is unclear how many offenders are aware of these protections or to what extent they are used.

¹⁴⁶ 15 U.S.C. § 1681m(a)(4).

¹⁴⁷ 15 U.S.C. § 1681j(b).

¹⁴⁸ 15 U.S.C. §§ 1681i(a)(1)(A), (a)(5)(A)(i).

¹⁴⁹ *Id.* at (a)(5)(A)(ii).

¹⁵⁰ 15 U.S.C. § 1681i(a)(2)(A).

¹⁵¹ 15 U.S.C. § 1681i(c); 15 U.S.C. § 1681c(f).

¹⁵² 15 U.S.C. § 1681s-2(a)(1)(A).

¹⁵³ 15 U.S.C. § 1681s-2(a)(2)(B).

¹⁵⁴ *Id.*

¹⁵⁵ 15 U.S.C. § 1681k(a)(2).

¹⁵⁶ 15 U.S.C. § 1681c(a)(2).

¹⁵⁷ 15 U.S.C. § 1681c(a)(5).

¹⁵⁸ 15 U.S.C. §§ 1681n, 1681o.

¹⁵⁹ 15 U.S.C. § 1681s.

North Carolina has taken steps to address collateral consequences

North Carolina has sought to reduce the effect of collateral consequences on offenders seeking employment by addressing both the imposition of the consequences and by creating several relief mechanisms. All the methods highlighted below strive to balance the interests in limiting the effect of collateral consequences while maintaining public safety and employer autonomy. Consequently, the logical parameters around the methods limit the scope of what these tools can achieve. As discussed below, there are few options for modifications of these policies that would increase their effectiveness, while maintaining balance with public safety concerns.

Controlling Collateral Consequences: G.S. 93B-8.1. Use of criminal history records

G.S. 93B-8.1 is designed to limit the consequences associated with occupational licensing to those with a rational connection to the duties of that particular occupation (see Appendix E). In 2013, the General Assembly passed this law, prohibiting licensing boards from denying a license solely on the basis of a criminal conviction. Instead, it requires the consideration of several factors regarding the underlying crime: the level and seriousness of the crime; the date of the crime; the age of the person at the time of the crime; the circumstances surrounding the commission of the crime; the nexus between the criminal conduct and the prospective duties of the applicant as a licensee; the prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed; the subsequent commission of a crime by the applicant; and, any affidavits or other written documents, including character references.¹⁶⁰ Consideration of these factors encourages agencies to consider the connection between the conviction and the occupation in a broader context, with the purpose of preventing unnecessary denials of licenses while recognizing employers' concerns regarding public safety and perception.

The statute includes an exception that allows the laws governing occupational boards to provide specific guidelines regarding treatment of a conviction. As such, laws may bar the issuance of a license for those with criminal convictions or may provide for consideration of other or different factors from those stated in G.S. 93B-8.1. This exception appears to have outgrown the rule; most boards have elected to adopt specific guidelines relating to their profession. For example, the State Board of Education automatically revokes the licenses of teachers and administrators convicted of any of 23 crimes listed in the statute.¹⁶¹ The State Board of Nursing specifies its own factors for consideration stating that the Board may refuse to issue a license where the applicant "has been convicted of or pleaded guilty or nolo contendere to any crime which indicates that the nurse is unfit or incompetent to practice nursing."¹⁶² As shown by the above examples, many boards create regulations tailored to their specific area of industry; the restrictions on licenses correspond with the needs of the position. It is unclear which boards rely on G.S. 93B-8.1, given the broad exception and the self-interest boards have in regulating their own occupations, and, therefore, the effect this legislation has on limiting restrictions in occupational licensing is unknown.

¹⁶⁰ G.S. 93B-8.1(b) (2017).

¹⁶¹ G.S. 115C-270.35(b) (2017).

¹⁶² G.S. 90-171.37(5) (2017).

Providing Relief from Collateral Consequences

North Carolina has three mechanisms available for offenders seeking relief from the effect of collateral consequences—certificates of relief, expunction, and pardons. The courts control certificates of relief and expunctions, while the third, a request for pardon, is a function of the Executive branch. Each are discussed below.

1. Certificates of Relief

Certificates of relief are available to eligible offenders at the discretion of the judge in the court of the offender’s conviction. To qualify for the certificate, the petitioner cannot have more than two convictions for Class G felonies or lower in one single session of court and cannot have any prior felony or misdemeanor convictions (other than a traffic violation). Additionally, the applicant must wait twelve months from completing their sentence, defined as either serving their active component or completion of probation, prior to petitioning the court and must be engaged in or seeking lawful employment or training. The court determines the scope of the certificate, specifying any consequences not relieved by the certificate, and can revoke the certificate in the event of a future conviction or for material misrepresentation in the petition for the certificate.

Certificates of relief benefit potential employees by relieving offenders from most collateral sanctions and helping to persuade agencies to approve their application for licensure. The statute distinguishes between collateral sanctions and disqualifications; a collateral sanction is defined as a penalty imposed on an individual by operation of law, such as the loss of the right to vote following a felony conviction, whereas a disqualification is defined as a penalty imposed by an agency or court in a civil proceeding, such as the example of the State Board of Education’s revocation of a license stated above. If granted, the certificate relieves most collateral sanctions but does not automatically relieve disqualifications.¹⁶³ Instead, the statute provides that agencies can treat the certificate favorably when considering whether the applicant’s conviction should bar his or her licensure.

Certificates of relief also benefit the employers who choose to hire offenders who have certificates. The certificate shields employers from liability due to “lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued.”¹⁶⁴ As discussed previously, employers are understandably concerned about liability arising from injuries or wrongdoings by an employee; this certificate protects employers from some of those concerns.

According to stakeholders interviewed, certificates of relief have seen minimal usage across the state. Enacted into law in 2011, it could be that the certificate is still relatively new and will take more time to gain traction in the courtroom. While the Administrative Office of the Courts has developed a form for applicants to use when seeking the certificate, the procedure for applying is fairly localized (*see* Appendix F). Creating a uniform procedure for the application, issuance, and implementation of the certificate could assist both applicants and courts alike in awareness and use of the certificate.

¹⁶³ See G.S. 15A-173.3 (2017) (for those sanctions not relieved by the issuing of a certificate).

¹⁶⁴ G.S. 15A-173.5 (2017).

and implementation of the certificate could assist both applicants and courts alike in awareness and use of the certificate.

The minimal usage could also be due to its discretionary nature. While certificates of relief can be used to persuade a board to use its discretion and allow the offender to be issued a license, it is unclear whether boards that maintain discretionary review of applicants are inclined to honor the certificates. Boards may not have many opportunities to consider the certificates in the first place.

Lastly, the infrequent use of certificates of relief could be due to being seldom sought– the PPO survey indicated that very few offenders have or seek an occupational license while on probation.¹⁶⁵ Additionally, licensure is unnecessary for many occupations in the fields reported as the most common to employ offenders – construction, food service industries, landscaping, maintenance, and janitorial/housekeeping.

Establishing a process for applying, granting, and using the certificates could increase awareness of the tool which could ultimately increase its effectiveness.

2. Expunction

While the certificate of relief removes some civil disabilities, it does not actually alter the offender’s criminal record; instead, the offender must pursue an expunction to remove the conviction from his or her record. North Carolina has eleven types of criminal records that may be eligible for expunction, based on factors such as the type of disposition of the original charge, the age of the offender at the time of offense, the type of offense,¹⁶⁶ and the presence of other criminal convictions. (For a complete list of expunction statutes, see Appendix G.) In 2017, the General Assembly altered the eligibility requirements to petition for expunctions by modifying the waiting period for filing for expunctions from fifteen years to five years for a nonviolent misdemeanor and ten years for a nonviolent felony.¹⁶⁷

An expunction is beneficial because it sets aside the conviction as if it never occurred; if asked on an employment application, the offender can truthfully state that he or she has not been convicted of that charge.¹⁶⁸ However, the limitations on expunctions reduce the number of offenders that can benefit from this tool. Namely, the waiting period to file, even at its reduced length, is a significant barrier for those whose conviction interferes with their current employment opportunities. If an offender must find some other means of support for five to ten years while awaiting eligibility for the expunction, the possible benefit to the offender may be diminished.

Confounding the benefits of an expunction, and largely outside the control of policy makers, is the permanence of criminal records in the digital age. While the expunction requires the removal of the conviction from public databases and those private databases they license with,

¹⁶⁵ NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017.

¹⁶⁶ Generally, expunctions are only available for convictions of Class H felony or below. See G.S. 15A-145 and following for details.

¹⁶⁷ S.L. 2017-195.

¹⁶⁸ G.S. 15A-145.5(d) (2017).

it is up to the offender to notify other database companies to remove his or her conviction information. However, even if the offender can contact the number of private companies subject to these licensing agreements for removal of the conviction, the information regarding their conviction may have already spread beyond the reach of what the expunction can remove. The number of ways this information can spread, including all who may have had access prior to the removal of the conviction, may hamper the actual effect of the expunction.

3. Pardon

As established in the state constitution, the discretion to pardon an offender from his or her conviction(s) lies with the Governor (i.e., executive branch). In North Carolina, the Governor's office has established as a matter of policy a waiting period of five years following the completion of the sentence before considering a request for pardon, to show that the offender has maintained a good reputation in the community.¹⁶⁹

According to the Governor's Clemency Office, there are three types of pardons issued: unconditional pardons, pardons of innocence, and pardons of forgiveness.¹⁷⁰ Unconditional pardons are used primarily to restore an individual's right to own or possess a firearm and are not seen in the employment context. Pardons of innocence require a determination of actual innocence, which make it infrequently used. The most commonly used when it comes to employment are pardons of forgiveness.

Pardons of forgiveness are issued at the discretion of the governor, and the governor can determine restrictions he or she deems necessary and proper. There is no standardized application form and there are no details as to the process or standards used in the granting of the pardon. The effect on collateral consequences is unclear. Some statutes outlining the collateral consequence associated with a conviction, require an actual pardon of innocence for relief; other statutes are silent, leaving the effect of the pardon up to interpretation and debate. Perhaps due to the unclear impact on collateral consequences or the uncertainty regarding its award, pardons are rarely sought.

North Carolina has addressed employment collateral consequences by creating several tools offering relief. However, due in part to limitations on these tools, in order to preserve policy interests in public safety and employer autonomy, the tools are used minimally. While modifications to these tools may expand the benefits available to offenders, it is unclear whether such expansion would increase their overall use.

Not all employment collateral consequences are reviewed once in place

As noted throughout this report, many employment collateral consequences are imposed by law, either through statute or administrative rule.¹⁷¹ These consequences may be mandatory based on the

¹⁶⁹ NC Department of Public Safety, "Governor's Clemency Office," www.ncdps.gov/Adult-Corrections/Governors-Clemency-Office.

¹⁷⁰ Id.

¹⁷¹ Based on a review of the Council of State Governments' NICCC, the majority of employment collateral consequences in North Carolina are found in the General Statutes (53%), but there are nearly as many in the Administrative Code (45%).

presence of a conviction, or a controlling entity may have the discretion to weigh the conviction. They can be permanent or limited to a period of time after the offense. The imposition of the consequence may be dependent on the type of offense; it could be triggered by the level of severity of the offense (felony vs. misdemeanor), or it may be a specific offense that directly relates to the duties an employee would perform.

These consequences are put in place to serve a public interest, such as public safety. However, it is not clear that they are ever reviewed once they are enacted to determine if they fulfill their intended purpose or need to be amended. For a minority of the consequences, there are review processes in place that would allow an entity to examine their effect if they so choose. Still, for a majority of the consequences, there is no formal review process.

Consequences Subject to Formal Review Process

Some employment collateral consequences apply to offenders who are seeking or possess an occupational license. The General Assembly may direct an agency¹⁷² on how to treat criminal history by either putting a restriction in their enabling legislation or authorizing the agency to promulgate administrative rules, which might include such a restriction. If the agency creates a rule to that effect, the General Assembly has put processes in place for subsequently reviewing it.

The General Statutes require each agency subject to the Administrative Procedure Act¹⁷³ that promulgates rules to conduct an annual review of its rules. The agency must “identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section.”^{174, 175} The agency is required to repeal any rule identified by the review that meets this definition.¹⁷⁶

Another statute sets out a second process that focuses on a different standard and involves three different entities. In 2013, the General Assembly enacted a statute that requires each agency to conduct a review of its existing rules at least once every 10 years.¹⁷⁷ The agencies follow a schedule established by the Joint Legislative Administrative Procedure Oversight Committee for the review of all existing rules.¹⁷⁸ The review takes place in three steps. First, the agency analyzes the rule “to

¹⁷² See G.S. 150B-2(1a) (2017)(“Agency” includes an agency in the executive branch of North Carolina state government and a licensing board).

¹⁷³ Chapter 150B of the General Statutes.

¹⁷⁴ G.S. 150B-19.1(a) (2017) (The General Statutes require boards and agencies to adhere to certain principles while developing rules: “(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest. (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law. (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant. (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c). (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.”).

¹⁷⁵ G.S. 150B-19.1(b).

¹⁷⁶ *Id.*

¹⁷⁷ G.S. 150B-21.3A(c) (2017).

¹⁷⁸ G.S. 150B-21.3A(d).

make an initial determination as to whether the rule is (i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii) unnecessary.”¹⁷⁹ “Necessary with substantive public interest--[m]eans any rule for which the agency has received public comments within the past two years.”¹⁸⁰ The agency posts its determination on its website and invites public comment on the rule and the determination. At the conclusion of this process, the agency reviews the comments and develops a report that contains the comments, responses to any objections to the rule raised in the comments, and a final determination. The report is submitted to the Rules Review Commission (RRC).

The RRC is part of a division of the Office of Administrative Hearings and is set up to review administrative rules in accordance with Chapter 150B of the General Statutes.¹⁸¹ The RRC reviews the comments, responses, and the determination from the agency to decide whether it agrees with that determination.¹⁸² The RRC then submits a report containing its final determination to the Joint Legislative Administrative Procedure Oversight Committee (Committee) at the General Assembly for consultation.¹⁸³ The Committee may either concur with the final determination of the RRC or, if it disagrees with a determination, it may recommend that the General Assembly direct the agency to conduct a review of the specific rule in the following year.¹⁸⁴

The processes exist for reviewing administrative rules, but it is not known to what extent the criminal history provisions are reviewed for their impact on offenders. It would require public comment to draw attention to those provisions and it is not likely that the population affected by them is aware of the process.

It is also not known how many offenders are affected by the restrictions on obtaining occupational licenses. The General Statutes require licensing boards to report annually on various statistics, including the number of applicants who were refused an exam, but they do not report on the reason for the refusal.¹⁸⁵ In addition, it is not possible to know how many offenders chose not to apply because they have a criminal conviction. In the survey of PPOs, the majority responded that few offenders have occupational licenses upon entering supervision or attempt to get one while on supervision. On average, they indicated that about 10% of probationers and 9% of post-release supervisees enter supervision with an occupational license and 11% attempt to get one while on supervision.¹⁸⁶

It is important to note that few of the occupational training programs offered in prison lead to licensing issues upon release. In a review of the 71 programs offered, only ten appear to require a license upon release to work in that field and in eight of those fields, the licensing entity had the discretion to weigh the criminal history.¹⁸⁷

¹⁷⁹ G.S. 150B-21.3A(c)(1).

¹⁸⁰ G.S. 150B-21.3A(a)(3).

¹⁸¹ G.S. 143B-30.1 (2017).

¹⁸² G.S. 150B-21.9 (2017) (describing the standard of review used by the RRC).

¹⁸³ G.S. 150B-21.3A(c)(2).

¹⁸⁴ G.S. 150B-21.3A(c)(3).

¹⁸⁵ G.S. 93B-2 (2017).

¹⁸⁶ NC SPAC, Probation and Parole Officer Impressions of Offender Employment, 2017

¹⁸⁷ The ten programs include A/C Heating and Refrigeration, Barbering, Cosmetology, HVAC Technician, Plumbing, Plumber (part of Inmate Construction Program), and Continuing Education in the following: Electrical, Nursing,

Consequences Not Subject to Formal Review Process

Other employment collateral consequences are found in the General Statutes. When those statutes are proposed, they go through the same legislative process as other proposed legislation, which includes committee hearings and floor debate. However, there is no overarching requirement that these statutes be reviewed once they are in place. The legislature may place a sunset provision on an administrative provision or an act so it will be reexamined by a certain date, but it is not known how often this tool is utilized. A legislator may request a study of a provision, or introduce a bill to amend a provision, but that is usually preceded by an expression of public concern. Absent a specific requirement for the particular statute, there is no regular review of employment collateral consequences in the General Statutes.

Summary

Employment collateral consequences are established to serve a purpose; however, if their effect is not examined after enactment, they can end up failing to fulfill that purpose or even producing the opposite results. There is a process in place for reviewing administrative rules but for the employment collateral consequences in statute, there is no formal review process.

Veterinary Assistant, and Commercial Driving License. Other than Continuing Education for the Commercial Driving License and for Electrical, the licensing board or agency has the discretion to weigh the criminal history.

IV. CONCLUSIONS

Offender employment could reduce recidivism, yet this population struggles to gain work. North Carolina has almost 700 employment related collateral consequences, ranking twelfth with regard to collateral consequences specifically related to employment and occupational and professional licensing and certification. These numerous penalties related to employment raise a variety of issues, noted within this report, that are of interest to policymakers: notice to defendants of possible consequences following conviction, the nexus of the consequence to public safety risks, the potential uneven application in consequences among defendants, and the growing number of collateral consequences without any requirement for them to be reviewed. Review of the consequences in a periodic manner, by a body familiar with the issues they present, could be an efficient way to ensure that consequences in effect are still serving the desired purpose (*see* Appendix B, Proposal #2). Many, but not all of the consequences have a close connection between the behavior underlying the conviction and the consequence attached. Requiring a nexus between the behavior and the restriction would promote public safety while avoiding unnecessary restrictions on offender employment. Adopting a nexus requirement (particularly for misdemeanor offenses) as part of instituting new consequences going forward, and/or as part of the review of their continued purpose, could further the goal of balancing public safety needs with offender reintegration. (*See* Appendix B, Proposal #3).

Beyond the codified collateral consequences, other barriers to employment arise for offenders following a criminal conviction and completion of their sentence. Offenders exiting prison may lack identification cards, transportation, and a permanent address, making it difficult to apply and interview for jobs. Agencies and organizations across North Carolina are working to support offenders reentering communities by offering trainings for offenders to acquire and develop marketable skills. Reintegration of offenders has long term benefits for society: offenders who are employed, housed, and have a supportive community/home life may be less likely to reoffend.

The goals of supporting offender reentry for its long-term benefits and addressing the immediate safety concerns of society related to offenders in the workplace may, at times, be in conflict. Employers seem to be attempting to strike the most comfortable balance for these competing goals: for example, offenders with less serious offenses tend to fare better than those with more serious offenses, and offenders who disclose their conviction status, when required, may have a better chance of being hired. Criminal convictions may carry a public perception, which affects an offender's employability; employers are understandably concerned with how the public perceives their business. Given the considerations and perceived risks on behalf of employers in hiring individuals with criminal records, employers tend to evaluate applicants on an individual basis – considering the severity of any past crime, when it occurred, and the nexus of the offense to the responsibilities of the job. Reentry programs and policies that weigh the interests of supporting offenders while recognizing the public safety concerns, perceived and actual, may see the most support from the employer community, which could aid in their overall success.

Understanding how collateral consequences and logistical barriers impact recidivism is a challenge to measure empirically; the data cannot fully explain why someone is unemployed. However, through research and discussions with stakeholders, this report offers a perspective on the multi-faceted and intertwined factors many offenders face when seeking employment. This report also includes the many ways in which the state and community organizations work to help offenders overcome those barriers. One of these options, certificates of relief, is promoted across the nation as a priority policy for those supporting offender reintegration. North Carolina is ahead of many states by creating this relief option

in statute; increasing awareness of its availability to offenders and employers alike could help increase its use (see Appendix B, Proposal #1). The Commission supports the work of the General Assembly, DACJJ, and others who adopt laws and policies that strive to support offender's successful reintegration into society through relief and reentry measures while continuing to advance public safety. The Commission staff remain available for questions and further discussion of the issues included in this report.

**APPENDIX A
STUDY REQUEST**

Art Beeler
3684 Ben Mil Court
Franklinton, North Carolina 27525

September 4, 2016

Dear Judge Spainhour,

I write to ask the North Carolina Sentencing and Policy Advisory Commission to study the effects of the collateral consequences associated with a criminal conviction in North Carolina, specifically for those offenders released from state prisons. According to the Collateral Consequences Resource Center, there are more than 140,000 collateral consequences nationwide; the University of North Carolina School of Government has documented over 400 broad categories of collateral consequences in North Carolina alone.

Collateral consequences are the additional civil state penalties, mandated by statute, that attach to criminal convictions. Many defendants are not aware of the collateral consequences they face at conviction – unless a case involves deportation, there is no legal responsibility for defendants to be informed. Collateral consequences also impact prisoners returning to the community, but very little is known about their effect on recidivism. If offenders are not successful in their reentry, they may ultimately return to prison. Because the Sentencing Commission is mandated to report statewide adult and juvenile recidivism rates on an ongoing basis, a study of the effects of collateral consequences seems to fit within its purview.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Art Beeler', with a long, sweeping horizontal line extending to the right.

Art Beeler
Lieutenant Governor's Appointee, NC Sentencing Commission

APPENDIX B
SENTENCING COMMISSION PROPOSALS

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION SUMMARY OF PROPOSALS

Introduction

As part of its mandate, the Sentencing Commission is required to study issues relating to the recidivism of adult offenders on an ongoing basis. In 2014, the Commission formed the Research and Policy Study Group to explore existing criminal justice research findings that could lend themselves to policy recommendations that would ultimately reduce recidivism. In September of 2016, the Sentencing Commission referred a request to the Study Group to study the collateral consequences associated with a criminal conviction in North Carolina, specifically for those offenders released from state prisons.

Collateral consequences are the indirect civil penalties an individual faces as the result of a criminal conviction. They include barriers to employment, housing, and public benefits. The Study Group discussed the various collateral consequences and decided to focus on employment. For twelve months it explored the barriers, both legal restrictions and other issues, which affect offenders and employment. As a result of the study, the Group developed a set of proposals to report to the full Commission. The Commission reviewed and adopted a number of the proposals at its meeting on December 1, 2017. The proposals and the commentary are detailed below.

Proposals

1. Increase awareness of Certificates of Relief through Legal Aid of North Carolina, the NC Bar Association, the Administrative Office of the Courts, and the Department of Public Safety, particularly Probation and Parole Officers and Reentry Councils, and support efforts to increase availability of Certificates of Relief.

Commentary: A Certificate of Relief relieves most collateral sanctions for an individual and protects an employer against negligent hiring. (Article 6 of Chapter 15A of the North Carolina General Statutes) The process for being granted a Certificate of Relief has a shorter timeline and is less complex than an expunction, and more people likely would qualify for a Certificate of Relief than for an expunction.

Throughout the project, staff spoke with many individuals who expressed a lack of awareness of a Certificate of Relief. Despite the provision being enacted in 2011 (Session Law 2011-265), very little appears to have been done to publicize them. The Administrative Office of the Courts (AOC) did create a standard form to be used (AOC-CR-273), but there is no recommended statewide process to provide uniformity. As a result, each jurisdiction has been setting its own process for applying and approving or denying a Certificate of Relief. In addition, it is unclear how many Certificates of Relief are being issued because the AOC does not receive any data once a Certificate of Relief is granted. Certificates of Relief can assist ex-offenders in their search for employment but they may not know that the relief exists or that they qualify for one, engendering the need to increase awareness.

2. Periodically review criminal history restrictions for professional licenses and certifications.

Commentary: Licensing boards and state agencies issue professional licenses. Sometimes the General Assembly sets the requirements for obtaining a license in statute, while other times it authorizes the board or agency to promulgate administrative rules. The requirements may include a

prohibition on issuing a license to a person with a criminal conviction or may give the board or agency the discretion to consider the criminal conviction.

While boards and agencies are required by statute to conduct periodic reviews of their rules (G.S. 150B-21.3A), it is possible over time that a ban due to a prior conviction may be overly broad or no longer necessary as it relates to the license. Periodic review of those requirements would ensure that they continue to serve the public's interest in the most effective way.

3. The State should exclude convictions for misdemeanor offenses from triggering offenses for employment collateral consequences, unless there is a nexus between the offense and the consequence.

Commentary: Staff analyzed the data from the National Inventory of Collateral Consequences of Conviction for North Carolina employment collateral consequences and found 549 consequences. Twenty-nine percent (159) of collateral consequences are identified solely on offense type (felony, misdemeanor, or both). Almost half (46%) of collateral consequences are identified solely on crime type (i.e., person, property, drug, societal/other). One quarter (139) of collateral consequences are identified by a combination of offense type and crime type. Out of all 549 collateral consequences, 37 are triggered by a misdemeanor alone; 121 are triggered by a felony or misdemeanor; and it is not known how many of the consequences triggered solely by offense type are misdemeanor offenses.

Collateral consequences for lower level offenders can have a large impact on individuals. There are more misdemeanor offenders than felony offenders each year who must deal with the disruption to their lives caused by the sentence followed by collateral consequences that may affect their housing or employment status. Punishment for misdemeanor offenses is less than what is attached to a felony offense in recognition that the crime is less severe. Excluding convictions for misdemeanor offenses from triggering offenses for employment collateral consequences is another way to recognize this distinction between offense types.

4. The Commission refers development of a relief mechanism for offenders who receive an adult conviction while 16 or 17 prior to the change in the juvenile jurisdiction age to the Juvenile Jurisdiction Advisory Committee.

Commentary: In 2017, the North Carolina General Assembly passed the Juvenile Justice Reinvestment Act (JJRA) which "raises the age" of juvenile court jurisdiction to include 16- and 17-year olds. (Session Law 2017-57, s. 16D.4) Pursuant to JJRA, Class H and I felonies and non-traffic misdemeanors will be prosecuted in juvenile court. Previously, the upper limit for juvenile court jurisdiction was age 15, meaning that all 16- and 17-year olds charged with criminal offenses were automatically prosecuted as adults. The provisions of JJRA apply to offenses committed on or after December 1, 2019. As a result, 16- and 17- year olds who committed offenses prior to that date will have adult criminal records while those who commit their offenses after that date will not. Absent an expunction, those people will carry their criminal records for the rest of their lives and it could impede their ability to obtain employment and other necessities. Since the State has classified 16- and 17- year olds going forward as juveniles and thereby made their delinquency records confidential, it would be helpful to provide some form of a relief mechanism for similar offenders who were convicted as adults prior to the JJRA.

The General Assembly created the Juvenile Justice Advisory Committee as part of the JJRA. The Advisory Committee is tasked with developing a specific plan for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include 16- and 17-year-olds within the juvenile justice system. The issue of relief for members of this group who were convicted prior to the effective date of the change would be appropriate.

APPENDIX C
PPO SURVEY QUESTIONS

Probation and Parole Officers Survey Questions

The North Carolina Sentencing and Policy Advisory Commission was created to make recommendations to the General Assembly for the modification of sentencing laws and policies and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. The Sentencing Commission's Research and Policy Study Group undertook a request to study the potential impact of collateral consequences on recidivism. The group is focusing on the possible consequences a criminal conviction may have on individuals seeking employment.

We are seeking your perspective as a probation/parole officer on the issues and challenges offenders may face when attempting to obtain or maintain employment. Your knowledge and experience will greatly inform this project and we appreciate your time and responses.

Please answer the following questions based on your impressions from working with the offenders you supervise. The survey should take no longer than 10 minutes and will be split into two sections that ask questions focused on either PRS offenders or probationers. If the question asks for a number or percentage, please estimate based on the offenders you supervise in a year; statistics from your case management system are not expected. Responses collected will be anonymous. Thank you for taking the time to complete this survey and share your insights with us. If you have any suggestions or comments related to this survey or regarding the project in general, please contact the Sentencing Commission Staff at 919.890.1470 or sentencingcommission@nccourts.org.

1. In which county do you work?
2. Please select the length of time you have served as a PPO in North Carolina.
 - a. Two years or less
 - b. 3-5 years
 - c. 6-10 years
 - d. 10+ years

Please answer the following questions based on the offenders you supervise in a year.

PRS Offenders – offenders released from prison onto Post-Release Supervision

1. In your experience, what percentage of offenders are seeking employment (not pursuing a course of study or of vocational training)?
2. In your experience, what percentage of offenders are successful in obtaining some type of employment during supervision?
3. Of those who obtain employment, what percentage of offenders are successful in maintaining employment throughout their supervision period?
4. What type of employment do most offenders obtain?
 - a. Full time, employee for wages, salary, or commissions
 - b. Full time, self-employed in own business
 - c. Part time, employee for wages, salary, or commissions
 - d. Part time, self-employed in own business

- e. Day laborer (e.g. temporary work by the day or by the job)
5. What industries do offenders get employed in most frequently?
- a. Construction
 - b. Maintenance (e.g. building maintenance such as repairing windows or painting)
 - c. Janitorial/Housekeeping
 - d. Automotive repair
 - e. Food service
 - f. Landscaping
 - g. Trucking
 - h. Retail
 - i. Personal services (e.g. barbers, cosmetologists)
 - j. Other: _____
6. What percent of PRS offenders have an occupational license upon entering PRS?
7. What percent of PRS offenders attempt to get an occupational license after their release from prison? What percent of those are successful?
8. Of those employed, do individuals need assistance from other sources of income (e.g. federal assistance programs, family and friends) to provide for themselves?
- a. Need no supplement to work income
 - b. Need minimal supplement to work income
 - c. Need some supplement to work income
 - d. Need significant supplement to work income
9. What percent of offenders would you estimate engage in informal work (i.e. not on the official payroll)?
10. Select which of the following you see as a barrier for offenders in gaining employment. Please select as many as you think are barriers.
- a. Lack of soft skills (nontechnical job requirements related to behavior, personality, and attitude; e.g. communication, punctuality, work ethic)
 - b. Lack of training (technical knowledge for a job; e.g. operate a cash register, welding methods)
 - c. Inability to obtain occupational licenses due to their criminal conviction
 - d. Lack of transportation
 - e. Unstable housing
 - f. Inability to obtain identification documents
 - g. Employer concerns about hiring offenders generally
 - h. Other(s): _____
11. Please rank the order of significance of barriers selected above (1=most significant barrier).
12. What factor in your opinion is most important for preventing offenders from reoffending?

Please answer the following questions based on the offenders you supervise in a year.

Probationers – offenders placed onto supervision imposed as an alternative to imprisonment

1. In your experience, what percentage of offenders lost their job as a result of their criminal conviction?
2. In your experience, what percentage of offenders are seeking employment (not pursuing a course of study or of vocational training)?
3. In your experience, what percentage of offenders are successful in obtaining some type of employment during supervision?
4. Of those who obtain employment, what percentage of offenders are successful in maintaining employment throughout their supervision period?
5. What type of employment do most offenders obtain?
 - a. Full time, employee for wages, salary, or commissions
 - b. Full time, self-employed in own business
 - c. Part time, employee for wages, salary, or commissions
 - d. Part time, self-employed in own business
 - e. Day laborer (e.g. temporary work by the day or by the job)
6. What industries do offenders get employed in most frequently?
 - a. Construction
 - b. Maintenance (e.g. building maintenance such as repairing windows or painting)
 - c. Janitorial/Housekeeping
 - d. Automotive repair
 - e. Food service
 - f. Landscaping
 - g. Trucking
 - h. Retail
 - i. Personal services (e.g. barbers, cosmetologists)
 - j. Other: _____
7. What percent of probationers have an occupational license?
8. What percent of probationers attempt to get an occupational license while serving their supervision? What percent of those are successful?
9. Of those employed, do individuals need assistance from other sources of income (e.g. federal assistance programs, family and friends) to provide for themselves?
 - a. Need no supplement to work income
 - b. Need minimal supplement to work income
 - c. Need some supplement to work income
 - d. Need significant supplement to work income
10. What percent of offenders would you estimate engage in informal work (i.e. not on the official payroll)?

11. Select which of the following you see as a barrier for offenders in gaining employment. Please select as many as you think are barriers.

- a. Lack of soft skills (nontechnical job requirements related to behavior, personality, and attitude; e.g. communication, punctuality, work ethic)
- b. Lack of training (technical knowledge for a job; e.g. operate a cash register, welding methods)
- c. Inability to obtain occupational licenses due to their criminal conviction
- d. Lack of transportation
- e. Unstable housing
- f. Inability to obtain identification documents
- g. Employer concerns about hiring offenders generally
- h. Other(s): _____

12. Please rank the order of significance of barriers selected above (1=most significant barrier).

13. What factor in your opinion is most important for preventing offenders from reoffending?

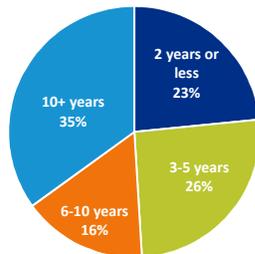
APPENDIX D
PRESENTATION OF PPO SURVEY RESULTS

SURVEY RESULTS:
PPO IMPRESSIONS OF OFFENDER EMPLOYMENT
RESEARCH AND POLICY STUDY GROUP
OCTOBER 20, 2017

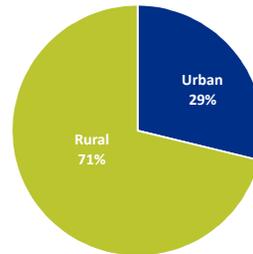
Offender Employment Survey: PPO Impressions

- Sought perspectives of Probation and Parole Officers (PPOs) on issues and challenges offenders may face when attempting to obtain or maintain employment
- Sent the survey to 1,808 officers
- 653 PPOs responded (36% response rate) from 94 counties with a completion rate of 86%

Length of Service as PPO in North Carolina



Population Density of PPO Districts



Key Findings

Based on Probation and Parole Officer impressions:

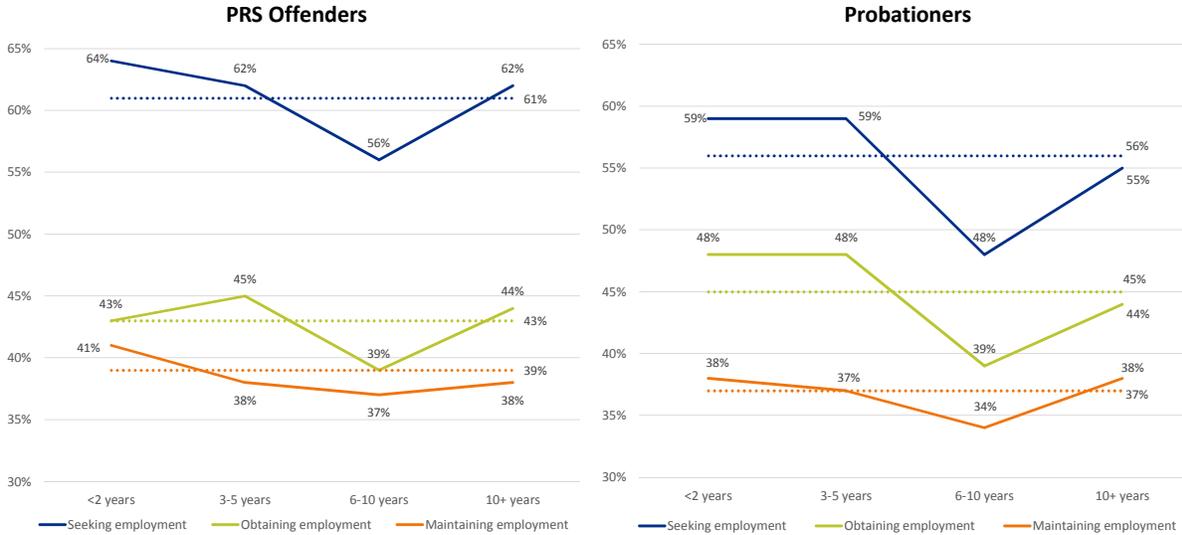
- Less than half of PPO caseloads obtain employment.
- Low percentage of supervisees obtaining full time employment.
- Construction industry most commonly selected as hiring probationers or PRS offenders
- Overwhelmingly, PPOs responded that having employment is the most important factor for preventing an offender from reoffending.

Less than half of PPO caseloads obtain employment

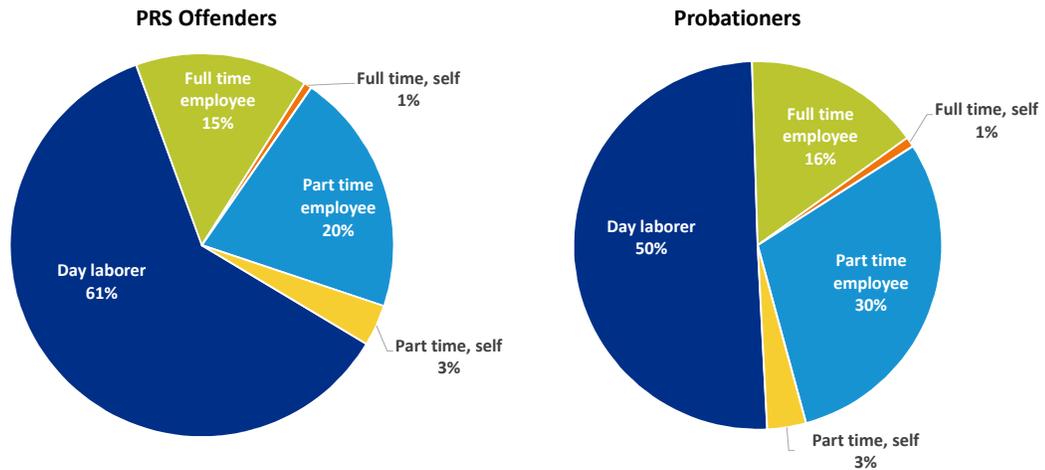
Statute requires as a regular condition of probation and PRS that offenders either be employed or pursue a course of study or vocational training.

Caseload Type	Average		
	Seeking Employment	Obtaining Employment	Maintaining Employment
PRS Offenders	61%	43%	39%
Probationers	56%	45%	37%

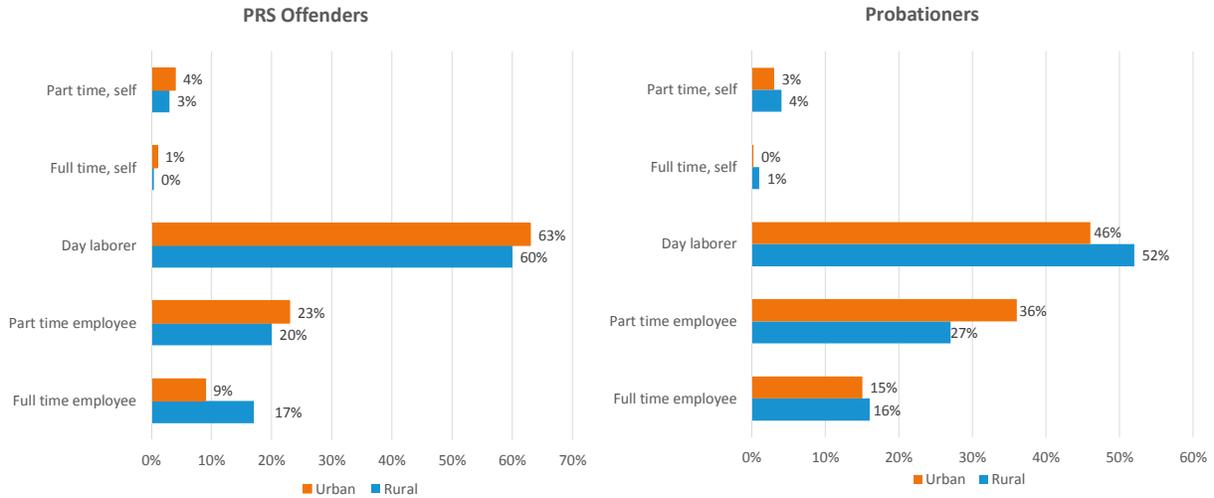
PPO impressions differed based on length of service



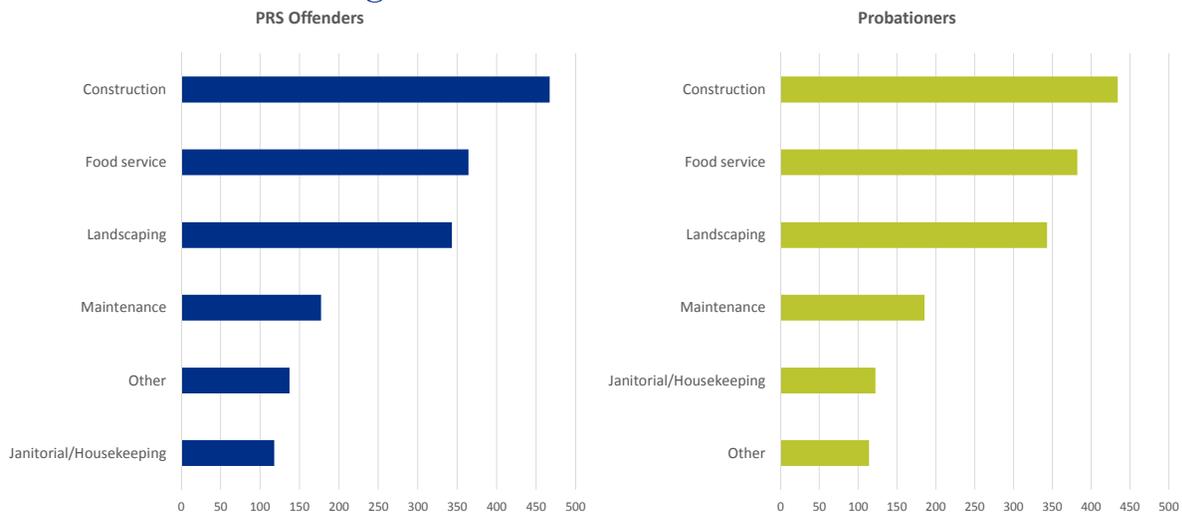
Few offenders obtain full-time employment



Type of employment obtained varied somewhat between urban and rural districts



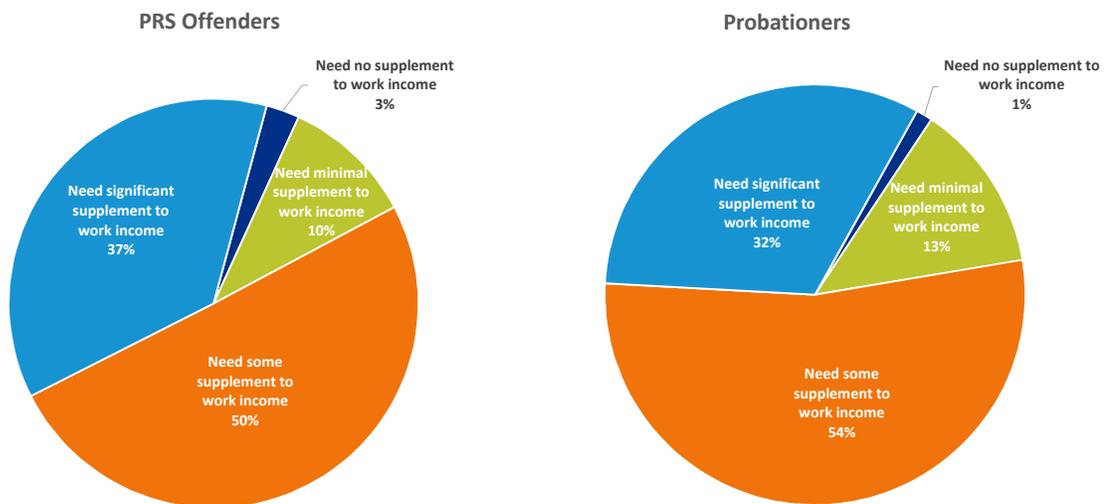
Construction and food service industries most commonly selected for hiring offenders



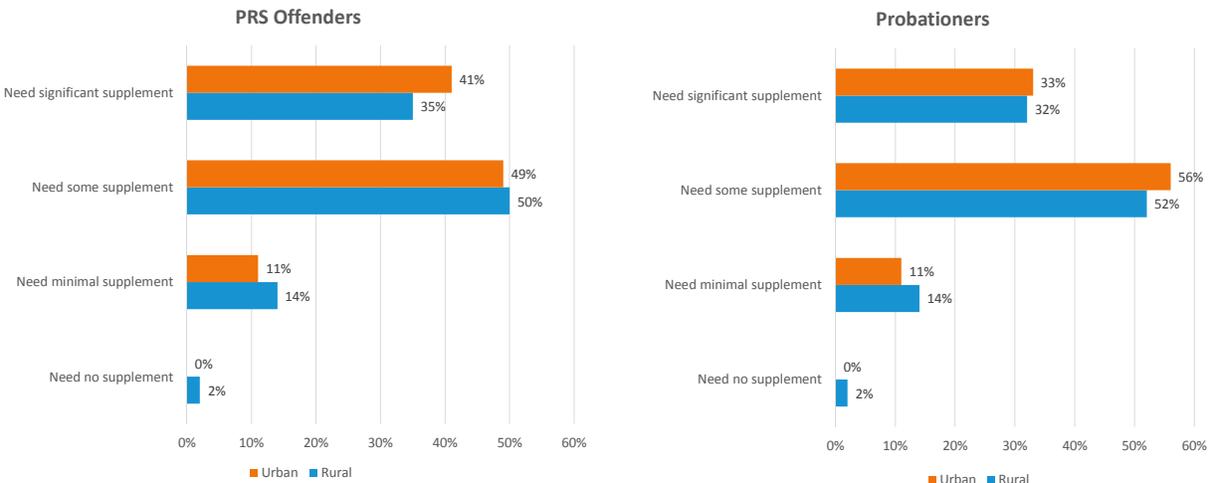
Very few offenders have or pursue licensure

Caseload Type	Average	
	Have an occupational license upon supervision entrance	Pursue an occupational license while on supervision
PRS Offenders	9%	11%
Probationers	10%	11%

Almost all offenders need financial supplement to income



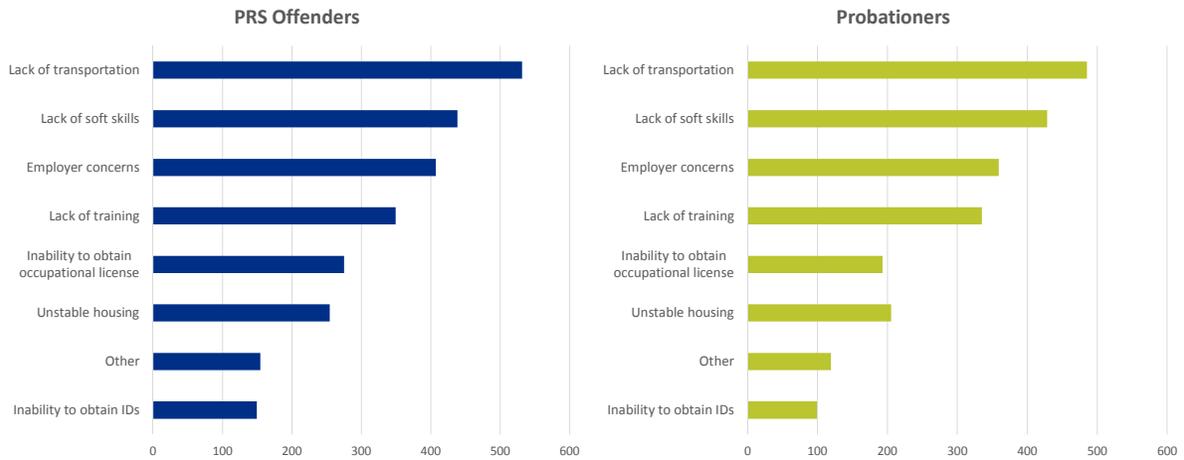
Slight differences in supplemental income need by population density



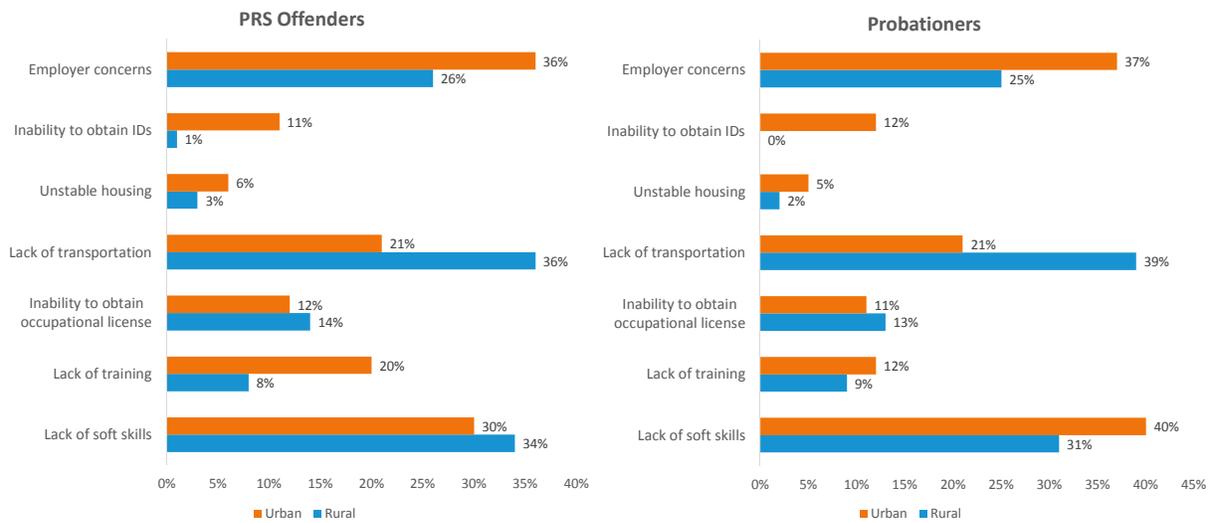
Approximately half of offenders engage in informal work

- Asked what percent of offenders would the PPO estimate engage in informal work (i.e. not on the official payroll)
- PPOs responded that slightly more than half of offenders engage in informal work
 - Did not vary significantly by caseload type
 - Did not vary by length of service as PPO

Lack of transportation and lack of soft skills selected as biggest barriers to offender employment

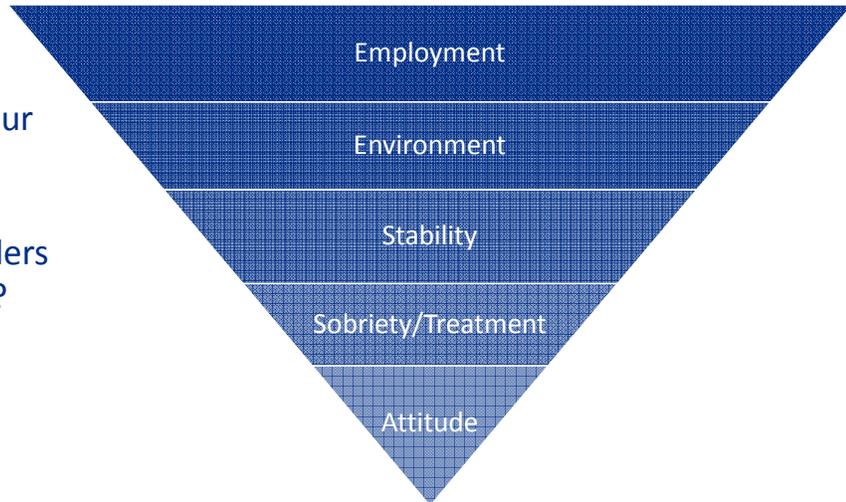


Barriers varied significantly by urban and rural areas



Employment cited as top factor to prevent reoffending

What factor, in your opinion, is most important for preventing offenders from reoffending?



Recap: Key Findings

Based on Probation and Parole Officer impressions:

- On average, 43% of PRS offenders and 45% of probationers are obtaining employment.
- Of offenders who obtain a job, most work as a day laborer.
- Most frequently selected industry for offender: Construction
- Very few offenders have or seek to get an occupational license.
- On average, approximately half of PRS offenders and probationers engage in informal work.
- Most frequently selected barrier to employment: Transportation
- Differences between rural and urban county PPO responses were more pronounced in the ranking of barriers to employment for offenders.
- Overwhelmingly, PPOs responded that having employment is the most important factor for preventing an offender from reoffending.



APPENDIX E
N.C. GEN. STAT. § 93B-8.1

§ 93B-8.1. Use of criminal history records.

(a) The following definitions apply in this section:

- (1) Applicant. – A person who makes application for licensure from an occupational licensing board.
- (2) Board. – An occupational licensing board as defined in G.S. 93B-1.
- (3) Criminal history record. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined.
- (4) Licensee. – A person who has obtained a license to engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) Unless the law governing a particular occupational licensing board provides otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal history. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (7) The subsequent commission of a crime by the applicant.
- (8) Any affidavits or other written documents, including character references.

(c) The board may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(d) This section does not apply to The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission. (2013-24, s. 1.)

APPENDIX F
AOC-CR-273: CERTIFICATE OF RELIEF PETITION AND ORDER

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

District Superior Court Division

IN THE MATTER OF

Name And Address Of Petitioner (Type Or Print)

**CERTIFICATE OF RELIEF
PETITION AND ORDER**

Race Sex Date Of Birth Last Four Digits Of SSN

G.S. 15A-173.1, -173.2, -173.3, -173.4, -173.5, -173.6

I. OFFENSE(S)

File No.	Date Of Conviction	General Statute And Offense Description	Class	Date Of Completion Of Sentence

II. PETITION

- I hereby petition for a Certificate of Relief under Article 6 of Chapter 15A of the General Statutes and certify as follows:
- I was convicted of no more than two Class G, H or I felonies or misdemeanors in one session of court, as shown above.
 - I have no other convictions for a felony or misdemeanor other than a traffic violation.
 - At least twelve (12) months have passed since I served all of the active time, if any, imposed for each offense, and since I completed any period of probation, post-release supervision, or parole related to the offense that was required by State law or court order.
 - I a. am engaged in, or seeking to engage in, the following lawful occupation or activity: *(list employment, training, education, or rehabilitative program)* _____
 b. have the following lawful source of support: *(list source of support)* _____
 - I have complied with all requirements of my sentence, including any terms of probation.
 - I a. am not in violation of the terms of any criminal sentence.
 b. am in violation of the terms of a criminal sentence, but the failure to comply is justified, excused, involuntary, or insubstantial because *(explain justification)* _____
 - No criminal charges are currently pending against me.
 - Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.
 - If I filed a previous petition for a Certificate of Relief that was denied, at least twelve (12) months have passed since the denial, which was entered on *(date)* _____. I have remedied any defects in my previous petition and have complied with any conditions for reapplication set by the Court in that *(explain)* _____

NOTE TO PETITIONER: You may submit additional materials that support the claims made in this petition at the hearing. Please note that any additional materials you submit may become part of the official court record, which is open to the public.

Date _____ Signature Of Petitioner _____

III. SERVICE ON DISTRICT ATTORNEY

NOTE TO CLERK: "When a petition [for a Certificate of Relief] is filed under G.S. 15A-173.2 . . . the court shall notify the district attorney at least three weeks before the hearing on the matter." G.S. 15A-173.4(a). No hearing may be held on this matter until at least three (3) weeks after notice to the District Attorney.

NOTE TO DISTRICT ATTORNEY: "The district attorney shall have the right to appear and be heard at any proceeding relating to the issuance . . . of the Certificate of Relief." G.S. 15A-173.4(c). "The victim of the underlying offense for which a Certificate of Relief is sought may appear and be heard, or may file a statement for consideration by the court, in a proceeding for issuance . . . of the Certificate of Relief. Notification to the victim shall be made through the Victim Witness Coordinator in the office of the district attorney." G.S. 15A-173.6.

The undersigned accepts service of this petition on behalf of the Office of the District Attorney:

Date _____ Signature Of Person Accepting Service _____

Name Of Person Accepting Service (Type Or Print) _____ Title Of Person Accepting Service (Type Or Print) _____

CAUTION TO PETITIONER: A Certificate of Relief is **NOT** an expunction or a pardon. It does **NOT** relieve you of the collateral sanctions listed in G.S. 15A-173.3, sanctions imposed by the North Carolina Constitution, sanctions imposed by federal law, or any sanctions that remain in place as identified in Order No. 3 on Side Two. Your Certificate of Relief may be revoked if you are convicted of a new felony or misdemeanor other than a traffic violation, or if you are found to have made any material misrepresentation in your petition.

IV. FINDINGS OF FACT

After a hearing on this petition, and after reviewing the petition, the petitioner's criminal history, any information provided by the victim(s), any information provided by the District Attorney, and any other relevant evidence, the Court finds the following by a preponderance of the evidence:

- 1. The petitioner was convicted of no more than two Class G, H or I felonies or misdemeanors in one session of court.
2. The petitioner has no other convictions for a felony or misdemeanor other than a traffic violation.
3. At least twelve (12) months have passed since the petitioner served all of the active time, if any, imposed for each offense, and since the petitioner completed any period of probation, post-release supervision, or parole related to the offense that was required by State law or court order.
4. The petitioner (check one or both)
a. is engaged in, or seeking to engage in, the following lawful occupation or activity: (list employment, training, education, or rehabilitative program)
b. has the following lawful source of support: (list source of support)
5. The petitioner has complied with all requirements of the sentence, including any terms of probation.
6. The petitioner (check one)
a. is not in violation of the terms of any criminal sentence.
b. is in violation of the terms of a criminal sentence, but the failure to comply is justified, excused, involuntary, or insubstantial because (explain justification)
7. No criminal charges are currently pending against the petitioner.
8. Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.
9. No previous petition has been filed, or if the petitioner filed a previous petition for a Certificate of Relief that was denied, at least twelve (12) months have passed since the denial, and the petitioner has remedied any defects in the previous petition and has complied with any conditions for reapplication set by the Court in that (explain)
10. The Office of the District Attorney received notice at least three weeks prior to the hearing on this matter.
11. Other:

V. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court concludes as follows: (check one)

- 1. (full relief granted) Finding No. 1 through Finding No. 10 above having all been found, and the Court having found no reason in Finding No. 11 above to deny or limit the Certificate of Relief, the petitioner is entitled to a full Certificate of Relief.
2. (relief denied) Finding No. 1 through Finding No. 10 above having NOT all been found, No. 11 above having been found indicating that the petitioner should not obtain the relief requested, the petitioner is NOT entitled to a Certificate of Relief.
The following reapplication condition(s) is necessary:
3. (restricted relief granted) Finding No. 1 through Finding No. 10 above having all been found, BUT having found reason in Finding No. 11 above to limit the Certificate of Relief, the petitioner is entitled to a Certificate of Relief, with the following limitation: (identify restriction and/or collateral consequence from which relief should not be granted)

VI. ORDER

(check one)

- 1. (full relief granted) The petitioner's request for a full Certificate of Relief is granted.
2. (relief denied) The petitioner's request for a full Certificate of Relief is denied. If the petitioner chooses to reapply under G.S. 15A-173.2(g), the petitioner must satisfy the following condition(s) of reapplication:
3. (restricted relief granted) The petitioner's request for a Certificate of Relief is granted, with the following limitation: (identify restriction and/or collateral consequence from which relief is not granted)

Table with 4 columns: Date, Name Of Judicial Official (Type Or Print), Judge/Clerk/Magistrate checkboxes, Signature Of Judicial Official

APPENDIX G
EXPUNCTION STATUTES IN NORTH CAROLINA

Expunction Statutes in North Carolina

- Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor. (G.S. 15A-145)
- Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses. (G.S. 15A-145.1)
- Expunction of records for first offenders not over 21 years of age at the time of offense for certain drug offenses. (G.S. 15A-145.2)
- Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses. (G.S. 15A-145.3)
- Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony. (G.S. 15A-145.4)
- Expunction of certain misdemeanors and felonies; no age limitation. (G.S. 15A-145.5)
 - Felony Classes H and I, misdemeanor Classes 1 through 3.
- Expunctions for certain defendants convicted of prostitution. (G.S. 15A-145.6)
- Expunction of records when charges are dismissed or there are findings of not guilty. (G.S. 15A-146)
- Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft or mistaken identity. (G.S. 15A-147)
- Expunction of records when pardon of innocence is granted. (G.S. 15A-149)

APPENDIX H
LIST OF REFERENCES

List of References

- Agan, Amanda and Sonja Starr. "Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment." University of Michigan Law & Econ Research Paper No. 16-012, June 2016, file:///C:/Users/cscrad/Downloads/SSRN-id2795795.pdf.
- Baker, Suzanne, et al. "Chapter 5: Education, Employment, and Recidivism: A Review of the Literature." Juvenile Justice Educational Enhancement Program, Center for Criminology and Public Policy Research, 2006, <http://criminology.fsu.edu/wp-content/uploads/Education-Employment-and-Recidivism-a-Review-of-the-Literature-Ch-5-2006-Annual-Report.pdf>.
- Bucknor, Cherrie and Alan Barber. "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies." Center for Economic and Policy Research, June 2016, <http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5>.
- Bureau of Justice Statistics. "Survey of State Criminal History Information Systems, 1993." United States Department of Justice, 1994, <https://www.bjs.gov/content/pub/pdf/Schis93.pdf>.
- Bureau of Justice Statistics. "Survey of State Criminal History Information Systems, 2012." United States Department of Justice, January 2014, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.
- Carlin, Michael and Ellen Frick. "Criminal Records, Collateral Consequences, and Employment: the FCRA and Title VII in Discrimination Against Persons with Criminal Records." *Seattle Journal for Social Justice*, Vol. 12, no. 1, 2013, 109-163, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1724&context=sjsj>.
- Chin, Gabriel J. "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction." *University of Pennsylvania Law Review*, Vol. 160, p. 1789, August 2012; UC Davis Legal Studies Research Paper No. 308.
- Decker, Scott H., et al. "Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment." National Institute of Justice, 2014, <https://www.ncjrs.gov/pdffiles1/nij/grants/244756.pdf>.
- Demleitner, Nora V. "Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences," 11 *Stan. L. & Pol'y Rev.* 153 (1999).
- Duane, Marina, et al. "Criminal Background Checks: Impact on Employment and Recidivism." Urban Institute, March 2017, https://www.urban.org/research/publication/criminal-background-checks-impact-employment-and-recidivism/view/full_report.
- Duran, Le'Ann, et al. "Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness." The Council of State Governments, Sept. 2013, <https://www.bja.gov/publications/csg-reentry-and-employment.pdf>.
- Ewald, Alec C. "Collateral Consequences in the American States." *Social Science Quarterly*, vol. 93, no. 1, March 2012, pp. 211-247.
- Fahey, Jennifer, et al. "Employment of Ex-Offenders: Employer Perspectives." Crime and Justice Institute, Oct. 2006, http://www.antonioacasella.eu/nume/Fahey_2006.pdf.
- Holzer, Harry J., et al. "Employment Barriers Facing Ex-Offenders." Urban Institute, May 2003, <https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF>.
- Holzer, Harry J., et al. "Employer Demand for Ex-Offenders: Recent Evidence from Los Angeles." Urban Institute, March 2003, <https://www.urban.org/sites/default/files/publication/59286/410779-Employer-Demand-for-Ex-Offenders.PDF>.
- Holzer, Harry J., et al. "Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers." *The Journal of Law and Economics*, Vol. 49, no. 2, Oct. 2006, pp. 451-

- 480, https://gspp.berkeley.edu/assets/uploads/research/pdf/Holzer,_etal-PerceivedCriminality-oct2006.pdf.
- Jain, Eisha. "Prosecuting Collateral Consequences." 104 *Georgetown Law Journal*, vol.104, 2016, pp. 1197-1244, <https://georgetownlawjournal.org/articles/5/prosecuting-collateral-consequences/pdf>.
- Love, Margaret C. "Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act." *Howard Law Journal*, vol. 54, no. 3, 2011, pp. 753-793.
- Pager, Devah. "The Mark of a Criminal Record." *American Journal of Sociology*, Vol. 108, no. 5, March 2003, pp.937-975. https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf.
- Shannon, Sarah, et al. "Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948 to 2010." *Population Association of America*, 2011, <http://paa2011.princeton.edu/papers/111687>.
- Stacy, Christina and Mychal Cohen. "Ban the Box and Racial Discrimination: A Review of the Evidence and Policy Recommendations." *Urban Institute*, Feb. 2017, https://www.urban.org/sites/default/files/publication/88366/ban_the_box_and_racial_discrimination_2.pdf.
- Tyler, John H., et al. "Correctional Programs in the Age of Mass Incarceration: What Do We Know About "What Works"?" *Brown University*, Nov. 2007.
- Vallas, Rebecca and Sharon Dietrich. "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records." *Center for American Progress*, Dec. 2014, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.
- Visher, Christy, et al. "Employment after Prison: A Longitudinal Study of Releasees in Three States." *Urban Institute*, Oct. 2008, www.urban.org/research/publication/employment-after-prison-longitudinal-study-releasees-three-states.
- Wilson, David B., et al. "A Meta-Analysis of Corrections-Based Education, Vocation, and Work Programs for Adult Offenders." *Journal of Research in Crime and Delinquency*, vol. 34, no. 4, Nov. 2000, pp. 347-368.