ISSUE BRIEF

Promoting Health Equity in Communities Affected by Mass Incarceration: Addressing Legal Obstacles to Hiring Formerly Incarcerated Individuals as Community Health Workers

The Network for Public Health Law

TRANSITIONS CLINIC

Table of Contents

I. Introduction

Every year in the United States, more than 650,000[1] people are released from prison and nine million more return to their communities from jail.[2] The perpetual punishment of incarceration lasts long after one returns home, however. Nationwide, there are more than 44,000 policies and laws—collateral consequences of conviction—that make it incredibly difficult for an individual to rebuild their life and reenter their community.[3] Due to systemic racism, people of color are disproportionately represented in all stages of the criminal legal system,[4] with the rate of incarceration among Black Americans amounting to almost five times that of White Americans.[5] Incarceration is a social determinant of health,[6] exacerbating individual and population health disparities.[7]

Individuals returning from incarceration have more healthcare needs than the general population[8] but face numerous barriers to receiving care[9]. Specially trained community members with lived experience of incarceration, serving in the role of community health worker (CHW), are uniquely effective at engaging returning community members in health services. Despite evidence that employment of these healthcare workers leads to better patient outcomes, individuals with histories of incarceration encounter significant barriers to becoming employed as CHWs within health systems. Barriers exist along the entire continuum, including at the entry points for education, training, certification, and hiring.[10] While laws vary from state to state, there are commonalities in the policies blocking individuals with criminal convictions from participating in the healthcare workforce. A consequence of these policies, although often framed as protecting vulnerable patients, is that the particularly vulnerable reentry patient population is denied the optimal care that CHWs with shared lived experience of incarceration can provide.

The CHW position, while not traditionally associated with primary health care systems, is associated with cost savings and better care for certain complex populations.[11] Increased interest in and movement towards employing CHWs in health care systems renders issues related to CHW staffing particularly relevant. This brief does not reflect an exhaustive survey of all potentially relevant laws in all 50 states, nor does it examine all possible employment barriers hindering individuals with any record of criminal legal system involvement. Rather, this brief introduces examples of key legal barriers that may be encountered by individuals with incarceration histories who are seeking employment as CHWs. In highlighting these barriers and suggesting opportunities for policymakers and health systems to reduce them, we hope to inspire progress towards health and hiring equity concurrently, at a time when our nation has both a dire shortage of healthcare workers[12] and the number of Americans with criminal records nearly equals the number with college degrees.[13]

KEY TERMS:

Community health worker (CHW): A trained, non-clinical frontline health worker who provides patient-facing services, addresses social needs, facilitates healthcare access and patient engagement, and supports team-based care. CHWs may also advocate and organize for policy changes designed to improve social determinants of health. CHWs are most effective when they share backgrounds and life experiences with the communities they serve.[14]

Conviction: An outcome in the criminal legal system where an individual is found guilty of a charged offense.[15] In 90-95% of cases in the U.S., individuals agree to plead guilty and be convicted in return for concessions from the prosecuting attorney rather than go to a jury trial.[16]

Criminal legal system: The system of policing, prosecution, adjudication, sentencing, and corrections in the United States.[17] We choose to use this term rather than the term "criminal justice system," as the latter term has been scrutinized with increased awareness that this biased system does not deliver justice for everyone.[18]

Criminal record: A record of an individual's arrests, indictments, convictions, and criminal legal system dispositions.[19] It is possible for someone to have a criminal record without having a criminal conviction.

In-reach services: Services to connect someone who is incarcerated to community-based healthcare providers and social support prior to their release, aiming to reduce gaps in care during the reentry process.

Returning community member: A person who is reentering their community following a period of incarceration in jail or prison.

Social determinants of health (SDOH): The environmental, social, economic, legal, structural, and other "non-medical factors" that impact individual and community health and well-being.[20] The carceral system is a social determinant of health with wide-reaching health impacts on individuals and communities.[21] [22]

A note on terminology: Using pejorative or prejudicial language to describe individuals who have been incarcerated increases stigma[23], and the use of crime-first language has been found to increase perceived recidivism risk for individuals previously convicted of violent-classified crimes.[24] In the healthcare setting, studies indicate that stigmatizing language about patients can influence quality of care[25] and prevent people with behavioral health conditions from seeking treatment.[26] Throughout this brief, we use person-first language to honor the dignity of the human beings being discussed.

II. The Need

People who are incarcerated have higher rates of chronic conditions, including higher medical, mental health, and substance use disorder treatment needs than the general population.[27] Rather than improving during the reentry period, health conditions tend to worsen upon release[28] and returning community members experience more emergency department visits[29] and hospitalizations[30] than the general population. A study of individuals released from the Washington State Department of Corrections found that during the first two weeks post-release, the risk of death among returning community members was twelve times that of other state residents.[31] Drug overdose was the leading cause of death among formerly incarcerated individuals, followed by cardiovascular disease, homicide, and suicide.[32] Individuals released from incarceration often return to under-resourced communities that lack sufficient health and reentry support to meet their complex needs.[33] Health challenges impede employability, preventing financial gain and housing stability and increasing the risk of recidivism.[34]

Communities that have been disproportionately affected by mass incarceration are poor and communities of color that experience healthcare inequities and racial health disparities. In addition to barriers to care, such as lack of insurance coverage, individuals who have been incarcerated are less likely to get appointments in primary care clinics and more likely to experience stigma and discrimination in healthcare systems, potentially resulting in a mistrust of the healthcare system and those working in it.[35] CHWs with lived experience of incarceration are uniquely qualified to engage and support patients returning from incarceration. For health equity at the individual and population levels, it is critical to connect returning community members with programs that provide enhanced services and culturally appropriate, patient-centered care.

III. Transitions Clinic Network Model

Transitions Clinic Network (TCN) is a national organization dedicated to transforming the healthcare system to improve health equity and better meet the complex health and social needs of individuals returning from incarceration. TCN partners with existing primary care programs to implement the TCN model of enhanced primary care for returning community members. Central to the model are CHWs with lived experience of incarceration.

TCN CHWs are embedded into primary health systems to support patients and serve as liaisons to primary care services. The shared history of incarceration helps build a trusting, engaging relationship between patients and CHWs, leading to better health outcomes for patients. CHWs effectively get patients in the door to medical appointments and ensure their needs are holistically met by connecting them to wraparound services such as housing, employment, and transportation. When permitted by prisons and jails, TCN CHWs begin engaging with patients prior to release by performing in-reach to build rapport and strengthen care continuity between the carceral and community health systems.

> *"They ran a background check on me, and I couldn't work even warehouse jobs. When I interviewed for this position, it wasn't a factor about my criminal history. My past was my past; I fit right in."*
>
> -Ron, CHW

In addition to hiring and training CHWs, TCN trains and supports health systems' clinicians and staff to effectively collaborate with and utilize CHWs as integral members of the care team. Furthermore, the TCN model addresses a critical employment issue by providing individuals who have been incarcerated opportunities to work in healthcare, a field they have traditionally been excluded from despite a national shortage of healthcare workers. TCN prioritizes hiring CHWs with significant incarceration histories who often have larger obstacles to employment due to felony conviction, as well as a deeper understanding of the impacts of the carceral system on health. This model helps promote the representation of Black and Brown people in healthcare positions and strengthens under-resourced communities in need of healthcare workers.

Since 2006, when the model was developed in partnership with impacted community members, TCN has trained over 48 primary care systems to provide culturally appropriate services to people coming home from incarceration. TCN's network has served over 20,000 returning community members. This evidence-based care model is predicated on health systems hiring CHWs with incarceration histories. It is essential that barriers to training, certifying, and hiring this workforce be prevented and thoughtfully eliminated for the benefit of a highly complex patient population in need of specialized healthcare services and support.

> *"Don't judge what you see on paper. Don't let the black and white be your decision. We need a chance. We need to be heard and we need to be able to help."*
>
> -Charlezetta, CHW

Studies of the TCN model have found:

- Increased engagement in medical care.[36]
- 51% reduction in emergency room utilization.[37]
- Reduced quantity and duration of hospitalizations.[38]
- Reduced technical violations of parole and probation.[39]
- Reduced incarceration days.[40]
- Lower criminal legal system costs.[41]

> *"I felt relaxed. I knew that I was able to bring something to the table that some other employer might find not beneficial and not an asset, but this position did. I believe it's a confidence builder. It's a self-esteem builder. I've received so many things from having this position as a community health worker."*
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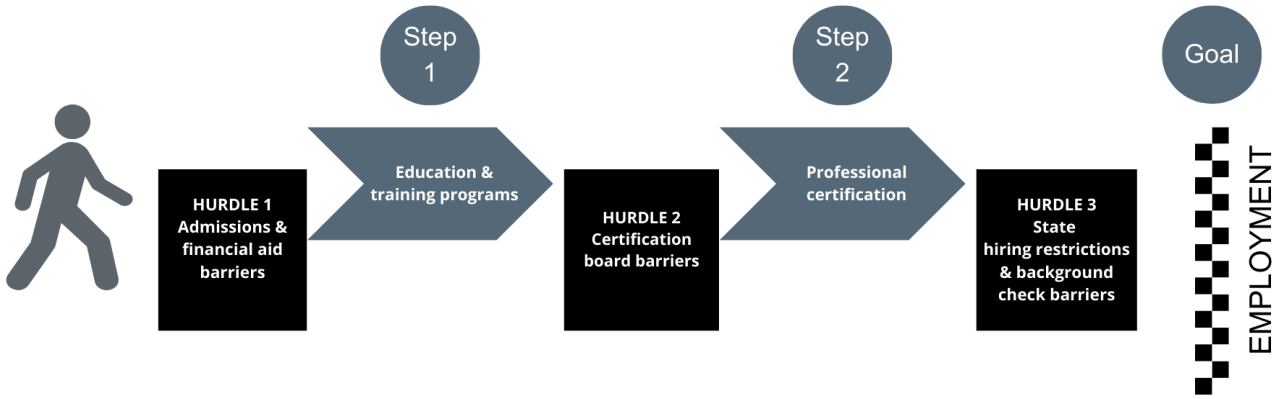
> -MaDonna, CHW

IV. Barriers: Legal Obstacles to Employing CHWs with Conviction Histories



Across the U.S, state laws and policies differ with respect to hiring people with criminal records to work in the healthcare field, posing unique challenges to people who have been incarcerated and are seeking CHW employment. In this section, we discuss two key legal obstacles that may impede employment of CHWs with incarceration histories: CHW certification processes that exclude people with criminal records, and blanket restrictions on hiring healthcare workers with criminal records.

A. Certification and Training Barriers

CHW certification is becoming more common across the U.S. and can affect CHWs and their clients in both positive and negative ways. While certification is generally voluntary for CHWs, at least one state requires certification for CHWs o receive payment from the state Medicaid program[42] and another requires certification to receive any payment at all.[43] Overall, certification can offer several benefits to CHWs generally, such as recognition and respect as healthcare professionals, improved compensation and working conditions, increased job security and employability, and stronger integration into the healthcare system.[44] These benefits can help propel creation of dedicated funding streams for CHW roles and legitimize CHWs in the healthcare field.

Certification can also pose barriers to CHWs, particularly those with incarceration histories. For example, certification processes which require background checks may ultimately exclude prospective CHWs from obtaining certification based on their criminal record, notwithstanding the importance of their lived experience to serving similarly situated clients. Furthermore, formalized training programs may pose financial, educational, or language barriers for prospective CHWs who lack financial resources, don't meet educational requirements, or whose primary language is not

English. These barriers are particularly relevant for people with incarceration histories because they generally earn significantly less than the general population[45] and are twice as likely to lack high school credentials.[46] Finally, clients who distrust the healthcare system due to negative healthcare experiences and discrimination associated with incarceration may have difficulty trusting CHWs certified by those same systems.

The following examples demonstrate specific ways in which CHW certification programs may prevent CHWs with incarceration histories from engaging in the profession.

According to the Association of State and Territorial Health Officials, as of June 2022, thirteen states operated CHW certification programs, at least eight states had privately operated certification programs, and twenty-one states and Washington, D.C., were considering or were in the process of developing statewide CHW certification requirements and programming.[47] States have varied in their approaches to standardizing the CHW certification process, with some using legislation to formalize CHW roles and others using informal coalitions or taskforces to standardize CHW training programs and certification requirements.[48]

Example: New Mexico

Pursuant to New Mexico's Community Health Workers Act passed in 2014, the state health department has established a voluntary certification program for CHWs.[49] Only certified CHWs may use the title "certified community health worker,"[50] potentially improving their employability relative to non-certified CHWs. To obtain a certificate, CHWs must demonstrate competency to provide CHW services through training, experience, or completion of an approved training program,[51] and they must complete a background check.[52] CHW certification applicants with conviction histories are automatically reviewed by the certification review committee and can be denied certification based on a felony conviction that "bears upon the applicant's fitness to provide services."[53]

Example: Minnesota

In Minnesota, CHWs must be certified through the Minnesota State Colleges and Universities System for their services to be reimbursed by Medicaid.[54] To complete the state certification program, students must complete an internship,[55] often at a state-licensed facility subject to the human services background study law[56] which prevents many individuals who have been incarcerated from working in health-related direct client services. Because of the background study law, many internship sites are prohibited from hiring individuals with certain convictions for positions involving direct client contact.[57] Presumably for this reason, the university training program requires students to pass a criminal background check to be placed for an internship.[58] By preventing individuals with incarceration histories from completing the required training program, these Minnesota laws exclude individuals with conviction records from becoming eligible for certification (and, as a result, for Medicaid reimbursement), likely decreasing their employability as CHWs.

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Summary: Certification can be a powerful tool to promote sustainable funding streams for CHW roles, provide a path to CHW career advancement, and increase respect for CHWs from the medical community. Certification can also create barriers to entering the profession by introducing additional educational requirements and exclusionary background check processes as well as erecting hurdles to gaining admission to and paying for training programs. These barriers may exclude CHWs who are otherwise ideal candidates due to their lived experience of incarceration.

B. State Restrictions on Hiring Healthcare Workers with Conviction Histories

State laws impose a range of employment restrictions on individuals with convictions who seek employment in healthcare.[59] These laws vary depending on healthcare setting, type of employer, the specific role or job involved, and the type and severity of an applicant's conviction(s), among other things.[60] These laws differ tremendously across states and can be difficult to track.[61] Note that federal law also prevents certain individuals with convictions from participating in federally funded programs such as Medicaid.[62]

To illustrate a category of restrictions potentially affecting CHWs, the examples below describe state laws that prohibit healthcare facilities from hiring persons with specified convictions for patient care positions.

Example: Wisconsin

Wisconsin's "Caregiver Law" prohibits healthcare facilities[63] from employing in direct client contact positions[64] people who have been convicted of a "serious crime"[65] (defined to include battery and homicide, among others) unless they have demonstrated proof of rehabilitation.[66] Although the law does not prohibit healthcare facilities from hiring individuals with non-serious convictions (e.g., drug, traffic, or theft infractions), it nevertheless requires the facilities to conduct background checks on all caregivers[67] and allows them to deny employment to a caregiver who has been convicted of any crime the facility deems "substantially related to the care of a client."[68] Thus, the law gives healthcare facilities broad latitude to exclude qualified applicants. Moreover, the process places the burden on applicants to challenge discriminatory exclusions,[69] which can be difficult and time-consuming to prove, and may deter applicants from even applying.

Example: Minnesota

Minnesota's human services background study law prevents a wide swath of candidates with incarceration histories from working in positions involving direct client contact at specified facilities licensed by the Minnesota Department of Human Services (DHS) or Department of Health (MDH).[70] Direct client contact includes providing face-to-face care or consultation to clients,[71] meaning that CHW services could be encompassed within the definition. The broad range of licensed health and human service facilities which are subject to the law includes potential CHW employers such as hospitals.[72] Thus, many prospective CHWs are likely subject to the law's employment prohibitions.

In particular, the Minnesota law bars covered facilities from hiring individuals to work in direct client contact positions if they have been convicted of a broad range of crimes, including murder, solicitation for prostitution, or first-degree arson, regardless of how much time has elapsed since the discharge of their sentence.[73] Individuals with convictions such as fraud, theft,

burglary, forgery, or felony-level convictions involving alcohol or drug use are disqualified for ten to fifteen years.[74] Additional crimes are subject to a seven-year hiring ban.[75]

People with disqualifying convictions may request a reconsideration or variance regarding their disqualification.[76] The relevant agency commissioner can set aside a disqualification if the applicant provides "sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant."[77] Alternatively, if the commissioner does not set aside an applicant's disqualification, the commissioner may instead grant a variance specifying conditions under which the applicant may provide direct care services.[78]

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Summary: State laws exclude wide ranges of applicants from being employed as healthcare workers even though in the role of CHW, it is someone's lived experience of incarceration and reentry that renders them uniquely qualified to care for patients returning from incarceration. While laws that allow for individualized, case-by-case assessment of applicants are preferable to blanket, categorical restrictions, applicants of color remain at a particular disadvantage due to inequitable application and enforcement of criminal laws.. Furthermore, these laws fail to account for the fact that a history of incarceration does not equate to] an accurate and current representation of someone's character or potential to make a positive impact in their community.

The role of federal law

Health care and other professions are primarily regulated at the state rather than federal level.[79] Nevertheless, federal law influences CHW employment as well, including through funding programs (see, e.g., Medicaid Section 1115 waivers, discussed further below) as well as through federal employment protections. With respect to employment, the U.S. Supreme Court has held that states may not exclude individuals from professions "in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."[80] Furthermore, Title VII of the federal Civil Rights Act of 1964 prohibits employment discrimination based on factors such as race and ethnicity.[81]

Title VII does not prohibit employment discrimination based on criminal history. Nevertheless, the disproportionate rates at which people of color are arrested and incarcerated in the U.S. substantially increases the likelihood that people of color will have criminal records.[82] Accordingly, the Equal Employment Opportunity Commission's (EEOC) 2012 Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions clarifies the limited Title VII protections for applicants with criminal records.[83] First, employers are prohibited from treating applicants with similar conviction records differently due to race and ethnicity. Second, if a hiring practice that excludes applicants with certain criminal histories disproportionately disadvantages applicants in specific racial or ethnic groups, the exclusion must be "job-related and consistent with business necessity."[84]

For an employer to exclude an applicant and be in compliance with Title VII, it must consider the nature and gravity of the crime, the time elapsed since the crime was committed, and the

nature of the position applied for.[85] Additionally, while the EEOC does not require individualized assessments of each excluded applicant, employers are more likely to be in compliance with Title VII if they offer excluded applicants individualized assessments, including an opportunity for an applicant to show why an exclusion does not properly apply to their situation.[86] While case-by-case consideration of individual applicants is preferable to blanket exclusions, deeply engrained systemic racism and implicit bias still render Title VII protections a weak match to the significant barriers that applicants who have been incarcerated face in seeking employment, especially applicants of color.

V. Opportunities to promote employment of CHWs with Conviction Histories

Several legal strategies have been implemented or proposed to facilitate employment of people with conviction histories, including financial incentive programs, state rehabilitation certificates, and Ban the Box laws. However, some of these strategies may have unintended consequences that ultimately hinder employment for certain individuals, such as CHWs who have serious convictions or have more recently returned from incarceration. As a result, these "solutions" may exclude the individuals who are best suited to serve as CHWs—those with the lived experience needed to assist individuals who are navigating reentry following long periods of incarceration and plagued by challenging criminal records. This section first describes financial incentive programs designed to promote employment of people with conviction histories. It then explains rehabilitation certificates and Ban the Box laws and explores their potential impact on prospective CHWs who have lived experience of incarceration.

A. Incentivizing Employment of People with Conviction Histories

Federal, state, and local governments have recognized the importance of integrating individuals who have been incarcerated into the workforce. To facilitate the reentry process and increase employment rates of people who have been impacted by the criminal legal system, some governments have created financial incentive programs for employers who hire applicants with conviction histories, including a federal bonding program and federal, state, and local tax breaks.

Federal Bonding Program: While job seekers with incarceration histories face barriers to being hired, employers who wish to hire them can face barriers, too. Many insurance companies designate people with convictions as "not bondable," preventing employers from obtaining insurance for these employees.[87] This designation is based on erroneous, biased beliefs that all individuals who have been impacted by the criminal legal system are untrustworthy employees. The Federal Bonding Program (FBF) was created to give employers 100% bond insurance coverage, at no cost, to incentivize employment of individuals who are otherwise not bondable.[88] Through the FBP, over 56,500 job placements have been made since 1966.[89]

Tax Breaks: The federal Work Opportunity Tax Credit incentivizes employers to hire individuals who have been incarcerated by reducing federal income tax liability by up to $2,400 per eligible employee.[90] Likewise, some states offer tax credits to employers who hire individuals who have been incarcerated.[91] Cities may also implement incentive programs, such as the city of Philadelphia's Fair Chance Hiring Initiative, which reimburses employers who hire applicants with incarceration histories for a portion of their wages.[92]

B. Rehabilitation Certificates and Waivers

Nearly every U.S. state has a process in place through which a person's criminal record may be pardoned, expunged, or sealed.[93] These processes can make it easier for a person with a conviction history to find employment, but they can be costly to pursue and difficult to obtain.[94] As such, these methods are often not viable for prospective CHWs with the lived experience of incarceration to pursue.

Several states offer more limited relief through mechanisms such as judicial certificates of relief (also known as rehabilitation certificates) or waivers specific to healthcare hiring prohibitions. Rehabilitation certificates, which were available in twelve states as of September 2020, do not remove information from an applicant's criminal legal history, but are intended to give employers confidence in an applicant's character or remove barriers to occupational certification.[95] Likewise, waivers specific to healthcare settings generally allow employers to exercise discretion in instances where they would otherwise be prohibited from hiring someone due to their criminal record.[96]

The impact of these mechanisms is blunted by several factors. For one, people with serious convictions may be ineligible for these processes, and the path to obtaining this limited relief can be long, confusing, and burdensome. Additionally, the efficacy of rehabilitation certificates is uncertain. At least one study has found that individuals with certificates of rehabilitation were more likely to get job interviews than those without such certificates.[97] However, some activists argue that because these certificates do not prevent employers from seeing an applicant's criminal legal system history or from making an employment decision based on that history, they are an inadequate solution to integrate people with conviction histories into the workplace. [98]

The following examples illustrate two states' approaches to facilitating employment of individuals with conviction histories through rehabilitation certificates/waivers.

Example: California

California offers a certificate of rehabilitation to individuals with eligible offenses who have resided in California for at least five years following the individual's release from incarceration, parole, probation, or supervision, and have been rehabilitated for an additional two to five years post-conviction as determined by the severity of their conviction.[99] (Applying for a rehabilitation certificate is also the first step towards applying for a governor's pardon.[100]) The certificate provides legal documentation that a person is deemed "rehabilitated," potentially increasing the individual's employability, removing barriers to obtaining state professional licenses, and, if the conviction was related to a sexual offense, relieving some sex offenders of their duty to register.[101]

To obtain a certificate of rehabilitation, a petitioner must demonstrate to a court that they "live an

honest and upright life," conduct themselves "with sobriety and industry," possess "good moral character," and "conform to and obey the laws of the land."[102] Courts look at various factors to determine whether or not a certificate of rehabilitation should be granted, such as employment and education history, volunteer work, letters providing the reasons a petitioner seeks the certificate, the petitioner's criminal and prison record, and family and community ties.[103]

This creates a paradoxical situation where it is extremely difficult to receive a certificate of rehabilitation without first obtaining employment, but it may be difficult or impossible to obtain employment in one's chosen field without a certificate of rehabilitation. Additionally, the invasive certificate of rehabilitation application process is similar to the parole process that occurs prior to an individual's release from a long period of incarceration. After releasing from incarceration and reintegrating into their family and community, it can be traumatic for an individual to have to reengage with the criminal legal system and once again be at its mercy.

Example: Illinois

Illinois offers a certificate of good conduct to relieve people with eligible convictions from bars to employment or occupational licensing.[104] To obtain a certificate, a person must demonstrate that they have been a "law-abiding citizen" and are "fully rehabilitated."[105] The applicant must demonstrate at least one year of "good conduct" if they were convicted of a misdemeanor and at least two years of "good conduct" if they were convicted of a felony.[106] People that have been convicted of arson, kidnapping, aggravated driving under the influence, and aggravated domestic battery, among other offenses, are not eligible for a certificate of good conduct.[107] The law promotes hiring of certificate recipients by providing civil and criminal liability protections for employers who hire them.[108]

Illinois also offers a healthcare worker waiver for people with convictions that would otherwise bar them from working specifically in healthcare, such as individuals excluded by the Illinois Healthcare Worker Background Check Act.[109] The waiver can be obtained after a waiting period determined by the number and severity of an applicant's convictions.[110]

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Summary: Certificates of relief and rehabilitation can provide some limited benefits to those who are able to successfully obtain them, but the application and review process is often lengthy and rigorous, placing them out of reach for many. Even when an individual is able to obtain a certificate, many employers do not understand the certificate's nuances and meaning, leaving applicants in the disadvantageous position of needing to educate a potential employer about the limited relief they provide. Furthermore, in circumstances where employers are aware of these certificates, they might expect all applicants with criminal records to have them and penalize applicants who do not.

C. Ban the Box Policies

Ban the Box policies typically require employers to remove questions about an applicant's criminal history from job applications and delay background checks until the end of the hiring process.[111] Ban the Box laws and policies have been implemented at the federal, state, and local levels to reduce the barriers that individuals who have been incarcerated face in securing employment. The laws do not prohibit employers from using background checks to inform their

hiring decisions, but rather delay inquiries into criminal legal system history until later in the application process.[112]

The federal government endorsed Ban the Box policies through the Fair Chance to Compete for Jobs Act of 2019, which requires most federal agencies and contractors to conditionally offer a job to an applicant before requesting information about an applicant's criminal record.[113] According to the National Employment Law Project, as of 2021, 37 states had adopted Ban the Box laws or policies for public-sector employment and 15 states had extended the laws to private-sector employment.[114]

While Ban the Box laws make it illegal for an employer to ask about an applicant's criminal history during the initial application process, employers seeking to hire individuals who have been incarcerated can still prioritize this experience in their hiring process by emphasizing that lived experience of incarceration is recommended for a role, such as for CHW positions tailored to supporting those who are transitioning from incarceration. The employer might then emphasize during the interview process that the role was crafted with this lived experience in mind without asking about an applicant's conviction record.

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Summary: For the most part, Ban the Box laws are beneficial to prospective employees with incarceration histories. For organizations that base their models around hiring individuals with lived experience of incarceration, Ban the Box policies may complicate the hiring process, though there are ways that employers can make clear that the role is designed for those with lived experiences of incarceration.

Best Practices for Employers

In many cases, employing individuals who have been incarcerated is not risky as is commonly perceived, especially when done thoughtfully. The likelihood of recidivism declines significantly over time, and research shows that a person who has not been involved with the criminal legal system for several years is no more likely to become involved in criminal activity than the general population.[115] Equitable employment practices strengthen a workforce, and studies indicate that employees with conviction records exhibit:

- Increased productivity,[116]
- Higher retention,[117]
- Faster rates of promotion,[118]
- No increase in likelihood of termination due to poor performance or misconduct.[119]

Johns Hopkins Hospital and Health System, the second-largest employer in Maryland, has been a leader in hiring individuals impacted by the criminal legal system. The Hopkins hiring model includes several key elements, including: not asking about conviction history during the initial application and interview process; conducting a background check only after a conditional offer is made; evaluating a candidate's background in light of specifically relevant factors (e.g., expected job duties, nature and timing of convictions, and whether the applicant disclosed the information); maintaining confidentiality of the background file unless necessary to disclose; and providing a coach to support the new hire.[120]

When developing hiring processes, employers should be informed by these steps. Additionally, they should consider information about an applicant's conviction history in the context of systemic racism and a flawed criminal legal system, as well as be open to considering how an applicant's experience of incarceration and reentry could be an asset to their work and workforce.

VI. Policy Recommendations

Law and policy changes can help facilitate employment of CHWs with lived experience of incarceration. The viability of these strategies in a given jurisdiction will depend heavily on state and local political contexts. Avenues for consideration are set forth below.

Prioritize lived experience and expertise when developing CHW certification programs: Certification programs should be crafted with the goal of creating more opportunities for individuals with the lived experience of incarceration to be hired as CHWs and creating sustainable funding streams for these positions. In designing certification programs and processes, certification boards should rely heavily on the wisdom of CHWs to ensure that barriers are being eliminated and not unintentionally created. CHWs are the experts on their work and the communities they serve. It is essential that policymakers learn from CHWs' experiences, perspectives, and expertise when developing CHW certification programs to ensure programs are responsive to community needs and reflective of the skills that CHWs utilize to support their clients.

Use Medicaid funds to increase opportunities for individuals who have been incarcerated to work as CHWs: Government funds can and should be used to create healthcare jobs for individuals who have been incarcerated. With new guidance on Medicaid Section 1115 waivers (see text box on page 16) that supports in-reach and enhanced case management services for people returning from incarceration, State Medicaid agencies should fund and mandate or incentivize the hiring of CHWs with lived experience of incarceration to provide these services.

Increase incentives for employers to hire individuals with incarceration histories: At the local, state, and federal levels, governments can incentivize employment of individuals with criminal histories by expanding existing tax reduction programs and introducing new ones. With current labor shortages—especially in healthcare—incentives could help to close workforce gaps and provide additional opportunities to historically-excluded applicants. Employers receiving incentives should also receive training on stigma, discrimination, and best practices, as well as funding to create professional development opportunities. This would ensure that workplace cultures are positive environments for individuals who have been affected by the criminal legal system, not only to gain employment but also to thrive as professionals in their field.

Issue guidance on Ban the Box policies for employers: To support employers who are seeking to hire individuals who have criminal records, the federal government, through the EEOC, should issue guidance on hiring practices that are both compliant with Ban the Box policies and allow employers to prioritize hiring individuals with the lived experience of incarceration.

Eliminate or greatly simplify the process to receive certificates of rehabilitation: Currently, our criminal legal system is built primarily for punishment and deterrence and is not seen as primarily rehabilitative for incarcerated persons. While a system built to rehabilitate rather than punish would have wide-reaching benefits for society, until this perspective is ingrained in law and society, states should take steps to ensure that rehabilitation certificates and waivers are easily accessible for persons with incarceration histories and are not overly complicated. States should eliminate restrictions preventing persons with certain convictions from seeking certificates of rehabilitation, allowing instead for individual assessment of applicants. Additionally, states should provide guidance and training to employers about how to use certificates of rehabilitation so that applicants who have them do not have to educate employers on their meaning and applicants who do not have them are not penalized.

Eliminate state restrictions on hiring healthcare workers with criminal records: States should eliminate categorical bans excluding people with criminal legal system histories from working in healthcare; instead, they should leave hiring up to individual employers and health systems. Additionally, states should issue guidance to support employers in equitably assessing applicants on a case-by-case basis.

Medicaid Section 1115 Waiver – An Opportunity to Expand Access to Care and Employment

- Section 1115 of the Social Security Act allows states to demonstrate and test new or altered Medicaid programs that federal law would otherwise not allow.[121]
- The Medicaid Inmate Exclusion Policy prohibits Medicaid funds from being used for healthcare services for people while they are incarcerated,[122] impeding access to continuous medical care and contributing to gaps in care during the reentry period.
- To circumvent these barriers, the Centers for Medicare and Medicaid Services (CMS) recently issued guidance for a "Reentry Section 1115 Demonstration Opportunity" to allow state Medicaid funds to be used for targeted health services, transitional planning, case management, and reentry support for 30 days prior to an individual's release from incarceration.[123]

VII. Conclusion

People returning from incarceration have unique and heightened health needs that traditional health systems fail to meet. These needs can be addressed by CHWs who have lived experiences of incarceration, intimately understand the needs of individuals returning from incarceration, and can build trusting relationships with patients through their shared lived experiences. CHWs with incarceration histories serve as a bridge to care for a complex patient population, addressing social needs by effectively engaging returning community members in healthcare and social support services. Unfortunately, individuals who have been incarcerated face numerous barriers to becoming CHWs, with state laws creating roadblocks that make employment as a CHW difficult, if not impossible, in a time where major healthcare worker shortages already exist.

It is well past time for policymakers and health systems to lower the barriers that prevent individuals with incarceration histories from working as CHWs. Opening the CHW profession to individuals uniquely qualified to address the unmet needs of returning community members would improve health outcomes for the individuals served while simultaneously advancing the health and economic needs of communities disproportionately harmed by mass incarceration and addressing our nation's persistent healthcare worker shortage.

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Resources and Further Reading

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2018, October 11). Linking People with Criminal Records to Employment in the Healthcare Sector: 5 Things to Consider. https://aspe.hhs.gov/sites/default/files/private/pdf/259686/MeetingtheDemand.pdf

National Employment Law Project and Safer Foundation. (2016, September). A Healthcare Employer Guide to Hiring People with Arrest and Conviction Records. http://www.nelp.org/wp-content/uploads/NELP-Safer-Toolkit-Healthcare-Employer-Guide-Hiring-People-with-Arrest-Conviction-Records.pdf

Natividad Rodriguez, M., and Avery, B. (2016). Unlicensed and Untapped: Removing Barriers to State Occupational Licenses for People with Records. National Employment Law Project. http://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf

Lu, H. (2022). Worker Power in the Carceral State: 10 Policy Proposals Against the Criminalization of Workers. National Employment Law Project. https://www.nelp.org/publication/worker-power-in-the-carceral-state-10-policy-proposals-against-the-criminalization-of-workers/

JustLeadershipUSA. (2020). Reentry Mythbusters. https://jlusa.org/resource_categories/reentry/

Umez, C., and Pirius, R. (2018). Barriers to Work: People with Criminal Records. National Conference of State Legislatures. https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx

Love, M. (2020). New 2019 laws reduce workplace barriers for people with a criminal record. Collateral Consequences Resource Center. https://ccresourcecenter.org/2020/02/04/new-2019-laws-restore-voting-rights-in-11-states/

1 U.S. Dept. of Justice. (n.d.). *Prisoners and Prison Re-entry*. https://www.justice.gov/archive/fbci/progmenu_reentry.html
2 Office of the Assistant Secretary for Planning and Evaluation (ASPE). (n.d.). *Incarceration and Reentry*. https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0
3 National Inventory of the Collateral Consequences of Conviction. (n.d.). *Collateral Consequences Inventory*. https://niccc.nationalreentryresourcecenter.org/consequences.
4 Nat'l Conference of State Legislatures. (2022, May 24). *Racial and Ethnic Disparities in the Criminal Justice System*. https://www.ncsl.org/research/civil-and-criminal-justice/racial-and-ethnic-disparities-

in-the-criminal-justice-system.aspx
5 Nellis, A. (2021, October 13). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. The Sentencing Project. https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/
6 National Academies of Sciences, Engineering, and Medicine—Roundtable on the Promotion of Health Equity. (2019). Mass Incarceration as a Public Health Issue. Anderson, K.M., and Olson, S., eds. (2019) *The Effects of Incarceration and Reentry on Community Health and Well-Being: Proceedings of a Workshop. National Academies Press*. https://www.ncbi.nlm.nih.gov/books/NBK555719/
7 Brinley-Rubinstein, L. (2013). Incarceration as a catalyst for worsening health. *Health and Justice*, 1(3). https://healthandjusticejournal.biomedcentral.com/articles/10.1186/2194-7899-1-3
8 Binswanger, I., Krueger, P., and Steiner, J. (2009). Prevalence of chronic medical conditions among jail and prison inmates in the USA compared with the general population. *Journal of Epidemiology and Community Health*, 63: 912-919. doi: 10.1136/jech.2009.090662
9 Fahmy, N., Kouyoumdjian, F., Berkowitz, J., Fahmy, S., Neves, C., Hwang, S., and Martin, R. (2018). Access to primary care for persons recently released from prison. *Ann Fam Med*, 16(6). 549-551. doi: 10.1370/afm.2314; Frank, J. W., Wang, E. A., Nunez-Smith, M., Lee, H., and Comfort, M. (2014). Discrimination based on criminal record and healthcare utilization among men recently released from prison: A descriptive study. *Health and Justice*, 2(6). doi: 10.1186/2194-7899-2-6; Schnittker, J. and John, A. (2007). Enduring Stigma: The Long-Term Effects of Incarceration on Health. *Journal of Health and Social Behavior*, 48(2), 115–130. doi: 10.1177/002214650704800202
10 Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2018, October 11). *Linking People with Criminal Records to Employment in the Healthcare Sector*: 5 Things to Consider. https://aspe.hhs.gov/sites/default/files/private/pdf/259686/MeetingtheDemand.pdf [hereinafter ASPE, Linking People with Criminal Records.]
11 Crespo, R., Christiansen, M., Tieman, K., and Wittberg, R. (2020). An Emerging Model for Community Health Worker–Based Chronic Care Management for Patients With High Health Care Costs in Rural Appalachia. *Preventing Chronic Disease*, 17. doi: http://dx.doi.org/10.5888/pcd17.190316. See generally Guide to Community Preventive Services (2021, June 17). *Community Health Workers*. https://www.thecommunityguide.org/pages/community-health-workers.html.
12 Bateman, T., Hobaugh, S., Pridgen, E., and Reddy, A. (2021). *US Healthcare: Labor Market*. Mercer. https://www.mercer.us/content/dam/mercer/assets/content-images/north-america/united-states/us-healthcare-news/us-2021-healthcare-labor-market-whitepaper.pdf
13 Friedman, M. (2015). *Just Facts: As Many Americans Have Criminal Records as College Diplomas. Brennan Center for Justice*. https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas
14 Hartzler, A.L., Tuzzio, L., Hsu, C., and Wagner, E.H. (2018). Roles and Functions of Community Health Workers in Primary Care. Ann Fam Med, 16(3), 240-245. doi: 10.1370/afm.2208; American Public Health Association. (2009, Nov. 10). *Support for Community Health Workers to Increase Access and to Reduce Health Inequities*. https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/09/14/19/support-for-community-health-workers-to-increase-health-access-and-to-reduce-health-inequities.
15 Legal Information Institute. (2021). Conviction. https://www.law.cornell.edu/wex/conviction

16 Lindsay Devers. (2011). *Plea and Charge Bargaining: Research Summary*. https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf.
17 U.S. Dept. of Justice, Bureau of Justice Statistics. *What is the sequence of events in the criminal justice system?* (2021, June 3). https://bjs.ojp.gov/justice-system.
18 Bryant, E. (2021, December 1). Why We Say "Criminal Legal System," Not "Criminal Justice System". Vera Institute. https://www.vera.org/news/why-we-say-criminal-legal-system-not-criminal-justice-system
19 Cornell School of Industrial and Labor Relations (ILR) Criminal Justice and Employment Initiative (CJEI). (n.d.). *What is a Criminal Record or Criminal History?* https://cjei.cornell.edu/about-your-record/what-criminal-record-or-criminal-history
20 World Health Organization. (n.d.) *Social determinants of health*. https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1; U.S. Dept. of Health and Human Services Office of Disease Prevention and Health Promotion (OASH). (n.d.). *Social Determinants of Health*. https://health.gov/healthypeople/priority-areas/social-determinants-health.
21 Wang, L. (2022). *Chronic Punishment: The unmet health needs of people in state prisons*. Prison Policy Initiative. https://www.prisonpolicy.org/reports/chronicpunishment.html
22 Widra, E. (2021, July 12). *New Data: People with incarcerated loved ones have shorter life expectancies and poorer health*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2021/07/12/family-incarceration/
23 Bedell, P.S., So, M., Morse, D.S., Kinner, S. A., Ferguson, W. J., and Spaulding, A. C. (2019). Corrections for Academic Medicine: The Importance of Using Person-First Language for Individuals Who Have Experienced Incarceration. *Academic Medicine*, 94(2), 172-175. doi: 10.1097/acm.0000000000002501
24 Denver, M., Pickett, J., and Bushway, S. (2017). The Language of Stigmatization and the Mark of Violence: Experimental Evidence on the Social Construction and Use of Criminal Record Stigma. *Criminology*, 55(3), 664-690. doi: 10.1111/1745-9125.12145
25 Goddu, A.P., O'Conor, K.J., Lanzkron, S., Saheed, M.O., Saha, S., Peek, M.E., Haywood, C. Jr., and Beach, M.C. (2018). Do Words Matter? Stigmatizing Language and the Transmission of Bias in the Medical Record. *J Gen Intern Med*, 33(5), 685-691. doi: 10.1007/s11606-017-4289-2
26 Ashford, R.D., Brown, A.M., and Curtis, B. The Language of Substance Use and Recovery: Novel Use of the Go/No-Go Association Task to Measure Implicit Bias. *Health Commun*, 34(11), 1296-1302. doi: 10.1080/10410236.2018.1481709
27 Binswanger et al. (2009), supra note 8; California Health Policy Strategies. (2020, February). *The prevalence of mental illness in California jails is rising: An analysis of mental health cases and psychotropic medication prescriptions*, 2009-2019. https://calhps.com/wp-content/uploads/2020/02/Jail_MentalHealth_JPSReport_02-03-2020.pdf; Davis, L., Williams, M., Derose, K., Steinberg, P., Nicosia, N., Overton, A., Miyashiro, L., Turner, S., Fain, T., and Williams, E. (2011). *Understanding the health implications of prisoner reentry in California*. RAND Corporation. https://www.rand.org/pubs/monographs/MG1165.html
28 Wildeman, C., and Wang, E. A. (2017). Mass incarceration, public health, and widening inequality in the USA. *The Lancet*, 389(10077), 1464–1474. doi: 10.1016/S0140-6736(17)30259-3. *See also* Cunningham, W., Weiss, R., Nakazono, T., Malek, M., Shoptaw, S., Ettner, S., and Harawa, N. (2018). Effectiveness of a peer navigation intervention to sustain viral suppression among HIV-positive men

and transgender women released from jail: The LINK LA randomized clinical trial. *JAMA Intern Med*, 178(4), 542-553. doi: 10.1001/jamainternmed.2018.0150
29 Frank, J.W., Andrews, C.M., Green, T.C., Samuels, A.M., Trinh, T.T., Friedmann, P.D. (2013, Nov. 5). Emergency department utilization among recently released prisoners: a retrospective cohort study. *BMC Emergency Med.*, 13:16. doi: 10.1186/1471-227X-13-16.
30 Wang, E., Wang, Y., and Krumholz, H. (2013). A high risk of hospitalization following release from correctional facilities in Medicare beneficiaries. *JAMA Intern Med*, 173(17), 1621-1628. doi: 10.1001/jamainternmed.2013.9008
31 Binswanger, I., Stern, M.F., Deyo, R.A., Heagerty, P.J., Cheadle, A., Elmore, J.G., and Koepsell, T.D.. (2007). Release from Prison—A High Risk of Death for Former Inmates. *New England Journal of Medicine*, 356(2): 157-165. doi:10.1056/NEJMsa064115.
32 *Id.*
33 Davis et al. (2011), supra note 27; Mallik-Kane, K., and Visher, C. (2008). *Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration. The Urban Institute*. https://www.urban.org/sites/default/files/publication/31491/411617-Health-and-Prisoner-Reentry.PDF; Wang et al. (2013), supra note 30.
34 Davis et al. (2011), supra note 27; Greene, M., Ahalt, C., Stijacic-Cenzer, I., Metzger, L., and Williams, B. (2018). Older adults in jail: High rates and early onset of geriatric conditions. *Health and Justice*, 6(1), 3. doi: 10.1186/s40352-018-0062-9; Mallik-Kane and Visher (2008, February), supra note 33; Mauer, M. and Chesney-Lind, M. (2002). *Invisible punishment: The collateral consequences of mass incarceration*. The New Press. https://thenewpress.com/books/invisible-punishment.
35 Fahmy et al. (2018), *supra* note 9; Frank et al. (2014), supra note 9; Schnittker and John (2007), supra note 9.
36 Santa Clara Valley Medical Center. (2015). Administrative data reported by Dr. Ari Kriegsman.
37 Wang, E.A., Hong, C.S., Shavit, S., Sanders, R., Kessell, E., and Kushel, M,B,. (2012). Engaging individuals recently released from prison into primary care: a randomized trial. *Am J Public Health*, 102(9), 22-29. doi: 10.2105/AJPH.2012.300894
38 Wang, E.A., Lin, H.J., Aminawung, J.A., Busch, S.H., Gallagher, C., Maurer. K., Puglisi, L., Shavit, S., and Frisman, L. (2019). Propensity-matched study of enhanced primary care on contact with the criminal justice system among individuals recently released from prison to New Haven. *BMJ Open*, 9(5). doi: 10.1136/bmjopen-2018-028097
39 *Id.*
40 *Id.*
41 Harvey, T.D., Busch, S.H., Lin, H.J.. Aminawung, J.A., Puglisi, L., Shavit, S., and Wang, E.A. (2022). Cost savings of a primary care program for individuals recently released from prison: a propensity-matched study. *BMC Health Serv Res*, 22, 585. https://doi.org/10.1186/s12913-022-07985-5
42 *See*, e.g. Minn. Stat. § 256B.0625 subd. 49 (permitting Medicaid reimbursement for eligible CHW services only if provided by a certified CHW).
43 *See*, e.g., Tex. Health and Safety Code § 48.052 (providing that certification is required for CHWs who receive compensation for their services, but certification may not be required for CHWs who do not receive compensation).
44 Snyder, J. (2016, January). *Community Health Workers: Roles and Opportunities in Healthcare*

Delivery System Reform. ASPE Issue Brief, 2. https://aspe.hhs.gov/sites/default/files/private/pdf/168956/CHWPolicy.pdf
45 Wang, L., Bertram, W. (2022, February 8). *New Data on Formerly Incarcerated People's Employment Reveal Labor Market Injustices*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2022/02/08/employment/
46 Couloute, L. (2018, October). Getting Back on Course: Educational Exclusion and Attainment Among Formerly Incarcerated People. Prison Policy Initiative. https://www.prisonpolicy.org/reports/education.html
47 Association of State and Territorial Health Officials. (2022, June 14). *State Approaches to Community Health Worker Certification*. https://www.astho.org/topic/brief/state-approaches-to-community-health-worker-certification/.
48 Association of State and Territorial Health Offices. (2022, April 6). *States Continue Efforts to Build and Strengthen Community Health Workforce*. https://www.astho.org/communications/blog/states-continue-efforts-build-strengthen-community-health-workforce/
49 N.M. Stat. § 24-30-1 et seq.; New Mexico Department of Public Health. (n.d.). *Office of Community Health Workers*. https://www.nmhealth.org/about/phd/pchb/ochw/
50 N.M. Stat. § 24-30-6.
51 N.M. Admin. Code 7.29.5.10.
52 N.M. Admin. Code 7.29.5.10
53 N.M. Admin. Code 7.29.5.11-12.
54 Minn. Stat. § 256B.0625 (subd. 49); Minnesota Department of Human Services. (n.d.). *Community Health Worker* (CHW). https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSIONandRevisionSelectionMethod=LatestReleasedanddDocName=dhs16_140357.
55 Minneapolis College. (n.d.). *Community Health Worker Program Information*. Minneapolis College Catalog. https://mctc.decisionacademic.com/Catalog/ViewCatalog.aspx?pageid=viewcatalogandtopicgroupid=2570andtopicid=3302andloaduseredits=Trueand_ga=2.72960659.1225718803.1653667833-291716289.1653667833
56 Minn. Stat. § 245C.01 et seq.
57 Minn. Stat. §§ 245C.03 (subd. 1(c), 5a); Minn. Stat. §§ 245C.14.
58 Minneapolis College (n.d.), *supra* note 55.
59 ASPE, Linking People with Criminal Records, *supra* note 10.
60 *Id.*
61 *Id.*
62 The U.S. Department of Health and Human Services' Office of Inspector General (OIG) has the authority to exclude certain individuals with criminal convictions from receiving federal healthcare funds. Excluded individuals cannot receive payment from federal healthcare programs such as Medicare or Medicaid. Social Security Act §1128, 42 U.S.C. § 1320a-7. Individuals are automatically excluded by OIG for offenses such as Medicare or Medicaid fraud; felony convictions for other healthcare-related fraud, theft, or other financial misconduct; patient abuse or neglect; and felony convictions relating to unlawful manufacture, distribution, prescription, or dispensing of controlled substances. U.S. Dept. of Health and Human Servs. Office of Inspector General. (n.d.) *Background Information*. https://oig.hhs.gov/exclusions/background.asp. An organization that hires an excluded individual can be subject to civil penalties. 42 U.S.C § 1320a-7a(a)(6).

63 Wis. Stat. § 50.065(1)(c) (defining entities subject to the law's background check requirements).
64 Wis. Stat § 50.065(1)(ag)1.a (defining caregiver to include people who have regular, direct contact with clients).
65 Wis. Stat. § 50.065(1)(e) (defining serious crime for purposes of the Caregiver Law).
66 Wis. Stat §§ 50.065(4m)(b); 50.065(5).
67 Wis. Stat § 50.065(2)(b).
68 Wis. Stat. § 50.065(5m) (2022); Wis. Adm. Code § DHS 12.06 ("Determining whether an offense is substantially related to client care"); *Brown County v. Wisconsin Emp't Rel. Comm'n*, 742 N.W.2d 916 (Ct. App. 2007) (noting that employers have discretion to refuse employment to a person if their non-serious crime is "substantially related" to client care); Wis. Dept. of Health Servs. (2021). *Wisconsin Background Check and Misconduct Investigation Program: Offenses Affecting Eligibility for Employment or Contract in Roles with Client Contact.* https://www.dhs.wisconsin.gov/publications/p0/p00274.pdf.
69 Wis. Stat § 50.065(5c).
70 Minn. Stat. §§ 245C.03 (subd. 1(c), 5a); 245C.14; 245C.15.
71 Minn. Stat. § 245C.02 (subd. 11) (defining "direct contact" to include providing face-to-face care or consultation).
72 See Minn. Stat. §§ 245C.03 (subd. 1(c), 5a).
73 Minn. Stat. § 245C.15 , subd. 1.
74 Minn. Stat. § 245C.15, subd. 2 and 3.
75 Minn. Stat. § 245C.15, subd. 4.
76 Minn. Stat. § 245C.22.4a.
77 Minn. Stat. § 245C.22.4a
78 Minn. Stat. § 245C.30.1.
79 For further discussion, see McCabe, H. and Boufides, C.H. (2018). *Legal Considerations for Community Health Workers and their Employers. Network for Public Health Law*. https://www.networkforphl.org/wp-content/uploads/2020/01/Legal-Considerations-Community-Health-Workers.pdf.
80 *Schware v. Bd. of Bar Examiners of New Mexico*, 353 U.S. 232, 238-39 (1957).
81 Civil Rights Act of 1964 § 701, 42 U.S.C. §2000e-2(a).
82 Sawyer, W. (2020, July 27). *Visualizing the Racial Disparities of Mass Incarceration*. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2020/07/27/disparities/#slideshows/slideshow4/3others
83 U.S. Equal Employment Opportunity Commission. (2012, April 25). *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act.*
https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions [hereinafter EEOC Enforcement Guidance (2012)].
84 Civil Rights Act of 1964 § 701, 42 U.SC §2000e-2(k)(1)(A)(i); ASPE, Linking People with Criminal Records, *supra* note 10.
85 *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977) (identifying the three factors relevant to assessing the legality of an exclusion).
86 EEOC Enforcement Guidance (2012), *supra* note 83.

87 National Institute of Corrections. (2013). *The Federal Bonding Program: A US Department of Labor Initiative. U.S. Dept. of Justice*. https://nicic.gov/federal-bonding-program-us-department-labor-initiative
88 *Id.*
89 The Federal Bonding Program (n.d.). About the FBP. https://bonds4jobs.com/about-us
90 26 U.S.C. § 51; IRS. (n.d.). *Work Opportunity Tax Credit*. https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit#targeted
91 *See*, e.g., Iowa Admin. Code 701-40.21; 35 Ill. Comp. Stat. § 5/216.
92 City of Philadelphia Dept. of Commerce. (n.d.). Fair Chance Hiring Initiative. *https://www.phila.gov/programs/fair-chance-hiring-initiative/*
93 Love, M., Schlussel, D. (2020, September). The Many Roads to Reintegration: *A 50-State Report on Laws Restoring Rights and Opportunities After Arrest and Conviction. Collateral Consequences Resource Center*, 23-50. https://ccresourcecenter.org/wp-content/uploads/2020/09/The-Many-Roads-to-Reintegration.pdf.
94 *Id.*
95 *Id.*
96 See, e.g., Minn. Stat. § 245C.22.4a; Wis. Stat. § 50.065(5) (2022); Wis. Dept. of Health Servs. (n.d.). *Wisconsin Caregiver Program: Rehabilitation Review Process*. https://www.dhs.wisconsin.gov/publications/p6/p63160.pdf
97 Leasure, P., Stevens Andersen, T. (2016, November 7). The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study. *Yale Law and Policy Review*. https://ylpr.yale.edu/inter_alia/effectiveness-certificates-relief-collateral-consequence-relief-mechanisms-experimental.
98 Hager, E. (2015, March 17). *Forgiving vs. Forgetting*, The Marshall Project. https://www.themarshallproject.org/2015/03/17/forgiving-vs-forgetting
99 Cal. Pen. Code § 4852.03(a).
100 Cal. Pen. Code § 4852.16(a).
101 Superior Court of California, City of Los Angeles. (2019, February). Certificate of Rehabilitation and Pardon Instruction Packet. https://www.lacourt.org/division/criminal/pdf/CertificateRehabandPardonPacket.pdf
102 Cal. Pen. Code § 4852.05.
103 SHouse California Law Group. (n.d.). *How to Apply for a Certificate of Rehabilitation in California*. https://www.shouselaw.com/ca/defense/post-conviction/certificate-of-rehabilitation/
104 730 Ill. Comp. Stat. § 5/5-5.5-25. Illinois law also provides for a certificate of relief from disabilities which prohibits specified occupational licensing authorities from denying a person a license based on the person's criminal offenses. 730 Ill. Comp. Stat. §§ 5/5-5.5-15; 5/5-5-5(h).
105 730 Ill. Comp. Stat. § 5/5-5.5-25(a-6). See also 730 Ill. Comp. Stat. 5/5-5.5-3(a).
106 730 Ill. Comp. Stat. 5/5-5.5-3(c).
107 730 Illinois Compiled Statutes § 5/5-5/5-5.
108 730 Ill. Comp. Stat. § 5/5-5.5-25(c).
109 Healthcare Worker Background Check Act , 225 Ill. Comp. Stat. § 46/25.
110 225 Ill. Comp. Stat. § 46/40.
111 Avery, B., Lu, H. (2021, October 1). *Ban the Box: U.S Cities, Counties, and States Adopt Fair-*

Chance Policies to Advance Employment Opportunities for People with Past Convictions. National Employment Law Project. https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2021.pdf
112 ACLU Foundation and Trone Private Sector and Education Advisory Council. (2017). *Back to Business: How Hiring Formerly Incarcerated Jobseekers Benefits Your Company*.12. https://www.aclu.org/sites/default/files/field_document/060917-trone-reportweb_0.pdf
113 Fair Chance Act of 2019, 5 U.S.C. § 9202.
114 Avery et al. (2021, October 1), supra note 111.
115 National Employment Law Project. (2012, March). *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment*. 6-7. https://www.nelp.org/wp-content/uploads/2015/03/65_Million_Need_Not_Apply.pdf; A. Blumstein and K. Nakamura. (2009, June). 'Redemption' in an Era of Widespread Criminal Background Checks. *National Institute of Justice Journal*, Issue No. 263. https://www.ojp.gov/pdffiles1/nij/226872.pdf.
116 ASPE, Linking People with Criminal Records, *supra* note 10, at 19.
117 National Employment Law Project and Safer Foundation. (2016, September). *A Healthcare Employer Guide to Hiring People with Arrest and Conviction Records*. 13. http://www.nelp.org/wp-content/uploads/NELP-Safer-Toolkit-Healthcare-Employer-Guide-Hiring-People-with-Arrest-Conviction-Records.pdf
118 *Id.*
119 ASPE, Linking People with Criminal Records, *supra* note 10, at 19.
120 National Employment Law Project and Safer Foundation (2016, September), supra note 117.
121 Social Security Act § 1128, 42 U.S.C. §1315(a)(1); Blewett, L. and Zylla, E. *Targeting Justice-Involved Populations through 1115 Medicaid Waiver Initiatives: Implementation Experiences of Three States*. State Health Access Data Assistance Center 2 (2019, December 23). https://www.shadac.org/sites/default/files/publications/Justice-involved1115-waiver-initiatives_01.2020.pdf.
122 *Medicaid's Evolving Role in Advancing the Health of People Involved in the Justice System*. The Commonwealth Fund. https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/medicaid-role-health-people-involved-justice-system#:~:text=Section%201905(a)%20of%20the,the%20Medicaid%20inmate%20exclusion%20policy
123 Letter from Daniel Tsai, Deputy Administrator and Director, Centers for Medicare and Medicaid Services, to State Medicaid Directors. (April 17, 2023). https://www.medicaid.gov/federal-policy-guidance/downloads/smd23003.pdf.