

Fair Chance Employment for Individuals in Reentry



Root & Rebound
November 18, 2020

Today's Agenda



- **Introductions to Root & Rebound**
- **Why is Fair Chance hiring important?**
- **RAP sheets & Background Checks**
- **Overview of Fair Chance Act & LA City Ordinance**
- **Practical Tips & Best Practices**

About Root & Rebound



MISSION: Root & Rebound’s mission is to restore power and resources to the families and communities most harmed by mass incarceration through legal advocacy, public education, policy reform and litigation—a model rooted in the needs and expertise of people who are directly impacted.

About Root & Rebound



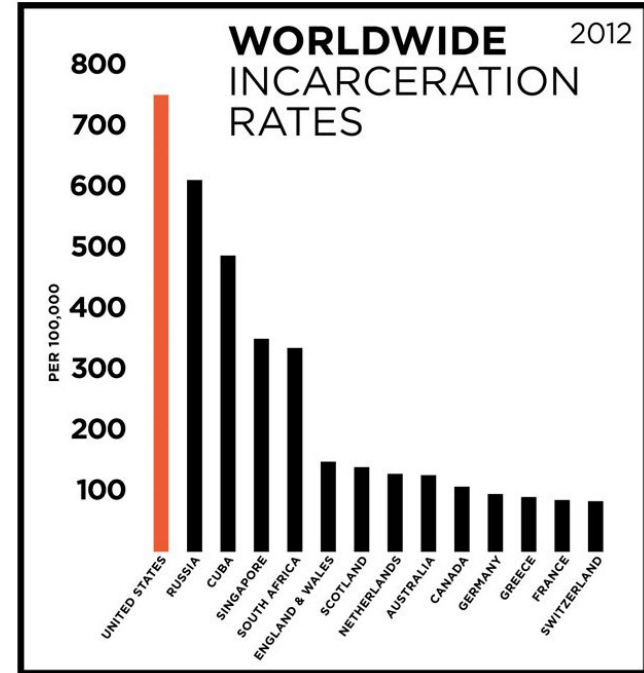
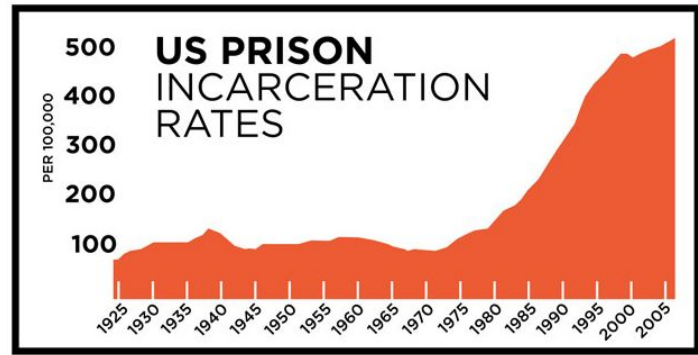
KEY PROGRAMS:

- **EDUCATION:** Roadmap to Reentry Guide, Toolkits, and Trainings
- **ADVOCACY:** Reentry Legal Hotline, Prison Legal Mail, and Legal Clinics
- **REFORM:** Lift up voices of people directly impacted!

PART I:

**Why is Fair Chance
Hiring Important?**

Since 1978, California's prison population has grown over 600%.



1 in 3

Americans has a criminal
record.



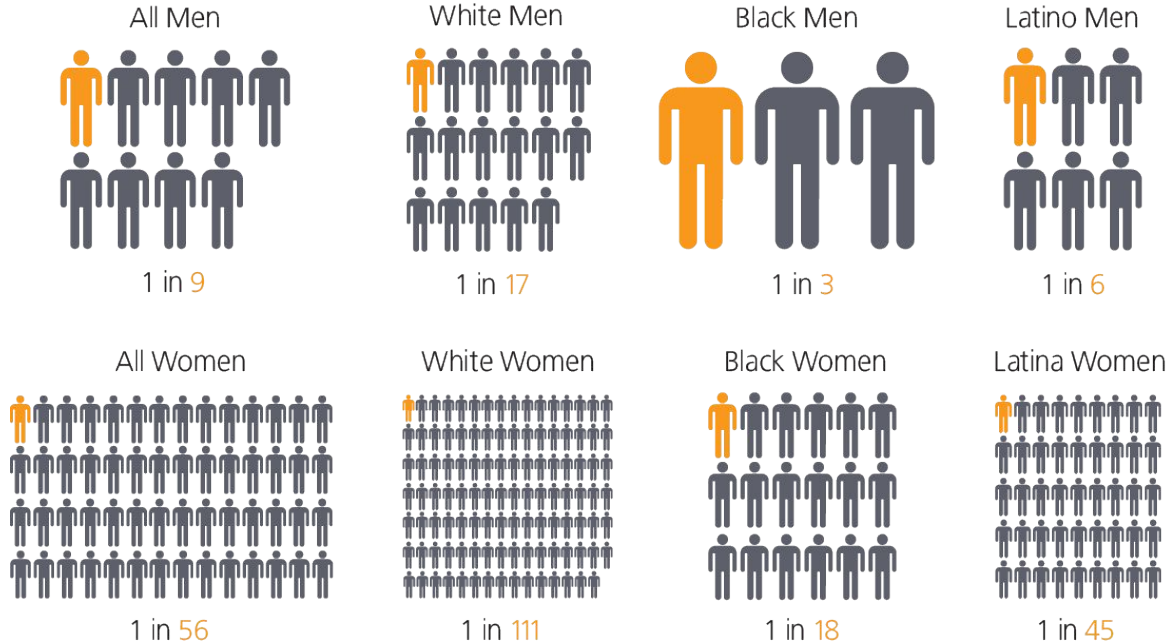
**percentage of Americans who have
committed a crime they can go to prison
for?**

91%

Americans have committed a crime for which they can go to prison.

It's not a matter of who commits crime but who gets policed, arrested and convicted.

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, DC: Bureau of Justice Statistics.





federal, state & local laws that limit and discriminate against people with records

48,000
Legal Barriers

System-Impacted Economic Instability

Pre-Entry Poverty

- Roughly 50% of people entering justice system are unemployed
- Income below \$22,500 -- 57% of incarcerated men & 72% of incarcerated women

Reentry & Workforce

- 75% unemployed after 1 year
- Only 55% report *any* earnings
 - Median is \$10,050

Post-Release

- Intersection of practical/logistical, emotional, and legal barriers
- Stressors:
 - Poverty - Prior to Incarceration, Debt, Lack of Economic Opportunity (Inside and In Reentry)
 - Unemployment
 - Housing Instability
- Compounded by Legal & Logistical Barriers:
 - Discrimination Based on Record
 - Supervision
 - Transportation
 - Tech Advancements
- Meaningful Access to Community-Based Treatment / Health Centers
- Retraumatization & Isolation

**PART II:
RAP SHEETS &
BACKGROUND
CHECKS**

WHAT IS A CRIMINAL RECORD?

Most Common Types of Criminal Records



- RAP Sheet
- Private Background Check

RAP Sheet



“Record of Arrests and Prosecutions”

All information on documented interactions with the criminal justice system.

- arrests / citations
- charges filed
- convictions / pleas / sentences
- dismissals / acquittals
- open warrants
- juvenile and adult

RAP Sheet



Government document containing ALL contact with law enforcement.

- **Who can access a RAP sheet?**
 - Individual; government jobs; government-assisted housing (like the PHA/public housing); state occupational licensing boards; law enforcement; judges; government welfare agencies
- **Most private employers can't see RAP sheets.**

Background Checks



Usually done by private background check companies & can include some information in RAP sheet.

What can show up on a commercial background check?

- Criminal convictions < 7 years
- Other court cases (i.e., civil cases like small claims)
- Driving record
- Employment history
- Education records
- Property ownership records
- Previous addresses
- Evictions

Background Checks



What **CANNOT** be on a commercial background check?

- Full “RAP Sheet”
- Convictions, lawsuits, judgments > **7 years old**
- Arrests or charges not leading to conviction, unless case is pending
- Expunged/dismissed/sealed convictions
- Court diversion program participation (e.g., drug treatment programs)
- Certain minor marijuana convictions
- Credit report

Common Background Check & RAP Sheet Errors



- Information that should not be included
- Wrong information (e.g., wrong conviction or person)
- Duplicates
- Including sealed information
- No final outcome included
- Unconfirmed public records

PART III:

**Fair Chance Hiring
Laws**

Fair Chance Hiring



The City of LA and the State of California each have their own Fair Chance Hiring (aka “Ban-the-Box”) laws.

- City of Los Angeles Fair Chance Initiative for Hiring Ordinance, effective July 1, 2017.
- State of California Fair Chance Ordinance, effective January 1, 2018.

Employers in the City of Los Angeles need to comply with both the LA and California laws!

California Fair Chance Act (AB 1008)



- Went into effect January 1, 2018.
- Applies to most private and government employers with 5+ employees.
 - Exceptions: Required to run background check by law; position with criminal justice agency; required by law to prohibit employment based on conviction history

CA Fair Chance Act: Highlights



1. Employers **CANNOT** inquire about OR consider an applicant's criminal record until *after a conditional offer of employment* has been made.
2. Employers must make an individualized assessment before withdrawing conditional offer of employment.

CA Fair Chance Act: Timing



- Can run a background check after the conditional offer and *with consent*.
- No questions about criminal record, or statements that criminal background check must be passed, on the initial written application.
- No questions about criminal record during the interview.
- Can't consider criminal record even if it comes up before the conditional offer.

CA Fair Chance Act: What Can Be Considered?



Employers can ONLY consider convictions & pending charges.

- Consider whether convictions have a direct & adverse relationship to the duties of the job.

Employers CANNOT Consider or Disseminate:

- Arrests and detentions not leading to conviction;
- Juvenile records;
- Diversion programs;
- Records/convictions that have been sealed, dismissed/expunged, or that are no longer illegal under the law.²⁸

CA Fair Chance Act: Individualized Assessment



NATURE

The nature and gravity of the offense

TIME

The amount of time that has passed since the offense and completion of sentence

NATURE

The nature of the job

CA Fair Chance Act: Fair Chance Process



- Notify of preliminary decision in writing, providing notice of: (1) convictions that are the basis for preliminary decision to withdraw offer + (2) copy of background check + (3) ability to present rehabilitation and mitigation evidence;
- Provide at least 5 days for applicant to respond & 5 additional days if disputing accuracy of background check;
- If applicant provides additional information/documents employer must make reassessment;
- If final decision to withdraw, written notification of final decision, any procedure for challenging, and right to file complaint.

Additional Information For Individualized Assessment



- Mitigating circumstances or facts about the offense
- Evidence that applicant has performed same type of work, post-conviction, without any issues
- Employment history before and after offense
- Rehabilitation evidence
- Employment and character references

CA Fair Chance Act: Enforcement



1. Administrative Enforcement: **Submit complaint to CA Department of Fair Employment and Housing within 1 year OR Equal Employment Opportunity Commission within 300 days.**
 - Available remedies: damages for emotional distress, hiring, back pay, changes in policies, attorney's fees and costs.
2. Civil Court Action: Can pursue civil court action *instead* after complaint is filed with the DFEH or EEOC and Right-to-Sue Notice has been issued.

Los Angeles City Fair Chance Initiative for Hiring Ordinance



- Went into effect July 1, 2017.
- Applies to most private and government employers with 10+ employees.
 - Exceptions: required by law to get conviction history; required to possess firearm for job; prohibited from holding job because of conviction.
- Very similar to CA “Ban-the-Box” law.
- LA Ordinance requires written individualized assessment

LA Ordinance: Enforcement



- Administrative Enforcement: **Submit complaint to LA Department of Public Works, Office of Wage Standards within 1 year.**
 - Opportunity to appeal to a hearing officer, whose decision will be the “final decision.”
- Civil Court Action: **Within 1 year of “final decision,” can file petition in LA Superior Court to review.**

PART IV:
Practical Tips &
Best Practices

Fair Chance Hiring Talking Points: What can we do?

- *California Employers' Fair Chance Hiring Toolkit*
- This is an untapped pool of talent for businesses looking for loyal workers.



“Don’t look at this as a social program, and don’t look at this as being altruistic. Look at it as a business decision... These are good, loyal, solid workers.” - VP of Human Resources at John Hopkins Health System

Benefits of Fair Chance Hiring

REWARDS

- Good performance on the job.
- Company loyalty and talent retention.
- Financial incentives.

FINANCIAL INCENTIVES

- Federal Fidelity Bonding
- Federal Work Opportunity Tax Credit (WOTC)
- California New Employment Tax Credit
- California Competes Tax Credit
- Wage subsidy programs
- Municipality-specific programs

Engaging Employers

- **Opportunity for employer education**
 - What are the most compelling talking points?
 - Do they know the requirements under the FCA?
- **Take it back to the team**
 - Does anyone have a stronger relationship or contact?
- **Utilizing external partners' relationships**
 - Other business people who promote fair chance employment

Best Practices in Hiring

- Include language in job postings that people with conviction histories are **encouraged** to apply
- Post job listings on forums geared towards individuals with records (70 million jobs)
- Establish pipelines (social service providers > workforce developers / supervising agencies)
 - Proactively support untapped talent pool!!
- Choose a reliable background check company
- Create an informative, encouraging pre-adverse action notice

Best Practices in Onboarding

- See the Whole Person, Not Just the Record
- Offer Well-Structured Orientation & Onboarding Program
- Offer Mentorship
- Provide Ongoing Training for All Staff, Especially Human Resources Personnel
- Keep Records Confidential
- Engage Legal Counsel
- Have a Diversity Policy
- Connect with Workforce Readiness Agencies who do the hard work for your company

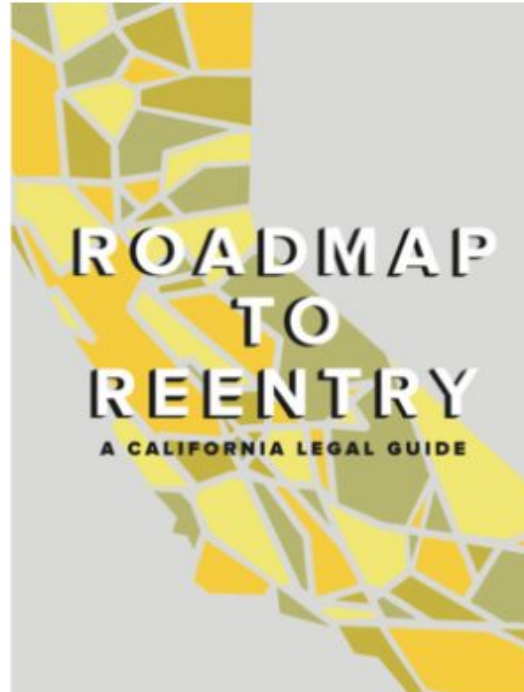
Tips for Jobseekers with Records



- Prepare for the interview
- Get RAP Sheet / Background Check
- Consult with Legal Aid Org (especially to get record cleaned)
- Connect with organizations, forums, workforce devs supporting in reentry
- Prepare for a pre-adverse action notice
- Save everything related to application process (e.g., documents, correspondence) if you think employer violated Fair Chance hiring laws

PART V:
Root & Rebound
Resources

Roadmap to Reentry Guide



Reentry Planning Toolkits

FOR PEOPLE IN
REENTRY/WITH RECORDS

REENTRY PLANNING TOOLKIT

*for people in reentry &
people with arrest and
conviction records*

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FOR FAMILY & LOVED
ONES

REENTRY PLANNING TOOLKIT

*for family members with
a loved one in reentry or
loved one with an arrest
or conviction record*

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FOR REENTRY SERVICE
PROVIDERS

REENTRY PLANNING TOOLKIT

*for all service provider
professionals supporting
people in reentry &
people with arrest and
conviction records*

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Education Toolkit

my education, *my* freedom:

A Toolkit for Formerly Incarcerated
and System-Impacted Students
Pursuing Education in California



**ROOT &
REBOUND**
REENTRY ADVOCATES

Trainings & Community Clinics

- Offices in [Oakland](#) (headquarters), [Fresno](#), and [Los Angeles](#), and offer mobile reentry legal clinics in [Tribal communities](#).
- Tailored trainings and services to partner organizations and employers.

R&R Hotline & Prison-Letter Services

R&R Reentry Legal Hotline (anyone!):

Fridays, from 9am - 5pm.

Call: (510) 279-4662 (We accept Collect Calls from people in custody.)

Get help with the guide; reentry legal information & advice; Local referrals & resources

R&R Prison Letter-Writing (people in custody):

Letters should be sent as confidential, legal mail.

Address: [Root & Rebound, 1730 Franklin St, Suite 300, Oakland, CA 94612](#)

Thank you!

Questions?