

**Council of the District of Columbia**  
**Committee on Government Operations and the Environment**


2010 DEC 3 AM 11:46  
OFFICE OF THE  
SECRETARY

**Report**

1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

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To: Members of the Council of the District of Columbia

From:  Mary M. Cheh, Chairperson  
Committee on Government Operations and the Environment

Date: December 2, 2010

Subject: Bill 18-826, the "Returning Citizen Public Employment Inclusion Amendment Act of 2010"

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The Committee on Government Operations and the Environment, to which B18-826, the "Returning Citizen Public Employment Inclusion Amendment Act of 2010," was referred, reports favorably on the legislation and recommend its approval by the Council of the District of Columbia.

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## **STATEMENT OF PURPOSE AND EFFECT**

Bill 18-826, the “Returning Citizen Public Employment Inclusion Amendment Act of 2010,” would establish procedures governing how and when the District government or a government contractor may investigate the criminal background of job applicants and employees.

## **LEGISLATIVE HISTORY**

June 1, 2010	Introduction of B18-826 by Councilmember Thomas.
June 3, 2010	Referral of B18-826 to the Committee on Government Operations and the Environment
June 11, 2010	Notice of Intent to Act on B18-826 is published in the <i>District of Columbia Register</i>
October 22, 2010	Notice of Public Hearing on B18-826 is published in the <i>District of Columbia Register</i>
November 8, 2010	Public Hearing on B18-826 held by the Committee on Government Operations and the Environment
November 30, 2010	Working Group Meeting
December 2, 2010	Consideration and vote on B18-826 by the Committee on Government Operations and the Environment

## **BACKGROUND AND COMMITTEE REASONING**

It is estimated that there are more 60,000 residents of the District of Columbia are formerly incarcerated. Of these, researchers have suggested that at least half are unemployed. Nationally, some experts have concluded that the rate of unemployment of returning citizens can exceed 75%.

The inability of formerly incarcerated residents to find employment affects the District in many ways. On a social level, residents who are unable to earn a living struggle to provide for themselves and their families. The District loses tax revenue when employers choose to reject District residents and hire non-residents instead. An inability to find work can lead to recidivism, which can increase the crime rate.

One of the primary causes of the high unemployment rate of returning citizens is that many employers frequently automatically disqualify them from positions because of their criminal background – without considering whether the crime was committed decades ago,

whether the resident has been fully rehabilitated, how the resident has contributed to society since returning, or other factors.

To address this problem, a growing number of jurisdictions have chosen to “ban the box” by prohibiting employers from asking whether an applicant has been convicted of a crime on job applications. To be clear, employers are still fully permitted to consider an applicant’s criminal history and to disqualify an applicant because of his past crimes. However, instead of inquiring on the application form and automatically filtering out applicants, employers may only ask about an applicant’s criminal history and conduct a criminal background check after he has been selected for an interview.

This legislation would “ban the box” in the District government and government contractors. For positions involving public safety and children, public employers may inquire about an applicant’s criminal background at any time. For all other positions, the District and its contractors may not ask about an applicant’s criminal history on an employment application form. Instead, public employers may only investigate an applicant’s criminal history after he has been selected for an interview. An applicant must be given the opportunity to explain his criminal background and the District and its contractors should consider a variety of factors before deciding whether to disqualify an applicant because of his criminal history.

Many have concluded that this legislation will result in the hiring of more returning citizens. A higher employment rate for returning citizens will improve the quality of our community, increase tax revenue, and reduce crime.

## **SECTION-BY-SECTION ANALYSIS**

### **Sec. 2.**

Before posting a job announcement, the District government would determine if the position requires a criminal background check by law (“covered position”).

If the position is a covered position, the District government could inquire about a job applicant’s criminal history at any time. The job announcement would include the following statement: “This position requires a criminal background check. Therefore, you may be required to provide information about your criminal history in order to be considered for this position.”

If the position is not a covered position, the District government could not inquire about a job applicant’s criminal history until after the initial screening of applications. At that point, the public employer could inquire about a job applicant’s criminal history so long as the applicant is given an opportunity to explain his criminal background. Public employers would be required to conduct criminal background checks in accordance with the procedures set forth in D.C. Code § 4-1501.05.

The District would only be permitted to conduct criminal background checks for covered positions and must follow the standards set forth in D.C. Code § 4-1501.05 when conducting

those checks.

In considering whether to disqualify an applicant because of his criminal history, a public employer should consider the following factors:

- (1) The specific duties and responsibilities of the position sought;
- (2) The bearing, if any, that an applicant's criminal background will have on the applicant's fitness or ability to perform one or more of such duties or responsibilities;
- (3) The time that has elapsed since the occurrence of the criminal offense;
- (4) The age of the person at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense;
- (6) Any information produced regarding the applicant's rehabilitation and good conduct since the occurrence of the criminal offense; and
- (7) The public policy that it is generally beneficial for ex-offenders to obtain employment.

By February 1, 2011, the Department of Human Resources would be required to provide guidance to all personnel authorities on the implementation of this act.

### Sec. 3. Fiscal impact statement.

The Council would adopt the fiscal impact statement in the committee report.

### Sec. 4. Effective date.

This legislation would take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of Congressional review, and publication in the District of Columbia Register.

## IMPACT ON EXISTING LAW

This bill amends the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), and the Criminal Background Checks for the Protection of Children Act of 2004, approved April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*).

## FISCAL IMPACT

The Committee adopts the Fiscal Impact Statement prepared by the Chief Financial Officer.

## SUMMARY OF PUBLIC HEARING

On Monday, November 8, 2010, the Committee on Government Operations and the Environment held a public hearing on Bill 18-826, the "Returning Citizen Public Employment Inclusion Act of 2010." Councilmember Mary M. Cheh, Chairperson of the Committee on Government Operations and the Environment, called the hearing to order at 11:20 a.m. in Room 120 of the John A. Wilson Building.

Councilmember Cheh explained that the purpose of the hearing was to consider the "Returning Citizen Public Employment Inclusion Act of 2010" and other bills referred to the Committee that affect District government personnel.

The following witnesses testified:

Herman D. Cdom, Jr., Director, Office of Ex-Offender Affairs  
Brender Gregory, Director, Department of Human Resources  
Larry A. King, Former Director of Personnel & Deputy City Administrator  
Stephen M. Block, ACLU of the Nation's Capital  
Andre Marr, Product of Product  
Philip Fornaci, DC Prisoners' Project  
Johnny Allem, DC Recovery Community Alliance  
Al Malik Farrakan, CeaseFire Don't Smoke the Brothers  
James Lynch-Bey, Public Witness  
Earl Robinson, Public Witness  
Laquaneta Alston-Bey, Public Witness  
Tony Bennett, Public Witness  
Charles Thornton, Public Witness  
Debra G. Rowe, Returning Citizens United  
Robert Brown, Public Witness  
Andrew Wilson, Public Witness  
Robert Kemp, Public Witness  
Susan Hoskins, Coalitions for Economic Empowerment  
Troy Russell, Public Witness

Chairperson Cheh thanked the witnesses for their testimony and called the hearing to a close at 5:02 p.m.

## COMMITTEE ACTION

On Thursday, December 2, at 4:35 p.m., Chairperson Mary M. Cheh convened an additional meeting of the Committee on Government Operations and the Environment in Room 120 of the John A. Wilson Building. Present with Chairperson Cheh were Councilmembers K. Brown, Catania, and Thomas.

Chairperson Cheh described Bill 18-826, the “Returning Citizen Public Employment Inclusion Act of 2010” and its purpose. She offered a friendly amendment that would have the bill amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 instead of the Criminal Background Checks for the Protection of Children Act of 2004, and make other technical changes.

Councilmember Catania asked about the positions, which would be exempt from the requirements and expressed concerns about the applicability of this legislation to District contractors, namely health care providers. Chairperson Cheh moved to amend the bill so that it would no longer be applicable to contractors and said that she would consider this issue further before first reading.

Ms. Cheh then moved for a vote on the amended. The Committee voted unanimously, 4-0, to approve the bill, as follows:

**YES:** Chairperson Cheh, Councilmembers K. Brown, Catania, and Thomas

**NO:**

**PRESENT:**

**ABSENT:** Councilmember Wells

#### **LIST OF ATTACHMENTS**

- (A) Bill 18-826, as introduced
- (B) Notice of Intent to Act, published in the *District of Columbia Register*
- (C) Public Hearing Notice, published in the *District of Columbia Register*
- (D) Public Hearing Agenda and Witness List
- (E) Committee Print of Bill 18-967
- (F) Fiscal Impact Statement
- (G) Testimony from the November 8, 2010, Public Hearing

# **Attachment A**



Councilmember Harry Thomas, Jr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Harry Thomas, Jr. introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To require that the District shall not inquire into the criminal history of any public employment applicant unless that applicant has been chosen for an interview, however employment positions in the Department of Corrections, and any other positions with statutorily required background checks, are excluded from the requirement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,



1 That this act may be cited as the "Returning Citizen Public Employment Inclusion Act of  
2 2010".

3 Sec. 2.

4 (a) A public employer may not inquire into or consider the criminal record or  
5 criminal history of an applicant for District government employment until the applicant  
6 has been selected for an interview by the employer.

7 (b) This section does not apply to the Department of Corrections or to public  
8 employers who have a statutory duty to conduct a criminal history background check or  
9 otherwise take into consideration a potential employee's criminal history during the hiring  
10 process.

11 (c) This section does not prohibit a public employer from notifying applicants that  
12 law or the employer's policy will disqualify an individual with a particular criminal  
13 history background from employment in particular positions.

14 Sec.3. Fiscal impact statement.

15  
16 The Council adopts the fiscal impact statement in the committee report as the  
17 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home  
18 Rule Act, approved December 24, 1973 (87 Stat 813; D.C. Official Code § 1-  
19 206.02(c)(3)).

20 Sec. 4. Effective date.

21 (a) This act shall take effect following approval by the Mayor (or in the event of  
22 veto by the Mayor, action by the Council to override the veto), a 30-day period of  
23 Congressional review as provided in section 602(c)(1) of the District of Columbia Home

- 1 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02
- 2 (c)(1)), and publication in the District of Columbia Register

# **Attachment B**

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**NOTICE OF INTENT TO ACT ON NEW LEGISLATION**

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than 15 days. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Cynthia Brock-Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at [www.dccouncil.us](http://www.dccouncil.us).

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**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PROPOSED LEGISLATION**

**BILLS**

- |         |  |
|---------|--|
| B18-821 | Marriage Officiant Amendment Act of 2010<br><br>Intro. 6-01-10 by Councilmembers Cheh, Catania and Evans and referred to the Committee on Public Safety and the Judiciary  |
| <hr/>   |  |
| B18-822 | District of Columbia Board of Elections and Ethics Membership Expansion Act of 2010<br><br>Intro. 6-01-10 by Councilmember Cheh and referred to the Committee on Government Operations and the Environment   |
| <hr/>   |  |
| B18-823 | Transportation Infrastructure Amendment Act of 2010<br><br>Intro. 6-01-10 by Councilmembers Wells, Graham, K. Brown, Catania, Bowser, Alexander, Thomas, M. Brown, Evans, Cheh, Barry and Chairman Gray and referred to the Committee on Public Works and Transportation |
| <hr/>   |  |
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**COUNCIL OF THE DISTRICT OF COLUMBIA****PROPOSED LEGISLATION****BILLS cont'd**

- B18-824                      Condominium Combined Real Property Tax and Vault Rent Billing Act of 2010
- Intro. 6-01-10 by Councilmember Wells and sequentially referred to the Committee on Public Services and Consumer Affairs and the Committee on Public Works and Transportation
- 
- B18-825                      Reverend Donald Robinson Field Designation Act of 2010
- Intro. 6-01-10 by Councilmember Thomas and referred to the Committee of the Whole with comments from the Committee on Libraries, Parks and Recreation
- 
- B18-826                      Returning Citizen Public Employment Inclusion Act of 2010
- Intro. 6-01-10 by Councilmember Thomas and referred to the Committee on Government Operations and the Environment with comments from the Committee on Public Safety and the Judiciary
- 
- B18-827                      Poplar Point Business Incentive Act of 2010
- Intro. 6-01-10 by Councilmember Barry and referred to the Committee on Finance and Revenue
- 
- B18-828                      800 Kenilworth Avenue Northeast Redevelopment Project Real Property Limited Tax Abatement Assistance Act of 2010
- Intro. 6-04-10 by Councilmember Alexander and referred to the Committee on Finance and Revenue
- 
- B18-829                      Uniform Collaborative Law Act of 2010
- Intro. 6-08-10 by Councilmember Mendelson and referred to the Committee on Public Safety and the Judiciary
- 
- B18-830                      Public Notice of Advisory Neighborhood Commissions Resolutions Act of 2010
- Intro. 6-01-10 by Councilmembers Bowser and Alexander and referred to the Committee on Aging and Community Affairs
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# **Attachment C**

Council of the District of Columbia  
Committee on Government Operations and the Environment  
**Notice of Public Hearing**  
1350 Pennsylvania Avenue, N.W. Washington, DC 20004

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**COUNCILMEMBER MARY M. CHEH, CHAIRPERSON**  
**COMMITTEE ON GOVERNMENT OPERATIONS AND THE ENVIRONMENT**

Announces a Public Hearing on

**B18-100, the "District Government Residency Requirement Amendment Act of 2009"**

**B18-328, the "MSS Employment Amendment Act of 2009"**

**B18-611, the "Corrective Action Amendment Act of 2010"**

**B18-767, the "Management Supervisory Service Amendment Act of 2010"**

**B18-797, the "District Domicile Requirement Amendment Act of 2010"**

**B18-798, the "Jobs for D.C. Residents Amendment Act of 2010"**

**B18-826, the "Returning Citizen Public Employment Inclusion Act of 2010"**

**November 8, 2010**

**11:00 AM**

**Room 120**

**John A. Wilson Building**

**1350 Pennsylvania Avenue, N.W.**

On Monday, November 8, 2010, Councilmember Mary M. Cheh, Chairperson of the Committee on Government Operations, will hold a public hearing on pending legislation related to District government personnel. This public hearing will begin at 11:00 AM in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Bill 18-100, the "District Government Residency Requirement Amendment Act of 2009," would require all Career Service employees and teachers to live in the District with certain exceptions. Under Bill 18-328, the "MSS Employment Amendment Act of 2009," Management Supervisory Service employees could only be terminated for cause after a one-year probationary period. Bill 18-611, the "Corrective Action Amendment Act of 2010," would establish a 45-day time limit for employees to file grievances. Bill 18-767, the "Management Supervisory Service Amendment Act of 2010," would split the Management Supervisory Service into two groups: career and at-will. Bill 18-797, the "District Domicile Requirement Amendment Act of 2010," would require all Career Service employees and teachers to live in the District with certain exceptions. Bill 18-798, the "Jobs for D.C. Residents Amendment Act of 2010," would require each agency to certify the reasons why a non-District resident was hired for each position filled. Bill 18-826, the "Returning Citizen Public Employment Inclusion Act of 2010," would prohibit the District government from conducting a criminal background investigation into a job applicant until the applicant has been selected for an interview.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify at the hearing should contact Ms. Aukima Benjamin, staff assistant to the Committee on Government Operations and the Environment, at 724-8062, or via e-mail at [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Individuals will be permitted three (3) minutes for oral presentation. The record will close at the end of the business day on November 12, 2010.

# **Attachment D**

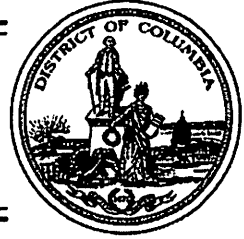


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**COMMITTEE ON GOVERNMENT OPERATIONS  
AND THE ENVIRONMENT**

MARY M. CHEH, CHAIR

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**DRAFT WITNESS LIST**

**COUNCILMEMBER MARY M. CHEH, CHAIRPERSON  
COMMITTEE ON GOVERNMENT OPERATIONS AND THE ENVIRONMENT**

Announces a Public Hearing on

**B18-100, the "District Government Residency Requirement Amendment Act of 2009"**  
**B18-328, the "MSS Employment Amendment Act of 2009"**  
**B18-611, the "Corrective Action Amendment Act of 2010"**  
**B18-767, the "Management Supervisory Service Amendment Act of 2010"**  
**B18-797, the "District Domicile Requirement Amendment Act of 2010"**  
**B18-798, the "Jobs for D.C. Residents Amendment Act of 2010"**  
**B18-826, the "Returning Citizen Public Employment Inclusion Act of 2010"**

**November 8, 2010**

**11:00 AM**

**Room 120**

**John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.**

**GOVERNMENT WITNESSES**

Herman D. Odom, Jr., Director, Office of Ex-Offender Affairs  
Brender Gregory, Director, Department of Human Resources

**PUBLIC WITNESSES**

Larry A. King, Former Director of Personnel & Deputy City Administrator  
Stephen M. Block, ACLU of the Nation's Capital  
Andre Marr, Product of Product  
Philip Fornaci, DC Prisoners' Project  
Johnny Allem, DC Recovery Community Alliance  
Al Malik Farrakan, CeaseFire Don't Smoke the Brothers  
James Lynch-Bey, Public Witness  
Earl Robinson, Public Witness  
Laquaneta Alston-Bey, Public Witness  
Tony Bennett, Public Witness  
Charles Thornton, Public Witness  
Debra G. Rowe, Returning Citizens United  
Robert Brown, Public Witness  
Andrew Wilson, Public Witness  
Robert Kemp, Public Witness  
Susan Hoskins, Coalitions for Economic Empowerment  
Troy Russell, Public Witness

# **Attachment E**

**Committee on Government Operations and the Environment  
Committee Print of B18-826  
December 2, 2010**

A BILL

B18-826

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to restrict a public employer's inquiry into the criminal history of job applicants.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Returning Citizen Public Employment Inclusion Amendment Act of 2010".

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended by adding a new title XX-D to read as follows:

"TITLE XX-D

"CRIMINAL HISTORY INQUIRIES.

"Sec. 2041. Definitions.

"For the purposes of this title, the term:

"(1) "Applicant" means an individual who has filed an application for employment with a public employer or who has filed an application or made a verbal request to serve in a volunteer position with a public employer.

“(2) “Covered position” means a position in which a criminal background check is required by law.

“(3) “Criminal background check” shall have the same meaning as provided in section 202(4) of the Criminal Background Checks for the Protection of Children Act of 2004, approved April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01(4)).

“(4) “Public employer” means the District government.

“Sec. 2042. Pre-employment inquiries.

“(a) Before posting a vacancy announcement, a public employer shall determine if the position is a covered position.

“(b) If a position is a covered position, a public employer may inquire about an applicant’s criminal history at any time; provided, that the vacancy announcement includes the following statement: “This position requires a criminal background check. Therefore, you may be required to provide information about your criminal history in order to be considered for this position.”

“(c) If a position is not a covered position, a public employer shall not inquire about an applicant’s criminal history on the application form. A public employer may inquire about an applicant’s criminal history after the initial screening of applications. If a public employer inquires about an applicant’s criminal history, the applicant shall be permitted to provide an explanation of his criminal history to the public employer.

“Sec. 2043. Criminal background checks.

“(a) Public employers may only conduct criminal background checks for covered positions.

“(b) Criminal background checks shall be conducted in accordance with the procedures provided by section 205 of the Criminal Background Checks for the Protection of Children Act of 2004, approved April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.04).

“Sec. 2044. Limitation on disqualification.

“When considering whether to disqualify an applicant because of the applicant’s criminal history, a public employer should consider the following factors:

“(1) The specific duties and responsibilities of the position sought;

“(2) The bearing, if any, that an applicant’s criminal background will have on the applicant’s fitness or ability to perform one or more of such duties or responsibilities;

“(3) The time that has elapsed since the occurrence of the criminal offense;

“(4) The age of the person at the time of the occurrence of the criminal offense;

“(5) The frequency and seriousness of the criminal offense;

“(6) Any information produced regarding the applicant’s rehabilitation and good conduct since the occurrence of the criminal offense; and

“(7) The public policy that it is generally beneficial for ex-offenders to obtain employment.

“Sec. 2045. Implementation for public employers.

“(a) The Department of Human Resources shall provide guidance on the implementation of sections 2042, 2043, and 2044 to all personnel authorities within the District government on or before February 1, 2011.

“(b) The Office of Contracting and Procurement shall add a statement to the District’s standard solicitation and contract forms for contracts explaining the requirements of sections 2042, 2043, and 2044 on or before February 1, 2011.”.

**Sec. 3. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

**Sec. 4. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

# **Attachment F**


Government of the District of Columbia  
Office of the Chief Financial Officer



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** November 30, 2010

**SUBJECT:** Fiscal Impact Statement – “Returning Citizen Public Employment Inclusion Act of 2010”

**REFERENCE:** Bill Number 18-826, Draft Committee Print

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**Conclusion**

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation.

**Background**

The proposed legislation would<sup>1</sup> require the District of Columbia Department of Human Resources and all District service contractors to only perform background checks after a job applicant has been selected for an interview. The exceptions are for jobs directly involved with the financial security and public safety of the District.

**Financial Plan Impact**

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation does not impact on the District’s budget and financial plan.

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<sup>1</sup> By amending District of Columbia Government Comprehensive Merit Personnel Act of 1978, approved March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*)



# **Attachment G**

**THE COMMITTEE ON GOVERNMENT OPERATIONS  
AND THE ENVIRONMENT**

**MARY M. CHEH, CHAIRPERSON**

**TESTIMONY OF**

**HERMAN D. ODOM, JR.**

**EXECUTIVE DIRECTOR, OFFICE ON EX-OFFENDER AFFAIRS**

**DATE: NOVEMBER 8, 2010**

Chairperson Cheh and distinguished members of the Committee, I want to thank you for the opportunity to appear before you as the Executive Director of the Office on Ex-Offender Affairs. I also want to state how appreciative and honored I am to have been nominated and appointed. I am truly grateful to be in a position to continue serving the residents of the District of Columbia, my home and the place of my birth.

I am Herman D. Odom, Jr., a native Washingtonian raised in the Trinidad and Catholic University community where I spent most of my formative and teenage years. I have worked in the criminal justice field working with returned citizens and adjudicated youth for approximately 20 years in the DC Metropolitan area. I am here today to testify concerning B18-826, the Returning Citizens Public Employment Inclusion Act of 2010.

I have spent almost my entire life providing service to residents of the District of Columbia within the community and correctional facilities. I have worked with many District and Federal government agencies, non-profits, civic/neighborhood associations and employers in DC, Maryland and Virginia to provide assistance for the underserved and ex-offender population. I enjoy the work and being a voice for the voiceless and an advocate for District residents that need advocacy assistance in their everyday endeavors.

As the Executive Director of the Office on Ex-Offender Affairs, I see the pain and hear about the impediments many returning citizens face transitioning back in society, into the lives of their families and into the world of work. With the current recession facing all of America it is extremely more difficult for returning citizens to not only obtain employment but many times even be scheduled for an interview for a vacant position. Returning citizens are many times overlooked, underserved, disenfranchised and not provided with a true opportunity to advance and succeed in today's society.

With the criminal justice system's current methodology of incarceration being punishment focused it is truly difficult for any individual confined and desiring to be

**"reformed" to have the ability to program and correct any lifestyle, mindstyle and value system flaws that may exist within themselves. There are many states that are now exploring other options to address the overcrowding conditions within their correctional systems and training/employment opportunities within their respective facilities and prisons.**

**By implementing "B18-826, the Returning Citizen Public Employment Inclusion Act of 2010" this will open the door for qualified returning citizens to at least have an opportunity to apply for a position and be selected for an interview within the District government without being discriminated against or singled out based on a criminal background check. This is indeed a correct step in the right direction. Many returning citizens want to work and need to work in order to provide for themselves, their families and satisfy their supervision mandates.**

**There is also the issue of community safety and reducing the recidivism rate. A returned citizen working offers benefits to the city including becoming a tax payer and voter, assuming the role of father/mother in the family and becoming involved in community issues that can help lower the crime rate and assist with our troubled youth.**

**There is a great need in the returning citizens community for help as it relates to employment and training. The Federal and District government offers millions of dollars in grants to non-profits, faith and community based organizations and a host of others to offer training and provide subsidized employment. This is ideal but if there are no real connecting points, training leads to employment, then this is just a waste of tax payers money.**

**There needs to be developed new innovative thoughts and ideas as it relates to technology training and employment for returning citizens. We cannot truly address the needs of this critical population until we address these needs using 21<sup>st</sup> century methodology. Using 19<sup>th</sup> century ideas concerning employing and training returning citizens will provide you with the same results. The Office on Ex-Offender Affairs has developed several innovative ideas using technology as our theme weighing heavily on entrepreneurship opportunities and options to address the ever-increasing unemployment rate of returning citizens.**

**We support your efforts and the efforts of all of the Council members that understand the dire needs and conditions of the returning citizens population. We support the Returning Citizens Public Employment Inclusion Act of 2010 and look forward to working with your office and committee, other Council members, the returning citizens community and organizations, the District and Federal government and other entities in the community to address the over-whelming unemployment rate of returning citizens.**

**I want to "Thank You" and Council members for this opportunity to testify and I await any questions, comments or concerns you may have for me today. Again, Thank You!**

Government of the District of Columbia



D.C. Department of Human Resources

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Testimony of

**Brender L. Gregory**  
**Director**

*Public Hearing on Human Resources-Related  
Proposed Legislation*

BEFORE THE  
COMMITTEE ON GOVERNMENT OPERATIONS  
AND THE ENVIRONMENT

Councilmember Mary M. Cheh, Chair

Monday, November 8, 2010  
11:00 a.m.

John A. Wilson Building  
1350 Pennsylvania Avenue NW, Room 120  
Washington, DC 20004

Good morning Chairperson Cheh and members of the Committee on Government Operations and the Environment. I am Brender Gregory, Director of the D.C. Department of Human Resources (DCHR). I am pleased to have this opportunity to present testimony at today's public hearing on seven (7) bills directly impacting the area of human resources. Specifically, Bill 18-100, the District Government Residency Requirement Amendment Act of 2009; Bill 18-328, the MSS Employment Amendment Act of 2009; Bill 18-611, the Corrective Action Amendment Act of 2010; Bill 18-767, the Management Supervisory Service Amendment Act of 2010; Bill 18-797, the District Domicile Requirement Amendment Act of 2010; Bill 18-798, the Jobs for D.C. Residents Amendment Act of 2010; and Bill 18-826, the Returning Citizen Public Employment Inclusion Act of 2010.

At this time, I would like to address each of the proposed bills, beginning with Bill 18-100, the District Government Residency Requirement Amendment Act of 2009, and Bill 18-797, the District Domicile Requirement Amendment Act of 2010. Bill 18-100 would amend the Comprehensive Merit Personnel Act of 1978 ("CMPA") to require persons newly hired into Career Service, Excepted Service, and Educational Service positions to become bone-fide residents of the District of

Columbia at the time of appointment or within one hundred eighty (180) days of appointment; and maintain District residency for the duration of their employment with the District government.

**Bill 18-797, the District Domicile Requirement Amendment Act of 2010**, would amend the CMPA to require persons newly hired into Career Service and Educational Service positions paid at grade level 12 or above , to be domiciled in the District of Columbia at the time of appointment or within one hundred eighty (180) days of appointment and maintain such domicile for at least seven (7) years or forfeit their position. Additionally, this bill: (1) would require new hires to submit 8 proofs of bona-fide domicile; (2) authorizes the Mayor to grant waivers for hard-to-fill positions; (3) grants "retention and reinstatement of employment preference" to District residents over non-District residents in cases of reduction-in-force (RIF) and (4) excludes police officers and firefighters from the provisions of bill.

In addition, both bills appear to exclude the Legal Service and MSS from their provisions. The two (2) bills are duplicative in certain aspects and contradictory in others. They are duplicative in that the provisions in each of the bills overlap in their impact on Career and Educational Service employees. The contradiction is evident as Bill 18-100 provides for a residency requirement for all grades in the

Career, Educational, and Excepted Services requiring new hires to establish and maintain bona-fide District residency for the duration of employment; while Bill 18-797 establishes a "domicile requirement" for the Career and Educational Services (grades 12 and above) where new hires are required to establish and maintain District domicile for at least seven (7) years from the date of hire.

The direct effect of Bills 18-100 and 18-797 would be to eliminate the residency preference system that has been in effect since 1989 upon the enactment of D.C. Law 7-203, the Residency Preference Amendment Act of 1988, effective March 16, 1989; and basically "revert" back to the residency requirement law previously in effect. DCHR and the administration have been and remain committed to making every effort to provide as many job opportunities to District of Columbia residents as possible, and we believe that the residency preference law accomplishes that. The current residency preference law requires that, if all things are equal qualifications-wise, the District of Columbia resident who claimed the residency preference shall be selected. This recognizes the ultimate recruitment goal, which should be to select the best-qualified person for each position.

Through the current residency preference system, not only are District of Columbia residents who are seeking employment with the District government afforded the additional benefit of the residency preference system; but the District government

is able to broaden its reach to attract and be able to select the most qualified individuals. I respectfully submit to you that enactment of Bills 18-100 and 18-797 could significantly hamper the District government's ability to attract and retain such individuals.

Today there are two (2) Management Supervisory Service-related legislative items being considered. Before I begin my testimony on them, I would like to provide some background on this service. The Management Supervisory Service or "MSS" was established pursuant to section 101(k) of D.C. Law 12-124, the Omnibus Personnel Reform Amendment Act of 1998, effective June 10, 1998.

The objective in establishing the MSS at that time - which holds true today - was to form a cadre of high quality managers and supervisors that are responsive to the needs of this government. Career and Excepted Services employees at grade levels 11 and above who met the definition of "management employee" were converted into the MSS from these services. As a result of the establishment of the MSS and promulgation of MSS regulations, the District government has continued to draw experienced and highly motivated employees to be part of the MSS. Currently, there are approximately 1,562 MSS employees throughout the government. As you may be aware, MSS employees receive severance pay upon termination for non-disciplinary reasons, computed on the same basis as severance pay for Career



Service employees who are terminated by reduction in force (length of service, age). Also, please note that while MSS employees may be terminated at any time and do not have appeal rights to the Office of Employee Appeals (OEA) because of their at-will status, each proposed MSS termination is reviewed and authorized before the termination letter is issued for the purpose of ensuring that termination actions are not arbitrary or capricious; and protect the District government from potential legal liability.

I would now like to address Bills 18-767, the Management Supervisory Service Amendment Act of 2010, and 18-328, the MSS Employment Amendment Act of 2009: Bill 18-767 would amend the current MSS provisions of the CMPA by creating two (2) categories of MSS employees: “**Management Supervisory Service – Career**,” and “**Management Supervisory Service – At-Will**.” The “**MSS-Career**” category would be composed of MSS employees who supervise or manage employees or functions within a unit, section, branch, or division of an agency or department. The “**MSS – At-Will**” category would be composed of MSS employees who supervise or manage executive branch employees or functions within a major sub-component, office, or administration of an agency or department. This bill also establishes subcategories of MSS positions within the “**MSS-Career**” and “**MSS – At-Will**” categories; and further amends the MSS

provisions of the CMPA by: (1) standardizing the process for determining the qualifications for all MSS positions, including the development of an evaluation plan based on a total score of 100 points and an additional 10 points for "claiming and possessing a District preference and "an appropriate number of points" for employees claiming veterans preference; (2) establishing a 1-year probationary period for new hires into the "MSS – Career" category, which, if not completed, would result in the termination with a 30-day notice; and (3) establishing retreat rights for employees in the "MSS – Career" category who are terminated during their probationary period, provided that the employee retained Career or Educational status and had been promoted or appointed from a non-MSS position. The bill would also amend the CMPA to: provide that terminated "MSS – At-Will" employees be placed on a priority placement list for positions held prior to appointment to the MSS; establish specific training requirements; require the development of a pay schedule every year, following an annual classification and compensation study for the MSS; and provide that RIF procedures shall apply to the MSS. As is the case now, this bill provides for the payment of severance pay for MSS employees separated for non-disciplinary reasons, paid in accordance with the provisions of Chapter XI of the CMPA.

The second MSS-related Bill is **Bill 18-328, the MSS Employment Amendment Act of 2009**. Bill 18-328 would subject MSS employees to completion of an initial probationary period of 1 year; and provide that MSS employees shall only be terminated for cause.

It is the administration's opinion that Bills 18-767 and 18-328 have the potential of creating a lot of confusion, as they "mix" traditional Career Service entitlements such as probationary periods, terminations for cause and RIFs with elements of at-will employment; and even seem to give MSS employees more entitlements than Career Service employees currently have. As an example, presently employees in the MSS are not given a 30-day notice of termination; this is afforded to a Career Service employee impacted by a RIF. Additionally, Bill 18-328 does not seem to allow MSS terminations due to financial constraints such as the current budget shortfall, even though Career Service and Educational Services employees can, and have, been terminated via RIF because of spending pressures. Given that the bills directly touched upon classification issues, we recommend the postponement of any further consideration of these bills until after completion of the Classification-Compensation Reform Project currently underway in DCHR.

**Bill 18-611**, the **Corrective Action Amendment Act of 2010**, would amend the CMPA to increase the number of days for employees to file grievances from 45 days to 60 days from the date of the act or occurrence. DCHR does not have any objections to this bill.

This Committee is also contemplating an amendment to D.C. Law 17-108, the Jobs for D.C. Residents Amendment Act of 2007, effective February 6, 2008. **Bill 18-798, the Jobs for D.C. Residents Amendment Act of 2010**, would require the Mayor and heads of subordinate and independent agencies to certify the employment of non-District residents, and provide the reasons for their employment in the certification.

As you may recall, D.C. Law 17-108 currently requires that subordinate and independent agency heads submit quarterly reports to the Mayor and the Council detailing the names of all new employees, their pay schedules, titles, and place of residence; and explaining the reasons for the employment of non-District residents. Thus, because section 101 of D.C. Law 17-108, codified at D.C. Official Code § 1-515.01(c)(1) contains a requirement for agencies to submit quarterly reports, which includes an explanation for the selection of non-District residents, the

administration believes that the amended language contained in this bill may not be necessary.

The last bill subject of this hearing is **Bill 18-826, the Returning Citizen Public Employment Inclusion Act of 2010**. This bill would prohibit a public employer from inquiring into or considering the criminal record or criminal history of an applicant for a District government position until the individual has been selected for an interview. The bill would exclude the Department of Corrections or other public employers who have a statutory duty to conduct criminal history background checks during the hiring process. In relation to this bill, we recommend changing the term "public employer" to "District government." It should also be noted that while job interviews are not always conducted before selections are made, criminal background checks are only completed after tentative selections are made. Thus, "selectees," not applicants, are subjected to criminal background checks. For example, the approximately 951 criminal background checks conducted during the summer pursuant to Title II of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 were conducted only after the Department of Parks and Recreation and the District Department of the Environment made the tentative selections of their summer workers covered by D.C. Law 15-353.

In closing, I would like to once again express my thanks to you for giving me the opportunity to testify before this Committee on the aforementioned proposed bills. I would also like to reiterate to this Committee that we remain committed to our goal of attracting, developing and retaining the best qualified District government workforce. I hope my testimony has been helpful; and at this time, I am happy to answer any questions you have.

**TESTIMONY OF**  
**LARRY A. KING**  
**ON THE MANAGEMENT SUPERVISORY SERVICE**  
**AMENDMENT ACT OF 2010**  
**NOVEMBER 8, 2010**

**GOOD MORNING/AFTERNOON CHAIRMAN CHEH AND  
MEMBERS OF THE COMMITTEE ON GOVERNMENT  
OPERATIONS AND THE ENVIRONMENT.**

**I AM LARRY A. KING, FORMER DIRECTOR OF  
PERSONNEL AND FORMER DEPUTY CITY  
ADMINISTRATOR FOR PUBLIC MANAGEMENT FOR  
THE DISTRICT OF COLUMBIA GOVERNMENT.**

**I AM HERE TODAY TO SUPPORT THE PROVISIONS OF  
B18-767 MANAGEMENT SUPERVISORY SERVICE  
AMENDMENT ACT OF 2010.**

**WHILE DIRECTOR OF PERSONNEL FOR THE DISTRICT  
COLUMBIA I MANAGED AND COMPLETED A  
COMPREHENSIVE REVIEW OF KEY ASPECTS OF THE  
COMPREHENSIVE MERIT PERSONNEL ACT. THE END**

**PRODUCT INCLUDED SWEEPING CHANGES TO THE PERSONNEL PRACTICES WITHIN THE DISTRICT GOVERNMENT. ONE OF THE MOST SIGNIFICANT REFORM ITEMS WAS THE CREATION OF THE MANAGEMENT SUPERVISORY SERVICE.**

**I would like to provide to you some of my observations of the administration of the Management Supervisory Service in the most recent past.**

**One of the key issues with the management of the Management Supervisory Service (MSS) is that the Incumbents of these positions are treated like members of the Excepted or Executive Services, rather than a special category of civil servant. The intent was never for the incumbents of these positions to be treated as political appointees or to be a**



**substitution for or a supplement to the Excepted Service.**

**It is recognized that "at will" employment status generally means that employees can be summarily terminated without cause. It is also recognized that "at will" terminations, especially in the private sector, are commonplace and are not grievable unless the termination was due to a covered action such as discrimination. However, in the case of the District government and the MSS it was assumed that this group of employees were to be a critical core of civil servants that would provide the needed leadership to the rank and file carrying out fundamentally governmental functions and not be subjected to political influences. As a part of the critical core, it was**

**assumed that each member of the MSS would have performance contracts or performance goals and objectives established, would be evaluated or assessed on how well they were doing in relation to the performance contract or goals and objectives, and that as long as they were carrying out the requirements of their positions satisfactorily their job security would remain in tact. The critical aspect in this case is whether an employee is fulfilling their position requirements satisfactorily. In order for such a determination to be made, performance expectations must be in place for a reasonable period of time to provide the incumbent the opportunity to satisfy the requirements of their position. One of the assumptions of sound performance management practices is that if an individual is**

**not performing satisfactorily then they should be given an opportunity to improve. Another assumption is that once the opportunity to improve is provided and still no improvement is made then this lack of improvement should be the basis for termination from their position.**

**Another issue with the MSS is that during budget reductions the "at will" status is used as a cost cutting measure. The "at will" status of the MSS members is used as a means to cut positions and reduce budgets without using a reduction in force procedure. Many would argue that reduction in force procedures are not necessary since the employees in the MSS are "at will". However, the DC Code requires reduction in force procedures to be applied to, among others, the Excepted and Legal Services,**

**both of which are "at will". As a result, you have a situation of disparate treatment for a substantially similarly situated class of employees.**

**Key to the success of the Management Supervisory Service was the training and development component. The DC Code required the "maintenance and enhancement" of managerial and supervisory skills and competencies. The original intent was for an annual minimum number of hours to be required for training and development for each member of the MSS. The application of this requirement has been inconsistent from agency and department across the Executive Branch.**

**The competitive process for selection into the**

**MSS is inconsistent from agency and department. One of the basic assumptions of the MSS was that there are core skills and competencies that each employee or applicant must possess for selection into the MSS, regardless which agency or department an employee is assigned. A competitive process implies that a merit selection program has been developed and has been put into place across the government for selection or placement into the MSS. A merit selection program according to sound personnel and human resource management practices has key goals or objectives that include but are not limited to the following:**

**Contributing to the accomplishment of mission goals by staffing positions with high-quality**

**employees**

**Providing career opportunities for employees  
and ensuring that promotion opportunity  
information is made available to all  
employees**

**Bringing to the attention of management high-  
quality employees who have the capacity to  
perform in more responsible assignments**

**Fostering and facilitating the mobility of  
employees in the interest of broadening  
their experiences and increasing their  
qualifications**

**Ensuring the maximum utilization of  
employees in positions for which they are  
best qualified**

**Ensuring that the skills, qualifications,  
achievements, and promotion potential of  
employees are recognized and fairly**

**considered in the staffing process**

**Encouraging employees to improve their performance to develop their knowledge, skills, and abilities**

**A sound merit promotion program properly administered and fully supported by management officials and employees at all levels is essential to the staffing of an effective and highly motivated work force. These merit principles as well as the assumption that each employee appointed to the MSS would possess core managerial and supervisory skills and competencies have not been consistently applied.**

**Members of the MSS do not have access to a viable grievance procedure other than through**

**whistle blowing, anonymous calls to the Inspector General, or the filing of an EEO complaint to address issues in the work place. The current assumption is that if questions or issues are raised the potential for retaliation increases and may result in a 15 day notice for termination being issued. The result is that members of the MSS are essentially limited in their ability to make substantive changes and improvements in services being provided, if suggestions or recommendations are viewed as contrary to existing philosophy or practice.**

**Some of the assumptions about the MSS was that as an "at will" employee performance levels would improve; "at will" employees would be more productive; "at will" employment status would provide greater flexibility in**



**dealing with poor performers; "at will" status would provide greater flexibility to reward high performers; in exchange for decrease in job security, increased pay; create a more highly motivated and efficient workforce, to mention a few.**

**One of the leaders in the reform agenda was the State of Georgia – one of the states that was examined for the creation of the District's "at-will" service. In the State of Georgia all new hires, transfers and promotions for all employees hired after a certain date would be "at-will" - quite more radical than the District's reform efforts. Without going into great detail of the results of some of the research relating to employment at will in the State of Georgia one of the significant conclusions of a study**

**conducted by Dr. R. Paul Battaglio, Assistant Professor in the School of Economic, Political and Policy Sciences at the University of Texas and reported in the Review of Public Administration in May 2010 online and in the September 2010 issue is that the research results "suggest that Employment at Will systems have not followed through on a key component of public service reform – the removal of job security in an effort to create a more responsive and motivated workforce."**

**The State of Maryland's Department of Legislative Services' Office of Policy Analysis issued a report in December 2008 "At-will Employment in Maryland". One of the recommendations in this report was suggesting the Maryland General Assembly "add additional**

**protections for certain management service positions." One of the options suggested "would be to divide the management service into a group of positions that require "policy managers" and group of positions that require "program managers" and provide program managers with additional protections... The assumption is that program managers do NOT work in political or policymaking positions and are performing core functions of agencies or departments."**

**Based on my review and research those that are interested in the impact of "at-will" employment models in state and local government appears to be those that have been proponents of this form of human resource practice and those in academia. I must add that there are not a lot of research findings to determine whether one of**

**the key assumptions of "at-will" employment is really working. This key assumption is that with at-will employment, services and delivery of programs to the citizens will improve. Based on research data up to now, it appears not to be clear that the efficiency and effectiveness of services and delivery of programs has improved.**

**Thank you for providing me the opportunity to appear before this Committee.**

Testimony on behalf of the  
American Civil Liberties Union of the Nation's Capital

By

Stephen M. Block  
Legislative Counsel

Before the

Committee on Government Affairs and the Environment

Of the

Council of the District of Columbia

On

Bill 18-826

"Returning Citizen Public Employment Inclusion Act of 2010"

November 8, 2010

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The ACLU of the Nation's Capital is grateful to Councilmember Harry Thomas, Jr. for having introduced the "Returning Citizen Public Employment Inclusion Act of 2010," and to councilmembers Yvette Alexander, Marion Barry, Muriel Bowser, Kwame Brown, Michael Brown, and Jim Graham for having co-sponsored it. However, the bill falls short of what is needed, and we urge the passage of a revised version.

Public Safety Demands the Reintegration of Ex-Offenders

The need to protect ex-offenders from discrimination is critical. About 2,000 ex-offenders who have served their time return to the District every year.

As many as 60,000 District residents are ex-felons; this is 1 in 10. 15,000 are under court supervision.<sup>1</sup>

According to the Department of Justice, the likelihood that many of these released prisoners will reoffend is great.<sup>2</sup>

Two studies come closest to providing "national" recidivism rates for the United States. One tracked 108,580 State prisoners released from prison in 11 States in 1983. The other tracked 272,111 prisoners released from prison in 15 States in 1994. The prisoners tracked in these studies represent two-thirds of all the prisoners released in the United States for that year.

#### Rearrest within 3 years

- 67.5% of prisoners released in 1994 were rearrested within 3 years, an increase over the 62.5% found for those released in 1983
- The rearrest rate for property offenders, drug offenders, and public-order offenders increased significantly from 1983 to 1994. During that time, the rearrest rate increased:
  - from 68.1% to 73.8% for property offenders
  - from 50.4% to 66.7% for drug offenders
  - from 54.6% to 62.2% for public-order offenders

The rearrest rate for violent offenders remained relatively stable (59.6% in 1983 compared to 61.7% in 1994).

The opportunity for released prisoners to obtain employment when they return to the District is critical to breaking the vicious cycle of reoffending and being returned to prison.

According to a spokesman for the Court Services and Offender Agency for the District of Columbia, Leonard A. Sipes, the offender employment issue is "crucial" to his agency's agenda. "One in 45 people nationwide are on criminal supervision whether it is Rockville, Md., the District of Columbia, or Manassas,

<sup>1</sup> *Washington Post*, "Back From Behind Bars," by Robert E. Pierre, September 2, 2007, p. A 01.

<sup>2</sup> DOJ Report available <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&lid=1134>.

Va. Criminology statistics estimate that 1 out of 20 people have a criminal record. The question we need to ask is, if you are going to see hundreds of people a day with criminal records, do you want those people employed? . . . [W]e feel this is a public safety issue. The evidence is abundantly clear that people who are working commit fewer crimes."<sup>3</sup>

The Justice Policy Institute summarizes the research that demonstrates that unemployment increases the crime rate:<sup>4</sup>

- Increased employment is associated with positive public safety outcomes. Researchers have found that from 1992 to 1997, a time when the unemployment rate dropped 33 percent, "slightly more than 40 percent of the decline [in overall property crime rate] can be attributed to the decline in unemployment."
- Increased wages are also associated with public safety benefits. Researchers have found that a 10 percent increase in wages would reduce the amount of hours young men spent participating in criminal activity by 1.4 percent.
- States that had higher levels of employment also had crime rates lower than the national average. Eight of the 10 states that had the lowest unemployment rates in the United States also had violent crime rates that were lower than the national average. In comparison, half of the 10 states with the highest unemployment rates had higher violent crime rates than the national average in 2005.
- The risks of incarceration, higher violent crime rates, high unemployment rates and low wages are concentrated among communities of color. Communities of color and African Americans, specifically, experience more unemployment and lower average wages than their white counterparts. At the same time, communities of color are more likely to experience higher rates of violence than are white communities, and African Americans are more likely to be incarcerated than are whites.

<sup>3</sup> Reported by Ben Koconis, Special to the NNPA from the Washington Informer, available at <http://www.blackvoicenews.com/news/news-wire/44621-ex-offenders-want-job-applications-revised.html>.

<sup>4</sup> Employment, Wages and Public Safety, October 1, 2007, p.2, available at <http://justicepolicy.org/content-hmID=1811&smID=1581&ssmID=67.htm>.

But we know from the testimony of ex-offenders at the October 26, 2006 Public Roundtable on Bill 16-909<sup>5</sup> that employers are extremely resistant to hiring ex-offenders. Their anecdotal testimony is validated by academic studies showing that having a criminal record has a large negative effect on employment prospects. Moreover, "criminal record discrimination amplifies racial discrimination in employment."<sup>6</sup>

The message is clear. District of Columbia employers – both in the private and public sectors – should hire ex-offenders. Crime increases the cost of doing business in the District. It is in everyone's self-interest to support a meaningful prohibition on discrimination against ex-offenders in employment. In enacting such a prohibition, the District would not be plowing new ground. Federal law and that of fifteen states already bar such discrimination.

#### Federal Law Already Prohibits Discrimination Against Ex-Offenders

The U.S. Equal Employment Opportunity Commission has determined that a policy of rejecting job applicants with records of conviction is a violation of Title VII of the Civil Rights Act of 1964.<sup>7</sup> It found:

... nationally, Blacks and Hispanics are convicted in numbers which are disproportionate to Whites and that barring people from employment based on their conviction records will therefore disproportionately exclude those groups.<sup>8</sup>

Consequently:

... an employer may not base an employment decision on the conviction record of an applicant or an employee absent business necessity.

<sup>5</sup> See the Committee Report available at <http://dccouncil.us/images/00001/20061220113944.pdf>.

<sup>6</sup> Henry & Jacobs, *De Facto Discrimination Against Ex-Offenders in Hiring*, October 16, 2007, available at <http://www.nelp.org/page/-/SCLP/Henry-Jacobs.BantheBox.article.Oct-07.pdf>.

<sup>7</sup> 42 U.S.C. §2000e *et seq.* (1982).

<sup>8</sup> U.S. E.E.O.C. Notice # 915.061 of September 7, 1990.



Business necessity can be established where the employee or applicant is engaged in conduct which is particularly egregious or related to the position in question.<sup>9</sup>

Fifteen States Prohibit Employment Discrimination Against Ex-Offenders

Nine states prohibit discrimination by public sector employers against ex-offenders: Arizona, Colorado, Connecticut, Florida, Kentucky, Louisiana, Minnesota, New Mexico, and Washington. An additional six states prohibit discrimination by public and private sector employers against ex-offenders: Hawaii, Kansas, Massachusetts, New York, Pennsylvania, and Wisconsin. Appended to this testimony is a summary of the laws of fourteen of those states.<sup>10</sup>

The "Returning Citizen Public Employment Inclusion Act of 2010" is Inadequate

The bill before you is the fourth proposal in recent memory to address discrimination against ex-offenders.<sup>11</sup> Previous efforts sought to make discrimination in the public and private sectors against ex-offenders in the areas of employment, housing, and education a violation of the District's Human Rights Act. All failed in the face of substantial opposition from the business, education, and realtor communities. Presumably, because of that history, the bill before you deals only with "public employer[s]"<sup>12</sup>.

Under Bill 18-826, a public employer would be prohibited from inquiring into an applicant's criminal record until the applicant has been selected for an

<sup>9</sup> *Ibid.*

<sup>10</sup> Massachusetts was added subsequently. See <http://www.thedefendersonline.com/2010/09/07/the-%E2%80%99Can-the-box%E2%80%99D-movement-scores-victories/>.

<sup>11</sup> Prior proposals: Bills 18-136, 17-078, and 16-909 (available on the Council's website at <http://dccouncil.us/lims/>).

<sup>12</sup> "Public employer" is not defined. Presumably, this would not encompass the District's contractors regardless of the services/products they provide.

interview. But the public employer would then be absolutely free to reject the applicant whether or not her criminal record had any possible relationship to the job opening. Importantly, failure to comply with this very modest limitation would not constitute a violation of the Human Rights Act or any other law, and there is no remedy for a violation such as a private right of action for an aggrieved job applicant.

#### The District Needs a Law that Takes the Best from Federal and State Laws

Bill 18-826 should be revised to:

- Cover private sector as well as public sector employment.
- Place the protection for ex-offenders under the District's Human Rights Act. The Human Rights Office and Commission have the experience and facilities for dealing with all manner of discrimination, most importantly, the availability of mediation to resolve disputes.
- Prohibit discrimination against ex-offenders except if there is a "business necessity" for such discrimination, as allowed in federal law, or if there is a "rational" relationship between the job and the applicant's criminal record, as allowed in state laws.
- Prohibit discrimination against ex-offenders in housing and education as well as employment. The promise of employment is hollow if ex-offenders don't have the skills for the jobs or the ability to live within commuting distance of it.

Again, we commend the councilmembers who have brought the "Returning Citizen Public Employment Inclusion Act of 2010" before the Council.

The ACLU urges them and their other colleagues to back a bill that provides a broader and more effective bar to discrimination against ex-offenders. Such a measure should be part of a larger program to further the reintegration of ex-offenders into our community. What is at stake is the dignity of these people and the safety of all who live and work in the District.

Thank you for considering our views.

## OVERVIEW OF STATE LAWS THAT BAN DISCRIMINATION BY EMPLOYERS<sup>13</sup>

The following is a description of 14 states that have laws prohibiting employment discrimination of individuals with criminal records.

### States that Ban Discrimination by Public Employers

#### Arizona

In Arizona, public employers may deny employment on the basis of a conviction, and agencies may deny licenses to persons whose civil rights have been restored only if a reasonable relationship exists between the conviction and employment or license sought.<sup>14</sup> The law is inapplicable to law enforcement agencies.

#### Colorado

Colorado law provides that a felony conviction or other offense involving "moral turpitude" shall not act as an automatic bar to obtaining public employment or an occupational license.<sup>15</sup> The statute does not apply to certain positions, including law enforcement and jobs working with vulnerable populations. The statute's intent is clearly stated: expanding employment opportunities for those who "have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society."<sup>16</sup> Thus, the fact of having a conviction may not, in and of itself, bar employment or licensing.

#### Connecticut

In Connecticut, an applicant may not be denied state employment or licensure solely because of a prior conviction.<sup>17</sup> However, a state agency may determine a person is not suitable for the position or license after considering: (1) the relationship between the offense and the job; (2) the applicant's post-conviction rehabilitation; and (3) the time elapsed since conviction and release.<sup>18</sup> When conducting these determinations, the state employer or licensing agency may not consider arrests that did not lead to conviction, nor records that have been expunged.<sup>19</sup> If a conviction is used as a basis for rejection, a written rejection stating the evidence presented and the reasons for the rejection must be

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<sup>13</sup> The original document is available at [http://www.lac.org/toolkits/standards/Fourteen\\_State\\_Laws.pdf](http://www.lac.org/toolkits/standards/Fourteen_State_Laws.pdf).

<sup>14</sup> Ariz. Rev. Stat. § 13-904(E).

<sup>15</sup> Colo. Rev. Stat. § 24-5-101.

<sup>16</sup> Id.

<sup>17</sup> Conn. Gen. Stat. § 46a-80.

<sup>18</sup> Id.

<sup>19</sup> Id.; see also Conn. Gen. Stat. § 31-51i.

completed, and such a rejection must be sent via registered mail to the applicant.<sup>20</sup>

### Florida

State employment and licensure may not be denied solely because of a conviction.<sup>21</sup> However, this prohibition does not apply if the conviction was for a felony or a first degree misdemeanor that is directly related to the position sought by the applicant.<sup>22</sup> In addition, the prohibition is inapplicable to law enforcement, fire fighting, and correctional agencies.

### Kentucky

Kentucky forbids discrimination by public employers and licensing agencies. Public employers and licensing agencies can consider applicants' convictions if they directly relate to the employment.<sup>23</sup> Lawyers and some law enforcement personnel are not protected.<sup>24</sup> The statute does not protect many persons with criminal records, as it does not protect persons convicted of "felonies, high misdemeanors, and misdemeanors for which a jail sentence may be imposed," as well as crimes of "moral turpitude."<sup>25</sup>

### Louisiana

Louisiana forbids discrimination by public employers and licensing agencies. Agencies may consider applicants' felony convictions if they directly relate to the employment. When an applicant is denied employment or licensure because of his or her conviction record, that decision must be made in writing. Thirteen different agencies, ranging from all law enforcement agencies to the State Board of Embalmers and Funeral Directors, are exempted from the statute.<sup>26</sup>

### Minnesota

Minnesota does not allow public employers and licensing agencies to refuse to hire or license persons solely or in part because of their convictions, unless those convictions directly relate to the employment.<sup>27</sup> Furthermore, if the applicant can

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<sup>20</sup> Conn. Gen. Stat. § 46a-80(c).

<sup>21</sup> Fla. Stat. § 112.011.

<sup>22</sup> Id.

<sup>23</sup> Ky. Rev. Stat. § 335B.020.

<sup>24</sup> Ky. Rev. Stat. § 335B.070.

<sup>25</sup> Ky. Rev. Stat. § 335B.010(4). "Moral turpitude" is defined by the Second Restatement of Torts as, "an inherent baseness or vileness of principle in the human heart. It means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community." RESTATEMENT (SECOND) OF TORTS § 571 cmt. g (1977).

<sup>26</sup> La. Rev. Stat. § 37:2950.

<sup>27</sup> Minn. Stat. § 364.03.

show competent evidence of sufficient rehabilitation, he or she is not disqualified from licensure or employment.<sup>28</sup>

### New Mexico

Public employers and occupational licensing authorities may not use, distribute, or disseminate records of misdemeanor convictions not involving moral turpitude. Convictions may be considered, but cannot operate as an absolute bar to employment or licensing.<sup>29</sup> Applicants may be disqualified based upon felony convictions or misdemeanor convictions involving moral turpitude if they are directly related to the position or license sought, or if the individual is deemed insufficiently rehabilitated. Completion of parole or probation or a three-year period following discharge or release from imprisonment without a subsequent conviction will create a presumption of rehabilitation. Regardless of rehabilitation, convictions for drug-trafficking, child abuse, and certain sexual offenses may disqualify an individual for a teaching certificate or child-care licensure or employment. Furthermore, the statute does not cover law enforcement agencies.

### Washington

Except for law enforcement agencies and jobs providing unsupervised access to children and vulnerable adults, most public employers and occupational licensing agencies may not disqualify an individual solely because of a prior felony conviction. Because the conviction may be considered, however, individuals may be denied employment or a license if the conviction directly relates to the position or license sought, and if fewer than ten years have elapsed since the conviction. Regardless of the time elapsed, individuals may be barred from employment in the county treasurer's office based upon a felony conviction of embezzlement or theft, which is an obvious example of a criminal history that has a direct relationship to the business. In addition, guilty pleas or convictions for felony offenses involving certain sexual offenses against children will also bar employment or licensing for many positions in education that involve unsupervised access to children, including teaching.<sup>30</sup>

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<sup>28</sup> Id.

<sup>29</sup> N.M. Stat. §§ 28-2-3, 28-2-4, 28-2-5, and 28-2-6.

<sup>30</sup> Wash. Rev. Code §§ 9.96A.020, 9.96A.060, and 9.96A.030.

## States that Ban Discrimination by Public and Private Employers

### Hawaii

Hawaii prohibits employment discrimination by all non-federal employers, even those with only one employee, based on applicants' criminal records. Employers may consider applicants' convictions insofar as they are rationally related to the employment.<sup>31</sup> Hawaii is unique in forbidding employers in most fields from inquiring about applicants' criminal records until they have extended a conditional offer of employment, and in only allowing employers to consider convictions that occurred within the past ten years.<sup>32</sup>

### Kansas

Kansas law provides that for an employer to refuse to hire an applicant, his or her criminal history must reasonably bear on his or her trustworthiness or the safety or wellbeing of the employer's employees or customers.<sup>33</sup> The statute applies to both public and private employers. In addition, the statute limits liability for employers regarding the employment decision, as long as the applicable standard is followed.

### New York

The New York State Human Rights Law states that an applicant may not be denied employment or licensure because of his or her conviction record unless there is a direct relationship between the offense and the job or license sought, or unless hiring or licensure would create an unreasonable risk to property or to public or individual safety.<sup>34</sup> This law applies to employers with ten or more employees.<sup>35</sup> A person with a criminal record who is denied employment is entitled to a statement of the reasons for such denial.<sup>36</sup> Factors to consider in analyzing whether employment may be denied are found in N.Y. Corrections Law, Article 23-A.<sup>37</sup> In addition, an employer may not inquire about nor act upon

<sup>31</sup> Haw. Rev. Stat. § 378-2.5(a).

<sup>32</sup> Haw. Rev. Stat. §§ 378-2.5(b)-(d).

<sup>33</sup> Kan. Stat. Ann. § 22-4710(f).

<sup>34</sup> N.Y. Exec. Law § 296(15); N.Y. Correct. Law §§ 750 to 753.

<sup>35</sup> Id.

<sup>36</sup> N.Y. Correct. Law § 754.

<sup>37</sup> This Article states that the public agency or private employer shall consider the following factors: (a) the public policy of the State to encourage the licensure and employment of people with criminal convictions; (b) the specific duties and responsibilities necessarily related to the license or employment; (c) the bearing, if any, the criminal offense will have on the applicant's fitness to perform job duties or responsibilities; (d) the time elapsed since the criminal offense; (e) the age of the person at the time of the criminal offense; (f) the seriousness of the offense; (g) any information produced by the person, or produced on his or her behalf, in regard to rehabilitation and good conduct; and (h) the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

an arrest that was terminated or determined in favor of the individual.<sup>38</sup> Upon request and within thirty days, the applicant must be given a written statement of the reasons why employment was denied. The provisions of this law do not apply to the licensing activities of governing bodies in relation to the regulation of firearms, or an application for employment as a police officer or peace officer.

### Pennsylvania

Employers in Pennsylvania may only consider a job applicant's felony or misdemeanor convictions if they relate to the applicant's suitability for employment.<sup>39</sup> Occupational licensing agencies may consider any felony, but only job related misdemeanor convictions.<sup>40</sup> The applicant is entitled to a written explanation if he or she is denied employment based upon a criminal history, or licensure based upon a conviction.<sup>41</sup>

### Wisconsin

Wisconsin prohibits discrimination based on arrest or conviction records in the same manner it prohibits discrimination against members of other protected classes. The statutes apply to employers, labor organizations, employment agencies and licensing agencies. Several types of employers are exempted from the statute<sup>42</sup> and in many cases licensing agencies are not covered.<sup>43</sup> Employers cannot ask applicants about an arrest record, unless a charge is pending. If an applicant's arrest is pending, employers can refuse to consider hiring him or her if the arrest substantially relates to the employment. Employers can only consider convictions insofar as they substantially relate to the employment or affect applicants' bondability.<sup>44</sup>

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<sup>38</sup> N.Y. Exec. Law § 296(16).

<sup>39</sup> 18 Pa. Cons. Stat. § 9125.

<sup>40</sup> 18 Pa. Cons. Stat. § 9124(c).

<sup>41</sup> Pa. Cons. Stat. §§ 9124(d), 9125(c).

<sup>42</sup> Wis. Stat. § 111.335.

<sup>43</sup> Wis. Stat. § 111.335 provides that, "is not employment discrimination because of conviction record to deny or refuse to renew a license or permit . . . to a person who has been convicted of a felony and has not been pardoned for that felony."

<sup>44</sup> Wis. Stat. § 111.335.



**DISTRICT OF COLUMBIA COUNCIL  
BILL B18-826, "RETURNING CITIZENS PUBLIC EMPLOYMENT  
INCLUSION ACT OF 2010"**

**November 8, 2010**

**Testimony of Philip Fornaci  
Director, D.C. Prisoners' Project,  
Washington Lawyers' Committee for Civil Rights & Urban Affairs**

Thank you for the opportunity to testify in support of Bill B18-826, the Returning Citizens Public Employment Inclusion Act of 2010. On behalf of the Washington Lawyers' Committee for Civil Rights & Urban Affairs, we are grateful for the bill's author, Councilmember Harry Thomas, for spearheading this important initiative, and to co-sponsors Michael Brown, Yvette Alexander, Jim Graham, Muriel Bowser and Marion Barry for their support.

For several years, our organization has worked to spearhead efforts to combat discrimination against people with criminal records. Our clients who are released from incarceration face enormous obstacles to their successful re-integration into society. The lack of housing options, drug treatment, and training opportunities presents a significant challenge. However, even when a formerly incarcerated person overcomes these obstacles, the barrier of discrimination in employment remains. Even highly skilled, and motivated, people with non-violent offenses in their past often cannot get past the employment application.

**The Current Bill**

The DC Public Defender Service (PDS) has already submitted a series of proposed amendments to the bill as introduced. We support those amendments. The Introduced version of Bill B18-826, the Returning Citizens Public Employment Inclusion Act of 2010, was a useful start to the remedying this situation, but the bill lacks three crucial elements that we encourage including in the final legislations (in addition to the suggestions included in the PDS proposal):

1. **The bill must include antidiscrimination protections.** The introduced version of Bill B18-826 required that job applicants for DC government jobs be offered an interview prior to any criminal background check. This important requirement insures that the hiring agency evaluate the job applicant based on his or her qualifications, not a criminal record. However, the introduced draft of the bill stops here. It includes no guidance about what to do if the record check reveals a conviction. We encourage the

Committee to adopt the general approach articulated in a current DC statute, Criminal Background Checks for Services Involving Children Statute (DC Code § 4-1501 *et seq.*), as described in the next section of my testimony. (Note that PDS has proposed a slight alteration of the language from § 4-1501 *et seq.*, alterations that we support.)

2. **The bill's antidiscrimination protections must cover DC government contractors, as well as DC agencies.** With the massive outsourcing and privatization of DC government services over the last decade, DC must require entities under contract with the DC government to abide by DC government policy in this area. They are performing DC government functions like any DC government worker. Agencies like the Department of Mental Health and the Department of Human Services have massive contracts with outside companies and organizations, receiving DC government funds to perform functions previously handled by DC government workers. It should be the policy of the DC government to encourage the employment of people with criminal records, and should use its power as a contracting entity to further that policy goal.
3. **The bill should provide antidiscrimination protection for current DC government workers and workers under DC contracts.** Over the last several months, hundreds of DC workers have lost their jobs due to their criminal records. In most cases, these individuals disclosed their backgrounds in the course of their employment. In many cases, their backgrounds made them more attractive employees, due to their relevant life experiences (for example, working with at-risk youth or people with addiction issues). Due to an apparent policy change at the highest levels of the Fenty Administration, DC government agencies have adopted a policy of terminating employment of workers with criminal records. This is not only unfair but counterproductive to the goals of good government and public safety. As discussed later in my testimony, employees of agencies who work with children are, ironically, not subjected to this arbitrary change in policy.

#### **The Criminal Background Checks for Services Involving Children Statute**

The DC government has significant experience in giving people a second chance, of hiring people with criminal records who bring skills and talents with them. In 2005, the District enacted the "Criminal Background Checks for Services Involving Children" statute (§ 4-1501 *et seq.*). The law provided for background checks for anyone working with children in the

DC government or in youth services providers under contract to the DC government. Under the law, "The information from the criminal background check shall not provide a disqualification or presumption against employment or volunteer status...unless the Mayor determines that the applicant poses a present danger to children or youth." The law then sets out seven criteria for determining whether an applicant is a "present danger":

- "(1) The specific duties and responsibilities necessarily related to the employment sought;
- "(2) The bearing, if any, the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities;
- "(3) The time which has elapsed since the occurrence of the criminal offense;
- "(4) The age of the person at the time of the occurrence of the criminal offense;
- "(5) The frequency and seriousness of the criminal offense;
- "(6) Any information produced by the person, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- "(7) The public policy that it is beneficial generally for ex-offenders to obtain employment.

This process is utilized by the DC Public School system to evaluate hundreds of applicants for staff and volunteer positions annually.

Unfortunately, other District agencies, those providing services to *adults* and in other aspects of the DC government, simply disqualify wholesale people with criminal records from both DC government employment and from employment with contractors. For example, this summer, the Addiction Prevention and Recovery Administration (APRA) issued a directive to all its contractors barring employment of anyone with a criminal record of "felonies against the person." This vague language has resulted in job loss for dozens of highly qualified APRA employees and contract employees. Beyond the obvious notion that people with criminal records might in fact be the very best drug counselors due to their life experiences, it is simply absurd that **the District government subjects people applying to work with adults to a more stringent – and irrational – standard than it does for people applying to work with children.**

## **Other cities and counties have already adopted "Ban the Box" legislation**

The kind of legislation under consideration is widely referred to as "Ban the Box." The "box" is the question on the application that asks whether an applicant has ever been convicted of a crime (and sometimes asks whether the applicant has ever been arrested). By banning this question from a government employment application, the jurisdiction promotes the hiring of people with criminal records as a policy, improving employment prospects of these individuals and encouraging the private sector to do the same.

Currently, 24 cities and localities have passed Ban the Box legislation, barring discrimination in public employment. Major cities like Chicago, San Francisco, and Oakland have joined this group: As noted on the website of the National Employment Law Project ([www.nelp.org](http://www.nelp.org)):

Cities in Connecticut, Washington, Michigan, Tennessee and Ohio have all joined the movement to ban the box. As Mayor Richard Daley explained when he announced Chicago's new hiring policy, "Implementing this new policy won't be easy, but it's the right thing to do. . . . We cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches."

<http://www.nelp.org/page/-SCLP/2010/BantheBoxCurrent.pdf?nocdn=1>

Most of these ordinances include the elements recommended in DC, specifically:

- Antidiscrimination protection in applying criminal background check requirements.
- Include government contractors in the Ban the Box legislation.
- Cover current employees in the antidiscrimination law.

Additionally, it is notable that several states have gone further, enacting Ban the Box statutes barring discrimination by both public and private employers. These states include Wisconsin and Hawaii, both of which have had Ban the Box statutes in place for more than a dozen years.

## **The Need for a Strong Returning Citizens Public Employment Inclusion Act of 2010**

Eliminating employment discrimination based on a criminal conviction is a complex issue, but one that needs to be addressed. By

various conservative estimates, at least half the African-American men in D.C. have a background that includes an arrest or criminal conviction. This is most likely an underestimate. It is impossible to meaningfully discuss the criminal justice system in D.C., and the issues around reintegration of ex-offenders into society, without acknowledging the central role of race in the criminal justice system in this city. It is African-Americans who are overwhelmingly affected by this system.

African-Americans represent more than 90 percent of the D.C. jail population, and 94 percent of the D.C. prisoner population sent to the federal Bureau of Prisons. African-Americans are far more likely to be arrested, charged, and convicted than white people involved with the same offenses, particularly in D.C.<sup>1</sup> The causes of this phenomena are a topic for another day. However, it is important to recognize that, when we discuss antidiscrimination against ex-offenders in D.C., we are primarily addressing pervasive discrimination against African-American men and women.

The need for reintegration of people who have been incarcerated, and the need to give people with criminal records without an incarceration record a fresh start, should be obvious to this Committee. An extremely important report, *Money Well Spent: How positive social investments will reduce incarceration rates, improve public safety, and promote the well-being of communities*, the Justice Policy Institute noted the following:

In the first six months of 2010, D.C. police made 700 more arrests than the same time last year, an increase of 2.8 percent. The biggest increases in arrests were in Police Districts 3 and 4, at 18.1 percent and 28.3 percent respectively. Policing efforts in the District targeting low-income communities and communities of color are not uncommon. "Summer crime emergencies" produce extreme, neighborhood-wide responses that are frequently the result of a highly-publicized incident of violence.<sup>51</sup>

In D.C., over half of all arrests occur in police districts 1, 3, and 6, which roughly coincide with Wards 1, 6 and 7, and are areas that are primarily made up of communities of color. Nearly half of arrests for drug offenses occur in wards 7 and 8, where most residents are black and have the lowest median incomes in the city. Selective enforcement in certain neighborhoods can lead to more criminal justice involvement for residents of those areas, resulting in higher incarceration rates and negative impacts on communities.

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<sup>1</sup> *Hobbling a Generation: Young African American Men in D.C.'s Criminal Justice System Five years Later* by Eric Lotke, *National Center on Institutions and Alternatives*, August 1997

The racial disparities running through the criminal justice system in DC become amplified when utilized to screen out job applicants. The Equal Employment Opportunity Commission (EEOC) has recognized the disparate impact on racial minorities of screening out people based on a criminal conviction.

In its current guidance to employers, first published in 1990, the EEOC states that an employer's reliance on a job applicant's arrest or conviction records in making hiring decisions could cause a "disparate impact" based on race or ethnicity under Title VII of the 1964 Civil Rights Act and that employers must demonstrate "business necessity" for using such records. Later guidance, published in 2006, allows employers to consider an applicant's criminal history when relevant to the job at stake. The proposed change would be consistent with the proposed Bill B18-826 being considered today. It would "ban the box" regarding criminal convictions on the employer's application but would allow an inquiry later in the application process if convictions were relevant to the job at stake.

Testimony to DC Council  
Committee on Government Operations and the Environment  
Johnny W. Allem, President  
DC Recovery Community Alliance  
November 8, 2010

### **In Support of the Returning Citizen Public Employment Inclusion Act of 2010**

Thank you for this opportunity to testify on behalf of the Returning Citizen Public Employment Inclusion Act, sponsored by Council Member Harry Thomas Jr. My name is Johnny Allem and I am a co-founder and President of the DC Recovery Community Alliance. In my 41 years as a District citizen, I have been a successful business owner, public official, and president and CEO of a national non-profit based here. I

The Alliance works to raise awareness of the cost and prevalence of addiction disease and to support improvement in the District's support for recovery. DCRCA also serves others whose lives are threatened by addiction disease. Among other things, we bring recovery support meetings to the DC Jail.

The first point I would make on this legislation is that it is good business for the people and the economy of the District. Keeping tax-supported jobs in the hands of DC residents puts tax money back into our budget.

The District Government's economic indicators earlier this year showed that jobs in the District from February of 2009 to February of 2010 have increased by 1600. During the same period, employment of District citizens dropped by 6900. This illustrates for me the extreme economic pressures felt in a fragile part of our city and economy.

It doesn't take research of statistics to see the overwhelming number of Virginia, Maryland, West Virginia and even Pennsylvania license tags around the major construction sites in DC. Our categorical discrimination against a significant portion of our working-age adults is costly to everyone who resides and pays taxes here.

Every job that we fund that ends up employing people from other states results in tax income payments to these other states rather than the District. Targeting employment to DC residents can significantly relieve our current budget difficulties.

The second point I would make is that ending discrimination against citizens who have paid their debt to society is our moral duty. The assumption that ex-offenders automatically lack character is too wrong and too expensive for our city to bear. We must open the access and encourage negotiation and conversation in the market.

According to Bureau of Prison research, more than half of the people incarcerated in America today committed crimes related to illegal drugs. Many more operated under the influence of alcohol as well as other drugs. These are not people from another planet. They are our fathers, our children, our neighbors, our friends and our fellow citizens. Their health recovery and return to our families and contributing citizenship is a critical process that is successful for many DC citizens.

Many employers find that healing from addiction makes us, as Shakespeare says, "strong at the broken places."

The final point I want to make is the connection between our high rate of incarceration and the failed War on Drugs that has been inflicted on the District.

According to the DC Fiscal Policy Institute, DC's unemployment rate not only increased 40 percent in 2009, but it sharply affected specific regions of the city – Wards 5, 7 and 8. These are areas disproportionately affected by barriers to employing people with past criminal justice histories.

These are also areas disproportionately affected by the nation's failed War on Drugs. A recent SAMHSA survey shows that the District leads the nation in untreated addiction. Broken down by ward, the survey results show that the highest difficulty with alcohol and other drug addiction is in Wards 1 and 2. Yet anyone who works in the Corrections system, which I do as a volunteer, knows that the system is not weighted toward Wards 1 and 2.

The implication is clear. If you have addiction disease and live in one part of DC, you have an illness. If you live east of the Anacostia, you are a criminal.

More than 7400 individuals currently report to DC Pretrial Services Agency. These are people charged with violations of law and awaiting trial. Another 15,000 individuals report to the Court Services and Offender Supervision Agency. These are individuals who have completed their time in custody and are in a re-entry process or under Parole.

CSOSA and PSA have developed quality, evidence-based treatment practices for individuals with addiction diagnoses. But this work is too often lost when individuals return to the community



with no job, no hope, and no one to care.

This legislation ends the arbitrary screening that kills opportunity for returning citizens to be employed by DC Government. We are hopeful that this Committee extends the law to contractors funded by tax payer dollars. The bill ends this barrier without jeopardizing the legitimate rights of employers to know the character as well as the skills of potential employees. This legislation, in fact, provides for a discussion of our criminal justice involvement and puts it in appropriate perspective for long and successful employment.

I urge Council to pass the Returning Citizens Employment Inclusion Act rapidly. It will help complete the return of our brothers and sisters to full participation in the community. And it will help us balance our budget.

Ending discrimination against skilled workers and their families is the American thing to do, the morally correct thing to do, and the best business practice for DC's economy.

END

Johnny\_allem@yahoo.com  
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Councilmember Mary M. Cheh, Chairperson:

I am honored to be here in the ether of B18-826, the "Returning" Citizen Public Employment Inclusion Act of 2010.

First let me state that, "the peace of society depends on justice"; the happiness of individuals on the safe enjoyment of all their possessions, therefore our enforcement officers are due much honor, to keep our citizens and streets safe.

Let me give you some personal testimony of one who has been discriminated upon in the job market because of my police and/or FBI records:

CASE IN POINT: I was away from the streets of Washington, D.C. for over 30 years. Now I am at home, and no longer a ward of the state. The thousands of dollars that was paid every year to house me are no longer necessary to be paid. I've paid for my wrong doings and want to give back to society by being self-supporting and responsible. As a returning citizen, I want to be a part of the continuous building of this great city. Give the returning citizen an opportunity to make a difference by giving back through gainful and secure employment. We are willing to go into the community and educate our wayward youth on the higher goals in life. We are returning with a better vision of what disobedience to the law can bring about and how to overcome.

A steady and permanent job would definitely help me to do the things required of me as a returning citizen and family man. The results of the background check does not accurately reflect the person I am today.

The greatest heights can be gained by those who have reached the lowest depths. Men and women can change and do change. I am a living example of the changes a person can make in their life. They can change their thought pattern and be born again with a higher thought pattern.

I did not attend Howard University or the University of Maryland unlike my daughters; but I have been in the wilderness for more than 30 years and like unto John the Harbinger I am returning as a citizen who wants to do his part in making this a better city. One of my friends (Sammie L. Ware) who graduated with me from Dunbar High continues to give back to the community by playing a role in the coaching of Dunbar's football team. This where our home is, our roots are here.

For the past few years, some of the original returning citizen's group has been stressing to the Wardens in various penal institutions to set aside a portion of the thousands of dollars received to house inmates; to set aside a portion for the development of progressive workshops and programs to assist returning citizens being released back into the free society.

I observed during my tour in Viet Nam some of the same things similar to our prison system. The correctional system, the punishment of offenders, the parole system is all big businesses set up to keep the supply coming at the expense of human equality.

I have a God loving family; two daughters who are good and clean persons and graduates of Howard U and University of Maryland. I am presently unable to spend the quality time I would like with them because of having a below-poverty level income. Good family ties are a strong force in our community. Community, as defined by our new Mayor Vincent Gray is "ONE CITY".

If we are condemned based on our past we become victims of "double jeopardy". So in summation the passing of Bill 18-826 is necessary so that returning citizens can be judged on the content of their character and not by words printed on paper.

Peace and Islam – Sheik James Lynch-Bey, Divine Minister  
A "Returned Citizen" and one of yours....

**Testimony Given by Tony C. Bennett EL**

**on Bill 18-826**

**"Returning Citizen Public Employment Inclusion Act of 2010"**

**Before**

**The Committee on Government Operations and the  
Environment**

**Monday, November 8, 2010**

**11:00 am**

**Good Morning Chairman and Members of the Committee**

Thank you for allowing me, Tony Bennett EL to testify before your committee on Bill 18-826, "Returning Citizen Public Employment Inclusion Act of 2010. This bill to help ex offenders to apply for District government employment, and their employer can not consider their criminal record or criminal history until the applicant has been selected for an interview by the employer. The public employers and Department of Corrections have a duty to conduct a criminal history background check on an ex offender applying for a job. I was parole

In January of this year to the halfway house on Langston Place, SE. In order to leave the halfway house, you have to have a job, and the economic is so bad for non offenders, so you know how hard it is to get

a job for ex offenders. We need a service or program within the system to assure that once we are paroled, that we would secure employment once released. We need Resocialization and Asset Development Program for Inmates/Residents and Ex-offenders returning citizens. This program should be incorporated with state, private and federal partnerships working together to assist target participants in establishing a plan of action that consolidates their personal development needs with their obligations and responsibilities to their family, children, and community. They need to be trained in non traditional careers which covers women and men. The career is based on their own interest, ability and need. A person's gender should not be a determining factor in choosing a career path but their personal satisfaction, and one that pays a descent wage. Just to name a few non traditional careers, Construction Technology, Family and Consumer Science, Healthcare Services, Transportation and Automotive and Manufacturing Architecture and Engineering. The programs should be taught in the facilities and in the vocational schools on the outside.

I had two jobs since I have been out, but now I am unemployed and spent every day looking for work. With all the construction being done here in the city, you can't even get a flag pole position. The city should demand that these construction sites and any other businesses employ a certain amount of ex offenders and provide them the necessary to enhance their career. And it is worthy to say that a bill should be passed that all businesses that is granted a contract with the District of Columbia government, should be required to hire ex offenders with the appropriate training to assist them in achieving their career goals and accomplishments. From these key points ones will

become a productive tax paying citizen in society and their own community.

Good Afternoon Council Members Cheh and other members of the council.

My name is Charles Thornton and I thank you for the opportunity to give testimony today on Bill 18-826 the Returning Citizen inclusion act of 2010. I am a third generation Washingtonian, a member and advocate of the returning citizen community, and co-chair of the Reentry Task Force. I spent over ten years of my life in prison and understand first hand the challenges of connecting back into society after incarceration. This bill is important to returning citizens because it addresses the often discriminatory policies returning citizens face once released from prison and faced with the challenge of finding a job. Returning citizens are routinely denied opportunities to even interview for jobs that we qualify for simply because we check a box on an application that asked if we have ever been convicted of a crime. What all too often happens once one checks the box is that the application goes into a file or the trash and when you call the company back to enquire about your application you are told that the position has been filled or you will be notified in writing. This practice has been going on in the District for far too long, it's duplicated in the private industry, and there is growing concern about the same practice being enforced on sub contractors working on District Government contracts. The unemployment rate in the District hovers around 10% with ward 7 and 8 coming in around 19% and 30% respectively. The unemployment rate for our citizens returning to the community after serving time quadruples those numbers with the turnaround time of finding gainful employment anywhere from 9 months to two years for people returning from prison. Once an individual serves his or her time they should be returned back into the community with every opportunity to succeed and not faced with practices that deny

opportunities. It is in that spirit that we thank you for calling this hearing we also want to thank council member Harry Thomas for introducing the bill and we support it as well as finding a way to include the private sector and government contractors. I stand ready to answer any questions you may have of me at this time.





Committee on Government Operations and the  
Environment

B18-826,  
“The Returning Citizen Public Employment Inclusion Act of  
2010”

*FOR THE*

*DISTRICT OF COLUMBIA*

TESTIMONY OF  
Debra G. Rowe, M.H.S., C.C.H.P.  
Acting Executive Director  
Returning Citizens United, Inc.

MONDAY, NOVEMBER 8, 2010  
THE JOHN A. WILSON BUILDING  
COUNCIL WOMAN MARY CHEH  
CHAIRPERSON

Good Morning Chairperson Cheh and members of the Committee on Governmental Affairs and the Environment. My name is Debra G. Rowe, and I am the Acting Executive Director for Returning Citizens United, Inc. Returning Citizens United (RCU) is an organization that represents the more than 60,000 ex-offenders (returning citizens) who reside in the District of Columbia. RCU performs advocacy and lobbying activities to address the lack of opportunities among this community and support for brothers and sisters committed to change.

Returning Citizens United's mission is to provide advocacy and support services for formerly incarcerated District of Columbia citizens as they transition and reconnect with their families, the business community, social and supportive service agencies. I appear before you today to provide testimony on the plight that continues to hinder the successful transition of these individuals.

The plight that I refer to centers around the basic life needs of Returning Citizens; most importantly employment and the lack of legislation to allow the District of Columbia to govern its city hiring policies.

RCU has had many discussions between its programmatic and board leadership on the issues of race, power and privilege, especially since those dynamics are a key factor in the majority of the issues that we address. We have adopted efforts to enhance our leadership's communication skills, as well as those of the broader membership. We strive to not be perceived as unreasonable, as troublemakers, or as chronic complainers but rather as agents of important change. This approach has already solidified some very viable partnerships.

The *Sellmon v. Reilly* decision has resulted in hundreds of additional, long-term prisoners coming home to DC in the over the last several months. This is a particularly difficult group, most incarcerated at least 15 years, who will need help with housing,

employment, drug treatment, health care, etc. Still, without employment, they cannot gain the necessary resources to address their basic life needs.

The general profile of returning citizens are adults who are on average between the ages of 18 and 55 years of age. Ninety percent (90%) will be adult, African American males and 10% will be adult, African American females. Sixty-percent (60%) of these individuals are persons who lack a congruous, supportive family network.

Due to their lack of stable income or low income, they will be forced to seek shelter in distressed areas of the city where you find the highest poverty and crime rates. The high percentages of single-female headed households; teen births, child poverty and unemployment suggest that a significant number of fathers are absent their families and without employment.

Individuals released from jails and prisons are at high risk for being homeless due to a myriad of factors. While some return home to open hearts and arms, few return home to open doors. Upon release, returning citizens need help in reconciling their expectations with those of their family members, and even more, they need a plan for how they can fit back into family life.

Without this, many become economic burdens to their family households, creating strained relationships that may already be fragile due to their former criminal justice history. Family and or friends may allow the former offender to temporarily use the address and/or reside at the address just to facilitate discharge but soon thereafter they are often urged to find some place to live. As such, returning to any significant long term or stable housing among family members and friends is often not readily an option.

The people involved in this "Ban the Box" legislation have labored for a few years now to try and get it passed. The opponents expressed their concerns, we went back to the table to revise and appease. The governmental representatives listened and voiced their concerns, we went back to the table to revise and appease.

So we have these individuals while incarcerated telling their parents, or their husbands or wives, or their children or the care givers of their children that "when I come home this time (for some it is a second or third incarceration) I am going to get a job and I am going to do better" They come home, honestly check "the box", apply and apply and can't even get an interview.

We appreciate and support Councilmember Thomas introducing the "Returning Citizen Public Employment Inclusion Act of 2010" It is our hope that the District will finally implement the same "Ban the Box" policies that 24 cities and counties have initiated in their government and expanded as a requirement for thousands of private employers.

Madam Chairperson, this concludes my testimony. Returning Citizens United looks forward to continuing to work with the Committee and the community on this very important matter and I would be pleased to respond to any questions that you may have of me at this time.

Thank you.

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*Ms. Debra G. Rome*

GOOD morning

My Name is Robert Brown for the past 3 years. I was employed by the office on Ex-offenders Affairs as a Job Developer. In the time that I worked there I saw approx 7 to 8 thousand Ex-offenders. Excuse me clients for its about the title that ~~you~~ use when dealing with you. Most of the clients that came to see me were just coming home from a long time of incarceration. Most of them come home with NO GED, NO TRAINING. This is another issue, All come home with the HUNGER to change their life and are seeking employment. One of the first things I go over with them is to what job to apply for. IF you were convicted as a bank robber DON'T apply for a Bank Teller, IF you cant read LEARN. Every client that I have seen has had one problem checking the YES on your application. This puts a problem because I feel as tho it subconsciously tells the employer to say NO. Now of course they say it doesnt matter. BUT IF you ARE ~~are~~ qualified, and have a RECORD, the statistics show that

you are not hired

Now <sup>ANOTHER ONE</sup> ~~one~~ OF THE THINGS MY CLIENTS  
CAN ~~GO~~ INTO IS IF IT WAS A FELONY  
IT SEEMS TO REPLY DISQUALIFY YOU

• IF YOU HAVE A FELONY IT APPEARS THAT YOU  
WONT WORK. IF THIS IS THE CASE BUT  
FELONS NEED NOT TO APPLY!!

I THINK THE THE BEST PERSON THAT'S  
QUALIFIED SHOULD BE HIRED PERIOD (FELONY OR NOT)  
MOST PEOPLE ~~THAT~~ THAT HAVE FELONIES THAT  
WANT TO CHANGE DO CHANGE, OUT ~~OF~~ THE  
7 TO 8 THOUSAND PEOPLE ~~WHO~~ WALKED INTO  
GEORGIA ~~WORKERS~~ VOLUNTARY NOW IF  
YOU PLAN ON DOING WRONGS YOU DONT WALK  
INTO A OFFICE AND ASK FOR HELP ~~AND~~

~~THE~~ BILL - 18-826 IS A GOOD STEP IN THE  
RIGHT DIRECTION, BUT A LOT MORE NEEDS  
TO BE DONE.

THANK YOU

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**TESTIMONY OF COURTNEY CHAPPELL, ESQ.  
ADVOCACY DIRECTOR  
D.C. EMPLOYMENT JUSTICE CENTER  
Committee on Government Operations and the Environment  
*B18-826, Returning Citizen Public Employment Inclusion Act of 2010*  
November 8, 2010**

Chairperson Cheh, thank you for the opportunity to submit written testimony on B18-826, the *Returning Citizen Public Employment Inclusion Act of 2010*. My name is Courtney Chappell, and I am the Director of Advocacy at the DC Employment Justice Center ("EJC"). The EJC is a non-profit organization that protects and enforces the legal rights of low-wage workers in the D.C. metro area.<sup>1</sup> Each year, the EJC provides legal assistance to over 1,200 workers on a broad range of employment related matters. A significant percentage of the workers who come to our Workers Rights Clinic do so because their criminal record is a barrier to finding meaningful employment. The testimony below highlights the tremendous need for Bill 18-826 as well as suggests changes to ensure that the bill is comprehensive and effective.

***Returning Citizen Public Employment Inclusion Act: A Positive Impact***

*The Returning Citizen Public Employment Inclusion Act* will unquestionably have a significant impact on District residents. Approximately 2,100 men and women return each year from prison in the District of Columbia.<sup>2</sup> Moreover, the number of arrests made annually by the Metropolitan Police Department is staggering. In 2007, the Department arrested over 50,000 people, averaging nearly 900 per week, yet only half of these individuals were ever charged with a crime.<sup>3</sup> Nevertheless, these arrests can have a life-long and devastating effect on a person's employment prospects and earning potential. For instance, studies have found that the mere possession of an arrest record – without a conviction – can reduce an individual's annual earning power by up to 26%.<sup>4</sup>

You cannot discuss the criminal justice system without acknowledging the central role that race plays in influencing who is arrested, prosecuted, and convicted in this country. In 2001,

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<sup>1</sup> The EJC uses experienced employment law attorneys and policy advocates to provide high-quality, free legal advice and assistance to low-wage workers and to push for changes in workplace fairness laws. With our combined focus on legal services, advocacy, and education, there is no stronger voice for the legal rights of low-wage workers in the D.C. metro area.

<sup>2</sup> Court Services and Offender Supervision Agency, "Issues in Community Supervision: Employment"

<sup>3</sup> See Metropolitan Police Department Annual Report 2007 (Feb. 2009), available at [http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/publications/ar\\_2007.pdf](http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/publications/ar_2007.pdf).

<sup>4</sup> Joseph, Mark, "The Effect of Arrests on the Earnings of Young Men: Evidence from the National Youth Survey" 19-21 (2001).

16% of African American men and 7.7% of Hispanics were either current or former inmates.<sup>5</sup> African Americans are likewise overrepresented in the District's jail population, comprising 90% of all inmates.<sup>6</sup> Indeed, it is estimated that close to half of all African American men aged 18-35 in the District have a criminal record.<sup>7</sup> Thus, the use of background checks to screen for employment purposes will no doubt disproportionately impact people of color, and African Americans in particular.

National studies confirm that people are three times less likely to recidivate if they can obtain a stable job upon release.<sup>8</sup> Yet, finding employers willing to hire individuals with a criminal record remains a challenge.<sup>9</sup> The use of background checks for some employers has increased dramatically over the past years. Only about half of large employers conducted criminal background checks in 1996. In 2003, that percentage increased to 80%. Moreover, flat-out bans against hiring individuals with a criminal record are not uncommon. Last year, in California, Bank of America and Manpower Inc. posted announcements for over 600 jobs that explicitly barred employment consideration of persons with felony or misdemeanor records. Further, these job announcements made no distinction between arrests or convictions or the type of crime charged.<sup>10</sup> Bans such as these are both overly broad and discriminatory by disproportionately denying employment to significant percentages of people of color.

Legislation that limits discrimination against individuals with criminal records in city and county jobs is not new. Currently, 24 cities and counties have reevaluated their local policies that create unnecessary barriers to employment for returning citizens by removing the question on the job application regarding an individual's criminal history, deferring background checks until later in the hiring process, and/or only performing background checks for certain

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<sup>5</sup> Holzer, Harry J., Raphael, Steven, and Stoll, Michael, "How Willing Are Employers to Hire Ex-Offenders" Vol. 23, No.2 (Summer 2004).

<sup>6</sup> See D.C. Department of Corrections Facts and Figures, "Inmate Population by Race" at 14 (April 2009), available at <http://doc.dc.gov/doc/frames.asp?doc=/doc/lib/doc/populationstats/DCDepartmentofCorrectionsFactsnFiguresApr09.pdf>

<sup>7</sup> Lotke, Eric, National Center on Institutions and Alternatives, "Hobbling A Generation: Young African American Men in D.C.'s Criminal Justice System Five Years Later" (1997).

<sup>8</sup> Bernstein, Jared and Houston, Ellen, "Crime and Work: What Can We Learn From the Low-Wage Labor Market" (2000).

<sup>9</sup> A 2001 survey of 600 employers in Los Angeles County found that 40% would not be willing to hire an applicant with a criminal record, and that only 20% had hired at least one ex-offender. Moreover, of those businesses that had hired an ex-offender, most ex-offenders had work experience after they had been released. Holzer, Harry J., Raphael, Steven, and Stoll, Michael, "How Willing Are Employers to Hire Ex-Offenders" Vol. 23, No.2 (Summer 2004).

<sup>10</sup> See National Employment Law Project Sign On Letter Discussing Job Announcement, available at [http://nelp.3cdn.net/aa8a86751197fa03ef\\_z2m6b5abc.pdf](http://nelp.3cdn.net/aa8a86751197fa03ef_z2m6b5abc.pdf). According to the EEOC Hiring Guidelines, arrests cannot routinely be considered by employers, and convictions can be taken into account when an employer shows that they are related to the job. The EEOC has recognized that because nationally, African Americans and Hispanics are convicted in numbers that are disproportionate to Caucasians, barring people from employment based on their conviction records will disproportionately exclude those groups. Absolute prohibitions such as those listed in the Bank of America and Manpower job announcements, therefore, generally violate Title VII. Despite the EEOC's guidance barring absolute exclusion from employment based on any arrest and conviction history, far too many employers are unaware of or fail to comply with this requirement.



positions.<sup>11</sup> The goals of these initiatives reflect the dual goals of Bill 18-826: to provide returning citizens with the chance to demonstrate their ability to successfully hold a government job applied for, and to encourage public employers to fairly consider an applicant without relying on stereotypes or stigma.

### Amendments for a More Comprehensive Bill

The EJC applauds Councilmember Thomas for championing this issue and introducing Bill 18-826. We fully support the underlying principle of this legislation, but we do have several concerns to share with the Committee to ensure that the final bill considered by the Council is comprehensive in scope and content.

First, the language of the legislation is both unduly vague and overly broad. The definitions of “criminal record” and “criminal history” are not defined and presumably include both convictions and arrests. For an employer to consider someone’s arrest record is particularly problematic given that there is no evidence that that person was actually guilty of the crime charged. The EJC therefore suggests that “criminal history” and “criminal record” be replaced with “conviction,” and that a separate provision be added that explicitly prohibits employers from inquiring into and acting upon information regarding any arrest of the individual.

Second, the current language is silent about both the criteria that an employer is legally permitted to use to deny employment and the process for doing so. Instead, Bill 18-826 simply states that “A public employer may not inquire into or consider the criminal record or criminal history of an applicant for District government employment *until* the applicant has been selected for an interview by the employer.” The EJC recommends two changes to provide clarity and to strengthen the underlying intent of this bill. Specifically, in order to effectively give applicants with a criminal record a fair chance at securing potential employment, the EJC recommends amending this provision by prohibiting an employer from considering an applicant’s criminal record until *after making a job offer*.

In addition, the EJC further suggests adding language detailing that an employer can only deny employment if the employee’s criminal conviction has a **rational relationship** to the person’s fitness to perform the duties and responsibilities of the offered position. The factors to determine whether a rational relationship exists may include: (1) the public policy to encourage the full integration into society of individuals previously convicted of criminal offenses; (2) the time which has elapsed since the conviction; (3) the age of the person at the time of the occurrence of the criminal conduct that resulted in the conviction; (4) any information produced by the person regarding his/her rehabilitation and good conduct since the conviction; and (5) the reasonable belief that the person would pose an unreasonable risk to the safety or welfare of the customers, employees, consumers, or others associated with the workplace.

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<sup>11</sup> These 24 cities and counties include: Alameda County, CA; Austin, TX; Baltimore, MD; Berkeley, CA; Boston, MA; Bridgeport, CT; Cambridge, MA; Cincinnati, OH; Chicago, IL; Hartford, CT; Jacksonville, FL; Kalamazoo, MI; Memphis, TN; Minneapolis, MN; Multnomah County, OR; New Haven, CT; Norwich, CT; Oakland, CA; Providence, RI; San Francisco, CA; Seattle, WA; St. Paul, MN; Travis County, TX; and Worcester, MA. See National Employment Law Project, “Major US Cities and Counties Adopt Hiring Policies to Remove Unfair Barriers to Employment of People with Criminal Records” (2010).

The EJC strongly believes that these two changes improve the impact of the overall bill, sharpen its focus, and provide the necessary guidance to employers. Moreover, this language will help to ensure that employers are making legitimate business decisions, and not relying on stereotypes or other improper factors.

The third, and perhaps even more noteworthy concern, is that the legislation does not actually prohibit employers from discriminating against individuals with criminal records. Specifically, there are no provisions in the current bill that make it an unlawful discriminatory practice for employers to consider taking adverse action – in terms of hiring, promotion, or termination – after considering someone’s criminal record. As a result, the bill offers very little real protection for returning citizens and little incentive for employers to comply. Accordingly, the EJC recommends adding an anti-discrimination provision and suggests the following language:

“In connection with the hiring, termination, promotion, or other change in the terms, conditions or privileges of employment, it shall be an unlawful discriminatory practice for a public employer to take adverse action based on the prior conviction(s) of a person.”

Adding an anti-discrimination provision will help the legislation achieve its purported goals – to prevent employers from relying on stereotypical views of returning citizens or illogical fears of liability to deny employment. The legislation is likewise intended to prohibit outright bans against individuals with a criminal record. Permitting public employers to consider and discriminate against an individual prior to hiring – before that person even has the opportunity to demonstrate his/her skills and ability to successfully carry out the job responsibilities – only serves to reinforce the barriers that returning citizens face in seeking public employment.

## **Conclusion**

We recognize that this legislation alone is insufficient to facilitate the successful re-entry of returning citizens. No doubt other issues – such as vocational training, substance abuse counseling, and educational programs – play a crucial role in ensuring that returning citizens are not only hired, but remain employed. All of these approaches, however, are both necessary and complementary in providing returning citizens with a real chance to rebuild their lives, acquire skills, and become productive members of society.

Thank you for the opportunity to provide written testimony. I would be happy to provide additional information if needed.

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November 8, 2010

**From:** Lwhite809@aol.com [mailto:Lwhite809@aol.com]  
**Sent:** Monday, November 08, 2010 5:55 PM  
**To:** Benjamin, Aukima (COUNCIL)  
**Subject:** Testimony on Bill B18-826- For the Record

**Returning Citizens Employment Inclusion Act, 2010; Bill B-18-826**

The Reentry Task Force applauds your effort to increase the anti discrimination protections for people with criminal records. The Washington Post in the past week has had several illuminating articles stressing the tragic human cost on ex-offenders of the present system. There is a growing public awareness of the injustice of asking returning residents to state up front their criminal record before they even have a chance to apply for a job or submit their skills and credentials. The proposed law improves the situation by stating that an interview should take place before any background check.

We urge you to go further and stipulate how an employer should use the information about criminals records. Possible factors include the duties of the employment, the relevance of the conviction, the time since the felony, the age of the person, information on rehabilitation efforts.

Secondly we urge you to require that these protections apply to employees of government contractors as well as government employees.

And thirdly, they should apply to current as well as future employees.

Again, we thank you for taking on this controversial issue. There is wide evidence that it is being looked at across the nation and that several jurisdictions have moved to enact laws against such discrimination. It is also clear that the entire community benefits if those released from prison have a chance to find employment. It is reassuring to know that the District is trying to take on these issues.

**Louise White**

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