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March 6, 2020

Chair, Delegate Dereck E. Davis  
Vice Chair, Delegate Kathleen M. Dumais  
House Economic Matters Committee  
Room 231  
House Office Building  
Annapolis, Maryland 21401

**Subject: INFORMATIONAL - HB-1030 - Employers of Ex-Offenders - Liability for  
Negligent Hiring or Inadequate Supervision - Immunity**

Dear Chair, Vice Chair and Committee:

I ask for a favorable report for HB -1030 because it supports the objectives of HB-1524, which is the Return Citizen Job Opportunity Bill, whose goal is to increase employment opportunities for Returned Citizens in Maryland. As you know, there are many barriers to the hiring Returned Citizens and providing an immunity to employers is at least one method for incentivizing more employers to hire.

However, according to “*Getting Talent Back to Work*” initiative by the Society of Human Resource Management, employers are encouraged more to exercise the appropriate level of due diligence to avoid liability rather than solely relying on an immunity statute to provide protections from Negligent Hire claims. Please note that on SHRM’s website indicates that negligent hiring tends to be associated with candidates with criminal records, but the link between the two is often exaggerated, according to Oakland, Calif., attorney Maurice Emsellem, fair-chance hiring director with the National Employment Law Project. According to Mr. Emsellem, the fear of negligent hiring litigation shouldn’t negate the emerging trend of employers giving people with criminal histories a second chance. Current research indicates that these individuals are no more likely to engage in workplace misconduct than anyone else.

It is important to note that under the doctrine of negligent hiring, an employer is liable for harm its employees inflict on third parties when the employer knew or should have known of the employee’s potential risk to cause harm, or if the risk would have been discovered by a reasonable investigation.

While federal courts and the courts of nearly every state recognize a cause of action for negligent hiring, they apply different standards for liability—notably, to the degree of foreseeability required—and offer little clarity on how to avoid it.

A dozen states have passed laws recently limiting employer liability for negligent hiring, but even these provisions are not uniform. These laws may open doors for some candidates with records, but they also perpetuate the stigma associated with a criminal record, according to Emsellem says. According to Emsellem, “it’s really not about criminal records; it’s about due diligence.” Emsellem prefers as a standard the broader fair-chance hiring laws that remove barriers to employment for people with criminal records.

State law reform—fair-chance hiring laws and limitations on employer liability—is neither sufficiently widespread nor standardized to guarantee a good night’s sleep for most employers. In the absence of a uniform national standard, it is more efficient, effective and sustainable to adopt best practices for due diligence in hiring people with criminal records.

The [Lawyers’ Committee for Civil Rights Under Law](#) collaborated with other employee rights organizations and consulted with leaders in the background-screening industry to produce *Best Practice Standards: The Proper Use of Criminal Records in Hiring in 2013*.

The standards, covering both employers and consumer reporting agencies, are grounded in the [Equal Employment Opportunity Commission](#)’s (EEOC’s) *2012 Enforcement Guidance on the Use of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964*. They are intended to mitigate the risks of negligent hiring claims, as well as to help prevent violations of laws regarding employment discrimination and background checking.

Employers should not ask about criminal records on application forms, the EEOC report states. They should consider only convictions and pending prosecutions, and only those that are relevant to the job in question and recent enough to indicate significant risk. Employers should provide applicants the opportunity to challenge any report, and they should consider evidence of rehabilitation.

With nearly 700,000 people released from prison each year; therefore, something must be done to keep these individuals from being locked out of the job market. I applaud Delegates Wilson and Atterbeary sponsorship of HB-1030 as one of several means of creating an environment in the State of Maryland where employers can have a defense to negligent hire claims, which encourages employers to hire persons with criminal records. We believe that those who have served their time should not be “re-sentenced” by employers, especially when businesses are experiencing a human capital crisis. HB – 1030 is a valuable method that can remove an obstacle to persons with criminal records in achieving gainful employment.

While it is the EEOC’s long standing position that employers are prohibited from using the existence of a criminal record alone as a reason to not hire a person, that policy and the practice of employers do not always mirror. A 2017 report by the National Employment Law Project (NELP) showed that employers did not call back for an interview:

- 40 percent of male applicants with a criminal record, and
- 70 percent of female applicants with a criminal record
- with 93 percent of black women and 61 percent of Hispanic women less likely to be contacted for an interview or offered a job than white women.

Therefore, HB -1030 can be a valuable tool that can address what the NELP report has demonstrated is a problem for persons with a criminal record. However, as the nation reaches nearly full employment, business leaders and human resources professionals are considering these previously overlooked populations for the first time as a source for workers. In fact, job applicants with criminal records are proving to be a viable workplace solution for many organizations. While a great deal of uncertainty about hiring workers with criminal records still exists among some senior executives today, a recent study commissioned by the Society for Human Resource Management (SHRM) and the Charles Koch Institute (CKI)<sup>1</sup> finds that:

- employees generally are open to working side-by-side with the formerly incarcerated; and
- 14% of HR professionals and 26% of managers are unwilling to work with or hire someone with a criminal conviction
- 82% of managers and 67 percent of HR professionals believe that the quality of hire for workers with criminal records is about the same or higher than that of workers without records.

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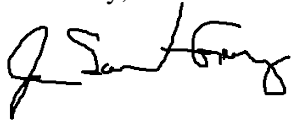
<sup>1</sup> See full data sheet attached.

Consequently, the “[Getting Talent Back to Work](#)” toolkit produced by SHRM (See Toolkit attached), provides HR professionals with the information and tools needed to confidently evaluate applicant criminal records, reduce legal liability and increase inclusive hiring from this untapped labor pool, is available to all employers that seek to hire persons with criminal records. Since its release, over 1,500 companies have made the “Pledge” to give opportunities to qualified people with a criminal record, deserving of a second chance.

It is noted on the SHRM website that many employers have had very positive results from giving people with records a second chance. It is important to note that Johns Hopkins Medicine has hired hundreds of people with records, many for critical jobs involving patient care. When it conducted a multiyear audit of accidents and other major negative events involving employees, Johns Hopkins found that not even one had been caused by an employee with a record. This is not unusual. Other employers have reported that people with records often are so grateful for a chance that they are the most dedicated employees in the company and among those with the best retention rates.<sup>2</sup>

Therefore, I ask for a favorable report for HB-1030.

Sincerely,

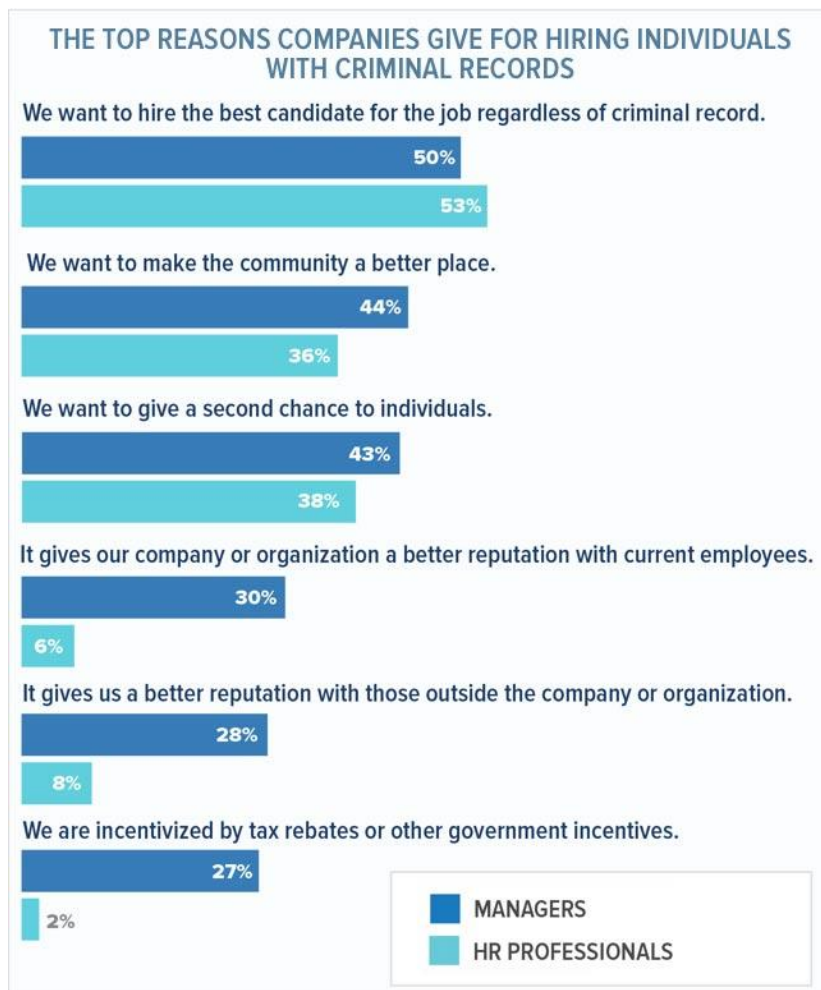
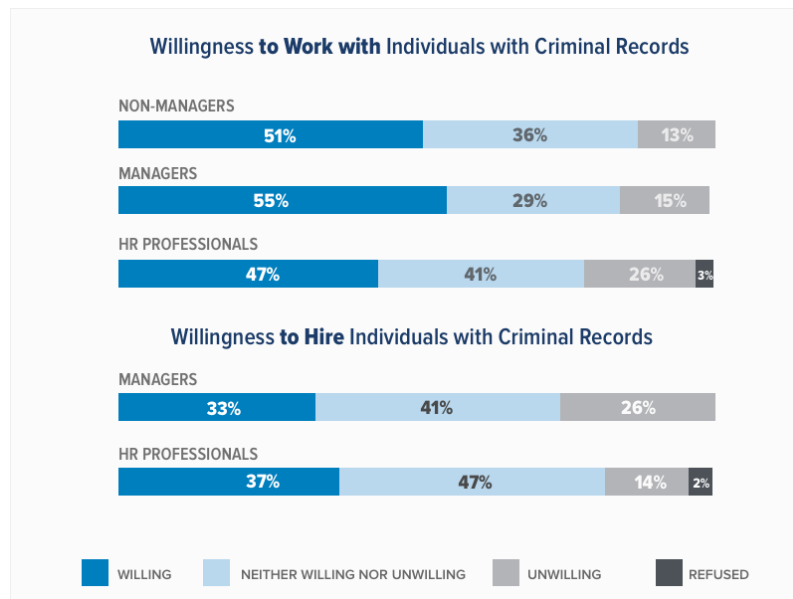
A handwritten signature in black ink, appearing to read "Jo Saint-George". The signature is fluid and cursive, with the first name "Jo" being the most prominent.

Jo Saint-George, Esq.

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<sup>2</sup> See Testimony of Employers regarding their experience hiring people with criminal records.

2018 study commissioned by the Society for Human Resource Management (SHRM) and the Charles Koch Institute (CKI)





**TESTIMONIES FROM EMPLOYERS WHO HAVE  
HIRED RETURNED CITIZENS**

*“Our formerly incarcerated employees aren't just 'nonproblems.' They're role models in terms of performance, attendance and teamwork. They have an especially strong incentive to deliver value because they've seen the alternative, and in the overwhelming majority of cases, they deliver.”*

**— Gretchen Peterson, CHRO, Dave’s Killer Bread**

*“These are human beings who are finding ways to be resilient—to transform their lives and to reimagine who they’ll be when they come home from prison or jail. “*

**— Jasmine Heiss, former director of coalitions and outreach with the Coalition for Public Safety (CPS)**

*“In my experience, people with criminal records are often model employees. They are frequently the most dedicated and conscientious. A lot of doors are shut to them, so when someone gives them an opportunity, they make the most of it.”*

**— a restaurant executive who employs hundreds of workers in Ohio and Florida**

*“Of all the groups we targeted, people with criminal records turned out to be the best employees, in part because they usually have a desire to create a better life for themselves ... and are often highly motivated. “*

**— Denver-based telecommunications company founder**