New York State Senate

Proposed Amendments to Executive Law 296 and New York Correction Law 754 Article 23-A

Second Chance in Employment Act

- **640,000** people are released from State and Federal prisons.

- More than **70 million Americans** have criminal records, that create significant barriers to employment, economic stability and successful re-entry into society.

- Nearly **75% of people** who were formerly incarcerated are **still unemployed** a year after being released.

Second Chance Act of 2007

- The **Second Chance Act of 2007 H.R. 1593**, a bipartisan initiative, was signed into law on April 9, 2008. The statute sought to re-authorize the grant program for the re-entry of offenders into the community. The bill's original precursor was the **Omnibus Crime Control and Safety Act of 1968**.

- The bill had the following objectives:

1) **improve re-entry planning and implementation by reducing recidivism;**
2) **preserve public safety; and**
3) **assisting states and communities in addressing the growing population of inmates upon their release**.

April: Second Chance Month

- In 2017, **April** was designated **Second Chance Month**.
- On March 31, 2023, President Joseph Biden signed the "**Proclamation on Second Chance Month**."

Second Chance Act of 2007

- Funding for grants under the **Second Chance Act** are currently administered through the **Office of Justice Programs at the U.S Department of Justice**.

- Since **2008**, the Second Chance Act has funded more than **600 grants** to state and local governments and nonprofit organizations and more than **1/3 of these grants** have been awarded to **counties**.

- **FY2022** the program had **$110 million** of funding.

- **FY2023** the program had **$125 million** of funding.

Impact of Prior Convictions in New York

- According to **John Jay's College Data Collaborative for Justice** (DCJ), approximately **2.1 million adult New Yorkers** have records of prior convictions. In contrast, New York's workforce consists of 9.7 million people.

- According to a **Brennan Center Analysis, felony convictions** reduce a person's annual earnings by approximately **20%.; and persons with misdemeanor convictions experienced a 15% reduction.**

- **Underemployment related to a criminal record** costs New Yorkers around **$12.6 billion annually. This has been found to equate to five times** the effects of prison terms or annual earnings.

New York's Current Laws Addressing Prior Convictions

- **Correction Law Chapter 43 Article 23A:** was passed on February 1, 2009. The Act prohibits employers with 10 or more people from denying employment or licenses to people convicted of crimes unless there are direct relationships between the crimes and the jobs or licenses or unless there are unreasonable risks to property or to the safety or welfare of specific individuals or the general public.

- **New York City Fair Chance Act:** was passed by the City Council in June 2015 and was added to the NYCHRL on October 27, 2015. The Act limits the ways in which employers can consider an applicant's criminal history during the hiring process.

- **Local Law 4 of 2021** effective July 29, 2021 adds protections for people whose criminal history includes unsealed violations and unsealed non-criminal offenses. Local Law 4 also expands the protections of the Fair Chance Act to cover current employees to reach pending cases.

New York's Current Laws Addressing Prior Convictions

- **Clean Slate Act S7551A/A. 1029C**: Was signed into law on November 16, 2023 and goes into effect on November 16, 2024. The act allows certain offenders to petition for the expungement or sealing of certain criminal records.

- **Executive Law 296(a)(15) and (16):** prohibit discrimination against people with prior convictions in the hiring and licensing processes.

National Statutes: Current Anti-Discrimination Statutes for Persons with Prior Convictions

- The current statutes across the nation provide narrow protections, that pertain to the hiring process. None of the statutes address on the job discrimination against employees with prior convictions.

- **Wisconsin** is the only other state besides New York, that expressly includes those with arrests and convictions in its discrimination statutes.

- Most importantly, **Wisconsin** is the **only** state that mimics **Title VII.** It Is the only state that provides persons with carceral histories protection under the law if they experience discrimination while they are employed.

Wisconsin's Fair Employment Act
Wis. Stat. 111.31 ch 269

(1) The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies, and licensing agencies that deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation**, arrest record**, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, deprive those individuals of the earnings that are necessary to maintain a just and decent standard of living

Wisconsin's Fair Employment Act
Wis. Stat. 111.31 ch 269

(2) It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, **arrest record**, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family, and all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employee or applicant for employment based upon the individual qualifications of the employee or applicant rather than upon a particular class to which the individual may belong.**(**

Wisconsin's Fair Employment Act
Wis. Stat. 111.31 ch 269

3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, **arrest record**, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters. Nothing in this subsection requires an affirmative action program to correct an imbalance in the work force. This subchapter shall be liberally construed for the accomplishment of this purpose.

- **The Proposed New York State Second Chance In Employment Act** seeks to amend the State Human Rights and Correction Laws to protect persons with carceral histories in the workplace. The current law only addresses the hiring and licensing processes.

- The amendments will have the following objectives:

- To protect persons with prior convictions against **disparate treatment** In the **terms and conditions** of their employment (i.e. in terms of salary, promotional and or job opportunities);

- To ensure that employers don't engage in discriminatory employment practices and or to prevent them from implementing policies that have a **disparate impact** on employees with prior convictions;

- To protect employees with prior convictions from experiencing **hostile work environments** based on their actual or perceived carceral history, or their relationship to a person with a carceral history; and

- To protect employees with carceral histories or prior convictions from **retaliation** when they engage in protected activities (i.e. opposing discrimination, filing workplace and administrative complaints of discrimination).

Proposed Amendments to Executive Law 296

We are proposing the addition of "prior convictions" as a protected classification to the following paragraphs and subdivisions:

296(a) through 296(e)
296(h)
296 1-a(b) through (d)
296 2-a (a) through (c-1)
296 3-b
296-4
296-5(a)(1) through (3)
296-5(b)(1) through (3)
296-5(C) (1) through (2)
296-5 (d)
296-9(a)

Recommendations and Next Steps

- The Executive Law should be **simplified** so that both legal practitioners and lay persons can pursue legal recourse in their workplaces, with the State Division of Human Rights and in New York's Courts of Law.

- Specific references and definitions should be provided for the following terms: **discrimination; disparate impact; disparate treatment; hostile work environment; and retaliation**.

- The definitions should be consistent with the standards established by the Courts in this jurisdiction, so that lay persons and practitioners alike are able to engage intelligently before litigation.

Recommendations and Next Steps

- Apply for federal funding under the Second Chance Act to open Re-Entry Career Centers in each district.
- The Centers should have classes on soft skills, such as learning to communicate in the workplace, mental health counseling , child care services and other social service referrals to facilitate re-entry into society writ large.
- Outreach to Community Based Organizations and to not-for-profit organizations to expand on the Statewide Re-Entry Taskforce and to obtain buy-in.

Taskforce:
Proposed Outreach

Organization	Contact
Prison Policy Initiative	413-527-0845
Network Advocates for Justice	202-347-9797 info@networklobby.org
Correctional Association of New York	212-254-5700
Innocence Project	212-364-5340 info@innocenceproject.org
Vera Institute	212-334-1300 contactvera@vera.org
Women's Prison Association	646-292-7710 info@wpaonline.org
Exodus Transitional Community	917-492-0990 Ext. 118
New York State Division of Criminal Justice Services County Re-Entry Taskforce	518-485-2393

Taskforce:
Proposed Outreach

Organization	Contact
The Fortune Society	212-691-7554 info@fortunesociety.org
Columbia University Center for Justice	centerforjustice@columbia.edu
The Osborne Association	212-324-5577
Color of Change	Rashad Robinson, President Shannon Talbert. Senior Director of Movement Building Media@colorofchange.org
Freedom Agenda/Urban Justice Center	646-602-5600 fa@urbanjustice.org
Legal Action Center	212-243-1313 lacinfo@lac.org
Trinity Church Wall Street/Prison Re-Entry Program	212-602-0800

Taskforce:
Proposed Outreach

Organization	Contact
Women & Justice Project	wjp@womanandjusticeproject.org
National Action Network NYC Chapter Second Chances Committee	Rev. Steffie Bartley North East Region 973-464-9303 pastorsbartley@yahoo.com