



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: March 5, 2014

TO: Delaware State Senate

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 167 (Public Employment: Consideration of Criminal Record)

DMP/KW

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 167, which as amended, would make it unlawful for “any public employer to inquire into or consider the criminal record, criminal history, or credit score of an applicant for employment during the initial application process, up to and including the first interview.” “Public employer” means “the State of Delaware, its agencies, or political subdivisions.” Employers could consider criminal history and credit information after the first interview and disqualify an applicant “where the exclusion is job related for the position in question and consistent with business necessity.” Vendors doing business with the State would be encouraged to adopt similar policies. Some entities are exempt, including police agencies, the Department of Correction, Department of Justice, Public Defender’s Office, and the Courts. The legislation would be effective 180 days after enactment.

The impetus for this legislation is compelling. The preamble and attached documents provide the following statistics and information. At least 40 cities, 7 counties, and 7 states have passed similar measures. The 7 states are Massachusetts, Connecticut, Hawaii, California, Minnesota, Colorado, and New Mexico. The City of Wilmington has adopted a conforming ordinance, Philadelphia adopted its ordinance in 2011 and Baltimore adopted its ordinance in 2007. “Ban the box” legislation is pending in New Jersey, Michigan, North Carolina, and Ohio. New Castle County Executive Tom Gordon adopted a “ban the box” policy through Executive Order No. 2014-03 on January 28, 2014. The Delaware Department of Correction processes 23,000 intakes and 23,000 releases every year. Federal statistics show that 1 in 3 black men and 1 in 6 Hispanic men will be incarcerated during their lifetime compared to 1 in 17 white men. One of the results of disproportionate representation of minorities in the criminal justice system is high rates of unemployment upon release based on a criminal record.

The bill’s prime sponsor, Rep. J.J. Johnson, offered the following perspective:

House Bill 167 is not a “hire the felons” bill, but a “foot in the door” bill. He noted that more than two-thirds of the men and women released from prison end up back there within three years, and the lack of a stable job contributes greatly to that recidivism.

Similar views are shared in the attached excerpt from the Governor's recent State of the State address and June 6, 2013 News Journal editorial, "Public robbed of a reformed employee". Given the high correlation between mental illness and substance abuse, criminal history checks also disproportionately impact persons with disabilities convicted of drug possession.

Delaware has been implementing other initiatives in recent years to remove barriers to employment by those with criminal histories. See attached March 24, 2012 News Journal article, "Making probation a positive recognized at awards event". See also S.B. No. 59, enacted in 2011, which reduced or eliminated waiting periods for persons convicted of crimes to obtain restoration of a professional license.

SCPD strongly endorses the proposed legislation subject to consideration of some amendments.

First, it would be preferable to clarify that the bill establishes minimum protections for job applicants which local governments may exceed by ordinance or executive order. For example, the amended legislation literally permits consideration of three factors in the hiring decision: 1) nature and gravity of offense or conduct; 2) time that has passed; and 3) nature of job held or sought. A local government might wish to include other considerations. For example, the New Castle County executive order requires consideration of "remorse" and "evidence of rehabilitation". Moreover, a local government might prefer to categorically disallow consideration of misdemeanors more than 5 years old (akin to the original version of H.B. 167). Local governments should not be hamstrung in their authority to adopt standards offering greater protection to job applicants.

Second, the original bill (lines 32-36) limited consideration of criminal histories to convictions. To the contrary, the amended legislation ostensibly authorizes exclusion of applicants based on arrest record. H.A. 2 allows a public employer to disqualify an applicant from employment based on "criminal history" (which would include arrests without conviction). This is contrary to EEOC guidance. See attached January 11, 2012 EEOC press release and News Journal article, "Pepsi Beverages settles race discrimination case", describing \$3.1 million settlement when company's policy of not hiring individuals with arrest records pending prosecution disproportionately excluded black applicants. See also attached EEOC guidance (pp 12-14) holding that an arrest without conviction is generally not an acceptable reason to deny employment. The bill would benefit from a conforming amendment limiting consideration to convictions.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB167 employment-record 3-5-14

Baker gets rid of felon job box

Written by Andrew Staub The News Journal
Dec. 10

delawareonline.com

People with felony convictions no longer have to reveal their criminal background when applying for a non-uniform job with the city of Wilmington.

At the request of City Council, Mayor James M. Baker on Monday signed an executive order that removes a question about criminal convictions from city job applications unrelated to public safety.

The decree does not apply to the private sector.

"Many people who have had problems in the past need work and are ready to work and put their problem periods behind them," Baker said.

Such measures are known popularly throughout the country as "ban the box," a reference to the square employers require applicants to check denoting a conviction record. Wilmington's application also asked the applicant to indicate the type, date and location of the offense.

"By taking this action, we can restore hope, save money and give someone a fair chance and the opportunity to present themselves as an individual and not immediately be frowned upon because of past behavior," said Councilman Justen Wright, who pushed the idea that won unanimous support in the council.

Public-safety jobs in the police and fire departments are excluded from the order because of "obvious reasons," the city said.

The city will conduct criminal background checks only on applicants who have received a conditional job offer for a non-uniformed position, Baker said.

Previously, the city conducted checks on potential employees before an offer was made, said Samuel D. Pratcher Jr., the director of human resources.

Wright said he hopes other municipalities and businesses follow suit, and would like to see the ban expanded to include vendors doing business with Wilmington.

As of November, 43 cities and counties across the country had "banned the box," and statewide measures have been instituted in Hawaii, California, Minnesota, Colorado, New Mexico, Massachusetts and Connecticut, according to the National Law Employment Project.

In April, the federal Equal Employment Opportunity Commission updated its guidelines urging employers to eliminate "policies or practices that exclude people from employment based on any criminal record."

Baltimore removed the question regarding criminal history in 2007, while identifying "positions of trust" that require background checks. Last year, Philadelphia banned the box for public and private jobs.

Though support has been strong in Wilmington, such measures have been criticized elsewhere.

Earlier this year in Minnesota, business owners opposed expanding a statewide ban-the-box provision for public employers to the private sector.

The EEOC already protects against automatic denials of employment, said Ben Gerber, manager of energy and labor management policy for the Minnesota Chamber of Commerce.

"Primarily, we feel this is already being addressed, and it's kind of unnecessary legislation," Gerber said.

Different measures from state to state also can create an administrative burden for national employers, Gerber said. Employers, not the state, should decide whether they want to ask about a person's criminal history, he said.

The National Law Employment Project estimates 1 in 4 adults in the United States has a criminal record that would appear in a background check.

There are 5,770 people incarcerated in Delaware's four prison facilities and another 1,068 in community corrections centers, said John Painter, spokesman for the state Department of Correction.

Delaware processes about 23,000 intakes and 23,000 releases a year, Painter said. About 1,300 of released prisoners annually have served a sentence of a year or more, he said.

Locally, Wright said, he often hears stories of people who need jobs, but worry about a checkered past.

Councilwoman Hanifa Shabazz tied unemployment to crime, saying some people enter survival mode after a criminal record precludes them from a chance at being hired.

"That makes it very difficult for someone to continue to do the straight and narrow," she said.

The ban-the-box measures can streamline municipalities' background check procedures, while giving people with past convictions another chance at gainful employment, said Michelle Rodriguez, a staff attorney with the National Law Employment Project.

"So many times, that's all people want," she said. "They just want the opportunity to prove themselves."

Contact Andrew Staub at 324-2837, on Twitter @AndrewStaubTNJ or at astaub@delawareonline.com.

Phila. limits questions about criminal record

5/1/12

Businesses can ask in interview

By MARYCLAIRE DALE
Associated Press

PHILADELPHIA — Philadelphia will soon become the latest U.S. city to “ban the box,” prohibiting questions about a person’s criminal record on job applications. The president of the NAACP plans to be in town Monday when Mayor Michael Nutter signs the law.

Employers can still ask candidates about the issue, but proponents say ex-offenders at least deserve a chance to get a foot in the door. They say the interviews never come if they admit their records early on.

“Americans believe in second chances. We believe that when somebody has paid their debt to society, they deserve the right to earn a living, reunite their

families,” said Benjamin Todd Jealous, president of the civil rights group.

Chicago, Boston and several other cities have adopted similar measures. Some involve only public-sector jobs, but the Philadelphia law will apply to most public and private employers.

About 65 million Americans, or one in four, have a criminal record, while 90 percent of employers use criminal background checks, according to New York’s National Employment Law Project, which released a report on the issue last month.

The group argues that stable employment will help former offenders straighten out their lives, and save tax dollars that would otherwise go toward supporting them in or out of prison.

Some business groups, including the Greater Philadelphia Chamber of Commerce, oppose the law.

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A growing movement to protect convicted job applicants

By Claire Zilkman, reporter January 14, 2014 12:13 PM ET

So-called ban the box campaigns, which prohibit employers from immediately asking jobseekers to disclose their criminal history, have been gathering steam across the U.S.

The image shows a portion of a job application form. At the top, there are several questions with 'YES' and 'NO' options: 'Are you a citizen of the United States?', 'Have you ever worked for this company?', and 'Have you ever been convicted of a felony?'. Below these is a section titled 'EDUCATION' with a table for listing degrees. The table has columns for 'From', 'To', 'Did you graduate?', and 'Degree'. There are three rows for listing education, each with a 'From' field, a 'To' field, a 'Did you graduate?' field with 'YES' and 'NO' options, and a 'Degree' field. The bottom of the form is partially obscured by a dark, blurry image of a person's face.

FORTUNE -- Samantha Rogers readily acknowledges her past drug problem. "If I had a rap sheet to email you, you'd see all the repeated offenses," she told *Fortune*. Back when possession of all controlled substances was a felony, her frequent court appearances landed her in jail again and again over the course of 17 years.

When she got out for good in 2010, things didn't get much easier.

She was rejected for jobs she applied to -- she thinks -- because the applications asked her to disclose her criminal past. Finding affordable housing -- with its similar paperwork -- is just as difficult for former felons. "The hardest thing for all of us is finding a safe environment and housing so we can channel our energy into going back to school and getting a job," says Rogers, 46, who's now back in school and works part-time in the San Francisco area as a program assistant for the California Coalition for Women Prisoners.

Formerly incarcerated individuals like Rogers soon could have an easier time finding employment and a place to live in San Francisco if a recently proposed ordinance is approved. San Francisco currently prohibits city agencies from using job applications that inquire about an individual's criminal history. The new proposal would extend that ban to private employers, publicly funded housing providers, and city contractors, and would keep businesses from asking job candidates about their criminal backgrounds until after a live interview.

MORE: The disappearing U.S. workforce: It's not just the 'Obummer economy'

"Incarceration is bad enough," says Jesse Stout, policy director at Legal Services for Prisoners with Children. Once people are released from prison, he says, they deserve "the basic right to the housing and employment that many of us take for granted."

The San Francisco measure, dubbed the Fair Chance ordinance, is one of the latest efforts in a nationwide movement to "Ban the Box" -- the little square on applications that, when ticked, acknowledges individuals' criminal histories and often disqualifies them for a job or housing on the spot. Since 9/11, and with the increased accessibility of criminal records online, hiring background checks have been on the rise, says National Employment Law Project attorney Michelle Rodriguez, but so too have efforts to limit them.

In addition to San Francisco, Louisville, Ky. is considering a similar Ban the Box ordinance. The city, where 160,000 people in the metro area of 800,000 have a criminal background, already refrains from asking about a person's record early in its own hiring processes, but the ordinance would codify that rule and extend it to city vendors and contractors.

And in Indianapolis, city councilman Vop Osili plans to introduce a "Ban the Box" initiative on Jan. 27 that would prohibit the city and its vendors from asking about job candidates' criminal backgrounds until after the first interview. Osili's effort stems from a desire to cut down on the city's prison recidivism rate, which hovers near 50%. "Every person coming out of jail has a

one-in-two chance of going back within three years," he says. If the ordinance passes, instead of costing taxpayers the \$30,000 required to keep a person in jail for a year, a former felon could be contributing income and property taxes, Osili says.

At the state level, lawmakers in Delaware, New Jersey, Michigan, North Carolina, and Ohio recently introduced Ban the Box legislation too.

The prevalence of these initiatives has to do with "this understanding in our society [that] mass incarceration is broken," says Rodriguez. According to an August 2013 report by NELP, an estimated 65 million Americans -- or one in four adults -- have a criminal record that would show up on a routine background check. "We need people to be able to work," says Rodriguez. "It makes no sense to keep qualified people out of the labor market. There are already enough barriers [to getting a job] in place, and this takes the simplest one away and gives them a fair chance."

MORE: 3 reasons why Chris Christie is damaged goods

Hawaii became the first state to outlaw questions about a job applicants' criminal background, when it passed a Ban the Box law that applied to public and private employment in 1998. Fifty-three cities and counties and 10 states have established some sort of Ban the Box measure since then. Last year alone, eight cities joined those ranks, as did five states, including Minnesota and Rhode Island, which applied the rule to private employers in addition to state agencies.

Businesses groups, meanwhile, have argued that the bans are too big of a burden. The San Francisco Chamber of Commerce, for instance, argued that the original version of the city's most recent proposal, which prohibited background checks until after an individual received a conditional job offer, would have caused businesses to waste resources and time on candidates they ultimately could not hire. The Chamber and the ordinance's sponsors ultimately reached a compromise -- the ban on background checks would be lifted earlier in the hiring process, after the first interview.

The Chamber now supports the measure. "[The Chamber had] no issue with Ban the Box. The broader issue was the scope of the legislation and how it applies in the hiring process," says Jim Lazarus, the Chamber's senior vice president of public policy. "If possible, we want to give everyone a fair chance to be employed."

THOMAS P. GORDON
County Executive



DAVID A. GRIMALDI
Chief Administrative Officer

EXECUTIVE OFFICE

For Immediate Release
Jan. 28, 2014

Contact: Antonio Prado, Director of Communications
(302) 395-5108, AMPrado@nccde.org

NEWS RELEASE

County Executive Gordon Issues Executive Order to 'Ban the Box'

NEW CASTLE, Del. – At the urging of New Castle County Council Pro Tempore Penrose Hollins, County Executive Tom Gordon signed an executive order removing criminal conviction history information from the County's non-uniformed employment applications.

County Executive Gordon's executive order endorsed the national and statewide effort to "Ban the Box" (i.e. the checkbox that asked, "Have you ever been convicted of a violation of Federal, State, County or Municipal laws or ordinances?") from job applications.

In lieu of this question, New Castle County will only conduct criminal background investigations on job applicants who have received a conditional offer of employment for a non-uniformed position with the County.

"No Department or Office within the New Castle County Government shall automatically exclude applicants from consideration for employment due to criminal history, but rather, henceforth shall balance the nature and severity of an applicant's criminal history with other factors, such as the length of time since the infraction(s), the known applicable surrounding circumstances, remorse, and documented evidence of rehabilitation," Gordon wrote in Executive Order No. 2014-03.

"I agree with the Americans for Democratic Action of Delaware and Councilman Penrose Hollins that a criminal history should not automatically disqualify an individual for consideration of employment within New Castle County," Gordon said. "When people have paid their debt to society, they are ready to work and become contributing members of the community once again."

New Castle County Councilman Hollins, who is a board member of the Wilmington Hope Commission, commended the Executive's order.

"This is a great first step, but there has to be greater support from the business community," Councilman Hollins said.

County Executive Gordon signed the executive order on Tuesday, Jan. 28, 2014.

Criminal background check policy updated

EEOC issues new hiring guidelines for employers

By SAM HANANEL
Associated Press

WASHINGTON — Is an arrest in a barroom brawl 20 years ago a job disqualifier?

Not necessarily, the government said Wednesday in new guidelines on how employers can avoid running afoul of laws prohibiting job discrimination.

The Equal Employment Opportunity Commission's updated policy on criminal background checks is part of an effort to rein in practices that can limit job opportunities for minorities who have higher arrest and conviction rates than whites.

"You thought prison was hard, try finding a decent job when you get out," EEOC member Chai Feldblum said.

She cited Justice Department statistics showing that 1 in 3 black men and 1 in 6 Hispanic men will be incarcerated during their lifetime. That compares with 1 in 17 white men who will serve time.

"The ability of African-Americans and Hispanics to gain employment after prison is one of the paramount civil justice issues of our time," said Stuart Ishimaru, one of three Democrats on the five-member commission.

About 73 percent of employers conduct criminal background checks on all job candidates, according to a 2010 survey by the Society for Human Resource Management. Another 19 percent of employers do so only for selected job candidates.

That data often can be

inaccurate or incomplete, according to a report this month from the National Consumer Law Center.

EEOC commissioners said the growing practice has grave implications for blacks and Hispanics, who are disproportionately represented in the criminal justice system and face high rates of unemployment.

But some employers say the new policy — approved in a 4-1 vote — could make it more cumbersome and expensive to conduct background checks. Companies see the checks as a way to keep workers and customers safe, weed out unsavory workers and prevent negligent-hiring claims.

The new standards urge employers to give applicants a chance to explain a past criminal misconduct before they are rejected outright. An applicant might say the report is inaccurate or point out that the conviction was expunged. It may be completely unrelated to the job, or a former convict may show he's been fully rehabilitated.

The EEOC also recommends that employers stop asking about past convictions on job applications. And it says an arrest without a conviction is not generally an acceptable reason to deny employment.

The guidelines are the first attempt since 1990 to update the commission's policy on criminal background checks.

While the guidance does not have the force of regulations — and may conflict with state requirements for some job applicants — it sets a higher bar in explaining how businesses can avoid violating the law.

"It's going to be much more burdensome," said Pamela Devata, a Chicago employment lawyer who has represented companies trying to comply with EEOC's requirements.

EXCERPT: DEL HOUSE DEMOCRATS "LEG HALL INCIDENT"
(JANUARY 17, 2014)

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islative Wrap-Up

Our Leadership

Peter C. Schwartzkopf
Speaker of the House
14th District

Valerie Longhurst
Majority Leader
15th District

John Viola
Majority Whip
26th District

Keep In Touch



Pawing Around



Rep. Trey Paradee's 3-year-old yellow lab, Belle, reaches across the aisle to shake hands with House Minority Leader Rep. Danny Short as House Majority Leader Rep. Valerie Longhurst looks on. Belle visited Legislative Hall on the first day of session Tuesday and greeted lawmakers and staff as they returned to Dover to complete the 147th General Assembly. No word on whether she'll return during the "dog days" of session in June.

Ban the Box Legislation Advances

Legislation giving ex-offenders an opportunity to gain employment after their release from prison cleared a House committee Wednesday.

Rep. J.J. Johnson said House Bill 167 is not a "hire ex-felons" bill, but a "foot-in-the-door" bill. He noted that more than two-thirds of the men and women released from prison end up back there within three years, and the lack of a stable job contributes greatly to that recidivism.

HB 167 would prevent most public agencies in Delaware from requiring job applicants to disclose criminal history information when moving through the early steps of the hiring process. Agencies still would be able to ask about an applicant's criminal record, even perform a criminal background check, before hiring a person. The bill would exempt several state agencies.

Said Rep. Johnson: "If we are serious about curbing recidivism and helping Delawareans

who are trying to right their wrongs, then we as a state owe it to them to lead by example.

Ten other states and dozens of local jurisdictions, including Wilmington and Philadelphia, have enacted similar policies. HB 167 was unanimously released from the House Economic Development Committee and awaits action by the full House.

EXCERPT: STATE OF THE STATE ADDRESS
(JANUARY, 2014)

The Opportunity to Contribute

We cannot meet the potential of our great state and our great country if we give up on a great number of our people. Today, America incarcerates more than 2 million people, and each year we release more than 700,000 inmates. 25 years ago, the total number of people incarcerated was 700,000.

For released inmates, their criminal record makes it difficult to be productive members of society.

There are those who belong behind bars and it is worth every penny we spend to keep them there. But when a person has served their time, it's up to them – and to us – to make sure they transition effectively, achieve their potential and contribute to society.

In 2009, with the leadership of Secretary McMahon and Director Ben Addi, we began our I-ADAPT initiative to help offenders prepare for their eventual release by giving them some of what they need to return to our communities. Identification. Access to medical care. A transition plan. Job training opportunities.

Five years of experience has taught us that those little things make a big difference. But for many offenders there is one thing we can't give them – a driver's license. Many offenders guilty of drug offenses are denied a driver's license – regardless of whether their crime had anything to do with a car. This penalty is just one more punishment that prevents them from seeking employment and accessing job training.

This should change. I ask you to eliminate the arbitrary loss of a drivers' license for crimes that have nothing to do with automobiles.

Too many of the inmates we release end up going back to prison. One of the best predictors of whether a person will commit another crime is whether they have a job. If we know employing ex-offenders helps make our communities safer, why are we putting so many hurdles in the way of job opportunities for ex-offenders?

* We need to start by looking at employment discrimination against people who have repaid their debt to society. Here is an example: If there is one employer in Delaware that should be able to decide whether hiring an ex-offender makes sense, it's the Department of Correction. But the Department is prohibited from hiring anyone with a felony record, even on a part-time basis.

* As Representative JJ Johnson has suggested, we can do better.

* Many communities have started to "ban the box" on job applications by eliminating the box that says "check here if you've been convicted of a crime." I believe we should ban the box for state government hires this year.

* Let's stop denying ex-offenders their first interview. Let's be a model for the private sector, because marginalizing ex-offenders helps none of us.

Delaware's incarceration rate is higher than the national average in a country whose average is higher than the rest of the world's. That's not a point of pride, it's incredibly expensive, and it hasn't worked.

We lock up too many people for not making bail and not appearing at hearings. Forty percent of the women incarcerated at Baylor are pre-trial detainees, many charged with non-violent offenses.

Based on guidance from Commissioner Coupe, I propose that we pilot, in the City of Wilmington, a program of pre-trial community supervision for non-violent offenders. Based on a model from New York, this pilot program will allow the Department of Correction and social service providers to help get offenders to hearings and avoid trouble while awaiting trial.

By supervising some offenders, we can keep them out of prison in the first place and link them with services to address addictions or mental health concerns in the community, and not a prison cell.

In addition to filling our prisons with pre-trial detainees, we also impose longer sentences than other states do. One reason is that we are the only state in the country that forces our judges, without exception, to impose consecutive rather than concurrent sentences for multiple offenses.

That hasn't made us any safer and contributes to overcrowding in our prisons. I ask you to join me in giving judges greater discretion when it comes to concurrent and consecutive sentencing.

Lastly, we need to change the trajectory of kids who enter the criminal justice system at a young age.

Many of these kids are bright and full of potential. And, after living in a facility with structure, education, and medical care, they have the same goals and determination as any of our kids.

But here is the reality. As well as those kids do while they are in a secure facility, when they leave our care, they often return to the same exact circumstances that led them to us in the first place, only now they are returning with the burden of a juvenile record. Many of them won't complete their education.

Of 184 kids in custody at our Faulkland Road campus last year, only 11 were back in traditional schools six months later. Many kids drop out, are expelled, or are re-incarcerated. This is our failure. We have seen the progress many of them make while under our care and we must do better when they transition away from our facilities.

I am asking you to fund community-based advocates to work with these families and kids after they leave the custody of the Kids Department. A 15 year old doesn't know how to access mental health services, re-enroll in school, and get on a path to success. These advocates can make that happen.

We also need to break the cycle of incarceration by getting these kids back into school. I am asking Secretary Ranji to lead a task force focused on how to get these children into an educational environment that is sensitive to their unique challenges and experiences.

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OPINION

Howard L. Gri
President and
David F. Ledfc
Executive Editc
John Sweene
Editorial Page

The NewsJournal ...

OUR V

Public robbed of a reformed employee

Recently, Wilmington nixed the felon check-off box on city job applications. For decades, many in the criminal justice system urged rethinking this one-size-fits-all life sentence for former criminals.

CITY LEADER

Alfonso Ballard, who oversaw Wilmington's public works department since February, had earned that honor. Last week, he was booted out of his job due to a nonsensical application of justice, which has too long dominated the public's psyche.

From 1990 to 1992, he submitted fraudulent claims to the Railroad Retirement Board, while working for Delmarva Power. Appropriately he was indicted. Deservedly he went to federal prison for 14 months, which classifies him as a felon. He paid his \$10,000 fine.

A felony is no minor offense. Murderers, thieves, rapists and corrupt

accountants share the designation. The punishment is death or imprisonment in excess of one year. That wide range allows enough room to measure former inmates' worthiness according to their after-prison citizenship.

Yet Mr. Ballard spent his post-jail history working his way up the manager ladder on projects that keep the city's critical infrastructure functioning and preparing for its future upkeep. So nearly two decades of demonstrated honorable citizenship — including being entrusted with overseeing an \$86 million municipal public works department — should count for something.

However, unbalanced public perceptions and fears pressure government leaders to give more weight to every worker's criminal history. In the end, it is the public that gets robbed of these reformed employees' credible and needed service.

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Making probation a positive recognized at awards event

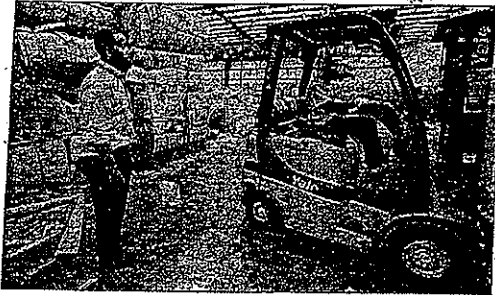
Officials laud locals who turned their lives around

By MIKE CHALMERS and SEAN O'SULLIVAN
The News Journal

Five years ago, after being caught with a gun he wasn't supposed to have, Tarrell Anderson faced a federal prison sentence and made a decision.

His life as a drug dealer had to end, he said, and his life as a responsible father had to begin. Anderson earned his GED, learned job skills behind bars and, after being released last year, got a job, a promotion, an apartment and a car.

"It's been long, and it's been hard, too," Anderson said, wiping away tears Friday morning as federal officials recognized him as a model probationer.



Tarrell Anderson (left), supervisor at Waste Carpet Depot in New Castle, received an award Friday for being a model probationer.

THE NEWS JOURNAL/SUCHAT PEDERSON

The sixth annual Workforce Development Ceremony is a way for the U.S. Probation Office in Delaware to draw attention to its programs that help ex-offenders successfully return to society. It was held at the J. Caleb Boggs Federal Building

in Wilmington.

"Folks sometimes need a second chance," said Jack McDonough, chief of the federal probation office in Delaware. "We all do."

See PROBATION, Page B9

Probation: Employers urged to hire

Continued from Page B1

In the past few years, the office has helped probationers get jobs, housing and other services, including cognitive-behavioral therapy — a form of psychotherapy that focuses on how thoughts influence feelings and behaviors.

McDonough said it helps probationers value employment and stability.

"We can get people jobs, but this helps with job retention," McDonough said.

The approach has helped cut recidivism dramatically. Among medium- and high-risk offenders who receive cognitive-behavioral therapy, only 10 percent are arrested again within a year of being released, far below national averages that range from 40 percent to 70 percent, he said.

William D. Burrell, a 19-year veteran of probation services in New Jersey, who is now a corrections consultant, praised the Delaware program.

Burrell, who recently appeared at John Jay College's Guggenheim Symposium on Crime in America, said the U.S. correctional system generally is "addicted to punishment" instead of considering ways to help ex-offenders reform and avoid slipping back into criminal ways. The Delaware program sends a positive message to ex-offenders that the focus on punishment is ending and the system is now interested in helping probationers get back on track, he said.

"That is an important mind-set



Tarrell Anderson, supervisor at Waste Carpet Depot in New Castle, was honored Friday during the sixth annual Workforce Development Ceremony. THE NEWS JOURNAL/SUCHAT PEDERSON

for the system to embrace," Burrell said.

Anderson, 30, had a history of drug dealing and probation violations, but he never spent more than six months at a time behind bars, said John Selvaggi, deputy chief of the federal probation office. That changed in November 2007, when police caught Anderson — a felon — with a handgun during a traffic stop. He was sentenced to four years in federal prison.

Anderson said the sentence scared him.

"When they told me how much time I had to do, that was the wake-up," he said.

Anderson said he was determined to make the most of his prison time, so he took courses in HVAC and commercial driving. He served 40 months in Kentucky and New Jersey before being released.

While living with his mother, Anderson went to work as a laborer at Waste Carpet Depot, a carpet recycling company in New Castle. He worked his way up to

supervisor two months ago, increasing his salary and allowing him to take better care of his girlfriend and three children, ages 7, 10 and 12.

Selvaggi said it's rare to see a probationer make so much progress in less than a year.

The ceremony also recognized Local 199 of Laborers' International Union of North America, which started working with the federal probation office a year ago to get ex-offenders work on road-construction crews.

"Our Local is very forgiving of people who have arrest records, as long as they want to do the job" and have experience in construction, said Toby Lamb, president of Local 199.

Burrell said recognition efforts like Friday's ceremony also encourage employers to hire ex-offenders.

"We so desperately need employers to step up and hire ex-offenders," Burrell said. "We need to cultivate those employers that are willing to step up."

McDonough also thanked the St. Vincent de Paul Society for helping probationers get transitional housing and Delaware Technical Community College for providing vocational training.

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7-2-12

BUSINESS IN BRIEF

Pepsi Beverages settles race discrimination case

Pepsi Beverages Co. has agreed to pay \$3.1 million to settle federal charges of race discrimination for using criminal background checks to screen out job applicants. The Equal Employment Opportunity Commission says the company's policy of not hiring workers with arrest records disproportionately excluded more than 300 black applicants. Under the policy, applicants with arrest records were not hired even if they had never been convicted of a crime. The company also denied employment to those arrested or convicted of minor offenses.



U.S. Equal Employment Opportunity Commission

PRESS RELEASE
1-11-12

Pepsi to Pay \$3.13 Million and Made Major Policy Changes to Resolve EEOC Finding of Nationwide Hiring Discrimination Against African Americans

Company's Former Use of Criminal Background Checks Discriminated Based On Race, Agency Found

MINNEAPOLIS – Pepsi Beverages (Pepsi), formerly known as Pepsi Bottling Group, has agreed to pay \$3.13 million and provide job offers and training to resolve a charge of race discrimination filed in the Minneapolis Area Office of the U.S. Equal Employment Opportunity Commission (EEOC). The monetary settlement will primarily be divided among black applicants for positions at Pepsi, with a portion of the sum being allocated for the administration of the claims process. Based on the investigation, the EEOC found reasonable cause to believe that the criminal background check policy formerly used by Pepsi discriminated against African Americans in violation of Title VII of the Civil Rights Act of 1964.

The EEOC's investigation revealed that more than 300 African Americans were adversely affected when Pepsi applied a criminal background check policy that disproportionately excluded black applicants from permanent employment. Under Pepsi's former policy, job applicants who had been arrested pending prosecution were not hired for a permanent job even if they had never been convicted of any offense.

Pepsi's former policy also denied employment to applicants from employment who had been arrested or convicted of certain minor offenses. The use of arrest and conviction records to deny employment can be illegal under Title VII of the Civil Rights Act of 1964, when it is not relevant for the job, because it can limit the employment opportunities of applicants or workers based on their race or ethnicity.

"The EEOC has long standing guidance and policy statements on the use of arrest and conviction records in employment," said EEOC Chair Jacqueline A. Berrien. "I commend Pepsi's willingness to re-examine its policy and modify it to ensure that unwarranted roadblocks to employment are removed."

During the course of the EEOC's investigation, Pepsi adopted a new criminal background check policy. In addition to the monetary relief, Pepsi will offer employment opportunities to victims of the former criminal background check policy who still want jobs at Pepsi and are qualified for the jobs for which they apply. The company will supply the EEOC with regular reports on its hiring practices under its new criminal background check policy. Pepsi will conduct Title VII training for its hiring personnel and all of its managers.

"When employers contemplate instituting a background check policy, the EEOC recommends that they take into consideration the nature and gravity of the offense, the time that has passed since the conviction and/or completion of the sentence, and the nature of the job sought in order to be sure that the exclusion is important for the particular position. Such exclusions can create an adverse impact based on race in violation of Title VII," said Julie Schmid, Acting Director of the EEOC's Minneapolis Area Office. "We hope that employers with unnecessarily broad criminal background check policies take note of this agreement and reassess their policies to ensure compliance with Title VII."

"We obtained significant financial relief for a large number of victims of discrimination, got them job opportunities that they were previously denied, and eradicated an unlawful barrier for future applicants," said EEOC Chicago District Director John Rowe. "We are pleased that Pepsi chose to work with us to reach this conciliation agreement and that through our joint efforts, we have been able to bring about real change at Pepsi without resorting to litigation."

The EEOC enforces federal laws against employment discrimination. The EEOC issued its first written policy guidance regarding the use of arrest and conviction records in employment in the 1980s. The Commission also

considered this issue in 2008 and held a meeting on the use of arrest and conviction records in employment last summer. The EEOC is a member of the federal interagency Reentry Council, a Cabinet-level interagency group convened to examine all aspects of reentry of individuals with criminal records.

The Minneapolis Area Office is part of the EEOC's Chicago District. The Chicago District is responsible for investigating charges of discrimination in Minnesota, Illinois, Wisconsin, Iowa and North and South Dakota. Further information is available at www.eeoc.gov.