**The Worker Justice Project:**

 **A Blueprint for a Comprehensive Criminal Employment Law Practice**

Melissa S. Ader[[1]](#footnote-2)∞

Introduction

On January 1, 2019, The Legal Aid Society’s Criminal Defense Practice launched the Worker Justice Project in order to combat discrimination faced by workers with arrest or conviction records living in New York City. For many clients of the Criminal Defense Practice, the most catastrophic result of an arrest or conviction is its effect on employment. The Worker Justice Project aims to minimize the employment consequences of arrest and conviction from the date of arrest until long after the conclusion of the criminal case. We do so via a multifaceted approach rooted in expertise in criminal employment law, a legal field focused on the employment consequences of pending and resolved criminal cases.[[2]](#footnote-3) We believe that every client and former client of Legal Aid’s Criminal Defense Practice should have access to a criminal employment law expert who understands the unique consequences of that client’s criminal case on their specific industry and employment goals.

This brief Article lays out the vision and strategies underpinning the Worker Justice Project. The four strategies described—(1) advising criminal defense attorneys about how to minimize the employment consequences of the criminal case; (2) empowering workers with records to defend their rights; (3) representing workers with records in administrative proceedings, pre-litigation advocacy, and litigation; and (4) advocating for legislative solutions and challenging government policies to effect systemic change—work best when used in conjunction. Our efforts in each of the strategy areas inform our advocacy in the others; using all four strategies allows us to develop a comprehensive expertise in the area of criminal employment law in New York City. We approach our work through a racial justice lens, with an awareness that the exclusion of workers with records from employment is rooted in racism.[[3]](#footnote-4)

I hope that this Article will assist other public defender organizations that seek to create similar projects.

**Strategy 1: Advise Criminal Defense Practice attorneys about how to minimize the employment consequences of a criminal case, from arraignment to disposition.**

Much of our work involves advising trial attorneys in Legal Aid’s Criminal Defense Practice. This advice generally fits into one of two categories: (1) what steps the attorney and their client should take while the criminal case is pending to increase the likelihood of retaining their job or license, and (2) what criminal case disposition will cause the least harm to a client’s current employment and future job opportunities, given the realities of the criminal case.

As many scholars and practitioners have noted, an arrest or conviction has numerous and varied negative consequences on employment and occupational licensure.[[4]](#footnote-5) In New York State and New York City, hundreds of government agencies are licensors and/or employers; thousands more private actors are employers. Each of these licensing agencies and employers has a different policy and practice with respect to arrest and conviction. For example, the New York City Department of Education (which issues security clearances to workers in the city’s public schools[[5]](#footnote-6)) has different practices than the New York State Education Department (which issues security clearances to workers in New York City charter schools and certifications to teachers in New York City public and charter schools[[6]](#footnote-7)), which has different practices from the New York City Department of Health and Mental Hygiene (which issues security clearances to workers in New York City daycares[[7]](#footnote-8)).

To properly advise Criminal Defense Practice attorneys about the likely consequences of arrest and various case dispositions, attorneys in the Worker Justice Project have become experts in the policies and practices of many of these agencies and employers. We have done so by parsing the countless statutes and regulations that govern different types of licenses, clearances, and positions. And, perhaps more importantly, we have done so by building relationships with employees who work at the government agencies and are willing to explain their agencies’ practices and the likely consequences of various case dispositions. It has been more challenging to obtain useful information in the private employment context, except where the employees are represented by a union (union attorneys are often quite helpful). For all types of licenses and employment, we keep records of the consequences that have in fact resulted from our clients’ case dispositions, which allows us to estimate likely impacts for future clients. Building our expertise has required patience, time, and diligent and organized notetaking.

Worker Justice Project attorneys must also become experts in certain aspects of criminal law. For example, for an individual whose criminal case results in a violation-level conviction in New York City, a sentence of “time served” has significantly different consequences than a sentence of “conditional discharge.”[[8]](#footnote-9) The client who is sentenced to “time served” is protected from employment discrimination related to the criminal case after the date to pay their surcharge has passed, whereas the client who is sentenced to “conditional discharge” must wait a year to gain the same protections. Providing the most accurate advice related to a client’s employment requires a nuanced understanding of numerous provisions in the criminal procedure, penal, and vehicle and traffic laws.

We advise criminal defense attorneys in three separate ways: via one-on-one consultations, office-wide trainings, and an internal document called the Employment Consequences Manual. In 2019, the Worker Justice Project provided 772 one-on-one consultations to Criminal Defense Practice staff. Each of these consultations conveyed essential advice that increased our clients’ chances of retaining or obtaining employment or licensure. However, because The Legal Aid Society’s Criminal Defense Practice is the largest public defender in the United States, representing clients in close to 200,000 legal matters last year alone, [[9]](#footnote-10) the Worker Justice Project also sought to provide advice in a more efficient way. To that end, we created a 35-page Employment Consequences Manual that we update and expand over time. The manual provides detailed and specific advice for Criminal Defense Practice staff whose clients are employed in various low-wage industries in New York City. It answers the most commonly asked questions for those industries and provides basic template letters that attorneys can send to employers and government agencies when such a letter is necessary to increase or maintain employment opportunities. Based on conversations with attorneys, it is our understanding that this manual has significantly expanded the impact of the Worker Justice Project.

**Strategy 2: Empower workers with arrest or conviction records to defend their rights.**

The second strategy the Worker Justice Project uses to reduce barriers to employment is to empower workers with records to defend their rights through Know Your Rights education and the creation of “accomplishment packets.” This work is particularly important in New York and other jurisdictions that have strong laws protecting people with criminal records from employment discrimination,[[10]](#footnote-11) where knowledge of these laws can mean the difference between employment and unemployment.

New York has some of the strongest employment discrimination protections in the country for workers with records. The New York State Human Rights Law prohibits almost all employers from discriminating in any way on the basis of criminal cases that have been terminated in the defendant’s favor, sealed, resolved with a youthful offender adjudication, or resolved with an adjournment in contemplation of dismissal.[[11]](#footnote-12) Article 23-A of the New York Correction Law prohibits the denial of a job or license because of a conviction record unless there is a direct relationship between the work and the offense, or employing or licensing the worker would involve an unreasonable risk to people or property.[[12]](#footnote-13) Whether a “direct relationship” or “unreasonable risk” exists depends on an analysis of eight factors, including New York’s public policy encouraging employment of people with criminal records, the offense’s impact on the worker’s ability to perform their specific job duties, the amount of time that has elapsed since the worker committed the offense, the worker’s age at the time of the offense, and the worker’s evidence of rehabilitation and good conduct.[[13]](#footnote-14) In addition, the New York City Fair Chance Act postpones an employer’s inquiry into a worker’s criminal record until after the employer makes a conditional job offer.[[14]](#footnote-15) After the employer offers the job, it must follow a number of steps if it seeks to withdraw the conditional offer on the basis of the worker’s conviction record. The employer must properly evaluate the eight Article 23-A factors and determine whether the aforementioned direct relationship or unreasonable risk categories apply.[[15]](#footnote-16) If a direct relationship or unreasonable risk exists, the employer must give the worker a “Fair Chance Act Notice” (an individualized document that explains in specific detail precisely how the employer weighed the factors), and a copy of any background check it ran.[[16]](#footnote-17) The employer must also give the worker a reasonable time of at least three business days to respond to these documents, and must hold the position open during that time.[[17]](#footnote-18) If, upon reviewing the worker’s response to the documents, the employer then properly determines again that there is a direct relationship or unreasonable risk, it may withdraw the job offer.[[18]](#footnote-19)

Few New Yorkers know that the above laws exist. Instead, many of the workers who contact the Worker Justice Project incorrectly assume that employers have total discretion to discriminate based on an arrest or conviction record. When they contact us, our first responsibility is to explain to them that they have rights, and to tell them how they can defend those rights. In 2019, we provided individualized advice and counsel to 302 New Yorkers.

In addition, many of the people who contact us are confused or discouraged by the Fair Chance Act Notice. Instead of viewing the Fair Chance Act Notice as an opportunity to explain their conviction record and their accomplishments, they believe it is pointless to respond and choose not to do so. Even when they want to respond, they often do not know how to compile a response within the three business days allotted to them by employers.

Based on the Worker Justice Project’s experience speaking with New Yorkers, we believe it is essential for every worker with a conviction record to have a pre-prepared written response to the Fair Chance Act Notice. The three-day window to respond to the Fair Chance Act Notice is simply too short unless a worker already has a pre-prepared response. In the Worker Justice Project, we call these pre-prepared responses “accomplishment packets.” Accomplishment packets generally contain two parts. The first is a personal statement that sometimes explains the facts of the offenses for which the worker was convicted and always describes the worker’s accomplishments, especially since the time of their most recent offense. The second is evidence of their accomplishments, such as letters of recommendation from employers, teachers, and counselors; proof of their employment history; and documentation that they have attended school, job training, counseling, and other programs such as anger management. Although we sometimes help workers respond to the Fair Chance Act Notice within the three-day window, we more often help them prepare these accomplishment packets in advance so that they can provide them to any employer who gives them a Fair Chance Act Notice. We email a Microsoft Word version of the personal statement to the worker so that they can update the personal statement themselves as they gain accomplishments over time. Employers sometimes respond to these accomplishment packets by hiring the worker. [[19]](#footnote-20) If they do not hire the worker, the fact that the worker has provided the accomplishment packet will lend strength to any employment discrimination action they might bring against the employer.

To increase the number of accomplishment packets the Worker Justice Project can prepare, we organize biannual clinics staffed by volunteers from our pro bono partners in the private sector.[[20]](#footnote-21) Each attendee leaves the clinic with an accomplishment packet, along with a completed application for a legal document called a “certificate of relief from disabilities” or “certificate of good conduct.” These documents are issued by the courts or the Department of Corrections and Community Supervision, and they regularly reduce barriers to employment. In 2019, within and outside of our two clinics, we prepared 45 accomplishment packets and 46 applications for certificates of relief and certificates of good conduct.

Of course, even using the clinic model, it is impossible for us to provide individualized advice and assistance to all of the workers with records in New York City. Therefore, we also engage in large-scale Know Your Rights education. We have created three Know Your Rights manuals[[21]](#footnote-22) that appear on The Legal Aid Society website and are distributed in each Legal Aid office, at community-based organizations’ offices, and in legislators’ offices. We also conduct Know Your Rights trainings by working with community-based organizations and at clinics staffed by The Legal Aid Society.

**Strategy 3: Enforce the rights of workers who are unlawfully denied jobs or licenses by representing them in administrative proceedings, pre-litigation advocacy, and affirmative litigation.**

There is a reason why few New Yorkers know about the above-mentioned laws: criminal record discrimination laws are rarely enforced. Employers blatantly violate these laws, either because they do not know that the laws exist or because they believe that workers with records will not assert their rights. Therefore, each time the Worker Justice Project tells an employer that its discrimination may entitle our client to financial remuneration, we are notifying the employer that its discrimination is illegal—and costly.

Making employers see the cost of criminal record discrimination is essential, because background check companies have long told employers that hiring workers with criminal records will result in costly negligent hiring lawsuits.[[22]](#footnote-23) Negligent hiring lawsuits related to people with pre-existing conviction records are rare,[[23]](#footnote-24) but, right now, so are criminal record discrimination lawsuits. The greater the number of workers who file claims against employers for criminal record discrimination, and the more these claims affect employers’ bottom lines, the less likely employers are to discriminate.

When a worker tells the Worker Justice Project that they have been denied employment because of their conviction record, we assess whether the employer’s behavior was unlawful. It often was. We then speak with the worker to explain their options and discuss potential remedies. Many times, our client simply wants to work. If that is the case, we act quickly. Our typical course of action is to send a demand letter to the employer notifying it of the damages to which its discrimination may entitle our client. Such letters are regularly successful in persuading the employer to give our client the job they should have received in the first place—plus, sometimes, backpay for the period of time that the client was unemployed. When our client no longer seeks to work for the employer, or when the employer is unwilling to hire the client, we seek a financial settlement that compensates our client for the employer’s discrimination.

If our pre-litigation advocacy is unsuccessful, we are prepared to litigate our clients’ claims. In New York City, we are lucky to have an administrative agency—the New York City Commission on Human Rights—that is a national leader in enforcing criminal record discrimination claims. Sometimes, we file our clients’ claims at the City Commission on Human Rights. Other times, we choose to litigate our clients’ claims in state court or federal court.

Although some of our clients have old or minor convictions, many of the clients whom we represent have recent or serious convictions, including violent offenses and sex offenses. Indeed, the clients for whom our assistance is most valuable are those with recent or serious offenses, or who have recently been released from incarceration, because these are the New Yorkers who are most likely to require a lawyer’s assistance in order to begin working. The judges who adjudicated these clients’ criminal proceedings did not sentence them to unemployment, and yet private employers and government agencies regularly effectuate just such a sentence. We are proud of asserting our clients’ rights against this unlawful behavior.

Finally, much of our advocacy involves representing clients in administrative proceedings when they are denied or at risk of being denied government licenses or security clearances. We most commonly represent home health aides, certified nurse aides, security guards, and taxi drivers in these administrative proceedings. We are generally successful in persuading the administrative agencies to grant—or permit our clients to retain—licenses or clearance. Where a licensing agency’s final administrative determination violates New York’s antidiscrimination protections, we are prepared to file suit. We also correct errors on our clients’ criminal records by contacting the agencies that manage criminal records in New York State.[[24]](#footnote-25)

In 2019, the Worker Justice Project’s representation resulted in six financial settlements, 20 corrected criminal records, and 81 secured jobs and licenses.

**Strategy 4: Challenge government policies that create barriers to employment and advocate for legislative solutions to effect systemic change.**

The Worker Justice Project’s high volume of cases allows us to understand and analyze the systemic problems that result in loss of employment for our clients. We make sure to carve out the time to address these problems by engaging in legislative work and advocating for government agencies to improve their policies and practices.

For example, a persistent problem that arose while advising Criminal Defense Practice attorneys and advocating for clients concerned a criminal case disposition known as an “adjournment in contemplation of dismissal,” or ACD. An ACD is a court order that schedules the dismissal of a criminal case, typically for a date six months to one year after the ACD order is issued. An ACD is generally the fastest means of dismissal in New York’s backlogged court system,[[25]](#footnote-26) and is “by far the most common mechanism for dismissal [of misdemeanor arrests] in New York City.”[[26]](#footnote-27) ACDs are not convictions and do not involve an admission of guilt. However, due to a gap in the State Human Rights Law, workers whose cases were scheduled for dismissal were unprotected from employment discrimination during the six-month or one-year period between the ACD order and final case dismissal. Because of this gap, clients were often better off, from an employment discrimination perspective, if they pled guilty to an offense than if their case were scheduled for dismissal (since, in many cases, the Human Rights Law immediately protects those who are convicted of an offense).

To close the gap, the Worker Justice Project helped draft and advocated extensively for a bill that expanded the State Human Rights Law to prohibit employment discrimination against people whose cases have been adjourned in contemplation of dismissal. We lobbied in coordination with the excellent organizations that belong to the Coalition of Reentry Advocates.[[27]](#footnote-28) The bill was introduced by Sen. Jose M. Serrano and Assemblyman David I. Weprin[[28]](#footnote-29) and was ultimately enacted in April 2019 as part of the reentry package in Governor Andrew Cuomo’s FY2020 budget.[[29]](#footnote-30) It went into effect in July of 2019. We estimate that it will provide protections to approximately 80,000 New Yorkers each year.[[30]](#footnote-31)

Our work, however, was not done after the law went into effect. Enforcement is key to ensuring the law’s impact. Since July, employers have fired, refused to hire, or refused to lift the suspension of several of our clients after their criminal case was resolved with an ACD, in violation of the expanded Human Rights Law. The Worker Justice Project immediately contacted the employers, explained that their conduct was unlawful under the new law, and advised that we were prepared to sue them unless they reversed their adverse actions. In every case, the employers agreed to reverse their adverse actions and our clients were able to work.

Separate from our legislative advocacy, the Worker Justice Project challenges government policies and practices at a systemic level. We are often able to persuade government agencies to change problematic policies by building relationships with agency decisionmakers and explaining how their policies violate the law or harm New Yorkers. For example, after the expansion of the Human Rights Law was enacted, we persuaded multiple government agencies to change their policies and practices in light of the amended law—and convinced one agency to go beyond the strict requirements of the law. We are lucky in New York that a number of the agency officials in charge of criminal background check policies are sympathetic to the concerns of New Yorkers with criminal records and are willing to change agency policies if advocates explain the need for such policy changes. However, if agency officials are unwilling to change their policies and practices, the Worker Justice Project is prepared to file suit.

Conclusion

In the United States, nearly one in three adults has a criminal record.[[31]](#footnote-32) These individuals face enormous barriers to employment. Legal services lawyers cannot, on their own, eliminate these barriers. A major culture shift is necessary[[32]](#footnote-33)—one that pushes employers and government agencies to appreciate the qualifications and value of people with records, and ends the exclusion of people with records from the workplace and public life.[[33]](#footnote-34)

However, legal services lawyers in public defender offices can play an important role in expanding employment opportunities for workers with records. Every person represented by a public defender organization deserves access to a criminal employment law expert from the date of their arrest until the date that the criminal case ceases to harm their employment opportunities. To be most effective, these experts should provide comprehensive criminal employment law services, including (1) advice to trial-level criminal defense attorneys about the employment consequences of arrest and disposition; (2) empowerment of workers with records through advice and the creation of accomplishment packets; (3) representation of workers in administrative proceedings, pre-litigation advocacy, and litigation related to criminal record discrimination; and (4) legislative and policy-related advocacy to effect systemic change. This model addresses head-on the destructive employment consequences of criminal prosecution, and it increases workers’ employment opportunities in concrete and measurable ways.

1. ∞ Melissa S. Ader, Staff Attorney, Worker Justice Project, Criminal Defense Practice, The Legal Aid Society. Email: mader@legal-aid.org. Thank you to Tina Luongo for her immense support of the Worker Justice Project, without which the Project would not exist; to Joshua Carrin for building the Worker Justice Project with me in 2019; and to Megumi Saito, Caroline Lowry, and Tiffany Pesante, for building the Project even further these past few months—I am so excited for the work we will do together in the future. Thank you also to Equal Justice Works and the sponsors of my 2015–2017 Equal Justice Works fellowship, Sullivan & Cromwell LLP and AIG; the fellowship, which focused on criminal employment law, was instrumental in enabling the creation of the Worker Justice Project at The Legal Aid Society. Finally, thank you to the members of the Employment Law Unit in the Civil Practice of The Legal Aid Society, for their support and guidance. [↑](#footnote-ref-2)
2. *See generally* Benjamin Levin, *Criminal Employment Law*, 39 Cardozo L. Rev. 2265 (2018) (describing criminal employment law as existing “at the nexus of employment law and the criminal system” wherein laws encourage employers not to hire or retain people with criminal records). [↑](#footnote-ref-3)
3. *See* Michelle Alexander, The New Jim Crow: Mass Incarceration in the Era of Colorblindness 151–54 (2012) (explaining that Black people with criminal records “are the most severely disadvantaged applicants in the modern job market,” and that the explicitly race-based employment discrimination of the mid-twentieth century has been replaced by no-less-insidious employment discrimination that uses criminal records as a proxy for race); Bruce Western & Catherine Sirois, *Racialized Re-entry: Labor Market Inequality After Incarceration*, 97 Soc. Forces 1517 (2019) (finding that, after incarceration, white people earn more and secure more stable jobs than Black and Hispanic people do, “even after accounting for health, human capital, social background, crime and criminal justice involvement, and job readiness”); Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Soc. 937, 959 (2003) (noting that the negative effect of a criminal record on number of callbacks is 40% larger for Black job applicants than white job applicants). [↑](#footnote-ref-4)
4. *See, e.g.*, Margaret Colgate Love, et al., Collateral Consequences of Criminal Conviction: Law Policy And Practice (West/NACDL 3d ed. 2019); Devah Pager, Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration 28–41 (2007) (discussing a criminal record as an official “negative credential” and stigmatizing mark, making jobs and licenses more difficult to obtain); Benjamin D. Geffen, *The Collateral Consequences of Acquittal: Employment Discrimination on the Basis of Arrests Without Convictions*, 20 U. Pa. J.L. & Soc. Change 81, 85–88 (2017) (noting negative employment consequences suffered by people who were arrested but never prosecuted); Levin, *supra* note 1, at 2266–2271 (stating that employers may fire, punish, or refuse to hire workers with criminal records). [↑](#footnote-ref-5)
5. N.Y. Educ. Law § 2590-h(20) (2019); N.Y.C. Dep’t of Educ., Reg. of the Chancellor C-105 (2003). [↑](#footnote-ref-6)
6. 8 N.Y. Comp. Codes R. & R. §§ 87.2(e), 87.3, 87.4 (2007). [↑](#footnote-ref-7)
7. N.Y Soc. Serv. Law § 390-b (2019); 24 N.Y.C. Rules & Regs. § 47.19(c)(1) (2020). [↑](#footnote-ref-8)
8. A violation is a type of conviction that can result from criminal prosecution in New York State. Although a violation is not a crime, it can negatively affect employment opportunities. *See* N.Y. Penal Law § 10.00(1) (2019) (defining “violation” as “an offense, other than a ‘traffic infraction,’ for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed,” and defining “crime” as “a misdemeanor or a felony”). [↑](#footnote-ref-9)
9. Legal Aid Soc’y, Annual Report 2019: Justice in Every Borough 28 (2020) https://legalaidnyc.org/annual-report/2019/img/LAS-AR-2019.pdf [https://perma.cc/C5YN-FMXY]. [↑](#footnote-ref-10)
10. While this article focuses on New York, where the Worker Justice Project is located, various other states and cities have strong protections for workers with records. *See* Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, Nat’l Emp’t Law Project (July 1, 2019), https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/ [https://perma.cc/966Q-UQLP] (describing the various state and city laws and policies concerning employment-related criminal record discrimination); *50-State Comparison: Criminal Record in Employment & Licensing*, Restoration of Rights Project (2019), http://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncomparison-of-criminal-records-in-licensing-and-employment/ [https://perma.cc/JL8R-5J8V] (comparing and categorizing each state’s statutes regulating criminal record discrimination in employment and licensing). Some advocates, however, live in states or localities without strong antidiscrimination protections for people with criminal records. I recommend that these advocates prioritize legislative advocacy for strong criminal record discrimination laws, where feasible, over basic Know Your Rights education. However, as I explain below, I believe accomplishment packets can be beneficial even in jurisdictions with weak criminal record discrimination laws. *See* *infra* n. 18. [↑](#footnote-ref-11)
11. N.Y. Exec. Law § 296(16) (2019); *see also* N.Y.C. Admin. Code § 8-107(11) (2020) (incorporating section 296(16) of the executive law into the city human rights law). [↑](#footnote-ref-12)
12. N.Y. Correct. Law § 752 (2007). [↑](#footnote-ref-13)
13. N.Y. Correct. Law § 753; *see also* N.Y. Exec. Law § 296(15) (incorporating article 23-A of the correction law); N.Y.C. Admin. Code § 8-107(10) (same). [↑](#footnote-ref-14)
14. N.Y.C. Admin. Code § 8-107(11-a)(a)(2). [↑](#footnote-ref-15)
15. *Id.* at § 8-107 (11-a)(b)(ii). [↑](#footnote-ref-16)
16. *Id.* at §§ 8-107(11-a)(b)(i), (ii). To see a copy of the Fair Chance Act notice, visit *Fair Change Act Notice*, N.Y.C. Comm’n on Human Rights, https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance\_Form23-A\_distributed.pdf [https://perma.cc/FEU8-7TKN] (last visited March 6, 2020). [↑](#footnote-ref-17)
17. N.Y.C. Admin. Code § 8-107(11-a)(b)(iii) (2020). [↑](#footnote-ref-18)
18. *Id*. at § 8-107(11-a)(b). [↑](#footnote-ref-19)
19. An employer in New York might hire the worker after reviewing the accomplishment packet because (1) the worker has persuaded the employer that they would be an excellent employee and they do not pose a serious risk to the employer, and/or (2) the employer is concerned that the worker will have a valid and litigable discrimination claim if the employer does not hire them. Based on my experience speaking to employers and attorneys, I believe that employers are more motivated by the fear of antidiscrimination litigation and negligent hiring litigation than by a reasonable assessment of the worker’s qualifications and riskiness. For this reason, accomplishment packets are most useful in jurisdictions with strong antidiscrimination protections for people with criminal records. Nevertheless, because some employers do genuinely seek to assess whether the worker will pose a serious risk, accomplishment packets can be useful even in jurisdictions with weak antidiscrimination protections. [↑](#footnote-ref-20)
20. Alternatively, organizations seeking to create similar clinics could partner with local law schools. [↑](#footnote-ref-21)
21. *What You Need to Know About Background Checks*, Legal Aid Soc’y, https://www.legalaidnyc.org/get-help/employment/what-you-need-to-know-about-background-checks/ [https://perma.cc/2R3F-X9X2] (last visited Mar. 6, 2020); *What You Need to Know About Certificates of Relief from Disabilities and Certificates of Good Conduct*, Legal Aid Soc’y, https://www.legalaidnyc.org/get-help/employment/what-you-need-to-know-about-certificates-of-relief-and-good-conduct/ [https://perma.cc/74ST-RF74] (last visited Mar. 6, 2020); *What You Need to Know About Discrimination Based on Arrest and Conviction Records*, Legal Aid Soc’y, https://www.legalaidnyc.org/get-help/employment/what-you-need-to-know-about-discrimination-based-on-arrest-conviction-records/ [https://perma.cc/F7UQ-S4C5] (last visited Mar. 6, 2020). [↑](#footnote-ref-22)
22. Kimani Paul-Emile, *Beyond Title VII: Rethinking Race, Ex-Offender Status, and Employment Discrimination in the Information Age*, 100 Va. L. Rev. 893, 919–20 & n. 130 (2014). [↑](#footnote-ref-23)
23. Data indicate that workers with conviction records are more successful employees than those without conviction records. Trone Private Sector and Educ. Advisory Council, Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company 8–11 (2017). And, New York law provides significant protection to employers who are sued because they hired someone with a conviction record. Specifically, if an employer reasonably considers the eight factors listed at Correction Law section 753 and decides to hire or retain an employee with a conviction record, there is a rebuttable presumption in favor of excluding from evidence the employee’s conviction record in any negligent hiring or retention lawsuit. N.Y. Exec. Law § 296(15). [↑](#footnote-ref-24)
24. When reviewing clients’ criminal records, we determine whether the clients can benefit from New York’s criminal conviction sealing law, Criminal Procedure Law Section 160.59. We refer eligible clients to Legal Aid’s criminal conviction sealing project, Case Closed. *See* Case Closed, https://caseclosed.nyc [https://perma.cc/BE26-9P8T] (last visited Feb. 17, 2020). [↑](#footnote-ref-25)
25. *See* William Glaberson, *Faltering Courts, Mired in Delays*, N.Y. Times (Apr. 13, 2013) (identifying the criminal courts in Bronx County, New York, as in “the bottom ranks of the most backlogged of the big-city courts in the country”). [↑](#footnote-ref-26)
26. Issa Kohler-Hausmann, Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing 147 (2018). [↑](#footnote-ref-27)
27. *See Our Organizations*,Coalition of Reentry Advocates, <http://www.cora-ny.org/>our-organizations [https://perma.cc/6C2F-UUQX] (last visited Feb. 15, 2020). [↑](#footnote-ref-28)
28. A. 6045, 2019–2020 Leg., Reg. Sess. (NY 2019); S. 3995, 2019–2020 Leg., Reg. Sess. (N.Y. 2019). [↑](#footnote-ref-29)
29. S. 1505–C & A. 2005–C, pt. II, subpt. O, 2019–2020 Leg. (N.Y. 2019) (amending N.Y. Exec. Law § 296(16)). [↑](#footnote-ref-30)
30. *See* N.Y. State Div. of Crim. Justice Servs., 2014–2018 Dispositions of Adult Arrests (Mar. 22, 2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf [https://perma.cc/6MTT-LEK6] (reporting the number of criminal cases in New York State resolved with adjournments in contemplation of dismissal annually, from 2014 to 2018). [↑](#footnote-ref-31)
31. Anastasia Christman & Michelle Natividad Rodriguez, *Research Supports Fair Chance Policies*, Nat’l Emp. Law Project (Aug. 1, 2016), <https://www.nelp.org/publication/research-supports-fair-chance-policies/> [https://perma.cc/9CCF-V27N]. [↑](#footnote-ref-32)
32. *See* Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward A Demosprudence of Law and Social Movements*, 123 Yale L.J. 2740 (2014) (explaining the role of culture shifting and popular mobilization in “producing durable social change”); Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law To Make Social Change*, 72 N.Y.U. L. Rev. 967 (1997) (describing the law’s “culture-shifting” and “rule-shifting” capacities). [↑](#footnote-ref-33)
33. *See, e.g.*,Full Participation Is A Human Right, https://full-participation.org [https://perma.cc/HT67-8ZSM] (last visited Feb. 17, 2020) (describing the Full Participation Movement, which challenges the exclusion of people with criminal records from the workplace and other community sectors). [↑](#footnote-ref-34)