



## Economic Opportunity and Poverty Reduction Task Force Bill #2 to Clarify Employer Liability

**WHAT THE BILL DOES:** This bill seeks to codify what is common law in Colorado in order to clarify employer liability when hiring persons with a criminal history. Specifically, this bill clarifies the criminal history information that can be admitted into evidence in a civil action.

- If the nature of the criminal history has no direct relationship to the facts underlying the cause of action in the civil case, the criminal history information can not be admitted into evidence.
- If the court has sealed the criminal record or the employee was pardoned before the act giving rise to the civil action, this information can not be admitted into evidence.
- If the record is of an arrest or charge that did not result in a conviction, this information can not be admitted into evidence.
- The bill does not supersede any statutory requirement an employer has to conduct a criminal history background investigation or consider a criminal history background for certain professions.

(Note: The intent of this bill is to codify common law. CCJRC is currently seeking further legal advice, and the draft of the bill may need to be revised.)

**RATIONALE:** The Pew Center on the States recently reported that one out of every 29 people in Colorado is either incarcerated or under supervision of the criminal justice system.

- 98% of the people incarcerated in Colorado are eventually released to re-enter society.
- 10,789 people were released from prison during fiscal year 2009; thousands more are released from Colorado's jails every year.

Research demonstrates a relationship between employment and recidivism reduction, as well as desistance from crime:

- "Meaningful work is an important contributor to reductions in offending."  
*What Works: Effective Recidivism Reduction and Risk-Focused Prevention Programs.* Roger Prsybylski. Prepared for the Colorado Division of Criminal Justice. February 2008.
- "Like marriage, strong ties to work can lead to desistance from crime. One study using longitudinal data found that job stability was strongly related to desistance from crime."  
*Parole, Desistance from Crime, and Community Integration.* National Research Council. 2008.
- "Research has shown a relationship between employment, wages and crime rates and a relationship between the economic health of a community and incarceration rates. The impact of policies related to employment and wages is concentrated among people of color, who are more likely to experience unemployment, hold lower-paying jobs and be incarcerated."  
*"Employment, Wages and Public Safety."* Justice Policy Institute. October 1, 2007.

Many employers are reluctant to hire people due to the lack of clarity around employer liability for employers who hire people with criminal histories. Since 9/11, more employers than ever are conducting criminal background checks as part of their hiring process. Many people with a criminal conviction from ten–twenty–even thirty years ago continue to encounter barriers to employment long after they have served their sentence and become productive members of society.

- "Many private employers are more reluctant to hire people with criminal records than workers from virtually any other disadvantaged or stigmatized group, because employers view criminal records as a signal of liability and/or risks."

*National Blueprint for Reentry.* Legal Action Center, National HIRE Network. October 2008.