



A Handbook for Kentucky Employers



**FROM COSTING THE TAXPAYERS TO
BEING TAXPAYERS:
Why Second-Chance Hiring Is
Right on Crime**

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INTRODUCTION

Right on Crime trusts this handbook will both assist and encourage employers to consider hiring individuals with criminal records for employment, better known as “second-chance hiring.” According to the Bureau of Justice Statistics, in 2018 alone, 614,844 prisoners were released by state and federal correctional authorities.¹ The Kentucky Department of Corrections reported the release of over 18,000 inmates in 2018.² In the 5-year period ending in 2018, 42.2% of the total number of inmates under the jurisdiction of state and federal correctional authorities were released.³ Their ability to obtain gainful employment is vital to the successful transition from being a burden to taxpayers to becoming productive members of society.

In 2017, Kentucky saw its first decline in recidivism rates in 9 years. At 28.9%, however, this still means that almost a third of those released either violated the conditions of their supervision or committed a new crime within 1 year.⁴ This recidivism rate suggests that in 2018, an estimated 5,000 or more of those released returned to prison, exemplifying a failure in terms of the safety and fiscal health of Kentuckians.

One of the most effective ways to reverse the recidivism trend is through employment. According to former Kentucky Justice and Public Safety Cabinet Secretary John Tilley, those who maintain employment for at least 1 year after release are about 35% less likely to return to jail than those who do not maintain employment.⁵

The ability of those with criminal records to obtain full employment is vital to their success in moving from being tax burdens to taxpayers.

Corporate leaders, including Home Depot, Koch Industries, Walmart, and Starbucks, have encouraged second-chance hiring. However, it is understandable that some employers maintain concerns that there might be risks associated with hiring someone with a criminal background. Through this brief “how to” handbook, Right on Crime hopes to equip employers with data to inform their consideration of second-chance hiring, which benefits not only individuals and employers, but also the Bluegrass State as a whole.



WHO ARE THE KENTUCKIANS IN NEED OF SECOND-CHANCE HIRING?

In December 2017, former Governor Matt Bevin’s Kentucky Criminal Justice Policy Assessment Council (CJPAC) released a report that gave a better understanding of Kentucky’s prison overcrowding, finding that a significant portion of Kentucky’s prisoners were low-level, nonviolent offenders. The group found that from 2012 through 2016, “there was a 38 percent growth in Class D felony admissions, the least serious of Kentucky’s felony offenses, including a doubling in drug possession admissions. At the same time, admissions for parole revocations increased by 50 percent, and, by 2016, supervision failures made up 61 percent of all admissions to prison.”⁶ (Parole revocations and supervision failures are often for otherwise non-jailable offenses, such as failing a drug test or missing a meeting with a parole officer.) Of new felony admissions in 2016, the group found that “almost two-thirds of new admissions were sentenced for drug and property offenses, and nearly half of people sentenced directly to prison for drug and property offenses had no prior felony record.”⁷ Unfortunately, although the majority of those being incarcerated are low-level offenders who receive significant amounts of taxpayer-funded resources, recidivism remains high. As of 2016, “41 percent of offenders return to state custody within two years of release.”⁸



EMPLOYING INDIVIDUALS WITH CRIMINAL RECORDS PROVIDES ECONOMIC STABILITY FOR FAMILIES

Kentucky has a historically high incarceration rate—the seventh highest rate in the country in 2018.⁹ Also in 2018, Kentucky had the fifth highest rate in the country of children with parents who have ever been incarcerated at 117,794 children, or 12% of Kentucky’s kids.¹⁰ Research has shown that “income averaged over the years a father is incarcerated is 22% lower than family

income was the year before a father is incarcerated.”¹¹ Upon reentry, “in the year after the father is released, family income remains 15 percent lower than it was the year before incarceration.”¹² Kentucky already grapples with high levels of poverty: as of 2018, Kentucky’s overall poverty rate was 17.2% (ranked 47th in the country), and the rate of children under 18 in families living in poverty was 22% (ranked 43rd in the country).¹³ Adding incarceration to the equation perpetuates this poverty and economic instability.

An effective solution to address the poverty among the formerly incarcerated is to expand opportunities for good-paying, stable employment upon release. When employers hire individuals with criminal records, they provide benefits not only to these individuals, but also to their families and ultimately to the community at large. Economic stability makes it less likely that individuals with criminal records will return to criminal activity and allows them to model a positive work ethic for their children. Additionally, they gain self-respect, improve their mental health, and are offered the opportunity to develop strong positive relationships through their work.¹⁴ Individuals leaving prison have stressed the importance of having a job in order to avoid future criminal activity. Employers are in a special position to support these individuals’ transition into contributing members of their households and communities.¹⁵

WHY EMPLOYMENT SHORTLY AFTER RELEASE IS IMPORTANT

Individuals with criminal history, like all Kentuckians, rely on employment to integrate into the community. Employment is a strong contributor to recidivism reduction efforts as it helps individuals with criminal records focus their time and efforts on pro-social activities, rather than engaging in risky or criminal behavior. A study on the recidivism rates of individuals with criminal records found the longer an individual remains out of prison, the lower the likelihood of recidivism.¹⁶ Reducing recidivism, of course, “improves public safety, reduces taxpayer spending on prisons, and helps formerly incarcerated people successfully resume family and community responsibilities.”¹⁷ Moreover, various evidence-based policies and programs¹⁸ that have been put in place in prisons and through reentry services in recent years have demonstrated improved outcomes for those released from prison: Georgia has seen a 35% reduction in



returns to prison from parole (from 2007 to 2016) and Michigan has seen a 43% reduction (from 2006 to 2015).¹⁹



BARRIERS TO EMPLOYMENT—BACKGROUND CHECKS, EMPLOYER LIABILITY, & COMMUNITY SUPERVISION REQUIREMENTS

Individuals with criminal records face numerous obstacles when trying to reintegrate into society. One of the hardest obstacles to overcome is the reluctance of employers to hire someone with a criminal background.²⁰ Another concern of employers who use background checks is protection from any liability that could stem from hiring an individual with a criminal record. Additionally, community supervision requirements after release can interfere with one’s ability to perform one’s job without interruption. The information below may be helpful to employers who have these concerns.

Criminal Background Checks

Research has shown that most employers are reluctant to hire applicants with criminal records.²¹ Criminal background checks remain a part of the application process for many employers—as of 2019, 93% of U.S. employers performed criminal background checks on prospective employees.²² Criminal background checks can also be necessary, especially if employers are hiring individuals to work with vulnerable populations, such as children or the elderly, or to fill roles that are subject to a sensitive fiscal duty. Important to consider in the goal of reducing recidivism through employment, though, is that “a criminal record reduces the likelihood of a callback or job offer by nearly 50%,” with a 28% callback or job offer rate for applicants without a criminal record versus a 15 percent rate for applicants with a criminal record.²³

In Kentucky, some movement has been made to reduce the reliance on criminal background checks, at least in the early stages of the hiring process. In 2017, Governor Bevin signed an executive order that eliminates questions about criminal history on state executive branch job applications.²⁴ Hiring managers are still able to run background checks on their applicants prior to making a hiring decision, but the criminal background is not otherwise a hurdle to qualified applicants first having a job interview. Governor Bevin encouraged businesses to consider implementing similar policies.

Additionally, through the work of the General Assembly, Kentucky has made progress on expungement of criminal records. Expungement is a judicial process by which an arrest or conviction record is erased or sealed, giving individuals a “clean slate” when applying for jobs. In 2016, Governor Bevin signed House Bill 40 into law, which created a process for a defendant to apply for discretionary expungement of certain low-level Class D felonies. If the court grants the motion, the record is expunged. In 2019, Governor Bevin signed Senate Bill 57 into law, which expanded discretionary expungement to all Class D felonies. In 2020, Governor Andy Beshear signed House Bill 327 into law, which automatically expunges acquittals and dismissals with prejudice—in other words, records that resulted in a finding of legal innocence.

What Employers Should Consider

When creating an application and interview process that could include potential employees with a criminal background, employers should consider:

- Whether employment decisions can be made without focusing on a background check. Employers who focus on background checks to make a final hiring decision risk missing out on good employees.
- If your business uses criminal background checks, whether you are following Equal Employment Opportunity Commission (EEOC) guidance. EEOC updated its guidance on the use of criminal background checks to clarify that covered employers are “liable for violating Title VII when [a] plaintiff demonstrates that the employer’s policy or practice has the effect of disproportionately screening out a Title VII-protected group and the employer fails to demonstrate that the policy or practice is job related for the position in question and consistent with business necessity.”²⁵ EEOC identifies three factors that can be used to assess whether excluding a person with a criminal background is job-related and consistent with business necessity: “The nature and gravity of the offense or conduct; [t]he time that has passed since the offense or conduct and/or completion of the sentence; and [t]he nature of the job held or sought.”²⁶ If those factors exclude a candidate, then the employer should provide an “opportunity for an individualized assessment for people excluded...to determine whether the policy as applied

is job related and consistent with business necessity.”²⁷ For more information, please visit <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#V>.



EMPLOYER LIABILITY—PROTECTING EMPLOYERS FROM EMPLOYEE WRONGDOING

In recent years, several states have enacted legislation that holds employers harmless for misdeeds an employee who has a criminal background may commit.

In Kentucky, the General Assembly has been following this trend. In the 2020 regular session, the legislature passed and the governor signed into law a bill to encourage second-chance hiring.²⁸ The new law, codified as KRS 222.215, requires the Cabinet for Health and Family Services and the Office of Drug Control Policy to promulgate regulations needed to implement employer-facilitated substance use disorder treatment programs for employers voluntarily wishing to implement treatment programs for employees who fail an employment-related drug test. The law relieves compliant employers participating in the program from potential liabilities arising from negligent hiring, retention, or supervision.

What Employers Should Consider

When contemplating hiring someone with a criminal background, some questions for employers to consider are:

- What is the relevance of the offense to the job being applied for?
- How long ago did the offense(s) occur? (Research supports that non-recidivism 5 to 6 years after a property crime or 9 to 11 years after a violent crime drops an individual’s risk of reoffending to approximately that of a never-arrested person of the same age.²⁹)
- Was the offense work-related?
- What has the person accomplished since being convicted of an offense (job skills, life skills, drug treatment, further education)?

Community Supervision

Nationally, by the end of 2016, there were approximately 4,537,100 adults under some type of community supervision. Some 19% were under parole supervision (874,800 adults) and the other 81% were on probation. The total represents a rate

of 1 in 55 adults under supervision.³⁰ In Kentucky, as of year-end 2018, there were 50,066 offenders under the supervision of the Kentucky Department of Corrections Division of Probation and Parole—13,754 or 29% were parolees released by the Parole Board and 36,279 or 70% were offenders placed on supervision by the Court.³¹

There are many benefits to hiring those with criminal records, and hiring those under community supervision is no different. These employees come with a unique set of barriers, but many can be mitigated by proactive steps taken by individuals and their employers. It is recommended that employers develop relationships with employees' probation or parole officers where possible. In a meeting between Volunteers of America Mid-States (VOA Mid-States) and Right on Crime in June 2019 in Louisville, Kentucky, VOA Mid-States reported great success in building relationships with community supervision officers and helping balance clients' obligations between supervision reporting and treatment programming. This outreach can be applied to workplace managers and probation and parole officers. This is a unique opportunity for employers to be advocates for their employees.

Additionally, Right on Crime Louisiana State Director Scott Peyton has worked to host a series of employer forums that has brought the state's employers and probation and parole authorities together to share needs and opportunities from both sectors. These forums have encouraged both groups to work together and help overcome the barriers this population faces in the workplace.

What Employers Should Consider

As employers contemplate hiring individuals under community supervision, it is important for HR managers and company leaders to understand and help manage the requirements an employee may have as part of their supervision. Some important reminders and helpful tips to consider are:

- Will this employee need to have check-ins with his or her parole or probation officer during work hours? Employers should consider offering flexibility for employees to meet these probation and parole requirements, when possible.
- Will any of the job requirements conflict with this employee's community supervision conditions? (Some states have conditions that forbid individuals from being in environments



where alcohol is served or limitations on being around other individuals of ill repute.)

- Would it be acceptable if a probation or parole officer comes by the workplace to do an unexpected check-in with the employee?



BENEFITS TO EMPLOYERS WHO HIRE INDIVIDUALS WITH CRIMINAL RECORDS

Employers should engage the local American Job Centers (AJCs) in their community, which typically have pools of candidates with criminal records that have received training or other supportive services. The AJCs³² can also offer valuable assistance with business incentives like the Work Opportunity Tax Credit, Federal Bonding, and the On-the-Job Training Program.

Any unemployed or underemployed person can sign up for job training or placement at American Job Centers (AJCs), which provide opportunities funded by the Workforce Innovation and Opportunity Act (WIOA). AJCs provide a number of services that include online job search tools, résumé assistance, and the ability to pay for training programs or On-the-Job Training (OJT) programs. They also assess the person's reading and math levels for training eligibility, often by administering the Test of Adult Basic Education (TABE). All training programs are intended to result in at least one industry-recognized credential and subsequent job placement. On-the-Job Training programs are employer-focused, and the local AJC temporarily pays a percentage of a person's salary as they learn while they work. Other employer-focused programs include federal bonding and the Work Opportunity Tax Credit (WOTC).

Work Opportunity Tax Credits

The Work Opportunity Tax Credit (WOTC) is a federal program available to employers who hire individuals with criminal records. For individuals with criminal records, the tax credit is based on qualified wages paid to the employee for the first year of employment. Qualified wages are capped at \$6,000. The credit is 25% (up to \$1,500) of qualified first-year wages for those employed at least 120 hours but fewer than 400 hours, and 40% (up to \$2,400) for those employed 400 hours or more.³³ If the employee works less than 120 hours, the WOTC cannot be claimed. To apply, Kentucky employers should follow these steps:³⁴

1. Complete the first page of IRS Form 8850 by the day the job offer is made. The second page can be filled out once the employee is hired. The form is available on the IRS website at <https://www.irs.gov/forms-pubs/about-form-8850>.
2. Complete ETA Form 9061, available on the DOL website at <https://www.dol.gov/agencies/eta/wotc/how-to-file>.
3. Submit the completed and signed IRS and ETA forms through the Kentucky online WOTC System, available at <https://wotc.ky.gov/logon.aspx>. Form 8850 must be submitted within 28 calendar days of the employee's start date.
4. Wait for a final determination from your Kentucky Career Center Tax Credit Unit. The determination will indicate whether the employee is certified as meeting the eligibility for one of the WOTC target groups. The Kentucky Tax Credit Unit can be reached at phone number (502) 782-3465 or email wotc@ky.gov.
5. The employment of the target group employee is verified, and a tax credit certification is administered to the employer certified by the Kentucky Career Center Tax Credit Unit to file for the tax credit with the Internal Revenue Service.

Federal Bond Program

The U.S. Department of Labor (USDOL) created the Federal Bonding Program (FBP) to provide fidelity bonds to qualifying employers who hire someone with a criminal history. Employers can obtain the bonds—a \$5,000 face value—free of charge as an incentive to hire those with criminal backgrounds. Coverage is for the first 6 months of employment. The FBP bond was designed to reimburse the employer for any loss due to employee theft of money or property. Advantages include:

- No special application form for job seeker to complete,
- No bond approval process,
- No federal regulations covering bonds issued,
- No papers for employers to submit or sign,
- No follow-up or required termination actions,
- No deductible in bond insurance amount if employee dishonesty occurs, and
- No bondee age requirements (other than legal working age in state).



The Federal Bond Program Has Achieved a 99% Success Rate

Since the inception of the program over 50 years ago, bonds have been activated only 1% of the time.³⁵ The truth is the **Federal Bonding Program** has introduced talented, dedicated, and passionate employees to their employers with many successful outcomes.

Bonds can be applied to:

- Any job,
- Any state,
- Any employee dishonesty committed on or away from the work site, and
- Any full- or part-time employee paid wages (with federal taxes automatically deducted from pay), including individuals hired by temp agencies. Self-employed people cannot be covered by fidelity bonds.

Employers can contact the state bonding coordinator through the Kentucky Career Center Office of Employment and Training.

Michelle DeJohn, Business Services Branch Manager
275 East Main Street, 2-WA
Frankfort, KY 40621

Phone: 502-564-7456

Email: michelle.dejohn@ky.gov

Thousands of employers across the country have integrated the FBP into their hiring practices, including those in industries such as the hospitality, retail, construction, transportation, auto repair, manufacturing, health care, nonprofits, banking, tourism, and more. This program boasts over 52,000 job placements for at-risk job seekers made automatically bondable.

On-The-Job Training

Once exiting inmates are connected to the AJCs, eligible employers can take advantage of the On-the-Job Training program. The OJT program is a federal labor program in which employers agree to hire workers from disenfranchised groups and, in turn, the state DOL, using USDOL funds, reimburses 50% or more of an employee's wages for a specific period. This program can incentivize the business community to consider prospective employees before permanently hiring the most qualified candidates at a competitive wage.

Ex-offenders qualify for Workforce Innovation and Opportunity Act (WIOA) funds based on this status, although they may qualify under multiple criteria.³⁶ WIOA defines an "ex-offender" as an adult or juvenile:

1. Who is or has been subject to any stage of the criminal justice process, and for whom services under this Act may be beneficial; or
2. Who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.³⁷

Nationally, approximately 49,286 ex-offenders received some type of WIOA service from October 2018 to September 2019.³⁸ These can take the form of basic career services, individualized career services, or professional training services.³⁹ However, only 16,468 ex-offenders actually received professional training services during that same period.⁴⁰ This is because a person can receive initial WIOA services without progressing to professional training services.

To apply, employers should contact their local Kentucky Career Center and ask to discuss the requirements of the OJT program. A list of local Kentucky Career Centers can be found at: <https://kcc.ky.gov/Pages/Locations.aspx>.

HIRING INDIVIDUALS WITH CRIMINAL RECORDS PUTS EMPLOYERS IN GOOD COMPANY

Companies of all sizes have publicly manifested an intent to hire individuals with criminal records. Below are examples of both national and Kentucky-based businesses that have made second-chance hiring a part of their business model.

KOCH INDUSTRIES

Koch Industries has enthusiastically embraced a business model of second-chance hiring and has encouraged other businesses to do the same. One way Koch has integrated second-chance hiring is through “ban the box,” meaning they have removed questions about a criminal record from their job applications. This is aligned with Koch’s desire to find the best employees regardless of past mistakes. Employers, like Koch Industries, are engaged in global competition for talent and need the best employees, not just the best employees without a criminal record.

To date, Koch Industries has hired hundreds of people with criminal records. Koch Industries’ philosophy is that all businesses have a stake and a role to play in providing meaningful employment for those seeking a second chance and that

“Nobody should be defined by their worst day. Everyone who paid their debt to society and wants to work hard deserves a fair chance.”

—Mark V. Holden,
*Koch Industries
General Counsel*

considering qualities beyond a criminal record is a smart business practice.

DV8 KITCHEN

Rob and Diane Perez created DV8 Kitchen in Lexington with a social enterprise goal of second-chance hiring for those in recovery from substance abuse, to allow people to “deviate” from their past lifestyle. DV8 partners with local residential recovery facilities to ensure its employees’ optimal accountability. DV8 also expects its employees to complete a 12-step recovery program and ensures continued sobriety through weekly checks. Besides accountability and employment, DV8 also offers employees opportunities to learn from local business leaders, workshops to learn skills from yoga to ballroom dancing, and encouragement to pursue a career, whether it be culinary or otherwise. After Yelp ranked them the 40th best restaurant in America, their popularity skyrocketed. The success of their restaurant led to them hosting seminars for individuals around the country interested in setting up similar businesses.

TYSON FOODS

Tyson Foods, which has multiple locations throughout Kentucky, signed the Fair Chance Pledge, a pledge to work to eliminate barriers for those with criminal records. The company hires for a variety of positions, including working at their warehouses, farms, production plants, and in logistics and transportation.

WALMART

Walmart has over 100 stores in Kentucky, employing nearly 30,000 associates. Walmart also signed the Fair Chance Pledge and generally does not discriminate against hiring those with criminal backgrounds (so long as a certain time has passed since their conviction and they are not working with firearms). Walmart also allows those with felony backgrounds to apply to management positions.

WHY INDIVIDUALS WITH CRIMINAL RECORDS MAKE OUTSTANDING EMPLOYEES

In addition to the intrinsic societal benefits and economic stability attributed to second-chance hiring, employers who hire individuals with criminal records may actually experience lower employee turnover, saving their company thousands of



dollars each year.⁴¹ Individuals on community supervision will have an extra layer of accountability that can serve as a safety net for the employer, since these individuals are supervised, report frequently for drug testing, and must maintain employment as a condition of release. (A list of general probation and parole requirements is found in the **Appendix**.)

According to the National Skills Coalition workforce projections through 2022, Kentucky will experience job openings of 29% for high-skill jobs, 53% for middle-skill jobs, and 18% for low-skill jobs. In 2015, 58% of Kentucky’s job market required at least middle skills, while only 48% of the state’s workers were trained to that level.⁴³ A middle-skill job is one “which require[s] education beyond high school but not a four-year degree.”⁴⁴ Kentucky has a number of programs to train inmates into middle-skilled workers, ripe for employment by second-chance employers.

In light of Kentucky’s staggering need for skilled workers, employers who consider hiring individuals with criminal records can find those who have used their time in prison productively by participating in any number of life skills and job training opportunities found in Kentucky prisons. Many of these opportunities offer “good time” credit, meaning the inmate will receive credit toward his or her sentence for completing the program.⁴⁵ According to the Kentucky Department of Corrections, the following trainings, among others, and which vary from facility to facility, are provided to the state population with a criminal record:

Soft Skills Boot Camp — Soft Skills Boot Camp is designed to “assist inmates in getting a job upon release” and is limited to inmates whose release dates are less than a year away.⁴⁶ The program teaches work-ready skills, “such as communication, problem solving, customer service, teamwork, and conflict resolution.”⁴⁷

Jobs Skills Training via In2Work (N2W) — This program “is designed to provide hands-on training that consists of three phases—kitchen basics, retail basics, and [Serv-Safe] certification” for the food service industry.⁴⁸ Upon completion, the participant receives a Serv-Safe certificate.

Emergency Medical Technician Program — The Emergency Medical Technician training program “trains potential EMTs to manage urgent care patients” and teaches them how to

“We’ve found that just by us giving that opportunity [of employment], a lot of people so appreciate it that what we get back as a company in return is much greater than what we ever gave in the beginning,” says Bonnie Mrozcek, chief talent officer for Butterball Farms.

Butterball is a leader in the effort to get more so-called released offenders into stable employment. But its original motive wasn’t strictly altruistic, says Mrozcek. Twenty years ago, Butterball was having trouble filling positions and wanted to expand the applicant pool. The company discovered ex-offenders were great workers with lower turnover rates on average than other employees.⁴²

—*The Guardian*



transport patients to hospitals or other medical facilities.⁴⁹ “The participants will have an EMT certification test at the conclusion of the course,” and “[t]hose [who] pass will earn an [EMT] certification.”⁵⁰

Water Plant and Waste Water Treatment Program — This program “covers the operation and maintenance of a one million gallon per day extended aeration plant [handling] raw sewage that is treated with microorganisms.”⁵¹ After 1 year of work in the program, inmates qualify to test for the Class I Operator’s license. After 2 years, they can test for the Class II license.⁵²

Horticulture — This two-phase vocational program instructs inmates on horticulture and landscaping and includes OSHA safety courses. Horticulture is a 10-month good time eligible program.⁵³

Masonry — This 10-month program “provid[es] inmates with entry-level masonry skills” and OSHA training.⁵⁴ The program uses the same curriculum “used by technical schools and apprenticeships throughout the nation” so that inmates are ready to enter the workforce upon release.⁵⁵

Carpentry — This program teaches inmates “the basics of residential and commercial carpentry.”⁵⁶ Eligible inmates “can earn 90 days [of] Educational [good time] credits once completed.”⁵⁷

C-Tech Network Cabling — This program teaches inmates three different curriculum components: “Introduction to Telecommunications, Copper Based Cabling, and Fiber Based Cabling.”⁵⁸ C-Network Cabling “is a six-month [good time] eligible program.”⁵⁹

Construction Management — This vocational program teaches inmates the basics of construction management, including a 10-hour OSHA certification, soft skills, and project supervision.⁶⁰ Construction Management “is a six-month [good time] eligible program.”⁶¹

Small Engine Repair Program — This program certifies inmates on small engine repair based on the National Occupational Career Testing Institute curriculum. Small Engine Repair is a 10-month “good time” eligible program.⁶²

CONCLUSION

Second-chance hiring benefits the community in many ways. First, it increases individuals' chances at becoming a productive members of society by affording gainful employment to provide for themselves and their families. Second, successful reintegration into the community translates to safer communities. Finally, businesses who embrace second-chance hiring contribute to their communities, while also investing in the potential of a good employee.

The purpose of this handbook is to assist employers in making informed decisions when considering individuals with criminal records for employment in their companies. Right on Crime is engaged in Kentucky's effort to move the criminal justice system from a zero-sum model of punitive engagement to a mutually beneficial model of restitution and rehabilitation, with the ultimate goal of improving the safety of Kentucky communities. We also have a strong belief in and support for preserving the family. Providing opportunities for employment is a proven way to achieve this end.

THE CONSERVATIVE CASE FOR CRIMINAL JUSTICE REFORM

The defense of society from internal and external threats is a legitimate public good, and public safety is recognized by virtually all Americans as a legitimate use of government power and funds. Americans must ensure that government performs its public safety responsibilities effectively and efficiently.

For too long, however, American conservatives have ceded the intellectual ground on criminal justice. Liberal ideas came to occupy the space, and in many respects, they were misguided ideas. They often placed the blame for crime upon society rather than upon individuals. They also failed to effectively monitor many criminal justice programs to determine whether they were truly providing taxpayers with the results commensurate with their cost. Now, the criminal justice arena is starved for conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering costs. Right on Crime makes the case for conservative criminal justice reform.

Public Safety

Although crime has declined in recent years, more than 10 million violent and property crimes were reported in 2012.





Because government exists to secure liberties that can only be enjoyed to the extent there is public safety, state and local policymakers must make fighting crime their top priority, including utilizing prisons to incapacitate violent offenders and career criminals. Prisons are overused, however, when non-violent offenders who may be safely supervised in the community are given lengthy sentences. Prisons provide diminishing returns when such offenders emerge more disposed to re-offend than when they entered prison.

Conservatives recognize that there are still far too many victims and too many Americans living in fear in their own homes and neighborhoods. Accordingly, conservatives are united in seeking to use the limited resources in both the law enforcement and corrections systems to maximize further reductions in the crime rate for every taxpayer dollar spent.

Right-Sizing Government

Nearly 1 in every 100 American adults is in prison or jail. When you add in those on probation or parole, almost 1 in 33 adults is under some type of control by the criminal justice system. When Ronald Reagan was president, the total correctional control rate was 1 in every 77 adults. This represents a significant expansion of government power. By reducing excessive sentence lengths and holding nonviolent offenders accountable through prison alternatives, public safety can often be achieved consistent with a legitimate, but more limited, role for government.

Fiscal Discipline

Taxpayers know that public safety is the core function of government, and they are willing to pay what it takes to keep communities safe. In return for their tax dollars, citizens are entitled to a system that works. When governments spend money inefficiently and do not obtain crime reductions commensurate with the amount of money being spent, they do taxpayers a grave disservice. Conservatives must address runaway spending on prisons just as they do with education and health care, subjecting the same level of skepticism and scrutiny to all expenditures of taxpayers' funds.

The prison system now costs states more than \$50 billion per year, up from \$11 billion in the mid-1980s. It has been the second-fastest growing area of state budgets, trailing only Medicaid, and consumes 1 in every 14 general fund dollars.

Conservatives know that it is possible to cut both crime rates and costly incarceration rates because over the past 10 years, 7 states have done it: Maryland, Nevada, New Jersey, New York, North Carolina, South Carolina, and Texas.

At a time of tight budgets in state capitols and households alike, it is time for innovative policy approaches that maximize the public safety return on our investment of taxpayers' dollars.

Victim Support

Punishing criminals and holding them accountable is only part of a government's proper response to crime. Also important is ensuring that crime victims are made whole, treating victims and survivors with respect, making sure they are aware of available services and opportunities for involvement, and reconciling victims with offenders where possible.

In 2008, Texas probationers paid \$45 million in restitution to victims, but prisoners paid less than \$500,000 in restitution, fines, and fees. Making victims whole must be prioritized when determining appropriate punishments for offenders.

Increasing evidence indicates that there is a genuine benefit to incorporating practices into our criminal justice system that emphasize victim engagement, empowerment, and restitution. These concepts have been demonstrated to yield benefits that redound not only to victims, but also to taxpayers and even to offenders, since an offender fully recognizing and acknowledging the harm they have caused another person is often critical to rehabilitation.

The criminal justice system should be structured to ensure that victims are treated with dignity and respect and with the choice to participate, receive restitution, and even be reconciled with offenders. To this end, the system should ensure that victims are provided opportunities: to obtain notice of all proceedings; to be present at all proceedings; to be heard at every proceeding involving a post-arrest release, delay, plea, sentencing, post-conviction release, or any other proceeding at which a victim's right may be at issue; for reasonable protection from intimidation and harm; for privacy; for information and referral; to apply for victim compensation (for violent crime victims); for speedy proceedings and a prompt and final conclusion; and for restitution.





Personal Responsibility

With some 5 million offenders on probation or parole, it's critical that the corrections system hold these offenders accountable for their actions by holding a job or performing community service, attending required treatment programs, and staying crime- and drug-free. When the system has real teeth, the results can be dramatic. For example, offenders subject to swift, certain, and commensurate sanctions for rule violations in Hawaii's HOPE program are less than half as likely to be arrested or fail a drug test.

Government Accountability

More than 40% of released offenders return to prison within 3 years of release, and in some states, recidivism rates are closer to 60%. As Right on Crime signatories Newt Gingrich and Mark Earley have asked, "[i]f two-thirds of public school students dropped out, or two-thirds of all bridges built collapsed within three years, would citizens tolerate it?" Corrections funding should be partly linked to outcomes and should implement proven strategies along the spectrum between basic probation and prison.

Reducing recidivism should be a central focus of conservative efforts to reform criminal justice. Conservatives understand that reforming offenders is both a moral imperative and a requirement for public safety. Breaking the cycle of crime and turning lawbreakers into law-abiding citizens is a conservative priority because it advances public safety, the rule of law, and minimizes the number of future victims.

Family Preservation

Incarceration is a significant and necessary factor in public safety, but conservatives understand that there are also other factors. A strategy of vigorous, data-driven law enforcement that results in more crimes being deterred and solved—coupled with effective probation strategies that emphasize restitution, work, and treatment—is essential for protecting communities.

Conservatives know that certain law enforcement techniques enhance safety, others have little effect on safety, and some may actively diminish public safety because law enforcement dollars are being spent inefficiently or in counterproductive ways. Ultimately, the question underlying every tax dollar that is spent on fighting crime ought to be: Is this making the public safer?

According to *National Review*, “40 percent of low-income men who father a child out of wedlock have already been in jail or prison by the time their first son or daughter is born.” The family unit is the foundation of society. In a society in which too many young men are incarcerated, marriage rates are depressed and far too many children grow up in single-parent homes. Instead of harming families, the corrections system must harness the power of charities, faith-based groups, and communities to reform offenders and preserve families.

Free Enterprise

The Constitution lists only three federal crimes, but the number of statutory federal crimes has now swelled to around 4,500. This is to say nothing of the thousands of bizarre state-level crimes, such as the 11 felonies in Texas related to the harvesting of oysters. The explosion of non-traditional criminal laws grows government and undermines economic freedom. Criminal law should be reserved for conduct that is blameworthy or threatens public safety, not wielded to regulate non-fraudulent economic activity involving legal products.

RIGHT ON CRIME STATEMENT OF PRINCIPLES

As members of the nation’s conservative movement, we strongly support constitutionally limited government, transparency, individual liberty, personal responsibility, and free enterprise. We believe public safety is a core responsibility of government because the establishment of a well-functioning criminal justice system enforces order and respect for every person’s right to property and life, and ensures that liberty does not lead to license.

Conservatives correctly insist that government services be evaluated on whether they produce the best possible results at the lowest possible cost, but too often this lens of accountability has not focused as much on public safety policies as other areas of government. As such, corrections spending has expanded to become the second fastest growing area of state budgets—trailing only Medicaid.

Conservatives are known for being tough on crime, but we must also be tough on criminal justice spending. That means demanding more cost-effective approaches that enhance public safety. A clear example is our reliance on prisons, which serve a critical role by incapacitating dangerous offenders and career



criminals but are not the solution for every type of offender. And in some instances, they have the unintended consequence of hardening nonviolent, low-risk offenders—making them a greater risk to the public than when they entered.

Applying the following conservative principles to criminal justice policy is vital to achieving a cost-effective system that protects citizens, restores victims, and reforms wrongdoers.

1. As with any government program, the criminal justice system must be transparent and include performance measures that hold it accountable for its results in protecting the public, lowering crime rates, reducing re-offending, collecting victim restitution and conserving taxpayers' money.
2. Crime victims, along with the public and taxpayers, are among the key “consumers” of the criminal justice system; the victim’s conception of justice, public safety, and the offender’s risk for future criminal conduct should be prioritized when determining an appropriate punishment.
3. The corrections system should emphasize public safety, personal responsibility, work, restitution, community service, and treatment—both in probation and parole, which supervise most offenders, and in prisons.
4. An ideal criminal justice system works to reform amenable offenders who will return to society through harnessing the power of families, charities, faith-based groups, and communities.
5. Because incentives affect human behavior, policies for both offenders and the corrections system must align incentives with our goals of public safety, victim restitution and satisfaction, and cost-effectiveness, thereby moving from a system that grows when it fails to one that rewards results.
6. Criminal law should be reserved for conduct that is either blameworthy or threatens public safety, not wielded to grow government and undermine economic freedom.



These principles are grounded in time-tested conservative truths—constitutionally limited government, transparency, individual liberty, personal responsibility, free enterprise, and the centrality of the family and community. All of these are critical to addressing today’s criminal justice challenges. It is time to apply these principles to the task of delivering a better

return on taxpayers' investments in public safety. Our security, prosperity, and freedom depend on it.

STATEMENT OF PRINCIPLES SIGNATORIES

- **Chuck Colson** (1931–2012), Prison Fellowship Ministries—*In Memoriam*
- **Kevin Kane** (1966–2016), Pelican Institute for Public Policy (LA)—*In Memoriam*

Governors & Former Governors

- **Jeb Bush**, Former Governor of Florida
- **Robert Ehrlich**, Former Maryland Governor
- **Luis Fortuño**, Former Puerto Rico Governor
- **Mike Huckabee**, Former Arkansas Governor
- **Asa Hutchinson***, Governor of Arkansas; Former U.S. Attorney and Administrator of the U.S. Drug Enforcement Administration
- **Rick Perry**, Former Governor of Texas
- **Bill Haslam**, Former Governor of Tennessee

Former Federal & State Elected Officials

- **Jeff Aftwater**, Former Florida Senate President
- **Bob Barr**, Former Prosecutor, Former Member of the U.S. House of Representatives, Georgia's 7th District
- **Ken Bell**, Former Florida Supreme Court Justice
- **Allan Bense**, Former Speaker of the Florida House
- **Ken Blackwell**, Former Ohio Secretary of State
- **Dean Cannon**, Former Florida Speaker
- **Allison DeFoor**, Former Florida Judge and Sheriff of Monroe County
- **Jim DeMint**, Former South Carolina Senator
- **Craig DeRoche**, Senior Vice President of Advocacy & Public Policy of Prison Fellowship, Former Speaker of the Michigan House of Representatives
- **Don Gaetz**, Former Florida Senate President
- **Andy Gardner**, Former Florida Senate President
- **Newt Gingrich**, Former Speaker of the House of Representatives; American Solutions for Winning the Future
- **Mike Haridopolis**, Former Florida Senate President
- **Bernard Kerik**, Former New York City Police Commissioner
- **Jerry Madden**, Former Chairman, Texas House of Representatives Corrections Committee





- **Simone Marstiller**, Former Florida District Court of Appeals Judge
- **Cleta Mitchell**, Former Member of the Oklahoma House of Representatives, Attorney Foley & Lardner LLP
- **B.J. Nikkel**, Former House Republican Majority Whip, Colorado House of Representatives
- **Kris Steele**, Former Speaker of the Oklahoma House of Representatives
- **Wansley Walters**, Former Secretary, Florida Department of Juvenile Justice
- **J.C. Watts**, Former Member of the U.S. House of Representatives, Oklahoma's 4th District
- **Will Weatherford**, Former Speaker of the Florida House

Former Attorneys General

- **Ken Cuccinelli**, Former Attorney General of Virginia
- **Deborah Daniels**, Former U.S. Attorney and U.S. Assistant Attorney General
- **Richard E. Doran**, Former Florida Attorney General
- **Mark Earley**, Former Virginia Attorney General
- **Edwin Meese, III**, Former U.S. Attorney General
- **Jim Petro**, Former Ohio Attorney General
- **Hal Stratton**, Former New Mexico Attorney General
- **Larry Thompson**, Former U.S. Deputy Attorney General
- **Joe Whitley**, Former Acting U.S. Associate Attorney General and U.S. Attorney
- **Alberto Gonzales**, Former U.S. Attorney General

Think Tanks & Policy Organizations

- **Donna Arduin**, Arduin, Laffer & Moore
- **Gary L. Bauer**, American Values
- **Adam Brandon**, FreedomWorks
- **Ed Corrigan**, Conservative Partnership Institute
- **Tom Giovanetti**, Institute for Policy Innovation
- **Rebecca Hagelin**, Executive Committee of the Council for National Policy
- **Timothy Head**, Faith and Freedom Coalition
- **David Keene**, National Rifle Association
- **Eli Lehrer**, R Street Institute
- **Kelly McCutchen**, The High Impact Network of Responsible Innovators
- **Mark Meckler**, Citizens for Self-Governance

- **Gene Mills**, Louisiana Family Forum
- **Charles Mitchell**, Commonwealth Foundation
- **Derek Monson**, Sutherland Institute
- **Stephen Moore**, Heritage Foundation
- **Penny Nance**, Concerned Women for America
- **Pat Nolan**, Director of the Criminal Justice Reform Project at the American Conservative Union Foundation
- **Lisa B. Nelson**, American Legislative Exchange Council (ALEC)
- **Grover Norquist**, Americans for Tax Reform
- **Tony Perkins**, Family Research Council
- **Ralph Reed**, Founder of the Faith and Freedom Coalition
- **Roberta Combs**, President and CEO, Christian Coalition
- **Keith den Hollander**, National Field Director, Christian Coalition
- **Stacie Rumenap**, Stop Child Predators
- **Bob Williams**, State Budget Solutions
- **Richard Viguerie**, ConservativeHQ.com

Journalists & Commentators

- **William J. Bennett**, Former U.S. Secretary of Education and Federal “Drug Czar”
- **L. Brent Bozell**, Founder, Media Research Center and Chairman of ForAmerica
- **Monica Crowley, Ph.D.**, Fox News political analyst
- **Erick Erickson**, *The Resurgent*

State Policy Organizations

- **Connor Boyack**, Libertas Institute
- **Matthew J. Brouillette**, Commonwealth Foundation (PA)
- **Dominic M. Calabro**, Florida Tax Watch (FL)
- **Jon Caldara**, Independence Institute (CO)
- **Michael Carnuccio**, E Foundation for Oklahoma
- **Daniel Erspamer**, Pelican Institute (LA)
- **Paul Gessing**, Rio Grande Foundation (NM)
- **Wayne Hoffman**, Idaho Freedom Foundation
- **George Kelling**, Manhattan Institute, New York
- **Craig Ladwig**, Indiana Policy Review Foundation
- **George Liebmann**, Calvert Institute for Policy Research (MD)
- **J. Robert McClure, III**, James Madison Institute (FL)



- **John S. McCollister**,* Platte Institute (NE)
- **Charles Mitchell**, Commonwealth Foundation (PA)
- **Sal Nuzzo**, James Madison Institute (FL)
- **Justin Owen**, The Beacon Center (TN)
- **Jon Pritchett**, Mississippi Center for Public Policy
- **Kevin Roberts**, Texas Public Policy Foundation
- **Kory Swanson**, John Locke Foundation (NC)
- **Brenda Talent**, Show-Me Institute (MO)
- **Mike Thompson**, Thomas Jefferson Institute for Public Policy (VA)
- **John Tillman**, Illinois Policy Institute (IL), President, Think Freely Media
- **Kyle Wingfield**, Georgia Public Policy Foundation

Academics

- **Ward Connerly**, American Civil Rights Institute; Former Regent of the University of California
- **John J. Dilulio, Jr.**, University of Pennsylvania
- **Viet Dinh**, Georgetown University Law Center and former U.S. Assistant Attorney General

Religious Leaders

- **David Barton**, WallBuilders
- **Pastor Jack Graham**, Prestonwood Baptist Church
- **Bishop Harry Jackson**, Hope Christian Church
- **Rabbi Daniel Lapin**, American Alliance of Jews and Christians
- **Dr. Russell Moore**, Ethics and Religious Liberty Commission of the Southern Baptist Convention (ERLC)

Former Prosecutors/Executive Agency Employees

- **Kurt Altman**, Attorney, Former Federal and Arizona Prosecutor
- **Brad Cates**, Attorney, Former Director of U.S. Justice Department's Asset Forfeiture Office
- **Donald Devine**, Former Director, Office of Personnel Management
- **Sidney Powell**, Attorney, Former Federal Prosecutor
- **Matthew Orwig**, Former U.S. Attorney, Eastern District of Texas
- **Brett Tolman**, Former U.S. Attorney, District of Utah; Former Counsel, Senate Judiciary Committee
- **Susan Broderick**, Former Assistant District Attorney, Manhattan District Attorney's Office



Private Sector Signatories

- **Doug Deason**, Deason Foundation
- **Stephen Gele**, Smith and Fawer
- **B. Wayne Hughes, Jr.**, Businessman/Philanthropist
- **Henry Juskiewicz**, Gibson Guitar
- **Jay Lapeyre**, Laitram
- **Raul Lopez**, Men of Valor
- **Star Parker**, Center for Urban Renewal and Education
- **Bob Woodson**, Center for Neighborhood Enterprise

**denotes signatory emeritus*

ACCOMPLISHMENTS TO DATE: Right on Crime—Kentucky

House Bill 327

- Allows automatic expungement for the legally innocent, in other words, defendants whose charges have been acquitted or dismissed.
- Offers the ability to petition for expungements of past acquittals or dismissals that occurred prior to the bill's enactment.
- *Why It Matters:* Expungement is an essential reentry tool, particularly as used in House Bill 327, as it prevents acquitted or dismissed charges on someone's record from becoming a roadblock to his advancement through work and life. We should not be hampering individuals who want to be in the workforce from job opportunities when a court did not find them guilty in the first place.

House Bill 284

- Allows Kentucky's probation system to offer sentence credits for those who comply with the conditions of their probation supervision.
- *Why It Matters:* Sentence credits incentivize good behavior and completion of important programs, such as obtaining a GED, skills training, or a college degree. This newly enacted law encourages offenders to improve and rehabilitate their lives and obtain and retain employment, while also reducing corrections costs to Kentuckians.

Senate Bill 120

- Removes the blanket occupational licensing measures that disqualified applicants with felony convictions. Licensing authority must demonstrate a direct relationship between



an applicant's past criminal conduct and the occupation for which he/she seeks a license.

- Creates a mechanism for challenging the licensing authority's determination. Certain violent crimes will carry a presumptive relation to any occupation for which a license is required.
- Focuses on job training; authorizes state officials to enroll in the Prison Industry Enhancement Certification Program (PIECP)
 - Allows Kentucky Department of Corrections to "lease the labor of state prisoners" with the prisoner's consent. In turn, the prisoner will receive job training and fair compensation toward their restitution or other financial obligations.
- Provides options for those struggling to pay their court fines and fees.
 - Arrest warrant no longer will be issued for an individual who fails to pay court costs. Instead, a notice to show cause will be served, allowing the court to determine if the individual is indigent or willfully failed to pay.
 - If the former, then the court has a number of options, including work release, adjustment of fees in accordance to a sliding scale set by Kentucky Supreme Court, waiving the costs, or setting up a payment plan.
- Creates a 4-year reentry substance abuse pilot program that includes two phases:
 - The first phase will focus on education and increased monitoring of participants that includes three drug screens per week.
 - The second phase is "self-motivating" and continues monitoring/rehab with increased focus on employment and job/skills training. The participant is on probation the entirety of the 12-month program. The program requires regular evaluations of the participants, their individual success, and overall success rates.
- *Why It Matters:* As the Kentucky Department of Corrections so aptly points out, a "majority of offenders are coming soon to a neighborhood near you," and reentry must be approached as "a second chance to make a first impression." With skills training, the removal of employment barriers, and improved substance abuse treatment and monitoring, Senate



Bill 120 affords offenders the opportunity to make the most of their second chance.

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APPENDIX

Kentucky Probation and Parole Requirements (<https://corrections.ky.gov/Probation-and-Parole/Pages/Information-for-Offenders.aspx>)

All regular felony offenders must abide by a set of rules known as the Conditions of Supervision. The conditions that supervisees must follow include:

1. I understand that I shall be subject to search and seizure without a warrant if my officer has a reasonable suspicion that I may have illegal drugs, alcohol or other contraband on my person or property.
2. I understand that I shall not use or possess any alcoholic beverages (or enter any place where they are sold as the primary commodity, i.e., bars, nightclubs, liquor stores, etc.) or narcotics/controlled substances that are not currently prescribed to me by a licensed physician.
3. I understand that I shall avoid associating with any convicted felon and shall not visit residents of jails or prisons unless permission is obtained from my officer and institutional or jail authority.
4. I understand that I shall submit to alcohol and/or drug testing and shall pay for said testing if directed by my officer.
5. I understand that my Probation and Parole Officer may visit my residence and place of employment at any time. I understand that I will maintain only one residence and shall not change my residence without approval of my officer.

6. I shall work regularly and support my legal dependents. I will immediately report to my officer and change or loss of employment. If unemployed I will make every attempt to obtain bona fide employment.
7. My designated area of supervision is _____ and I will not leave this area without my officer's permission. I also understand that I do hereby agree to waive extradition to the State of Kentucky and also agree that I will not contest any effort by any other state to return me to the State of Kentucky. Failure to comply with the above will be deemed to be a violation of the terms and conditions of my release.
8. I shall not violate any law or ordinance of this state, any other state or the United States. If I am arrested, cited, or served with a Criminal Summons/Emergency Protective Order/Domestic Violence Order or if I am questioned by any law enforcement official I will report this within 72 hours to my Probation and Parole Officer. I understand that I cannot serve as an informant or special agent for any law enforcement agency without written permission of the Court.
9. I shall not harass or threaten any employee of the Kentucky Department of Corrections and agree to cooperate fully with any Probation and Parole Officer or any Peace Officer acting at the direction of a Probation and Parole Officer, during the course of my supervision. I shall not falsify any written or oral report to any employee of the Kentucky Department of Corrections.
10. I understand that as a convicted felon that I shall not be permitted to purchase, own or have in my possession or control a firearm, ammunition, dangerous instrument or deadly weapon. I understand that I have lost the right to vote and hold public office. When I become eligible, I may apply for Restoration of Civil Rights at any Probation and Parole Office. Restoration of Civil Rights Does not give a convicted felon the right to purchase, own or possess a firearm.
11. I understand that I have five (5) days from the date of an incident to file a written grievance with my officer.

Special Conditions

The court or parole board may order special conditions of supervision to be added to the standard conditions above. Some examples of the these might include:

- Attending Drug Treatment
- Paying Restitution
- No Contact Orders
- Child Support Payments

In addition to the special conditions set by the court or parole board, the Probation and Parole Officer may add conditions as necessary to ensure the offender's proper adjustment to community life. Examples of these might include:

- Curfews
- More Frequent Reporting
- Job Searches

Supplemental Conditions for Sex Offenders

In addition to the conditions listed above, convicted sex offenders may be required to abide by additional conditions. Examples of these conditions are:

- Proximity Requirements
- Sex Offender Registration
- Sex Offender Treatment



ABOUT THE AUTHOR



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Following graduation from law school, Travis worked in a senior fundraising role on Sen. Rand Paul’s presidential campaign and then worked in his Senate office as his general counsel in the 114th and 115th Congresses.

While in law school, Travis was the president of the Federalist Society and clerked for now-Congressman James Comer, current Acting Deputy Secretary of Homeland Security Ken Cuccinelli, and RANDPAC.

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ABOUT RIGHT ON CRIME

Right on Crime is a national campaign of the Texas Public Policy Foundation, in partnership with the American Conservative Union Foundation and Prison Fellowship and supports conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs.



ABOUT TEXAS PUBLIC POLICY FOUNDATION

The Texas Public Policy Foundation is a nonprofit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.