

## **Making DEI Real By Cutting Chains From The Past**

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### **Abstract:**

Pennsylvania has more people walking around with criminal histories than almost any other state in the country, and here, as around the country, people of color are disproportionately burdened by arrests and convictions. Once someone has completed their judge-imposed sentence, they are not free to get back to work: their criminal record keeps them chained to their past. Doing background checks, the vast majority of employers, landlords, academic institutions, and banks include criminal records which are available 24/7/365 in just three clicks. In almost every state, the only way to a clear record is with a pardon from the governor. Thanks to major reforms over the past three years, the pardon process in Pennsylvania costs nothing, takes little time, and does not require lawyers. That's why all employers should be offering criminal record-clearing services as an employee benefit.

### **Introduction**

I'm a grocer. Our family have been grocers for five generations. I first met Mike when he was on probation. Like so many young African American men in Philadelphia, he grew up spending a lot of time on the street and had made good money selling marijuana – and gotten caught doing it. With the encouragement of his probation officer, we hired him. That was 20 years ago. Today, he's a member of our management team at Brown's Super Stores, Inc., a family of ten Shop Rites and two Fresh Grover supermarkets located mostly in lower-income neighborhoods in the Greater Philadelphia area. He's an exemplary employee. And his head was in his hands in the break room where I saw him.

"I don't know, Jeff. I just don't know. I work hard, do well, climb the ladder here in the company, save up. My wife and I find the perfect home for our kids in a neighborhood with a good school. The American Dream, right? But I cannot get a mortgage. Convicted felons don't qualify."

### **The Problem**

The United States has the highest percentage of its people under "carceral control" (in prison or jail, on probation or parole) of any country in the world, including the most repressive regimes. For years if not decades, Pennsylvania has been in the top (worst) five. And, as we have all come to appreciate (most of us more recently than others), we are not "all in this together": Black Pennsylvanians are 8.9 times more likely, and Latinos 3.3 times more likely, to be incarcerated than white Pennsylvanians. Examining data from 2016, Pennsylvania's Auditor General has reported that "in Philadelphia alone that year, roughly 1 out of every 35 people was under supervision of some kind. In fact, Pennsylvania had more people under correctional control

(375,000) than the entire population of Pittsburgh (305,928).” Going deeper, the *Philadelphia Inquirer* found that one out of 14 Black adults in Philadelphia was on probation or parole that same year.

The problem’s not just with so many being watched or incarcerated – at some point, that will end. But after the sentence has been fully served, history remains – criminal record histories that are available 24/7/365 in three clicks. As the Chair of Pennsylvania’s Workforce Development Board, reporting directly to the Governor, I know first-hand what that means: almost immediate disqualification of tens of thousands of Black and Brown citizens from consideration for jobs and careers for which people are completely qualified, even though they have fully “repaid their debt to society.” If you are an employer in Pennsylvania and you want to improve diversity, equity and inclusion, you simply have to deal with criminal records.

**The problem is “criminal records” – the online databank that permanently brands people with the worst things they ever did, despite the passage of decades.**

But having to “check the box” on employment applications is only the most visible form of discrimination. In 2016, the American Bar Association (the national organization of lawyers) issued a report that found there were 40,000 “post-punishment punishments” across the United States that were imposed on people who had been convicted of crime and fully served their judicially-imposed sentences. They exist in almost every facet of life: jobs, licenses, professions, career, trade schools, colleges and universities, financial aid (scholarships, grants and loans), housing, home mortgages, health care, small business loans, construction loans, being appointed the attorney-in-fact for an elderly parent or a disabled brother or sister, the guardian of a niece or nephew, or a foster parent, volunteering to chaperone a child’s school trip or coach their T-ball or soccer team, going on an army base to watch a child be commissioned, leaving the country.... The list goes on and on and on.

In fact, the exclusion from society is so complete and all-encompassing that criminal records have been called “a social determinant of public health” by the chief executive officer of The Joint Commission, the world’s largest accreditor of hospitals and health systems.

### **The Tools at Our Disposal**

So, what’s to be done? Yes, we can all decide not to make criminal records part of our background checks. Legislatures can even pass laws, as Philadelphia and some other jurisdictions have, that make it illegal to check records until after an offer has been made, and then allow jobs or promotions to be denied only if the conviction is material to the job. But all of that depends on people doing the right thing, or not getting caught doing the wrong thing. There is one sure way to make convictions disappear, permanently: a pardon from the Governor. The law says that a pardon “blots out the very existence of [the offender’s] guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.”

Once signed, a judge *must* expunge (erase) all record of the arrest and conviction.

**Pardons “blot out the very existence of guilt” and the individual is “thereafter as innocent as if he had never committed the offense.”**

Until 2019, getting a pardon was nearly impossible in Pennsylvania. The application was expensive, long (9 pages, with 14 pages of instruction), dense, and incredibly difficult to complete. In the same report, the Auditor General reported that, in 2017, over 83% of the 3400 people who purchased the pardon application form in 2017 did not succeed even in getting it filed – and, for the lucky ones, it then took almost three years to get a hearing.

All that started to change in 2019. Today, the process is entirely free, the form and instructions are written in Plain English and available over the internet, lawyers are not needed, and almost no applications are being rejected. There are at least three “expedited tracks” that get certain offenses to hearings within one year. And the results? Over the past three years, **87% of the pardon applications heard by the Board of Pardons have been recommended to the Governor, and the Governor has signed more than 98% of them.**

### **WE can do this!**

We all now “get” the fact that we are hurting ourselves by keeping so many people out of the employment market. Thanks to criminal records – history – we cannot get enough teachers, or day care providers, or home health care workers – jobs which COVID has proven are essential to society – or bus drivers or snow plow operators. Economic analyses have proven that pardons bring millions of dollars into communities, at no cost to the taxpayers at all. The Secretary of Pennsylvania’s Department of Labor and Industry has said that “getting past those [criminal record] histories is key to Pennsylvania’s economic future.”

Philadelphia’s City Solicitor has said, “removing criminal records is not just the right thing to do for individuals, and not just the right thing to do for their families: **it is a critical and essential neighborhood investment strategy. We have to get people working at their highest and best levels.**”

There’s an easy way to do this: businesses can offer criminal record clearing services to their people for free as an employee benefit. Like health care, it can be outsourced and kept entirely confidential. Unlike health care, it’s not expensive.

### **Criminal record clearing services should be an employee benefit, like health care.**

At our company, we hired a non-profit to provide that service to our employees, and since we hire more returning citizens that almost any other company in the state, we expect some 400 people to take advantage of that benefit. The cost? \$50,000. Do the math. We dare you to say you couldn’t do it, too. We’re also sponsoring free criminal record clinics at our stores where anyone from the neighborhood can come, learn about criminal records, and have a confidential session with a law student to discuss what their options are. And yes, we do expect that will help us advertise and get new customers.

Removing criminal records and releasing the potential of our people makes total sense. It’s good business. It increases diversity, equity and inclusion. It helps free people from poverty and reduces the need for government programs. Across the state, volunteer Pardon Projects created by civic leaders are bringing people together in common cause. It’s neighbors helping neighbors, eliminating stereotypes by connecting people whose paths would otherwise never cross.

It takes just 2-3 hours to help someone fill out a pardon application. The potential upside of that investment is incalculable. Pardons release potential. If you are an employer, if you are concerned about your community, if your objective is diversity, equity and inclusion, then there's simply no better, cheaper, or cost-effective strategy than helping your employees clear up their criminal records and get a fresh start on life.