

From Media to Practice

Local Stakeholders Take a Stand on Creating Fair Employment Policy

Roberta Meyers-Peebles

The National H.I.R.E. Network's principal objective is to increase employment opportunities for qualified job seekers with criminal records. It is our mission to level the playing field in the labor market at a time when race and class discrimination still exists and many employers operate under policies and practices that exclude large portions of the workforce. We are continually working with advocates around the country to promote employment standards that will allow qualified job seekers with criminal records to be given a fair chance in the labor market. Our advocacy efforts include promoting legislation that will encourage employers to make individualized determinations when making employment decisions about people with criminal histories. However, the real challenge is getting employers to openly recognize that while they may have legitimate concerns about hiring people with criminal histories, maintaining unfair policies that eliminate thousands of qualified applicants who are committed to

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Relief from the Collateral Consequences of Conviction: Executive Pardon

By Margaret Colgate Love, Esq.

Editor's note: This is the third in a series of four articles describing the results of the author's recent study of how a person can seek to "neutralize" the effect of a criminal record in each U.S. jurisdiction. The first article, published in the November 2005 newsletter, dealt with laws limiting consideration of conviction in hiring and licensure. The second, in the December 2005 newsletter, deal with judicial expungement, sealing and set-aside. The final article will summarize national trends, and take a closer look at several promising restoration schemes.

Pardon is assigned a surprisingly important role in the criminal justice system of almost every state, and in the federal system as well. While most states now allow convicted persons to vote upon release from prison or completion of sentence, other legal barriers to reentry and reintegration are not so easily overcome. As noted in last month's newsletter, a handful of states authorize their courts to expunge or seal adult felony records, after an eligibility waiting period of law-abiding conduct. A few more states allow sealing for minor offenders. New York has adopted an administrative relief system that involves the award of certificates of good conduct by courts and the parole board. But in 42 states, pardon remains the only way that most adult felony offenders can regain the legal status of an ordinary citizen.

In most states a pardon removes legal disabilities and disqualifications. It also evidences good character, so that an employer or landlord or lending institution can have some level of comfort in dealing with a pardoned individual. Some states go further and make pardon recipients automatically eligible for judicial expungement of their record. Connecticut, Massachusetts, Minnesota, Ohio, and Washington fall into the latter category. State pardons are given effect in federal law in several important areas, including immigration, firearm privileges, and employment in

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rehabilitation only deprives them of potentially excellent employees. See [Smart Solutions: Individuals with Criminal Histories: A Potential Untapped Resource](#)

Some local advocates also recognize the importance of securing employer buy-in. For instance, advocates in Chicago have undertaken the challenge of creating a dialogue with employers about unfair employment practices that exclude all people with criminal histories. As a result of local advocacy, Mayor of Chicago, Richard Daley, puts the city's efforts to address employment practices front and center. It was reported in an article by Gary Washington, ["City Alters Its Policy on Hiring Ex-Convicts"](#) (*Chicago Tribune*, January 25, 2006), that the City of Chicago was changing its unwritten policy of not hiring people with criminal records. In the article, a top aid to the Mayor was quoted as saying, "The city will end a 'de facto' policy that prevented ex-convicts from being hired." Mayor Daley's policy chief, Jose Cerda II, was also quoted as saying, "We have had a 'de facto' policy of disqualifying people because we didn't give the guidance so that [city department heads] could make the appropriate decisions."

The guidance Mayor Daley offered is critical in addressing some of the concerns employers may have about being able to make individualized determinations about applicants who have criminal histories. This guidance can come in the form of legislation that clearly articulates the state's (or local jurisdiction's) policy to encourage the employment of people with criminal records and can spell out factors that should be considered in assessing an applicant's qualifications and whether or not their criminal history is substantially related to the job that is being sought. It appears that the City of Chicago will follow the guidance of the U.S. Equal Employment Opportunity Commission (EEOC) in its policy directive regarding the consideration of conviction records in the hiring process. The EEOC's directive specifies four relevant factors in assessing the job-relatedness of a conviction:

1. the nature, number and circumstances of the offenses for which the individual was convicted;
2. the length of time intervening between the conviction for the offense(s) and the employment decision;
3. the individual's employment history; and
4. the individual's efforts at rehabilitation.

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federally regulated industries like transportation and banking. Under regulations issued by the Transportation Safety Administration, an individual who has been pardoned may qualify for a trucker's hazmat license, an airport security pass, or a job as a longshoreman, no matter what the underlying offense.

But as everyone knows, it is not easy to get a pardon even in the jurisdictions that assign it a key operational role in offender reentry. Indeed, in only a handful of states are there more than a token number of pardons granted each year. Some governors have issued no pardons at all in recent years, even where they enjoy the relative safety of a legislatively designed support mechanism. For example, in Louisiana, Massachusetts and Michigan, the legislature has authorized an administrative board to advise the governor pursuant to a regular administrative hearing process, but the incumbent governor has nonetheless chosen not to exercise the power. Pardons are "exceedingly rare" in Colorado, North Carolina, Tennessee, Vermont, West Virginia, and Wyoming -- even though there is no other relief mechanism in those states, even for the most minor offenders. In Mississippi, New Jersey and Washington, it has become customary for governors to issue pardons only at the end of their term, and very few are granted even then. New York's governor customarily commutes a handful of prison sentences at Christmas, but for many years has granted no post-sentence pardons. The federal pardoning process has also withered in the past 20 years, producing only a trickle of grants where once there was a steady stream.

The fact is that most chief executives no longer regard pardoning as an integral and routine function of their office. While the modern politician's reluctance to pardon may be attributable to a pragmatic concern about making a politically costly mistake, it conveniently cloaks itself in a notion of pardon as an "extraordinary" remedy that interferes with the proper functioning of the legal system. The public thinks of pardon as a lightning strike or a winning lottery ticket; not a remedy that can reasonably be sought by ordinary people who can meet an objective set of criteria. And yet so many states continue to condition full reintegration after conviction upon this unreliable and inaccessible remedy.

It may come as a surprise to some that there are a few states in which pardon continues to function as an integral part of the criminal justice system, and is

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In San Francisco, California, Legal Services for Prisoner's with Children's All of Us or None project, a grassroots organizing group led by people with criminal histories, achieved a major local victory in a campaign called "Ban the Box."

Members of the San Francisco Board of Supervisors voted to eliminate questions about past felony convictions from job applications for public employment. Job applicants will no longer be stigmatized by their conviction record and will have a chance to demonstrate their qualifications before their conviction history is considered in the hiring decision. Advocates argued that in past practice, the City discriminated against otherwise qualified applicants with conviction histories by not giving everyone a fair opportunity for employment.

In order to increase employment opportunities for people with criminal records, advocates must continue to work directly with employers to improve employment practices, while encouraging changes on the state and local level. Communication with employers is important in order to foster candid discussions about written vs. operational policies. Efforts that address the legitimate concerns of employers, local labor market needs, and balancing public safety can lead to win-win situations for all stakeholders ❖



H.I.R.E. on the Hill

Alexa Eggleston and Gabrielle de la Gueronniere

House Approves Partial Repeal of Ban on Federal Financial Aid for Individuals with Drug Convictions; President is Expected to Sign Bill into Law Shortly

On Wednesday, February 1st, the House of Representatives approved S. 1932, the Deficit Reduction Act of 2005, a large piece of legislation aimed at cutting future spending that also includes a provision to partially repeal the ban on student federal financial aid for people convicted of drug crimes. The budget reconciliation legislation, approved by the Senate in December, is expected to be signed into law by President Bush in the next week.

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available to ordinary people with garden variety convictions who can meet the basic eligibility requirements and demonstrate their rehabilitation. With the new interest in facilitating offender reentry and "neutralizing" the effect of a criminal record in appropriate cases, the experience of the states with a regular pardoning practice should be of interest. As will be seen, the key to making the pardon power operational appears to lie in two things: protection from the political process, and regular exercise.

The ten states that presently treat the pardon power as an integral part of their criminal justice process each issue a substantial number of pardons each year, and grant a high percentage of the applications filed. It is no coincidence that in all of these states the pardon process is regulated by statute and operates with a reasonable degree of transparency. In Alabama, Connecticut, Georgia, Idaho, and South Carolina, the pardon power reposes in an appointed board, and the governor has no role (except a peripheral one in capital cases). In Nebraska, the authority to grant pardons is vested in a board of pardons that is composed of the Governor, Secretary of State and Attorney General. In Delaware, Pennsylvania, and Oklahoma, an appointed board makes binding recommendations to the governor, without which the governor may not act. In Arkansas the legislature requires the governor to consult with the parole board and obtain its non-binding recommendation in each case, and to report regularly on the number of grants and the reasons for each. This regulation seems to give the pardoning authority in each of these states sufficient protection from the political process to make them comfortable in exercising the power. (A chart available on The Sentencing Project's website shows the characteristics of the most active state pardoning authorities. See <http://www.sentencingproject.org/rights-restoration.cfm>. Idaho does not appear on this chart because of the comparatively low absolute number of grants, but it is included here because it acts favorably on 2/3 of the applications it receives.)

In each of the ten states where the pardon power is actually operational, it is administered through a public application process. In all but two, the board responsible for administering the power is required by law to hold public hearings at regular intervals, and to notify the prosecutor and victim. (The Georgia Board of Pardons and Paroles generally considers cases on a paper record, as does the Arkansas Parole Board, though both have the authority to conduct public hearings.)

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According to the legislation approved by both the House and the Senate, the financial aid ban would only apply to students who are convicted of a drug offense while they are enrolled in school and receiving federal financial assistance.

The ban would no longer apply to students who were convicted of drug crimes prior to their enrollment and application for federal financial aid. The timetable in the current law, outlining how an individual's aid would be delayed or denied according to type and number of offenses, would still apply to students convicted of drug crimes while receiving aid.

Work Opportunity Tax Credit Expected to Be Renewed; Legislation with Reauthorizing Provision Moves Forward in Congress

Congress has recently been working on broad legislation to renew a number of tax cut and credit programs. In December, the House of Representatives approved H.R. 4297 and the Senate approved a similar version of the legislation on February 2nd. Both approved versions of H.R. 4297 include a provision to extend the Work Opportunity Tax Credit (WOTC), which expired on December 31st. Although the provision to extend the WOTC in both tax bills is identical, there are a number of other differences between the pieces of legislation that Congress needs to reconcile before the President can sign the bill into law and the tax credit can be reauthorized. As in the past, the WOTC is expected to apply retroactively once Congress does reauthorize the program.

The Work Opportunity Tax Credit (WOTC) provides an incentive for employers to hire, train, and retain job seekers, including "qualified ex-felons," who often experience barriers to employment. The WOTC is available to employers who employ people from one of eight targeted groups, including "qualified ex-felons." A "qualified ex-felon" is defined as an individual who (1) has a state or federal felony conviction; (2) is a member of an economically disadvantaged family and (3) is hired within in one year of release from prison or from date of conviction. This credit can reduce an employer's federal income tax liability by as much as \$2,400 per qualified new worker. ❖

Most of the pardoning authorities in these states are required to defend their grants by reporting them annually to the legislature, along with a statement of the reasons for each grant. In Arkansas, the governor may not issue a pardon unless he first issues a public notice that provides a statement of reasons for the grant.

Illinois and South Dakota also hold public pardon hearings at regular intervals, but are not counted among the ten "operational" boards either because of recent irregularities in the pardon process, or a sluggish pardoning rate by the current governor, or both. The current governors of Maryland and Hawaii have shown a commendable interest in pardoning, despite not having the benefit of a statutory administrative apparatus that would give them a regular stream of reliable recommendations and a measure of political protection.

Particularly since 9/11, there has been increased pressure on the pardoning mechanisms in the 42 states where it provides the only way most offenders can avoid the automatic rejection that generally follows discovery of their criminal record. A number of state pardon authorities reported a surge in pardon applications from people fired or refused employment because of their criminal record, often far in the past and involving quite relatively minor offenses. Employers increasingly rely on criminal background checks to winnow out undesirable employees, sometimes because they are required to by law, but more often simple because they are risk averse and criminal record information is readily available. Yet, relatively speaking, even in the jurisdictions that have reasonably functional pardon procedures, surprisingly few people make use of them. For example, Georgia grants more pardons than any other state, but the numbers involved are still relatively small: in 2004, the Georgia Board of Pardons and Parole granted 422 pardons (including 39 "immigration pardons"), acting favorably on between 35% and 50% of applications received. South Carolina and Connecticut each granted about 200 pardons in 2004, about 65% and 25% of all applications filed, respectively. It is unclear whether so few people apply because of the time and expense involved, the perceived uncertain prospects of success, the availability of alternative relief mechanisms, the belief that a pardon won't make much of a difference -- or some combination of these factors.

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Upcoming Conferences of Interest

February 25-28, 2006

**National Association of Workforce Boards Forum
2006**

Renaissance Hotel
Washington, DC
Website: www.nawb.org

March 21-24, 2006

**Third Annual Ready4Work Conference: How It's
Working: Sharing Lessons for Effective Prisoner
Reentry/Resettlement**

Houston, TX
Website:
[http://www.ppv.org/ppv/pdf_uploads/214_publication.p
df](http://www.ppv.org/ppv/pdf_uploads/214_publication.pdf)

March 26-29, 2006

33rd Annual National Conference on Juvenile Justice

Hyatt Denver Convention Center
Denver, CO
Website: <http://www.ndaa-apri.org/events/index.html>

April 5-7, 2006

**2006 Women Work! National Conference: "Policies,
Programs, & Partnerships: Building for the Future"**

Hilton Crystal City
Arlington, VA
Website: <http://www.womenwork.org/>

April 11-13, 2006

**National Offender Workforce Development
Conference**

Adams Mark Hotel
St. Louis, MO
Website: <http://www.proworkdev.com/>

May 14-16, 2006

**17th Annual National Association of Workforce
Development Professionals Conference**

Sheraton New Orleans
New Orleans, LA
Website: <http://www.nawdp.org/conference.htm>

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For example, the pardon process in Pennsylvania appears to be both fair and accessible. It is administered by capable professionals, is presided over by elected officials who seem committed to the enterprise, and is the only relief available under that state's law. Moreover, a high percentage of those who apply for pardon in Pennsylvania are ultimately successful. Yet the process involves a lengthy and burdensome application process even for misdemeanants and "summary" offenders, including a full background investigation and two public hearings in the state capital. It requires a substantial investment of time and energy each month from the five members of the Clemency Board, which include the lieutenant governor and state attorney general, and the numerous state employees responsible for its administration. A similar seriousness of purpose and formality of process is characteristic of all of the states where pardon remains operational. Perhaps there could be a less cumbersome and expensive alternative for individuals whose offenses are minor and dated, but who are still being denied jobs, loans, and other opportunities because of them.

It is unfortunate that in so many states pardoning has become an almost vestigial function, in light of its critical gate-keeping function for people struggling to overcome the lingering disabilities that come with having a criminal record. As a criminal record is becoming both more common and more disabling, it is essential to have a reliable and accessible way for individuals to overcome the legal barriers to reintegration, and to reassure employers and other members of the public of their rehabilitation. This surely has important benefits for the community as well as for the individuals involved. A well-administered pardon process can accomplish a great deal in closing the loop on an individual's experience in the criminal justice system, symbolizing a sort of "graduation" back to the legal status of an ordinary citizen. The ten states that have an active pardon docket offer models for jurisdictions interested in reviving the power.

On the other hand, pardon was never intended to be anything other than an "extraordinary" remedy, in theory unbidden by the strictures of the law and, as such, arguably unsuitable for everyday operational use. Pardon is supposed to remedy the occasional malfunctions of the legal system; it is not supposed to

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July 11-13, 2006

Workforce Innovations 2006

Anaheim Convention Center

Anaheim, CA

Save the Date!

October 13-15, 2006

National Prisoner Reentry Conference

"The Heart of The Problem"

Sponsored by Transition of Prisoners Inc. and Operation Oasis

Westin Park Central Hotel

Dallas, TX

Website: www.topinc.net

Telephone: (313) 875-3883 x28❖



Funding Opportunities!

The Baltimore City Mayoral Fellowship is now accepting applications from undergrads in their junior, senior year or recently graduated and any students in or recently graduated from graduate school. The summer 2006 Fellowship application deadline is March 1, 2006. Baltimore's Ex-offender Initiative through the Mayor's Office of Employment Development invites students to apply for this outstanding opportunity. To learn more, [click here](#).

Joyce Foundation Backs \$5.1 Million Initiative for Transitional Jobs The Joyce Foundation will support a three-year, \$15-million initiative to help male ex-inmates in the Midwest find transitional jobs when they get out of prison. The Foundation aims to set up temporary jobs in healthy environments and provide education and counseling, and help ex-inmates reconnect to the job market. This program will be a test to see if transitional jobs help reduce recidivism and ensure better lives and stable jobs for released prisoners. To read more about this initiative, [click here](#). ❖

substitute for law reform. And, as a practical matter, any program that requires the personal action of the chief executive will never be quite as reliable or accessible as a program that is less politically vulnerable. This was the conclusion of the drafters of the Model Penal Code, when they provided for judicial relief from disabilities, and eventual "vacation" of the record of conviction for someone who had demonstrated his rehabilitation. (See *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 *FORDHAM URBAN LAW JOURNAL* 101 (2003).

So where does this leave us? I believe that it is evidently too much to ask of pardon that it serve as the primary mechanism for relief from collateral consequences, at least where it remains the sole responsibility of the chief executive. The very fact that so many jurisdictions rely so heavily upon pardon to perform what should be a routine restoration function speaks volumes about the need for law reform. It is shortsighted and potentially dangerous to expect offenders to reintegrate and remain law-abiding, while at the same time depriving them of the tools for doing so. Pardon can be adapted to large scale use by making it more bureaucratic, as the experience of several states shows. But other statutory relief mechanisms, judicial and administrative, may provide even more reliable alternatives. Above all, employers and other decision-makers must be persuaded that it is safe to go behind the fact of a criminal record, to see the entire person. The nuanced case-specific approach taken in the post-9/11 federal Transportation Safety Administration regulations combines elements of all of these approaches, and will be the subject of the final installment of this series in next month's newsletter. ❖

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Hot Off the Press: Recent Reports

Ready4Work Progress Report Online

To view this two-page progress report, which includes initiative-wide data on services, employment, education and recidivism, [click here](#).

Clearing Your Record: A six-step guide to expunging criminal records in New Jersey
By Legal Services of New Jersey (January 2006)
This handbook provides basic information about how to expunge a record of arrest or conviction. To view the manual, [click here](#).

Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information
This report is the first-ever comprehensive look at the role that commercial background screening companies play in the collection, maintenance, sale and dissemination of criminal history record information for employment screening and other important risk management purposes. To view the report, [click here](#).

Community Responses Improved With Jail Exit Surveys "Gender-Responsive Strategies for Women Offenders: Using Jail Exit Surveys To Improve Community Responses to Women Offenders" (19 pp.) (ACCN 020853). This publication addresses the usefulness of conducting jail exit surveys. Topics include designing the survey, the elements to include, and understanding the information provided. Also included are comprehensive listings of major data elements, lessons learned, and a sample questionnaire. Not available from NCJRS. For more information, contact the NIC Information Center (800-877-1461). To review the publication, [click here](#).

National Black Caucus of State Legislators (NBCSL) Adopts Resolution Promoting a Smart on Crime Agenda that Reduces Recidivism by Addressing Barriers that Prohibit Employment of People with Criminal Records: This resolution urges states to remove unwarranted barriers in laws that prohibit employment of people with criminal records and incorporate protections that take into account rehabilitation. The resolution, which was sponsored by State Senator Spencer Coggis of Wisconsin (the Labor Committee Chair), also urges Congress to adopt standards that remove excessive barriers to employment in federal laws. To read the resolution, [click here](#) (see page 61-62 Res. # 06-125).

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New UNICOR Federal Bonding Program

This month, UNICOR is scheduled to implement a new bonding program. Central Office's Inmate Transition Branch will administer the program, assisted by a staff member at each institution who is designated to serve as the institution's Federal Bonding Coordinator. Released Federal inmates who have worked in UNICOR for at least 6 months during their incarceration will be eligible for bonding coverage. Employers may request bonding coverage of \$5,000, at no cost to the employer or the ex-offender, after the ex-offender is hired. The bonding coverage protects the employer against potential acts of dishonesty by the employee.

The initial bond, the premium for which is paid by UNICOR, covers the first six months of employment, and is renewable by the employer at commercial rates. In the event of theft of money or property, employers will be reimbursed up to the bond value. Coverage must be requested within one year after release; each offender will be entitled to coverage for one job after residence in a Residential Re-entry Center (RRC) is completed. Information about the program will be made available through individual inmate employment folders, inmate orientation programs, materials in institution libraries and employment resource centers, staff training, and information available from RRCs and Federal Probation offices. For more information, [click here](#). ❖

Message to the National HIRE Network Advisory Board:

We trust that you have had a safe and joyous holiday season and peaceful beginning to the New Year. We are pleased to announce that Public Welfare Foundation recently awarded HIRE a grant to continue our field education and organizing work. In addition, supporters from around the country also invested in HIRE's work in response to our end-of-the-year direct solicitation.

We are also delighted to share with you the release of our packet of NYS [Criminal Justice legislative proposals](#) to assist qualified jobseekers who are seeking employment and licensure. Many of the proposed legislative "fixes", plus our "Second Chance" proposal, respond directly to problems you have all identified in your respective disciplines.

To view a list of National HIRE Network Advisory Board members, please [click here](#). ❖

National HIRE Network Provides New Advocacy Toolkits to Combat Legal Barriers Facing Individuals with Criminal Records The Legal Action Center and its National H.I.R.E. Network have posted a series of toolkits that organizations and individuals all over the country can use to advocate for removal of unfair roadblocks facing individuals with criminal records. They include: "Prohibit Inquiries About Arrests That Never Led to Conviction", "Standards for Hiring People with Criminal Records", "Certificates of Rehabilitation", and "Sealing/Expunging Arrest and Conviction Records." To view these toolkits, [click here](#).

Smoothing the Path from Prison to Home: A Summary and a Roundtable Discussion on the Lessons of Project Greenlight, by James A. Wilson, Yury Cheryachukin, Robert C. Davis, Jean Dauphinee, Robert Hope, Kajal Gehi, and Timothy Ross of the Vera Institute. This report presents research findings about Project Greenlight, an ambitious prison-based reentry demonstration project that the Vera Institute of Justice conducted at the Queensboro Correctional Facility in Queens, New York, from February 2002 to February 2003. To view the report, [click here](#).

Chicago Mayoral Task Force Releases Recommendations on Reentry Mayor Richard M. Daley recently announced \$900,000 in City grants for programs to help former prisoners learn job skills and become productive members of society. The programs were among the recommendations of the Mayoral Policy Caucus on Prisoner Re-Entry, which released its final report in January. The Caucus spent a year and a half studying issues of prisoner re-entry, and its report calls for: expanded education and job opportunities, including transitional jobs; improved access to health care, including more substance abuse and mental health treatment; more family-friendly policies in the corrections system, including mentoring programs for the children of incarcerated parents; and stronger supports in the community, including local resource centers. To view the report, [click here](#).

Falling Through the Cracks: Loss of State-Based Financial Aid Eligibility for Students Affected by the Federal Higher Education Act Drug Provision, by Drug Reform Coordination Network. The report shines a light on a previously unreported consequence of the federal Higher Education Act drug provision, the loss of state financial aid as well to students losing federal aid because of drug convictions even though the legislatures of their states have never voted on that policy. To read the report, [click here](#). ❖

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Are you interested in submitting an article to H.I.R.E. Network News? Do you have a conference scheduled? Is your agency about to release an important study? Are you a jobseeker with a criminal record? We are always looking for input from our membership! We invite guest writers on a range of subjects. Please email Glenn E. Martin at gmartin@hirenetwork.org if you are interested in contributing to our newsletter. We look forward to hearing from you. ❖