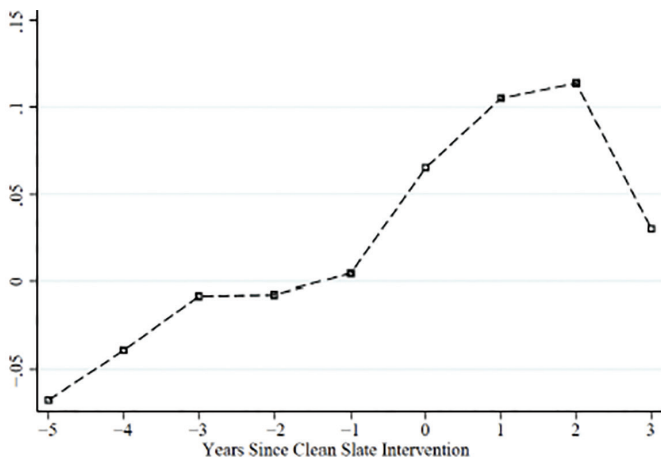


## JUSTICE INVOLVEMENT, EXPUNGEMENTS, PROBATION & PAROLE

Since the passage of HB40 in 2016 in Kentucky, after 5 years, individuals with certain eligible offenses can apply to have their records expunged. (KRS 431.073) Current research points to a marked improvement in job prospects, income, and civic engagement for those individuals who have had their records expunged. However, due to the costs involved, lack of awareness of the program, or an inability to access the legal services necessary to petition for expungement, studies show that on average less than 10% of those eligible ultimately get their record expunged (Prescott). In 2024 two pieces of legislation were introduced to make the process automated under Kentucky law, and while those bills ultimately did not pass, lawmakers should continue to look at the issue and craft legislation that addresses the concerns of stakeholders while promoting access to expungement as a tool for our citizens.

One of the most compelling arguments for automatic expungement is economic. Considerable social and employment stigma exists for those with criminal records, regardless of whether they ultimately resulted



Prescott, J.J. "Expungement of Criminal Convictions: An Empirical Study

in a conviction or are related to the particular position someone is applying for. Reducing the barriers to expungement improves employability, increases wages, and broadens the tax base. A report from the US Chamber of Commerce (US Chamber) showed within three years

Within three years of a record expungement average employment rates went from 75% to approximately 85%, and earnings grew by a third, from \$4000 below baseline (Selbin), to almost \$2000 above

of a record expungement average employment rates went from 75% to approximately 85%, and earnings grew by a third, from \$4000 below baseline (Selbin), to almost \$2000 above, comparing the income level for that cohort that was studied prior to expungement to that same group two years post expungement. A 2019 University of Michigan study showed an average wage increase of 23% over the first year, rising slightly to 25%

According to The Marshall Project 70 million people in the United States with some kind of criminal record. According to The Sentencing Project Kentucky's incarceration rate is approximately 17% higher than the national average (411/100k, vs 350/100k). So at 70 million with criminal records that is on average 21% of people in the US, and with a 17% correction for KY's higher rates of incarceration means 24.6% of Kentuckian's with some kind of criminal record, or just over 1.1 million people.

in the second year. As Kentucky continues to reform its tax system, policymakers should be encouraged to look for as many ways as possible to broaden the tax base by increasing the number of its citizens in the workforce. As of October 2023, according to the St. Louis Federal Reserve, Kentucky's labor force participation rate is 57%, or 46th out of 51 (St. Louis Fed). More worryingly, this trails the average of the surrounding 7 states at 61.92% with only West Virginia having a lower rate (St. Louis Fed). In order to get Kentucky on par with our neighbors, we need to add an additional 155,966 people to our current labor force. Getting more of our citizens back into the workplace is one of the most effective ways at our disposal to broaden the tax base. In Kentucky there are approximately 1.1 million adults with some kind of criminal record that would appear on a background check. If only 10% of those eligible for expungement (110,000) saw the projected increase in earnings according to the study in the Journal of Criminal Law and Criminology, that is an extra \$220 million a year in projected wages, and the associated tax revenue to go with them.

There exists a need to balance any reforms with the effects on the general population, as well as recidivism amongst those who have had their records expunged. Current research points to the positive social impact these policies have on recidivism rates, showing that those who have had their records expunged commit criminal offenses at lower rates than the general population. A 2019 University of Michigan study published in the Harvard Law Review found that justice-involved individuals who obtain expungement have extremely low rates of reoffending, comparable to the general population (Prescott). These comparably low rates of recidivism, especially given that the populations involved (younger, male, and impoverished) typically show higher rates of justice involvement post-expungement than the average person to start with, show that there is little public safety interest in the continued barriers to civic participation that a criminal record presents. In fact, under the two bills most recently introduced in the Kentucky General Assembly to automate the expungement process, law enforcement and the courts would still have access to criminal records for specific purposes, including the consideration of future offenses. If anything, the increased employment opportunities afforded by record expungement should alleviate some of the barriers that this population faces, with a policy paper released by the

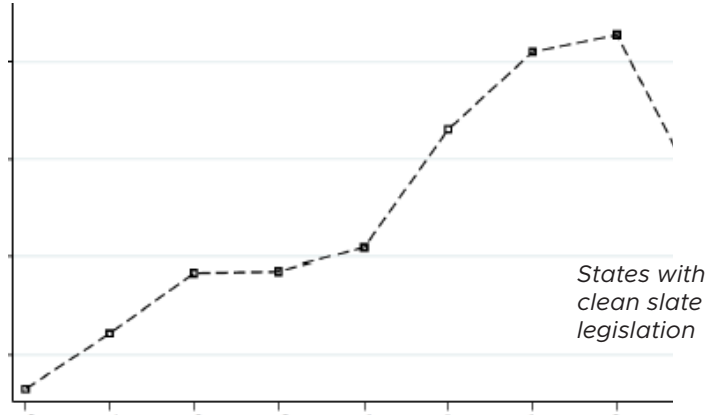
R Street Institute pointing to a 2020 survey of inmates where 33% shared that increased wages would have prevented their incarceration (Smith). Other opportunities that expungement provides include restoration of voting rights, the ability to be more involved with an individual's child's education, and better access to housing. These provide much needed supports to an individual and their family units that will further reduce recidivism.

Since 2018 twelve states have passed some form of "Clean Slate" legislation, allowing for automatic expungement of criminal records after a certain period of time. Under Kentucky's current statutes eligible persons must petition the court for an expungement and pay additional fees in order to be granted the petition. Under a KY Supreme Court decision, those who are declared indigent may have their fees waived, but that is inconsistently applied across the Commonwealth. Beyond the statutory hurdles, Goodwill of Kentucky and our partners, the various Legal Aid Societies, have battled delays in the process due to an already overwhelmed court system and a system that is extremely labor intensive. Furthermore, while the imposition of fees itself is not an unreasonable expectation, judges are already granted the ability to waive fees for those unable to pay, and anecdotally often do. Automating the process will decrease the administrative burden on the courts and improve outcomes for eligible individuals. Non-profit organizations such as Code For America are already working with other states to provide the technical assistance necessary for these records to be identified and expunged. Finally, all due consideration should be given to the security of records prior to expungement to prevent the private sector from circumventing the process and making overly broad public record requests to capture criminal record data prior to expungement.

According to a 2018 Prison Policy Initiative there were nearly 63,000 Kentuckians on probation or parole (Wang). For individuals on probation and parole, one barrier to employment is the need for regular check-ins with parole officers, drug tests, and court appointments that make work schedules difficult or impossible to accommodate. In the book *Untapped Talent* Jeffery Korzenik details ways other states have worked with employers to accommodate these requirements in the workplace in the least disruptive way possible. For employers to be able to successfully recruit and retain a workforce, deference to employer needs should be allowed for those on court ordered supervision. While it would be ideal for employers to offer accommodations to those individuals, there is no "one size fits all" solution given the variety of environments in which they may be employed.

A 5-year study from Johns Hopkins Hospital of over nearly 500 hires showed a lower turnover rate for the first 40 months of employment for those with a criminal background, as opposed to those without (Paulk). The

study also pointed to the need for additional wrap around support beyond simple "ban the box" policies, including career coaching and working without outside partners. In fact, 85% of HR leaders say individuals with criminal records perform the same, or better



than, employees with no criminal records (SHRM).

People who are employed are less likely to reoffend. More importantly, the quality of a job has a larger impact on the likelihood of recidivism. (Uggen) In his book, *Untapped Talent*, Jeffery Korzenik differentiates the models of hiring for justice involved individuals, and the so called "disposable employee" model is the least successful, owing to the lack of investment in the employees required to insure successful hiring (Korzenik). While programs like the Work Opportunity Tax Credit are well intentioned, employers who see this population as below market rate labor are unlikely to reap the benefits of true second chance hiring.

**Policies should be adopted by the Department of Corrections to increase usage of this application, including review of qualifications of those under supervision to expand to a larger population.**

In 2021 the introduction of the Kentucky Offender Management System (KOMS) Client Portal App allowed offenders on low or administrative supervision with Probation and Parole to use an alternative method of reporting (DOC). Policies should be adopted by the Department of Corrections to increase usage of this application, including review of qualifications of those under supervision to expand to a larger population. The legislature should convene a working group to review the use of these tools, and solicit input from the business community on what challenges they face, with the goal of providing direction to the Department of Corrections in the form of a joint resolution or legislation.

**In fact, 85% of HR leaders say individuals with criminal records perform the same, or better than, employees with no criminal records. (SHRM)**

## JUSTICE-INVOLVED PARTICIPANT STORY

**Melvin Robards** came to Goodwill in 2013 after being incarcerated. “I was actually referred here by my parole officer at the time...I had been locked up for six and a half years.” Melvin was referred to Goodwill’s reentry programming at the East Broadway Opportunity Center, and was eventually connected with a facilitator who referred him to the retail stores for employment. “I kept in contact with [my career coach] Tom because it was my first job since being released, and really my first job as an adult. When I got to the store the rest of the staff included people who had backgrounds or had come from similar situations. This made me feel a little more at ease transitioning back into the workforce.”

Melvin’s interaction with the justice system started at a young age when making bad choices is not uncommon. “In 2008, I was sentenced to 15 years for multiple drug charges. Around 15 or 16, I started selling drugs. I had been in trouble a few times leading up to this but nothing that resulted in any consequences.” He grew up in an environment where this conduct was commonplace. “The people who I was associating with at the time, everyone was involved in the same thing, and it was lucrative. To the point where I never really wanted to work. I had no intentions of working.”

Because of this Melvin didn’t have steady employment to fall back on, nor work experience to draw from. “I worked at a few fast-food restaurants and a factory, and in total, I had four different jobs from 16 to 23, but none lasted longer than a month.”

Coming to Goodwill was Melvin’s first experience with a true fair chance employer that had experience serving the reentry community along with the ability to provide wraparound supportive services to its employees. While many Goodwill employees start off in entry level positions, the culture is an important part of what attracts people to the organization.

Melvin’s experience at Goodwill showcases the transformative impacts of supportive workplace environments that go beyond financial incentives. Reflecting on his journey, he remarks, “I found different opportunities [with other organizations] but after having a conversation about the unique culture [at Goodwill] it was like, the money is important, but this is an environment where I can grow.” The organizational culture shapes the experience of justice involved individuals and can impact the success an individual has in the organization. Melvin states, “Some companies place a stigma on someone with a background, but working for a company who embraces it is part of the reason why I chose to stay with Goodwill.”

The moment an application is submitted, justice involved individuals are hit with the reality of the barriers and hurdles that lie ahead on their journey to reintegration. Their background often prevents them from progressing

through the hiring process, in turn not giving them the opportunity to highlight the skills and benefits they can offer the employer. Melvin recalls his journey to obtaining gainful employment. “I didn’t know the type of barriers or the type of hurdles that you would face by having something on your background. While I was looking around at other places, all that kept coming up was ‘Do you have a felony? How old is it?’ and a lot of employers wouldn’t even give you a chance because of your background.”

Even for someone who is willing to accept accountability for their actions there are collateral consequences that can last far beyond the initial sentence. In 2016 Kentucky passed House Bill 40, which allowed for expungement of some misdemeanors, as well as a handful of non-violent felonies. While the process for obtaining an expungement in Kentucky is beset by delays in court processing, and fees that can present a barrier to obtaining the order, Goodwill has committed resources to helping people achieve expungement. While it is not a panacea for employment for justice involved people, it is an important tool to help address some of the collateral consequences.

“Having a record is definitely punitive. It affects not just employment, but housing, being able to go on school trips with your children, even where you can travel, it affects every aspect of life. Aside from that just knowing that the record is there, I’m like a different person now, completed my sentence, no trouble since then, regardless I know that I still have a background. Even though it’s not a reflection of who I am now, at all.”

Organizations that truly embrace Fair Chance Hiring can also attract people who want to give back to their communities. “When I learned more about the mission and how Goodwill was able to help people coming out of prison or people dealing with substance abuse, it made me want to stay around, especially considering my mother and father come from social work backgrounds.”

People of all backgrounds can understand that mission-based work helps to give them purpose in their careers. “Each year watching Goodwill grow regarding what they offered and the assistance they could provide for justice-involved individuals kept me involved and sparked a passion within me. I wanted to be part of the company because I was watching these reentry initiatives. Goodwill was one of the first companies, from my perspective, to take that path.”



Melvin Robards

When companies embrace Fair Chance Hiring and give their employees the opportunity to succeed, they are paid back multiple times over with the ambition and success of those employees. “I met Dennis Ritchie, Goodwill’s Senior Director of Reentry, when we were both working in the retail stores. One day he called to let me know about LifeLaunch, which was a grant funded program to help people 25 and up who were returning from incarceration. I actually took a significant pay cut to come and work with him in this grant because it was really something that I could see myself pursuing as a career.”

Marvin is now the Senior Manager for Grant Funded Programs at Goodwill’s Young Adult Opportunity Campus, known as “The Spot”. He has been able to grow his career at Goodwill while giving back to the community. “This position allows me to help people who have gone through the same issues, have the same backgrounds, and come from the same place as I did. It was rewarding.” Melvin was able to leverage that work experience into a new role, as Goodwill began serving disconnected and at-risk young adults. “I transitioned into a career coach position for the IGNITE program. It was rewarding to work with people who have been through the same things I’ve experienced as an adult, but even more so to work with younger people where you have a chance to be a positive influence on the rest of their life and change their trajectory.

People reentering society from incarceration face multiple challenges to joining the workforce and leading productive lives. Part of Goodwill’s outreach efforts include hosting “Reentry Simulations” for those in the community to learn what it is like for someone coming out of incarceration, including one for the Kentucky General Assembly in the summer of 2023. Even that experience pales in comparison to what individuals like Melvin have faced, and that is what makes him an ideal manager and mentor for our employees. “When it comes to addressing the barriers people face, I think it is just about trying to be empathetic and helping to get someone through their process. It can be overwhelming to try to balance work, recovery, court conditions, drug testing, probation and parole appointments and various other obligations while dealing with the initial shock of reentering.” This extends to people who are in recovery from substance use disorder with justice-involvement as well.

“As a manager it took learning more about what it takes for someone to be successful in recovery. People are a work in progress. Mistakes happen, slip ups happen, and not being so quick to shut someone out or dismiss someone who is struggling with addiction. A lot of times reentry comes with substance abuse, especially here in Kentucky, the majority of the incarcerated population are people who’ve struggled with substance abuse. So just being aware of the struggles people face is crucial.”

Some employers are still concerned with the financial risk of Fair Chance Hiring, or believe they lack the resources to do so effectively. But as Melvin points out, it is no different than training any other workforce, and the return on investment is often even greater. “You have to invest in your workforce. If you want to get the best employee that you can, you have to invest in them.” Still those employees may face other barriers to their success, so to ensure their investment goes as far as possible it is essential to partner with community organizations like Goodwill to address those barriers.

“Housing for somebody who has a background is a barrier. Not only is it hard to find employment, but a lot of places won’t rent to you. The ones that do often are in areas where the most crime occurs, so it puts you back into a bad environment. Another issue is transportation. You don’t have the best access to everything using public transportation. A lot of the companies that we call Fair Chance are in areas that are hard to reach by public transportation.”

Even though everyone Goodwill meets is not necessarily ready to begin the employment piece of their reentry journey, managers like Melvin are able to use their skills and lived experience to guide them on the path.

“It really comes from being somebody who is a returning citizen. I am able to sit down with someone to have a conversation and get a better read on where someone is mentally, and where someone is in that journey. Then you have to be honest with them and let them know if you’re not ready right now, we can connect you to people to help move you along in the journey and then you can circle back for employment. A lot of the time that is where you end up with the more passionate employees, because they see themselves and all of the people we serve.”

However, with empathy, also comes accountability. Whether it is to your employer, the conditions of your release, or your recovery treatment, Melvin believes accountability is an important part of the overall process

“Accountability is going to be key when you are dealing with anybody, especially people who have been in the justice system and have had to manipulate the system or found ways to kind of take advantage of situations to survive. It is important to have someone who is aware of that and can basically call you on it, and let you know that I see it. Without the accountability there’s no reason for someone to even want to try to change.”



## APPENDIX A

### Citations

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According to March 2023 data from the Bureau of Labor Statistics current Labor Force participation rate is 2,042,066 for 3,550,017 eligible Kentuckians, to increase from 57.5 to 61.9 would be a 4.4% increase, for a total of 2,198,032. [https://data.bls.gov/timeseries/LASST210000000000006?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/LASST210000000000006?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true)

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