

## Voice of the Bar

### Proposed Act Gives Job Seekers With Criminal Records a Fair Chance

To the Editor:

It's hard to know where to begin in refuting Joseph Paranac Jr.'s July 8 op-ed, "Opportunity to Compete Act' Could Spur Unemployment, Not Jobs."

The Act would merely delay, not eliminate, the point in the hiring process at which criminal records — which 65 million Americans have — would continue to be considered. The federal government, Wal-Mart and other leading businesses already do this.

The Act would not expand litigation risk. It holds that "[t]his act shall not be actionable by private parties." The Act reduces litigation risk because compliance renders almost inconceivable liability under existing Title VII doctrine.

While applicants could decline permission to check their criminal backgrounds, obtaining permission before conducting a criminal background check is required by current law (15 U.S.C. § 1681b(b)(2)(A)) and an applicant who refused to grant permission could immediately be denied the position on that basis.

The New Jersey Institute for Social Justice is proud to have played a role in developing the Opportunity to Compete

Act at the request of its principal sponsor, Sen. Sandra Cunningham. The Act was crafted over the better part of a year, following more than a dozen meetings with business leaders and associations from throughout the state.

Many modifications were made based on the input of the business community, including: (1) the number of employees at which the Act applies was raised to 15, leaving more than 80 percent of New Jersey employers and approximately 700,000 jobs uncovered, notwithstanding that other states' similar laws apply to employers of any size, and (2) employers may move immediately to the next candidate when an applicant's record is deemed inconsistent with the job, without even meeting with the first candidate, notwithstanding that upwards of 50 percent of criminal records are inaccurate.

Also, the Act exempts all jobs about which any existing (or future) law — federal or state; statute, regulation or rule — renders it mandatory, or even just permissible, to consider criminal records in the hiring process. There are hundreds of such laws covering hundreds of jobs, the hiring processes for all of which would be unaffected by the Act.

Having a criminal record has become the *Scarlet Letter* of our age. The Institute has worked with innumerable hard-working, dedicated, responsible people in our employment training

programs. It is disheartening (even to us, to say nothing of how it feels to them and their families) when they are, time and again, not invited even to interview for positions for which they are eminently qualified, solely (it would appear) because they are required to categorize themselves right from the outset as having a criminal record. None of these inquiries bothers to ask whether the record was for a major or minor offense, or for events that occurred three days or three decades ago. We represented a salt-of-the-earth, 60-year-old grandfather whose livelihood was placed in grave jeopardy, after four decades of a strong work record and multiple longstanding civic commitments, owing solely to a 1971 conviction in municipal court for possession of five Valium pills without a prescription.

What the Opportunity to Compete Act would do is provide people a reasonable chance to get a job and work hard. Nothing more, nothing less. Their criminal records could continue to be considered, but on an individual basis, in light of the rest of their lives and the particulars of the job. Businesses would continue to make the final calls, consistent with their business judgment. And no individual could second-guess them in court.

The Opportunity to Compete Act is so named because citizens with the will and skill to work should be allowed

simply to compete for work — no guarantees, no promises, merely fairness.

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