The Brennan Center for Justice at New York University School of Law welcomes the chance to testify regarding barriers to workforce participation faced by the millions of New Yorkers with a criminal record. The Center’s cutting-edge research demonstrates that mass incarceration negatively impacts the wellbeing of the state’s economy and workforce. It also points to the need for innovative policy solutions to overcome these challenges, such as legislation to automatically “seal” conviction histories. We thank the Committee for the chance to discuss this vital but underappreciated dimension of labor policy.

Employment rebounded in New York State and New York City over the past year. But several industries continue to experience major gaps in the workforce. For example, New York City has yet to recover from pandemic-related job losses in the hospitality and retail sectors. Statewide data tells a similar story, with delivery, healthcare, and service listed as sectors in need of talent.

No single factor accounts for these labor shortages. Undoubtedly the lingering effects of the pandemic and other structural imbalances in the economy offer partial explanations. But the side-effects (or “collateral consequences”) of criminal convictions and imprisonment may be another contributing factor. Legal barriers and social stigma regularly prevent people with a criminal record from participating fully in the economy, blocking them from competitive jobs and housing, among other things. As a result, people with a criminal record tend to be pushed into jobs with low pay and few benefits. The individual costs are profound: the Brennan Center’s analyses show that even a minor criminal record may reduce annual earnings by 16 percent. And they add up. New research by a team of sociologists shows that as a state’s share of adults with a felony record rises, so does the working-age non-employment rate.

New York State is far from immune to these pressures. While previous estimates place the number of New Yorkers with a criminal conviction at 2.3 million, the real figure could be nearly
And in 2020 alone, more than 18,000 New Yorkers left one of the state’s prisons or parole facilities. Many if not most of these people face barriers to employment and basic necessities, with consequences that extend to our communities and the State as a whole. According to the Center’s research, reduced annual earnings attributable to unemployment and under-employment among New Yorkers with a prison record alone may add up to $1.9 billion.

The legislature should work to reduce these hardships and help people with a criminal record re-enter the workforce. One promising idea is to allow a criminal conviction to fall off someone’s record after they have been released from incarceration and abstained from crime for several years. “Sealing” criminal records has been shown to boost earnings and employment among people with a criminal history. Unfortunately, New York’s sealing process requires people to apply for relief, and has proved complicated and time consuming. Fewer than one percent of those eligible have successfully sealed a record under the petition-based sealing statute.

A better option would be to automate the process for sealing records, easing the transition back into the workforce for people with a criminal record and seamlessly removing some of the collateral consequences of conviction. This is the approach favored by a growing number of states — and by last session’s Clean Slate Act, A. 6399C, which the Center endorsed at the time and continues to support. That bill would have sealed most misdemeanor records after three years and most felony records after seven years. These timelines would have begun only after release from incarceration (where relevant), and automatically restarted if someone committed a new crime during the waiting period. Critically, a sealed record could not be held against someone in an application for housing, licensing, or employment — sharply limiting the stigma of a criminal conviction in these competitive markets. But it would have preserved the records for sensitive matters such as firearm licensing and subsequent sentencings. In doing so, the bill struck an important balance between public safety and expanding access to the State economy.

Automatic record sealing would not remove every barrier to employment faced by New Yorkers with a criminal record. But it would, according to a new analysis, remove those records as a barrier to employment for as many as 1.4 million people across the State — and help draw down the estimated $7.1 billion in reduced earnings this group faces every year. The Clean Slate Act would open a world of opportunity for these workers, expand the State’s labor pool and, in the process, reduce both income inequality and the racial wealth gap. We strongly urge the Assembly to take up this legislation again in the coming session and pass it at the earliest opportunity, as a matter of both economic justice and workforce development.
New York State cannot afford to leave any workers behind. The Brennan Center urges the Legislature to reintroduce and pass the Clean Slate Act, expanding at a stroke the state’s labor force and generating new economic opportunities for people with a criminal record.

Endnotes

1 The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice, and conducts rigorous research to better understand — and identify policy solutions that will help overcome — the collateral consequences of mass incarceration. The opinions expressed in this testimony are only those of the Brennan Center, and do not necessarily reflect the opinions of NYU School of Law.


8 Craigie et al, Conviction, Imprisonment, and Lost Earnings, 2020, 14–15. These conclusions are in line with other research, some of which also documents high unemployment among formerly imprisoned people. See id., 25–26.


14 Chien et al., *The Estimated Size and Lost Earnings of New York’s Second Chance Sealing Gap*, 1–2; see also Aaron Morrison, “Nearly 600,000 New Yorkers Are Eligible to Have Their Records Sealed. Fewer than 1,800 Have Succeeded.,” *The Appeal*, October 8, 2019, https://theappeal.org/nearly-600000-new-yorkers-are-eligible-to-have-their-records-sealed-fewer-than-1800-of-them-have-succeeded/.


17 A. 6399C, § 1 (creating N.Y. Crim. Proc. Law § 160.57(4)(b), (g)–(h)).
