



Policy Solutions for Ontario's Prosperity

# Employing Ontarians with Criminal Records: Policies to Correct Labour Market Misconceptions

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*Ontario 360's* purpose is to scan Ontario's economic opportunities and challenges and develop evidence-based public policy ideas to inform and shape the Ontario government's own policy planning and development.

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## Key Points

- Finding a job is a key step in helping people with criminal records desist from future crime. Yet having a criminal record is a major stumbling block for this same population in finding a job. The Government of Ontario can help to resolve this Catch-22 by implementing five policies to improve labour-market demand for people with criminal records.
- The first set of policies seeks to change the perspectives of employers toward this group. The government should (1) mandate police forces and other criminal-record providers to include positive and counterbalancing general information about the employability of people with criminal records, along with the record results; and (2) give people with criminal records the option of adding individual-specific information about the positive aspects of their interactions with the criminal justice system to the results of their criminal record checks.
- The second set of policies seeks to change the hiring decisions of employers. The government should (3) establish a provincial bonding program that would provide insurance to employers, at no cost to them, for some risks associated with hiring people with criminal records; and (4) introduce a general wage subsidy for employers who hire people with criminal records.
- The final policy concerns the importance of communication. The government should (5) actively promote the above policies, communicate the motivations behind the re-integration of people with criminal records, and actively encourage employers to hire them.

# 1. Introduction

More than one million Ontarians have a criminal record.<sup>1</sup> In 2021–22, over 50,000 adults were in custody in Ontario.<sup>2</sup> Based on the latest available data from 2015–16, within two years of release, more than one-third of inmates in Ontario’s twenty-five provincial jails and prisons will return to a provincial institution having been convicted of another crime.<sup>3</sup>

Previous Cardus research has shown that employment is a key factor in helping someone involved in the criminal justice system desist from further crimes.<sup>4</sup> At the same time, people with criminal records face steep barriers in finding employment. This *Catch-22* presents a serious public-policy challenge for governments to solve.

In economic terms, policies to improve the labour-market conditions of people with criminal records can be understood as falling into either supply-side reforms or demand-side reforms. Supply-side policies seek to improve the labour supply, that is, the workers themselves. For those with criminal records, this may take the form of education or skills-training programs to prepare them for re-entry into the labour market. Other reports, such as those produced by Howard Sapers, the former Correctional Investigator of Canada, and by the Auditor General of Ontario, which are summarized briefly in section 2, have addressed this aspect of the labour market

to some degree. Moreover, the Ontario government’s Skills Development Fund, which is also discussed below, falls mostly in the category of supply-side policies.

Demand-side policies, by contrast, seek to change the outlook or the behaviour of employers, that is, those who demand labour in the marketplace. This is the focus of this paper. It examines a handful of demand-side reforms that the Government of Ontario should consider to help the employment prospects of Ontarians with criminal records.

As such, this paper does not deal directly with other issues in criminal justice, such as sentencing, the condition of prisons, or rehabilitation programming within prisons. Neither does the paper deal with other factors relating to the re-entry of people with criminal records into society, such as housing, family relations and social networks, and substance abuse. This is not to diminish the importance of addressing

<sup>1</sup> Ontario Ministry of Labour, Immigration, Training and Skills Development, “Ontario Creating Safer Communities through Second Chance Hiring,” news release, Government of Ontario, April 26, 2023, <https://news.ontario.ca/en/release/1002977/ontario-creating-safer-communities-through-second-chance-hiring>.

<sup>2</sup> Statistics Canada, “Table 35-10-0014-01. Adult Admissions to Correctional Services,” <https://doi.org/10.25318/3510001401-eng>.

<sup>3</sup> Ontario Ministry of the Solicitor General, “Rates of Recidivism in Ontario,” Government of Ontario, September 13, 2021, <https://www.ontario.ca/page/rates-recidivism-ontario>.

<sup>4</sup> R. Nauta, “Curbing Crime with Employment: Exploring Work as Crime Prevention for Canadians with Criminal Records,” Cardus, 2023, <https://www.cardus.ca/research/work-economics/reports/curbing-crime-with-employment/>; R. Nauta, “Humanizing Criminal Records: Toward a View of the Whole Human Person,” Cardus, 2023, <https://www.cardus.ca/research/work-economics/reports/humanizing-criminal-records/>.

any of these factors. Indeed, each factor can reinforce another and help or detract from the role of employment in re-establishing one's life after being convicted of a crime.

It should also be acknowledged at the outset that the objectives of criminal justice policy are complex and varied. The successful re-entry of people with criminal records is an important goal, but it must be balanced against other goals, such as the preservation of order and public safety and the safeguarding of victims' rights. While this paper focuses on re-entry, this is not to suggest that it is the only issue of concern. On the contrary, the policy recommendations in this paper retain a degree of latitude for government and employers to consider the particular circumstances of individual cases, while correcting some of the biases that hinder successful labour-market re-entry.

Nevertheless, work is an important part of the re-entry process. Therefore, the actions proposed for the Government of Ontario fall into three categories: (1) policies to reform criminal records themselves, to reduce the stigma that employers associate with them, (2) incentives for employers to hire people with criminal records, and (3) communications strategies to encourage employers in this regard. These policies are outlined in section 3 of this paper.

## 2. Context

### 2.1 The Responsibilities of the Government of Ontario

The responsibilities of the Ontario government with respect to individuals involved in the justice system are more numerous than might first meet the eye. The most obvious may be Ontario’s correctional institutions. In Canada, responsibility for corrections is divided between levels of government. Those sentenced to prison for two years or longer are incarcerated in federal institutions, while those with prison sentences of less than two years are incarcerated in provincial institutions, of which there are currently twenty-five in Ontario.<sup>5</sup> In addition, those on remand—meaning those who are in jail awaiting trial or sentencing—are held in provincial institutions. The provincial government also runs the Ontario Provincial Police, the provincial court system, and the Ontario Parole Board, all of which have direct interactions with people involved in the criminal justice system.

Less obvious, but nonetheless relevant, may be the relationship between the Ontario government and individuals with criminal records outside the formal context of the criminal justice system. In fact, much of the Ontario government’s policy agenda

with respect to the employment prospects of this population has focused on the development of their skills *outside* of prison. In 2021, the government, under the Ministry of Labour, Immigration, Training and Skills Development, created the Skills Development Fund, which provides funding to organizations such as unions, employers, and non-profits to support projects that strengthen the workforce. Among other things, it funds projects that promote the entry of members of groups that face difficulties participating in the labour market. The Fund specifically includes those with previous involvement in the justice system as a target group.<sup>6</sup>

Importantly, the Minister who launched the program, Monte McNaughton, placed a strong emphasis on persons with criminal records in his communications about the Skills Development Fund. His social-media feed frequently included references to how this program would help the formerly incarcerated and featured interactions with stakeholders in this space.<sup>7</sup> These communications efforts complemented the policy and, as discussed further below, were an important part of the policy effort itself.

<sup>5</sup> Ontario Ministry of the Solicitor General, “Correctional Facilities,” Government of Ontario, September 13, 2021, <https://www.ontario.ca/page/correctional-facilities>.

<sup>6</sup> Employment Ontario, “Skills Development Fund Training Stream,” Government of Ontario, February 5, 2021, <https://www.ontario.ca/page/skills-development-fund>.

<sup>7</sup> See for example, M. McNaughton, (@MonteMcNaughton), “This week, I visited @jhsontario in Hamilton. . .” Twitter, November 12, 2021, 2:06 p.m., <https://twitter.com/MonteMcNaughton/status/1459236144290357251>; M. McNaughton, (@MonteMcNaughton), “For too long, people on social assistance & those involved in the criminal justice system have been forgotten. . .” Twitter, September 26, 2022, 11:38 a.m., <https://twitter.com/MonteMcNaughton/status/1574423114318057477>; M. McNaughton, (@MonteMcNaughton), “Having a prior conviction shouldn’t be a life sentence. . .” Twitter, October 28, 2022, 8:55 a.m., <https://twitter.com/MonteMcNaughton/status/1585978591208411138>; M. McNaughton, (@MonteMcNaughton), “We’re on a mission to give people a second chance at meaningful careers. . .” Twitter, September 28, 2022, 1:30 p.m., <https://twitter.com/MonteMcNaughton/status/1575176215790759936>.

## 2.2 Recent Policy Recommendations

Concerns about the rehabilitation of people involved in the justice system are not new in Ontario. It has been the focus of a few major reports in recent years.

In 2017, Howard Sapers delivered a comprehensive report to the Government of Ontario on the province's prisons.<sup>8</sup> It contained sixty-two recommendations covering a wide range of categories, including healthcare for inmates, correctional programming, and a section dedicated to Indigenous inmates. While the report does not deal at great length with the issue of employment per se, there are a number of recommendations that are related to the re-entry of former inmates into the labour force. The recommendations most closely related to employment are summarized as follows:

- Improve the gathering of personal information about inmates, including economic history, at the beginning of their sentence, to aid in planning their release (Recommendation 3.4).
- Require that each inmate be given a case manager to assist with their needs and referrals to community services upon release (Recommendation 3.5).
- Establish *meaningful* programming allowing inmates to work (Recommendation 3.6, emphasis added).

- Establish a centralized tracking system of all programming that is available to inmates in Ontario prisons (Recommendation 3.7).

In 2019, the Auditor General of Ontario conducted an examination of the Ontario prison system, making similar recommendations to those in the Sapers report.<sup>9</sup> Many of the employment-related recommendations focused on access to the Life Skills programming available in Ontario prisons, which includes training on how to look for and keep a job and other skills conducive to success in the workplace. In particular, the Auditor General recommended that the Government of Ontario:

- Inform all inmates, including remanded inmates, of programming available to them (Recommendation 1).
- Implement incentives for inmates to complete Life Skills programming (Recommendation 1).
- Proactively reach out to inmates who would benefit from certain programs (Recommendation 1).
- Improve the collection of personal information, including about inmates' employment needs, to help with their transition post-release (Recommendation 2).

<sup>8</sup> H. Sapers, et al., "Corrections in Ontario: Directions for Reform," Independent Review of Ontario Corrections, 2017, <https://www.ontario.ca/page/corrections-ontario-directions-reform>.

<sup>9</sup> Office of the Auditor General of Ontario, "Adult Correctional Institutions," in *Annual Report 2019: Reports on Correctional Services and Court Operations* (Government of Ontario, 2019), 16–82, [https://auditor.on.ca/en/content/annualreports/arreports/en19/2019AR\\_v3\\_en\\_web.pdf](https://auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v3_en_web.pdf).

- Proactively plan the release of remanded inmates (Recommendation 2).

In response to the Auditor General's report, the Ontario government committed to implementing some version of the ideas in Recommendation 2, while assessing the feasibility of the ideas in Recommendation 1.<sup>10</sup>

<sup>10</sup> Office of the Auditor General of Ontario, "Annual Report 2019."

## 3. Improving Labour-market Demand for People with Criminal Records

As discussed above, the policies outlined in section 2, including the Skills Development Fund and the recommendations of Howard Sapers and the Auditor General, seek to improve the supply side of the labour market. That is, they act upon the prospective employee who has a criminal record.

This section considers five ways that the Government of Ontario could influence the demand side of the equation. The five policies fall into three categories, as follows:

- Policies to change the perspective of employers toward those with criminal records;
- Policies to incentivize employers to hire more of this group, despite persistent negative perceptions; and
- Communications strategies for political leaders to promote actively the cause of employment for those with criminal records.

### 3.1 Changing the Perspective of Employers

One structure that scholars have identified as particularly problematic for re-entry into society, and for employment prospects in particular, is the criminal record.<sup>11</sup>

In Ontario, the criminal records regime is governed primarily by the *Police Record Checks Reform Act, 2015* (the *PRCRA*).<sup>12</sup> This legislation sets out the framework for criminal records in the province, but it delegates the responsibility of fulfilling the record check to others, mainly individual police forces across the province.

The results of a criminal record check can encompass a great deal of information about individuals' histories with the criminal justice system, potentially including much more than just a list of convictions and sentences. In Ontario, there are three levels of disclosure outlined in the *PRCRA*:

- A ***criminal record check*** discloses criminal convictions, except where a pardon has been granted. This may even include convictions under the *Youth Criminal Justice Act* if the check is conducted during a period of access outlined in law. In narrow circumstances, it may include information about a conviction that has been pardoned.
- A ***criminal record and judicial matters check*** discloses all the information in the criminal record check, as well as findings of guilt that resulted in an absolute or conditional discharge, outstanding charges, and court orders, with some exceptions.
- A ***vulnerable sector check*** discloses all the information in the criminal record and judicial matters check, as well as

<sup>11</sup> D. Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108, no. 5 (2003): 937–75.

<sup>12</sup> *Police Record Checks Reform Act, 2015*, SO 2015, c 30, <https://www.ontario.ca/laws/statute/15p30>.

instances in which the individual was found not criminally responsible because of a mental disorder. It also contains potentially any information held by police forces, including information unrelated to any criminal convictions, if it meets certain criteria for disclosure. This level of record check may include any instances of contact that an individual had with the police, including arrests that did not lead to charges or instances in which an individual was simply a witness to a crime.<sup>13</sup>

In short, people with criminal records are subject to a high degree of exposure when they are asked for a record check. Scholars have long pointed to the stigmatization that occurs from having a criminal record.<sup>14</sup> Indeed, a person's criminal record report is a consolidated list of the events that are among the worst in that person's life. There are few domains of human life in which so much negative information is meticulously tracked and follows a person for their whole life.

Having a criminal record is a major barrier to finding employment. There are many

possible reasons for this. Employers may be reluctant to hire someone who they believe could steal from them, pose a threat to customers and co-workers, or fail to perform as well as other employees. Employers may also assume that their insurance policies require them to have a policy on checking criminal records.<sup>15</sup> Even when they are hired, people with criminal records can find themselves bumping up against a glass ceiling, preventing their promotion to positions of greater responsibility.<sup>16</sup>

However, there is strong evidence showing that employers tend to misunderstand or to exaggerate the effect of recidivism on the workplace. For example, employers tend to misunderstand how ageing affects criminality: employers tend to be more forgiving of youth with a criminal record despite strong evidence that *growing older* is the most reliable factor in desistance from crime.<sup>17</sup> There is even a body of research that suggests that some people with criminal records actually perform better than other employees on certain metrics and in certain types of employment, including military and customer-service jobs.<sup>18</sup>

<sup>13</sup> *Police Record Checks Reform Act, 2015*, SO 2015, c 30; John Howard Society of Ontario, "What Are Police Records?," February 26, 2018, <https://johnhoward.on.ca/download/what-are-police-records/>. For a complete breakdown of the kinds of information each check contains in Ontario, see J. DeJong VanHof, "Vulnerable Sector Check Costs Remain a Barrier for Volunteers," *Cardus*, 2022, table 1, <https://www.cardus.ca/research/spirited-citizenship/reports/vulnerable-sector-check-costs-remain-a-barrier-for-volunteers/>.

<sup>14</sup> Pager, "The Mark of a Criminal Record."

<sup>15</sup> Canadian Civil Liberties Association, "False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada," 2014, <https://ccla.org/recordchecks/doc/Records-check-final-20140516.pdf>.

<sup>16</sup> J. Griffith and T.C. Harris, "The Relationship between Criminal Records and Job Performance: An Examination of Customer Service Representatives," *Personnel Assessment and Decisions* 6, no. 3 (2021): 13–17, <https://doi.org/10.25035/pad.2020.03.003>.

<sup>17</sup> C. Uggen, "Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism," *American Sociological Review* 65, no. 4 (2000): 529–46. <https://doi.org/10.2307/2657381>.

<sup>18</sup> J.H. Lundquist, D. Pager, and E. Strader, "Does a Criminal Past Predict Worker Performance? Evidence from One of America's Largest Employers," *Social Forces* 96, no. 3 (2018): 1039–68; Griffith and Harris, "The Relationship Between Criminal Records and Job Performance"; D. Minor, N. Persico, and D.M. Weiss, "Criminal Background and Job Performance," *IZA Journal of Labor Policy* 7, no. 8 (2018): 2, <https://doi.org/10.1186/s40173-018-0101-0>.

The John Howard Society of Ontario found that 15 percent of surveyed employers would refuse to hire anyone with a criminal record, regardless of the severity of the crimes or the time that had passed since the last contact with police.<sup>19</sup> This suggests that, to some degree and for some people at least, it is the fact of having a criminal record, as opposed to a fair assessment of underlying traits it may reveal, that is the barrier to these individuals gaining employment.

### Policy Options

In response to the problems with criminal records outlined above, some researchers and advocates have pushed for a solution known as “ban the box”—the “box” being the checkbox on application forms asking whether an applicant has a criminal record. Specifically, it prevents employers from asking job applicants about whether they have a criminal record until a later stage in the application process, perhaps after a preliminary job interview or after a conditional offer of employment has been made. The purpose is to prevent employers from filtering out anyone with a criminal record, regardless of the nature of that record, before giving the applicant a fair

chance at demonstrating their suitability for the job.

Some governments in the United States have implemented ban-the-box policies in one form or another. The US federal government implemented a ban-the-box policy in 2016 that restricted federal agencies from inquiring about criminal records until the conditional offer stage of the job-application process.<sup>20</sup> Exemptions from the policy must be requested from the Office of Personnel Management.<sup>21</sup> The federal policy does not apply to the private sector. By contrast, the state of Hawaii, which was the first US jurisdiction to proceed with a ban, in 1998, has a much wider scope of application covering private-sector employers as well. Similar to the requirements of the federal policy, Hawaiian employers can ask about criminal records only after a conditional offer of employment has been extended. Even then, however, employers may consider elements of someone’s criminal record only from a fixed period of time (the previous seven years for felonies and the previous five years for misdemeanours) and may retract the conditional offer only if there is a rational relationship between the job and the content of the criminal record.<sup>22</sup>

<sup>19</sup> John Howard Society of Ontario, “Help Wanted: Reducing Barriers for Ontario’s Youth with Police Records,” 2014, <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/johnhoward-ontario-help-wanted.pdf>; John Howard Society of Ontario, “Invisible Burden: Police Records and the Barriers to Employment in Toronto,” 2018, <https://policerecordhub.ca/en/invisibleburden/>.

<sup>20</sup> White House, “Fact Sheet: White House Announces New Commitments to the Fair Chance Business Pledge and Actions to Improve the Criminal Justice System,” November 30, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/11/30/fact-sheet-white-house-announces-new-commitments-fair-chance-business>.

<sup>21</sup> US Office of Personnel Management, “Recruitment, Selection, and Placement (General) and Suitability: A Rule by the Personnel Management Office,” December 1, 2016, <https://www.federalregister.gov/documents/2016/12/01/2016-28782/recruitment-selection-and-placement-general-and-suitability>.

<sup>22</sup> R.I. Greenberg, A.L. Pepper, and N.K. Hudspeth, “Hawaii Tightens ‘Ban-the-Box’ Law,” Society for Human Resource Management, October 12, 2020, <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/hawaii-tightens-ban-the-box-law.aspx>.

However, governments contemplating ban-the-box policies should be aware of a body of research that has uncovered possible unintended consequences. One study from New York City and New Jersey found that the gap in the call-back rate between Caucasian and Black job applicants widened following the implementation of ban-the-box policies, growing more than six-fold: employers called Caucasian applicants for interviews 7 percent more often than similarly qualified Black applicants prior to ban-the-box policies, and after the policies, Caucasian applicants were called back 43 percent more often.<sup>23</sup> The researchers hypothesized that employers were using race as a proxy for criminality, relying on stereotypes based on real-world, statistical differences in conviction rates. Another study found that employment levels for unskilled Black and Hispanic men dropped following the introduction of ban-the-box policies in a range of jurisdictions, with the researchers hypothesizing essentially the same reasoning as that in the previous study.<sup>24</sup> Although some scholars have expressed some skepticism about the results of these studies,<sup>25</sup> governments would nevertheless be justified in wishing to see more evidence concerning the unintended consequences of these policies before proceeding with them.

In order to address the concerns about ban-the-box outlined above, advocates have turned to educating employers on the facts concerning the job performance of those with criminal records. The John Howard Society of Ontario provides resources for employers, including best practices for interpreting and dealing with criminal records.<sup>26</sup> It has also established a “Fair Chances Coalition” of businesses and other organizations dedicated to implementing policies in their own organizations that aim to give those who have criminal records a better chance at employment.<sup>27</sup>

Public education initiatives and others like them are necessary and have promise for changing the hearts and minds of employers with respect to this population. However, there is room for the Government of Ontario to amplify these messages and offer some fundamental reforms of criminal record checks to help alleviate the challenges that people with criminal records face in entering the labour market.

To that end, the government should consider a number of policy options. Two of them are outlined below, the first being relatively simple and straightforward, the second being more complex but potentially more effective.

<sup>23</sup> A. Agan and S.B. Starr, “Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment,” *Quarterly Journal of Economics* 133, no. 1 (2018): 195–235, <https://doi.org/10.1093/qje/qjx028>.

<sup>24</sup> J.L. Doleac and B. Hansen, “Does ‘Ban the Box’ Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Histories are Hidden,” National Bureau of Economic Research Working Paper no. 22469, July 2016, <http://www.nber.org/papers/w22469>.

<sup>25</sup> A. Hanks, “Ban the Box and Beyond: Ensuring Individuals with a Criminal Record Have Access to the Labor Market,” Center for American Progress, July 2017, <https://www.americanprogress.org/article/ban-box-beyond/>.

<sup>26</sup> John Howard Society of Ontario, “For Employers,” <https://policerecordhub.ca/en/employers/>.

<sup>27</sup> John Howard Society of Ontario, “Fair Chances Coalition,” <https://www.fairchances.ca/>.

- ***Mandate police forces and other criminal-record providers to include positive and counterbalancing general information about the employability of people with criminal records, along with the record results.***

The idea here is to equip employers with facts that dispel the myths and to highlight the benefits of hiring people with criminal records. As discussed above and in previous Cardus research, there is plenty of evidence that employers tend to exaggerate the risk to their businesses of hiring someone with a criminal record.<sup>28</sup> This evidence can help to correct prevailing perceptions of people with criminal records.

The information provided could be quite wide-ranging. It could include:

- Statistical information that challenges prevailing assumptions about the employability of people with criminal records, such as the data outlined above that show that people with criminal records can actually perform better than others in certain jobs;
- Guidance on how to use a record check fairly in a job-interview process, especially advice on considering someone's criminal record in a broader context and not vetoing the person simply on the basis of having a criminal record; and

- A list of employers' resources to help interpret the results of the check, such as those on offer from the John Howard Society.<sup>29</sup>

Including this information is a similar principle to public education initiatives, such as advertising campaigns, aimed at changing the views of the public, except that it is directed squarely at the recipient of the criminal record check. It would also arrive at the moment that the recipient first considers the contents of the record check. In this way, the information would be both timely and targeted.

The additional information could come in many forms. Ideally, it would be included in a prominent position directly on the criminal record results, but it could also be included in an attached cover letter or other communication piece.

This mandate could be accomplished quite simply, possibly in regulations or directives to the police forces. The legislature could also amend the *PRCRA* to this effect. The legislation need not be prescriptive about the data to be included; it could simply outline the broad categories of information to be included and leave it to regulations—or even to the police forces themselves—to determine which data points to include. The main point is that the person receiving the results of the check would have easy access

<sup>28</sup> Nauta, "Curbing Crime with Employment"; Nauta, "Humanizing Criminal Records."

<sup>29</sup> John Howard Society of Ontario, "For Employers."

to accurate, up-to-date information to correct prevailing misperceptions.

- ***Give people with criminal records the option of adding individual-specific information about the positive aspects of their interactions with the criminal justice system to the results of their criminal record checks.***<sup>30</sup>

A fundamental problem with criminal records and how they are interpreted by employers is that they present a heavily lopsided picture of the human person. As discussed above, they are a list of some of the worst decisions of a person's life. Given this formulation, it is perhaps not surprising that many employers would treat criminal records effectively as a veto on hiring. Yet a person's criminal record is not a complete picture of who they are as a person, nor even as a potential employee.

More to the point, the criminal record is not a complete picture even of that person's relationship with the criminal justice system. In fact, a person's interactions with the system include a host of instances that could be seen in a favourable light. These could include an inmate's behaviour while on remand, in prison, or on parole. It could also include their participation in programs while in prison, such as those offered to improve life skills, develop work experience, or treat substance

abuse and addiction. There is no reason, in principle, why information about these activities could not also be included. Doing so would provide a more holistic perspective on the individual's "record" with the justice system.

The benefit to someone with a criminal record is that it would contextualize—to some degree, at least—the litany of negativity that is the current formulation of the record provided. Along with arrest and conviction information, a prospective employer would see information about how the individual behaved well while in custody, received skills training, participated in work programs, or received treatment or spiritual care.

It is important that the inclusion of this category of information be optional for those with criminal records. Some may not wish to disclose some of this information (for example, about spiritual care or substance-abuse treatment), and there is no reason why disclosing this information should be *required*. That said, including most of this information should be a net positive for the individual. Even including information about substance-abuse treatment could be a net benefit to individuals whose criminal records otherwise show substance-abuse-related crimes. Nevertheless, respect for privacy must be a prime concern for implementation of this policy.

<sup>30</sup> An expanded analysis of this policy proposal is outlined in greater detail in Nauta, "Humanizing Criminal Records."

This policy option would be significantly more complex to implement than the previous one. While some of this information is already tracked by the Ontario prison system, much of it would require a significant upgrade of information systems. Ontario's Auditor General has previously highlighted deficiencies in the Offender Tracking Information System, reporting that most information is recorded manually and on paper.<sup>31</sup> It may also require new processes that track not just misconduct but instances of good behaviour as well. A previous Cardus paper discusses the challenges of implementation and possible solutions in greater detail.<sup>32</sup>

Moreover, to fully implement a new record regime in this way would require the cooperation of many jurisdictions, including federal and provincial correctional systems, and the coordination of information systems across jurisdictions. Without underestimating the challenge of this undertaking, it should go without saying that, separate from any consideration of the proposals offered in this paper, governments should be making improvements to their information systems and increasing coordination

of their activities. Doing so with this proposal in mind may give a renewed sense of purpose to these efforts.

In the meantime, during negotiations with other jurisdictions, there is nothing in principle stopping any provincial government from implementing the first steps of this proposal. As immediate next steps, the Government of Ontario could implement the tracking of this information within its own jurisdiction and amend the *PRCRA* to mandate the inclusion of whatever information is available on criminal record reports.

It is worth noting that nothing in either of these policy proposals forces the hand of anyone in the labour market. They simply increase the amount of information available to the players in the market: general information in the former policy and individual-specific information in the latter. Economic theory suggests that markets work better when information flows more freely. In the particular case of those with criminal records, we can expect that a more accurate assessment of their employability should increase their successful participation in the labour market.

<sup>31</sup> Office of the Auditor General of Ontario, "Annual Report 2019."

<sup>32</sup> Nauta, "Humanizing Criminal Records."

## 3.2 Incentivizing the Hiring Decisions of Employers

The section above dealt with the perspectives that employers have toward individuals with criminal records. The present section addresses the outward manifestation of these perspectives: the actions of employers in hiring these same individuals.

The policies in the previous section may go some way in correcting some of the misperceptions that employers tend to have regarding people with criminal records. It would be a mistake, however, to think that any of these policies are a silver bullet to the problem of labour-market participation of this population. The policies above should be seen as a long-term play, aimed at a re-framing of criminal records that will take some time to elaborate. But even in the long run, it may be that employers will remain less willing to hire people with criminal records than society would deem optimal. In that case, governments will not be able to rely solely on changing the perspectives of employers; they will continue to need to overcome some ongoing barriers to employment for these individuals.

This rightly opens the door to attention from government policymakers. A sizable body of research has shown that employment is a significant and causal factor in helping individuals previously involved in the justice system turn their lives around.<sup>33</sup> This finding should not

come as a surprise. Employment has been shown to have many positive effects well beyond the financial benefit of a paycheque. People with jobs tend to have better mental health, are more likely to be in good physical and mental health, and are less likely to attempt suicide. Unemployment is associated with a general increase in divorce and substance abuse.<sup>34</sup> It is important to note, also, that these benefits accrue not only to the individual with the job but also to their partners, dependents, and other family members. In desisting from crime, there is a strong benefit to their communities and to society at large.

In other words, employment of persons with criminal records can be understood as having positive externalities that the labour market may fail to capture. In cases like this, government can be justified in implementing incentives to nudge employers toward hiring more of these people.

There are existing programs that may have some non-targeted benefit to people with criminal records. For example, the federal Canada Workers Benefit (CWB) provides assistance to any person with employment income under a certain threshold. The benefit acts as a top-up on employment income whereby individuals with the lowest levels of employment income receive the greatest amounts. The benefit is phased

<sup>33</sup> Nauta, “Curbing Crime with Employment.”

<sup>34</sup> B. Dijkema and M. Gunderson, “Work Is About More than Money: Toward a Full Accounting of the Individual, Social, and Public Costs of Unemployment, and the Benefits of Work,” Cardus, 2019, <https://www.cardus.ca/research/work-economics/reports/work-is-about-more-than-money/>.

out as the individual's employment income rises. Canadian data show that the formerly incarcerated earn substantially less than the average Canadian, so this program would almost certainly disproportionately benefit them.<sup>35</sup> Other pro-employment benefit programs that are targeted at low-income people would certainly disproportionately benefit those who have criminal records.

However, the CWB and similar programs act as an incentive targeted at the employee to seek and remain in employment, not targeted at the employer.<sup>36</sup> Yet, as we have seen above, a major problem associated with the underemployment of persons with criminal records is the orientation of employers toward this population. Programs that support the earnings of prospective employees are welcome policies, but they are incomplete as they are not targeted towards people with criminal records. There remains a need for incentives to encourage employers to hire this population in particular.

Moreover, there is a strong case that people with criminal records are in a particularly difficult situation in finding employment. Although many groups of people in our society face barriers to employment, few carry with them a mark so seemingly disqualifying as a criminal record. They may no longer be imprisoned by the walls of the penitential system, but they continue to face a wall to participation in the labour market.

## Policy Options

Some of the reasons why employers might shy away from hiring people with criminal records were outlined above and covered more extensively in previous Cardus research.<sup>37</sup> They include concern about theft or violence in the workplace, concern about the person's work ethic, and other issues. In many ways, these perspectives are understandable even if they are exaggerated or based on incorrect information.

At the root is a concern about risk—and risk carries a cost to a business. A business owner cannot know in advance whether an employee will steal from them or create an unsafe work environment, but they may believe that someone with a criminal record is more likely to do so. This is a risk calculation. Similarly, a well-intentioned employer may hire someone with a criminal record and “take a chance on” them, but this too is a risk to the employer. There is a cost to this risk that employers factor into their calculations. They may be willing to hire someone they deem to be a higher risk, but they may do so only with proper compensation—by negotiating a lower wage or with some form of insurance policy.

The government can assist by de-risking the hiring of someone with a criminal record. Two ways the Ontario government could consider doing this are as follows:

<sup>35</sup> K.M. Babchishin, L.-A. Keown, and K.P. Mularczyk, “Economic Outcomes of Canadian Federal Offenders,” Public Safety Canada, 2021, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2021-r002/>.

<sup>36</sup> The CWB may indirectly incentivize employers, but only insofar as they pay a lower wage than they otherwise would, knowing that their employee's wages would be topped up by the government program.

<sup>37</sup> See Nauta, “Humanizing Criminal Records,” 11–12.

- ***Establish a provincial bonding program that would provide insurance to employers, at no cost to them, for some risks associated with hiring people with criminal records.***

In 1966, the United States government established the Federal Bonding Program. Run by the US Department of Labor, the program provides bonds of between \$5,000 and \$25,000 on individuals who face barriers to the labour market, but it is especially targeted at formerly incarcerated people.<sup>38</sup> The bonds cover “fraudulent or dishonest acts” by bonded employees during the first six months of employment. The program highlights theft, forgery, larceny, and embezzlement as examples.<sup>39</sup> Importantly, there is no deductible for the employer, meaning that the employer is responsible only for the risk associated with acts resulting in damages above the amount of the bond.

The idea has merit for consideration in Ontario. It directly targets a concern among employers about hiring people with criminal records. Fundamentally, this policy represents a transfer of risk from the employer to the government, which is in a better position to absorb risk than most employers, particularly small and medium-sized businesses.

A benefit of this program is that it should be fairly low-cost to the provincial treasury. While the incentive

and benefit of de-risking is potentially very broadly applied—that is, potentially to any employer that hires someone with a criminal record—the actual payments are likely to be quite narrow in their disbursements. Unlike other incentive models (including the one outlined below) that would offer financial payouts to all employers who hire people with criminal records, regardless of the individual’s future behaviour, the fiscal impact would apply only in those situations where an employer faces a loss because of a risk that they took on an employee. The government could further limit its fiscal exposure by applying an upper limit to the amount that would be paid out per individual, as the US does.

Were the Ontario government to pursue the creation of a bonding program like this, it would have to tailor it to its own needs. In particular, the government would have to consider how much risk it is willing to take on behalf of taxpayers. Fortunately, the parameters of such a program are scalable along several lines, including the amount of damages covered, the amount of time during which the bond is active, and the type of act that would trigger a payment. In theory, the government could include a co-payment to share the risk with the employer, but this may defeat the purpose of the program. It could also limit eligibility to certain industries in which those with criminal records are more likely to be employed, but this

<sup>38</sup> Federal Bonding Program, “Employers,” <https://bonds4jobs.com/our-services/employers>.

<sup>39</sup> Federal Bonding Program, “About the FBP,” <https://bonds4jobs.com/about-us>.

seems unnecessary since the marginal cost of including other industries would be comparatively low.

It is worth signaling one note of caution about the results of the US program. The Federal Bonding Program is said to have a 99 percent success rate, which means that only 1 percent of bonds result in an employer claim.<sup>40</sup> At the same time, since its inception in 1966, the program has provided 56,500 bonds for job placement, including 1,068 individuals in a recent year.<sup>41</sup> These numbers seem very low considering the nearly eight million Americans who have been to prison at least once in their lives<sup>42</sup> and the approximately 600,000 who are released from prison every year.<sup>43</sup>

These statistics suggest that there is significant room for expansion of the program. The fact that only 1 percent of bonds result in a payout might seem like a sign of a highly successful program, but it could equally be a sign that the government is taking on an insufficient amount of risk. An Ontario version of this program could potentially improve on this model by promoting it to a cohort of people

with criminal records that employers perceive as entailing a greater level of risk. This would increase the fiscal cost of the program, but it would be money well spent, as it would be targeting a group that is harder to place in the labour market.

Finally, the government may consider this program as a pilot for other populations that face barriers in the labour market but that do not necessarily have criminal records, as the US programs does.<sup>44</sup> Possible groups include recipients of social assistance, individuals with little or no work experience, and those recovering from substance abuse.

- ***Introduce a general wage subsidy for employers who hire people with criminal records.***

The other main policy measure of the US federal government to incentivize the hiring of people with criminal records is the Work Opportunity Tax Credit (WOTC), which is a wage subsidy to employers who hire members of groups who face barriers to employment. There are ten designated groups, of which “ex-felons” are one.<sup>45</sup>

<sup>40</sup> National Institute of Corrections, “The Federal Bonding Program: A US Department of Labor Initiative,” 2013, <https://nicic.gov/resources/nic-library/web-items/federal-bonding-program-us-department-labor-initiative>.

<sup>41</sup> Federal Bonding Program, “About the FBP.”

<sup>42</sup> T.-A. Craigie, A. Grawert, and C. Kimble, “Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality,” Brennan Center for Justice, 2020, [https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport\\_pdf.pdf](https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf).

<sup>43</sup> US Assistant Secretary for Planning and Evaluation, “Incarceration and Reentry,” US Department of Health and Human Services, <https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0>.

<sup>44</sup> Federal Bonding Program, “About the FBP.”

<sup>45</sup> Internal Revenue Service, “Work Opportunity Tax Credit,” August 31, 2023, <https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>. “Ex-felon” is a technical term in the US justice system, referring to those who have been convicted of a crime that entails imprisonment of at least one year, or the death sentence. Thus, the application of the WOTC is much narrower than all those with criminal records.

Under this program, the federal government offers a business tax credit to the employer equal to 40 percent of up to \$6,000 of the individual's wages during the first year of the individual's employment, provided the employee works a minimum of 400 hours. Thus, an employer could receive a subsidy of up to \$2,400 for hiring an ex-felon. The rate drops to 25 percent if the individual works between 120 and 400 hours for that employer.

The amount of the subsidy is not massive, but it could help make the difference in the hiring decision. Consider the effect on someone with a criminal record working half-time (approximately 1,000 hours over the course of a year) at a business that receives the WOTC: on an average cost basis, the government would be covering about \$2.40 per hour of the person's hourly wage. At the very least, it makes it more attractive to hire that person.

A benefit of a general wage-subsidy policy for the Ontario government is that it expands the impact of its pro-employment, anti-crime policies to a wider population of people with criminal records. The scope of the work that it can do within its prisons is admittedly rather limited, because only those with prison sentences of less than two years end up in provincial institutions.

The provincial government has little or no capacity to offer institutional programming to those with sentences served outside of prison and those in federal prisons. Even those in provincial prisons are often there for very short periods, which makes it challenging to offer consistent programming. On the other hand, a wage subsidy applying to a broad class of people with criminal records across Ontario is one way that the provincial government can have a wider positive impact.

Ontario has a wage subsidy that includes people with criminal records, but it is offered through the Skills Development Fund and therefore may have a narrow scope of application. Employers and other civil-society organizations can apply to the Fund for support in workforce development projects for participating workers who are members of certain identified groups, including "justice-involved individuals." A wage subsidy is but one of many different forms of financial support that are offered. The subsidy can cover up to half of the wages, to a maximum of \$5,000 per individual.<sup>46</sup> British Columbia offers a similar wage subsidy for employers who hire clients of its WorkBC agency.<sup>47</sup>

<sup>46</sup> Ontario Ministry of Labour, Immigration, Training and Skills Development, "Skills Development Fund Training Stream Application Guide," Government of Ontario, August 2023, <https://forms.mgcs.gov.on.ca/en/dataset/on00560>.

<sup>47</sup> WorkBC Employment Services, "WorkBC Wage Subsidy: Employer Application Guide," Ministry of Social Development and Poverty Reduction, June 2023, <https://www.workbc.ca/media/1528/download?inline>.

The purpose of identifying these programs is simply to draw attention to the fact that Canadian jurisdictions, including Ontario, have experimented with wage subsidies. The models themselves could use some modifications, especially the requirement that prospective employees be clients of a government agency in order to be eligible for the wage subsidy. Such a condition unnecessarily narrows the scope of the program and could perpetuate reliance on a government program instead of encouraging employers and employees alike towards independence. By contrast, the WOTC is delivered through the tax system. A company simply claims the credit on its income tax without the need for an intervening government program.

As with the Federal Bonding Program, an Ontario version of the WOTC could fit the particular needs of the province. Some parameters would likely need to be changed off the top. For example, the classification of “ex-felon” does not line up well with the Canadian justice system: typically, the dividing line for sentencing is between those serving two years or more and those serving less than that. One option not dissimilar to the US program would be to make anyone who has served any time in prison within a

certain timeframe an eligible employee for the program. Of course, those with criminal records who were not sentenced to prison also face barriers to entering the labour market. An expanded option, then, would be to include all those with criminal records, perhaps at a lower subsidy rate than those who have been to prison.

For ex-felons, the US program applies only in the first year after conviction or release from prison. On the one hand, this may encourage the formerly incarcerated to move quickly in securing employment, which could aid in re-establishing their lives on a legal foundation. On the other hand, this policy may be missing many of the formerly incarcerated who do not tend to get hired very quickly upon their release from prison. The provincial government should therefore consider a longer period of time during which an individual’s employment would be eligible for the subsidy.

Finally, a potential weakness of this program is that it requires the employee to disclose their criminal record in order to inform the employer that they would be eligible for the benefit, which could perpetuate the stigma attached to the record. But this is an inherent problem with any policy that seeks to help people with criminal records specifically and is probably unavoidable. That said, it is

likely that the employer will have known about the criminal record already by the time discussions about wages begin, which lessens the negative effect of this

particular policy in this regard. In any case, it should be up to the prospective employee to disclose whether their wages would be eligible for the program.

### 3.3 Communicating the Motivation

Good policy needs strong communications in order to succeed. This is especially true of policies that promote employment for those with criminal records.

There are plenty of reasons to support the policies above, and others, that help those with criminal records re-enter the labour market. Encouraging employment among this population will make our streets safer by reducing recidivism rates. It will also put hands to work that may otherwise remain idle, tapping an underutilized pool of labour. More people making things or providing services for others grows our economy and makes it stronger. Thus, an approach to criminal justice that includes a focus on employment will yield benefits not just to public safety, but to the economy as well.<sup>48</sup>

But more fundamentally, the reason to support these policies is that every human being who intends to lead a better life should be provided with the opportunity to demonstrate it. The purposes of sentencing are varied, but, save for the most dangerous offenders, they anticipate the safe re-entry of a citizen into society. When someone has repaid their debt to society, we should give them the chance to re-establish themselves on a solid foundation. Rehabilitation programs exist to prepare

them for this re-entry. Employment can help with this. A good workplace has the potential to provide a worker with a sense of belonging. At best, it is a place where one is valued for one's contribution and rewarded for that value through one's wages. That value and sense of belonging can provide dignity, meaning, and direction to the lives of those with criminal records.

Yet programs for this group of people may not always be seen in positive terms. Members of the public may question why scarce government resources and precious tax dollars are being allocated to people who have committed a crime instead of other groups of unemployed and underemployed persons who have not.

This means that government leaders must communicate their motivations in a proactive way. A positive communications strategy should be seen as part of the policy. The policies above, particularly about reframing criminal records, are aimed at changing the hearts and minds of employers, but they will only go so far. Strong communication from government leaders about the importance of hiring people with criminal records is necessary to complement these efforts.

<sup>48</sup> Nauta, "Curbing Crime with Employment."

For example, former Minister Monte McNaughton engaged the communications side of this policy problem effectively when he was Minister of Labour, Immigration, Training, and Skills Development. He actively promoted the aspects of the Skills Development Fund that supported people with criminal records and leveraged his social-media presence to highlight success stories of people with criminal records and the organizations that supported their re-entry into the labour market.

This leads, therefore, to one final recommendation for the Ontario government and its political leaders:

- ***Actively promote the above policies, communicate the motivations behind the re-integration of people with criminal records, and actively encourage employers to hire them.***

This recommendation is important for the success of the above programs for two reasons. First, it could build the support necessary for buy-in from the public. Second, it could help to increase take-up rates of the fiscal measures, which is a necessary condition for the measures to have a strong policy impact. Ultimately, the combination of strong direction from political leaders and successful public policy measures have the potential to lead to better outcomes for people with criminal records. This in turn should assuage the political concerns about the use of resources for this group.

Communicating this message should be the responsibility not only of the Minister of Labour, Immigration, Training and Skills Development and the Solicitor General, but of the whole government—and ultimately of civil society as well. The government should look to civil-society organizations, especially groups representing employers, as partners in the promulgation of these policies, with the goal of disseminating these messages as broadly as possible.

## 4. Conclusion

The policies outlined above are hardly exhaustive of the problem of increasing the employment of Ontarians with criminal records. Indeed, a fully integrated employment strategy for this population would need to consider other factors as well, including skills training, assistance in finding housing, development of social-support networks, and treatment of substance abuse. Governments should not neglect these factors in developing policies that support the re-entry into the labour force of persons with criminal records.

Nevertheless, the policies outlined in this paper address specific barriers that this population faces to participation in the labour market. They can be seen as addressing two sides of the same coin. The policies on criminal records, to correct employers' inaccurate impressions about hiring people with criminal records, seek to change the *inner* dispositions of employers. The incentives for employers to hire individuals with criminal records seek to change the *outer* behaviour of those same employers. Ultimately, each policy is designed to improve the hiring decisions of employers, but from a different angle.

Finally, both rest on the final recommendation to promote the policies proactively. By strongly communicating the motivations behind this policy agenda, political leaders can not only increase the effectiveness of its policies but also employ the bully pulpit to lead employers to the ultimate goal of each of these policies: viewing these individuals as more than just people with criminal records, but as human persons with dignity.

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# ONTARIO 360

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