

Welcome All!

To the Fourth Monthly Meeting
of West Contra Costa County's
Reentry Solutions Group

Tuesday, October 25, Noon to 2:00 PM
Bermuda Room, Civic Center, Richmond, CA

Hosted by the Office of Neighborhood Safety,
CCISCO, Pacific Institute, and Bay Area Legal Aid

Knowledge and Needs:

Reentry Solutions Group to Advance Reentry Effectiveness

Sponsored by ONS, hosted by Bay Area Legal Aid,
facilitated by Further The Work,
and **in partnership with all of you,**
over the next year the Reentry Solutions Group
will work together to **strengthen the reentry system**
and **improve the reentry experience**
in West Contra Costa County.

On the Calendar

- *Meeting #1, July: Open call to the community*
 - What we know, what we want, identifying shared goals and priorities
- *Meeting #2, August: Understanding multi-sector projects*
 - Public and private systems they relate to incarceration and reentry
 - Local one-stop models: lessons from the field
- *Meeting #3, September: Deeper dive on developing a one-stop center*
 - Parole and probation departments and their partnership in reentry and in developing a one-stop center
 - Identifying high-priority affinity issues and individual levels of interest
- *Meeting #4, October: Advocacy and policy in employment and housing*
 - Richmond Housing Authority on access to public housing for people with criminal convictions
 - Bay Area Legal Aid on access to low-income housing for people with criminal convictions
 - National Employment Law Project on legal rights for California employees and job applicants
 - Safe Return Team on local housing and employment issues
- *Meeting #5, November: Restorative justice (RJ) and reentry systems*
 - Sujatha Baliga, National Council on Crime and Delinquency, on principles of restorative justice
 - Judge Gail Bereola and the Alameda County RJ strategic plan

Nine Priorities

You want....

1. **A one-stop Reentry Services and Referrals Center in Greater Richmond**
2. **An up-to-date, accurate list of programs and services**
3. **Service providers that work together, so referrals are efficient and effective**
4. **General population to better understand reentry issues and people**
5. **Ongoing support group for individuals and their families**
6. **Better pre-release and transition services**
7. **Policy changes to encourage employers to hire the formerly incarcerated**
8. **To identify, educate, and connect with employers willing to hire**
9. **What other communities are doing to improve reentry**

Agenda for Today

| | |
|--|--|
| 12:00-12:15 | Settling In:Thought Prompt for the day [please turn these in to us] |
| 12:15-12:20 | Introduction: Who's in the room? Who's new in the room? |
| 12:20-12:40 | Michelle Natividad Rodriguez, National Employment Law Project, on legal rights for California employees and job applicants |
| 12:40-12:55 | Adam Poe, Bay Area Legal Aid, on access to low-income housing |
| 12:55-1:10 | Richmond Public Housing Director Tim Jones on access to public housing |
| 1:10-1:20 | Local Update: Safe Return Team: Local research on employment and housing |
| 1:20-1:50 | Affinity Team group activity |
| 1:50-2:00 | Next Steps, meeting dates, virtual community forum |
| Sign up by texting the word “reentry” to 22828 | |

Legal Rights for California Employees and Job Seekers

Michelle Natividad Rodriguez, JD
Staff Attorney
National Employment Law Project

Workers with Criminal Records: Legal Rights Information for California Employees and Job Applicants

Reentry Solutions Group
October 25, 2011

Michelle Natividad Rodriguez
National Employment Law Project
mrodriguez@nelp.org



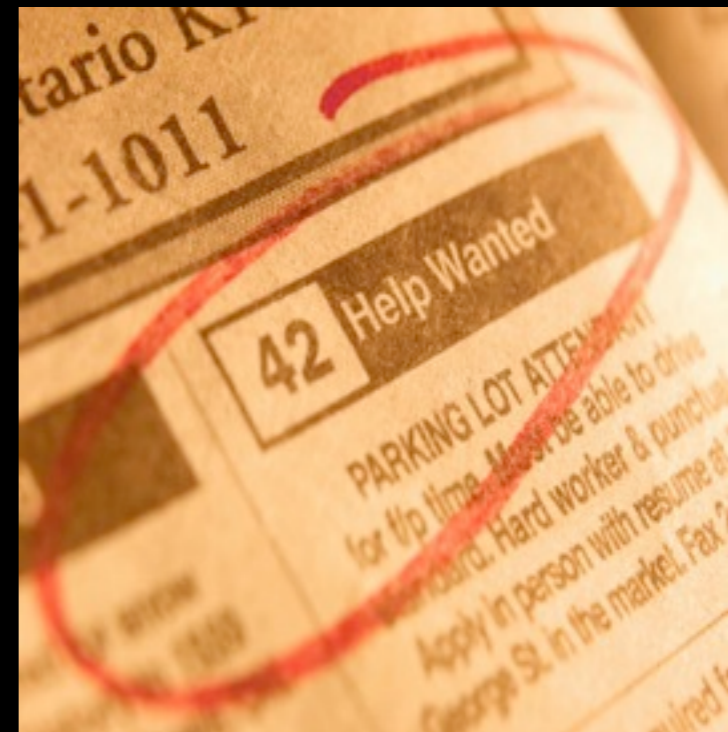
National Employment Law Project's Second Chance Labor Project



NELP's Second Chance Labor Project promotes model employment policies and basic protections, such as Title VII of the Civil Rights Act of 1964 and the Fair Credit Reporting Act, that allow qualified workers with records to attain and retain quality jobs.

Agenda

- Why do criminal background check protections matter?
- How Title VII applies to criminal records
- What background checks cover



Why do criminal background check protections matter?



(C) Patriska Thomson

How is public safety and



Sixty-five million U.S. adults, over one in four adults, have a criminal record.

- Over one in four U.S. adults have records. (NELP (2011))
- Studies found that employment reduces recidivism. One study showed reduction of recidivism by 58% after 30 days of employment. (Safer Foundation (2004))
- The cost of corrections has increased 660% from 1982 to 2006 consuming \$68 billion a year. (U.S. Bureau of Justice Statistics)
- \$57 to \$65 billion lost in GDP because of lost employment. (CEPR (2010))

How Title VII of the Civil Rights Act of 1964 Applies to Arrest and Conviction Records



Considering criminal history has a disparate impact

“Disparate impact” is presumed when employers bar people with convictions:

“[A]n employer’s policy or practice of excluding individuals from employment on the basis of their conviction records has an **adverse impact** on [African American and Latino workers] in light of statistics showing that they are convicted at a disproportionately higher rate than their representation in the population.”

(EEOC Policy Statement on the Issue of Conviction Records (issued 2/4/87))

Absolute bars based on convictions are unlawful:

“[W]here there is evidence of adverse impact, an absolute bar to employment based on the mere fact that an individual has a conviction record is unlawful under Title VII.”

(EEOC Policy Statement on the Issue of Conviction Records (issued 2/4/87))

“No Arrests”

**“Do Not Apply
with Any
Misdemeanors/Felonies”**

**BLANKET
BANS**

“Clean Rec

**“No Felonies or
Misdemeanors
Allowed”**

“Spotless Background/Criminal History”

**“Must Not Have Any Felony
Or Misdemeanor Convictions.
PERIOD.”**

**“No Misdemeanors
No Felonies”**

Employers Must Consider Convictions on a Case-by-Case Basis

1. The **nature and gravity of the conviction**;
2. The **nature of the job** held or sought.
3. The **time** that has **passed** since the conviction and/or completion of the sentence.

Employer should consider mitigating factors, e.g., rehabilitation, education, successful work history, age, etc.



What Criminal Background Checks Cover



What shouldn't be included on a criminal background check?



- **No arrests, no convictions older than 7 years** (Cal. Civil Code § § 1786, et seq)
- **No arrests for which diversion program completed** (Cal. Labor Code § 432.7(a); 2 CCR § 7287.4(d)(1)(C))
- **No dismissed, expunged, sealed convictions** (2 CCR § 7287.4(d)(1)(B)); (2 CCR § 7287.4(d)(1)(B))
- **Certain marijuana-related convictions, if the conviction is over 2 years old** (Cal. Labor Code § 432.8)

Most common errors with criminal background checks

- Wrong person
- Multiple reports of the same incident - confusing
- Uncorrected identity theft
- Arrests that didn't lead to conviction
- No dispositions
- Old convictions (over 7 years)
- Dismissed records still appear



What Can California Employers Learn About (1) Arrests and (2) Convictions?

| | Can the <u>employer ask</u> about it?* | Will it be reported on a <u>commercially prepared background check</u> ?** | Will it be on a government <u>rap sheet</u> from FBI / Cal. DOJ? |
|--|---|---|--|
| Arrest that did not lead to conviction | No (unless for law enforcement position or certain drug arrests for some healthcare positions) | No** (unless company has verified in last 30 days that arrest is still open) | Yes / Yes |
| Conviction less than 7 years old | Yes | Yes | Yes / Yes |
| Conviction more than 7 years old | Yes | No** | Yes / Yes |
| 1203.4 dismissal for misdemeanors | No | No** | Probably / Yes |
| Successful diversion program | No | No** | Probably / Yes |

* This does not include the over 200 occupations in California that require state licensing or certification.

** Remember, commercially prepared background checks are often inaccurate and report arrests and/or convictions they should not under California law.

Hiring Incentives

- The Department of Labor offers a **free bonding program** for “at-risk” job applicants, including people with criminal records, indemnifying employers for loss of money or property due to an employee’s dishonesty or theft. Employers seeking bonding may call 1.877.US2.JOBS (1.877.872.5627) to locate the State Bonding Coordinator. <http://www.bonds4jobs.com>
- Employers can take advantage of the federal **Work Opportunity Tax Credit**, which allows a company to claim up to a \$2,400 tax credit for hiring an employee with a felony conviction within one year of the date of his or her conviction or release from incarceration. http://www.edd.ca.gov/jobs_and_training/Work_Opportunity_Tax_Credit.htm
- Employers can also take advantage of state and local tax credits in **Enterprise Zones**. CA provides tax credits for hiring workers with criminal records in cities like Oakland, Richmond, and San Jose (San Francisco is conditional). Some cities like San Francisco may also offer local tax credits for employers. <http://www.hcd.ca.gov/fa/cdbg/ez/>

National Employment Law Project

Contact Information

Hotline for applicants
denied employment based
on a criminal record:

(510) 409-2427

Michelle Natividad Rodriguez

www.nelp.org



Access to **Low-Income** Housing

Adam Poe, JD

Housing Attorney

Bay Area Legal Aid

Key Issues for Housing for People with Criminal Records

1. Federally Assisted housing

1.1. What is Federally Assisted Housing?

1.2. Eligibility criteria

1.3. Screening process

2. Consumer Protection Laws

3. Other issues

3.1. Juvenile records

3.2. Disability

3.3. Sex offender residency restrictions

What is Federally Assisted Housing?

- **Public Housing:** The Housing Authority is your landlord.
- **Section 8 Vouchers** are “portable.” They are administered by the Housing Authority, but you live in housing owned by a private landlord. Section 8 pays a portion of the rent, based on your income.
- **Project-Based Section 8:** The subsidy is “attached” to the unit. If you move, you lose.

Who is Ineligible?

1. Which of the following criminal conviction **MUST** result in your denial from a Federally Assisted Program?
 - A. Any conviction resulting in mandated registration in sex offender database;
 - B. Any conviction for production of methamphetamine on premises of federally assisted property;
 - C. Any conviction for drug-related criminal activity on the premises of federally assisted property within the last 3 years;
 - D. Homicide, or attempted homicide

Answer: All, except D: Homicide, or attempted homicide

Possible Cause for Ineligibility

- Drug-related criminal activity
- Violent criminal activity “within a reasonable time” before admission
- “Other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees”

Local Policies

1. **Local policies** on a “reasonable time”

I.1. Contra Costa County Housing Authority – 5 years

I.2. Public housing – “Even if a person has served time in jail and has now been released on probation, that person cannot be admitted into public housing unless a year has passed since the completion of probation.”

I.2.1.NOTE: Provision is possibly illegal

I.3. Richmond Housing Authority – 5 years

I.4. Pittsburg Housing Authority – 5 years

2. “Other criminal activity” is **limited** by statute

2.1. MUST adversely affect the health, safety or right to peaceful enjoyment of the premises

2.2. HUD guidance indicates **many offenses cannot be grounds for denial**

Mitigating Circumstances

1. Mitigating circumstances – 3 “R”s
 - 1.1. Recency
 - 1.2. Relevance
 - 1.3. Rehabilitation
2. Each jurisdiction can have its own definition of “mitigating circumstances”
3. Violence Against Women Act (VAWA)

Screening Process

1. Applicant

- 1.1. PHAs and HUD-assisted owners will perform criminal background check on each adult member of the household

2. Adding member to household

- 2.1. Need to notify PHA or HUD-assisted owner and obtain approval
- 2.2. Failure to obtain approval could result in termination of entire household
- 2.3. Often arises as a result of parole reporting or incidental police contact

Denial Process

1.If PHA or HUD-assisted owner proposes to take adverse action on basis of criminal record obtained by PHA:

1.1.**Must** send copy of criminal record to applicant or tenant

1.2.**Must** provide opportunity to dispute accuracy and relevance

2.If HUD-assisted owner obtained criminal record from tenant screening agency:

2.1.FCRA and ICRAA apply

3.Written **notice of denial** is required

3.1.**Must state reasons for denial:** Simple statement “applicant did not meet the standards for admission” not sufficient

3.2.Must state how and when applicant can contest decision

3.3.TIP: **Request hearing in writing immediately** and keep a copy w/ receipt or file stamp

4.

Review Process

I. Processes Vary:

- 1.1. **Public Housing:** Informal Hearing
- 1.2. **Section 8 Voucher Program:** Informal Review
- 1.3. **HUD-Assisted Housing:** Meeting

2. Possible Claims:

- 2.1. Notice deficient (but procedural challenge will not result in admission)
- 2.2. PHA or owner did not follow own policies
- 2.3. Policies do not conform to federal statute or regulations
- 2.4. **Mitigating circumstances**

Mitigating Circumstances

1. Evidence of rehabilitation

1.1. Letters of support critical

- Employer
- Teacher
- Case worker
- Drug or alcohol treatment program
- Current or prior landlord
- Parole or probation officer

2. Information from prison or jail about programs completed in custody

Contact Info

ADAM POE – APOE@BAYLEGAL.ORG

Access to **Public** Housing

Timothy Jones

Executive Director

Public Housing Authority

City of Richmond



U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

THE SECRETARY

June 17, 2011

Dear PHA Executive Director:

Each year, more than half a million people are released from prisons in the United States, and an additional seven million are released from jails. Research shows that ex-offenders who do not find stable housing in the community are more likely to recidivate than those who do, yet people returning to their communities from prison often face significant barriers to obtaining housing. Studies have also found that the majority of people released from prison intend to return to their families, many of whom live in public or other subsidized housing.

The Department is engaged in several initiatives that seek a balance between allowing ex-offenders to reunite with families that live in HUD subsidized housing, and ensuring the safety of all residents of its programs. To that end, we would like to remind you of the discretion given to public housing agencies (PHAs) when considering housing people leaving the criminal justice system. The Department encourages you to allow ex-offenders to rejoin their families in the Public Housing or Housing Choice Voucher programs, when appropriate.

Within HUD statute and regulations, there are only two explicit bans on occupancy based on criminal activity. PHAs must establish a lifetime ban on admission to the Public Housing and Housing Choice Voucher programs for:

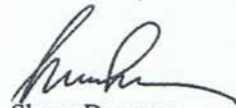
1. Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR 960.204, 24 CFR 982.553); and
2. Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR 960.204, 24 CFR 982.553).

Additionally, PHAs must establish standards that prohibit admission if the PHA determines that any household member is currently engaged in illegal use of a drug, or the PHA has reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of drug or alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. PHAs must also prohibit admission of an applicant for 3 years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. In this case, however, PHAs retain discretion to consider the circumstances and may admit households if the PHA determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, including those supervised by drug courts, or that the circumstances leading to eviction no longer exist (24 CFR 960.204, 24 CFR 966.4, 24 CFR 982.553).

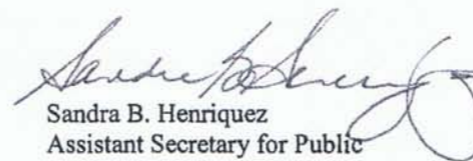
Beyond these restrictions, PHAs have broad discretion to set admission and termination policies for the Public Housing and Housing Choice Voucher programs. When screening family behavior and suitability for tenancy, PHAs may consider all relevant information, including factors which indicate a reasonable probability of favorable future conduct. For example, evidence of rehabilitation and evidence of the applicant family's participation in or willingness to participate in social services such as counseling programs should be taken into consideration by the PHA.

As President Obama recently made clear, this is an Administration that believes in the importance of second chances – that people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future. Part of that support means helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live.

We are grateful that you will join us in welcoming these deserving citizens back to their communities.



Shaun Donovan
Secretary



Sandra B. Henriquez
Assistant Secretary for Public
and Indian Housing

Update on Local Research:

Ban the Box

Andres Abarra, Jeff Rutland

Safe Return Team

Fair Hiring Process

- Job announcement: statement on discrimination and encouraging applicants
- Application: no 'box' asking about past convictions
- Background check: only for state-mandated positions, only for applicants who have received conditional offer
- Consideration of record: clear criteria applied by a trained staff person
- Appeal process: opportunity to see and correct background check, and present evidence of rehabilitation

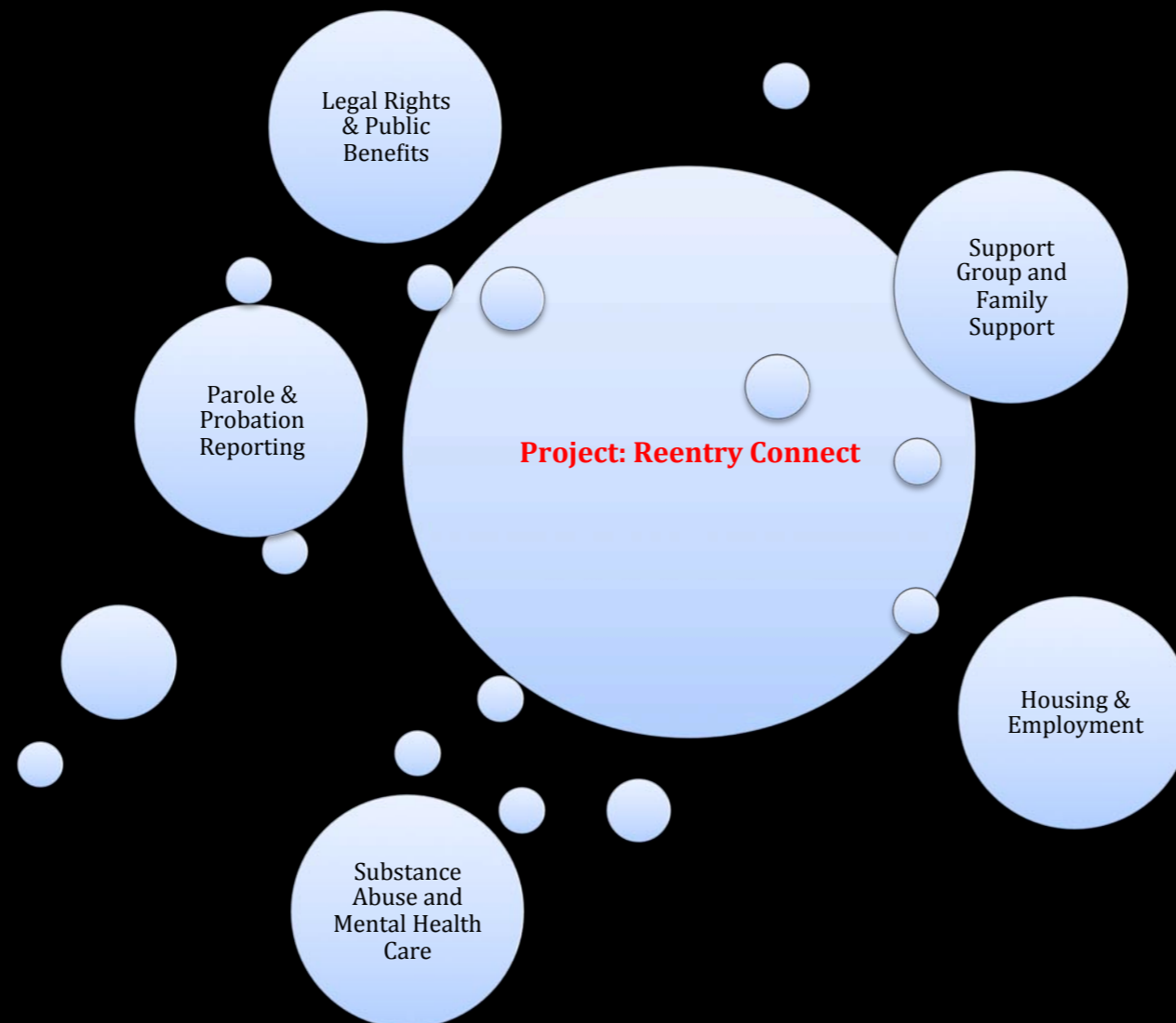
Your Affinities

| | One-Stop Center | Restorative Justice | Programs Improvement/ Integration | Advocacy & Policy | Workforce Development | Housing Access | Funding | Research | Community Attitudes | Data and Evaluation Systems | Communication & Info Mgt | Inside/ Outside | Other Ideas |
|---------------------------|-----------------|---------------------|-----------------------------------|-------------------|-----------------------|----------------|---------|----------|---------------------|-----------------------------|--------------------------|-----------------|----------------------|
| ? | | | | | | | | | | | 2 | | After parole? |
| ? | | | 1 | | | | | | | | | | 1 |
| ? | | | 2 | | | | | | | | | | |
| ? | | | | | 1 | | | | | | | | |
| ? | | | | | 1 | | | | | | | | |
| ? | 1 | | | | | | | | | | | | |
| Allwyn Brown | 1 | | | | | | | | | | 1 | | |
| Anton Burrell | 2 | | | | | | | | | | | | |
| April Suwalsky | 1 | 2 | | | | 2 | | 3 | 1 | | | 3 | |
| Bill Erban | 1 | | | | | 2 | 1 | | | | | | |
| Che Soto-Vigil | | 1 | 1 | 2 | | | | | | | | | |
| Chris Frederick | 2 | 1 | | | | 1 | | | | | | | |
| Deborah Diaz | 1 | | 1 | | | 2 | | | | | | | |
| Dennis Newlin | 2 | | 1 | 2 | | | | | | 3 | | | |
| Doria Mueller-Beilschmidt | 1 | | 2 | | | | | | 1 | | | | |
| Eli Moore | 3 | | | 1 | 2 | 3 | | 1 | | 2 | | | |
| Emlyn Struthers | 2 | 1 | | | 1 | 3 | 2 | | 3 | | | | |
| Fatima Matal-Sol | | | 2 | | | | | | | | 1 | | |
| Gene Alameda | | | | | 1 | | 2 | | | 2 | 2 | | |
| George Horiuchi | | | | | 2 | 2 | | | | | | | |
| Hafsah Al-Amin | 1 | | | 1 | | | | | | | | | Family Reunification |
| Jeff Ritterman | | 2 | | | 1 | | | 2 | 1 | | | | |
| Jerry Elster | 3 | | | 1 | | 2 | | | | 3 | | | |
| Jim Becker | 2 | | | | | | 1 | | | 1 | | | |
| Katherine Webster | | | | | | | | | 1 | | | | |
| Kristen Pursley | 2 | 2 | | | 1 | | | | 1 | | | | |
| Latressa Alford | 1 | 2 | | 2 | | | | | | | | | Voting Rights |
| Leonard Neal | | | | | | | | 3 | 1 | 3 | | | |
| Linda Evans | 2 | | | 1 | | 1 | | | | | | | |
| Lindy Lavender | 2 | 2 | 1 | 1 | | | | | | | | 3 | |
| Lori Beath | | 1 | | 1 | | 2 | | 2 | 3 | 3 | | | |
| Margaret Gee | 1 | | 3 | 3 | 2 | | | | | 2 | | | |
| Mike Elster | 1 | 1 | | | | | 3 | | | | | 2 | |
| Minoo Zabih | | | | | | | | 2 | | 1 | 2 | | |
| Nancy Thome | | | 1 | | 2 | | 1 | 2 | | | | | |
| Nicole Valentino | 2 | 2 | | 1 | 3 | 1 | 3 | | | | | | Families |
| Orlena Foy | | | 2 | | | | | | | | | | |
| Pamela Crespin | | | 1 | | 2 | | | 2 | | | | | |
| Peter Ordaz | 2 | | 1 | 2 | | 1 | | | | | | | |
| R. Shaw | | | 1 | | 2 | | | | | | | | |
| Reed? | | | 1 | | 2 | 3 | | | | | | | |
| Richard Boyd | | 3 | | | | | 1 | | | | | | |
| Rob Hope | 1 | | | | 1 | | 2 | | 2 | | | | |
| Russ Miller | | 1 | 1 | | | | | 3 | | | | | |
| Tamisha Walker | 1 | 1 | | 3 | 2 | | 2 | 3 | | | | | |
| Terrance Cheung | 1 | 2 | 2 | | | | 1 | | | | 1 | | |
| Terri Waller | | 2 | | 1 | | | | 1 | | | | | |
| Tracy Reed | 1 | | | 2 | | | | | | | | 3 | |
| # of respondents | 26 | 16 | 17 | 15 | 16 | 13 | 11 | 11 | 10 | 8 | 6 | 5 | 0 |
| Average response | 1.54 | 1.63 | 1.41 | 1.60 | 1.63 | 1.92 | 1.73 | 2.18 | 1.60 | 2.25 | 1.50 | 2.80 | 1.00 |
| % of scores that rank 1 | 50% | 44% | 59% | 53% | 31% | 31% | 45% | 18% | 60% | 25% | 50% | 0% | 75% |

1=Most Important; therefore, low scores reflect high level of commitment

Here's One Idea:

What about starting a small-scale, once-weekly “pop-up” One Stop Center modeled on the “Homeless Connect approach,” with a borrowed location, a few key services, a defined and shared data set, a pilot-style web-based information management system, and a specific, limited population?



Stay Involved! Invite Others!

The 411 on November's Meeting: It's all about restorative justice

Reentry Solutions Group at a Glance:

- How Often: **Last Tuesday** of every month
- What Time: **Noon to 2:00 PM**
- Place: **Bermuda Room**, Civic Center
- Dates: **Nov. 29**, Jan. 31; *no meeting in December*
- Sign up: **Text reentry to 22828**
- Be an electronic pioneer: **Join the virtual community** discussion group at <http://furtherthoughts.ning.com>
- **Download** these slides at furtherthework.com/publications.html