

# U.S. Equal Employment Opportunity Commission Policy Guidance: **A Mental Health Impact Assessment**



Predicted impacts on the mental health of residents of Chicago's Englewood community, due to changes in federal policy guidance on the use of arrest records in employment decisions



**ADLER SCHOOL**

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## Committees

The MHIA Steering Committee met monthly and comprised staff from the Institute on Social Exclusion at the Adler School of Professional Psychology, as well as representatives from the Adler School's Institute on Public Safety and Social Justice, U.S. Centers for Disease Control and Prevention, Safer Foundation, Sargent Shriver National Center on Poverty Law, Teamwork Englewood, Imagine Englewood IF, Englewood Community Health Clinic, Chicago Department of Public Health, Illinois Department of Public Health, Northern Illinois University—Public Health Program, University of Illinois at Chicago—School of Public Health, and the Illinois Department of Employment Security Re-Entry Employment Services Program. Also in attendance were external project consultants, which included Human Impact Partners, Millennia Consulting, Varga and Associates, Stewart Communications, and faculty from the University of California—Berkeley Schools of Public Health and Urban Planning.

The MHIA Advisory Committee met quarterly and included representatives of the Robert Wood Johnson/Pew Charitable Trusts Health Impact Project, Neighborhood Housing Services of Chicago, Inc., Teamwork Englewood, Chicago Department of Public Health, University of Pittsburgh—School of Medicine, and the Public Health Agency of Canada. It also included a London-based specialist who consults on mental health issues to the World Health Organization.

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## Table of Contents

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|  |    |
|--|----|
| <b>I. Executive Summary</b> .....  | 4  |
| <b>II. Glossary</b> .....  | 16 |
| <b>III. Introduction</b> .....   | 18 |
| <b>IV. Policy Context</b> .....  | 20 |
| <b>V. About HIA and MHIA</b> .....   | 22 |
| <b>VI. The Context for this MHIA</b> .....   | 24 |
| <b>VII. Screening</b> The Decision to Focus on the U.S. EEOC Policy Guidance<br>on the Use of Arrest Records in Employment Decisions ..... | 27 |
| <b>VIII. Scoping</b> Creating a Workplan for the MHIA .....  | 31 |
| <b>IX. Assessment</b> Part I: The Methods.....   | 35 |
| <b>X. Assessment</b> Part II: The Heart of the MHIA.....   | 40 |
| <b>XI. Assessment</b> Part III: The Impact Predictions and Supporting Evidence.....  | 47 |
| <b>XII. Recommendations</b> .....  | 67 |
| <b>XIII. Reporting</b> .....   | 69 |
| <b>XIV. Monitoring</b> .....   | 71 |
| <b>XV. Limitations</b> .....   | 73 |
| <b>XVI. Evaluation</b> .....   | 74 |
| <b>XVII. Conclusion</b> .....  | 75 |
| <b>XVIII. Bibliography</b> .....   | 77 |
| <b>XIX. Appendices</b> .....   | 82 |

# I. Executive Summary

## BACKGROUND

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In 1990, the United States Equal Employment Opportunity Commission (EEOC or Commission) enacted federal policy guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (referred to as Policy Guidance) to help employers, employees, and job applicants understand and comply with legislation that was intended to eliminate unlawful discrimination in employment (U.S. Equal Employment Opportunity Commission [EEOC], 2012a).

Over time, many people, including members of the EEOC, recognized a need to amend the Policy Guidance, particularly as it related to issues such as the use of arrest records in employment decisions.

The disproportionality of arrest rates in the United States underscores the importance of clarifying the Policy Guidance. Arrest rates for African Americans and Latinos are staggeringly high, at two to three times their proportions of the national population. For instance, in 2010, African Americans, who accounted for approximately 14 percent of the general U.S. population, accounted for 28 percent of all arrests (EEOC, 2012a).

In 2008, Latinos were arrested for federal drug charges at a rate of approximately three times their proportion of the general population (EEOC, 2012a). A record of arrest does not necessarily mean a conviction occurred. Research undertaken as part of this project suggests that following arrest, many African Americans and Latinos likely have no subsequent charges or convictions. Despite this, arrest records are still often used as a basis of employment decisions, which results in exacerbating the already dis-

proportionally high unemployment rates experienced by these two populations (Bureau of Labor Statistics, 2012).

Employment discrimination has been linked to adverse mental health effects, including anxiety, depression and stress (Hammond, Gillen, & Yen, 2010).

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Consequently, changes in the U.S. EEOC's Policy Guidance that help to mitigate employment discrimination based on the use of arrest records could have important implications for the mental health and well-being of vulnerable populations, such as African Americans and Latinos.

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Yet, prior to the Mental Health Impact Assessment (MHIA) described in this report, impacts to mental health were not considered as part of the EEOC's deliberations on its employment policy revision.



In 2010, African Americans, who accounted for approximately 14% of the general U.S. population, accounted for 28% of all arrests.

U.S. Equal Employment Opportunity Commission, 2012

## USE OF MHIA

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This report describes, in brief, the process and results of a Mental Health Impact Assessment (MHIA). MHIA is a Health Impact Assessment (HIA) that focuses explicitly on the mental health implications of public decisions. Like HIA, the fundamental goal of an MHIA is to ensure that health and health inequities are considered in public decision-making by using a process that engages the populations most likely to be impacted by those decisions. Through this six-step process, HIA and MHIA assess the potential impacts of proposed decisions (e.g., laws, policies, programs, or projects) on the social determinants of health and mental health. The social determinants of health are where people are “born, grow, live, work, and age (Commission on the Social Determinants of Health, 2008).

## THE SIX STEPS OF MHIA’S ARE AS FOLLOWS:

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## MHIA FOCUS

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Between January 2011 and June 2012, the MHIA Team, which comprised faculty at the Institute on Social Exclusion (ISE) and the Institute on Public Safety and Social Justice (IPSSJ) at the Adler School of Professional Psychology, worked with Chicago's Englewood community to conduct an MHIA on the proposed changes to the U.S. EEOC Policy Guidance. Englewood is a low-income African American community characterized by many social determinants that adversely impact mental health including poverty, crime, violence, poor quality housing, lack of educational and employment opportunities, and public services. In conducting the MHIA, the intention of the MHIA Team was to help ensure that community voices were integrated into the EEOC deliberation process and to ensure that the final decision promoted mental health of the community and its residents.

Typically, proposed changes to legislative language are available in advance of the decision to conduct an HIA. That was not the case with the MHIA because of the nature of the EEOC decision-making process: proposed revisions to policy guidance are not made available to the public prior to the actual amendment. Though the MHIA Team did not have specific language to assess, it had a solid understanding of the intent of the proposed revisions due to the considerable publicly documented legal critiques of the 1990 legislation. This understanding was used to inform the MHIA. The question, then, that guided the MHIA process was the following: What is the impact upon the mental health of a community when employers use arrest records in making employment decisions about members of that community?

This MHIA focused on assessing the impact of employers' use of arrest records. The MHIA placed a "mental health lens" on areas of law that had previously been informed only by civil rights, human rights, and economic analyses.

Thus, the MHIA provides new information upon which to determine whether or not a proposed policy, program, or project should be implemented. This MHIA highlights the mental health impacts of the policy and makes recommendations about how the proposal could be improved to better protect and promote community mental health.

The MHIA process was initiated prior to the public release of the EEOC's revisions to the Policy Guidance. The MHIA assessment was still in process when the revised guidance was released on April 25, 2012; therefore, the MHIA Team was able to use the preliminary MHIA findings to offer public comment about the impact of the proposed revisions on mental health outcomes to the EEOC prior to their April ruling.

The EEOC revisions will have national impact. However, in predicting the impact of the EEOC revisions on mental health, the MHIA Team collaborated with the Englewood community, a low-income African American community with which members of the MHIA Team had collaborated on numerous other initiatives in previous years and with which there existed strong relationships. Located on Chicago's south side, the Englewood community, which is characterized by many social determinants that negatively impact mental health, was defined as the project area for the MHIA. The proposed EEOC revisions were salient where the unemployment rate was extremely high due in part to the high rates of arrest.



What is the impact upon the mental health of a community when employers use arrest records in making employment decisions about members of that community?

## SOCIAL DETERMINANTS OF INTEREST

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Through a highly iterative process involving literature reviews and informal dialogue with Englewood residents, the MHIA Team identified four social determinants most likely to be impacted by the EEOC revision: social exclusion (i.e., the systematic marginalization of groups of people within a society), employment, income, and neighborhood conditions. Changes resulting from the proposed revisions to the EEOC guidance could affect these determinants, and as a result were hypothesized to have important impacts on both individual- and community-level mental health in Englewood.

## THE ASSESSMENT

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The process of assessing the potential impact of the EEOC revisions on mental health involved two steps:

- ① determination of existing community and individual mental health conditions and
- ② prediction of the impact of the proposed revisions on those conditions.

To make impact predictions, The MHIA Team used quantitative and qualitative methods, which included a literature review, secondary data analysis, a community survey administered to residents, focus groups with community residents, and interviews with employers in the Englewood community.

### Predicted Impacts of EEOC Revisions on Mental Health

To help determine the likely impact of the proposed revision (hereafter referred to as “Impact Predictions”) to the U.S. EEOC’s Policy Guidance on the social determinants, and then individual and community mental health outcomes, the MHIA Team analyzed findings from the literature review, survey, focus groups, and interviews, the MHIA Team made predictions about the impact that revisions to U.S. EEOC Policy Guidance might have on the social determinants and mental health outcomes of interest. Tables 1 and 2 provide summaries of predicted impacts.



Englewood, Chicago



As illustrated in the tables, for each social determinant an assessment was made of the *direction*, *likelihood*, *magnitude*, and *distribution* of the impact. For each mental health outcome, an assessment was made of the *direction*, *likelihood*, *severity*, and *distribution* of the impact.

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### **DIRECTION**

Refers to a decrease or increase in the social determinant or mental health outcome of interest.

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### **LIKELIHOOD**

Refers to the certainty of the predictions made by the MHIA Team. Likelihood may be unlikely/implausible, possible, likely, very likely/certain, or there may be insufficient evidence for evaluation.

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### **MAGNITUDE**

Refers to the number of individuals likely to be impacted by the revision, relative to the total target population. Magnitude may be limited, moderate, substantial, or there may be insufficient evidence for evaluation.

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### **SEVERITY**

Refers to the level of impact on human functioning, well-being, or longevity, and may be low, medium, high, or there may be insufficient evidence for evaluation.

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### **DISTRIBUTION**

Refers to whether the anticipated impacts will be allocated equitably across populations, and whether they might reverse baseline or historical inequities. Distributional effects may exact disproportionate harms, disproportionate benefits, restorative equity, or there may be insufficient evidence for evaluation.

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Below, in **Tables 1 and 2**, the predicted impacts to the U.S. EEOC Policy Guidance are cited. **Table 1** presents social determinants, and **Table 2** presents mental health outcomes. The MHIA Team predicts that if the social determinants of health change, there would be important impacts on mental health outcomes.



Table 1 presents predicted impacts of changes to the U.S. EEOC Policy Guidance on the four social determinants (e.g., employment, income, social exclusion, and neighborhood conditions) that influence mental health outcomes in Englewood.

The predicted impact of the revisions to the U.S. EEOC Policy Guidance is a possible moderate to substantial increase in the “employability” of Englewood residents, as well as possibly other communities with large numbers of residents with arrest records.<sup>1</sup>

As a result of this finding, the MHIA Team predicted a likely moderate to substantial increase in resident income (in absolute terms) as well as a possible substantial increase in resident income relative to the citywide median; and a possible moderate decrease in use of the informal economy<sup>2</sup> and sources of informal income.

The MHIA Team also predicted there would likely be a substantial decrease in resident exclusion from employment opportunity, resulting from the EEOC revision as well as a possible substantial decrease in resident self-exclusion from social interaction.

The MHIA Team predicted a possible moderate to substantial decrease in Englewood crime rates relative to the rate for the city as a whole. The MHIA Team predicted that the distributional effects of these impacts would result in some measure of restorative equity; that is, they would reduce or reverse existing and/or historical mental health inequities.

**Table 1: Impact Predictions – Social Determinants**

| Indicator   | Direction  | Likelihood | Magnitude                | Distribution          |
|---|--|------------|--------------------------|-----------------------|
| <b>Employment</b>   |  |            |                          |                       |
| Number of employable Englewood residents  | Increase in employability  | Possible   | Moderate/<br>Substantial | Restorative<br>Equity |
| <b>Income</b>   |  |            |                          |                       |
| Level of Englewood residents' income  | Increase in levels of income   | Likely     | Moderate/<br>Substantial | Restorative<br>Equity |
| Ratio of Englewood income to City of Chicago income                               | Increase in levels of income   | Possible   | Substantial              | Restorative<br>Equity |
| Number of informal economy sources in Englewood and frequency of use by residents | Decrease in number of informal economy sources and frequency of informal economy use | Possible   | Moderate                 | Restorative<br>Equity |
| <b>Social Exclusion</b>   |  |            |                          |                       |
| Number of Englewood residents excluded due to arrest record                       | Decrease in exclusion  | Likely     | Substantial              | Restorative<br>Equity |
| Number of Englewood residents self-excluded due to arrest record                  | Decrease in self-exclusion   | Possible   | Substantial              | Restorative<br>Equity |
| <b>Neighborhood Condition</b>   |  |            |                          |                       |
| Ratio of crime in Englewood to crime in City of Chicago                           | Decrease in crime as employability increases   | Possible   | Moderate/<br>Substantial | Restorative<br>Equity |

<sup>1</sup> Note that revisions to the U.S. EEOC Policy Guidance do not guarantee that job applicants will ultimately be employed. The revision creates additional provisions against employer inquiry of an applicant's history of arrest and its use as a basis for making hiring decisions. Consequently, our estimation of projected impact effects is related to the potential *employability* of residents of Englewood, rather than their future employment status.

<sup>2</sup> “Informal” economy refers to that part of an economy that is not taxed, monitored by any form of government, or included in any gross national product (GNP), unlike the formal economy.

Table 2 presents predicted impacts of changes in the U.S. EEOC Policy Guidance on individual and community mental health (i.e. collective well-being) outcomes in Englewood.

The MHIA Team predicted that revisions to the Policy Guidance would likely result in each of the following: a medium increase in individual well-being as a result of increased employability; a low decrease in the severity of depression and psychological distress as a result of an increase in income; a high decrease in the severity of depression and psychological distress as a result of reduced social exclusion; and a high increase in well-being also as a result of as a result of reduced social exclusion.

The MHIA Team predicted that revisions to the Policy Guidance would likely result in: a medium increase in social capital (e.g., social networks, trust and reciprocity) and psychological sense of community in Englewood, as a result of increased employability; a low increase in social capital and psychological sense of community, as a result of increased income; and a high increase in social capital and psychological sense of community, resulting from reduced levels of social exclusion.

**Table 2: Impact Predictions – Mental Health Outcomes**

| Mental Health Outcome   | Direction   | Likelihood | Severity | Distribution       |
|---|---|------------|----------|--------------------|
| <b>Individual Mental Health Outcomes</b>                        |   |            |          |                    |
| Individual mental health, mediated by employment                | Increased individual well-being   | Likely     | Medium   | Restorative Equity |
| Individual mental health, mediated by income                    | Decreased severity of depression and psychological distress                       | Likely     | Low      | Restorative Equity |
| Individual mental health, mediated by social exclusion          | Decreased severity of depression and psychological distress; increased well-being | Likely     | High     | Restorative Equity |
| <b>Community Mental Health Processes</b>                        |   |            |          |                    |
| Community mental health processes, mediated by employment       | Increased social capital and sense of community                                   | Likely     | Medium   | Restorative Equity |
| Community mental health processes, mediated by income           | Increased social capital and sense of community                                   | Likely     | Low      | Restorative Equity |
| Community mental health processes, mediated by social exclusion | Increased social capital and sense of community                                   | Likely     | High     | Restorative Equity |

## RECOMMENDATIONS

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The recommendations put forth by the MHIA Team reflect both the assessment findings as well as suggestions made by Englewood residents during a Town Hall meeting on April 13, 2012, where the MHIA findings were reported to community residents. Testimony based on the findings was submitted to the EEOC during a public comment period in 2011.

### MHIA RECOMMENDATIONS SUBMITTED TO THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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Recognizing that Americans are generally “presumed innocent until proven guilty,” we propose that the current U.S. EEOC Policy Guidance be updated to state: **when employers make employment decisions, they may not lawfully rely upon records of arrests that did not culminate in convictions** (Callanan, 2012).

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Acknowledging that criminal records should be kept up-to-date, we propose that the U.S. EEOC Policy Guidance be updated to state: **only those criminal background checks that come from government-sanctioned sources (e.g., police or FBI) or from third-party sources, required by law to keep criminal records current, should be deemed legally “relevant” during employment processes** (Callanan, 2012).

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Given that best practices for employers have been included in Section VIII of the Policy Guidance, we recommend that an equivalent component for the education of the general public (including potential job applicants) also be included.



## RECOMMENDATIONS TO STATE AND LOCAL JURISDICTIONS

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To provide equitable employment opportunities and mental health benefits, we also recommend that state and local jurisdictions implement policies based on the U.S. EEOC Policy Guidance, inclusive of the amendments we offer in this report.

## ADDITIONAL RECOMMENDATIONS

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In addition to the specific recommendations listed above, due to the significant decrease in social exclusion that could result from implementation of the Policy Guidance, the following series of additional recommendations should be considered by decision makers:

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Prioritize expanded funding for implementation and enforcement of the U.S. EEOC Policy Guidance to support those whose employment rights have been violated.

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Engage community partners in advocating for updates to the current Policy Guidance and adoption of model policy on a state and local level that will increase education and awareness of employment rights.

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Monitor outcomes for changes in each social determinant as a result of the revisions to the Policy Guidance.

## REPORTING

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The MHIA Team developed and implemented a comprehensive multi-modal communication strategy to increase awareness and knowledge among decision makers and the general public of the mental health implications of the proposed revision to the U.S. EEOC Policy Guidance. The reporting plan that was employed comprised three categories of communication vehicles: professional presentations, interviews and op-ed pieces to the news media, and presentations to the Englewood community.

## MONITORING

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The MHIA outcomes, implementation of revisions to the U.S. EEOC Policy Guidance, and changes in behaviors that may arise as a result of that implementation are being monitored through September 2014. Given that a main goal of the MHIA was to integrate mental health considerations into HIA practice, the MHIA Team will also monitor the ways that policy discussions consider mental health implications. An important objective in this work will be to equip the Englewood community with the knowledge, skills, and tools required to promote the health and well-being of children and families, including: ① capacity for monitoring, ② capacity for civic engagement, and ③ capacity to participate in public decision-making processes that stand to impact their health.



## EVALUATION

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One of the goals of this MHIA was to advance the practice of Health Impact Assessment by conducting an external evaluation of the process, impact, and outcomes. This was conducted by a team of evaluators from the School of Public Health and the School of City and Regional Planning at the University of California at Berkeley.

The specific aims of the evaluation were to:

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Provide ongoing feedback for participants involved in the implementation of the MHIA.

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Generate evaluation methods in partnership with the MHIA Team to build ongoing self-reflection and learning so that the evaluation process itself can strengthen the capacity of all participants and their respective organizations.

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Provide specific feedback for the MHIA Team about the barriers and opportunities being faced during implementation.

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Provide general evaluation criteria that can support the measurement of place-based health equity initiatives in Chicago and other locations.

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In addition to the independent external evaluation, the MHIA Team conducted three debriefing meetings to evaluate lessons learned during the process of conducting the MHIA. The meetings followed the completion of: Screening and Scoping (September, 2011), Assessment (March, 2012), and Reporting (May, 2012). Salient themes identified during these meetings included the following:

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Integrating public health and mental health frameworks.

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Ensuring authentic community engagement throughout the MHIA process.

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Honoring and accurately reflecting the voices of Englewood residents and key stakeholders.

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Understanding and following the legislative decision-making process.

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## CONCLUSION

Public decisions have important mental health implications that must be integrated into deliberative processes in order to avoid creating or exacerbating mental health inequities. Too often, these implications are not apparent to legislative and policy decision makers unless they are exposed to, and understand, the perspectives and experiences of the populations likely to be impacted by their decisions. This is the value of Mental Health Impact Assessment.

The Mental Health Impact Assessment is a tool for analyzing the mental health implications of public decisions and for ensuring that such decisions promote mental health and mental health equity. The results of the MHIA described in this document indicate that proposed revisions to the U.S. EEOC Policy Guidance would have positive impacts on the mental health and well-being of the residents of Chicago's Englewood community through increased employability. Revisions to the Policy Guidance are predicted to impact mental health through the social determinants of social exclusion, income, employment, and neighborhood conditions. In addition, revisions to the U.S. EEOC Policy Guidance are predicted to impact mental health most strongly through social exclusion. Based on these predictions, the MHIA Team supports the changes already made by the EEOC, and recommends educating community residents and increasing funding for enforcement.

The overarching goal of this MHIA was to advance HIA practice by:

- ⊕ More rigorously integrating mental health considerations;
- ⊕ Focusing on a public decision outside of the traditional domains of planning, land use, and the built environment; and
- ⊕ Conducting more systemic and structured monitoring and evaluation process.

### ***Integrating mental health considerations into HIA.***

Historically, HIA practice has not identified and considered the mental health implications of public decisions as comprehensively and as rigorously as physical health impacts. This is problematic for three reasons.

First, health is comprised of both physical and mental health. As famously attributed to Former U.S. Surgeon General David Satcher, M.D., "There is no health without



mental health." Similarly, the World Health Organization defines health as "a state of complete physical, mental and social well-being (World Health Organization, 1948). Thus, if HIA's are to be effective in achieving their goals of health promotion and health equity, mental health considerations must be integrated.

Second, mental health plays a critical role in shaping physical health. Increasingly, science is illuminating the role that emotional distress plays in the development and evolution of chronic diseases such as diabetes, asthma, obesity, and cancer. Moreover, because HIA's are intended to highlight the relationship between the social environment and health, it is essential that they integrate an understanding of the role that mental health plays in mediating the relationship between social conditions and chronic disease. Consider, for instance, how chronic poverty (social condition), impacts emotional distress (mental health), which in turn increases allostatic load and hypertension (physical disease).

Third, funding for mental health services are dwindling nationwide. As a consequence, preventative interventions, such as HIA, are increasingly important. More and more, it is important that public decisions are made in ways that reflect a solid understanding of their impacts on health, including mental health, since resources required for corrective interventions are less available.



***Focusing on a public decision outside of the traditional domains of planning, land use, and the built environment.*** Historically, HIAs have overwhelmingly focused on physical environment decisions, including decisions in such areas as housing, transportation, zoning, master plans, redevelopment and mining or natural resource projects. At the time of this writing, of the roughly 225 HIAs conducted in the U.S., about 180 were conducted on some aspect of the physical environment. Because many other kinds of decisions (e.g., education, employment, criminal justice, social welfare, etc.) also impact health, it is important that HIAs be conducted on those decisions, as well. To help meet that need, this MHIA focused on an employment (labor) related decision. Additionally, most HIAs focus on state and local decisions. This HIA sought to help expand the practice by focusing on a federal decision.

The MHIA focused on an employment (labor) decision of which there are comparatively few—only 11. Moreover, this HIA is the only labor/employment related HIA to focus on a federal decision and only one of 17 of the 225 that have been completed.

***Conducting more systemic and structured monitoring and evaluation process.*** In this MHIA, independent evaluators were engaged to conduct a process, impact, and outcome evaluation. Historically, the monitoring and evaluation components of HIAs are limited due to resource constraints. Additional resources were secured to monitor the impact of the MHIA on the decision to revise the U.S. EEOC Policy Guidance, implement the Policy Guidance, monitor changes in health determinants that may arise as a result of implementation, and assess policies that consider mental health impact.

In conducting this MHIA, the MHIA Team has provided some guidance and insight into how mental health can be better integrated into HIA practice.

## II. Glossary

**Allostatic load:** The cumulative burden (e.g., wear and tear) on physiological systems that occurs as a result of sustained stress, and contributes directly to risk for disease.

**Chilling Effect:** The discouragement of application for employment due to belief of exclusion based on criminal record.

**Collective efficacy:** Residents' willingness to intervene for the common good, including enhancing trust and safety, and reducing violence within their community

**Correlation:** Statistical measurement of the consistency of the relationship between two continuous variables. Correlations range from 0.00 (no relationship) to 1.00 (perfect relationship) and may be positive or negative. A positive correlation indicates that as one variable increases in value, so too does the other variable. A negative correlation indicates that as one variable increases, the other variable decreases.

**Depression:** A measure of the how often individuals have experienced persistent sad or dysphoric mood, reduced enjoyment of activities and hobbies, low energy and fatigue, poor appetite, difficulty sleeping, thoughts of guilt, low self-esteem, difficulties in interpersonal relationships, and thoughts of death and/or suicide.

**Dual continuum model:** A model of conceptualizing mental health and mental illness on two separate continua. One continuum assesses the presence versus the absence symptoms of mental illness, whereas the other continuum assesses the presence versus the absence of symptoms of mental health.

**Effect size:** A quantitative evaluation of the magnitude of the difference between groups on a variable or interest. Effect size also refers to the quantitative evaluation of the strength of the relationship between two variables. They may be roughly categorized into *small*, *medium*, and *large effect* sizes. When comparing differences between groups, effect sizes of 0.20 or less are considered small, 0.2 - .79 are considered medium, and .80 are large. When quantifying the strength of the relationship between two variables, effect sizes less than .09 are considered small, .09 - .25 are considered medium, and .25 or greater are considered large.

**Employability:** The capability for individuals to obtain employment.

**Felony:** A crime that is punishable by incarceration for one year or more.

**Informal economy:** Sources of income that are not taxed, monitored by any form of government, or included in any gross national product (GNP). Broadly, the informal economy refers to a system of economic exchange that takes place outside of government-regulated (e.g., taxable) transactions.

**Health Impact Assessment:** A combination of procedures, methods and tools that systematically judges the potential, and sometimes unintended, effects of a policy, plan, program or project on the health of a population and the distribution of those effects within the population.

**Hypothesis:** A tentative statement about the nature of the relationship between two or more variables, minimally an independent and dependent variable, that may or may not be true. Hypotheses are supported or refuted by gathered data and the observed results of assessment.

**Mental Health Impact Assessment:** A Health Impact Assessment focusing explicitly on the mental health implications of public policy decisions.

**Misdemeanor:** Any crime for which the penalty administered is incarceration for less than one year or some form of monetary fine.

**Overcrowded:** A household with more than one occupant per room.

**Perceived discrimination:** A measure of how often individuals have experienced various forms of racial discrimination within the past year.

**Protected populations:** Populations and groups qualified for special protection under anti-discriminatory law and policy. Protected populations may encompass a range of characteristics that cannot be targeted for unfair or discriminatory treatment, and include race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

**Psychological distress:** A measure of how much individuals have been distressed by prominent symptoms of several psychological conditions, including depression, anxiety, and somatic complaints.

**Psychological sense of community:** A measure of the degree to which individuals perceive themselves as belonging to and emotionally connected with their community. Sense of community is also widely thought of as a measure of the benefits individuals derive from a community (McMillan & Chavis, 1986).

**Race-related stress:** Distress experienced as a result of exposure to racism and discrimination.

**Re-entry:** Issues related to the transition of ex-offenders from the prison to community supervision. Re-entry may also refer to the discharge of ex-offenders from parole supervision.

**Rent or costburdened:** Households that pay more than 30 percent of their income for housing and may have difficulty affording necessities such as food, clothing, transportation, and medical care.

**Restorative equity:** A change in pervasive social conditions such that the health status and/or social status of historically disadvantaged and marginalized groups is improved.

**Severely overcrowded:** A household that has more than 1.50 occupants per room.

**Social capital:** The ability for individuals to secure benefits by virtue of their membership in social networks and other social structures.

**Social determinants of health:** Those conditions in which people are born, grow, live, work, and age, and which are shaped by the distribution of money, power, and resources at the global, national, and local level (WHO, 2008). These conditions are influenced by policy choices and are primarily responsible for disparities in health.

**Social determinants of mental health:** Social conditions that are influenced by policy choices and are primarily responsible for disparities in mental health.

**Social exclusion:** The systematic marginalization of individuals and communities from mainstream society.

**Structural equation modeling:** A collection of statistical techniques that allow for the relationships between at least one independent variable and at least one dependent variable to be analyzed simultaneously.

**Vulnerable population:** Populations and groups of individuals who have reduced opportunities to make decisions that lead to optimal health, and whose opportunities for good health are compromised by the inequitable distribution of adverse social conditions such as insufficient education, inadequate housing, poverty/low income, and racism.

**Well-being:** A measure of perceived overall positive mental health.

**WHO Commission on the Social Determinants of Health:** A commission established in 2005 by the World Health Organization (WHO) to draw attention to social conditions that lead to ill health and health inequities. The Commission on the Social Determinants of Health (CSDH) is comprised of a global network of policy makers, researchers, and civil society organizations.

**U.S. Equal Employment Opportunity Commission:** A federal agency that is responsible for enforcing laws that make it illegal to discriminate against a job applicant or employee on the basis of the person's race, color, religion, sex, national origin, age, disability, or genetic information.

# III. Introduction

In 1990, the U. S. Equal Employment Opportunity Commission (EEOC) enacted “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.” (referred to as Policy Guidance) to help employers, employees, job applicants, and EEOC enforcement staff to understand and comply with legislation intended to eliminate unlawful employment discrimination.

However, since its enactment, the Policy Guidance has been criticized by legal commentators who have described it as lacking clarity and failing to provide sufficient research for the courts. According to critics, these inadequacies lead to inefficient uses of EEOC and judicial system resources, as time and money are spent on cases that may be avoided with clearer understanding of the law. It is within this context that many people, including members of the EEOC, have recognized the need to amend the current Policy Guidance, particularly around topics such as the use of arrest records in employment decisions involving hiring, firing, and promotion.

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Even when correctly applied, however, the U.S. EEOC’s Policy Guidance has produced unintended adverse effects on legally protected minority groups. For instance, research shows that African Americans and Latinos in particular have forgone applying for jobs because they were under the false impression that employers were legally permitted to inquire about arrest records or were unlikely to hire an applicant with an arrest record, even an arrest that did not result in a charge or conviction (Harris & Keller, 2005).

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In this way, the Policy Guidance, as understood by potential job seekers, has had a “chilling” effect among people most in need of employment and associated benefits like health insurance.

The distribution of arrest rates in the United States underscores the importance of clarifying guidance on the use of arrest records as a basis of employment decisions. Arrest rates for African Americans and Latinos are staggeringly high. For instance, in 2010, African Americans, accounted for 28 percent of all arrests despite accounting for only 14 percent of the general U.S. population, (U.S. Equal Employment Opportunity Commission, 2012a). In 2008, Latinos were arrested for federal drug charges at a rate of approximately three times their proportion of the general population (EEOC, 2012a). The distribution of arrest rates combined with the practice of using arrest records in employment decisions has served to undermine employment opportunities for African American and Latino populations in particular. As a result, already high unemployment rates experienced by these populations, which in July 2012 were 14.8 percent and 10.3 percent for African Americans and Latinos, respectively, as compared to 7.4 percent for Whites, have been exacerbated (Bureau of Labor Statistics, U.S. Department of Labor, 2012).



In 2010, African Americans, accounted for 28 percent of all arrests despite accounting for only 14 percent of the general U.S. population, (U.S. Equal Employment Opportunity Commission, 2012a).

Employment discrimination has been linked to a range of adverse mental health effects, including anxiety, depression, and stress (Hammond, Gillen, & Yen, 2010). Consequently, changes in the U.S. EEOC's Policy Guidance on use of arrest records in employment decisions may have important implications for the mental health and well-being of protected populations. Yet, prior EEOC deliberations around employment discrimination have focused primarily on issues of civil rights, human rights, or economic analyses, and mental health has been largely overlooked. Thus, an MHIA to analyze the impacts of the proposed revisions to U.S. EEOC Policy Guidance on mental health would provide new information and a new frame by which to determine whether and how the revision should go forward.

Therefore, between January 2011 and June 2012, the Institute on Social Exclusion (the MHIA Team) initiated a Mental Health Impact Assessment (MHIA) with the intention of providing input to the EEOC on how best to amend its Policy Guidance so as to promote the mental health of protected populations. Typically, proposed legislative changes are available in advance of the decision to conduct an HIA. That was not the case in the MHIA because of the nature of the EEOC decision-making process in which proposed revisions to policy guidance are not made available to the public prior to the actual change. Though the MHIA Team did not have specific language to assess, it did have an understanding of the spirit and intention of the EEOC proposal, which was based on years of documented legal critiques of the original legislation from 1990. This understanding was used to guide the work of the MHIA.

The question, then, that guided the MHIA process was the following:

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**What is the impact upon the mental health of a community when employers use arrest records in making employment decisions about members of that community?**

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It is important to note that this MHIA was specifically focused on the impact of arrest records only (i.e., not convictions).



This question is of particular interest and relevance to vulnerable populations, such as those living in Chicago's Englewood community. Englewood is one of Chicago's 77 communities. It is challenged by many social determinants that negatively impact mental health, such as poverty, crime, violence, limited quality housing, education and employment opportunities, and public services. Greater Englewood, defined as both Englewood and West Englewood communities, is the focus of this MHIA. It is important to note that the findings of this MHIA are relevant to similar African American, Latino, and low income communities around the nation.

Use of arrest records in the employment decision-making processes stands to exacerbate this community's already high official rate of unemployment which averaged around 25 percent in 2010 (U.S. Census Bureau, 2012d). Like many low-income African American communities, Englewood is characterized by high rates of arrests. For instance, among the Chicago Police Department's (CPD) 25 districts, the one that serves Englewood—District 7—has the sixth highest number of arrests.<sup>1</sup> According to CPD data, during the 50-month period ending in March 2010, District 7 recorded more than 64,000 arrests (Chicago Police Department, 2007; 2008; 2009; 2010).

The question that guided the MHIA places a "mental health lens" on the impact of the use of arrest records in employment decisions for Englewood residents. Thus, the MHIA provides new information and a new frame (i.e., mental health impacts) by which to determine whether or not a proposed policy, program, or project should be implemented.

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<sup>1</sup> The Chicago Police Department's District 7 primarily serves the Englewood and West Englewood communities.

# IV. Policy Context

The focus of this MHIA was the proposed revision to the 1990 U.S. EEOC Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. The purpose of the proposed revision was to consolidate and update the U.S. Equal Opportunity Commission’s guidance documents on the use of arrest or conviction records in employment decisions.

On April 25, 2012, as the MHIA process was nearing its completion, the EEOC issued new Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. The new Enforcement Guidance is consistent with public testimony provided by the MHIA Team. See Appendix C for full testimony.

## **THE PROPOSAL: Amend EEOC Policy Guidance on the Use of Arrest Records in Employment Decisions**

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Since 1965, the EEOC has issued materials to help employers, employees, applicants, and enforcement staff understand the application of Title VII (EEOC, 2012b). For example, in 1990, the EEOC produced a policy statement, stating that “a business justification can rarely be demonstrated for blanket exclusions on the basis of arrest records,” adding that “the alleged conduct must be related to the position sought.” See Appendix A for a complete copy of the Policy Guidance. The statement also cited, for example, a leading appellate court decision that stated that “blacks are arrested more often than whites” and, for that reason, the presentation of national statistics was allowed “to establish a *prima facie* case of discrimination against blacks where arrest records are used in employment decisions.” The EEOC also determined that Latinos were similarly adversely affected by arrest record inquiries, although courts had not then reviewed that impact.

Since its release, the 1990 Policy Guidance has been criticized, often by legal commentators and others who endorsed changes to the EEOC’s policy position. For example, Carson (2010) noted that the guidance: ① lacked clarity (especially on the issue of an employer’s “business necessity” to exclude certain job applicants); ② failed to provide sufficient research to demonstrate the reasons courts should show deference to the guidelines in their appellate decisions; ③ caused problems for employees when employers inappropriately used records resulting in the misuse of EEOC time and court resources when applicants challenged hiring decisions; and ④ led members of the EEOC to recognize the need for amendments (e.g., regarding the use of arrest records that did not lead to convictions).



In 2011, the EEOC proposed revising the 1990 Policy Guidance. In accordance to the EEOC's structure and decision-making processes, the Commission does not release proposed revisions to the public prior to making a final decision. An amendment to existing EEOC guidance usually progresses in the following way:

- ① The EEOC notifies the public that amendments are being contemplated;
- ② The EEOC invites knowledgeable persons to present testimony and documentation concerning the subject matter of the proposed amendments during a properly scheduled public hearing;
- ③ Following the hearing, the EEOC receives additional public comment from persons who desire to have their views placed in the record of proceedings;
- ④ The EEOC analyzes input and comment received from its staff, the public, and others; and
- ⑤ The EEOC disseminates its amended guidance and notifies the public about the contents of the amendments.

There was very limited reference to mental health in previous EEOC rulings. The MHIA Team sought to weigh in on the revision via testimony and documentation that addressed the following overarching question: What is the impact upon the mental health of a community when employers use arrest records in making employment decisions about members of that community? This question is of particular interest to Englewood residents because of the community's high arrest rates combined with employer use of arrest records in hiring processes. The MHIA Team hypothesized that these conditions adversely impact employment opportunity and subsequent mental health of Englewood residents.



Twice during the revision process, the MHIA Team provided input on potential mental health impacts of the proposed revision. A policy brief based on preliminary findings of the MHIA was submitted to the EEOC during the public comment period in August 2011. See Appendix C for this policy brief. The MHIA Team also signed the letter of The Leadership Conference on Civil and Human Rights (4/24/2012), which urged the EEOC to move forward and update its guidance. See Appendix D for a copy of this letter. This final report will be sent to the EEOC to provide further support for the revisions to the policy guidance and to provide recommendations to ensure the protection of vulnerable populations. See Chapter XII for Recommendations.

# V. About HIA and MHIA

Health Impact Assessment (HIA) is a combination of procedures, methods and tools that systematically judges the potential, and sometimes unintended, effects of a policy, plan, program or project on the health of a population and the distribution of those effects within the population. HIA identifies appropriate actions to monitor those effects. This report describes the process and results of a *Mental Health Impact Assessment (MHIA)*, which is an HIA that focuses explicitly on the mental health implications of public decisions.

Like HIA, the fundamental goal of an MHIA is to ensure that health and health inequities are considered in decision-making by using a systematic process that engages populations most likely to be impacted by those decisions, especially the most vulnerable. The report authors use the acronym MHIA to bring attention to the fact that HIA practice largely focuses much more on physical health than mental health. This bias is reflected, for instance, in the seminal 2011 National Research Council Report, entitled *Improving Health in the United States: The Role of Health Impact Assessment*, in which terms referring to physical health are far more frequently referenced than mental health. For instance, obesity (40 times), diabetes (13 times), cardiovascular (13 times), asthma (14 times), cancer (12 times), and infectious diseases (4 times), as opposed to mental health (1 time), behavioral health (0 times), anxiety (1 time), depression (1 time), stress (0 times), post-traumatic stress disorder (0 times), attention deficit/hyperactivity disorder (0 times), or suicide (0 times). Measures or indicators of community mental health were also overlooked (i.e., collective efficacy, social cohesion, and psychological sense of community) (National Research Council on the National Academies, 2011).

The relative neglect of mental health as compared to physical health in HIA practice is problematic for several reasons. As noted by former U.S. Surgeon General David Satcher and others, there is no health without mental health (Chapman et al., 2005; World Health Organization, 2010).

These are the reasons why:

① **Neglecting mental health fails to appreciate its impact on morbidity and mortality.** According to a 2003 World Health Organization (WHO) report, depressive disorders are the third leading contributor to the global burden of disease (World Health Organization, 2003). Two measures of disease burden often used in public health are years lost due to disability, which refers to time spent with a disease or injury, and disability adjusted life years, which refers to the number of years lost due to poor health, disability, or premature death. According to the WHO report, four of the six leading causes of years lived with disability were neuropsychiatric disorders (e.g., depression, alcohol-use disorders, schizophrenia and bipolar disorder; World Health Organization, 2003). Moreover, WHO has estimated that by 2020, mental illness and substance use disorders will surpass physical disabilities as major causes of disability (World Health Organization, 2004).

② **There is a bi-directional relationship with mental illness and chronic physical disease.** Research suggests that depressive disorders play an important role in the origin, course, and outcomes associated with chronic disease such as asthma, arthritis, cardiovascular disease, cancer, diabetes, and obesity (Chapman et al., 2005). In addition, people suffering from chronic physical illnesses have increased probability of developing mental disorders (World Health Organization, 2003).





**③ Mental health is highly correlated with adverse health behaviors that lead to physical illnesses.** For instance, depression is associated with higher levels of physical inactivity, smoking, drinking and other substance abuse and linked to a wide range of chronic illnesses such as heart disease, diabetes, and infectious diseases (Centers for Disease Control and Prevention, 2011).

**④ Social conditions have documented impacts on mental health.** For instance, living in poverty is a predisposing factor for stress, anxiety, and depression (Orpana, H.M, Lemyre, L., & Gravel, R., 2009). Chronic exposure to neighborhood and interpersonal violence is associated with depression, suicidal ideation, and post-traumatic stress disorder (Mazza & Reynolds, 1999; Pico-Alfonso et al., 2006). Nutritional deficits—due, for instance, to living in a food desert—predisposes children to aggression and other behavioral and mood disorders (Golomb, Evans, White, & Dimsdale, 2012). Thus HIA, which helps to ensure that social conditions promote population health and narrow health disparities and inequalities, is as critical for mental health as it is for physical health.

**⑤ When mental health is left out of the HIA equation, we fail to fully understand the mechanisms by which the social environment impacts physical health** (Matthews, Gallo, & Taylor, 2010). For instance, Collins and colleagues (2004) found that experiencing discrimination and segregation contributed to heightened emotional distress and stress hormone production. This in turn contributed to cardiovascular disease and preterm and low birth weight babies. Thus, emerging research findings suggest that mental health is an important link between social conditions and physical health.

**⑥ Decreasing mental health expenditures will require smarter health promotion strategies that focus “up-stream” on the root causes of health inequalities.**

In 2012, Illinois Governor Pat Quinn made drastic cuts to the state budget reducing state payments for mental health services. Subsequently, Chicago Mayor Rahm Emanuel closed six of the city’s 12 clinics due to lack of funding. As cities and states continue to face hard economic realities that lead to the shuttering of mental health facilities and services, it will become increasingly important to take preventative efforts, such as MHIA, that help to ensure that social conditions promote mental health and well-being, especially that of vulnerable populations.

In assessing mental health impacts, the MHIA described in this report followed standard sources of authority for HIA practice, notably *Minimum Elements and Practice Standards for Health Impact Assessment* (North American HIA Practice Standards Working Group, 2010). The *Practice Standards* are not rigid criteria, but offer guidance for effective HIA practice. The MHIA also drew on standards articulated in sources such as *A Health Impact Assessment Toolkit: A Handbook to Conducting HIA* (Human Impact Partners, 2011), *Health Impact Assessment: A Guide for Practice* (Bhatia, 2011), and *Improving Health in the United States: The Role of Health Impact Assessment* (National Research Council of the National Academies, 2011).

According to the ***Minimum Elements and Practice Standards***, the MHIA includes the following steps: Screening, Scoping, Assessment, Recommendations, and Reporting. The MHIA process also included a process, impact, and outcome Evaluation and Monitoring to track the outcomes of the decision and its implementation. These latter two steps are necessary for HIA field development and practice improvement. Each of these steps is described in the succeeding sections of this report.

# VI. The Context for This MHIA

## BACKGROUND: ORIGINS OF THE MHIA

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In 2006, the Board of Directors of Teamwork Englewood (Teamwork)—the lead agency for the New Communities Program of Local Initiatives Support Corporation<sup>1</sup>—asked the ISE to partner with them to address a series of community issues, notably youth violence. Working with Teamwork, ISE developed and launched a Youth Gun Violence Prevention Program for boys between the ages of 14 and 17. This led to the development of other organizational relationships in the community and a deeper understanding of the health challenges that confront the community.

The MHIA described in this report was preceded by a pilot project that sought to assess the mental health implications of a proposed amendment to Chicago’s Vacant Buildings Ordinance (No. SO2011-8066, Amendment of Chapter 13-12 of Municipal Code regarding vacant buildings). The proposed amendment was sponsored by Alderman Pat Dowell (3<sup>rd</sup> Ward) – one of the six Chicago City Council members that represents the Englewood community in City Hall. The amendment was intended to increase the accountability of financial institutions for registering, securing and maintaining the houses on which they foreclose by increasing registration fees and fines for non-compliance. The proposal was particularly relevant to the needs of low income communities in which many of the city’s foreclosed properties were located. Based on a brief review of literature and a workshop with community residents and other stakeholders, the MHIA pilot project team concluded that the proposed revision would enhance the mental health and well-being of Englewood residents by altering critical health determinants, notably blight, crime, and violence.

The findings were documented in a policy letter that was submitted to the sponsor of the amendment and provided the basis of testimony that was presented before the City Council. On July 28, 2011, a revised ordinance passed Council vote. Its legality was subsequently challenged by financial institutions and revised again on November 2, 2011. The MHIA on the Vacant Buildings Ordinance was the first formal effort in Chicago to increase local—community and policy maker—awareness of how seemingly “non-health” decisions can impact the mental health and well-being of communities, especially the most vulnerable. Subsequent to the pilot, the ISE and Teamwork collaborated on the full-scale MHIA on a proposed revision to the U.S. EEOC Policy Guidance.



<sup>1</sup> The Local Initiatives Support Corporation (LISC) helps transform distressed neighborhoods into healthy and sustainable communities. LISC/Chicago’s New Communities Program is a long-term initiative to support comprehensive community development in 16 Chicago neighborhoods. Englewood is one of those communities.

## PROJECT GOALS

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The ISE identified a goal and four objectives for the MHIA. The goal of the MHIA was to advance the practice of Health Impact Assessment. This was done through the following objectives:

- ① Integrate mental health considerations into HIA practice.
- ② Assess a policy or legislative proposal outside the domains of planning, land use, and the built environment.
- ③ Conduct an independent process, impact, and outcomes evaluation.
- ④ Execute a more structured and longer-term monitoring process. Fundamental to our work was facilitating authentic community involvement, understanding, and voice in a public decision that was likely to impact collective mental health and well-being.

As the project took shape, several additional goals evolved. They included:

- ⊗ Expanding health-focused collaborations with and within the Englewood community.
- ⊗ Increasing community, legislator/policy maker, and lay public understanding of the mental health impacts of non-health decisions.
- ⊗ Broadening organizational and professional responsibility for mental health and well-being.
- ⊗ Highlighting the MHIA as a tool for identifying and addressing the root causes of mental illness and wellness.
- ⊗ Advancing the “dual continuum model” of mental health and mental illness.
- ⊗ Promoting the concept of “population” or “public” mental health.
- ⊗ Developing local public agency awareness of HIA practice.
- ⊗ Advancing nascent efforts to institutionalize HIA practice among local public decision-making bodies.

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The project also sought to promote the mental health and well-being of residents in the Englewood community by increasing resident capacity to participate in community-based research and fostering alliances that span professions, sectors, and knowledge-bases to support health advocacy work. The project also sought to augment the tools and information that service providers, public officials, advocates, and others who work on behalf of Englewood residents to ensure that public decisions promote community mental health and health equity.

## MHIA ORGANIZATIONAL STRUCTURE

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The following is a description of the organizational structure that was formed to drive this MHIA. In sharing this information, we hope to help inform the practice of our colleagues, whether new to the field of HIA or seasoned practitioners. Committee functions are described below, while the Acknowledgments section lists members, to whom we are grateful for guidance and participation.



## **The organizational structure was comprised of five committees.**

The **Advisory Committee** included foundation representatives, international mental health experts, and community residents. The Advisory Committee provided high-level strategic oversight of the MHIA and facilitated access to information, data, contacts, and other resources necessary to ensure its successful completion.

The **Steering Committee** comprised a wide cross section of stakeholders including community residents, advocacy organizations, service providers, and Adler School faculty and staff. The purpose of the Steering Committee was to provide consultation and guidance throughout the project. An unanticipated, but helpful role of the Steering Committee was that of a “soft communications” vehicle. For example, Steering Committee members would circulate information about the MHIA to their professional networks, thereby increasing local awareness of MHIA practice, and the role of non-health decisions in health outcomes.

Initially, an **Executive Committee** oversaw daily execution of the MHIA. It met weekly for the first eight months of the project, to conduct the Screening and Scoping processes. As the project evolved, the Executive Committee became redundant and was dissolved. Subsequently, day-to-day project responsibilities were shifted to the Research and Outreach Subcommittees.

The **Research Subcommittee** laid the conceptual and logistical groundwork required to generate the evidence base for the MHIA findings. Responsibilities included “scoping out” the project (e.g., formalizing the theoretical framework—the pathway model (the final scope)—that guided the MHIA; identifying research questions, data needs and sources, research protocols, health determinants and health outcomes of interest; conducting the assessment and documenting the assessment results). The Research Subcommittee also assisted with crafting recommendations and writing the final report.

The **Outreach Subcommittee** facilitated access to key stakeholders, including Englewood residents and community-based organizations; local, state, and federal officials and service providers; advocacy organizations; and others with a stake in the decision that was the object of the MHIA. This access was critical to the success of the data collection and analyses processes (e.g., focus groups,

interviews, surveys), reporting and communications (e.g., presentations of MHIA findings at Council Ward meetings, Open Houses, and Town Hall events), and development of a plan for monitoring the effects of the U.S. EEOC Policy Guidance on social determinants of mental health.

A unique aspect of the MHIA was the inclusion of clinical, counseling, and community psychologists, which allowed a more comprehensive identification of mental health effects in a manner not typically undertaken in HIA. Others involved in the project included urban planners, a lawyer, a public health professional, and a marriage and family therapist.

The roles of the expert partners and key informants were established during the Scoping step. For instance, the Executive Committee determined that the expert partners would assist in: determining the appropriate timing and methods for data gathering; accessing key informants from within the community, employers, and service providers to participate in focus groups, interviews and surveys; and disseminating information about the MHIA to community residents. Partners also conducted informal “street interviews” with key informants to assist with development of the survey, interview, and focus groups questions. These key informants and partners played a critical role in helping to ensure that the MHIA was apprised of and respectful of community sensitivities and values.

Additional key partners included advocacy organizations, communications consultants, and independent evaluators. The advocacy organizations—Sargent Shriver Poverty Law Center and the Safer Foundation—served as project experts on Illinois SB1284 and the U.S. EEOC Policy Guidance. They helped ensure that the MHIA process reflected the EEOC’s deliberations and other critical activities. For instance, they notified the Executive Committee when the EEOC made requests for public comment, facilitated the Committee’s contributions to public comment, and provided updates on the deliberative process. They also helped ensure that the project stayed abreast of the actions of other key decision makers. In addition, Varga and Associates and Stewart Communications assisted in crafting the communications and public relations strategy (e.g., goals, audiences, framing, messages, and formats) for the MHIA. Faculty from the Schools of Public Health and Urban Planning at the University of California at Berkeley conducted an independent process, impact, and outcomes evaluation of the MHIA.

# VII. Screening

## The Decision to Focus on the U.S. Equal Employment Opportunity Commission (EEOC) Policy Guidance on the Use of Arrest Records in Employment Decisions

### SCREENING: THE BASICS

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Screening is the first step in the HIA process. It involves a determination as to whether an HIA, or in this case MHIA, would add value to the decision-making process. According to the *North American HIA Practice Standards*, there are several factors (i.e., decision selection criteria) to consider in making this determination (North American HIA Practice Standards Working Group, 2010). They include the following:

- ① The potential for the decision to result in substantial effects on public health, particularly those effects which are avoidable, involuntary, adverse, irreversible, or catastrophic.
- ② The potential for unequally distributed impacts.
- ③ Stakeholder and decision maker concerns about a decision's health effects.
- ④ The potential for the HIA to result in timely changes to a policy plan, policy or program.
- ⑤ The availability of data, methods, resources, and technical capacity to conduct analyses.
- ⑥ The availability, application, and effectiveness of alternative opportunities or approaches to evaluate and communicate the decision's potential health impacts.

During the Screening process any alternatives to the decision under consideration are identified. The MHIA Executive Committee supplemented the minimum selection criteria put forth in the *North American HIA Practice Standards* to include the following:

- ① There is an actual pending decision, or public proposal, to be made.
- ② The decision timeline allows input into the decision-making process.
- ③ The proposal is relevant to the Englewood community, reflective of resident concerns, and generates a high level of community interest, energy, and engagement.
- ④ An MHIA can actually be conducted on the proposal, and so would help to advance HIA practice.
- ⑤ The scale of the proposal—the size of the potentially impacted community—is commensurate with the funding received to support the MHIA.
- ⑥ The MHIA would be replicable by others.
- ⑦ The decision has the potential to impact the social determinants of mental health and mental health inequities.
- ⑧ The proposal does not have an obvious link to mental health.
- ⑨ Mental health has not been part of deliberations in the decision-making process.



## THE PROPOSAL SELECTION PROCESS

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The Screening process began in March 2011 with an extensive list of decision proposals that had been generated in the ISE's pilot MHIA on Chicago's Vacant Buildings Ordinance described in Chapter VI. The list included 58 proposed decisions (policies, programs, and projects) across several broad categories: criminal justice, violence, safety, education, housing, labor, environment, fiscal policy, food access, utilities, transportation, social welfare, and government affairs. In accordance with one of the objectives of the MHIA – to assess the mental health effects of a proposal outside of the domains of planning, land use, and the built environment—such proposals were eliminated from that initial list. See Appendix B for the final Screening worksheet.

Subsequently, Screening was a highly iterative process that involved a series of ad hoc meetings, conversations, and structured focus groups with Englewood residents and the staff of community-based and public service organizations to determine the most salient community issues. Such issues were used to frame and guide the Screening process. The identification of salient issues was an early critical step in the Screening process to fulfill the criterion that the proposal be relevant to the Englewood community and reflective of resident concerns. This was important in order to generate and maintain community interest, energy, and engagement in the project.

During the Screening process, several themes emerged creating a challenge to the consensus building required to select an MHIA topic. Community residents identified the following themes: re-entry (e.g., ex-offender joblessness, homelessness, and recidivism), housing (e.g., vacant houses and foreclosures, homeless youth and families), jobs (e.g. unemployment, underemployment, lack of local jobs), and safety (e.g., gangs and street violence). Englewood has one of the city's highest rates of resident re-entry from prison and jails, thus providing a credible basis for its selection as the focus of the MHIA. However, many residents rejected re-entry on the grounds that most people in the community were not former felons or in any way engaged with the criminal justice system, and that an MHIA on a re-entry related proposal would be an affront to the many law-abiding community residents. Therefore, the Executive Committee opted to focus Screening on the themes of jobs and safety. The Executive Committee noted that by focusing on jobs and safety, the MHIA would also speak to housing-related issues given the interconnectedness of jobs, safety, and housing. This decision to focus on jobs and safety helped to further narrow the original Screening list.

With jobs and safety as parameters for Screening, and in consultation with project partners, the Sargent Shriver National Center on Poverty Law (Shriver) and the Safer Foundation,<sup>1</sup> the Executive Committee elected to focus the MHIA on Illinois Senate Bill 1284. The legislation provides that no employer, employment agency or labor organization can use an arrest, criminal charge, or expunged or sealed criminal record history information as a basis to refuse to hire, issue adverse employment action against, or affect terms and conditions of employment for, an individual. Due to strong political opposition, that bill was subsequently withdrawn from the State's Senate Criminal Law Committee.



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<sup>1</sup> The Sargent Shriver National Center on Poverty Law "... provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty. The Safer Foundation's mission is "...to reduce recidivism by supporting, through a full spectrum of services, the efforts of people with criminal records to become employed, law-abiding members of the community...."

Upon recommendation by Shriver, the Executive Committee then shifted the focus of the MHIA to the proposed revisions to the U.S. Equal Opportunity Commission (1990) No. 915.061, Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII of the 1964 Civil Rights Act, as amended, 42U.S.C. § 2000e *et seq.* As described in Chapter IV, the EEOC Policy Guidance provides employers with guidelines for applicants with arrest and other criminal records. It is meant to enforce compliance with Title VII of the 1964 Civil Rights Act, which prohibits employment discrimination. See Appendix A for full text of the 1990 Policy Guidance.

Finally, the Executive Committee identified Illinois Senate Bill 1284 (SB 1284) as the focus of the MHIA. SB 1284 was a proposed amendment to the Illinois Human Rights Act that would make it a “civil rights violation for any employer, employment agency, or labor organization to inquire into or use the fact of an arrest . . . of a person, as a basis to refuse to hire, for an adverse employment action, to refuse to grant tenure, or to affect the terms, privileges or conditions of employment” (Illinois General Assembly, 2011). Senator Kimberly Lightford introduced the Bill to the Illinois General Assembly; however, SB 1284 was subsequently withdrawn due to strong political opposition in the Senate Criminal Law Committee. Lightford was advised by the MHIA Steering Committee member, Sargent Shriver National Center on Poverty Law, to await revised guidance on the use of criminal records in employment decisions from the U.S. Equal Employment Opportunity Commission. MHIA Steering Committee member, Safer Foundation, also supported the withdrawal as the best option for securing later passage of the bill.



The Executive Committee determined that conducting an MHIA on the proposed revision to the EEOC’s 1990 Policy Guidance would fulfill the project goal of advancing HIA practice by focusing on the mental health impacts of a decision in an area—at the nexus of employment, criminal justice, and civil rights—that is not well represented in established HIA practice. The Committee also determined that conducting an MHIA on the proposed revision met the Screening selection criteria, both those articulated in the North American Practice Standards and the additional criteria established by the Executive Committee.

The Screening process took considerably longer than planned because of the MHIA Team’s effort to ensure that the object of the MHIA was relevant to the Englewood community and reflective of resident concerns. Originally, Screening was to have taken eight weeks; the process took closer to 16 weeks. There were, however, clear benefits to spending the additional time in that the U.S. EEOC Policy Guidance was of great interest to Englewood residents, enabling the MHIA Team to effectively engage the community in the MHIA.



## SCREENING TIMELINE

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**January 2011:** MHIA begins.

**February 2011:** Illinois Sen. Lightford introduces Illinois SB1284.

**April 2011:** MHIA Team selects Illinois SB1284 for MHIA.

**April 2011:** Illinois Sen. Lightford withdraws Illinois SB1284 due to strong political opposition from the Illinois Senate Criminal Law Committee.

**May 2011:** MHIA Team selects U.S. EEOC Policy Guidance for MHIA.

## POST-SCREENING TIMELINE OF EVENTS

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**July 25, 2011:** The EEOC conducts public hearings.

**August 4, 2011:** MHIA Team files written public comment on proposal to revise U.S. EEOC Policy Guidance.

**April 13, 2012:** Town hall meeting with Englewood residents to discuss preliminary findings and gather recommendations to policymakers.

**April 24, 2012:** ISE signs onto letter supporting changes to 1990 Policy Guidance, which was submitted by The Leadership Conference on Civil and Human Rights.

**April 25, 2012:** EEOC issues amended 1990 Policy Guidance.

**June 2012:** MHIA Assessment completed.

As often occurs with HIAs that focus on legislative or policy decisions, the EEOC decision-making process for revising its Policy Guidance followed an unanticipated timeline. The actual timeline was both inconsistent with its previous direction and, therefore, unanticipated by the MHIA Team. The EEOC publicly released its revised Policy Guidance on April 25, 2012, approximately two months prior to the completion of the MHIA. However, the EEOC public release did succeed the completion of the research that informed the assessment of the revisions' likely impact on mental health outcomes. The MHIA Team was able to use the preliminary research findings to offer public comment to the EEOC prior to the April ruling.

For full-text of the following documents, see the corresponding appendices.

- Dr. Lynn Todman's policy brief is in Appendix C.
- The letter ISE signed onto on April 24, 2012, is in Appendix D.
- The amended EEOC Enforcement Guidance (Number 915.002, Date 4/25/2012) is in Appendix E.

# VIII. Scoping

## Creating a Workplan for the MHIA

### SCOPING: THE BASICS

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The second step of the MHIA, Scoping, was completed from June through August 2011. The Scoping process involves the establishment of the key parameters for the health impact assessment. According to the *North American HIA Practice Standards* (North American HIA Practice Standards Working Group, 2010), Scoping should identify at least the following:

- ① The decision and decision alternatives that will be assessed.
- ② Potentially important health impacts and their pathways, or logic model.
- ③ Research questions to guide the impact analysis.
- ④ The demographic, geographical, and temporal boundaries of the analysis.
- ⑤ Sources of evidence and research methods required for the impact research questions.
- ⑥ Vulnerable subgroups of the affected population.
- ⑦ An approach to the evaluation of the distribution of impacts.
- ⑧ Roles for experts and key informants.
- ⑨ Any standards or process, if any, that will be used for determining the significance of health impacts.
- ⑩ A plan for external and public review.
- ⑪ A plan for dissemination of findings and recommendations.

### THE DECISION AND DECISION ALTERNATIVES

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The decision to be assessed by the MHIA Team was the proposed revision to U.S. EEOC Policy Guidance on the consideration of arrest records in employment decisions. The decision alternative was that the U.S. EEOC Policy Guidance would remain unchanged. The decision alter-

native was unlikely because of a broad consensus that a revision to address long-standing concerns regarding lack of clarity, lack of an evidence base, and inappropriate application by employers, was merited.

### HEALTH IMPACTS AND THEIR PATHWAYS: CREATING PATHWAY DIAGRAMS

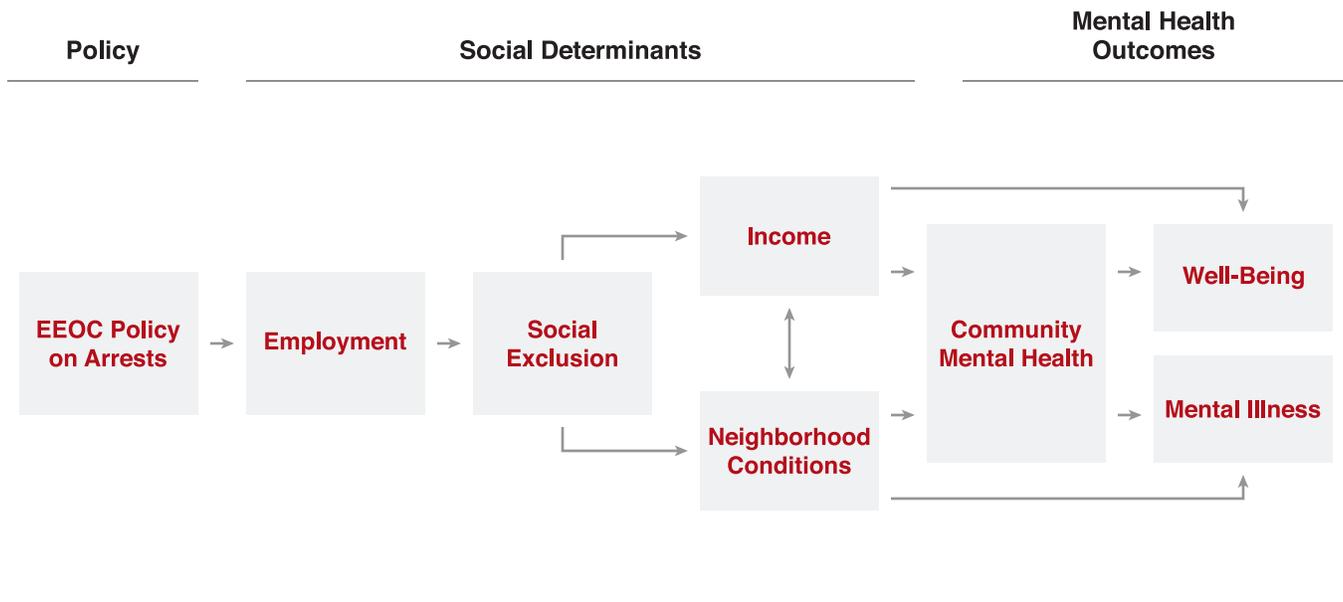
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The MHIA Team identified potential health impacts and designed a pathway diagram illustrating the relationships between the EEOC decision and mental health. The mental health outcomes of interest fell into two broad categories: the mental health of *individuals* in the community and the collective mental health and well-being of the *entire* community. Within the individual mental health outcomes, there were two categories: mental well-being and mental illness. The pathway diagram illustrated hypothesized relationships between the proposed revision and four key social determinants of interest: **social exclusion,**

#### **employment, income, and neighborhood conditions.**

The diagram also illustrates the relationship between these social determinants and individual and community mental health. The social determinants were identified through an iterative process involving literature reviews and informal dialogue with members of the Englewood community and the Executive Committee. Anticipated changes in the social determinants as a result of revision to U.S. EEOC Policy Guidance were hypothesized to have important impacts on both individual- and community-level mental health outcomes.

## Hypothesized Pathway Diagram



## RESEARCH QUESTIONS, Including Impact Research Question, Sources of Evidence and Research Methods

Based on the hypothesized relationships between as the proposed revisions to the U.S. EEOC Policy Guidance and mental health, the principal research question identified during Scoping was the following: **What is the impact upon the mental health of a community when employers use arrest records in making employment decisions about members of that community?** This question is of particular interest to populations protected by the Civil Rights Act of 1964 because use of arrest records in employment decisions may violate Title VII of the Act, especially when

those records disproportionately eliminate minority job applicants. This question informed the development of subsidiary questions addressed by the MHIA. To fully scope out the parameters of the project, the Executive Committee used, as a guide, the Scoping process and worksheet created by Human Impact Partners, an organization that provided technical assistance to the project. For each of the four social determinants of interest—social exclusion, employment, income, and neighborhood conditions—the Executive Committee identified the following:

- ⊗ A series of questions to establish the existing conditions for each determinant in Englewood (e.g., How do employers in Englewood feel about hiring people with a record of arrest? How does the current practice of employers inquiring about history of arrest impact the number of job applicants from Englewood?);
- ⊗ A series of impact research questions designed to establish the potential effects of the proposed revision to the U.S. EEOC Policy Guidance on the social determinants in Englewood (e.g., How will the proposed policy impact how employers in Englewood feel about hiring people with a record of arrest? If the policy change is approved, how well informed will Englewood employers be about the regulations regarding asking about history of arrest?);
- ⊗ A list of indicators that could be used to measure these changes (e.g., percent or number of employers in Englewood who ask for arrest record by neighborhood, or percent or number of people with arrest records in Englewood who are working);
- ⊗ A list of data sources (e.g., public data, community data, scholarly peer-reviewed literature, government documents, surveys, interviews and focus groups); and
- ⊗ A list of methods (e.g., literature reviews, quantitative analysis of community survey and public data, qualitative analysis of data from employer interviews and resident focus groups).



For each social determinant, a series of questions regarding its impact on individual- and community-level mental health outcomes were also crafted. For example, the MHIA Team assessed how the proposed amendment to the U.S. EEOC Policy Guidance would impact mental health through its impact on employment. In order to answer this research question, the Executive Committee identified a series of the mental health outcomes and indicators of interest including reported rates of individual mental illness (e.g., depression and psychological

distress); changes in indicators of community mental health (e.g., social capital, collective efficacy, psychological sense of community) and individual well-being (e.g., life satisfaction and general health and well-being). These questions, indicators, data sources and methods helped to guide the Assessment and were critical to ensuring that the MHIA stayed on course to fulfill its goals and objectives. The final Scoping Worksheet with a complete list of research questions addressed in this MHIA is included in Appendix F.

## THE DEMOGRAPHIC, GEOGRAPHICAL, AND TEMPORAL BOUNDARIES OF THE ANALYSIS

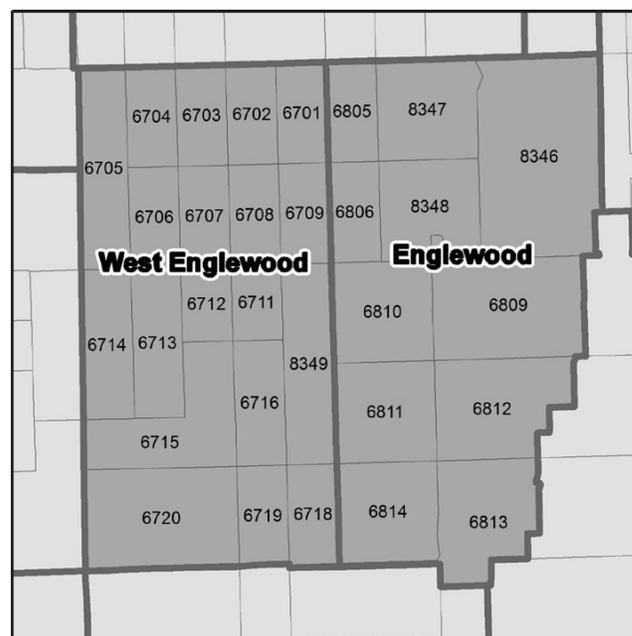
The key research question regarding the impact of employer use of arrest records on mental health is of particular interest to communities where there are large numbers of arrests. Englewood is one such community. Among the 25 Chicago Police Department (CPD) districts, District 7, which includes Englewood, had the sixth highest number of arrests in recent data.<sup>1</sup> Between January 2007 and March 2010, District 7 recorded more than 64,000 arrests. During the same period, District 7 was consistently among the city's top ten districts in terms of numbers of arrests (Chicago Police Department, 2011).

Englewood is a low-income African American community located on Chicago's south side. The above-cited data is consistent with research findings in the EEOC's Notice on the Policy Guidance (2012) that document the high rates of arrests in African American communities.

Englewood is one of Chicago's 77 communities. It is challenged by many social determinants that negatively impact mental health, such as poverty, crime, violence, limited quality housing, education and employment opportunities, and public services. Greater Englewood, defined as both Englewood and West Englewood communities, is the focus of this MHIA. The temporal boundary for the project was the timeline for the revision to the U.S. EEOC Policy Guidance.



**Map 1. Greater Englewood and West Englewood Census Tracts**



Source: American Community Survey, 2010.

<sup>1</sup> The Chicago Police Department's District 7 primarily serves the Englewood and West Englewood communities.

### **Sources of Evidence and Research Methods Required for the Impact Research Questions**

The sources of evidence include public data, community data, scholarly peer-reviewed literature, government documents, surveys, interviews and focus groups. Research methods included literature reviews, quantitative analysis of community survey and public data, qualitative analysis of data from employer interviews and resident focus groups.

### **Vulnerable Subgroups of the Affected Population**

While the entire Englewood community is vulnerable to the health impacts associated with employer use of arrest records those residents with arrest records, their families and children, are a particularly vulnerable subgroup of the community.

### **Roles for Experts and Key Informants**

During the Scoping step, the roles of the expert partners and key informants were established. For instance, the Executive Committee determined that the expert partners would assist in:

- ⊗ Determining the appropriate timing and methods for data gathering;
- ⊗ Accessing key informants from within the community, employers, and service providers to participate in focus groups, interviews and surveys; and
- ⊗ Disseminating information about the MHIA to community residents.

Additional key partners included advocacy organizations, communications consultants, and independent evaluators. The advocacy organizations served as project experts, and helped ensure that the MHIA process reflected the EEOC's deliberations and other critical activities. They also helped ensure that the project stayed abreast of the actions of other key decision-makers.

### **Approach for Evaluating the Impacts and Standards/ Process Used to Determine the Significance of the Health Impacts**

Data gathered during the Assessment step were used to evaluate the potential impacts of revision to U.S. EEOC Policy Guidance on the mental health of Englewood residents. Standards and processes for assessing impacts were based on previously established procedures and recommendations (Bhatia, 2011; NRC, 2011). See Chapter XI for further detail on Impact Predictions. Using these frameworks, three MHIA Team members independently assessed the impacts of revision to the U.S. EEOC Policy Guidance on social determinants and mental health. Assessments were subsequently compared and discrepancies among assessments were resolved through a series of group discussions. The Impact Predictions made in this report reflect a consensus reached by the three MHIA Team members.

### **Plans for External/Public Review and Dissemination of Findings and Recommendations**

During Scoping, the plan for community review of the MHIA findings was established. The plan was to present preliminary findings to the Englewood community in town hall style gatherings. The objective of this activity was to ensure that information gathered during the Assessment step accurately reflected the community.

The dissemination of information on the MHIA process, findings, and recommendations, was supported by the communications consultants and the Adler School's internal marketing and public relations functions. Dissemination occurred through presentations, interviews, op-eds, policy briefs, testimony, newsletters, and websites and blogs of professional, advocacy, and service provider organizations.

# IX. Assessment

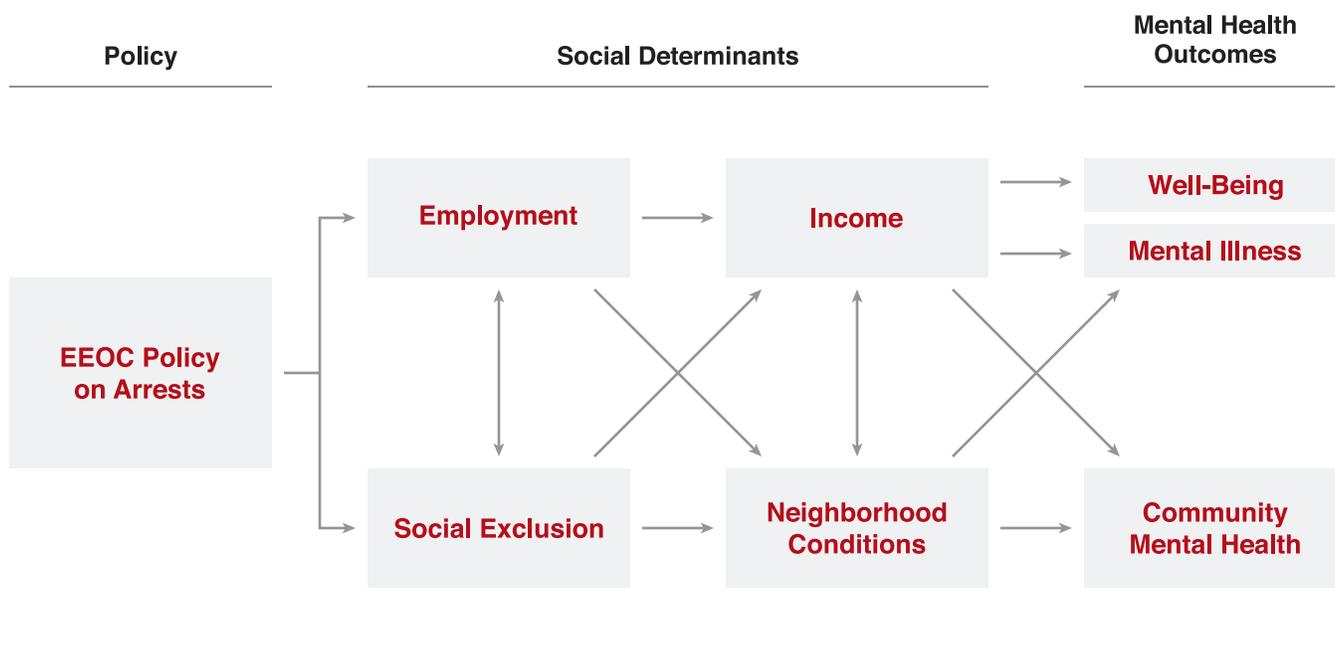
## Part I: The Methods

In Assessment, the third step in MHIA, the aim was to evaluate and predict the impact that the proposed revisions to the U.S. EEOC Policy Guidance might have on individual and collective mental health. Assessment involved two major steps:

- ① Determination of existing community and mental health conditions in Englewood and
- ② Prediction of the impact that proposed Policy Guidance could have on those conditions.

In Assessment, the relationships hypothesized in Scoping were revised to reflect the findings of the MHIA. See hypothesized pathway on page 31. The final pathway diagram, based on the research findings, is depicted in **Figure 1**. Below the methods and process for the Assessment are described.

**Figure 1: Final Pathway Diagram**



The entire Englewood community was defined as the project area for the MHIA, including the area within the 60621 zip code, which is geographically bounded by 55<sup>th</sup> Street on the north, 75<sup>th</sup> Street on the south, Racine Avenue on the west, and State Street on the east. When using data from the U.S. Census American Community Survey (ACS), the source for much of the existing conditions information contained in this report, the project area was defined as Census tracts 6805, 6806, 6809, 6810, 6811, 6812, 6813, 6814, 8346, 8347, and 8348 (U.S. Census Bureau, 2011). These tracts were chosen because they correspond to the formal geographical borders of the Englewood community as specified by the City of Chicago (City of Chicago, 2010b). The location of the Englewood community in Chicago and its census tracts is to the right in **Map 2**.

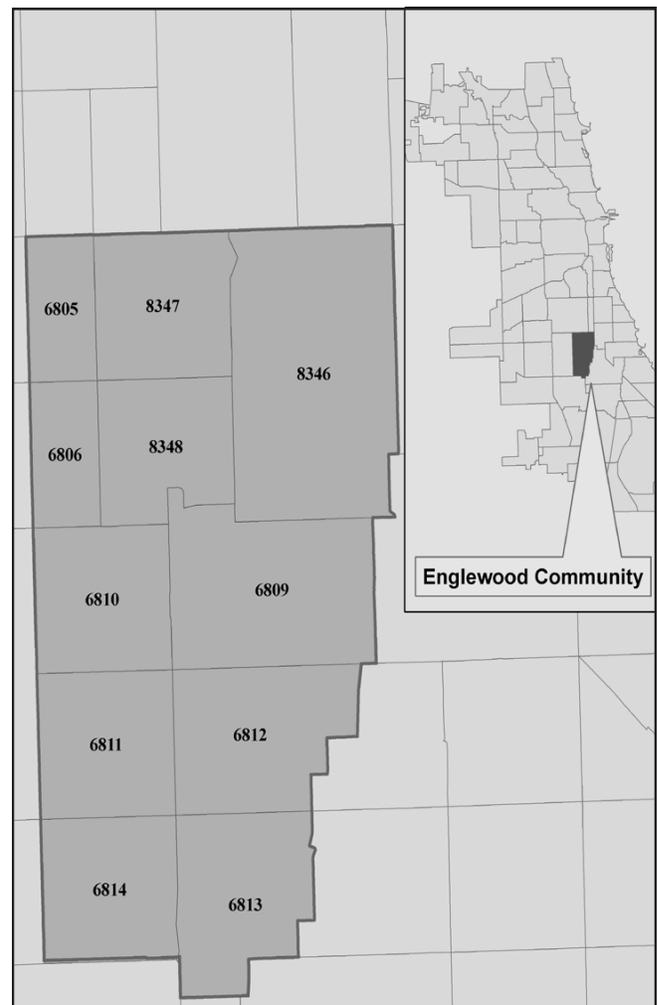
A multi-method process was used to assess the mental health impacts of the proposed revision to the U.S. EEOC Policy Guidance. It involved qualitative and quantitative analyses of primary and secondary data collected from the following sources: a systematic literature review; secondary data (i.e., publicly available health, economic, housing, safety and demographic data); a community survey of Englewood residents; and focus groups and interviews conducted with Englewood residents and employers. For all primary data collection methods (i.e., community survey, focus groups, and interviews), MHIA methods and procedures were reviewed and approved by the Adler School of Professional Psychology's Institutional Review Board (IRB).

In the sections that follow, the methodologies for the literature review, secondary data analysis, community surveys, focus groups, and employer interviews are described.

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**Literature Review.** The Research Team conducted a systematic literature review to identify the established relationships between the social determinants of interest (i.e., social exclusion, employment, income, and neighborhood conditions) and mental health. Although the focus of the MHIA was the overall relationship between four social determinants and mental health, a preliminary search of the literature indicated that there were insufficient peer-

**Map 2. Map of Englewood Census Tracts, 2010**



*Source: American Community Survey, 2010.*

reviewed materials documenting the relationships between arrest and social exclusion, arrest and income, and arrest and neighborhood conditions. There was, however, sufficient peer-reviewed literature on the relationship between arrest and employment. Consequently, the systematic literature review focused on the relationships between arrest, employment, and mental health.



Specifically, the review focused on literature that documented the following:

- ① Effect of Arrest on Employment
- ② Effect of Arrest on Mental Health (Individual-level and Community-level)
- ③ Effect of (Un)employment on Mental Health (Individual-level and Community-level)

The Research Team reviewed studies in a three-phase process. In Phase 1, the Research Team employed a wide range of search terms which are listed in **Table 3**.

**Table 3: Literature Review Search Terms**

| Topics                                | Search Terms  |
|---------------------------------------|---|
| <b>Arrest</b>                         | arrest, arrest records, criminal records  |
| <b>Employment</b>                     | employment, unemployment, job, work, working  |
| <b>Individual-level Mental Health</b> | family relationship, parent-child relationship, marital relationship, family conflict, depression, anxiety, mental illness, substance abuse, drug use   |
| <b>Community-level Mental Health</b>  | psychological sense of community, social capital, collective efficacy, social network, social connections, community network, attachment, participation, civic engagement, community empowerment, neighboring |

Searches were conducted in electronic sources that included Google Scholar and the following professional databases: Academic Search Premier, Criminal Justice Periodicals, Education Resources Information Center, MEDLINE, PsycINFO, Psychiatry Online, Sage Journals, Journal Storage, Informaworld, Springer Collection, and Proquest Digital Dissertations.

In Phase 2, the Research Team identified additional literature through reviews of the reference sections and works cited in the studies that were identified in Phase 1. The search process was concluded once it was determined that there were no additional studies to be found.

After identifying potential studies for inclusion in the literature review, Phase 3 involved the Research Team developing and applying specific criteria to help determine if the studies identified in Phases 1 and 2 warranted further

review. Criteria included the following: studies had to 1) include a specific analysis of mental health indicators associated with arrest and unemployment; 2) be published in peer-reviewed journals, governmental documents, or dissertations or theses over the last 15 years (between 1997 and 2012); 3) be published in English; and 4) be conducted in North America (i.e., U.S. and Canada).

**Secondary Data.** Existing data, used to establish baseline demographic, economic, social, and health conditions in Englewood (i.e., conditions prior to the U.S. EEOC decision), were collected from the ACS, the City of Chicago Department of Public Health (CDPH), the Illinois Department of Public Health (IDPH), the Woodstock Institute, and the Chicago Police Department (CPD).



**Community Surveys.** To build on and fill gaps in the information gathered through the literature review and secondary data, the MHIA Team surveyed the Englewood community. Surveys were administered to a convenience sample ( $n = 254$ ) recruited by the MHIA Outreach Team with assistance from the project's primary community-based partner, Teamwork Englewood. The MHIA Outreach Team was also able to enlist other community organizations (e.g., Imagine Englewood, IF; Residents Association for Greater Englewood), block clubs, and Kennedy-King College, in recruiting survey participants. All identifying information was removed from the surveys, and each participant was assigned an identification number. The surveys contained items regarding demographics (i.e., age, race and ethnicity, education level, income level, employment status, marital status, arrest and conviction history, years lived in their current residence and community), psychological sense of community, collective efficacy, race-related stress, perceived discrimination, use of the informal economy, psychological distress, depression, life satisfaction, and well-being. All measures were written at a 6th-grade reading comprehension level and, when appropriate, were read to participants by a trained member of the MHIA Team. The purpose, procedure, risks, and benefits of the MHIA were described both verbally and in writing, and written informed consent was obtained from all individuals prior to administration of the survey instrument. Participants received \$10 as compensation for completion of study measures. See Appendix G for sample survey questions.

The pathway diagram developed during Scoping illustrated the MHIA Team's hypothesis about how arrest records might be linked to mental health outcomes. To determine whether the hypothesis was supported by the information gathered through the community survey, a method of statistical analysis called structural equation modeling (SEM) was employed. Details of SEM analyses and results are described in Appendix J.

**Focus Groups.** Five focus groups with a total of 43 Englewood residents were conducted. The MHIA Outreach Team, in collaboration with Teamwork Englewood, recruited the participants. Teamwork Englewood secured a private room for each focus group. The location of the focus groups was convenient to residents and offered privacy and confidentiality regarding their participation in the MHIA.

The focus groups were assigned by gender and age, with two groups of women who were 35 and older and one group of each of the following: women who were 18 to 34, men who were 35 and older, and men who were 18 to 34. The hour-long group discussions included brief introductions, discussions of participants' experiences and opinions about finding employment in Englewood; the impact of arrest records on employment opportunity; and the positive aspects and challenges of living in Englewood. All focus groups were conducted in English. Written informed consent was obtained from each focus group participant and the MHIA was described to the group. Participants were paid \$10 for their time, and refreshments were provided.

Each focus group was audio recorded, and Adler School student researchers transcribed the recordings. All participants were aware of recording procedures and written permission for audio recording was obtained prior to beginning focus groups. Members of the Research Team analyzed the data using thematic analysis to identify participants' descriptions of the relationships between various social determinants and mental health, and potential impacts of revisions to the U.S. EEOC Policy Guidance on the community and its overall well-being. See Appendix H for focus group questions. Appendix J presents descriptive information of general responses obtained from the focus group participants.



**Employer interviews.** The Research Team interviewed employers and business managers in Englewood to better understand their perceptions and practices related to hiring employees with arrest records. To identify possible interviewees, the MHIA Team used the city of Chicago's business license directory (<https://webapps.cityofchicago.org/LicenseSearchWeb>) to create a list of all businesses within Englewood's 60621 zip code. Phone numbers for the relevant businesses were found using Google, and at least one attempt was made to contact each business on this list. When contacting businesses, requests were made to speak with a hiring manager or person in charge of hiring decisions. The MHIA was explained to the manager and a request was made for a confidential interview to learn about their hiring practices. Business managers who were willing to be interviewed were later contacted to schedule a date and time for the interview. Additional managers were identified through in-person solicitation with the help of community partners. A total of 33 Englewood employers were eligible to participate in interviews. Of these, 10 interviews were completed. The remaining employers were not interviewed either because they declined to participate or because of scheduling conflicts.



Written informed consent was obtained prior to conducting each interview. Interviews were audio recorded in those instances where participants agreed to have their interviews documented. When participants declined permission for audio recording, interviewers took careful notes of interviewee responses. Audio-recorded interviews were transcribed by members of the Research Team with Adler student support. Transcriptions were reviewed for accuracy. All identifying information was removed from the transcripts, and each interview was assigned an identification number. Participants were asked if they wanted a copy of the study. If they expressed an interest in seeing the final report, their name was placed on a list separate from their interview transcript. See Appendix I for questions asked in the employer interviews. Appendix J presents descriptive characteristics of the types of businesses that participated in the employer interview and general categories of employer responses to the interview questions.

The data collected out of each of these methodologies was synthesized by the Research Committee through an iterative process. The analytic process began by using the data to answer the questions listed on the Scoping document. For each research question in the Scoping document, methodologies and analytic techniques were specified. In some instances, additional data and analyses were used to more comprehensively answer questions in the Scoping document.

# X. Assessment

## Part II: The Heart of the MHIA

As noted in the previous section, Assessment involves the establishment of baseline or existing community and mental health conditions, and the prediction of the impact the proposed EEOC revisions might have on those conditions.

In the sections that follow, a description is provided of the data sources and the findings of the MHIA. Baseline community and health conditions are described first, followed by information on the relationships between each social determinant of interest (i.e., social exclusion, employment, income, and neighborhood conditions) and mental health at the individual and community levels.

Baseline community and health data in Englewood at the time of the MHIA are presented below. Community characteristics that are presented include basic demographics, employment, income, housing, crime rates, and general health status.

### Existing Community Conditions: Demographic, Economic, Social, and Health Conditions in Englewood

#### DEMOGRAPHIC CONDITIONS

***Demographics: The population of Englewood has declined in recent years. More than half the residents are female. They are younger than the average Chicagoan. Almost all residents are African American.***

Between 2000 and 2010, the population of Englewood declined 17.9 percent, considerably greater rate of decline than in the city overall, which was 6.9 percent (City of Chicago, 2010a; U.S. Census Bureau, 2012a).

In 2010, 55 percent of Englewood's 33,032 residents were female (U.S. Census Bureau, 2012a). The proportion of men and women who live in Englewood appears to shift to more women in early adulthood. For example, among young adults (aged 18 to 24), the proportion of male and female residents are similar (4.7 percent and 6.2 percent, respectively). However, among those residents aged 25 to 44 years females were 15.7 percent of the total Englewood population and males 10.6 percent. **Figure 2** in Appendix K presents the gender distribution for Englewood residents by age groups.

In 2010, the median age of Englewood residents was 30 years in contrast to the 33 year average of Chicago residents (City of Chicago, 2010a; U.S. Census Bureau, 2012a). Englewood has a higher proportion of residents who are youth (17.1 percent) than does Chicago (13.2 percent), as well as a higher proportion of adolescents (13.7 percent) compared to Chicago (10.4 percent). A somewhat greater proportion of senior citizens (65 years of age or older) reside in Englewood (12 percent) compared to Chicago overall (10.3 percent). In contrast, the proportion of residents between the ages of 25 and 64 is lower for Englewood (46.5 percent) than for Chicago (55 percent). It is worth noting that to the extent that Englewood has a lower proportion of residents between the ages of 25 and 64—the period in which the greatest amount of income is accrued (U.S. Census Bureau, 2012e)—Englewood also had a lower proportion of residents who could contribute to community earnings as compared to the rest of Chicago. **Figure 3** in Appendix K shows comparisons of age ranges for Englewood and Chicago.



In 2009, more than 99 percent of Englewood residents identified as African American (U.S. Census Bureau, 2012b).<sup>1</sup> See **Table 3** in Appendix K. This percentage is nearly three times the 2009 estimated percentage of Chicagoans who identified as African American, which was 34.1 percent (U.S. Census Bureau, 2012f).

## ECONOMIC CONDITIONS

**Employment: Unemployment rates are higher in Englewood than the Chicago average. Most residents who are employed work in education. Few employed residents work within the Englewood community.**

The distribution of unemployment rates for Englewood census tracts and other City of Chicago community areas are depicted in **Map 3**.

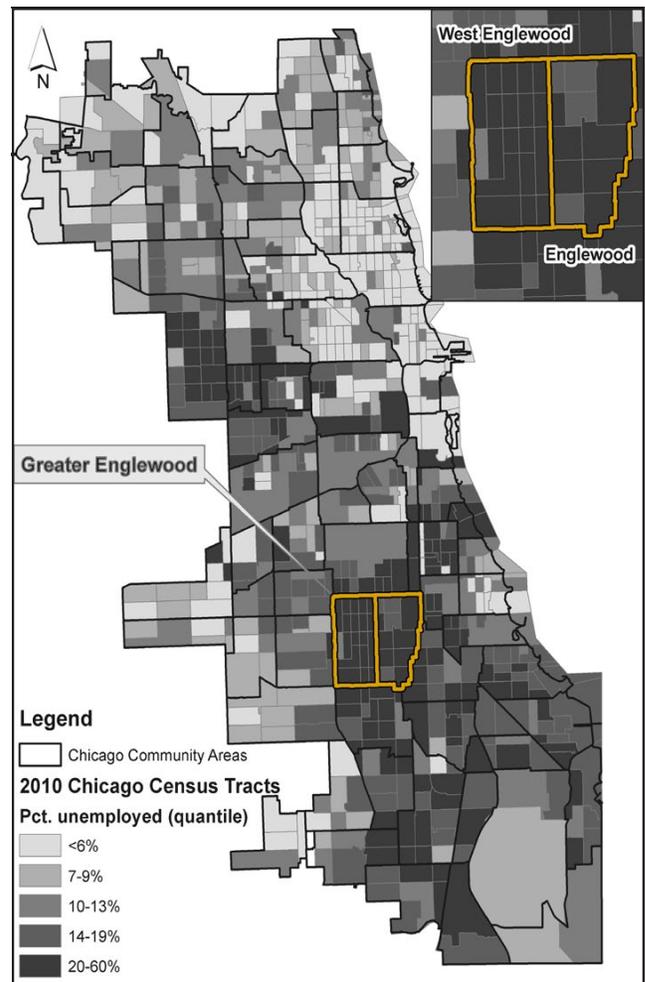
Of the 11 census tracts that comprise Englewood, unemployment rates are substantially higher than for the city overall.

In 2010, unemployment rates among Englewood census tracts ranged from 15.2 percent to 31.4 percent, compared to an 11.1 percent average in Chicago. Notably, six Englewood census tracts had unemployment rates greater than 20 percent, and only one had an unemployment rate below 17 percent.

The largest job sector for employed Englewood residents is education (31.0 percent) which includes employment as elementary school and high school teachers, and junior- and four-year college educators (U.S. Census Bureau, 2012d). Large numbers of Englewood residents also work in the following industrial sectors: 11.3 percent in professional (e.g., legal, accounting, engineering trades, scientific, management, and waste administrative services); 10.8 percent in transportation (e.g., rail transport, interurban and rural bus transport, postal service), warehouse and utilities (e.g., electric power generation, natural gas distribution); and 10.7 percent in retail (e.g., automotive dealers, electronics/appliance stores, grocery stores). See **Table 4** in Appendix K for more detail about employment by sector in Englewood.

<sup>1</sup> 2010 ACS 5-year estimates of race/ethnicity had not been released at the start of the MHIA, so 2009 ACS 5-year estimates are reported here.

**Map 3. Unemployment by Census Tract, 2010**



Another important characteristic of employment conditions is the approximate location of residents' jobs. A useful proxy measure for employment location is the proportion of community residents who work within 15 minutes of their home. Working in close proximity to home suggests that residents are employed in the local economy. This is of particular importance because an underlying assumption of the MHIA was that an increase in the employability of Englewood residents resulting from the proposed revision to the U.S. EEOC Policy Guidance might augment their income and increase the stability of Englewood's local economy. An estimated 6.6 percent of all employed Englewood residents work within 15 minutes of their home, which is less than half of the 13.3 percent of Chicagoans who work close to home (U.S. Census Bureau, 2012d).

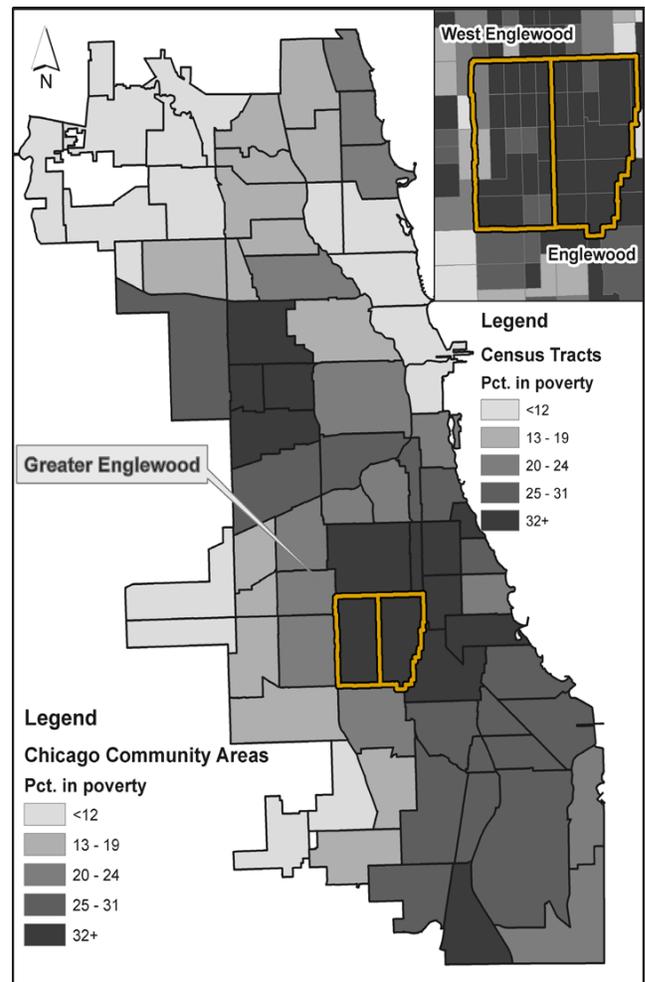


***Income: Median household income in Englewood is below the Chicago average. A large number of Englewood residents receive public assistance. Poverty rates in Englewood are higher than Chicago on average.***

In 2010, the median household income for the City of Chicago was \$46,877 (U.S. Census Bureau, 2012a). All 11 census tracts that comprise Englewood had median incomes lower than that of the Chicago average: the lowest median income was \$15,833 (census tract 6806) and highest was \$30,514 (census tract 6811). Furthermore, 58.1 percent of Englewood households earned an annual income of less than \$25,000 (U.S. Census Bureau, 2012d), which is nearly twice the rate of households in the City of Chicago that earn an annual income of less than \$25,000 (U.S. Census Bureau, 2012d). In 2010, compared to Chicago overall, a greater proportion of Englewood residents received aid from public assistance programs (U.S. Census Bureau, 2012d). While 14.8 percent of Chicago households received food stamp/Supplemental Nutrition Assistance Program (SNAP) benefits, between 24.9 percent (census tract 6806) and 45.2 percent (census tract 8346) of Englewood households received this form of assistance. Similarly, between 6.2 percent (census tract 6812) and 21.6 percent (census tract 6806) of Englewood households received Supplemental Security Income (SSI). In comparison, only 5.1 percent of Chicago households received SSI (U.S. Census Bureau, 2012d).

**Map 4** depicts 2009 poverty rates for Englewood and Chicago (U.S. Census Bureau, 2011). The average poverty rate for Englewood is greater than 32 percent aggregated across census tracts. This rate was substantially higher than the average Chicago poverty rate of 8.9 percent.

**Map 4. Percentage of Population in Poverty, 2009**



58.1 percent of Englewood households earned an annual income of less than \$25,000

## SOCIAL CONDITIONS

**Housing: In Englewood, residents are more rent burdened. There is a high proportion of foreclosure and vacant housing as compared to Chicago overall.**

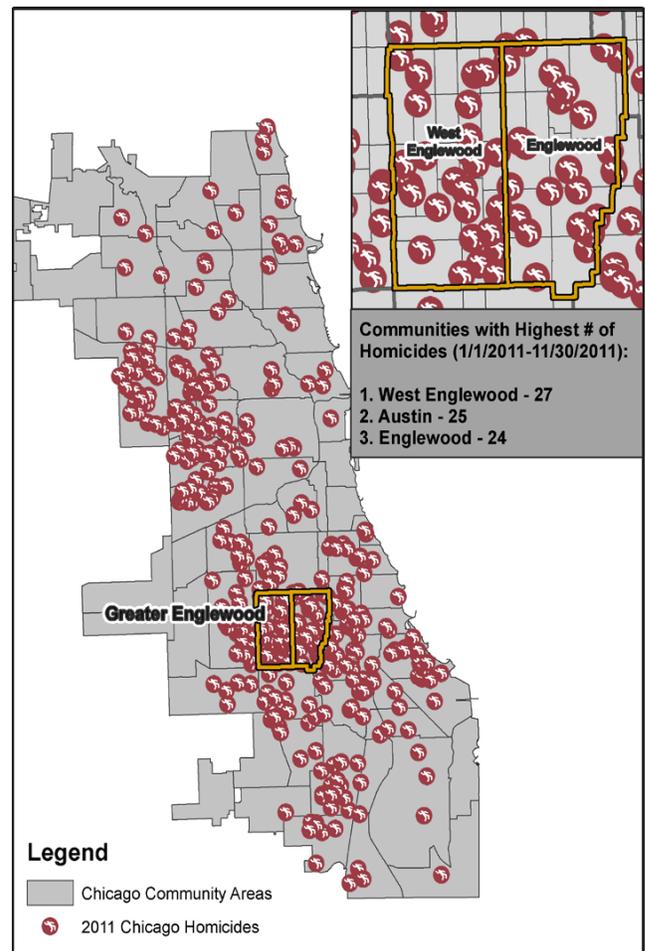
In 2010, the proportion of households with residential overcrowding was similar for Englewood (2.8 percent) and Chicago (4.7 percent; U.S. Census Bureau, 2012c). Nearly 60 percent of Englewood residents are rent burdened, compared to 48 percent for Chicago overall. In 2010, the housing vacancy rate in Englewood was nearly 27 percent as compared to nearly 16 percent for the city overall (U.S. Census Bureau, 2012c). A house in Englewood is nearly twice as likely to be vacant than a house in other Chicago communities.<sup>1</sup>

According to the U.S. Census Bureau (2012c), 50 percent of Englewood vacancies were classified as “other vacant.” Many of these are the result of foreclosure. In 2009, from the first through the fourth quarters, 474 housing foreclosures were filed in Englewood; 378 were filed during the same period in 2010 (Bultrago, 2012). This represents a 20 percent decrease in the foreclosure filings. By comparison, the foreclosure filings in Chicago increased by 2.9 percent in the same period.

In 2010, according to the U.S. Census Bureau (2012a), more than 40 percent of Englewood residents had lived in their housing unit for five years or fewer, suggesting a highly mobile population. A similar proportion (41 percent) of the MHIA survey sample reported having lived in their current housing unit for less than five years, and 74 percent indicated that they had moved into their current residence within the past 12 years. Survey respondents’ average tenure in a housing unit was 14 years. On average, respondents had lived in Englewood for 19.9 years. These data suggest that although Englewood residents may exhibit moderate to high housing mobility, when they do move, many stay within the Englewood community. See **Figure 4** in Appendix K for more detail.

<sup>1</sup> An odds ratio (OR) was calculated to determine likelihood of vacancy was calculated for this report. For this measure, OR=2.31.

**Map 5. Chicago Homicides, January–November 2011**



**Crime: Englewood had high numbers of arrests and homicides compared to many other communities in Chicago.**

From 2007 to 2010, Chicago Police District 7, which serves Englewood and the adjacent community of West Englewood, recorded the sixth highest number of arrests among the city’s 25 districts. Between January and November 2011, Englewood had the third highest number of homicides reported among Chicago’s 77 communities. Neighboring West Englewood reported the most homicides (see **Map 5**; Chicago Police Department, 2012).

Significantly for the MHIA, between January 2007 and March 2010, District 7 recorded more than 64,000 arrests (Chicago Police Department, 2010), and was consistently among the city’s 10 districts with the highest number of arrests (Chicago Police Department, 2012).



## HEALTH CONDITIONS

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**Physical health status: Compared to other city residents, Englewood residents have higher rates of the leading causes of death and premature death.**

Between 2004 and 2008, the leading causes of death in Englewood were cancer, coronary heart disease, and diabetes (Chicago Department of Public Health, 2011). Age-adjusted rates for cancer are higher in Englewood (272.1 per 100,000) compared to Chicago (197.7 per 100,000). Age-adjusted rates for coronary heart disease are also higher in Englewood (176.5 per 100,000) compared to Chicago (162.7 per 100,000). Age-adjusted rates for diabetes are higher in Englewood (101 per 100,000) compared to Chicago's rates (70.5 per 100,000).

The differences in health outcomes reflected in these causes of death are illustrative of differences in other health outcomes. This is reflected in years of potential life lost (YPLL), which is a commonly used measure for premature mortality. Between 2004 and 2008, YPLL among Englewood residents was 18,340. That compares to YPLL of 8,667 for the city (Department of Public Health, 2011).<sup>1</sup>

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<sup>1</sup> Premature mortality is an often-cited measure of population health because it assesses the deaths that occur before a person reaches an expected age, in this case 75 years; in other words, it gives a snapshot of deaths that likely could have been prevented. There are several measures of premature mortality, one of which is the number of years of life lost due to early deaths.

**Mental health status: Many Chicago residents rated their mental health as “not good” during the past 30 days. In 2010, more than 2,500 cases were treated in mental health outpatient settings in Englewood.**

Mental health status data are not available specifically for Englewood. However, city-level data suggests adequate mental health for most residents. For instance, in the 2009 Behavioral Risk Factor Surveillance Survey (BRFSS) data, 59.1 percent of Chicago resident respondents indicated that they had not experienced poor mental health in the previous 30 days. Because these findings were for the city as a whole, they may not be reflective of mental health status in the Englewood community in particular.

Information on the mental health of Englewood residents is available by examining the prevalence of psychiatric conditions among individuals in outpatient settings (e.g., mental health clinics, hospitals, outpatient medical clinics).

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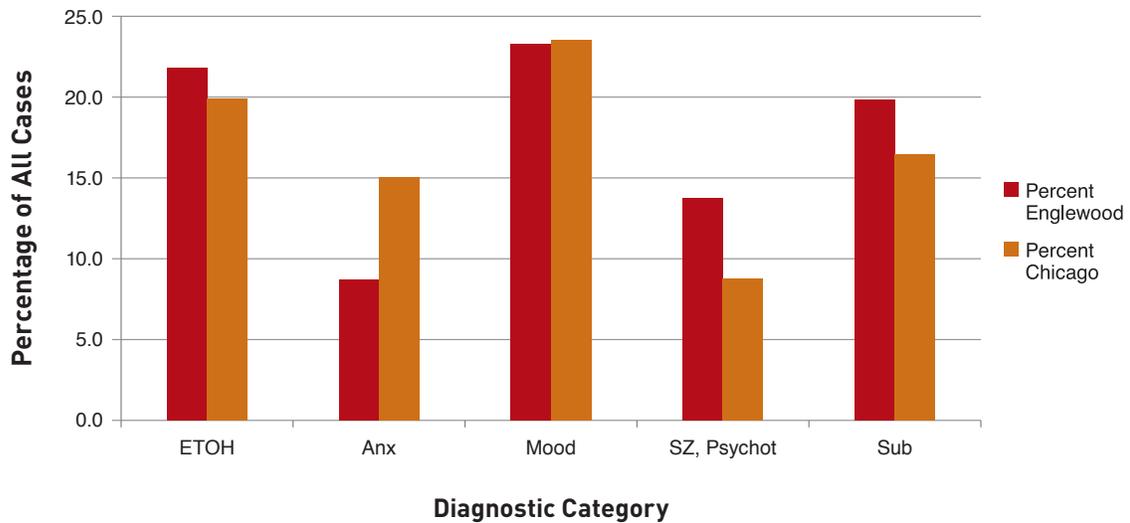
**According to the Illinois Department of Public Health (IDPH), 2,600 cases were treated in outpatient settings in Englewood for various psychiatric conditions during 2010 (IDPH, 2012).**

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Of these, the most commonly treated diagnostic categories were Mood Disorders (e.g., Major Depressive Disorder, Dysthymic Disorder, Bipolar Disorder), Alcohol-Related Disorder (e.g., Alcohol Abuse, Alcohol Dependence), and Substance-Related Disorders (e.g., Substance Abuse, Substance Dependence, Substance Withdrawal). **Figure 5** depicts the proportion of outpatient diagnostic cases in Englewood compared to the city (IDPH, 2012). As shown, Englewood and Chicago have a comparable number of cases receiving treatment for Mood Disorders and Alcohol-Related Disorders. In contrast, Englewood is higher than Chicago with regard to cases receiving treatment for Substance-Related Disorders (19.4 percent vs. 16.4 percent) and Schizophrenia/Psychotic Disorders (13.7 percent vs. 8.8 percent). Englewood was lower than Chicago in the number of cases receiving treatment for Anxiety Disorders (8.6 percent vs. 15.0 percent).



**Figure 5. Percent of Outpatient Psychiatric Diagnoses Received for Patients Treated in Englewood vs. City of Chicago, 2010**



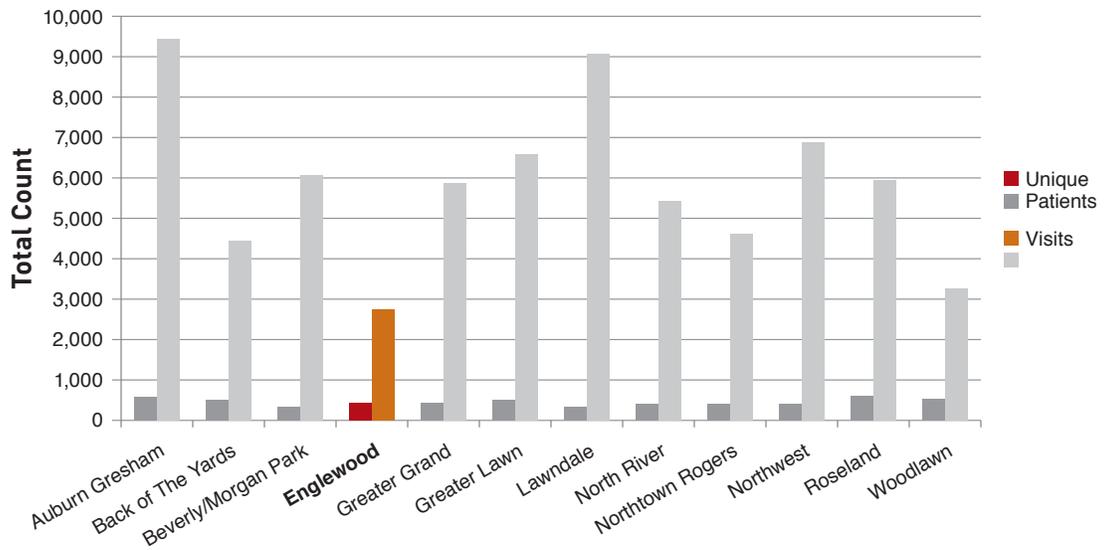
*Diagnostic Categories. ETOH = Alcohol-Related Disorders; Anx = Anxiety Disorders; Mood = Mood Disorders; SZ, Psychot = Schizophrenia and Other Psychotic Disorders; Sub = Substance-Related Disorders; Data source is Illinois Department of Public Health, 2012.*

Englewood residents have access to several mental health services, but it is not clear that they are being fully utilized. For instance, from January through November 2011, the Englewood Mental Health Clinic (EMHC) treated 442 patients, nearly identical to the average number of people treated during the same period across all city-operated mental health clinics (see **Figure 6** below). However, EMHC also reported the lowest number of patient visits of all city-operated clinics, reporting 2,741 treatment visits, compared to a city average of 5,856 visits. This implies that

EMHC patients are not returning for follow up visits at the rate that patients do on average in the City of Chicago. It is important to note that residents' usage of city-operated clinics is influenced by myriad factors, most of which the study of was beyond the scope of the present MHIA. Consequently, it is not possible to draw strong conclusions on mental health service usage in Englewood compared to use in other clinics in the city. Therefore, it is recommended that the above findings regarding the relative number of follow-up visits be viewed as descriptive.



**Figure 6. Number of Patients and Total Number of Treatment Sessions for City of Chicago Community Mental Health Clinics, 2011**



# XI. Assessment

## Part III: The Impact Predictions and Supporting Evidence

In this step of the Assessment, evidence-based relationships among social determinants and mental health are presented. The four social determinants of interest are: employment, income, social exclusion, and neighborhood conditions.

### IMPACT PREDICTIONS

The findings on their relationships among one another and their associations with mental health are based on the literature, community surveys, focus groups, and employer interviews. The findings were then used to predict how the proposed revisions to the U.S. EEOC Policy Guidance could impact social determinants of health, and as a result, subsequent changes in mental health outcomes.



#### **Table 6. Impact Predictions – Social Determinants.**

**Tables 6** provides a summary of the predicted impacts of the EEOC revisions on indicators associated with each of the four social determinants. For each indicator, an assessment is made of the direction, likelihood, magnitude, and distribution of the effect. This process for characterizing effects is based on recommendations provided by the National Research Council of the National Academies (2011) and Bhatia (2011). See Appendix L for more detailed description about how these predictions were made.

**Direction** refers to a decrease or increase in the social determinant of interest. **Likelihood** refers to the certainty of the predictions made by the MHIA Team. Likelihood may be unlikely/implausible, possible, likely, very likely/certain, or there may be insufficient evidence for evaluation. **Magnitude** refers to the number of individuals likely to be impacted by the revision, relative to the total target population. Magnitude may be limited, moderate, substantial, or there may be insufficient evidence for evaluation. **Distribution** refers to whether the anticipated impacts will be allocated equitably across populations, and whether they might reverse baseline or historical inequities. Distributional effects may exact disproportionate harms, disproportionate benefits, restorative equity, or there may be insufficient evidence for evaluation.



**Table 6. Impact Predictions – Social Determinants**

| Indicator   | Direction  | Likelihood | Magnitude                | Distribution          |
|---|--|------------|--------------------------|-----------------------|
| <b>Employment</b>   |  |            |                          |                       |
| Number of employable Englewood residents  | Increase in employability  | Possible   | Moderate/<br>Substantial | Restorative<br>Equity |
| <b>Income</b>   |  |            |                          |                       |
| Level of Englewood residents' income  | Increase in levels of income   | Likely     | Moderate/<br>Substantial | Restorative<br>Equity |
| Ratio of Englewood income to City of Chicago income                               | Increase in levels of income   | Possible   | Substantial              | Restorative<br>Equity |
| Number of informal economy sources in Englewood and frequency of use by residents | Decrease in number of informal economy sources and frequency of informal economy use | Possible   | Moderate                 | Restorative<br>Equity |
| <b>Social Exclusion</b>   |  |            |                          |                       |
| Number of Englewood residents excluded due to arrest record                       | Decrease in exclusion  | Likely     | Substantial              | Restorative<br>Equity |
| Number of Englewood residents self-excluded due to arrest record                  | Decrease in self-exclusion   | Possible   | Substantial              | Restorative<br>Equity |
| <b>Neighborhood Condition</b>   |  |            |                          |                       |
| Ratio of crime in Englewood to crime in City of Chicago                           | Decrease in crime as employability increases   | Possible   | Moderate/<br>Substantial | Restorative<br>Equity |

**Table 6** suggests that a *possible moderate to substantial increase* in resident “employability” will be associated with revisions to the U.S. EEOC Policy Guidance; a *likely moderate to substantial increase* in resident income, and a *possible substantial increase* in resident income relative to the citywide median. It is also predicted to produce a *possible moderate decrease* in use of the informal economy. It is predicted there

will be a *likely substantial decrease* in social exclusion and a *possible substantial decrease* in self-exclusion. It is predicted that there will be a *possible moderate to substantial decrease* in neighborhood crime relative to citywide rates. The distributional effects of all of these impacts will result in *Restorative Equity*; they will reduce or reverse existing and/or historical health-related inequities.



**Table 7. Impact Predictions – Mental Health Outcomes.**

**Table 7** provides a summary of the predicted impacts of the EEOC revisions on indicators of mental health in the Englewood community. For each mental health indicator, an assessment is made of the direction, likelihood, severity, and distribution of the effect.<sup>1</sup> This process for characterizing effects is based on recommendations provided by the National Research Council of the National Academies (2011) and Bhatia (2011). See Appendix L for more detailed description about how these predictions were made. *Direction* refers to a decrease or increase in the mental health outcome of interest. *Likelihood* refers to the certainty

of the predictions made by the MHIA Team. Likelihood may be unlikely/implausible, possible, likely, very likely/certain, or there may be insufficient evidence for evaluation. *Severity* refers to the importance of the impact on human functioning, well-being, or longevity, and may be low, medium, high, or there may be insufficient evidence for evaluation. *Distribution* refers to whether the anticipated impacts will be allocated equitably across populations, and whether they might reverse baseline or historical inequities. Distributional effects may exact disproportionate harms, disproportionate benefits, restorative equity, or there may be insufficient evidence for evaluation.

**Table 7. Impact Predictions – Mental Health Outcomes**

| Mental Health Outcome   | Direction   | Likelihood | Severity | Distribution       |
|---|---|------------|----------|--------------------|
| <b>Individual Mental Health Outcomes</b>                        |   |            |          |                    |
| Individual mental health, mediated by employment                | Increased individual well-being   | Likely     | Medium   | Restorative Equity |
| Individual mental health, mediated by income                    | Decreased severity of depression and psychological distress                       | Likely     | Low      | Restorative Equity |
| Individual mental health, mediated by social exclusion          | Decreased severity of depression and psychological distress; increased well-being | Likely     | High     | Restorative Equity |
| <b>Community Mental Health Processes</b>                        |   |            |          |                    |
| Community mental health processes, mediated by employment       | Increased social capital and sense of community                                   | Likely     | Medium   | Restorative Equity |
| Community mental health processes, mediated by income           | Increased social capital and sense of community                                   | Likely     | Low      | Restorative Equity |
| Community mental health processes, mediated by social exclusion | Increased social capital and sense of community                                   | Likely     | High     | Restorative Equity |

**Table 7** suggests a *likely medium increase* in individual well-being as a result of increased employability will be associated with revisions to the U.S. EEOC Policy Guidance, a *likely low decrease* in the severity of depression and psychological distress as a result of an increase in

income, a *likely high decrease* in the severity of depression and psychological distress as a result of reduced social exclusion, and a *likely high increase* in well-being also as a result of reduced social exclusion. The distributional effects of all of these impacts will result in *Restorative Equity*.

<sup>1</sup> Projected impacts for magnitude were only rated for social determinants (i.e., employment, income, social exclusion, and neighborhood conditions), and projected impacts for severity were only rated individual-level and community-level mental health.



With respect to community mental health, **Table 7** shows a *likely medium increase* in social capital and sense of community as a result of increased employability associated with revisions to the Policy Guidance; a *likely low increase* in social capital and sense of community, as a result of increased income; and a *likely high increase* in social capital and sense of community, resulting from reduced levels of social exclusion. The distributional effects of all of these impacts will result in *Restorative Equity*.

## SUPPORTING EVIDENCE

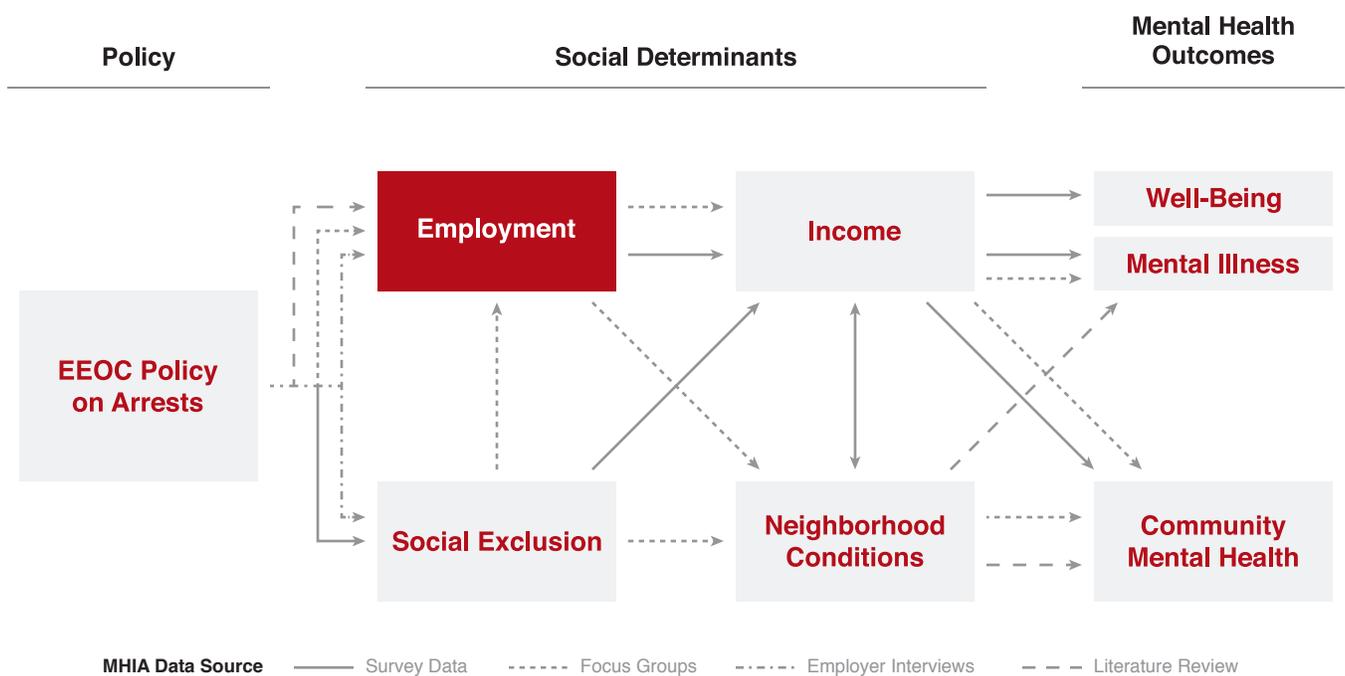
The supporting evidence is presented by each of the four social determinants. The four social determinants are: employment, income, social exclusion, and neighborhood conditions. The social determinant links to mental health and policy are also presented.

### Employment: Links among Policy Revision, Social Determinants, and Mental Health

The relationships between the proposed revisions to the U.S. EEOC Policy Guidance and the social determinant of *employment* are highlighted below in **Diagram 1**. Also shown are the relationships between employment and the other three social determinants (i.e., social exclusion, income, and neighborhood conditions). The arrows among the boxes indicate the sources of evidence (i.e., community surveys, focus groups, employer interviews, and literature review) that support predicted relationships among the policy revision, social determinants, and mental health outcomes. As shown, evidence from the literature

review, employer interviews, and focus groups suggest that revisions to the Policy Guidance will influence employment. Evidence from focus groups and community surveys suggest there is a relationship between employment and income. Evidence from focus groups suggests there is a relationship between employment and neighborhood conditions. Furthermore, the relationship between employment and mental health outcomes are supported by evidence provided by the literature review, focus groups, employer interviews, and community surveys.

**Diagram 1: Employment: Links among Policy, Social Determinants, and Mental Health Outcomes**



## SUPPORTING EVIDENCE: Relationship between Policy Revision and Employment

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**Literature Review: Arrest negatively affects employment.** The 15 studies reviewed for the MHIA provide evidence that contact with the criminal justice system negatively affects employment opportunity. Miller & Porter (2007) conducted a study composed of African Americans (52 percent), Latinos (41 percent), and Whites (5 percent) that found individuals with arrest records were less likely than those without arrest records to find a job; 5.5 percent probability of becoming employed for individuals with prior arrest compared to 8.6 percent probability for those without prior arrest.

Employers are less likely to hire ex-offenders than applicants who have similar skills but do not have criminal histories. For example, a 1996 study of employers in five major U.S. cities found that 65 percent of employers indicated that they would not hire an ex-offender (Holzer, 1996). A more recent investigation found that California employers' decision to hire ex-offenders was influenced by the type or severity of the crime (Holzer, Raphael, & Stoll, 2003). Ninety percent indicated that they were strongly averse to hiring those imprisoned for misdemeanor offenses. That percentage fell to 23 for a drug-related felony and to 7 percent for a property-related felony.

**Employer Interviews: Englewood employers were open to hiring people with arrest records, but often conflated arrest and conviction.** Englewood-based employers were questioned about their attitudes toward hiring individuals with an arrest record. Seventy percent of employers interviewed expressed openness to hiring individuals with an arrest. Seventy percent also indicated that arrest record is part of their background check. The interviews revealed that employers frequently use the terms "arrest" and "conviction" interchangeably, suggesting that

they did not distinguish between job applicants with arrest records that led to a conviction and those whose arrests did not lead to convictions. This conflation of arrest and conviction presented a challenge to obtaining an accurate understanding of employers' perceptions regarding the hiring of applicants with arrest records only (i.e., no subsequent conviction).

Suggesting openness, employers made comments such as "people make mistakes," "[arrest] don't mean anything," or "they have not been convicted of any crime." Similarly, employers acknowledge that residents of some communities may be profiled by police resulting in elevated arrest rates. For example, one employer indicated: "If you live down here, you stand a better than average chance of having some type of a run in at one time or another with the law. Ya know, it's unfortunate, but that's how it is. We probably don't use that as an indicator that, in my particular job, I just don't see it as a valid indication."

Several interview excerpts highlighted the hesitancy of employers to hire individuals with arrest records, as well as their tendency to conflate arrest and conviction. For example, one store manager stated, "We do not hire anyone with any record of arrest. It doesn't matter if they were convicted." Another employer explained his reasoning for checking arrest records saying, "I feel that employers should have the right to find out if the fella does have an arrest record and if he was arrested, what was he arrested for. You know, I mean, you know, like I said, you know, am I hiring a murderer?"



Individuals with arrest records were less likely than those without arrest records to find a job; 5.5 percent probability of becoming employed for individuals with prior arrest compared to 8.6 percent probability for those without prior arrest.

None of the employers interviewed were familiar with the EEOC's efforts to update their Policy Guidance on the use of arrest records in employment decisions. After learning about possible changes, 9 out of 10 employers indicated that revisions to the Policy Guidance would not impact their hiring practices. There are at least two potential explanations for this: employers already make hiring decisions in accordance with the Policy Guidance or there is a lack of enforcement of the Policy Guidance. Additionally, some hiring managers indicated that they would defer to corporate policies implying that they would only employ the revisions to the Policy Guidance subject to corporate dictate.

**Focus Groups: Englewood residents reported challenges when seeking employment, particularly if they have an arrest record.** Focus group findings support the idea that employment, or perception of employability, is a function of arrest history. According to focus group participants, like employers, individuals with arrest records also often conflate arrest and conviction. For instance, participants mentioned that many young people with arrests are treated as if they have also been convicted, thus limiting their employment opportunities. As one older woman stated, "If they have someone that knows to say '...look, you have just been arrested. You haven't been convicted.' Because once you hit this police station down the street, they'll put in your mind that it's over for you."



Participants in the focus groups indicated that any type of criminal record can present challenges in seeking stable employment. Job-seekers face a difficult predicament when deciding to disclose their arrest history to potential employers. According to an older gentleman: "I've noticed that if you put on the application 'I've been arrested', a lot of times it goes to this side, we ain't got to look at this one. If you don't put it on there, and you get this job, by the time you get your first check, now you fired because you falsified your application."



Participants in the focus groups indicated that any type of criminal record can present challenges in seeking stable employment.

## SUPPORTING EVIDENCE: Relationship between Employment and Income

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**Focus Groups: Many participants indicated that unemployment contributes to income instability.** Even those with full-time employment expressed concern about being able to make ends meet. Participants seemed to agree that income instability is a problem for residents with arrest or criminal records. An older woman described her experiences saying, “I don’t even want to just live comfortable, somehow I can’t supply my basic needs, and that’s a must. Comfortable is a want. But your basic needs is a must.”

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**Focus group participants suggested that the high level of unemployment in Englewood has increased dependence on the informal economy.**

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Informal economic strategies described by participants included odd jobs and street selling. Drug trade was the most often reported informal strategy for generating income. An older man said, “I ain’t gotta keep getting kicked when I can go over here and stand at this corner and get me a little change.” All groups noted the particular difficulty men face when denied employment opportunities. One young man stated, “If I know I gotta get something for my child and if I can’t get it the right way, I’m gonna get it the ... in whatever way I can.”

Several participants pointed out that the drug trade is pervasive in Englewood and that it was a logical source of income, especially to provide for family needs. Peer pressure also plays a role in participation in the drug trade. One young man also suggested it may be perceived as a norm for young men in Englewood explaining, “That’s all you see, you know, people outside selling drugs, you know... when you got people that’s not used to other options like that, it’s tempting for them.”

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**Many participants agreed that for young people with arrest records, selling drugs is often viewed as preferable over attempts at securing employment in the formal economy. This is because they are excluded from other employment opportunity due to their criminal records.**

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**Community Survey: Most respondents were unemployed. Income and income instability vary according to employment status. Respondents frequently generate income through the informal economy.** Most respondents (69.1 percent) indicated that they were currently unemployed. Of the remaining, 13.6 percent were employed part-time, 8.6 percent were employed full-time, and 8.6 percent reported that they were retired. Excluding retired participants, 66.8 percent of respondents reported that they had been unemployed for some period during the previous three years. Duration of unemployment ranged from one month to 20 years, with the highest percentage of respondents reporting unemployment for either two (16.5 percent) or three (14.1 percent) years.

Results of the community survey indicate that employment status significantly influences income. Specifically, respondents who were employed reported higher income and lower income instability compared to those who were unemployed<sup>1,2</sup>

Survey respondents were asked how frequently they used 22 types of informal economic sources. Respondents reported using all 22 sources, but the most frequently used were loans and monetary gifts from family and friends, sales of items, and fees for services. For more information see **Table 5** in Appendix K.

Among respondents, nearly all informal economic sources were used more than once. The exception was the pawning of personal and family items. Between 22 and 28 percent of residents reported using illegal and potentially harmful sources of informal income at least once (e.g., providing sex acts for money, stealing or burglarizing money or goods, writing bad checks, and selling illegal or prescription drugs). On average, survey respondents used eight sources of informal income.

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**However, individuals who had been arrested reported using significantly more sources of informal income, with an average of 11 sources used, compared to individuals who had never been arrested who used an average of seven informal sources.**

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<sup>1</sup> Income. Employed:  $M = 0.92$ ,  $SD = 1.35$ ; unemployed:  $M = 0.31$ ,  $SD = 0.87$ ;  $t(233) = -3.95$ ,  $p < .001$ .

<sup>2</sup> Income instability. Employed:  $M = 1.63$ ,  $SD = 0.99$ ; unemployed:  $M = 2.04$ ,  $SD = .92$ ;  $t(232) = 2.79$ ,  $p = .006$ .

## SUPPORTING EVIDENCE: Relationship between Employment and Neighborhood Conditions

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**Focus Groups:** *Participants reported lack of employment opportunities contributes to crime rates in Englewood.*

Focus group participants noted the link between scarce employment opportunities and neighborhood crime levels, specifically drug-related crime and violence. Several participants described how pervasive the illegal drug trade is in the Englewood community, and one young man suggested it may be perceived as normative for young men in the neighborhood. He explained, “That’s all you see you know, people outside selling drugs, you know... when

you got people that’s not used to other options like that, it’s tempting for them.” Many participants agreed that for young people with arrest records, selling drugs or robbing neighbors is a viable alternative to securing employment. An older man stated, “Lots of them don’t want no job now. They know, they see a drug, they going to get money fast. If they stick you up they’ll get some money fast.” A younger woman spoke about how her neighborhood has been impacted by the lack of employment: “My little area is bad... All they do is just rob and kill and shoot, sell drugs.”

## SUPPORTING EVIDENCE: Relationship between Employment and Mental Health

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**Literature Review: Unemployment negatively affects mental health.**

Meta-analyses suggest that, on average, unemployment has a negative effect on mental health, with significant long-term impacts. For example, a 2007 meta-analysis found that, on average, unemployed persons showed greater levels of psychological distress than employed persons (Paul & Moser, 2009). In particular, the meta-analysis found that unemployment was significantly associated with poor mental health outcomes for a range of indicators, including depression, anxiety, subjective well-being, and self-esteem. Significant long-term effects of unemployment on psychological distress symptoms were also found. These include: 1) a significant increase in distress symptoms for those who became unemployed; 2) a significant reduction in the distress among persons who had been unemployed but subsequently found jobs, and 3) a significant decrease in distress among young persons who found jobs after leaving school. Similarly, Pharr, Moonie, & Bungum (2012) found that unemployed persons were more likely to feel nervous, hopeless, depressed, and worthless than employed persons.

Given the predominantly African American population of Englewood, the MHIA Team was interested in the role race and/or ethnicity plays in the effects of unemployment on

mental health. Research findings are mixed on this topic, however, Shams and Jackson (1994) found that racial and ethnic minorities were at higher risk than Caucasians for psychological distress caused by unemployment due, in part, to having fewer economic resources and having to face discrimination.

Existing studies suggest there is an impact on mental health of partners and children of the unemployed. One analysis suggested that unemployment is significantly associated with lower marital and family satisfaction (McKee-Ryan, Song, Wanberg, & Kinicki, 2005). Ström (2003) reported that unemployment was related to a greater risk of marital conflicts and ‘marital instability’ (e.g., divorce), especially when adult men are unemployed in a family where women and men have traditional attitudes toward gender roles. The same analysis also reported that parents’ unemployment can have negative effects on children including higher school dropout rates, unemployment during adulthood, and social and behavioral problems. Similarly, the economic condition of the family was found to account for some of the effects of parental unemployment on children’s mental health.



Studies suggest there is an impact on mental health of partners and children of the unemployed.

**Literature Review: Unemployment may affect community mental health.** Six studies explored the relationship between unemployment and community mental health. Brodsky, O’Campo, and Aronson (1999) found that unemployment rates were related to psychological sense of community. In addition, the percentage not in the labor force (i.e., not in the job market) was inversely associated with psychological sense of community. Carroll-Scott (2008) found that high community-level unemployment was adversely related to collective efficacy (i.e., adults’ willingness to intervene on behalf of children). The study also found that high rates of unemployment contributed to less investment in community-based organizations, schools, and other neighborhood institutions which, in turn, is associated with poor community mental health.

**Focus Groups: Job-seekers with arrest records report poor mental health.** The challenge of obtaining employment appears to negatively impact the emotional well-being of job-seekers with arrest records. Englewood residents with arrest or other criminal records talked about feeling “depressed,” “hopeless,” and “discouraged” when looking for employment, and this was echoed across all five focus groups. The process of repeatedly being denied when seeking employment has been found to have a “chilling effect” on job seekers with criminal records (Harris & Keller, 2005). Participants noted that many give up hope of ever finding stable employment in the face of frequent rejection. One young man described his experiences finding a job after being incarcerated:

“When you like, constantly try to do the right thing and the more you try but you get shut down in the process of doing it, so it like, it breaks you down mentally.”

## PREDICTED IMPACTS OF REVISIONS TO U.S. EEOC POLICY GUIDANCE ON EMPLOYMENT

The predicted impact of the proposed revisions to the U.S. EEOC Policy Guidance on employment is a *possible, moderate to substantial increase* in the “employability”<sup>1</sup> of residents. We anticipate that changes to EEOC Policy Guidance would mitigate the influence of arrest history on the employability of Englewood residents. Based on the evidence gathered in the literature review and focus groups, the MHIA Team predicted the increase in employability would be associated with improved mental health outcomes. The Team also predicted that *Restorative Equity*, (i.e. a reduction in or reversal of existing and/or historical health inequities). For more details on this prediction, see **Table 6**, and Appendix L.

### Social Exclusion: Links among Policy, Social Determinants, and Mental Health

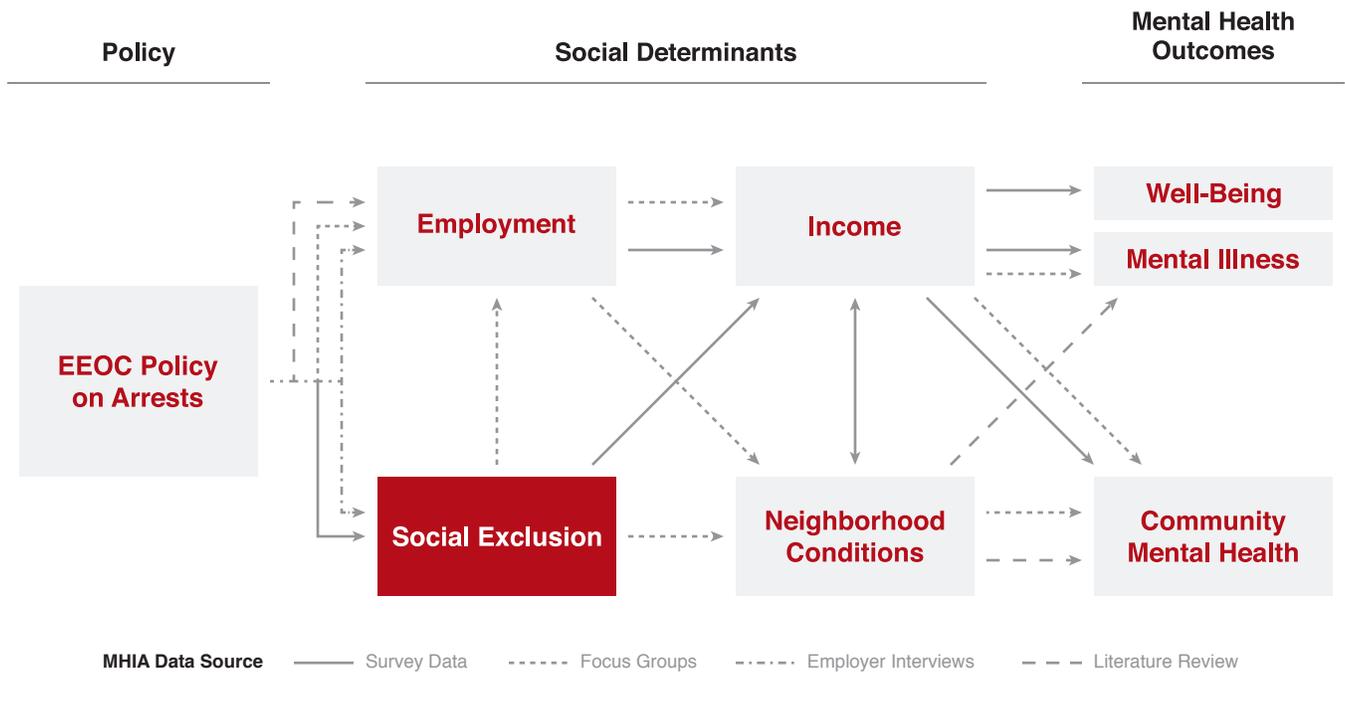
The relationships between the proposed revisions to the U.S. EEOC Policy Guidance and the social determinant of *social exclusion* are highlighted below in **Diagram 2**.

Also shown are the relationships between social exclusion and the other three social determinants (i.e., employment, income, and neighborhood conditions). The arrows among the boxes indicate the sources of evidence (i.e., community surveys, focus groups, employer interviews, and literature review) that support predicted relationships among the policy revision, social determinants, and mental health outcomes. As shown, evidence from employer interviews and survey data suggest that revisions to the Policy Guidance will influence social exclusion. Evidence from focus groups suggests there is a relationship between social exclusion and employment. Community survey data provide evidence that there is a relationship between social exclusion and income. Focus group data support the relationship between social exclusion and neighborhood conditions. Furthermore, evidence of the relationship between social exclusion and mental health outcomes is supported by the literature review and community surveys.



<sup>1</sup> Revisions to the U.S. EEOC Policy Guidance do not guarantee that job applicants will be employed which is a function of various factors including the availability of jobs. The revision creates additional provisions against employer inquiry of an applicant’s history of arrest and its use as a basis for making hiring decisions. Consequently, estimation of projected impacts is related to the potential *employability* of Englewood residents, rather than employment status.

**Diagram 2: Social Exclusion: Links among Policy, Social Determinants, and Mental Health**



**SUPPORTING EVIDENCE: Relationship between Revisions to U.S. EEOC Policy Guidance and Social Exclusion**

**Employer interviews: Applicants may be inappropriately excluded from hiring consideration on the basis of their arrest record.** Englewood job applicants with arrest records, particularly young men, face discrimination when seeking employment. During interviews, some employers shared that due to “company practice,” they were unable to hire individuals with arrest records regardless of whether they were convicted or not. It was also reported by some managers that businesses use an “exclusion” list to refuse employment to those individuals convicted of crimes that are related the position on offer. Employers also described hiring practices in which they deny employment to applicants with only arrest records for charges on which the company imposes hiring restrictions. This practice reflects attitudes and beliefs that individuals with arrest records have high likelihoods of problematic behavior.

**Community survey: Arrest records are associated with greater social exclusion.** Results from the community survey indicated that those Englewood residents who have been arrested more frequently reported significantly higher levels of social exclusion, as measured by perceived racial discrimination. Details of the analysis of community survey respondents are shown in Appendix J.



## SUPPORTING EVIDENCE: Relationship between Social Exclusion and Employment

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Focus groups: Social exclusion in the form of discrimination hurts residents' ability to obtain employment. Participants noted that job-seekers with records face discrimination from potential employers. Many described being rejected from jobs, and one young woman explained, "You know, you keep filling out these job applications—you keep submitting them and you keep getting turned down—either they don't call you back or they reject you outright." A few participants stated that they were not told directly that their arrest record was the factor in their rejection, but they expressed a strong suspicion that their record factored into the type of job they were able to be obtain. A young woman stated, "We try to go to stuff like malls, like big malls that got a lot of stores in it—that we feel like at least out of 10 stores one of them should give us a try."

An older man shared his experience with disclosing his criminal background to an employer, stating: I mean I'm not even going to try to be at the bank or a security guard, now I know I'm not going to get that one. Now a machinist, I know I can do this, a forklift operator, I can do this. And except on this application I know I didn't see this and saying after, when I got my first check when they called me in the office to get my check, "Oh we have to let you go, you falsified your application."

These participants highlight that although criminal record may not be relevant for the jobs they have applied for, they were still denied employment. Many focus group participants agreed that men are targets of discrimination more often than women, particularly young men.

One young woman said: The people who are doing the hiring, they look and discriminate against men or boys because that's who they see, they see someone who might look like they're in a gang, or who looks a certain way, or they probably look at the boys differently than they do at the girls.

Employers are seen as more willing to hire a young woman over a young man, even with a criminal record. When asked if there are differences for women and men in finding employment with an arrest record, a young man said, "Because I think the percentage is real higher for criminal activity for a male, you know when they look at backgrounds it's pretty much easier to hire a female than a male."

"You know, you keep filling out these job applications—you keep submitting them and you keep getting turned down—either they don't call you back or they reject you outright."

## SUPPORTING EVIDENCE: Relationship between Social Exclusion and Income

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**Community survey: Social exclusion adversely influences the income of Englewood residents.** Results of the community survey showed that social exclusion significantly contributes to income instability. Specifically, Englewood residents who reported greater social exclusion, as measured by perceived racial discrimination, also reported significantly greater levels of income instability. Details of these analyses are shown in Appendix J.



## SUPPORTING EVIDENCE: Relationship between Social Exclusion and Neighborhood Conditions

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**Focus groups: Social exclusion contributes to neighborhood crime.** Focus group participants pointed out the relationships between exclusion from employment and participation in neighborhood crime. Several participants described how drug-related crime and violence is viewed as a viable option for some unemployed residents with arrest records. When asked how people with arrest records survive when continuously denied employment, a younger man stated:

Yeah, out there selling [drugs], whatever they doing, robbing, whatever they doing. They making sure they family is fed even if it's not the right way... They see that it's hard to get a job so they say, "I gotta do this so I can make sure that my son has something to eat in the mornings."

This illustrates that perceived lack of options appears to drive neighborhood crime levels.

## SUPPORTING EVIDENCE: Relationship between Social Exclusion and Mental Health

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**Literature Review: Social exclusion is associated with poor mental health outcomes.** Social exclusion refers to processes that systematically marginalize groups and individuals. Basic laboratory findings have shown that social exclusion, in the form of messages of social rejection and isolation, is associated with a range of mental health outcomes such as decreased willingness to self-regulate (Baumeister, DeWall, Ciarocco, & Twenge, 2005). Socially excluded individuals have also been shown to engage in more self-defeating behaviors such as procrastination and eating unhealthy foods (Twenge, Catanese, & Baumeister, 2002). They report higher propensity to engage in antisocial behavior (e.g., verbally assault other people, humiliate other people) (Buckley, Winkel, & Leary, 2004), and they exhibit more aggressive interpersonal behavior (Twenge, Baumeister, Tice, & Stucke, 2001). Socially excluded individuals report higher rates of anxiety, depression, and lower self-esteem (Baumeister & Tice, 1990; Leary, 1990). These findings suggest that social conditions that contribute to chronic rejection and systematic exclusion of communities may have profound ill-effects on the mental health and well-being of their residents.

**Literature review: Perceived racial discrimination is linked to poor mental health outcomes.** Racial discrimination is a common mechanism by which Englewood residents are socially excluded and has important implications for their mental health. A substantial body of evidence has documented that racism and racial discrimination, broadly defined as beliefs, attitudes, behaviors, and cultural/institutional arrangements that denigrate and

marginalize individuals or groups on the basis of physical characteristics or ethnic group affiliation, is associated with adverse mental health outcomes and poorer well-being (Clark, Anderson, Clark, & Williams, 1999). For example, recent studies suggest that the perception of racism and discrimination is associated with heightened physiological and psychological stress responses, which over time contribute to poor mental health outcomes (Clark et al., 1999; Ong, Fuller-Rowell, & Burrow, 2009; Torres, Driscoll, & Burrow, 2010).

Two recent meta-analyses have found evidence supporting findings that show the negative effect of discrimination on psychological and physical health. Pascoe & Smart Richman (2009) analyzed 134 studies that found discrimination was significantly associated with both adverse mental health outcomes (e.g., greater depression and anxiety symptoms, greater psychological distress, lower well-being) and worse physical health outcomes (e.g., high blood pressure, hypertension, respiratory condition). Building on these findings, an analysis of 66 empirical studies by Pieterse, Todd, Neville, & Carter (2012) that focused on the relationship between racial discrimination and African American mental health found that greater levels of racial discrimination were associated with greater levels of negative mental health outcomes (e.g., anxiety, depression, distress). Taken together, these analyses highlight a clear relationship between perceived racial discrimination and poorer mental health.



The consistency of the findings on the relationship between discrimination and mental health is critical given the prevalence of discrimination in employment and other areas. Kessler, Mickelson, and Williams (1999) conducted a large-scale national study in which 33.5 percent of respondents reported that they had experienced at least one type of major discriminatory event (e.g., unfairly denied a job or a promotion, or unfairly fired from a job). Moreover, Kessler and colleagues found that 60.9 percent of respondents reported experiencing daily, chronic discrimination (e.g., treated by others as though they were inferior, not smart, less respectfully). Low-income individuals were significantly more likely to experience daily discrimination, suggesting that a differential rate of exposure to discrimination based on income may partially account for the relationship between economic and social disadvantaged status and mental health.

Research suggests that discrimination is associated with adverse short and long-term mental health outcomes. For example, research has found that African Americans report significantly higher levels of negative emotion, depression, and anxiety on days when they experience a discriminatory

event, and that the impact persists even after accounting for chronic levels of perceived discrimination (Ong et al., 2009). Similarly, greater perceived discrimination is significantly associated with greater severity of depression one year later, even after controlling for baseline levels of depression symptom severity (Torres et al., 2010). Taken together, the research suggests that discrimination has a consistent and significant influence on mental health.

**Community surveys: Social exclusion adversely influences mental health outcomes.** Analyses of the community survey data indicated that greater social exclusion, as measured by perceived racial discrimination, directly influences mental health. Englewood residents who reported greater social exclusion also reported greater severity of mental illness symptoms, as measured by depression and psychological distress, and lower levels of general health and well-being. In addition, social exclusion significantly influenced community mental health (i.e., lower collective efficacy and lower psychological sense of community). Details of the analyses of community survey results are shown in Appendix J.

## PREDICTED IMPACTS OF REVISIONS TO U.S. EEOC POLICY GUIDANCE ON SOCIAL EXCLUSION

The predicted impact of the proposed revisions to the U.S. EEOC Policy Guidance on social exclusion is a *likely substantial decrease* in systematic exclusion resulting from the EEOC revision and a *possible substantial decrease* in self-exclusion. For all predicted impacts that are discussed in Chapter 11, with the exception of the predicted impacts for the number and percentage of individuals asked about arrest record, it is estimated that there will be a *Likely* impact with *Substantial* magnitude, and a *Restorative Equity* distribution of effects.

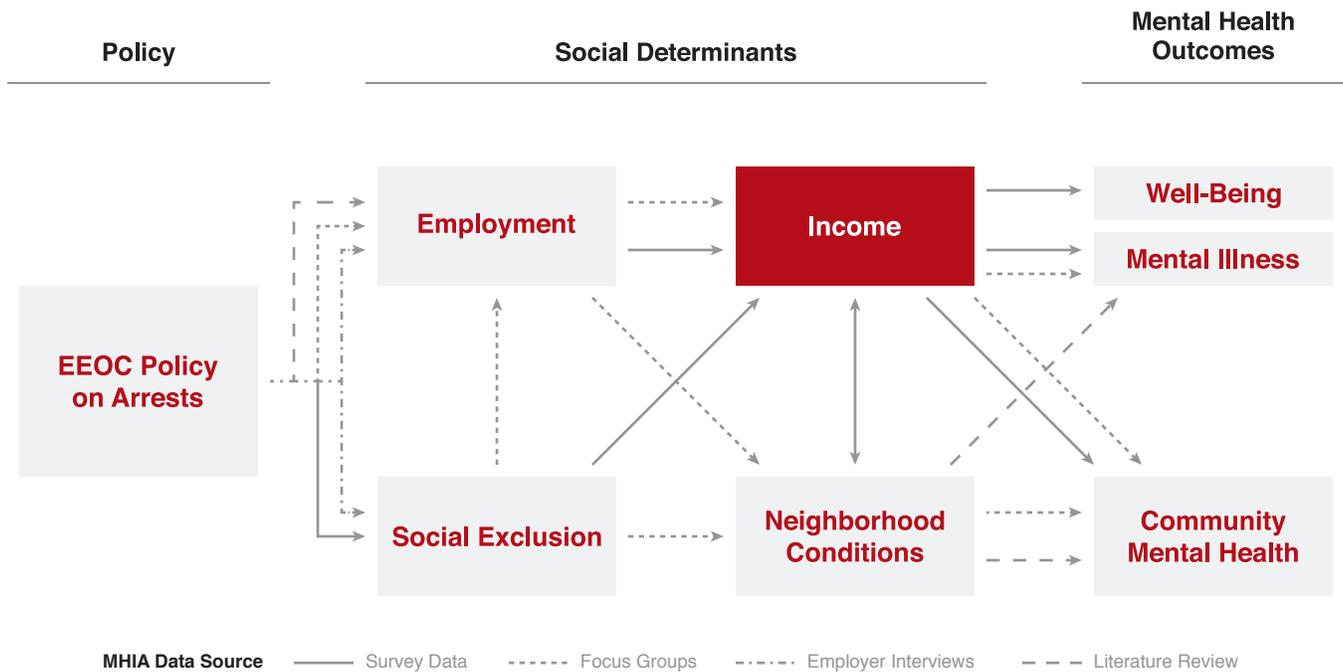
### Income: Links among Policy, Social Determinants and Mental Health

The relationships between proposed revisions to the U.S. EEOC Policy Guidance and the social determinant of *income* are highlighted below in **Diagram 3**. Also shown are the relationships between income and the other three social determinants (i.e., employment, social exclusion, and neighborhood conditions). The arrows among the

boxes indicate the sources of evidence (i.e., community surveys, focus groups, employer interviews, and literature review) that support predicted relationships among the policy revision, social determinants and mental health outcomes. As shown, evidence from the literature review supports a relationship between revision to the Policy Guidance and income. Evidence from the focus groups and community surveys suggest a relationship between income and employment. Community survey data supports a relationship between income and social exclusion. The literature review suggests a relationship between income and neighborhood conditions. Furthermore, evidence of the relationship between income and mental health outcomes is supported by the focus groups and community surveys.



**Diagram 3: Income:** Links among Policy, Social Determinants and Mental Health



**SUPPORTING EVIDENCE: Relationship between Revisions to U.S. EEOC Policy Guidance and Income.**

**Literature Review: Arrest can have a negative effect on annual income.** A literature review of 14 studies published between 1998 and 2012 revealed that contact with the criminal justice system (including arrest and incarceration) influenced employment status and income. Of those studies, few specifically examined the employment and income effects of arrest. For example, a 2002 analysis of adolescent (80 percent white) found that an arrest was

associated with a 26 percent decrease in income (i.e., annual earnings) six years later (Joseph, 2001). Based on evidence that a criminal record has stronger impact on employment opportunity of African Americans than Whites, findings such as these likely underestimate the income impacts on residents of communities like Englewood that are largely African American. Refer to Appendix E, Section IV Disparate Treatment Discrimination and Criminal Records.

Arrest was associated with a 26 percent decrease in income (i.e., annual earnings) six years later.

## SUPPORTING EVIDENCE: Relationship between Income and Neighborhood Conditions

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**Literature review: The relationship between income and neighborhood conditions is bi-directional.** Those who are considered to be low income have an increased chance of living in a disadvantaged neighborhood (i.e., neighborhoods characterized by conditions such as high crime rates, poor housing quality, and limited public resources). Unsurprisingly, in areas with housing that is affordable to low-income families are typically disadvantaged (Bennett, Smith, & Wright, 2006; Imbroscio, 2012).<sup>1</sup>

Living in a disadvantaged neighborhood makes it difficult to build wealth through home ownership. According to Saegert, Fields, and Libman (2011), this is a complex process reproduced over generations. African American households have typically been segregated in neighborhoods with low home values, making asset and therefore wealth accumulation difficult. As a result, few assets are passed to succeeding generations, who, in turn, are more

likely to also be relegated to neighborhoods with low value housing stock.

The literature provides an indication that low-income minority households are typically stuck in neighborhoods with poor conditions, and as a result are unable to derive wealth and income from homeownership. This is despite federal policy designed to help families, particularly low-income minority families, build wealth and income through homeownership (Hilber & Liu, 2008; Immergluck, 2008). This problem was exacerbated during the foreclosure crisis, during which time minority families fell victim to predatory lending practices that stifled homeownership (Cummings, DiPasquale, & Howell, 2006; Gerardi & Willen, 2009; Grinstein-Weiss, Sherraden, Gale, Rohe, Schreiner, & Key, 2011; Hilber & Liu, 2008; Kahn, 2002; Shapiro, Meschede, & Sullivan, 2010; Turner & Smith, 2009; Van Zandt & Rohe, 2006; Williams, Nesiba, & McConnell, 2005).

## SUPPORTING EVIDENCE: Relationship between Income and Mental Health

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**Community survey: Working within the informal economy is associated with poor mental health. Income instability is also associated with poor mental health.**

Greater use of informal economy was significantly associated with lower collective efficacy,<sup>2</sup> life satisfaction,<sup>3</sup> and well-being.<sup>4</sup> Greater use of the informal economy was also significantly associated with more severe depression symptoms and psychological distress.<sup>5,6</sup>

The survey results also indicated that greater income instability was directly associated with increased severity of mental illness, as measured by symptoms of depression and psychological distress. Additionally, greater income instability was directly associated with lower general health and well-being. Finally, greater income instability was directly associated with lower community mental health processes, as measured by collective efficacy and psychological sense of community. Details of these analyses are shown in Appendix J.

## PREDICTED IMPACTS OF REVISIONS TO U.S. EEOC POLICY GUIDANCE ON INCOME

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The predicted impact of the proposed revisions to the U.S. EEOC Policy Guidance on income is likely *moderate to substantial increase* in resident income (in absolute terms) as well as a *possible substantial increase* in resident income (relative to the citywide median). The revision

may also produce a *moderate decrease* in use of the informal economy and sources of informal income. All of these predicted impacts will result in *Restorative Equity* distribution of effects.



<sup>1</sup> In the United States, there is a consistent shortage of affordable housing (defined as less than 30% of household income) since 1970 (Institute for Children, Poverty and Homelessness, 2012). For example, in 2009, there were 5.4 affordable units available for every 10.9 households below the federal poverty line (Institute for Children, Poverty, and Homelessness, 2012). Higher quality neighborhoods are often inaccessible to low-income households due to their scarce supply of affordable housing (Imbroscio, 2012).

<sup>2</sup>  $r = -.14, p = .02$

<sup>3</sup>  $r = -.18, p = .008$

<sup>4</sup>  $r = -.19, p = .003$

<sup>5</sup>  $r = .37, p < .001$

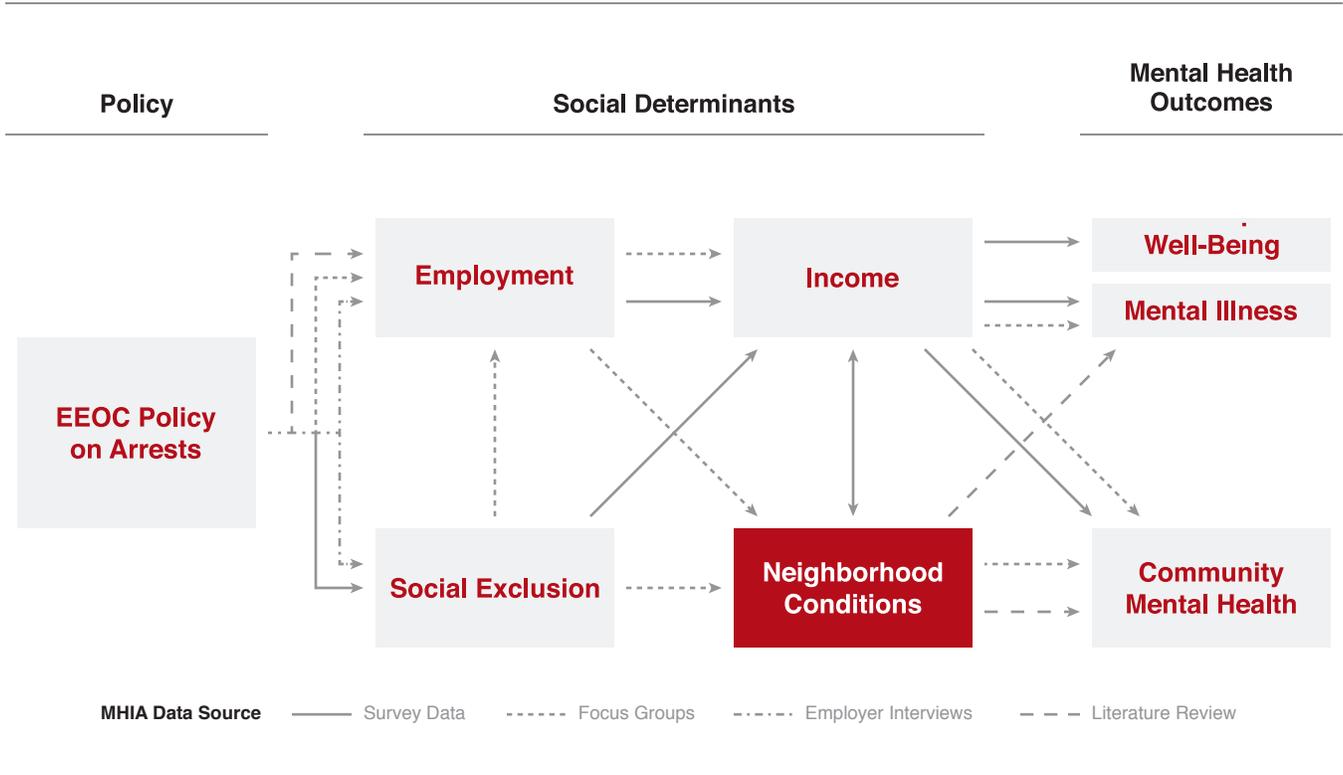
<sup>6</sup>  $r = .46, p < .001$

### Neighborhood Conditions: Links among Policy, Social Determinants and Mental Health

The relationships between proposed revisions to the U.S. EEOC Policy Guidance and the social determinant of *neighborhood conditions* are highlighted below in **Diagram 4**. Also shown are the relationships between neighborhood conditions and the other three social determinants (i.e., employment, social exclusion, and income). The arrows among the boxes indicate the sources of evidence (i.e., community surveys, focus groups, employer interviews, and literature review) that support predicted relationships

among the policy revision, social determinants, and mental health outcomes. As shown, evidence from the focus groups suggests a relationship between neighborhood conditions and income. Evidence from the focus groups suggests there is also a relationship between neighborhood conditions and social exclusion. The relationship between neighborhood conditions and mental health is supported by the literature review and focus groups.

**Diagram 4: Neighborhood Conditions: Links among Social Determinants and Mental Health**



### SUPPORTING EVIDENCE: Relationship between Neighborhood Conditions and Mental Health

The relationship between neighborhood conditions (e.g., the built environment including housing and other structures; social and economic conditions such as crime, violence, and disinvestment) and mental health has been

documented in a rich and diverse body of literature. The following is a brief synthesis of some of the key findings related to urban neighborhood conditions and mental health.



**Literature review: Housing instability negatively impacts individual well-being. Dissatisfaction with housing and neighborhood is negatively associated with psychological well-being. Neighborhood conditions such as disorder, instability, and crime rates may negatively impact psychological sense of community, collective efficacy, and social capital.** Overall, research finds that housing instability has a negative impact on individual sense of well-being. Research also shows that as dissatisfaction with housing and neighborhood increases, psychological well-being including happiness, optimism, and overall well-being decreases (Shaw, 2004), and anxiety and depression increases. A key feature of these relationships may be a perceived sense of control, or lack thereof, among residents dissatisfied with their housing or neighborhood conditions (Dunn, 2002; Dupuis & Thorns, 1998). Poor neighborhood conditions have an indirect, negative influence on community-level mental health by reducing sense of community, collective efficacy, and social capital. For example, Cohen, Mason, Bedimo, Scribner, Basolo, and Farley (2003) link detrimental environmental features (such as the presence of buildings with boarded up windows) with fewer opportunities to engage with the community and establish meaningful relationships that may influence risky health behaviors.

Housing and building conditions are frequently used as a proxy for neighborhood quality. Multi-level analyses confirm that living in neighborhoods with poor quality homes, buildings, and infrastructure is predictive of depression even when controlling for individual-level variables (Galea, Ahern, Rudenstine, Wallace, & Vlahov, 2005). Housing is a social determinant of health, including mental health. For instance, Shaw (2004) found that stable, decent housing conditions are associated with mental well-being, including security, psychological attachments, and sense of meaning and continuity. Shaw also found that housing instability negatively impacts these same indicators of well-being. Decreased security and social capital has been found among low-income families of color (particularly in urban neighborhoods) who are segregated into poor quality housing (Saegert, Fields, & Libman, 2011). Evans, Wells, & Moch (2003) noted that dissatisfaction with housing

and neighborhood conditions is associated with lower psychological well-being (e.g., happiness, optimism, and overall well-being) and associated with greater anxiety and depression. The association between housing quality and psychological well-being has been supported by evidence that housing problems and lack of neighborhood amenities were related to depression and anxiety (Macintyre, Ellaway, Hiscock, Kearns, Der, & McKay, 2003).

Residents of neighborhoods with high crime rates often display less sense of community (Brodsky et al., 1999), which is an important precursor to organized community (Perkins, Florin, Rich, Wandersman, & Chavis, 1990) and political participation, as well as general well-being (Chavis & Wandersman, 1990; Hughey, Speer, & Peterson, 1999; Perkins et al., 1990; Perkins, Brown, & Taylor, 1996). High crime areas have also been found to be associated with indicators of low collective efficacy such as shared trust, perceptions of cohesion, and expectations of social control (Sampson, Raudenbush, & Earls, 1997; Sampson, 2012). These constructs are important antecedents to individual and community health (Browning & Cagney, 2002; Putnam, 1996; Subramanian, 2002). Taken together these findings indicate that poor neighborhood conditions (i.e., high rates of crime) adversely influence individual and community mental health.

**Focus groups: Poor neighborhood social conditions adversely influence community mental health.**

Focus group participants noted that the prevalence of drug and alcohol problems, interpersonal violence, and criminal activity in their neighborhood were associated with an overall feeling of depression and hopelessness. They noted that having a large number of unemployed residents, many due to arrest or criminal history contributes to hopelessness in the neighborhood. An older man stated, "Everybody is hurting...they need to implement more jobs some kind of way." One older woman stated that "our community starts to be torn apart" as residents become more discouraged in their search for employment. Participants noted that joblessness and resulting hopelessness has undermined the social cohesion that once characterized the community.



"Participants noted that joblessness and resulting hopelessness has undermined the social cohesion that once characterized the community."

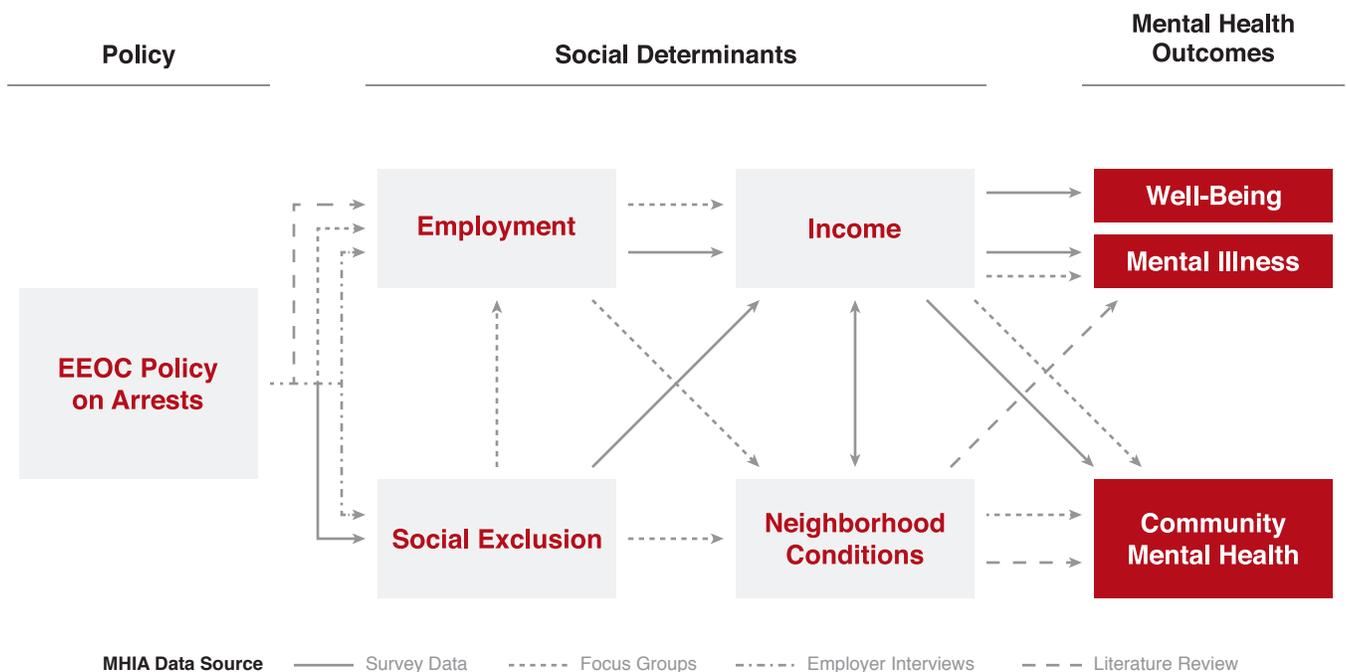
## PREDICTED IMPACTS OF REVISIONS TO U.S. EEOC POLICY GUIDANCE ON NEIGHBORHOOD CONDITIONS

The literature and focus group findings suggest that neighborhood conditions may influence mental health. As noted by neighborhood residents, a salient neighborhood condition is crime. The predicted impact of the proposed revisions to U.S. EEOC Policy Guidance on neighborhood conditions would lead to a *possible moderate to substantial decrease* in Englewood crime rates relative to the city. This predicted impact will result in *Restorative Equity* by reducing or reversing existing and/or historical health inequities.

### Mental Health: Links with Social Determinants and Policy

The relationships between proposed revisions to the U.S. EEOC Policy Guidance and mental health are highlighted in **Diagram 5**. Also shown are the relationships among the four social determinants (i.e. employment, income, social exclusion, and neighborhood conditions) and mental health. The arrows among the boxes indicate the sources of evidence (i.e., community surveys, focus groups, employer interviews, and literature review) that support the predicted relationships among the policy revision, social determinants, and mental health outcomes. The relationships highlighted in **Diagram 5** illustrate that revisions to the Policy Guidance will impact the social determinants of interest, which will, in turn, impact mental health outcomes.

**Diagram 5: Mental Health: Links with Social Determinants and Policy**



## **SUPPORTING EVIDENCE: Relationship between Revisions to U.S. EEOC Policy Guidance and Mental Health Outcomes**

**Literature review: Arrest may negatively affect community mental health.** In a search of articles published between 1997 and 2012, only three examined the impact of arrest on community mental health. Of those three, Lynch and colleagues (2002) found that in neighborhoods experiencing high levels of policing and arrest rates, residents were more likely to intervene individually in crime reduction, but less likely to participate in neighborhood voluntary organizations and were less attached to their community. Participation in voluntary organizations and community attachment are indicators of collective efficacy, which has been used in this study as a measure of community mental health.

**Community survey: Social determinants mediate the relationship between arrest records and mental illness.** Analyses of community survey data indicated that frequency of arrest was significantly associated with the severity of mental illness symptoms reported by Englewood residents. The results suggested three pathways by which arrest records influenced social determinants, which, in turn, influenced mental illness.

First, social exclusion mediated the relationship between arrests and mental illness. That is, having a greater number of arrests was associated with greater social exclusion, which, in turn, was associated with greater mental illness symptom severity.

Second, income instability mediated the relationship between arrests and mental illness. That is, having a greater number of arrests was associated with greater income instability, which, in turn, was associated with greater mental illness symptom severity.

Finally, both social exclusion and income instability mediated the relationship between arrests and mental illness. Specifically, the results indicated that individuals with a greater number of arrests reported greater social exclusion, which was associated with higher income instability. Higher income instability was associated with greater mental illness symptom severity. Details for each path analysis conducted to determine these mediated pathways are presented in Appendix J.

**Community survey: Social determinants mediate the relationship between arrest records and well-being.** Analyses of community survey data indicated that frequency of arrest was significantly associated with the psychological well-being of Englewood residents. Specifically, the results suggested three pathways by which arrest records influenced social determinants, which, in turn, influenced well-being.

First, social exclusion mediated the relationship between arrests and well-being. That is, having a greater number of arrests was associated with higher levels of social exclusion, which, in turn, was associated with lower well-being.

Second, income instability mediated the relationship between arrests and well-being. Thus, having a greater number of arrests was associated with greater income instability, which, in turn, was associated with lower well-being.

Finally, both social exclusion and income instability mediated the relationship between arrests and well-being. Specifically, the results indicated that individuals with greater number of arrests reported greater social exclusion, which was associated with higher income instability, which, in turn, was associated with lower well-being. Details for each path analysis conducted to determine these mediated pathways are presented in Appendix J.



**Community survey: Social determinants mediate the relationship between arrest records and community mental health.**

Analyses of community survey data indicated that frequency of arrest was significantly associated with community mental health, as measured by collective efficacy and psychological sense of community. Similar to mental illness and well-being, the results suggested three pathways by which arrest influenced social determinants, which, in turn, influenced community mental health.

First, social exclusion mediated the relationship between arrests and community mental health. That is, having a greater number of arrests was associated with higher levels of social exclusion, which, in turn, was associated with lower levels of community mental health.

Second, income instability mediated the relationship between arrests and community mental health processes. Thus, having a greater number of arrests was associated with greater income instability, which, in turn, was associated with lower levels of community mental health.

Finally, both social exclusion and income instability mediated the relationship between arrests and community mental health. Specifically, the results indicated that individuals who had been arrested more frequently reported higher levels of social exclusion. Social exclusion was associated with greater income instability, which was associated with lower levels of community mental health. Details for each path analysis conducted to determine these mediated pathways are presented in Appendix J.

**PREDICTED IMPACTS OF REVISIONS TO U.S. EEOC POLICY GUIDANCE ON MENTAL HEALTH OUTCOMES**

**Individual mental health.** It is predicted that revisions to the Policy Guidance would likely result in each of the following: a *likely medium increase* in individual well-being as a result of increased employability; a *likely low decrease* in the severity of depression and psychological distress as a result of an increase in income; a *likely high decrease* in the severity of depression and psychological distress as a result of reduced social exclusion; and a *likely high increase* in well-being also as a result of reduced social exclusion.

**Community mental health.** It is predicted that revisions to the Policy Guidance would result in a *likely medium increase* in social capital and sense of community, as a result of increased employability; a *likely low increase* in social capital and sense of community, as a result of increased income; and a *likely high increase* in social capital and sense of community, resulting from reduced levels of social exclusion.

A likely high decrease in the severity of depression and psychological distress as a result of reduced social exclusion.

A likely high increase in social capital and sense of community, resulting from reduced levels of social exclusion.

# XII. Recommendations

In August 2011, the MHIA Team developed preliminary recommendations during the public comment period to the EEOC. The EEOC's final revision to the Policy Guidance was issued on April 25, 2012. After the assessment was completed in June 2012, the MHIA Team augmented its preliminary recommendations based on the assessment results and stakeholder input. Those recommendations are listed below.

As reported earlier, the MHIA findings suggest that individuals with arrest records experience discrimination when seeking employment. Additionally, both employers and potential applicants reported limited awareness of the original 1990 EEOC policy guidance. As a remedy, in its revision, the EEOC included "best practices" for employers. However, the update provides no guidance to applicants regarding disclosure of arrest histories to employers, or how such disclosure may impact employment opportunity.

The MHIA Team held a Town Hall meeting on April 13, 2012, in the Englewood community to share preliminary results of the MHIA and gather resident recommendations to forward to the EEOC and other policymakers. The recommendations proposed here reflect those resident recommendations, as well as additional recommendations resulting from findings of the MHIA. Based on the MHIA impact predictions and the key assessment finding that social exclusion has a profound influence on the mental health of individuals and communities, the following recommendations are put forward:

## **RECOMMENDATIONS TO THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

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The MHIA Team proposed that by September 2013, the EEOC make the following additions to the Policy Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964:

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Recognizing that Americans are generally "presumed innocent until proven guilty," we propose that the Policy Guidance be revised to state: "when employers make employment decisions, they may not lawfully rely upon records of arrests that did not culminate in convictions" (Callanan, 2012).

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Acknowledging that criminal records are not always kept up-to-date, we propose that the Policy Guidance be revised to state: only criminal background checks that come from government-sanctioned sources (e.g., police or FBI) or third-party sources required by law to stay current, should be deemed legally 'relevant' during employment processes (Callanan, 2012).

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The updated Policy Guidance includes best practices for employers. We recommend that an equivalent component for the education of the general public (including potential job applicants) also be included.

## RECOMMENDATIONS TO STATE AND LOCAL JURISDICTIONS

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To provide equitable employment opportunities and mental health benefits, we also recommend that state and local jurisdictions implement policies based on the U.S. EEOC Policy Guidance, inclusive of the amendments we offer in this report.

## ADDITIONAL RECOMMENDATIONS

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In addition to the specific recommendations listed above, because of the significant decrease in social exclusion that could result from implementation of the revised Policy Guidance, the following series of additional recommendations should be considered by decision makers:

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Prioritize expanded funding for implementation and enforcement of the Policy Guidance to support those whose employment rights have been violated.

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Engage community partners in advocating for updates to the current Policy Guidance and adoption of model policy on a state and local level that will increase education and awareness of employment rights.

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Monitor outcomes for changes in each social determinant of focus in this MHIA as a result of the revision to the Policy Guidance, in partnership with community stakeholders.

# XIII. Reporting

The MHIA Team developed and implemented a communication strategy to increase awareness and knowledge among decision makers and the general public of the mental health implications of the proposed revision to the U.S. EEOC Policy Guidance, based on the findings of this MHIA. Listed below are three categories of communication vehicles: professional presentations, interviews and op-ed pieces to the news media, and presentations to the Englewood community. A representative list of MHIA communications includes the following:

## **PROFESSIONAL PRESENTATIONS**

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***“Mental Health Impact Assessment: A tool for advancing health equity”***

Robert Wood Johnson Foundation Local Funding Partnerships Annual Meeting. September 2012.

***“Post-Conference Workshop: Mental Health Impact Assessment”***

Workshop conducted at The Social Determinants of Urban Mental Health: Paving the Way Forward Conference. September 2012.

***“Mental health in disadvantaged and marginalized communities: A multi-method, collaborative approach”***

American Psychological Association Annual Meeting. August 2012.

***“Mental Health Impact Assessment: A tool for mental health prevention and advancing mental health equity”***

Department of Preventive Medicine, Rush University Medical Center. May 2012.

***“Mental Health Impact Assessment: Preliminary Findings”***

Safer Foundation: Industry Forum. March 2012.

***“Mental Health Impact Assessment: A tool for advancing mental health equity and promoting population mental health”***

The American Association of Community Psychiatrists. March 2012.

***“Health Impact Assessment in Chicago”***

Improving Health Through Planning. Metropolitan Planning Council. December 2011.

***“Mental Health Impact Assessment: A tool for achieving equity”***

PolicyLink Equity Summit: Healthy Communities, Strong Regions, and a Prosperous America. November 2011.

***“New topics in HIA: Integrating mental health considerations into Health Impact Assessment”***

HIA of the Americas. October 2011.

***“Mental health effects of unemployment”***

Council of Advisors to Reduce Recidivism through Employment, Safer Foundation. October 2011.

***“Health Impact Assessment: A practice for ensuing health in all policies”***

Partners in Action Online Conference: Communities Addressing Critical Health Issues. September 2011.

***“Mental Health Effects of Joblessness”***

Illinois Small Business Empowerment and Workforce Development Committee. July 2011.



## NEWS MEDIA

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**“New EEOC Guidelines on Discrimination Based on Arrests, Convictions Bring Hope to Some Communities”**

*Chicago Reporter*. May 9, 2012.

**“Arrests and Hiring”**

*New York Times*. Editorial Page. May 6, 2012.

**“Police Tactics”**

*Chicago Tribune*. Editorial Page. April 24, 2012.

**“Research Project Will Highlight Mental Health Impact of Policy Decisions”**

*Mental Health Weekly*. February 21, 2011.

Periodic updates of the MHIA were provided to the public through the ISE's quarterly *Intersections* newsletter, through the Adler School's public blog at <http://theadlerschool.wordpress.com>, and through the homepage for the MHIA at <http://www.adler.edu/mhia>. Updates about the MHIA were also provided in the Adler School's annual alumni magazine, *Gemeinschaftsgefühl*, as well as in the Adler School's 2011 and 2012 annual reports.

## ENGLEWOOD COMMUNITY

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**“Community Open House”**

Open house conducted at Kennedy-King College. June 29, 2012.

**“Community Open House”**

Open house conducted at Kennedy-King College. June 19, 2012.

**“Englewood Town Hall”**

Town hall meeting conducted at Teamwork Englewood. June 2012.

**“Englewood Town Hall”**

Town hall meeting conducted at Teamwork Englewood. April 2012.

**“Psychological Health in Communities”**

Presentation at 20th Ward Community Meeting. March 2012.

In addition, the Adler School of Professional Psychology will disseminate its findings and full final report nationwide. The report will be released during National Public Health Week 2013 to underscore the MHIA as an important tool for policy-makers and communities toward improving public health and well-being outcomes. The report will be disseminated via the Adler School Website at [adler.edu](http://adler.edu), [listservs](mailto:listservs), and social media, and shared with media including public health and policy reporters who have followed the MHIA's progress. We also have prepared talking points and a communications session for team members involved with publicly discussing the project and its findings.

# XIV. Monitoring

The MHIA outcomes, as well as the implementation of revisions to the U.S. EEOC Policy Guidance, and changes in behaviors that may arise as a result of that implementation are being monitored through September 2014. Given that a main goal of the MHIA was to integrate mental health considerations into HIA practice, the MHIA Team will also monitor the ways that policy discussions consider mental health implications. An important objective in this work will be to equip the Englewood community with the knowledge, skills, and tools required to promote the health and well-being of children and families, including: ① capacity for monitoring, ② capacity for civic engagement, and ③ capacity to participate in public decision-making processes that stand to impact their health.

Revisions to the Policy Guidance were issued in April 2012. The MHIA Team has been awarded additional funding to support the following monitoring activities:

**① Monitoring the impact of the MHIA on the decision to revise the Policy Guidance.**

The MHIA Team will monitor the extent to which the MHIA influenced public policy decision-making processes.

**② Monitoring the implementation of the Policy Guidance.**

The MHIA Team will work with community partners to monitor the number of state and local jurisdictions that propose and pass similar policy, the education and awareness of employers and the general population about the Policy Guidance, and the allocation of funding for its implementation. The MHIA Team will also partner with policy advocates to provide technical assistance for state and local jurisdictions in drafting policy recommendations.

**③ Monitoring social determinants that may change as a result of implementation.**

The MHIA Team will work with community partners to monitor changes in social exclusion, which the MHIA suggests has a significant impact on mental health. Revisions to the Policy Guidance are predicted to impact social exclusion which is predicted to impact employment. Indicators to be monitored include: changes in employer human resources practices, and changes in Englewood resident employment-seeking behaviors and experiences. Other indicators to be tracked include income and neighborhood conditions.

**④ Monitoring policy assessments that consider mental health impact.**

The MHIA presents a best practice model for consideration of mental health impacts in policy assessments. The MHIA Team will identify other HIAs and policy assessments that adopt a mental health frame based on this model.

In keeping with the MHIA Recommendations, community partners have been engaged in advocating for expanded funding for enforcement of the U.S. EEOC Policy Guidance. In June 2012, two open houses in the Englewood community were held. Nearly 150 community residents signed letters that aimed to educate policymakers on the importance of expanded funding for the enforcement of the Policy Guidance. See **Table 8** for details on the monitoring plan.



**Table 8. Monitoring Plan – November 1, 2012 through September 30, 2014**

| Indicator  | Responsible Party   | Time/Frequency                            |
|--|---|---|
| Inclusion of MHIA recommendations in the U.S. EEOC Policy Guidance   | MHIA Team   | Monthly check in until September 2013     |
| Creation of model policy language to be used in any state or local jurisdiction  | MHIA Team<br>Shriver Poverty Law Center                     | Completed by September 2013               |
| Identification of lead organizations to publicize and distribute model policy to state and local jurisdictions   | MHIA Team   | Completed by September 2013               |
| Uptake of local or state policies based on MHIA recommendations  | MHIA Team<br>Shriver Poverty Law Center<br>Safer Foundation | Monthly until September 2013              |
| Allocation of funding for expanded implementation or enforcement of U.S. EEOC Policy Guidance  | MHIA Team<br>Shriver Poverty Law Center<br>Safer Foundation | Monthly until September 2014              |
| Changes in employer human resources practices (e.g., application or interview questions, policy stated in human resources manuals)   | MHIA Team<br>Community partners                             | Three surveys completed by September 2013 |
| Changes in Englewood resident knowledge of U.S. EEOC Policy Guidance and job-seeking experiences (e.g., changes in the location and types of employment sought)            | MHIA Team<br>Community partners                             | Three surveys completed by September 2013 |
| Changes in health determinants in Englewood (e.g., changes in income levels of Englewood vs. city of Chicago, and changes in crime rates of Englewood vs. city of Chicago) | MHIA Team<br>Community partners                             | Completed by September 2014               |
| Identification of policy discussions that include mental health (e.g., HIAs, policy assessments)   | MHIA Team   | Completed by September 2013               |

# XV. Limitations

As with most HIAs, the MHIA met with several implementation challenges. Importantly, however, none of them fundamentally restricted our ability to make predictions and recommendations regarding the U.S. EEOC Policy Guidance. Specific limitations in the MHIA included:

**Limited Existing Conditions Data.** There was a lack of publicly available mental health data for the Englewood community. Thus, the MHIA Team reported very little data for the current mental health status of Englewood residents (e.g., surveillance data). Moreover, there was difficulty identifying indicators of community mental health. Additionally, there was little existing data regarding the actual hiring decisions of Englewood-based employers and their use of arrest records. Instead, to generate findings and assess the impacts of the U.S. EEOC Policy Guidance, the MHIA Team relied primarily on the community survey, peer-reviewed and grey literature, and findings from the focus groups and employer interviews.

**Limited Prior Research.** Much of the existing literature on criminal records conflates the arrest and conviction of individuals, and community crime rates. As a result, it was difficult to cull from the literature a clear relationship between arrest **only** (which was the focus of the MHIA), the social determinants of interest, and mental health outcomes.

We also were unable to find conclusive evidence linking various indicators of neighborhood conditions and mental health outcomes. Though it is clear that many other neighborhood conditions might change as a result of the revisions to the U.S. EEOC Policy Guidance, the MHIA Team decided to base impact predictions on neighborhood crime. While these challenges limited references to existing literature in making predictions, the findings can and should be used to inform future research agendas.

**Changing Policy Target.** Illinois SB 1284 was the initial policy target for the MHIA. In April 2011, Illinois SB 1284 was withdrawn due to strong political opposition in the Illinois Senate Criminal Law Committee. Legal experts at the Sargent Shriver National Center on Poverty Law advised a shift in the policy target to the U.S. EEOC Policy Guidance which dealt with the same issue, but at the federal level. It is anticipated that the federal policy guidance will serve as a model for state and local jurisdictions.

**Unanticipated Policy Timeline.** After more than 20 years of deliberation, the EEOC revised its Policy Guidance on April 25, 2012. The revision occurred prior to the completion of the Assessment. Nevertheless, due to the advice and guidance provided by the legal experts who were part of the MHIA Advisory Committee, preliminary recommendations were submitted to the Leadership Conference on Civil and Human Rights, which, in turn, submitted an April 24, 2012 letter to the EEOC in support of the revisions to the Policy Guidance.

**Convenience Study Sample.** With only 43 participants in our focus groups and 254 survey participants, there is the chance that participant perspectives may not be representative of the Englewood community. For example, many of the survey participants had been arrested once or more (the median was three) and were largely unemployed. In addition, focus group participants tended to be members of one or more community organizations which may not be typical of Englewood residents. However, the demographic makeup of the participants was similar to recent Census figures, suggesting the appropriateness of the sample.

# XVI. Evaluation

One of the goals of this MHIA was to advance the practice of Health Impact Assessment by conducting an external evaluation of the process, impact, and outcomes. This evaluation was conducted by a team of evaluators from the School of Public Health and the School of City and Regional Planning at the University of California at Berkeley. The team was comprised of experts in urban planning, epidemiology, and environmental health science. At the writing of this report, the evaluation is not yet complete. A full evaluation report is pending and will be made available as supplemental material to this report upon completion.

The specific aims of the evaluation were to:

- ① Provide ongoing feedback for participants involved in the implementation of the MHIA.
- ② Generate evaluation methods in partnership with the MHIA Team to build ongoing self-reflection and learning so that the evaluation process itself can strengthen the capacity of all participants and their respective organizations.
- ③ Provide specific feedback for the MHIA Team about the barriers and opportunities being faced during implementation.
- ④ Provide general evaluation criteria that can support the measurement of place-based health equity initiatives in Chicago and other locations.

To evaluate the MHIA process, the evaluation team assessed:

- ⊗ Stakeholder participation at the outset and through the end of the project;
- ⊗ Community network-building, knowledge generation, and accountability of community-based organizations and non-governmental stakeholders involved in the MHIA; and
- ⊗ Links that agencies and stakeholders participating in the MHIA make with other government and non-governmental organizations outside of Englewood, at the state or national levels.

To evaluate MHIA impacts, the evaluation team assessed:

- ⊗ The degree to which participation in the MHIA altered community perceptions of the relationship between social determinants and community mental health; and
- ⊗ The impact of the MHIA on policy decisions.

To evaluate MHIA outcomes, the evaluation team provided:

- ⊗ Peer review of the type and quality of evidence used within the MHIA, with particular focus on the relationships between social factors and community mental health within the assessment.

In addition to the independent external evaluation, the MHIA Team conducted three debriefing meetings to evaluate lessons learned during the process of conducting the MHIA. The meetings followed the completion of: Screening and Scoping (September 2011), Assessment (March 2012), and Reporting (May 2012). Salient themes identified during these meetings included the following:

- Integrating public health and mental health frameworks;
- Ensuring authentic community engagement throughout the MHIA process;
- Honoring and accurately reflecting the voices of Englewood residents and key stakeholders; and
- Understanding and following the legislative decision-making process.

# XVII. Conclusion

Public decisions have important mental health implications that must be integrated into deliberative processes in order to avoid creating or exacerbating mental health inequities. Too often, these implications are not apparent to legislative and policy decision makers unless they are exposed to, and understand, the perspectives and experiences of the populations likely to be impacted by their decisions. This is the value of Mental Health Impact Assessment.

The Mental Health Impact Assessment is a tool for analyzing the mental health implications of public decisions and for ensuring that such decisions promote mental health and mental health equity. The results of the MHIA described in this document indicate that proposed revisions to the U.S. EEOC Policy Guidance would have positive impacts on the mental health and well-being of the residents of Chicago's Englewood community through increased employability. Revisions to the Policy Guidance are predicted to impact mental health through the social determinants of social exclusion, income, employment, and neighborhood conditions. In addition, revisions to the U.S. EEOC Policy Guidance are predicted to impact mental health most strongly through social exclusion. Based on these predictions, the MHIA Team supports the changes already made by the EEOC, and recommends educating community residents and increasing funding for enforcement.

The overarching goal of this MHIA was to advance HIA practice by:

- More rigorously integrating mental health considerations;
- Focusing on a public decision outside of the traditional domains of planning, land use, and the built environment; and
- Conducting more systemic and structured monitoring and evaluation process.

## ***Integrating mental health considerations into HIA.***

Historically, HIA practice has not identified and considered the mental health implications of public decisions as comprehensively and as rigorously as physical health impacts. This is problematic for three reasons.

First, health is comprised of both physical and mental health. As famously attributed to Former U.S. Surgeon General David Satcher, M.D., "There is no health without mental health." Similarly, the World Health Organization defines health as "a state of complete physical, mental and social well-being (World Health Organization, 1948). Thus, if HIA's are to be effective in achieving their goals of health promotion and health equity, mental health considerations must be integrated.

Second, mental health plays a critical role in shaping physical health. Increasingly, science is illuminating the role that emotional distress plays in the development and evolution of chronic diseases such as diabetes, asthma, obesity, and cancer. Moreover, because HIA's are intended to highlight the relationship between the social environment and health, it is essential that they integrate an understanding of the role that mental health plays in mediating the relationship between social conditions and chronic disease. Consider, for instance, how chronic poverty (social condition), impacts emotional distress (mental health), which in turn increases allostatic load and hypertension (physical disease).



Third, funding for mental health services are dwindling nationwide. As a consequence, preventative interventions, such as HIA, are increasingly important. More and more, it is important that public decisions are made in ways that reflect a solid understanding of their impacts on health, including mental health, since resources required for corrective interventions are less available.

***Focusing on a public decision outside of the traditional domains of planning, land use, and the built environment.*** Historically, HIAs have overwhelmingly focused on physical environment decisions, including decisions in such areas as housing, transportation, zoning, master plans, redevelopment and mining or natural resource projects. At the time of this writing, of the roughly 225 HIAs conducted in the U.S., about 180 were conducted on some aspect of the physical environment. Because many other kinds of decisions (e.g., education, employment, criminal justice, social welfare, etc.) also impact health, it is important that HIAs be conducted on those decisions, as well. To help meet that need, this MHIA focused on an employment (labor) related decision. Additionally, most HIAs focus on state and local decisions. This HIA sought to help expand the practice by focusing on a federal decision.

The MHIA focused on an employment (labor) decision of which there are comparatively few—only 11. Moreover, this HIA is the only labor/employment related HIA to focus on a federal decision and only one of 17 of the 225 that have been completed.

***Conducting more systemic and structured monitoring and evaluation process.*** In this MHIA, independent evaluators were engaged to conduct a process, impact, and outcome evaluation. Historically, the monitoring and evaluation components of HIAs are limited due to resource constraints. Additional resources were secured to monitor the impact of the MHIA on the decision to revise the U.S. EEOC Policy Guidance, implement the Policy Guidance, monitor changes in health determinants that may arise as a result of implementation, and assess policies that consider mental health impact.

In conducting this MHIA, the MHIA Team has provided some guidance and insight into how mental health can be better integrated into HIA practice.



**ADLER SCHOOL**

Institute on Social Exclusion

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**ADLER SCHOOL**

Institute on Social Exclusion

# XIX. Appendices

## Appendices Table of Contents

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|  |     |
|--|-----|
| Ⓐ U.S. Equal Employment Opportunity Commission's 1990 Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S. §2000e et seq. (1982) (Number 915.061, date 9/7/90)..... | 83  |
| Ⓑ Screening Worksheet.....   | 90  |
| Ⓒ Policy Brief ISE Filed on August 4, 2011, as Public Comment to the EEOC.....   | 91  |
| Ⓓ Letter Submitted on April 24, 2012 by ISE and by The Leadership Conference on Civil and Human Rights.....  | 95  |
| Ⓔ EEOC Enforcement Guidance, Published on April 25, 2012.....  | 98  |
| Ⓕ Scoping Worksheet.....   | 127 |
| Ⓖ Community Survey Excerpts from Resident Surveys.....   | 131 |
| Ⓗ Focus Group Interview Guide.....   | 137 |
| Ⓘ Employer Interview Questions.....  | 139 |
| Ⓙ Data Collection and Statistical Modeling Methods.....  | 140 |
| Ⓚ Data Tables and Figures from Assessment.....   | 153 |
| Ⓛ Impact Predictions.....  | 157 |

## Appendix A: EEOC Policy Guidance on the Consideration of Arrest Records, 1990

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### The U.S. Equal Employment Opportunity Commission

Notice Number 915.061

Date: 9/7/90

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- ① **Subject:** Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. (1982).
- ② **Purpose:** This policy guidance sets forth the Commission's procedure for determining whether arrest records may be considered in employment decisions.
- ③ **Effective Date:** Upon Receipt.
- ④ **Expiration Date:** As an exception to EEOC Order 205.001, Appendix B, Attachment 4, §a(5), this Notice will remain in effect until rescinded or superseded.
- ⑤ **Originator:** Title VII/EPA Division, Office of the Legal Counsel.
- ⑥ **Instructions:** File behind the last Policy Guidance §604 of Volume II of Compliance Manual.
- ⑦ **Subject Matter:**

### I. INTRODUCTION

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The question addressed in this policy guidance is “to what extent may arrest records be used in making employment decisions?” The Commission concludes that since the use of arrest records as an absolute bar to employment has a disparate impact on some protected groups, such records alone cannot be used to routinely exclude persons from employment. However, conduct which indicates unsuitability for a particular position is a basis for exclusion. Where it appears that the applicant or employee engaged in the conduct for which he was arrested and that the conduct is job related and relatively recent, exclusion is justified.

The analysis set forth in this policy guidance is related to two previously issued policy statements regarding the consideration of conviction records in employment decisions: “Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e et seq. (1982)” (hereinafter referred to as the February 4, 1987 Statement) and “Policy Statement on the use of statistics in charges involving the exclusion of individuals with conviction records from employment” (hereinafter referred to as July 29, 1987 Statement). The February 4, 1987 Statement states that nationally, Blacks and Hispanics are convicted in numbers which are disproportionate to Whites and that barring people from employment based on their conviction records will therefore disproportionately exclude those groups.<sup>1</sup> Due to this adverse impact, an employer may not base an employment decision on the conviction record of an applicant or an employee absent business necessity.<sup>2</sup> Business necessity can be established where the employee or applicant is engaged in conduct which is particularly egregious or related to the position in question.

Conviction records constitute reliable evidence that a person engaged in the conduct alleged since the criminal justice system requires the highest degree of proof (“beyond a reasonable doubt”) for a conviction. In contrast, arrests alone are not reliable evidence that a person has actually committed a crime. *Schwartz v. Board of Bar Examiners*, 353 U.S.

232, 241 (1957) (“[t]he mere fact that a [person] has been arrested has very little, if any, probative value in showing that he has engaged in misconduct”). Thus, the Commission concludes that to justify the use of arrest records, an additional inquiry must be made. Even where the conduct alleged in the arrest record is related to the job at issue, the employer must evaluate whether the arrest record reflects the applicant’s conduct. It should, therefore, examine the surrounding circumstances, offer the applicant or employee an opportunity to explain, and, if he or she denies engaging in the conduct, make the followup inquiries necessary to evaluate his/her credibility. Since using arrests as a disqualifying criteria can only be justified where it appears that the applicant actually engaged in the conduct for which he/she was arrested and that conduct is job related, the Commission further concludes that an employer will seldom be able to justify making broad general inquiries about an employee’s or applicant’s arrests.

The following discussion is offered for guidance in determining the circumstances under which an employer can justify excluding an applicant or an employee on the basis of an arrest record.

## II. DISCUSSION

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### A. Adverse Impact of the Use of Arrest Records

The leading case involving an employer’s use of arrest records is *Gregory v. Litton Systems*, 316 F. Supp. 401, 2 EPD ¶10,264 (C.D. Cal. 1970), *modified on other grounds*, 472 F.2d 631, 5 EPD ¶18089 (9th Cir. 1972). *Litton* held that nationally, Blacks are arrested more often than are Whites. Courts and the Commission have relied on the statistics presented in *Litton* to establish a *prima facie* case of discrimination against Blacks where arrest records are used in employment decisions.<sup>3</sup> There are, however, more recent statistics, published by the U.S. Department of Justice, Federal Bureau of Investigation, which are consistent with the *Litton* finding.<sup>4</sup> It is desirable to use the most current available statistics. In addition, where local statistics are available, it may be helpful to use them, as the court did in *Reynolds v. Sheet Metal Workers Local 102*, 498 F. Supp. 952, 22 EPD ¶30,739 (D.C. 1980), *aff’d*, 702 F.2d 221, 25 EPD ¶31,706 (D.C. Cir. 1981). In *Reynolds*, the court found that the use of arrest records in employment decisions adversely affected Blacks since the 1978 Annual Report of the Metropolitan Police of Washington, D.C., stated that 85.5% of persons arrested in the District of Columbia were nonwhite while the nonwhite population constituted 72.4% of the total population. 498 F. Supp. at 960. The Commission has determined that Hispanics are also adversely affected by arrest record inquiries. Commission Decisions Nos. 7723 and 7603, CCH EEOC Decisions (1983) ¶¶6714 and 6598, respectively.<sup>5</sup> However, the courts have not yet addressed this issue<sup>6</sup> and the FBI’s Uniform Crime Reporting Program does not provide information on the arrest rate for Hispanics, nationally or regionally. As with conviction records (see July 29, 1987 Statement), the employer may rebut by presenting statistics which are more current, accurate and/or specific to its region or applicant pool than are the statistics presented in the *prima facie* case.

### B. Business Justification

If adverse impact is established, the burden of producing evidence shifts to the employer to show a business justification for the challenged employment practice. *Wards Cove Packing Co. v. Atonio*, 109 S.Ct. 2115, 2126 (1989).<sup>7</sup> As with conviction records, arrest records may be considered in the employment decision as evidence of conduct which may render an applicant unsuitable for a particular position. However, in the case of arrests, not only must the employer consider the relationship of the charges to the position sought, but also the likelihood that the applicant actually committed the conduct alleged in the charges. *Gregory v. Litton Systems*, 316 F. Supp. 401; *Carter v. Gallagher*, 452 F.2d 315, 3 EPD ¶18335 (8th Cir. 1971), *cert. denied*, 406 U.S. 950, 4 EPD ¶17818 (1972); *Reynolds v. Sheet Metal Workers Local 102*, 498 F. Supp. 952; *Dozier v. Chupka*, 395 F. Supp. 836 (D.C. Ohio 1975); *U.S. v. City of Chicago*, 411 F. Supp. 218 (N.D. Ill. 1974), *aff’d* in rel. part, 549 F.2d 415 (7th Cir. 1977); *City of Cairo v. Illinois Fair Employment Practice Commission et al.*, 8 EPD ¶19682 (Ill. App. Ct. 1974); Commission Decisions Nos. 7803, 7723, 76138, 7687, 7654, 7639, 7617, 7492, 7483, 7603, 7490, 7803, 7425, CCH EEOC Decisions (1983) ¶¶6714, 6710, 6700, 6665, 6639, 6630, 6612, 6424, 6414, 6598, 6423, 6400 and Commission Decisions Nos. 720947, 721005, 721460, CCH EEOC Decisions (1973) ¶¶6357, 6350 and 6341, respectively.

## 1. A Business Justification Can Rarely Be Demonstrated for Blanket Exclusions on the Basis of Arrest Records

Since business justification rests on issues of job relatedness and credibility, a blanket exclusion of people with arrest records will almost never withstand scrutiny. *Gregory v. Litton Systems*, 316 F. Supp. 401. *Litton* held that an employer's policy of refusing to hire anyone who had been arrested "on a number of occasions" violated Title VII because the policy disproportionately excluded Blacks from consideration and was not justified by business necessity. In *Litton*, an applicant for a position as a sheet metal worker was disqualified because of his arrest record. The court found no business necessity because the employer had neither examined the particular circumstances surrounding the arrests nor considered the relationship of the charges made against him to the position of sheet metal worker. Since the employer had failed to establish a business necessity for its discriminatory policy, it was enjoined from basing future hiring decisions on arrest records. Accord *Carter v. Gallagher*, 452 F.2d 315 (firefighter); *Dozier v. Chupka*, 395 F. Supp. 836 (firefighter); *City of Cairo v. Illinois Fair Employment Practice Commission, et al.*, 8 EPD ¶9682 (police officer).

The Commission has consistently invalidated employment policies which create a blanket exclusion of persons with arrest records. Commission Decision Nos. 7803, 7687, 7639, 7617, 7603, 7490, 7425, 720947, 721005, CCH EEOC Decisions (1983) ¶¶6714 (laborer), 6665 (police officer), 6630 (cashier), 6612 (credit collector), 6598 (catalogue clerk), 6423 (uniformed guard commissioned by police department), 6400 (firefighter), 6357 (line worker) and 6350 (warehouse worker or driver). In several decisions, it appears that the arrest record inquiry was made on a standard company application which was used by the employer to fill various positions and there was no mention of any particular position sought. Commission Decision Nos. 76138, 7654, 7482, 7483, 7402 and 721460, CCH EEOC Decisions (1983) ¶¶6700, 6639, 6424, 6414, 6386 and 6341 and Commission Decision No. 711950, CCH EEOC Decisions (1973) ¶6274, respectively. An employer may not routinely exclude persons with arrest records based on the assumption that an arrest record will prevent an applicant from obtaining necessary credentials to perform a job without giving the applicant an opportunity to obtain those credentials. For example, in Decision 7687, the Commission rejected an employer's assertion that employees' arrest records might hinder its ability to maintain fidelity (bond) insurance since it offered no proof to this effect.

Even where there is no direct evidence that an employer used an arrest record in an employment decision, a preemployment inquiry regarding arrest records may violate Title VII. It is generally presumed that an employer only asks questions which he/she deems relevant to the employment decision. *Gregory v. Litton Systems*, 316 F. Supp. at 403404. Noting that information which is obtained is likely to be used, the court in *Litton* enjoined the employer from making any preemployment inquiries regarding arrests which did not result in convictions. *Id.*<sup>8</sup> But see *EEOC v. Local 638*, 532 F.2d 821 (2d Cir. 1976) (inquiry not invalidated where there was no evidence that union actually rejected applicants who had been arrested but not convicted); *Jimerson v. Kisco*, 404 F. Supp. 338 (E.D. Mo. 1975) (court upheld discharge for falsifying information regarding arrest record on a preemployment application without considering the inquiry itself violated Title VII).<sup>9</sup> Numerous states have specifically prohibited or advised against preemployment inquiries in their fair employment laws due to the possible misuse of this information.<sup>10</sup>

## 2. The Alleged Conduct Must Be Related to the Position Sought

As discussed above, an arrest record may be used as evidence of conduct upon which an employer makes an employment decision. An employer may deny employment opportunities to persons based on any prior conduct which indicates that they would be unfit for the position in question, whether that conduct is evidenced by an arrest, conviction or other information provided to the employer. It is the *conduct*, not the arrest or conviction *per se*, which the employer may consider in relation to the position sought. The considerations relevant to the determination of whether the alleged conduct demonstrates unfitness for the particular job were set forth in *Green v. Missouri Pacific Railroad Co.*, 549 F.2d 1158, 1160, 13 EPD ¶11,579 (8th Cir. 1977) and reiterated in the February 4, 1987 Statement on Convictions, page 2:

- ① the nature and gravity of the offense or offenses.
- ② the time that has passed since the conviction<sup>11</sup> (or in this case, arrest)....
- ③ the nature of the job held or sought.

See also *Carter v. Maloney Trucking and Storage Inc.*, 631 F.2d 40, 43, 24 EPD ¶31,348 (5th Cir. 1980) (employer refused to rehire an exemployee who had murdered a coworker, not solely because of his conviction, but because he was a

dangerous person and friends of the murdered man might try to retaliate against him while he was on the job); *Osborne v. Cleland*, 620 F.2d 195, 22 EPD ¶130,882 (8th Cir. 1980) (employee who had forfeited collateral on a charge of “sexual procurement” was unfit to be a nursing assistant in a psychiatric ward); *Lane v. Inman*, 509 F.2d 184 (5th Cir. 1975) (city ordinance which prohibited the issuance of taxicab driver permits to persons convicted of smuggling marijuana was “so obviously job related” that “it could not be held to be unlawful race discrimination,” irrespective of any adverse impact); *EEOC v. Carolina Freight*, 723 F. Supp. 734, 52 EPD ¶139,538 (S.D. Fla. 1989) (criminal history was related to position of truck driver who transported valuable property); *McCray v. Alexander*, 30 EPD ¶133,219 (D. Colo. 1982), *aff’d* 38 EPD ¶135,509 (10th Cir. 1985) (supervisory guard was discharged for killing a motorist, while off duty, in a traffic dispute because employer concluded that, despite his acquittal, the conduct showed poor judgment on the use of deadly force).

Where the position sought is “security sensitive,” particularly where it involves enforcing the law or preventing crime, courts tend to closely scrutinize evidence of prior criminal conduct of applicants. *U.S. v. City of Chicago*, 411 F. Supp. 218, 11 EPD ¶110,597 (N.D. Ill. 1976), *aff’d* in rel. part, 549 F.2d 415, 13 EPD ¶11,380 (7th Cir. 1977), *on remand*, 437 F. Supp. 256 (N.D. Ill. 1977) (applicants for the police department were disqualified for prior convictions for “serious” offenses); *Richardson v. Hotel Corporation of America*, 332 F. Supp. 519, 4 EPD ¶17666 (E.D. La. 1971), *aff’d mem.*, 468 F.2d 951, 4 EPD ¶17666 (5th Cir. 1972) (bellman was discharged after his conviction for theft and receipt of stolen goods was discovered since bellmen had access to guests’ rooms and was not subject to inspection when carrying packages); *Haynie v. Chupka*, 17 FEP Cases 267, 271 (S.D. Ohio 1976) (police department permissibly made inquiries regarding arrest records and other evidence of prior criminal conduct).<sup>12</sup> (See Examples 3 and 4).

Even where the employment at issue is not a law enforcement position or one which gives the employee easy access to the possessions of others, close scrutiny of an applicant’s character and prior conduct is appropriate where an employer is responsible for the safety and/or well being of other persons. *Osborne v. Cleland*, 620 F.2d 195 (8th Cir. 1975) (psychiatric nursing assistant); *Lane v. Inman*, 509 F.2d 184 (taxi driver). In these instances, the facts would have to be examined closely in order to determine the probability that an applicant would pose a threat to the safety and well being of others. (See Examples 5 and 6).

### **3. Evaluating the Likelihood that the Applicant Engaged in the Conduct Alleged**

The cases cited above illustrate the jobrelatedness of certain conduct to specific positions. In cases alleging race discrimination based on the use of arrest records as opposed to convictions, courts have generally required not only jobrelatedness, but also a showing that the alleged conduct was actually committed. In *City of Cairo v. Illinois Fair Employment Practice Commission, et al.*, 8 EPD ¶19682, the court held that where applicants sought to become police officers, they could not be absolutely barred from appointment solely because they had been arrested, as distinguished from convicted. *See also* Commission Decision No. 7687, CCH EEOC Decisions (1983) ¶16665 (potential police officer could not be rejected based on one arrest five years earlier for riding in a stolen car since there was no conviction and the applicant asserted that he did not know that the car was stolen). Similarly, in Decision No. 7483, CCH EEOC Decision (1983) ¶16424, the Commission found no business justification for an employer’s unconditional termination of all employees with arrest records (all five employees terminated were Black), purportedly to cut down on thefts in the workplace. The employer could produce no evidence that the employees had been involved in any of the thefts or that persons who are arrested, but not convicted, are prone toward crime. Commission Decision No. 7492, CCH EEOC Decisions (1983) ¶16424.

An arrest record does no more than raise a suspicion that an applicant may have engaged in a particular type of conduct.<sup>13</sup> Thus, the investigator must determine whether the applicant is likely to have committed the conduct alleged. This is the most difficult step because it requires the employer either to accept the employee’s denial or to attempt to obtain additional information and evaluate his/her credibility. An employer need not conduct an informal “trial” or an extensive investigation to determine an applicant’s or employee’s guilt or innocence. However, the employer may not perfunctorily “allow the person an opportunity to explain” and ignore the explanation where the person’s claims could easily be verified by a phone call, i.e., to a previous employer or a police department. The employer is required to allow the person a meaningful opportunity to explain the circumstances of the arrest(s) and to make a reasonable effort to determine whether the explanation is credible before eliminating him/her from employment opportunities.<sup>14</sup> (See Examples 1, 4, 5 and 6).

### III. EXAMPLES

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The following examples are provided to illustrate the process by which arrest record charges should be evaluated.

#### **Example 1:**

Wilma, a Black female, applies to Bus Inc. in Highway City for a position as a bus driver. In response to a preemployment inquiry, Wilma states that she was arrested two years earlier for driving while intoxicated. Bus Inc. rejects Wilma, despite her acquittal after trial. Bus Inc. does not accept her denial of the conduct alleged and concludes that Wilma was acquitted only because the breathalyzer test which was administered to her at the time of her arrest was not administered in accordance with proper police procedures and was therefore inadmissible at trial. Witnesses at Wilma's trial testified that after being stopped for reckless driving, Wilma staggered from the car and had alcohol on her breath. Wilma's rejection is justified because the conduct underlying the arrest, driving while intoxicated, is clearly related to the safe performance of the duties of a bus driver; it occurred fairly recently; and there was no indication of subsequent rehabilitation.

Contrast Example Number 1 with the facts below.

#### **Example 2:**

Lola, a Black female, applies to Bus Inc. for a position as a bus driver. In response to an inquiry whether she had ever been arrested, Lola states that she was arrested five years earlier for fraud in unemployment benefits. Lola admits that she committed the crime alleged. She explains that she received unemployment benefits shortly after her husband died and her expenses increased. During this period, she worked parttime for minimum wage because her unemployment check amounted to slightly less than the monthly rent for her meager apartment. She did not report the income to the State Unemployment Board for fear that her payments would be reduced and that she would not be able to feed her three young children. After her arrest, she agreed to, and did, repay the state. Bus Inc. rejected Lola. Lola's rejection violated Title VII. The commission of fraud in the unemployment system does not constitute a business justification for the rejection of an applicant for the position of bus driver. The type of crime which Lola committed is totally unrelated to her ability to safely, efficiently and/or courteously drive a bus. Furthermore, the arrest is not recent.

#### **Example 3:**

Tom, a Black male, applies to Lodge City for a position as a police officer. The arrest rate for Blacks is substantially disproportionate to that of Whites in Lodge City. In response to an arrest record inquiry, Tom states that he was arrested three years earlier for burglary. Tom is interviewed and asked to explain the circumstances surrounding his arrest. Tom admits that although the burglary charge was dismissed for lack of sufficient evidence, he did commit the crime. He claims, however, that he is a changed man, having matured since then. Lodge City rejects Tom. Police officers are: 1) entrusted with protecting the public; 2) authorized to enter nearly any dwelling under the appropriate circumstances; and 3) often responsible for transporting valuables which are confiscated as evidence. The department is, therefore, justified in declining to take the chance that Tom has reformed. Even if the department is completely satisfied that Tom has reformed, it may reject him because his credibility as a witness in court could be severely damaged if he were asked about his own arrest and the surrounding circumstances while testifying against a person whom he had arrested. Since an essential element of police work is the ability to effect an arrest and to credibly testify against the defendant in court, the department would have two separate business justifications for rejecting Tom.

The above example is contrasted with circumstances under which an arrest record would not constitute grounds for rejection.

#### **Example 4:**

John, a Black male, applies to Lodge City for the same position as does Tom. John was arrested three years earlier for burglary. The charges were dismissed. Lodge City eliminates John from consideration without further investigation and will not consider the surrounding circumstances of the arrest. If allowed to explain, John could establish that his arrest was a case of mistaken identity and that someone else, who superficially fit John's description, was convicted of the crime for which John was initially charged. Since the facts indicate that John did not commit the conduct alleged in the

arrest record, Lodge City has not carried its burden of proving a business justification for John's rejection.

#### **Example 5:**

David, a Black male, applies for a teaching position in West High School. In response to a preemployment inquiry, David states that he was arrested two years earlier for statutory rape, having been accused of seducing a seventeen-year-old student in his class when he taught at another high school. The charges were dismissed. West High rejects David. David relies on *Litton* to establish a *prima facie* case of race discrimination, and West High is unable to rebut the case with more current, accurate or specific statistics. David denies that there is any truth to the charge. West High decides to conduct a further investigation and learns that David was arrested after another teacher found him engaged in sexual activity with Ann, one of his students, in the school's locker room. This event occurred on Ann's eighteenth birthday, but in the confusion of the arrest, no one realized that Ann had just reached the age of majority. Ann's parents and other teachers believed that David had seduced Ann, who had a schoolgirl "crush" on him, prior to her eighteenth birthday. However, since Ann would not testify against David, the charges had been dismissed. West High may reject David. Irrespective of Ann's age, West High is justified in attempting to protect its students from teachers who may make sexual advances toward them. Although he might not have been guilty of statutory rape, his conduct was unbecoming a teacher.

The above example is contrasted to the following circumstances.

#### **Example 6:**

Paul, a Black male, applies for the same position as does David. Paul was arrested two years earlier for statutory rape, having been accused of seducing a seventeen-year-old student in his class at another high school. West High eliminates Paul from consideration without further investigation and refuses to consider the surrounding circumstances of the arrest. When filing his complaint, Paul states that when he taught at the other high school, he befriended a troubled student in his class, Alice, who was terrified of her disciplinarian parents. Paul insists that he never touched Alice in any improper manner and that on the day before his arrest, Alice confided in him that she had become pregnant by her seventeen-year-old boyfriend, Peter, and was afraid to tell her parents for fear that her father would kill him. Paul states that the charges were dismissed because the district attorney did not believe Alice's statements. The district attorney and the principal of the high school, Ms. P., confirm Paul's assessment of Alice. Ms. P. states that Peter confided in her that he was the father of Alice's baby and that Alice had assured him that nothing sexual had ever happened between her and Paul. Ms. P. states that there were indications that Alice's father was abusive, that he had beaten her into giving him the name of someone to blame for her pregnancy and that Alice thought that Paul could handle her father better than could Peter. Since Paul denied committing the conduct alleged and his explanation was well supported by the district attorney and his former employer, West High has not demonstrated a business justification for rejecting Paul.

The examples discussed above demonstrate that whereas an employer may consider a conviction as conclusive evidence that a person has committed the crime alleged, arrests can only be considered as a means of "triggering" further inquiry into that person's character or prior conduct. After considering all of the circumstances, if the employer reasonably concludes that the applicant's or employee's conduct is evidence that he or she cannot be trusted to perform the duties of the position in question, the employer may reject or terminate that person.

**Date: 9/7/90**

**Approved: Date Evan J. Kemp, Jr.(Chairman)**

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#### **Footnotes**

<sup>1</sup> The July 29 Statement notes that despite national statistics showing adverse impact, an employer may refute this *prima facie* showing by presenting statistics which are specific to its region or applicant pool. If these statistics demonstrate that the policy has no adverse impact against a protected group, the plaintiff's *prima facie* case has been rebutted and the employer need not show any business necessity to justify the use of the policy. Statistics relating to arrests should be used in the same manner.

<sup>2</sup> The policy statements on convictions use the term "business necessity," as used by courts prior to the Supreme Court's decision in *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115 (1989). In *Atonio*, the Supreme Court adopted the term "business justification" in place of business necessity, but noted that "although we have phrased the query differently in different cases... the dispositive issue is whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer," citing *inter alia*, *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), 109 S. Ct. at 21252126.

<sup>3</sup> *U.S. v. City of Chicago*, 385 F. Supp. 543, 556557 (N.D. Ill. 1974), *adopted by reference*, 411 F. Supp. 218, *aff'd in rel. part*, 549 F.2d 415, 432 (7th Cir. 1977); *City of Cairo v. Illinois Fair Employment Practice Commission, et al.*, 8 EPD &9682 (Ill. App. Ct. 1974); Commission Decision Nos. 7803, 7723, 76138, 7687, 7639, 7492, 7490, 7483, 7402, CCH EEOC Decisions (1983) &&6714, 6710, 6700, 6665, 6630, 6424, 6423, 6414, 6386 and Commission Decision Nos. 721460, 721005, 72094 and 711950, CCH EEOC Decisions (1973) &&6341, 6357 and 6274 respectively.

<sup>4</sup> The FBI's Uniform Crime Reporting Program reported that in 1987, 29.5% of all arrests were of Blacks. The U.S. Census reported that Blacks comprised 11.7% of the national population in 1980 and projected that the figure would reach 12.2% in 1987. Since the national percentage of arrests for Blacks is more than twice the percentage of their representation in the population (whether considering the 1980 figures or the 1987 projections), the *Litton* presumption of adverse impact, at least nationally, is still valid.

<sup>5</sup> The statistics presented in Decision No. 7723 pertain only to prison populations in the Southwestern United States. This data would, therefore, probably not constitute a *prima facie* case of discrimination for other regions of the country. In fact, there is no case law to indicate whether courts would accept this data as evidence of adverse impact for arrest records, even for cases arising in the Southwest, since all arrests do not result in incarceration. Decision No. 7603 noted that Hispanics are arrested more frequently than are Whites, but no statistics were presented to support this statement.

<sup>6</sup> Cf. *EEOC v. Carolina Freight Carriers*, 723 F. Supp. 734, 751, 52 EPD & 39,538 (S.D. Fla. 1989) (EEOC failed to provide statistics for the relevant labor market to prove that trucking company's exclusion of drivers with convictions for theft crimes had an adverse impact on Hispanics at a particular job site).

<sup>7</sup> Under *Atonio*, the burden of producing evidence shifts to the employer, but the burden of persuasion remains with the plaintiff at all stages of a Title VII case. 109 S.Ct. at 2116. *Atonio* thus modifies *Griggs* and its progeny.

<sup>8</sup> Furthermore, potential applicants who have arrest records may be discouraged from applying for positions which require them to supply this information, thus creating a "chilling effect" on the Black applicant pool. *Carter v. Gallagher*, 452 F.2d at 330331; *Reynolds v. Sheet Metal Workers, Local 102*, 498 F. Supp. at 964 n.12, 966 n.13, 967, 973; Commission Decision Nos. 76138, 7687, 7617, 7490, 7425 and 7402, CCH EEOC Decisions (1983) &&6700, 6665, 6612, 6423, 6400, 6386 and Commission Decision Nos. 741005 and 711950, CCH EEOC Decisions (1973) &&6350 and 6274, respectively.

<sup>9</sup> Note also that in *Walls v. City of Petersburg*, 895 F.2d 188, 52 EPD &39,602 (4th Cir. 1990), the court upheld an employer's policy of making an employment inquiry regarding the arrest records of employees' immediate family members. The court determined that under *Atonio*, the plaintiff was obligated to show not only that Blacks were more likely to have "negative" responses to this question, but also that the employer made adverse employment decisions based on such responses.

<sup>10</sup> New York, Hawaii, Oregon, Wisconsin, New Jersey, Ohio, Virginia, District of Columbia, California, Maryland, Minnesota, Utah, Washington, West Virginia, Arizona, Colorado, Idaho, Massachusetts, Michigan, Mississippi.

<sup>11</sup> But see *EEOC v. Carolina Freight Carriers*, 723 F. Supp. at 753 (court upheld trucking company's lifetime bar to employment of drivers who had been incarcerated for theft crimes since EEOC did not produce evidence that a 510 year bar would be an equally effective alternative). Note also that the court in *Carolina Freight* specifically rejected the Eighth Circuit's reasoning in *Green*, cautioning that *Green* could be construed too broadly. 723 F. Supp. at 752.

<sup>12</sup> See also *Quarrels v. Brown*, 48 EPD &38,641 (D.C. Mich. 1988) (recent conviction was related to position of corrections officer). Note however, that this action was brought under 42 U.S.C. § 1983, rather than Title VII, and plaintiff alleged that he was discriminated against because he was an exoffender, not because the policy adversely affected a protected group.

<sup>13</sup> The employer's suspicion may be raised by an arrest record just as it would by negative comments about an applicant's conduct made by a previous employer or a personal reference.

<sup>14</sup> Although the number of arrests is not determinative (see *Litton*), it may be relevant in making a credibility determination.

## Appendix B: Screening Worksheet

| Proposal  | Category                                   | Notes   |
|---|--|---|
| <b>Proposed Federal Funding Cuts to Community Services Block Grant (CSBG)</b> | <b>Safety and Labor (Housing)</b>          | CSBG is the ONLY federal program focused on comprehensive services to fight poverty. If it is eliminated, more than a thousand Community Action Agencies across the country will be forced to slash programs, or even to shut their doors. Illinois benefits from \$47.2 million from the CSBG. The primary implications are on jobs, education, emergency services and housing.  |
| <b>Sweet Home Chicago (affordable housing ordinance)</b>                      | <b>Safety and Labor (Housing)</b>          | If the Sweet Home Chicago Ordinance became law, about \$100 million a year would go to developing and rehabbing affordable housing units — mostly rental spaces for families that make less than \$37,000 a year.   |
| <b>Put Illinois to Work Initiative</b>  | <b>Safety and Labor</b>                    | Through Put Illinois to Work, eligible Illinois residents are placed in subsidized employment positions with participating worksites for up to six months, learning valuable skills and supporting their families. The program, which was launched in April, has helped stimulate Illinois' ailing economy and develop a healthy workforce by providing meaningful work experience for participants.  |
| <b>Paid Sick Days in Illinois (Healthy Workplace Act)</b>                     | <b>Labor</b>                               | Requires an employer to provide an employee up to 7 sick days with pay during each 12-month period. Provides that an employee may use the sick days care for physical or mental illness, injury, medical condition, professional medical diagnosis or care, or a medical appointment of the employee or a family member.  |
| <b>Raising the Minimum Wage-Illinois</b>                                      | <b>Labor</b>                               | Illinois Senator Kimberly Lightfold is introducing to increase and index our state minimum wage, including the sub-minimum wage for tipped employees. Illinois Minimum Wage Coalition Meeting Thursday, January 27, 10:00 -11:30 am Action Now, 209 W. Jackson Blvd., 2nd Floor.  |
| <b>Living American Wage (LAW) Act of 2011 (H.R. 283)</b>                      | <b>Labor</b>                               | To amend the Fair Labor Standards Act to provide for the calculation of the minimum wage based on the Federal poverty threshold for a family of 2, as determined by the Census Bureau.  |
| <b>Second Chance Act</b>  | <b>Safety (Labor)</b>                      | Signed into law on April 9, 2008, the Second Chance Act (P.L. 110-199) was designed to improve outcomes for people returning to communities from prisons and jails. This first-of-its-kind legislation authorizes federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services that can help reduce recidivism.   |
| <b>Clear Up Juvenile Records Illinois (HB 2841)</b>                           | <b>Safety (Labor)</b>                      | Amends the Criminal Identification Act. Eliminates the provision that policing bodies must submit fingerprint and descriptions of minors 10 and older who are arrested on charges that are classified as felonies and Class A and Class B misdemeanors. Provides that such information shall be submitted if the person is over the age of 18. Amends the Juvenile Court Act of 1987. Provides for the automatic expungement of law enforcement records of a minor who has been arrested if: ① the minor had been arrested but no delinquency petition was filed with the clerk of the circuit court; ② the minor has attained the age of 18; and ③ since the date of the minor's most recent arrest, at least 2 years have elapsed without an additional arrest. |
| <b>"Ban the Box"</b>  | <b>Labor (Safety/ Violence)</b>            | According to the Safer Foundation, the bill they plan to work on at the state level will be "Ban the Box". It was introduced before to the state under HB65 and will be introduced again in a couple of weeks by Illinois Representative La Shawn Ford. This bill will have direct implications for employment in areas with a high ex-offender population which will then hopefully reduce crime often associated with recidivism.   |
| <b>Summer Jobs for Youth Program (funding cuts)</b>                           | <b>Labor (Safety/ Violence)</b>            | Jobs For Youth/Chicago helps young men and women from low-income families become a part of the economic mainstream; and, in the process, provides the business community with motivated job-ready workers. Jobs For Youth is a free program for teens and young adults ages 17 to 24.   |
| <b>Chicago's Vacant Buildings Ordinance</b>                                   | <b>Safety (Housing/ Labor)</b>             | An ordinance to increase accountability and responsibility for banks who own and/or service vacant and abandoned buildings in Chicago. The ordinance will require each bank to post a bond of \$10,000 on every vacant building they service. The banks will also be required to provide for a finder's fee to be given to neighbors who report maintenance violations on vacant properties   |
| <b>Employment Restrictions Legislation (SB 1284)</b>                          | <b>Labor (Employment/Safety/ Violence)</b> | Legislation provides that no employer, employment agency or labor organization can use an arrest, criminal charge, or expunged or sealed criminal record history information as a basis to refuse to hire, issue adverse employment action against, or affect terms and conditions of employment for, an individual.  |

## Appendix C: Policy Brief ISE Filed on August 4, 2011, as Public Comment to the EEOC

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August 4, 2011

Chair Berrien  
Commissioners Ishimaru, Barker, Feldblum, Lipnic  
U.S. Equal Employment Opportunity Commission  
131 M Street, N.E., Washington, DC 20507

### **RE: PUBLIC COMMENT - EEOC Enforcement of Title VII Protections Regulating Criminal Background Checks**

Dear Chair Berrien and Commissioners Ishimaru, Barker, Feldblum, and Lipnic:

Thank you for calling the EEOC Commissioners' meeting to consider the vital issue of Title VII violations resulting from criminal background checks for employment. For the reasons stated in this public comment, now is the historical moment for updating EEOC policy guidance that has been misused by employers and others to the detriment of our nation's workers – especially people of color – for over twenty years. Moreover, such amendments would encourage members of protected groups to apply for available jobs, with the confidence and knowledge that they are seeking work with the support of the law.

I am the Executive Director of the Institute on Social Exclusion (ISE) at the Adler School of Professional Psychology in Chicago. The Adler School's mission is to graduate socially responsible practitioners, engage communities in fostering individual and population health, and advance social justice. The ISE is the main vehicle by which the school pursues its social justice agenda.

In January 2011, using grant funding awarded by the Robert Wood Johnson Foundation (\$250,000) and the W.K. Kellogg Foundation (\$150,000), the ISE began an 18-month Health Impact Assessment (HIA) to address important mental health issues in Chicago's Englewood community. Englewood is a poor, African American neighborhood in southwest side of the city, which suffers with high unemployment, significant interpersonal and community violence rates, and other problems prevalent among marginalized populations across urban America.

Health Impact Assessment (HIA) is "a combination of procedures, methods and tools that systematically judges the potential, sometimes *unintended*, effects of a policy, plan, program or project on the health of a population, including the distribution of those effects within the population, and identifies appropriate actions to manage those effects." (Emphasis supplied) (International Association for Impact Assessment, 2006) HIA is an evidence-based practice that follows a well-recognized process involving screening, scoping, assessment, recommendations, reporting, and monitoring and evaluation of the particular policy under review.

Although usually focused upon the *physical* health of a population, in this instance, the ISE's emphasis is upon the *mental* health of the Englewood community, and by extension, on the mental health of similarly situated communities across the nation.

To select our HIA project, we screened more than 60 potential national, state, and local public policies – e.g., proposed amendments to the Fair Labor Standards Act, proposals to raise the minimum wage in the State of Illinois, and suggested amendments to municipal ordinances concerning how the city should address the growing number of foreclosed and vacant buildings in Chicago. After months of careful consideration, we chose the EEOC's Policy Guidance on the Consideration of Arrest Records in Employment Decisions [No. 915.061 (9/7/90)] for study in the first Mental Health Impact Assessment (MHIA) ever done in the United States.

Specifically, the ISE's MHIA examines the principal research question: *What is the impact upon the mental health of a community when an employer uses arrest records in making employment decisions about members of that community?* Asking this question provides a "health lens" to areas of law typically supported only by arguments based upon civil rights, human rights, or economic analyses. This MHIA is consistent with current public policy analysis techniques rooted in the "health in all policies" approach advanced by medico-legal practitioners and theorists engaged in the field of population health. [Rajotte, B. R., Ross, C. L., Ekechi, C. O. & Cadet, V. N. (2011). Health in all policies: Addressing the legal and policy foundations of health impact assessment. *Journal of Law, Medicine, & Ethics*, Spring Supplement, 27-29.] This perspective provides rationale for policy changes that contribute to individual well-being and healthy communities, while balancing civil rights and preventive healthcare measures, as well.

Since the answer to the principal research question will become salient, when the EEOC makes a decision on whether and how to amend the referenced Policy Guidance, we now write to offer our public comment on this very important issue.

Initially, we point out that the prospects of amending and increasing enforcement of this Policy Guidance stands to enjoy wide support in Englewood and other similarly situated communities, nationwide. For example, the Englewood and West Englewood neighborhoods (ZIP Codes 60621 and 60636) comprise District 7 of the Chicago Police Department. Both regions have high un/under-employment rates. However, although the population of District 7 is estimated at roughly 70,000 persons, between January 2006 and March 2010, almost 64,000 arrests were recorded. [Data were provided through the Chicago Police Department's Division of Research and Development. The analysis of the data reflects the opinions of the author and in no way represents the views of the Chicago Police Department or the City of Chicago.] Hence, the matters now under review by the EEOC not only profoundly influence employment, but, as we shall see, community health, as well.

Although our MHIA has only completed the "scoping" phase of an 18-month process, we are reasonably confident that our input can be of value during your deliberations. After a series of focus groups and interviews with residents and other community stakeholders as well as a review of the relevant academic literature, we have developed the attached "pathway" illustrating the possible relationships between the proposed amendment to the EEOC Policy Guidance on the use of arrest records in employment decisions and community mental health.

Since our review of this EEOC Policy Guidance remains underway, we may, at this time, only confirm that it measures up to the "preponderance of evidence" standard recognized in civil law and now deemed appropriate for HIA inquiry. [Braveman, P. A., Egerter, S. A., Woolf, S. H., & Marks, J. S. (2011). When do we know enough to recommend action on the social determinants of health? *American Journal of Preventive Medicine*, 40(1S1), S58-S66. doi: 10.1016/j.amepre.2010.09.026].

Succinctly stated, the attached pathway reveals that the present EEOC Policy Guidance -- as well as its interpretation and enforcement -- is likely to influence persons' capabilities to become employed and, consequently, affects individual, as well as overall community, mental health outcomes.

As shown on this pathway, the EEOC policy on arrests leads to a "social determinant of health" known as "social exclusion." "Employment status" is one aspect of such exclusion. A person's "employment status" determines whether one has "income" and the amount of any such income. The "employment status" of a neighborhood's residents affects "neighborhood conditions." Factors like "local economy, public services, amenities, voluntary organizations, and physical characteristics" are typically included within the descriptor "neighborhood conditions." "Intermediate outcomes," called "income" and "neighborhood conditions" in our pathway, contribute heavily to at least two types of "population mental health outcomes," labeled "community processes" and "individual processes" on our logic model. "Community processes" are comprised of both "social capital" and "psychological sense of community."

“Individual processes” include “mental well-being” (i.e., happiness and life satisfaction) and “mental illness.” Such mental illness consists of “mental health utilization, substance abuse, depression/anxiety, and family violence.”

In these ways, the current EEOC policy on arrests -- as it is commonly interpreted and misinterpreted by employers and others who may be involved in hiring processes -- has deleterious impacts upon African Americans, Latinos, and members of other communities that are vulnerable to high rates of arrests.

[Moreover, although it is outside the scope of our MHIA, we would be remiss if we did not also report this anecdotal evidence that our early inquiries has yielded: Not only does unemployment, which appears to be related to disproportional arrest rates, produce clinically diagnosable stress, depression, and anxiety, it may also fuel incidences of both sexually transmitted diseases (STDs) and unwanted pregnancies among members of marginalized populations due to risky sexual behavior used as coping mechanisms.]

Even when employers and others do not wrongly apply the current policy guidance, it may, nonetheless, produce adverse *unintended* effects on marginalized populations.

Believing that it is lawful for employers to inquire about arrest records (even though that may be inappropriate), residents of communities like Englewood may simply forego applying for available jobs due to a belief that they will not be successful due to stigma associated with having been arrested or because they fear the consequences of lying on a job application. In this way, the current policy, as *understood by potential job seekers*, may well have a “chilling” effect among people who most are in need of employment and its benefits (e.g., health insurance).

Of course, the ISE’s full MHIA will later include much more information derived from focus groups, town hall meetings, key person interviews, and the results from various psychological surveys. After completion of the entire project in summer 2012, we plan to forward a copy of the Mental Health Impact Assessment (MHIA) final report to the EEOC to augment this public comment.

As indicated above, our MHIA most acutely concerns people who have been arrested, but not convicted of a crime. Arrest records, standing alone, do not tell a job applicant’s entire story. On many occasions, such individuals may simply have been in the wrong place at the wrong time and were never guilty of a criminal offense. Thus, clear amendments to the current EEOC policy, which create a *legal presumption* that using arrests, not entailing convictions, in making hiring decisions is not favored by the EEOC or the law, would constitute a major step forward by the Commission in these proceedings.

Additionally, at this time, the Institute on Social Exclusion at The Adler School respectfully requests that the EEOC adopt updated and clear policy guidance to educate employers about the law regarding use of criminal records in employment decisions; that this body increase its oversight and enforcement of those laws and Title VII; and, that the Commission takes positive steps to educate the general public and potential job applicants about the contents of any newly amended policies.

Thanking you in advance for your thoughtful consideration of this policy letter and looking forward to supplementing these remarks later with a copy of our completed Mental Health Impact Assessment (MHIA).

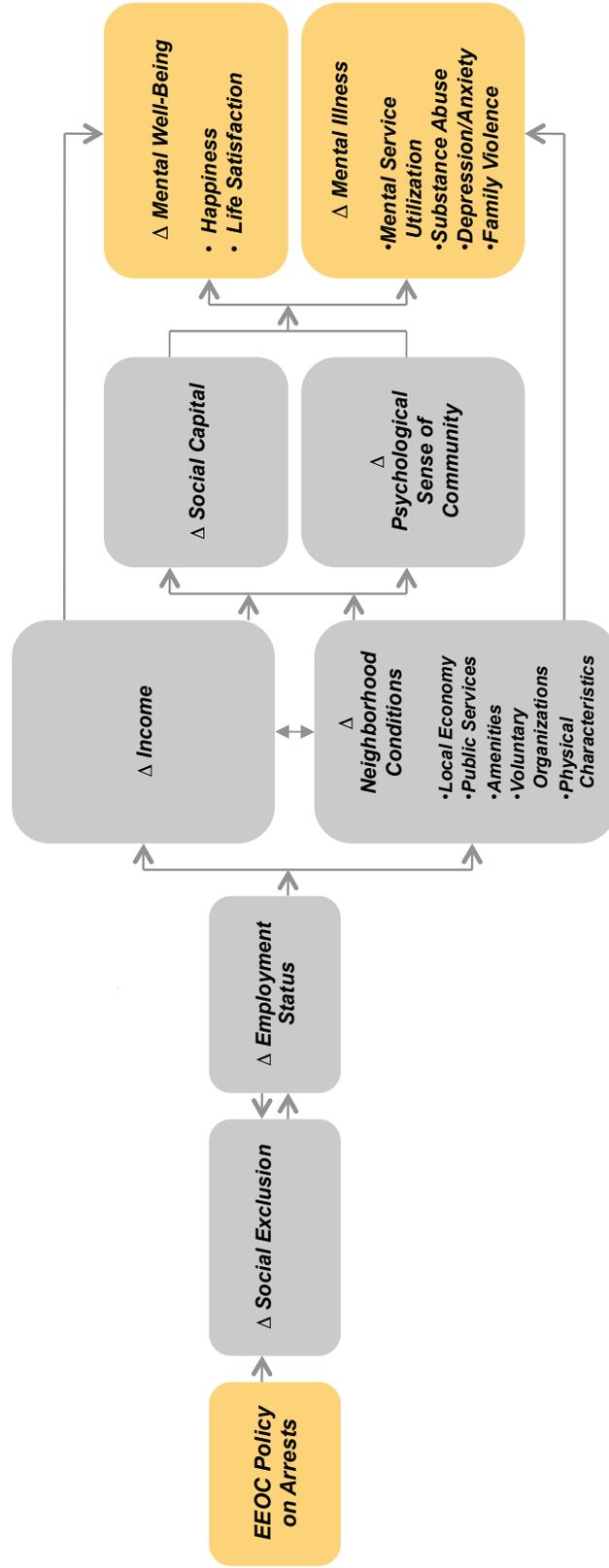
Very sincerely,

Lynn C. Todman, Ph.D.  
Executive Director, Institute on Social Exclusion  
The Adler School of Professional Psychology

Enclosures

## Pathway Showing Impact On Mental Health When Arrest Records Are Used In Employment Decisions

POLICY SOCIAL DETERMINANTS INTERMEDIATE OUTCOMES POPULATION MENTAL HEALTH OUTCOMES  
Community Processes Individual Processes



PRINCIPAL RESEARCH QUESTION: What is the impact upon the mental health of a community when an employer uses arrest records in making employment decisions about members of that community?

## Appendix D: Letter Submitted on April 24, 2012 by ISE and by The Leadership Conference on Civil and Human Rights

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### The Leadership Conference on Civil and Human Rights

1629 K Street, NW, 10th Floor  
Washington, DC 20006

April 24, 2012

The Honorable Jacqueline A. Berrien, Chair  
United States Equal Employment Opportunity Commission  
131 M Street, NE Washington, DC 20507t

#### **Re: Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964**

Dear Chair Berrien:

On behalf of The Leadership Conference on Civil and Human Rights, and the undersigned organizations, we thank the Equal Employment Opportunity Commission (EEOC) for its commitment to addressing discriminatory barriers to the workplace and strongly support the proposal to update the EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964. Updating the guidance will help balance the civil rights of workers and the legitimate concerns of employers about safety and security at the workplace.

We also commend the EEOC for its thoughtful, fair, and thorough process in soliciting input on this issue of critical concern to millions of U.S. workers, especially workers of color who are hardest hit by the proliferation of criminal background checks for employment because they have the highest rates of unemployment in today's challenging economy. The EEOC has held at least two meetings for which it has solicited and received the views of a diverse set of stakeholders, and participated in numerous forums organized by the key stakeholders.<sup>1</sup> Finally, the EEOC provided several opportunities for interested parties to submit documents to be considered as part of the record. The Commission received roughly 300 comments after its July 2011 meeting, two to one in favor of updating the guidance.

As our organizations continue our advocacy, litigation, and public education efforts, we support the EEOC's efforts to clarify and update the guidance. The legal requirements guiding the use of criminal background checks have existed for decades. Twenty-five years ago, the EEOC recognized the disparate impact that criminal background checks have on workers of color protected against employment discrimination by Title VII of the Civil Rights Act of 1964. In 1987, the EEOC made clear that "an employer's policy or practice of excluding individuals from employment on the basis of their conviction records has an adverse impact on Blacks and Hispanics."<sup>2</sup> Unfortunately, those disparities and others in the criminal justice system persist today.

By building on the guidance established in 1987, the Commission will provide necessary direction to the courts, employers, private screening firms, public employers at all levels of government, workers struggling to support their families, and communities hard hit by unemployment. Although it has long been the EEOC's policy that an absolute bar to employment based on a criminal conviction record is unlawful, many private employers continue to utilize blanket prohibitions that exclude anyone with a prior criminal record from employment. The use of criminal background checks is widespread. At least

90 percent of companies reported using criminal background checks for their hiring decisions, which is up from 51 percent in 1996.<sup>3</sup>

A disproportionate number of individuals with a criminal record come from low-income communities of color. Due in part to racial profiling and discriminatory sentencing schemes, racial and ethnic disparities persist at all stages of the criminal justice system. For example, African Americans account for 28 percent of all arrests in the United States, although they represent just 13 percent of the population; that arrest rate is more than double their percentage of the population.<sup>4</sup> In contrast, the arrest rates for white individuals falls below their percentage of the population.<sup>5</sup> African Americans are also more likely than white individuals to be charged once arrested, and more likely to be convicted and incarcerated when charged.<sup>6</sup> These inequities in the criminal justice system only magnify the discriminatory barriers already experienced by minorities and low-income individuals living in the United States.

The EEOC is in a unique position to help address the systemic discrimination described above. We are similarly encouraged by the past and hopefully continued bipartisan support that this issue has received. Hence, we urge the EEOC to move forward and update its guidance that applies to the use of arrest and conviction information.

If you have any questions, please contact Lexer Quamie, Counsel, at (202) 466-3648 or Nancy Zirkin at (202) 263-2880. Thank you for your attention to this issue of critical importance.

Sincerely,

### **National Organizations**

The Leadership Conference on Civil and Human Rights

9to5, National Association of Working Women

American Association for Affirmative Action

American Civil Liberties Union

American Federation of Labor- Congress of Industrial Organizations (AFL-CIO)

Asian American Justice Center, member of Asian American Center for Advancing Justice

Bazelon Center for Mental Health Law

Charles Hamilton Houston Institute for Race and Justice at Harvard Law School

CLASP Demos

Lawyers' Committee for Civil Rights Under Law

League of United Latin American Citizens

Legal Action Center

NAACP

NAACP Legal Defense and Educational Fund

National Action Network

National Association of Social Workers

National Bar Association

National Black Justice Coalition

National Education Association

National Employment Law Project

National Employment Lawyers Association

National Coalition on Black Civic Participation

National Council on Independent Living

National Gay and Lesbian Task Force

National Partnership for Women and Families

National Urban League

National Women's Law Center

National Workrights Institute PolicyLink

Poverty & Race Research Action Council

Rainbow PUSH

The Sargent Shriver National Center on Poverty Law

The Sentencing Project

Transportation Trades Department, AFL-CIO

UNITE HERE

The United Auto Workers (UAW)

## State and Local Organizations

Asian American Institute, member of Asian American Center for Advancing Justice (Illinois)

Asian Law Caucus, member of Asian American Center for Advancing Justice (California)

Asian Pacific American Legal Center, member of Asian American Center for Advancing Justice (California)

Bridgeport Reentry Collaborative (Connecticut)

Center for NuLeadership on Urban Solutions

Community Legal Services, Inc. (Pennsylvania)

Community Service Society (New York)

Community Solutions (Connecticut)

Fortune Society (New York)

Institute on Social Exclusion, Adler School of Professional Psychology (Illinois)

LAW Project of Los Angeles (California)

Michigan State University College of Law, Civil Rights Clinic (Michigan)

Public Justice Center (Maryland)

Rubicon Programs (California)

Safer Foundation (Illinois)

Seattle Office for Civil Rights (Washington)

Social Justice Law Project (California)

Women's Reentry Network (Arizona)

## Cc:

The Honorable Constance S. Barker, Commissioner

The Honorable Chai Feldblum, Commissioner

The Honorable Stuart J. Ishimaru, Commissioner

The Honorable Victoria A. Lipnic, Commissioner

Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

Nancy-Ann DeParle, Assistant to the President and Deputy Chief of Staff

<sup>1</sup> See Meeting of November 20, 2008 - Employment Discrimination Faced by Individuals with Arrest and Conviction Records at <http://www.eeoc.gov/eeoc/meetings/11-20-08/index.cfm> and Meeting of July 26, 2011 - EEOC to Examine Arrest and Conviction Records as a Hiring Barrier at <http://www.eeoc.gov/eeoc/meetings/7-26-11/index.cfm>.

<sup>2</sup> EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (1982) (2/4/87), 29 C.F.R. § 1607.16. [www.eeoc.gov/policy/docs/convict1.html](http://www.eeoc.gov/policy/docs/convict1.html).

<sup>3</sup> Michelle Natividad Rodriguez and Maurice Emsellem, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment*, National Employment Law Project, March 2011 [http://www.nelp.org/page/-/65\\_Million\\_Need\\_Not\\_Apply.pdf?nocdn=1](http://www.nelp.org/page/-/65_Million_Need_Not_Apply.pdf?nocdn=1), at 1.

<sup>4</sup> Id at 5; See also Crime in the United States, 2009 U.S. Department of Justice-Federal Bureau of Investigation (Sept. 2010) table 43, <http://www2.fbi.gov/ucr/cius2009/arrests/index.html>.

<sup>5</sup> *65 Million "Need Not Apply"* at 5.

<sup>6</sup> Christopher Uggen, Jeff Manza & Melissa Thompson, *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, 605 *Annals Am. Acad. Pol. & Soc. Sci.* 281,288 & tbl. 2 (2006).

## Appendix E. - EEOC Enforcement Guidance - April 25, 2012

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### ① SUBJECT

Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

### ② PURPOSE

The purpose of this Enforcement Guidance is to consolidate and update the U.S. Equal Employment Opportunity Commission's guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

### ③ EFFECTIVE DATE

Upon receipt.

### ④ EXPIRATION DATE

This Notice will remain in effect until rescinded or superseded.

### ⑤ ORIGINATOR

Office of Legal Counsel.

## CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

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### Table of Contents

- I. Summary
- II. Introduction
- III. Background
  - A. Criminal History Records
  - B. Employers' Use of Criminal History Information
  - C. The EEOC's Interest in Employers' Use of Criminal Records in Employment Screening
- IV. Disparate Treatment Discrimination and Criminal Records
- V. Disparate Impact Discrimination and Criminal Records
  - A. Determining Disparate Impact of Policies or Practices that Screen Individuals Based on Records of Criminal Conduct
    - 1. Identifying the Practice or Policy
    - 2. Determining Disparate Impact
  - B. Job Related for the Position in Question and Consistent with Business Necessity
    - 1. Generally
    - 2. Arrests
    - 3. Convictions
    - 4. Determining Whether a Criminal Conduct Exclusion Is Job Related and Consistent with Business Necessity
    - 5. Validation
    - 6. Detailed Discussion of the Green Factors and Criminal Conduct Screens
      - a. The Nature and Gravity of the Offense or Conduct 15
      - b. The Time that Has Passed Since the Offense, Conduct and/or Completion of the Sentence
      - c. The Nature of the Job Held or Sought
    - 7. Examples of Criminal Conduct Exclusions that Do Not Consider the Green Factors
    - 8. Targeted Exclusions that Are Guided by the Green Factors 17
    - 9. Individualized Assessment
  - C. Less Discriminatory Alternatives
- VI. Positions Subject to Federal Prohibitions or Restrictions on Individuals with Records of Certain Criminal Conduct
  - A. Hiring in Certain Industries
  - B. Obtaining Occupational Licenses
  - C. Waiving or Appealing Federally Imposed Occupational Restrictions
  - D. Security Clearances
  - E. Working for the Federal Government
- VII. Positions Subject to State and Local Prohibitions or Restrictions on Individuals with Records of Certain Criminal Conduct
- VIII. Employer Best Practices

## I. SUMMARY

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- An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended.
- The Guidance builds on longstanding court decisions and existing guidance documents that the U.S. Equal Employment Opportunity Commission (Commission or EEOC) issued over twenty years ago.
- The Guidance focuses on employment discrimination based on race and national origin. The Introduction provides information about criminal records, employer practices, and Title VII.
- The Guidance discusses the differences between arrest and conviction records.
  - The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question.
  - In contrast, a conviction record will usually serve as sufficient evidence that a person engaged in particular conduct. In certain circumstances, however, there may be reasons for an employer not to rely on the conviction record alone when making an employment decision.
- The Guidance discusses disparate treatment and disparate impact analysis under Title VII.
  - A violation may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin (disparate treatment liability).
  - An employer's neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity (disparate impact liability).
    - National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.
    - Two circumstances in which the Commission believes employers will consistently meet the "job related and consistent with business necessity" defense are as follows:
      - The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedures (if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors); or
      - The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three factors identified by the court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)). The employer's policy then provides an opportunity for an individualized assessment for those people identified by the screen, to determine if the policy as applied is job related and consistent with business necessity. (Although Title VII does not require individualized assessment in all circumstances, the use of a screen that does not include individualized assessment is more likely to violate Title VII.).
- Compliance with other federal laws and/or regulations that conflict with Title VII is a defense to a charge of discrimination under Title VII.
- State and local laws or regulations are preempted by Title VII if they "purport[] to require or permit the doing of any act which would be an unlawful employment practice" under Title VII. 42 U.S.C. § 2000e-7.
- The Guidance concludes with best practices for employers.

## II. INTRODUCTION

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The EEOC enforces Title VII of the Civil Rights Act of 1964 (Title VII) which prohibits employment discrimination based on race, color, religion, sex, or national origin.<sup>1</sup> This Enforcement Guidance is issued as part of the Commission's efforts to eliminate unlawful discrimination in employment screening, for hiring or retention, by entities covered by Title VII, including private employers as well as federal, state, and local governments.<sup>2</sup>

In the last twenty years, there has been a significant increase in the number of Americans who have had contact<sup>3</sup> with the criminal justice system<sup>4</sup> and, concomitantly, a major increase in the number of people with criminal records in the working-age population.<sup>5</sup> In 1991, only 1.8% of the adult population had served time in prison.<sup>6</sup> After ten years, in 2001, the percentage rose to 2.7% (1 in 37 adults).<sup>7</sup> By the end of 2007, 3.2% of all adults in the United States (1 in every 31) were under some form of correctional control involving probation, parole, prison, or jail.<sup>8</sup> The Department of Justice's Bureau of Justice Statistics (DOJ/BJS) has concluded that, if incarceration rates do not decrease, approximately 6.6% of all persons born in the United States in 2001 will serve time in state or federal prison during their lifetimes.<sup>9</sup>

Arrest and incarceration rates are particularly high for African American and Hispanic men.<sup>10</sup> African Americans and Hispanics<sup>11</sup> are arrested at a rate that is 2 to 3 times their proportion of the general population.<sup>12</sup> Assuming that current incarceration rates remain unchanged, about 1 in 17 White men are expected to serve time in prison during their lifetime;<sup>13</sup> by contrast, this rate climbs to 1 in 6 for Hispanic men; and to 1 in 3 for African American men.<sup>14</sup>

The Commission, which has enforced Title VII since it became effective in 1965, has well-established guidance applying Title VII principles to employers' use of criminal records to screen for employment.<sup>15</sup> This Enforcement Guidance builds on longstanding court decisions and policy documents that were issued over twenty years ago. In light of employers' increased access to criminal history information, case law analyzing Title VII requirements for criminal record exclusions, and other developments,<sup>16</sup> the Commission has decided to update and consolidate in this document all of its prior policy statements about Title VII and the use of criminal records in employment decisions. Thus, this Enforcement Guidance will supersede the Commission's previous policy statements on this issue.

The Commission intends this document for use by employers considering the use of criminal records in their selection and retention processes; by individuals who suspect that they have been denied jobs or promotions, or have been discharged because of their criminal records; and by EEOC staff who are investigating discrimination charges involving the use of criminal records in employment decisions.

## III. BACKGROUND

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The contextual framework for the Title VII analysis in this Enforcement Guidance includes how criminal record information is collected and recorded, why employers use criminal records, and the EEOC's interest in such criminal record screening.

### A. Criminal History Records

Criminal history information can be obtained from a wide variety of sources including, but not limited to, the following:

- **Court Records.** Courthouses maintain records relating to criminal charges and convictions, including arraignments, trials, pleas, and other dispositions.<sup>17</sup> Searching county courthouse records typically provides the most complete criminal history.<sup>18</sup> Many county courthouse records must be retrieved on-site,<sup>19</sup> but some courthouses offer their records online.<sup>20</sup> Information about federal crimes such as interstate drug trafficking, financial fraud, bank robbery, and crimes against the government may be found online in federal court records by searching the federal courts' Public Access to Court Electronic Records or Case Management/Electronic Case Files.<sup>21</sup>
- **Law Enforcement and Corrections Agency Records.** Law enforcement agencies such as state police agencies and corrections agencies may allow the public to access their records, including records of complaints, investigations, arrests, indictments, and periods of incarceration, probation, and parole.<sup>22</sup> Each agency may differ with respect to how and where the records may be searched, and whether they are indexed.<sup>23</sup>

- Registries or Watch Lists. Some government entities maintain publicly available lists of individuals who have been convicted of, or are suspected of having committed, a certain type of crime. Examples of such lists include state and federal sex offender registries and lists of individuals with outstanding warrants.<sup>24</sup>
- State Criminal Record Repositories. Most states maintain their own centralized repositories of criminal records, which include records that are submitted by most or all of their criminal justice agencies, including their county courthouses.<sup>25</sup> States differ with respect to the types of records included in the repository,<sup>26</sup> the completeness of the records,<sup>27</sup> the frequency with which they are updated,<sup>28</sup> and whether they permit the public to search the records by name, by fingerprint, or both.<sup>29</sup> Some states permit employers (or third-parties acting on their behalf) to access these records, often for a fee.<sup>30</sup> Others limit access to certain types of records,<sup>31</sup> and still others deny access altogether.<sup>32</sup>
- The Interstate Identification Index (III). The Federal Bureau of Investigation (FBI) maintains the most comprehensive collection of criminal records in the nation, called the “Interstate Identification Index” (III). The III database compiles records from each of the state repositories, as well as records from federal and international criminal justice agencies.<sup>33</sup>

The FBI’s III database may be accessed for employment purposes by:

- the federal government;<sup>34</sup>
- employers in certain industries that are regulated by the federal government, such as “the banking, nursing home, securities, nuclear energy, and private security guard industries; as well as required security screenings by federal agencies of airport workers, HAZMAT truck drivers and other transportation workers”;<sup>35</sup> and
- employers in certain industries “that the state has sought to regulate, such as persons employed as civil servants, day care, school, or nursing home workers, taxi drivers, private security guards, or members of regulated professions.”<sup>36</sup>

Recent studies have found that a significant number of state and federal criminal record databases include incomplete criminal records.

- A 2011 study by the DOJ/BJA reported that, as of 2010, many state criminal history record repositories still had not recorded the final dispositions for a significant number of arrests.<sup>37</sup>
- A 2006 study by the DOJ/BJA found that only 50% of arrest records in the FBI’s III database were associated with a final disposition.<sup>38</sup>

Additionally, reports have documented that criminal records may be inaccurate.

- One report found that even if public access to criminal records has been restricted by a court order to seal and/or expunge such records, this does not guarantee that private companies also will purge the information from their systems or that the event will be erased from media archives.<sup>39</sup>
- Another report found that criminal background checks may produce inaccurate results because criminal records may lack “unique” information or because of “misspellings, clerical errors or intentionally inaccurate identification information provided by search subjects who wish to avoid discovery of their prior criminal activities.”<sup>40</sup>

If applicants deny the existence of expunged or sealed records, as they are permitted to do in several states, they may appear dishonest if such records are reported in a criminal background check. *See generally* Debbie A. Mukamal & Paul N. Samuels, *Statutory Limitations on Civil Rights of People with Criminal Records*, 30 *Fordham URB. L.J.* 1501, 1509–10 (2003) (noting that 29 of the 40 states that allow expungement/sealing of arrest records permit the subject of the record to deny its existence if asked about it on employment applications or similar forms, and 13 of the 16 states that allow the expungement/sealing of adult conviction records permit the subject of the record to deny its existence under similar circumstances).

Employers performing background checks to screen applicants or employees may attempt to search these governmental sources themselves or conduct a simple Internet search, but they often rely on third-party background screening businesses.<sup>41</sup> Businesses that sell criminal history information to employers are “consumer reporting agencies” (CRAs)<sup>42</sup> if they provide the information in “consumer reports”<sup>43</sup> under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (FCRA). Under FCRA, a CRA generally may not report records of arrests that did not result in entry of a judgment of conviction, where the arrests occurred more than seven years ago.<sup>44</sup> However, they may report convictions indefinitely.<sup>45</sup>

CRAAs often maintain their own proprietary databases that compile information from various sources, such as those described above, depending on the extent to which the business has purchased or otherwise obtained access to data.<sup>46</sup> Such databases vary with respect to the geographic area covered, the type of information included (e.g., information about arrests, convictions, prison terms, or specialized information for a subset of employers such as information about workplace theft or shoplifting cases for retail employers<sup>47</sup>), the sources of information used (e.g., county databases, law enforcement agency records, sex offender registries), and the frequency with which they are updated. They also may be missing certain types of disposition information, such as updated convictions, sealing or expungement orders, or orders for entry into a diversion program.<sup>48</sup>

## **B. Employers' Use of Criminal History Information**

In one survey, a total of 92% of responding employers stated that they subjected all or some of their job candidates to criminal background checks.<sup>49</sup> Employers have reported that their use of criminal history information is related to ongoing efforts to combat theft and fraud,<sup>50</sup> as well as heightened concerns about workplace violence<sup>51</sup> and potential liability for negligent hiring.<sup>52</sup> Employers also cite federal laws as well as state and local laws<sup>53</sup> as reasons for using criminal background checks.

## **C. The EEOC's Interest in Employers' Use of Criminal Records in Employment Screening**

The EEOC enforces Title VII, which prohibits employment discrimination based on race, color, religion, sex, or national origin. Having a criminal record is not listed as a protected basis in Title VII. Therefore, whether a covered employer's reliance on a criminal record to deny employment violates Title VII depends on whether it is part of a claim of employment discrimination based on race, color, religion, sex, or national origin. Title VII liability for employment discrimination is determined using two analytic frameworks: "disparate treatment" and "disparate impact." Disparate treatment is discussed in Section IV and disparate impact is discussed in Section V.

# **IV. DISPARATE TREATMENT DISCRIMINATION AND CRIMINAL RECORDS**

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A covered employer is liable for violating Title VII when the plaintiff demonstrates that it treated him differently because of his race, national origin, or another protected basis.<sup>54</sup> For example, there is Title VII disparate treatment liability where the evidence shows that a covered employer rejected an African American applicant based on his criminal record but hired a similarly situated White applicant with a comparable criminal record.<sup>55</sup>

### ***Example 1: Disparate Treatment Based on Race.***

John, who is White, and Robert, who is African American, are both recent graduates of State University. They have similar educational backgrounds, skills, and work experience. They each pled guilty to charges of possessing and distributing marijuana as high school students, and neither of them had any subsequent contact with the criminal justice system.

After college, they both apply for employment with Office Jobs, Inc., which, after short intake interviews, obtains their consent to conduct a background check. Based on the outcome of the background check, which reveals their drug convictions, an Office Jobs, Inc., representative decides not to refer Robert for a follow-up interview. The representative remarked to a co-worker that Office Jobs, Inc., cannot afford to refer "these drug dealer types" to client companies. However, the same representative refers John for an interview, asserting that John's youth at the time of the conviction and his subsequent lack of contact with the criminal justice system make the conviction unimportant. Office Jobs, Inc., has treated John and Robert differently based on race, in violation of Title VII.

- Title VII prohibits "not only decisions driven by racial [or ethnic] animosity, but also decisions infected by stereotyped thinking . . . ."<sup>56</sup> Thus, an employer's decision to reject a job applicant based on racial or ethnic stereotypes about criminality—rather than qualifications and suitability for the position—is unlawful disparate treatment that violates Title VII.<sup>57</sup>

### **Example 2: Disparate Treatment Based on National Origin.**

Tad, who is White, and Nelson, who is Latino, are both recent high school graduates with grade point averages above 4.0 and college plans. While Nelson has successfully worked full-time for a landscaping company during the summers, Tad only held occasional lawn-mowing and camp-counselor jobs. In an interview for a research job with Meaningful and Paid Internships, Inc. (MPII), Tad discloses that he pled guilty to a felony at age 16 for accessing his school's computer system over the course of several months without authorization and changing his classmates' grades. Nelson, in an interview with MPII, emphasizes his successful prior work experience, from which he has good references, but also discloses that, at age 16, he pled guilty to breaking and entering into his high school as part of a class prank that caused little damage to school property. Neither Tad nor Nelson had subsequent contact with the criminal justice system.

The hiring manager at MPII invites Tad for a second interview, despite his record of criminal conduct. However, the same hiring manager sends Nelson a rejection notice, saying to a colleague that Nelson is only qualified to do manual labor and, moreover, that he has a criminal record. In light of the evidence showing that Nelson's and Tad's educational backgrounds are similar, that Nelson's work experience is more extensive, and that Tad's criminal conduct is more indicative of untrustworthiness, MPII has failed to state a legitimate, nondiscriminatory reason for rejecting Nelson. If Nelson filed a Title VII charge alleging disparate treatment based on national origin and the EEOC's investigation confirmed these facts, the EEOC would find reasonable cause to believe that discrimination occurred.

There are several kinds of evidence that may be used to establish that race, national origin, or other protected characteristics motivated an employer's use of criminal records in a selection decision, including, but not limited to:

- Biased statements. Comments by the employer or decisionmaker that are derogatory with respect to the charging party's protected group, or that express group-related stereotypes about criminality, might be evidence that such biases affected the evaluation of the applicant's or employee's criminal record.
- Inconsistencies in the hiring process. Evidence that the employer requested criminal history information more often for individuals with certain racial or ethnic backgrounds, or gave Whites but not racial minorities the opportunity to explain their criminal history, would support a showing of disparate treatment.
- Similarly situated comparators (individuals who are similar to the charging party in relevant respects, except for membership in the protected group). Comparators may include people in similar positions, former employees, and people chosen for a position over the charging party. The fact that a charging party was treated differently than individuals who are not in the charging party's protected group by, for example, being subjected to more or different criminal background checks or to different standards for evaluating criminal history, would be evidence of disparate treatment.
- Employment testing. Matched-pair testing may reveal that candidates are being treated differently because of a protected status.<sup>58</sup>
- Statistical evidence. Statistical analysis derived from an examination of the employer's applicant data, workforce data, and/or third party criminal background history data may help to determine if the employer counts criminal history information more heavily against members of a protected group.

## **V. DISPARATE IMPACT DISCRIMINATION AND CRIMINAL RECORDS**

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A covered employer is liable for violating Title VII when the plaintiff demonstrates that the employer's neutral policy or practice has the effect of disproportionately screening out a Title VII-protected group and the employer fails to demonstrate that the policy or practice is job related for the position in question and consistent with business necessity.<sup>59</sup>

In its 1971 *Griggs v. Duke Power Company* decision, the Supreme Court first recognized that Title VII permits disparate impact claims.<sup>60</sup> The *Griggs* Court explained that "[Title VII] proscribes . . . practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude [African Americans] cannot be shown to be related to job performance, the practice is prohibited."<sup>61</sup> In 1991,

Congress amended Title VII to codify this analysis of discrimination and its burdens of proof.<sup>62</sup> Title VII, as amended, states:

An unlawful employment practice based on disparate impact is established... if a complaining party demonstrates that an employer uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity...<sup>63</sup>

With respect to criminal records, there is Title VII disparate impact liability where the evidence shows that a covered employer's criminal record screening policy or practice disproportionately screens out a Title VII-protected group and the employer does not demonstrate that the policy or practice is job related for the positions in question and consistent with business necessity.

## **A. Determining Disparate Impact of Policies or Practices that Screen Individuals Based on Records of Criminal Conduct**

### **1. Identifying the Policy or Practice**

The first step in disparate impact analysis is to identify the particular policy or practice that causes the unlawful disparate impact. For criminal conduct exclusions, relevant information includes the text of the policy or practice, associated documentation, and information about how the policy or practice was actually implemented. More specifically, such information also includes which offenses or classes of offenses were reported to the employer (e.g., all felonies, all drug offenses); whether convictions (including sealed and/or expunged convictions), arrests, charges, or other criminal incidents were reported; how far back in time the reports reached (e.g., the last five, ten, or twenty years); and the jobs for which the criminal background screening was conducted.<sup>64</sup> Training or guidance documents used by the employer also are relevant, because they may specify which types of criminal history information to gather for particular jobs, how to gather the data, and how to evaluate the information after it is obtained.

### **2. Determining Disparate Impact**

Nationally, African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population. In 2010, 28% of all arrests were of African Americans,<sup>65</sup> even though African Americans only comprised approximately 14% of the general population.<sup>66</sup> In 2008, Hispanics were arrested for federal drug charges at a rate of approximately three times their proportion of the general population.<sup>67</sup> Moreover, African Americans and Hispanics were more likely than Whites to be arrested, convicted, or sentenced for drug offenses even though their rate of drug use is similar to the rate of drug use for Whites.<sup>68</sup>

African Americans and Hispanics also are incarcerated at rates disproportionate to their numbers in the general population. Based on national incarceration data, the U.S. Department of Justice estimated in 2001 that 1 out of every 17 White men (5.9% of the White men in the U.S.) is expected to go to prison at some point during his lifetime, assuming that current incarceration rates remain unchanged.<sup>69</sup> This rate climbs to 1 in 6 (or 17.2%) for Hispanic men.<sup>70</sup> For African American men, the rate of expected incarceration rises to 1 in 3 (or 32.2%).<sup>71</sup> Based on a state-by-state examination of incarceration rates in 2005, African Americans were incarcerated at a rate 5.6 times higher than Whites,<sup>72</sup> and 7 states had a Black-to-White ratio of incarceration that was 10 to 1.<sup>73</sup> In 2010, Black men had an imprisonment rate that was nearly 7 times higher than White men and almost 3 times higher than Hispanic men.<sup>74</sup>

National data, such as that cited above, supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to further investigate such Title VII disparate impact charges. During an EEOC investigation, the employer also has an opportunity to show, with relevant evidence, that its employment policy or practice does not cause a disparate impact on the protected group(s). For example, an employer may present regional or local data showing that African American and/or Hispanic men are not arrested or convicted at disproportionately higher rates in the employer's particular geographic area. An employer also may use its own applicant data to demonstrate that its policy or practice did not cause a disparate impact. The Commission will assess relevant evidence when making a determination of disparate impact, including applicant flow information maintained pursuant to the Uniform Guidelines on Employee Selection Procedures,<sup>75</sup> workforce data, criminal history background check data, demographic availability statistics, incarceration/conviction data, and/or relevant labor market statistics.<sup>76</sup>

An employer's evidence of a racially balanced workforce will not be enough to disprove disparate impact. In *Connecticut v. Teal*, the Supreme Court held that a "bottom line" racial balance in the workforce does not preclude employees from establishing a prima facie case of disparate impact; nor does it provide employers with a defense.<sup>77</sup> The issue is whether the policy or practice deprives a disproportionate number of Title VII-protected individuals of employment opportunities.<sup>78</sup>

Finally, in determining disparate impact, the Commission will assess the probative value of an employer's applicant data. As the Supreme Court stated in *Dothard v. Rawlinson*, an employer's "application process might itself not adequately reflect the actual potential applicant pool since otherwise qualified people might be discouraged from applying" because of an alleged discriminatory policy or practice.<sup>79</sup> Therefore, the Commission will closely consider whether an employer has a reputation in the community for excluding individuals with criminal records. Relevant evidence may come from ex-offender employment programs, individual testimony, employer statements, evidence of employer recruitment practices, or publicly posted notices, among other sources.<sup>80</sup> The Commission will determine the persuasiveness of such evidence on a case-by-case basis.

## **B. Job Related For the Position in Question and Consistent with Business Necessity**

### **1. Generally**

After the plaintiff in litigation establishes disparate impact, Title VII shifts the burdens of production and persuasion to the employer to "demonstrate that the challenged practice is job related for the position in question and consistent with business necessity."<sup>81</sup> In the legislative history of the 1991 Civil Rights Act, Congress referred to *Griggs* and its progeny such as *Albemarle Paper Company v. Moody*<sup>82</sup> and *Dothard*<sup>83</sup> to explain how this standard should be construed.<sup>84</sup> The *Griggs* Court stated that the employer's burden was to show that the policy or practice is one that "bear[s] a demonstrable relationship to successful performance of the jobs for which it was used" and "measures the person for the job and not the person in the abstract."<sup>85</sup> In both *Albemarle*<sup>86</sup> and *Dothard*,<sup>87</sup> the Court emphasized the factual nature of the business necessity inquiry. The Court further stated in *Dothard* that the terms of the exclusionary policy must "be shown to be necessary to safe and efficient job performance."<sup>88</sup>

In a case involving a criminal record exclusion, the Eighth Circuit in its 1975 *Green v. Missouri Pacific Railroad* decision, held that it was discriminatory under Title VII for an employer to "follow[] the policy of disqualifying for employment any applicant with a conviction for any crime other than a minor traffic offense."<sup>89</sup> The Eighth Circuit identified three factors (the "*Green* factors") that were relevant to assessing whether an exclusion is job related for the position in question and consistent with business necessity:

- The nature and gravity of the offense or conduct;<sup>90</sup>
- The time that has passed since the offense or conduct and/or completion of the sentence;<sup>91</sup> and
- The nature of the job held or sought.<sup>92</sup>

In 2007, the Third Circuit in *EI v. Southeastern Pennsylvania Transportation Authority*<sup>93</sup> developed the statutory analysis in greater depth. Douglas EI challenged SEPTA's policy of excluding everyone ever convicted of a violent crime from the job of paratransit driver.<sup>94</sup> EI, a 55 year-old African American paratransit driver-trainee, was terminated from employment when SEPTA learned of his conviction for second-degree murder 40 years earlier; the conviction involved a gang fight when he was 15 years old and was his only disqualifying offense under SEPTA's policy.<sup>95</sup> The Third Circuit expressed "reservations" about a policy such as SEPTA's (exclusion for all violent crimes, no matter how long ago they were committed) "in the abstract."<sup>96</sup>

Applying Supreme Court precedent, the *EI* court observed that some level of risk is inevitable in all hiring, and that, "[i]n a broad sense, hiring policies . . . ultimately concern the management of risk."<sup>97</sup> Recognizing that assessing such risk is at the heart of criminal record exclusions, the Third Circuit concluded that Title VII requires employers to justify criminal record exclusions by demonstrating that they "accurately distinguish between applicants [who] pose an unacceptable level of risk and those [who] do not."<sup>98</sup>

The Third Circuit affirmed summary judgment for SEPTA, but stated that the outcome of the case might have been different if Mr. El had, “for example, hired an expert who testified that there is a time at which a former criminal is no longer any more likely to recidivate than the average person, . . . [so] there would be a factual question for the jury to resolve.”<sup>99</sup> The Third Circuit reasoned, however, that the recidivism evidence presented by SEPTA’s experts, in conjunction with the nature of the position at issue—paratransit driver-trainee with unsupervised access to vulnerable adults—required the employer to exercise the utmost care.<sup>100</sup>

In the subsections below, the Commission discusses considerations that are relevant to assessing whether criminal record exclusion policies or practices are job related and consistent with business necessity. First, we emphasize that arrests and convictions are treated differently.

## **2. Arrests**

The fact of an arrest does not establish that criminal conduct has occurred.<sup>101</sup> Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed.<sup>102</sup> Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.<sup>103</sup>

An arrest, however, may in some circumstances trigger an inquiry into whether the conduct underlying the arrest justifies an adverse employment action. Title VII calls for a fact-based analysis to determine if an exclusionary policy or practice is job related and consistent with business necessity. Therefore, an exclusion based on an arrest, in itself, is not job related and consistent with business necessity.

Another reason for employers not to rely on arrest records is that they may not report the final disposition of the arrest (e.g., not prosecuted, convicted, or acquitted). As documented in Section III.A., *supra*, the DOJ/BJIS reported that many arrest records in the FBI’s III database and state criminal record repositories are not associated with final dispositions.<sup>104</sup> Arrest records also may include inaccuracies or may continue to be reported even if expunged or sealed.<sup>105</sup>

### **Example 3: Arrest Record Is Not Grounds for Exclusion.**

Mervin and Karen, a middle-aged African American couple, are driving to church in a predominantly white town. An officer stops them and interrogates them about their destination. When Mervin becomes annoyed and comments that his offense is simply “driving while Black,” the officer arrests him for disorderly conduct. The prosecutor decides not to file charges against Mervin, but the arrest remains in the police department’s database and is reported in a background check when Mervin applies with his employer of fifteen years for a promotion to an executive position. The employer’s practice is to deny such promotions to individuals with arrest records, even without a conviction, because it views an arrest record as an indicator of untrustworthiness and irresponsibility. If Mervin filed a Title VII charge based on these facts, and disparate impact based on race were established, the EEOC would find reasonable cause to believe that his employer violated Title VII.

Although an arrest record standing alone may not be used to deny an employment opportunity, an employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question. The conduct, not the arrest, is relevant for employment purposes.

### **Example 4: Employer’s Inquiry into Conduct Underlying Arrest.**

Andrew, a Latino man, worked as an assistant principal in Elementary School for several years. After several ten and eleven-year-old girls attending the school accused him of touching them inappropriately on the chest, Andrew was arrested and charged with several counts of endangering the welfare of children and sexual abuse. Elementary School has a policy that requires suspension or termination of any employee who the school believes engaged in conduct that impacts the health or safety of the students. After learning of the accusations, the school immediately places Andrew on unpaid administrative leave pending an investigation. In the course of its investigation, the school provides Andrew a chance to explain the events and circumstances that led to his arrest. Andrew denies the allegations, saying that he may have brushed up against the girls in the crowded hallways or lunchroom, but that he doesn’t really remember the incidents and does not have regular contact with any of the girls. The school also talks with the girls, and several of them recount touching in crowded situations. The school does not find Andrew’s explanation credible. Based on Andrew’s conduct, the school terminates his employment pursuant to its policy.

Andrew challenges the policy as discriminatory under Title VII. He asserts that it has a disparate impact based on national origin and that his employer may not suspend or terminate him based solely on an arrest without a conviction because he is innocent until proven guilty. After confirming that an arrest policy would have a disparate impact based on national origin, the EEOC concludes that no discrimination occurred. The school's policy is linked to conduct that is relevant to the particular jobs at issue, and the exclusion is made based on descriptions of the underlying conduct, not the fact of the arrest. The Commission finds no reasonable cause to believe Title VII was violated.

### 3. Convictions

By contrast, a record of a conviction will usually serve as sufficient evidence that a person engaged in particular conduct, given the procedural safeguards associated with trials and guilty pleas.<sup>106</sup> However, there may be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor.<sup>107</sup>

Some states require employers to wait until late in the selection process to ask about convictions.<sup>108</sup> The policy rationale is that an employer is more likely to objectively assess the relevance of an applicant's conviction if it becomes known when the employer is already knowledgeable about the applicant's qualifications and experience.<sup>109</sup> As a best practice, and consistent with applicable laws,<sup>110</sup> the Commission recommends that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.

### 4. Determining Whether a Criminal Conduct Exclusion Is Job Related and Consistent with Business Necessity

To establish that a criminal conduct exclusion that has a disparate impact is job related and consistent with business necessity under Title VII, the employer needs to show that the policy operates to effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position.

Two circumstances in which the Commission believes employers will consistently meet the "job related and consistent with business necessity" defense are as follows:

- The employer validates the criminal conduct screen for the position in question per the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines) standards (if data about criminal conduct as related to subsequent work performance is available and such validation is possible);<sup>111</sup> or
- The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three *Green* factors), and then provides an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job related and consistent with business necessity.

The individualized assessment would consist of notice to the individual that he has been screened out because of a criminal conviction; an opportunity for the individual to demonstrate that the exclusion should not be applied due to his particular circumstances; and consideration by the employer as to whether the additional information provided by the individual warrants an exception to the exclusion and shows that the policy as applied is not job related and consistent with business necessity. See Section V.B.9, *infra* (examples of relevant considerations in individualized assessments).

Depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the *Green* factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessarily require individualized assessment in all circumstances. However, the use of individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees, as part of a policy that is job related and consistent with business necessity.

## 5. Validation

The Uniform Guidelines describe three different approaches to validating employment screens.<sup>112</sup> However, they recognize that “[t]here are circumstances in which a user cannot or

need not utilize” formal validation techniques and that in such circumstances an employer “should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact as set forth [in the following subsections].”<sup>113</sup> Although there may be social science studies that assess whether convictions are linked to future behaviors, traits, or conduct with workplace ramifications,<sup>114</sup> and thereby provide a framework for validating some employment exclusions, such studies are rare at the time of this drafting.

## 6. Detailed Discussion of the *Green* Factors and Criminal Conduct Screens

Absent a validation study that meets the Uniform Guidelines’ standards, the *Green* factors provide the starting point for analyzing how specific criminal conduct may be linked to particular positions. The three *Green* factors are:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense, conduct and/or completion of the sentence; and
- The nature of the job held or sought.

### A. The Nature and Gravity of the Offense or Conduct

Careful consideration of the nature and gravity of the offense or conduct is the first step in determining whether a specific crime may be relevant to concerns about risks in a particular position. The nature of the offense or conduct may be assessed with reference to the harm caused by the crime (e.g., theft causes property loss). The legal elements of a crime also may be instructive. For example, a conviction for felony theft may involve deception, threat, or intimidation.<sup>115</sup> With respect to the gravity of the crime, offenses identified as misdemeanors may be less severe than those identified as felonies.

### B. The Time that Has Passed Since the Offense, Conduct and/or Completion of the Sentence

Employer policies typically specify the duration of a criminal conduct exclusion. While the *Green* court did not endorse a specific timeframe for criminal conduct exclusions, it did acknowledge that permanent exclusions from all employment based on any and all offenses were not consistent with the business necessity standard.<sup>116</sup> Subsequently, in *EI*, the court noted that the plaintiff might have survived summary judgment if he had presented evidence that “there is a time at which a former criminal is no longer any more likely to recidivate than the average person . . . .”<sup>117</sup> Thus, the court recognized that the amount of time that had passed since the plaintiff’s criminal conduct occurred was probative of the risk he posed in the position in question.

Whether the duration of an exclusion will be sufficiently tailored to satisfy the business necessity standard will depend on the particular facts and circumstances of each case. Relevant and available information to make this assessment includes, for example, studies demonstrating how much the risk of recidivism declines over a specified time.<sup>118</sup>

### C. The Nature of the Job Held or Sought

Finally, it is important to identify the particular job(s) subject to the exclusion. While a factual inquiry may begin with identifying the job title, it also encompasses the nature of the job’s duties (e.g., data entry, lifting boxes), identification of the job’s essential functions, the circumstances under which the job is performed (e.g., the level of supervision, oversight, and interaction with co-workers or vulnerable individuals), and the environment in which the job’s duties are performed (e.g., out of doors, in a warehouse, in a private home). Linking the criminal conduct to the essential functions of the position in question may assist an employer in demonstrating that its policy or practice is job related and consistent with business necessity because it “bear[s] a demonstrable relationship to successful performance of the jobs for which it was used.”<sup>119</sup>

## 7. Examples of Criminal Conduct Exclusions that Do Not Consider the *Green* Factors

A policy or practice requiring an automatic, across-the-board exclusion from all employment opportunities because of any criminal conduct is inconsistent with the *Green* factors because it does not focus on the dangers of particular crimes and the risks in particular positions. As the court recognized in *Green*, “[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed.”<sup>120</sup>

### **Example 5: Exclusion Is Not Job Related and Consistent with Business Necessity.**

The National Equipment Rental Company uses the Internet to accept job applications for all positions. All applicants must answer certain questions before they are permitted to submit their online application, including “have you ever been convicted of a crime?” If the applicant answers “yes,” the online application process automatically terminates, and the applicant sees a screen that simply says “Thank you for your interest. We cannot continue to process your application at this time.”

The Company does not have a record of the reasons why it adopted this exclusion, and it does not have information to show that convictions for all offenses render all applicants unacceptable risks in all of its jobs, which range from warehouse work, to delivery, to management positions. If a Title VII charge were filed based on these facts, and there was a disparate impact on a Title VII-protected basis, the EEOC would find reasonable cause to believe that the blanket exclusion was not job related and consistent with business necessity because the risks associated with all convictions are not pertinent to all of the Company’s jobs.

### **Example 6: Exclusion Is Not Job Related and Consistent with Business Necessity.**

Leo, an African American man, has worked successfully at PR Agency as an account executive for three years. After a change of ownership, the new owners adopt a policy under which it will not employ anyone with a conviction. The policy does not allow for any individualized assessment before exclusion. The new owners, who are highly respected in the industry, pride themselves on employing only the “best of the best” for every position. The owners assert that a quality workforce is a key driver of profitability.

Twenty years earlier, as a teenager, Leo pled guilty to a misdemeanor assault charge. During the intervening twenty years, Leo graduated from college and worked successfully in advertising and public relations without further contact with the criminal justice system. At PR Agency, all of Leo’s supervisors assessed him as a talented, reliable, and trustworthy employee, and he has never posed a risk to people or property at work. However, once the new ownership of PR Agency learns about Leo’s conviction record through a background check, it terminates his employment. It refuses to reconsider its decision despite Leo’s positive employment history at PR Agency.

Leo files a Title VII charge alleging that PR Agency’s conviction policy has a disparate impact based on race and is not job related for the position in question and consistent with business necessity. After confirming disparate impact, the EEOC considers PR Agency’s defense that it employs only the “best of the best” for every position, and that this necessitates excluding everyone with a conviction. PR Agency does not show that all convictions are indicative of risk or danger in all its jobs for all time, under the *Green* factors. Nor does PR Agency provide any factual support for its assertion that having a conviction is necessarily indicative of poor work or a lack of professionalism. The EEOC concludes that there is reasonable cause to believe that the Agency’s policy is not job related for the position in question and consistent with business necessity.<sup>121</sup>

## 8. Targeted Exclusions that Are Guided by the *Green* Factors

An employer policy or practice of excluding individuals from particular positions for specified criminal conduct within a defined time period, as guided by the *Green* factors, is a targeted exclusion. Targeted exclusions are tailored to the rationale for their adoption, in light of the particular criminal conduct and jobs involved, taking into consideration fact-based evidence, legal requirements, and/or relevant and available studies.

As discussed above in Section V.B.4, depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the *Green* factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessar-

ily require individualized assessment in all circumstances. However, the use of individualized assessments can help employers avoid Title VII liability by allowing them to consider more complete information on individual applicants or employees, as part of a policy that is job related and consistent with business necessity.

## 9. Individualized Assessment

Individualized assessment generally means that an employer informs the individual that he may be excluded because of past criminal conduct; provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity.

The individual's showing may include information that he was not correctly identified in the criminal record, or that the record is otherwise inaccurate. Other relevant individualized evidence includes, for example:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison;<sup>122</sup>
- Evidence that the individual performed the same type of work, post conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;<sup>123</sup>
- Rehabilitation efforts, e.g., education/training;<sup>124</sup>
- Employment or character references and any other information regarding fitness for the particular position;<sup>125</sup> and
- Whether the individual is bonded under a federal, state, or local bonding program.<sup>126</sup>

If the individual does not respond to the employer's attempt to gather additional information about his background, the employer may make its employment decision without the information.

### **Example 7: Targeted Screen with Individualized Assessment Is Job-Related and Consistent with Business Necessity.**

County Community Center rents meeting rooms to civic organizations and small businesses, party rooms to families and social groups, and athletic facilities to local recreational sports leagues. The County has a targeted rule prohibiting anyone with a conviction for theft crimes (e.g., burglary, robbery, larceny, identity theft) from working in a position with access to personal financial information for at least four years after the conviction or release from incarceration. This rule was adopted by the County's Human Resources Department based on data from the County Corrections Department, national criminal data, and recent recidivism research for theft crimes. The Community Center also offers an opportunity for individuals identified for exclusion to provide information showing that the exclusion should not be applied to them.

Isaac, who is Hispanic, applies to the Community Center for a full-time position as an administrative assistant, which involves accepting credit card payments for room rentals, in addition to having unsupervised access to the personal belongings of people using the facilities. After conducting a background check, the County learns that Isaac pled guilty eighteen months earlier, at age twenty, to credit card fraud, and that he did not serve time in prison. Isaac confirms these facts, provides a reference from the restaurant where he now works on Saturday nights, and asks the County for a "second chance" to show that he is trustworthy. The County tells Isaac that it is still rejecting his employment application because his criminal conduct occurred eighteen months ago and is directly pertinent to the job in question. The information he provided did nothing to dispel the County's concerns.

Isaac challenges this rejection under Title VII, alleging that the policy has a disparate impact on Hispanics and is not job related and consistent with business necessity. After confirming disparate impact, the EEOC finds that this screen was carefully tailored to assess unacceptable risk in relevant positions, for a limited time period, consistent with the evidence, and that the policy avoided overbroad exclusions by allowing individuals an opportunity to explain special circumstances regarding their criminal conduct. Thus, even though the policy has a disparate impact on Hispanics, the EEOC does not find reasonable cause to believe that discrimination occurred because the policy is job related and consistent with business necessity.<sup>127</sup>

**Example 8: Targeted Exclusion Without Individualized Assessment Is Not Job Related and Consistent with Business Necessity.**

“Shred 4 You” employs over 100 people to pick up discarded files and sensitive materials from offices, transport the materials to a secure facility, and shred and recycle them. The owner of “Shred 4 You” sells the company to a competitor, known as “We Shred.” Employees of “Shred 4 You” must reapply for employment with “We Shred” and undergo a background check. “We Shred” has a targeted criminal conduct exclusion policy that prohibits the employment of anyone who has been convicted of any crime related to theft or fraud in the past five years, and the policy does not provide for any individualized consideration. The company explains that its clients entrust it with handling sensitive and confidential information and materials; therefore, it cannot risk employing people who pose an above-average risk of stealing information.

Jamie, who is African American, worked successfully for “Shred 4 You” for five years before the company changed ownership. Jamie applies for his old job, and “We Shred” reviews Jamie’s performance appraisals, which include high marks for his reliability, trustworthiness, and honesty. However, when “We Shred” does a background check, it finds that Jamie pled guilty to misdemeanor insurance fraud five years ago, because he exaggerated the costs of several home repairs after a winter storm. “We Shred” management informs Jamie that his guilty plea is evidence of criminal conduct and that his employment will be terminated. Jamie asks management to consider his reliable and honest performance in the same job at “Shred 4 You,” but “We Shred” refuses to do so. The employer’s conclusion that Jamie’s guilty plea demonstrates that he poses an elevated risk of dishonesty is not factually based given Jamie’s history of trustworthiness in the same job. After confirming disparate impact based on race (African American), the EEOC finds reasonable cause to believe that Title VII was violated because the targeted exclusion was not job related and consistent with business necessity based on these facts.

**C. Less Discriminatory Alternatives**

If an employer successfully demonstrates that its policy or practice is job related for the position in question and consistent with business necessity, a Title VII plaintiff may still prevail by demonstrating that there is a less discriminatory “alternative employment practice” that serves the employer’s legitimate goals as effectively as the challenged practice but that the employer refused to adopt.<sup>128</sup>

**VI. POSITIONS SUBJECT TO FEDERAL PROHIBITIONS OR RESTRICTIONS ON INDIVIDUALS WITH RECORDS OF CERTAIN CRIMINAL CONDUCT**

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In some industries, employers are subject to federal statutory and/or regulatory requirements that prohibit individuals with certain criminal records from holding particular positions or engaging in certain occupations. Compliance with federal laws and/or regulations is a defense to a charge of discrimination. However, the EEOC will continue to coordinate with other federal departments and agencies with the goal of maximizing federal regulatory consistency with respect to the use of criminal history information in employment decisions.<sup>129</sup>

**A. Hiring in Certain Industries**

Federal laws and regulations govern the employment of individuals with specific convictions in certain industries or positions in both the private and public sectors. For example, federal law excludes an individual who was convicted in the previous ten years of specified crimes from working as a security screener or otherwise having unescorted access to the secure areas of an airport.<sup>130</sup> There are equivalent requirements for federal law enforcement officers,<sup>131</sup>

child care workers in federal agencies or facilities,<sup>132</sup> bank employees,<sup>133</sup> and port workers,<sup>134</sup> among other positions.<sup>135</sup> Title VII does not preempt these federally imposed restrictions. However, if an employer decides to impose an exclusion that goes beyond the scope of a federally imposed restriction, the discretionary aspect of the policy would be subject to Title VII analysis.

### **Example 9: Exclusion Is Not Job-Related and Consistent with Business Necessity.**

Your Bank has a rule prohibiting anyone with convictions for any type of financial or fraud-related crimes within the last twenty years from working in positions with access to customer financial information, even though the federal ban is ten years for individuals who are convicted of any criminal offense involving dishonesty, breach of trust, or money laundering from serving in such positions.

Sam, who is Latino, applies to Your Bank to work as a customer service representative. A background check reveals that Sam was convicted of a misdemeanor for misrepresenting his income on a loan application fifteen years earlier. Your Bank therefore rejects Sam, and he files a Title VII charge with the EEOC, alleging that the Bank's policy has a disparate impact based on national origin and is not job related and consistent with business necessity. Your Bank asserts that its policy does not cause a disparate impact and that, even if it does, it is job-related for the position in question because customer service representatives have regular access to financial information and depositors must have "100% confidence" that their funds are safe. However, Your Bank does not offer evidence showing that there is an elevated likelihood of committing financial crimes for someone who has been crime-free for more than ten years. After establishing that the Bank's policy has a disparate impact based on national origin, the EEOC finds that the policy is not job-related for the position in question and consistent with business necessity. The Bank's justification for adding ten years to the federally mandated exclusion is insufficient because it is only a generalized concern about security, without proof.

### **B. Obtaining Occupational Licenses**

Title VII also does not preempt federal statutes and regulations that govern eligibility for occupational licenses and registrations. These restrictions cover diverse sectors of the economy including the transportation industry,<sup>136</sup> the financial industry,<sup>137</sup> and import/export activities,<sup>138</sup> among others.<sup>139</sup>

### **C. Waiving or Appealing Federally Imposed Occupational Restrictions**

Several federal statutes and regulations provide a mechanism for employers or individuals to appeal or apply for waivers of federally imposed occupational restrictions. For example, unless a bank receives prior written consent from the Federal Deposit Insurance Corporation (FDIC), an individual convicted of a criminal offense involving dishonesty, breach of trust, money laundering, or another financially related crime may not work in, own, or control "an insured depository institution" (e.g., bank) for ten years under the Federal Deposit Insurance Act.<sup>140</sup> To obtain such FDIC consent, the insured institution must file an application for a waiver on behalf of the particular individual.<sup>141</sup> Alternatively, if the insured institution does not apply for the waiver on the individual's behalf, the individual may file a request directly with the FDIC for a waiver of the institution filing requirement, demonstrating "substantial good cause" to grant the waiver.<sup>142</sup> If the FDIC grants the individual's waiver request, the individual can then file an application directly with the FDIC for consent to work for the insured institution in question.<sup>143</sup> Once the institution, or the individual, submits the application, the FDIC's criminal record waiver review process requires consideration of mitigating factors that are consistent with Title VII, including evidence of rehabilitation, and the nature and circumstances of the crime.<sup>144</sup>

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6201, 124 Stat. 721 (2010) (the Act) includes a process to appeal or dispute the accuracy of information obtained from criminal records. The Act requires participating states to perform background checks on applicants and current employees who have direct access to patients in long-term care facilities, such as nursing homes, to determine if they have been convicted of an offense or have other disqualifying information in their background, such as a finding of patient or resident abuse, that would disqualify them from employment under the Social Security Act or as specified by state law. See 42 U.S.C. § 1320a-7l(a)(3)(A), (a)(4)(B), (6)(A)–(E). The background check involves an individualized assessment of the relevance of a conviction or other disqualifying information. The Act protects applicants and employees in several ways, for example, by: ① providing a 60-day provisional period of employment for the prospective employee, pending the completion of the criminal records check; ② providing an independent process to appeal or dispute the accuracy of the information obtained in the criminal records check; and ③ allowing the employee to remain employed (subject to direct on-site supervision) during the appeals process. 42 U.S.C. § 1320a-7l(a)(4)(B)(iii), (iv).

Additionally, port workers who are denied the Transportation Workers Identification Credential (TWIC) based on their conviction record may seek a waiver for certain permanently disqualifying offenses or interim disqualifying offenses, and also may file an individualized appeal from the Transportation Security Administration's initial determination of threat assessment based on the conviction.<sup>145</sup> The Maritime Transportation Security Act, which requires all port workers to undergo a criminal background check to obtain a TWIC,<sup>146</sup> provides that individuals with convictions for offenses such as espionage, treason, murder, and a federal crime of terrorism are permanently disqualified from obtaining credentials, but those with convictions for firearms violations and distribution of controlled substances may be temporarily disqualified.<sup>147</sup> Most offenses related to dishonesty are only temporarily disqualifying.<sup>148</sup>

#### **Example 10: Consideration of Federally Imposed Occupational Restrictions.**

John Doe applies for a position as a truck driver for Truckers USA. John's duties will involve transporting cargo to, from, and around ports, and Truckers USA requires all of its port truck drivers to have a TWIC. The Transportation Security Administration (TSA) conducts a criminal background check and may deny the credential to applicants who have permanently disqualifying criminal offenses in their background as defined by federal law. After conducting the background check for John Doe, TSA discovers that he was convicted nine years earlier for conspiracy to use weapons of mass destruction. TSA denies John a security card because this is a permanently disqualifying criminal offense under federal law.<sup>149</sup> John, who points out that he was a minor at the time of the conviction, requests a waiver by TSA because he had limited involvement and no direct knowledge of the underlying crime at the time of the offense. John explains that he helped a friend transport some chemical materials that the friend later tried to use to damage government property. TSA refuses to grant John's waiver request because a conviction for conspiracy to use weapons of mass destruction is not subject to the TSA's waiver procedures.<sup>150</sup> Based on this denial, Truckers USA rejects John's application for the port truck driver position. Title VII does not override Truckers USA's policy because the policy is consistent with another federal law.

While Title VII does not mandate that an employer seek such waivers, where an employer does seek waivers it must do so in a nondiscriminatory manner.

#### **D. Security Clearances**

The existence of a criminal record may result in the denial of a federal security clearance, which is a prerequisite for a variety of positions with the federal government and federal government contractors.<sup>151</sup> A federal security clearance is used to ensure employees' trustworthiness, reliability, and loyalty before providing them with access to sensitive national security information.<sup>152</sup> Under Title VII's national security exception, it is not unlawful for an employer to "fail or refuse to hire and employ" an individual because "such individual has not fulfilled or has ceased to fulfill" the federal security requirements.<sup>153</sup> This exception focuses on whether the position in question is, in fact, subject to national security requirements that are imposed by federal statute or Executive Order, and whether the adverse employment action actually resulted from the denial or revocation of a security clearance.<sup>154</sup> Procedural requirements related to security clearances must be followed without regard to an individual's race, color, religion, sex, or national origin.<sup>155</sup>

OPM is also responsible for establishing standards that help agencies decide whether to grant their employees and contractor personnel long-term access to federal facilities and information systems. See Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors, *2 Pub. Papers 1765* (Aug. 27, 2004) ("establishing a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors [including contractor employees]"); see also Exec. Order No. 13,467, § 2.3(b), 3 C.F.R. 196 (2009 Comp.) ("[T]he Director of [OPM] . . . [is] responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability and eligibility for logical and physical access."); see generally Shriver, *supra* note 157.

## E. Working for the Federal Government

Title VII provides that, with limited coverage exceptions, “[a]ll personnel actions affecting employees or applicants for employment . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin.”<sup>156</sup> The principles discussed above in this Guidance apply in the federal employment context. In most circumstances, individuals with criminal records are not automatically barred from working for the federal government.<sup>157</sup> However, the federal government imposes criminal record restrictions on its workforce through “suitability” requirements for certain positions.<sup>158</sup> The federal government’s Office of Personnel Management (OPM) defines suitability as “determinations based on a person’s character or conduct that may have an impact on the integrity or efficiency of the service.”<sup>159</sup> Under OPM’s rules, agencies may bar individuals from federal employment for up to three years if they are found unsuitable based on criminal or dishonest conduct, among other factors.<sup>160</sup> OPM gives federal agencies the discretion to consider relevant mitigating criteria when deciding whether an individual is suitable for a federal position.<sup>161</sup> These mitigating criteria, which are consistent with the three *Green* factors and also provide an individualized assessment of the applicant’s background, allow consideration of: ① the nature of the position for which the person is applying or in which the person is employed; ② the nature and seriousness of the conduct; ③ the circumstances surrounding the conduct; ④ the recency of the conduct; ⑤ the age of the person involved at the time of the conduct; ⑥ contributing societal conditions; and ⑦ the absence or presence of rehabilitation or efforts toward rehabilitation.<sup>162</sup> In general, OPM requires federal agencies and departments to consider hiring an individual with a criminal record if he is the best candidate for the position in question and can comply with relevant job requirements.<sup>163</sup> The EEOC continues to coordinate with OPM to achieve employer best practices in the federal sector.<sup>164</sup>

## VII. POSITIONS SUBJECT TO STATE AND LOCAL PROHIBITIONS OR RESTRICTIONS ON INDIVIDUALS WITH RECORDS OF CERTAIN CRIMINAL CONDUCT

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States and local jurisdictions also have laws and/or regulations that restrict or prohibit the employment of individuals with records of certain criminal conduct.<sup>165</sup> Unlike federal laws or regulations, however, state and local laws or regulations are preempted by Title VII if they “purport[] to require or permit the doing of any act which would be an unlawful employment practice” under Title VII.<sup>166</sup> Therefore, if an employer’s exclusionary policy or practice is *not* job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.<sup>167</sup>

### ***Example 11: State Law Exclusion Is Job Related and Consistent with Business Necessity.***

Elijah, who is African American, applies for a position as an office assistant at Pre-School, which is in a state that imposes criminal record restrictions on school employees. Pre-School, which employs twenty-five full- and part-time employees, uses all of its workers to help with the children. Pre-School performs a background check and learns that Elijah pled guilty to charges of indecent exposure two years ago. After being rejected for the position because of his conviction, Elijah files a Title VII disparate impact charge based on race to challenge Pre-School’s policy. The EEOC conducts an investigation and finds that the policy has a disparate impact and that the exclusion is job related for the position in question and consistent with business necessity because it addresses serious safety risks of employment in a position involving regular contact with children. As a result, the EEOC would not find reasonable cause to believe that discrimination occurred.

### ***Example 12: State Law Exclusion Is Not Consistent with Title VII.***

County Y enforces a law that prohibits all individuals with a criminal conviction from working for it. Chris, an African American man, was convicted of felony welfare fraud fifteen years ago, and has not had subsequent contact with the criminal justice system. Chris applies to County Y for a job as an animal control officer trainee, a position that involves learning how to respond to citizen complaints and handle animals. The County rejects Chris’s application as soon as it learns that he has a felony conviction. Chris files a Title VII charge, and the EEOC investigates, finding disparate impact based on race and also that the exclusionary policy is not job related and consistent with business necessity. The County cannot justify rejecting everyone with any conviction from all jobs. Based on these facts, County Y’s law “purports to require or permit the doing of any act which would be an unlawful employment practice” under Title VII.

## VIII. EMPLOYER BEST PRACTICES

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The following are examples of best practices for employers who are considering criminal record information when making employment decisions.

### **General**

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decisionmakers about Title VII and its prohibition on employment discrimination.

### **Developing a Policy**

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
  - Identify essential job requirements and the actual circumstances under which the jobs are performed.
  - Determine the specific offenses that may demonstrate unfitness for performing such jobs.
    - Identify the criminal offenses based on all available evidence.
  - Determine the duration of exclusions for criminal conduct based on all available evidence.
    - Include an individualized assessment.
  - Record the justification for the policy and procedures.
  - Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decisionmakers on how to implement the policy and procedures consistent with Title VII.

### **Questions about Criminal Records**

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.

### **Confidentiality**

- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

*Approved by the Commission:*

**Chair Jacqueline A. Berrien Date**

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## ENDNOTES

<sup>1</sup> 42 U.S.C. § 2000e et seq. The EEOC also enforces other anti-discrimination laws including: Title I of the Americans with Disabilities Act of 1990, as amended (ADA), and Section 501 of the Rehabilitation Act, as amended, which prohibit employment discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits discrimination on the basis of age 40 or above; Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits discrimination on the basis of genetic information; and the Equal Pay Act of 1963, as amended (EPA), which requires employers to pay male and female employees at the same establishment equal wages for equal work.

<sup>2</sup> All entities covered by Title VII are subject to this analysis. See 42 U.S.C. § 2000e-2 (anti-discrimination provisions); 42 U.S.C. § 2000e(b)–(e) (defining “employer,” “employment agency,” and “labor organization”); 42 U.S.C. § 2000e-16(a) (prohibiting discriminatory employment practices by federal departments and agencies). For purposes of this Guidance, the term “employer” is used in lieu of listing all Title VII-covered entities. The Commission considers other coverage questions that arise in particular charges involving, for example, joint employment or third party interference in *Compliance Manual Section 2: Threshold Issues, U.S. Equal Emp’t Opportunity Comm’n, § 2-III B., Covered Entities*, <http://www.eeoc.gov/policy/docs/threshold>.

html#2-III-B (last visited April 23, 2012).

<sup>3</sup> For the purposes of this Guidance, references to “contact” with the criminal justice system may include, for example, an arrest, charge, indictment, citation, conviction, incarceration, probation, or parole.

<sup>4</sup> See Thomas P. Bonczar, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Prevalence of Imprisonment in the U.S. Population, 1974–2001*, at 3 (2003), <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf> [hereinafter *Prevalence of Imprisonment*] (“Between 1974 and 2001 the number of former prisoners living in the United States more than doubled, from 1,603,000 to 4,299,000.”); Sean Rosenmerkel et al., Bureau of Justice Statistics, U.S. Dep’t of Justice, *Felony Sentences in State Courts, 2006 – Statistical Tables 1* (2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf> (reporting that between 1990 and 2006, there has been a 37% increase in the number of felony offenders sentenced in state courts); see also Pew Ctr. on the States, *One in 31: The Long Reach of American Corrections 4* (2009), [http://www.pewcenteronthestates.org/uploadedFiles/PSPP\\_1in31\\_report\\_FINAL\\_WEB\\_3-26-09.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf) [hereinafter *One in 31*] (“During the past quarter-century, the number of prison and jail inmates has grown by 274 percent . . . [bringing] the total population in custody to 2.3 million. During the same period, the number under community supervision grew by a staggering 3,535,660 to a total of 5.1 million.”); Pew Ctr. on the States, *One in 100: Behind Bars in America 2008*, at 3 (2008), [http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS\\_Prison08\\_FINAL\\_2-1-1\\_FORWEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf) (“[M]ore than one in every 100 adults is now confined in an American jail or prison.”); Robert Brame, Michael G. Turner, Raymond Paternoster, & Shawn D. Bushway, *Cumulative Prevalence of Arrest From Ages 8 to 23 in a National Sample*, 129 *Pediatrics* 21, 25, 26 (2012) (finding that approximately 1 out of 3 of all American youth will experience at least 1 arrest for a nontraffic offense by the age of 23).

<sup>5</sup> See John Schmitt & Kris Warner, Ctr. for Econ. & Policy Research, *Ex-Offenders and the Labor Market 12* (2010), [www.cepr.net/documents/publications/ex-offenders-2010-11.pdf](http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf) (“In 2008, ex-prisoners were 2.9 to 3.2 percent of the total working-age population (excluding those currently in prison or jail) or about one in 33 working-age adults. Ex-felons were a larger share of the total working-age population: 6.6 to 7.4 percent, or about one in 15 working-age adults [not all felons serve prison terms.]”); see *id.* at 3 (concluding that “in the absence of some reform of the criminal justice system, the share of ex-offenders in the working-age population will rise substantially in coming decades”).

<sup>6</sup> *Prevalence of Imprisonment*, *supra* note 4, at 4, Table 3.

<sup>7</sup> *Id.*

<sup>8</sup> *One in 31*, *supra* note 4, at 5 (noting that when all of the individuals who are probationers, parolees, prisoners or jail inmates are added up, the total is more than 7.3 million adults; this is more than the populations of Chicago, Philadelphia, San Diego, and Dallas combined, and larger than the populations of 38 states and the District of Columbia).

<sup>9</sup> *Prevalence of Imprisonment*, *supra* note 4, at 7.

<sup>10</sup> *Id.* at 5, Table 5; cf. Pew Ctr. on the States, *Collateral Costs: Incarceration's Effect on Economic Mobility 6* (2010), [http://www.pewcenteronthestates.org/uploadedFiles/Collateral\\_Costs.pdf?n=8653](http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653) (“Simply stated, incarceration in America is concentrated among African American men. While 1 in every 87 white males ages 18 to 64 is incarcerated and the number for similarly-aged Hispanic males is 1 in 36, for black men it is 1 in 12.”). Incarceration rates are even starker for 20-to-34-year-old men without a high school diploma or GED: 1 in 8 White males in this demographic group is incarcerated, compared to 1 in 14 Hispanic males, and 1 in 3 Black males. Pew Ctr. on the States, *supra*, at 8, Figure 2.

<sup>11</sup> This document uses the terms “Black” and “African American,” and the terms “Hispanic” and “Latino,” interchangeably.

<sup>12</sup> See *infra* notes 65–67 (citing data for the arrest rates and population statistics for African Americans and Hispanics).

<sup>13</sup> *Prevalence of Imprisonment*, *supra* note 4, at 1.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> See *Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964, U.S. Equal Emp’t Opportunity Comm’n* (Feb. 4, 1987), <http://www.eeoc.gov/policy/docs/convict1.html>; *EEOC Policy Statement on the Use of Statistics in Charges Involving the Exclusion of Individuals with Conviction Records from Employment, U.S. Equal Emp’t Opportunity Comm’n* (July 29, 1987), <http://www.eeoc.gov/policy/docs/convict2.html>; *Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII, U.S. Equal Emp’t Opportunity Comm’n* (Sept. 7, 1990), [http://www.eeoc.gov/policy/docs/arrest\\_records.html](http://www.eeoc.gov/policy/docs/arrest_records.html); *Compliance Manual Section 15: Race & Color Discrimination, U.S. Equal Emp’t Opportunity Comm’n*, § 15-VI.B.2 (April 19, 2006), <http://www.eeoc.gov/policy/docs/race-color.pdf>. See also EEOC Decision No. 72-1497 (1972) (challenging a criminal record exclusion policy based on “serious crimes”); EEOC Decision No. 74-89 (1974) (challenging a policy where a felony conviction was considered an adverse factor that would lead to disqualification); EEOC Decision No. 78-03 (1977) (challenging an exclusion policy based on felony or misdemeanor convictions involving moral turpitude or the use of drugs); EEOC Decision No. 78-35 (1978) (concluding that an employee’s discharge was reasonable given his pattern of criminal behavior and the severity and recentness of his criminal conduct).

<sup>16</sup> In 2011, U.S. Attorney General Eric Holder assembled a Cabinet-level interagency Reentry Council to support the federal government’s efforts to promote the successful reintegration of ex-offenders back into their communities. *National Reentry Resource Center – Federal Interagency Reentry Council*, <http://www.nationalreentryresourcecenter.org/reentry-council> (last visited April 23, 2012). As a part of the Council’s efforts, it has focused on removing barriers to employment for ex-offenders to reduce recidivism by publishing several fact sheets on employing individuals with criminal records. See, e.g., *Fed. Interagency Reentry Council, Reentry Mythbuster! On Federal Hiring Policies* (2011), [http://www.nationalreentryresourcecenter.org/documents/0000/1083/Reentry\\_Council\\_Mythbuster\\_Fed\\_Employment.pdf](http://www.nationalreentryresourcecenter.org/documents/0000/1083/Reentry_Council_Mythbuster_Fed_Employment.pdf); *Fed. Interagency Reentry Council, Reentry Mythbuster! On Hiring/Criminal Records Guidance* (2011), [http://www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry\\_Council\\_Mythbuster\\_Employment.pdf](http://www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf); *FED. Interagency Reentry Council, Reentry Mythbuster! Criminal Histories and Employment Background Checks* (2011), [http://www.nationalreentryresourcecenter.org/documents/0000/1176/Reentry\\_Council\\_Mythbuster\\_FCRA\\_Employment.pdf](http://www.nationalreentryresourcecenter.org/documents/0000/1176/Reentry_Council_Mythbuster_FCRA_Employment.pdf); *Fed. Interagency Reentry Council, Reentry Mythbuster! On Federal Bonding Program* (2011), [http://www.nationalreentryresourcecenter.org/documents/0000/1061/Reentry\\_Council\\_Mythbuster\\_Federal\\_Bonding.pdf](http://www.nationalreentryresourcecenter.org/documents/0000/1061/Reentry_Council_Mythbuster_Federal_Bonding.pdf).

In addition to these federal efforts, several state law enforcement agencies have embraced initiatives and programs that encourage the employment of ex-offenders. For example, Texas’ Department of Criminal Justice has a Reentry and Integration Division and within that Division, a Reentry Task Force Workgroup. See *Reentry and Integration Division-Reentry Task Force, Tex. Dep’t of Criminal Justice*, [http://www.tdcj.state.tx.us/divisions/rid/rid\\_texas\\_reentry\\_task\\_force.html](http://www.tdcj.state.tx.us/divisions/rid/rid_texas_reentry_task_force.html) (last visited April 23, 2012). One of the Workgroups in this Task Force specifically focuses on identifying employment opportunities for ex-offenders and barriers that affect ex-offenders’ access to employment or vocational

training programs. *Reentry and Integration Division – Reentry Task Force Workgroups*, Tex. Dep’t of Criminal Justice, [http://www.tdcj.state.tx.us/divisions/rid/r\\_workgroup/rid\\_workgroup\\_employment.html](http://www.tdcj.state.tx.us/divisions/rid/r_workgroup/rid_workgroup_employment.html) (last visited April 23, 2012). Similarly, Ohio’s Department of Rehabilitation and Correction has an Offender Workforce Development Office that “works with departmental staff and correctional institutions within the Ohio Department of Rehabilitation and Correction to prepare offenders for employment and the job search process.” *Jobs for Ohio Offenders*, Ohio Dep’t of Rehab. and Corr. Offender Workforce Dev., <http://www.drc.ohio.gov/web/JOBOFFEN.HTM> (last updated Aug. 9, 2010). Law enforcement agencies in other states such as Indiana and Florida have also recognized the importance of encouraging ex-offender employment. See, e.g., *Idoc: Road To Re-Entry*, Ind. Dep’t of Corr., <http://www.in.gov/idoc/reentry/index.htm> (last visited April 23, 2012) (describing various services and programs that are available to ex-offenders to help them to obtain employment); *Fla. Dep’t of Corrs., Recidivism Reduction Strategic Plan: Fiscal Year 2009-2014*, at 11, 12 (2009), <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (identifying the lack of employment as one of the barriers to successful ex-offender reentry).

<sup>17</sup> Carl R. Ernst & Les Rosen, “National” Criminal History Databases 1 (2002), <http://www.brpbpub.com/articles/CriminalHistoryDB.pdf>.

<sup>18</sup> LexisNexis, *Criminal Background Checks: What Non-Profits Need To Know About Criminal Records* 4 (2009), [http://www.lexisnexis.com/risk/nonprofit/documents/Volunteer\\_Screening\\_White\\_Paper.pdf](http://www.lexisnexis.com/risk/nonprofit/documents/Volunteer_Screening_White_Paper.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> Ernst & Rosen, *supra* note 17, at 1; Nat’l Ass’n of Prof’l Background Screeners, *Criminal Background Checks for Employment Purposes* 5, [http://www.napbs.com/files/public/Learn\\_More/White\\_Papers/CriminalBackgroundChecks.pdf](http://www.napbs.com/files/public/Learn_More/White_Papers/CriminalBackgroundChecks.pdf).

<sup>21</sup> LexisNexis, *supra* note 18, at 6. See also Nat’l Ass’n of Prof’l Background Screeners, *supra* note 20 at 5.

<sup>22</sup> Ernst & Rosen, *supra* note 17, at 1.

<sup>23</sup> *Id.*

<sup>24</sup> See SEARCH, *The National Task Force on the Criminal Backgrounding of America* 3, 4 (2005), <http://www.search.org/files/pdf/ReportofNTFCBA.pdf>. Registries and watch lists can also include federal and international terrorist watch lists, and registries of individuals who are being investigated for certain types of crimes, such as gang-related crimes. *Id.* See also LexisNexis, *supra* note 18, at 5 (reporting that “all 50 states currently have a publicly available sex offender registry”).

<sup>25</sup> See U.S. Dep’t of Justice, *the Attorney General’s Report on Criminal History Background Checks* 4 (2006), [http://www.justice.gov/olp/ag\\_bgchecks\\_report.pdf](http://www.justice.gov/olp/ag_bgchecks_report.pdf) [hereinafter *Background Checks*]. See also Ernst & Rosen, *supra* note 17, at 2.

<sup>26</sup> See Nat’l Ass’n of Prof’l Background Screeners, *supra* note 20, at 5. See also LexisNexis, *supra* note 18, at 5.

<sup>27</sup> LexisNexis, *supra* note 18, at 5. See also Am. Ass’n of Colls. of Pharmacy, *Report of the AACP Criminal Background Check Advisory Panel 6–7* (2006), <http://www.aacp.org/resources/academicpolicies/admissionguidelines/Documents/AACPBackgroundChkRpt.pdf>.

<sup>28</sup> Am. Ass’n of Colls. of Pharmacy, *supra* note 27, at 6–7.

<sup>29</sup> *Background Checks*, *supra* note 25, at 4.

<sup>30</sup> *Id.*

<sup>31</sup> Nat’l Ass’n of Prof’l Background Screeners, *supra* note 20, at 5.

<sup>32</sup> *Background Checks*, *supra* note 25, at 4.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> See *id.* (“Non-criminal justice screening using FBI criminal history records is typically done by a government agency applying suitability criteria that have been established by law or the responsible agency.”).

<sup>35</sup> *Id.* at 5.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> Dennis A. Debacco & Owen M. Greenspan, *Bureau of Justice Statistics, U.S. Dep’t of Justice, Survey of State Criminal History Information Systems*, 2010, at 2 (2011), <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf> [hereinafter *State Criminal History*].

<sup>38</sup> See *Background Checks*, *supra* note 25, at 17.

<sup>39</sup> SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* 83 (2005), [www.search.org/files/pdf/RNTF-CSCJRI.pdf](http://www.search.org/files/pdf/RNTF-CSCJRI.pdf); see also Douglas Belkin, *More Job Seekers Scramble to Erase Their Criminal Past*, *Wall St. J.*, Nov. 11, 2009, at A1, available at <http://online.wsj.com/article/SB125789494126242343.html?KEYWORDS=Douglas+Belkin> (“Arrests that have been legally expunged may remain on databases that data-harvesting companies offer to prospective employers; such background companies are under no legal obligation to erase them.”).

<sup>40</sup> See SEARCH, *Interstate Identification Name Check Efficacy: Report of the National Task Force To the U.S. Attorney General* 21–22 (1999), [www.search.org/files/pdf/III\\_Name\\_Check.pdf](http://www.search.org/files/pdf/III_Name_Check.pdf) (“A so-called ‘name check’ is based not only on an individual’s name, but also on other personal identifiers such as sex, race, date of birth and Social Security Number. . . . [N]ame checks are known to produce inaccurate results as a consequence of identical or similar names and other identifiers.”); *id.* at 7 (finding that in a sample of 82,601 employment applicants, 4,562 of these individuals were inaccurately indicated by a “name check” to have criminal records, which represents approximately 5.5% of the overall sample).

<sup>41</sup> *Background Checks*, *supra* note 25, at 2.

<sup>42</sup> A “consumer reporting agency” is defined by FCRA as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purposes of furnishing consumer reports to third parties . . . .” 15 U.S.C. § 1681a(f) (emphasis added); see also *Background Checks*, *supra* note 25, at 43 (stating

that the records that CRAs collect include "criminal history information, such as arrest and conviction information").

<sup>43</sup> A "consumer report" is defined by FCRA as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, *character, general reputation, personal characteristics*, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for . . . employment purposes . . ." 15 U.S.C. § 1681a(d)(1) (emphasis added).

<sup>44</sup> See 15 U.S.C. § 1681c(a)(2) ("[N]o consumer reporting agency may make any consumer report containing . . . records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period."). *But see id.* §1681c(b)(3) (stating that the reporting restrictions for arrest records do not apply to individuals who will earn "an annual salary which equals, or which may reasonably be expected to equal \$75,000 or more").

<sup>45</sup> 15 U.S.C. § 1681c(a)(5) ("[N]o consumer reporting agency may make any consumer report containing . . . [a]ny other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.").

<sup>46</sup> *Background Checks*, *supra* note 25, at 2.

<sup>47</sup> See Adam Klein, *Written Testimony of Adam Klein, U.S. Equal Emp't Opportunity Comm'n*, <http://www.eeoc.gov/eeoc/meetings/7-26-11/klein.cfm> (last visited April 23, 2012) (describing how "several data-collection agencies also market and sell a retail-theft contributory database that is used by prospective employers to screen applicants"). See also *Retail Theft Database, ESTEEM, Workplace Theft Contributory Database, LexisNexis*, <http://www.lexisnexis.com/risk/solutions/retail-theft-contributory-database.aspx> (last visited April 23, 2012) (stating that their database has "[t]heft and shoplifting cases supplied by more than 75,000 business locations across the country"). These databases may contain inaccurate and/or misleading information about applicants and/or employees. See generally *Goode v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 2:11-CV-2950-JD, 2012 WL 975043 (E.D. Pa. Mar. 22, 2012) (unpublished).

<sup>48</sup> *Background Checks*, *supra* note 25, at 2.

<sup>49</sup> *Soc'y for Human Res. Mgmt., Background Checking: Conducting Criminal Background Checks*, slide 3 (Jan. 22, 2010), [http://www.slideshare.net/shrm/background-check-criminal?from=share\\_email](http://www.slideshare.net/shrm/background-check-criminal?from=share_email) [hereinafter *Conducting Criminal Background Checks*] (73% of the responding employers reported that they conducted criminal background checks on all of their job candidates, 19% reported that they conducted criminal background checks on selected job candidates, and a mere 7% reported that they did not conduct criminal background checks on any of their candidates). The survey excluded the "not sure" responses from its analysis, which may account for the 1% gap in the total number of employer responses. *Id.*

<sup>50</sup> *Conducting Criminal Background Checks*, *supra* note 49, at slide 7 (39% of the surveyed employers reported that they conducted criminal background checks "[t]o reduce/prevent theft and embezzlement, other criminal activity"); see also Sarah E. Needleman, *Businesses Say Theft by Their Workers is Up*, *Wall St. J.*, Dec. 11, 2008, at B8, available at <http://online.wsj.com/article/SB122896381748896999.html>.

<sup>51</sup> *Conducting Criminal Background Checks*, *supra* note 49, at slide 7 (61% of the surveyed employers reported that they conducted criminal background checks "[to] ensure a safe work environment for employees"); see also Erika Harrell, *Bureau of Justice Statistics, U.S. Dep't of Justice, Workplace Violence, 1993-2009*, at 1 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/wv09.pdf> (reporting that in 2009, "[n]onfatal violence in the workplace was about 15% of all nonfatal violent crime against persons age 16 or older"). *But see id.* (noting that from "2002 to 2009, the rate of nonfatal workplace violence has declined by 35%, following a 62% decline in the rate from 1993 to 2002"). Studies indicate that most workplace violence is committed by individuals with no relationship to the business or its employees. See *id.* at 6 (reporting that between 2005 and 2009, strangers committed the majority of workplace violence against individuals (53% for males and 41% for females) while violence committed by co-workers accounted for a much smaller percentage (16.3% for males and 14.3% for females)); see also *Nat'l Inst. for Occupational Safety & Health, Ctr. for Disease Control & Prevention, Workplace Violence Prevention Strategies and Research Needs 4*, Table 1 (2006), <http://www.cdc.gov/niosh/docs/2006-144/pdfs/2006-144.pdf> (reporting that approximately 85% of the workplace homicides examined were perpetrated in furtherance of a crime by persons with no relationship to the business or its employees; approximately 7% were perpetrated by employees or former employees, 5% were committed by persons with a personal relationship to an employee, and 3% were perpetrated by persons with a customer-client relationship to the business).

<sup>52</sup> *Conducting Criminal Background Checks*, *supra* note 49, at slide 7 (55% percent of the surveyed employers reported that they conducted criminal background checks "[t]o reduce legal liability for negligent hiring"). Employers have a common law duty to exercise reasonable care in hiring to avoid foreseeable risks of harm to employees, customers, and the public. If an employee engages in harmful misconduct on the job, and the employer has not exercised such care in selecting the employee, the employer may be subject to liability for negligent hiring. See, e.g., *Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1318 (M.D. Fla. 2002) ("[N]egligent hiring occurs when . . . the employer knew or should have known of the employee's unfitness, and the issue of liability primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background.").

<sup>53</sup> *Conducting Criminal Background Checks*, *supra* note 49, at slide 4 (40% of the surveyed employers reported that they conducted criminal background checks for "[j]ob candidates for positions for which state law requires a background check (e.g., day care teachers, licensed medical practitioners, etc.)"); see *id.* at slide 7 (20% of the employers reported that they conducted criminal background checks "[t]o comply with the applicable State law requiring a background check (e.g., day care teachers, licensed medical practitioners, etc.) for a particular position"). The study did not report the exact percentage of employers that conducted criminal background checks to comply with applicable federal laws or regulations, but it did report that 25% of the employers conducted background checks for "[j]ob candidates for positions involving national defense or homeland security." *Id.* at slide 4.

<sup>54</sup> See 42 U.S.C. § 2000e-2(a).

<sup>55</sup> Disparate treatment based on the race or national origin of job applicants with the same qualifications and criminal records has been documented. For example, a 2003 study demonstrated that White applicants with the same qualifications and criminal records as Black applicants were three times more likely to be invited for interviews than the Black applicants. See Devah Pager, *The Mark of a Criminal Record*, 108 *AM. J. SOC.* 937, 958, Figure 6 (2003), [www.princeton.edu/~pager/pager\\_ajs.pdf](http://www.princeton.edu/~pager/pager_ajs.pdf). Pager matched pairs of young Black and White men as "testers" for her study. The "testers" in Pager's study were college students who applied for 350 low-skilled jobs advertised in Milwaukee-area classified advertisements, to test the degree to which a criminal record affects subsequent employment opportunities. The same study showed that White job applicants with a criminal record were called back for interviews more often than equally-qualified Black applicants who *did not have* a criminal record. *Id.* at 958. See also Devah Pager et al., *Sequencing Disadvantage: The Effects of Race and Criminal Background for Low Wage Job Seekers*, 623 *Annals Am. Acad. Pol. & Soc. Sci.*, 199 (2009), [www.princ-](http://www.princ)

eton.edu/~pager/annals\_sequencingdisadvantage.pdf (finding that among Black and White testers with similar backgrounds and criminal records, “the negative effect of a criminal conviction is substantially larger for blacks than whites. . . . the magnitude of the criminal record penalty suffered by black applicants (60 percent) is roughly double the size of the penalty for whites with a record (30 percent)”; see *id.* at 200–201 (finding that personal contact plays an important role in mediating the effects of a criminal stigma in the hiring process, and that Black applicants are less often invited to interview, thereby having fewer opportunities to counteract the stigma by establishing rapport with the hiring official); Devah Pager, *Statement of Devah Pager, Professor of Sociology at Princeton University, U.S. Equal Emp’t Opportunity Comm’n*, <http://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm> (last visited April 23, 2012) (discussing the results of the *Sequencing Disadvantage* study); Devah Pager & Bruce Western, *NYC Commission on Human Rights, Race At Work, Realities of Race and Criminal Record in the Nyc Job Market* 6, Figure 2 (2006), [http://www.nyc.gov/html/cchr/pdf/race\\_report\\_web.pdf](http://www.nyc.gov/html/cchr/pdf/race_report_web.pdf) (finding that White testers with a felony conviction were called back 13% of the time, Hispanic testers without a criminal record were called back 14% of the time, and Black testers without a criminal record were called back 10% of the time).

<sup>56</sup> *Race & Color Discrimination*, *supra* note 15, § V.A.1.

<sup>57</sup> A 2006 study demonstrated that employers who are averse to hiring people with criminal records sometimes presumed, in the absence of evidence to the contrary, that African American men applying for jobs have disqualifying criminal records. Harry J. Holzer et al., *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 *J.L. & ECON.* 451 (2006), <http://www.jstor.org/stable/pdfplus/10.1086/501089.pdf>; see also Harry Holzer et al., *Urban Inst., Employer Demand for Ex-Offenders: Recent Evidence From Los Angeles 6–7* (2003), [http://www.urban.org/UploadedPDF/410779\\_ExOffenders.pdf](http://www.urban.org/UploadedPDF/410779_ExOffenders.pdf) (describing the results of an employer survey where over 40% of the employers indicated that they would “probably not” or “definitely not” be willing to hire an applicant with a criminal record).

<sup>58</sup> The Commission has not done matched-pair testing to investigate alleged discriminatory employment practices. However, it has issued an Enforcement Guidance that discusses situations where individuals or organizations file charges on the basis of matched-pair testing, among other practices. See generally *Enforcement Guidance: Whether “Testers” Can File Charges and Litigate Claims of Employment Discrimination*, *U.S. Equal Emp’t Opportunity Comm’n* (May 22, 1996), <http://www.eeoc.gov/policy/docs/testers.html>.

<sup>59</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(i). If an employer successfully demonstrates that its policy or practice is job related for the position in question and consistent with business necessity, a Title VII plaintiff may still prevail by demonstrating that there is a less discriminatory “alternative employment practice” that serves the employer’s legitimate goals as effectively as the challenged practice but that the employer refused to adopt. *Id.* § 2000e-2(k)(1)(A)(ii).

<sup>60</sup> 401 U.S. 424, 431–32 (1971).

<sup>61</sup> *Id.* at 431.

<sup>62</sup> The Civil Rights Act of 1991, Pub. L. No. 102-166, § 105; see also *Lewis v. City of Chicago*, 130 S. Ct. 2191 (2010) (reaffirming disparate impact analysis); *Ricci v. DeStefano*, 557 U.S. 557 (2009) (same).

<sup>63</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(i).

<sup>64</sup> The Commission presumes that employers use the information sought and obtained from its applicants and others in making an employment decision. See *Gregory v. Littton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal.1970). If an employer asserts that it did not factor the applicant’s or employee’s known criminal record into an employment decision, the EEOC will seek evidence supporting this assertion. For example, evidence that the employer has other employees from the same protected group with roughly comparable criminal records may support the conclusion that the employer did not use the applicant’s or employee’s criminal record to exclude him from employment.

<sup>65</sup> *Unif. Crime Reporting Program, Fed. Bureau of Investigation, Crime in the U.S. 2010*, at Table 43a (2011), <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-43/10tbl43a.xls>.

<sup>66</sup> *U.S. Census Bureau, the Black Population: 2010, At 3* (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf> (reporting that in 2010, “14 percent of all people in the United States identified as Black, either alone, or in combination with one or more races”).

<sup>67</sup> Accurate data on the number of Hispanics arrested and convicted in the United States is limited. See Nancy E. Walker et al., *Nat’l Council of La Raza, Lost Opportunities: The Reality of Latinos in the U.S. Criminal Justice System 17–18* (2004), <http://www.policyarchive.org/handle/10207/bitstreams/20279.pdf> (explaining why “[i]t is very difficult to find any information – let alone accurate information – on the number of Latinos arrested in the United States”). The Department of Justice’s Bureau of Justice Statistics (BJS) *Sourcebook of Criminal Justice Statistics* and the FBI’s Crime Information Services Division do not provide data for arrests by ethnicity. *Id.* at 17. However, the U.S. Drug Enforcement Administration (DEA) disaggregates data by Hispanic and non-Hispanic ethnicity. *Id.* at 18. According to DOJ/BJS, from October 1, 2008 to September 30, 2009, 45.5% of drug arrests made by the DEA were of Hispanics or Latinos. Mark Motivans, *Bureau of Justice Statistics, U.S. Dep’t of Justice, Federal Justice Statistics, 2009 – Statistical Tables*, at 6, Table 1.4 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fjs09.pdf>. Accordingly, Hispanics were arrested for drug offenses by the DEA at a rate of three times their numbers in the general population. See *U.S. Census Bureau, Overview of Race and Hispanic Origin: 2010*, at 3 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf> (reporting that in 2010, “there were 50.5 million Hispanics in the United States, composing 16 percent of the total population”). However, national statistics indicate that Hispanics have similar or lower drug usage rates compared to Whites. See, e.g., *Substance Abuse & Mental Health Servs. Admin., U.S. Dep’t of Health & Human Servs., Results From the 2010 National Survey on Drug Use and Health: Summary of National Findings 21*, Figure 2.10 (2011), <http://oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf> (reporting, for example, that the usage rate for Hispanics in 2009 was 7.9% compared to 8.8% for Whites).

<sup>68</sup> See, e.g., *Human Rights Watch, Decades of Disparity: Drug Arrests and Race in the United States 1* (2009), [http://www.hrw.org/sites/default/files/reports/us0309web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0309web_1.pdf) (noting that the “[t]he higher rates of black drug arrests do not reflect higher rates of black drug offending . . . blacks and whites engage in drug offenses - possession and sales - at roughly comparable rates”); *Substance Abuse & Mental Health Servs. Admin., U.S. Dep’t of Health & Human Servs., Results From the 2010 National Survey on Drug Use and Health: Summary of National Findings 21* (2011), <http://oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.pdf> (reporting that in 2010, the rates of illicit drug use in the United States among persons aged 12 or older were 10.7% for African Americans, 9.1% for Whites, and 8.1% for Hispanics); Harry Levine & Deborah Small, *N.Y. Civil Liberties Union, Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997–2007*, at 13–16 (2008), [www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE\\_Final.pdf](http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf) (citing U.S. Government surveys showing that Whites use marijuana at higher rates than African Americans and Hispanics; however, the marijuana arrest rate of Hispanics is nearly three times the arrest rate of Whites, and the marijuana arrest rate of African Americans is five times the arrest rate of Whites).

<sup>69</sup> *Prevalence of Imprisonment*, *supra* note 4, at 1, 8. Due to the nature of available data, the Commission is using incarceration data as a proxy for conviction data.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Marc Maurer & Ryan S. King, *The Sentencing Project, Uneven Justice: State Rates of Incarceration by Race and Ethnicity 10* (2007), [www.sentencing-project.org/Admin%5CDocuments%5Cpublications%5Crd\\_stateratesofincbyraceandethnicity.pdf](http://www.sentencing-project.org/Admin%5CDocuments%5Cpublications%5Crd_stateratesofincbyraceandethnicity.pdf).

<sup>73</sup> *Id.*

<sup>74</sup> Paul Guerino et al., *Bureau of Justice Statistics, U.S. Dep't of Justice, Prisoners in 2010*, at 27, Table 14 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf> (reporting that as of December 31, 2010, Black men were imprisoned at a rate of 3,074 per 100,000 Black male residents, Hispanic men were imprisoned at a rate of 1,258 per 100,000 Hispanic male residents, and White men were imprisoned at a rate of 459 per 100,000 White male residents); *cf. One in 31*, *supra* note 4, at 5 ("Black adults are four times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults -- 9.2 percent -- was under correctional control [probation, parole, prison, or jail] at year end 2007.").

<sup>75</sup> The Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. part 1607, provide that "[employers] should maintain and have available . . . information on [the] adverse impact of [their employment selection procedures]." 29 C.F.R. § 1607.15A. "Where [an employer] has not maintained [such records, the EEOC] may draw an inference of adverse impact of the selection process from the failure of [the employer] to maintain such data . . ." *Id.* § 1607.4D.

<sup>76</sup> See, e.g., *El v. SEPTA*, 418 F. Supp. 2d 659, 668–69 (E.D. Pa. 2005) (finding that the plaintiff established a prima facie case of disparate impact with evidence from the defendant's personnel records and national data sources from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S.), *aff'd on other grounds*, 479 F.3d 232 (3d Cir. 2007); *Green v. Mo. Pac. R.R.*, 523 F.2d 1290, 1294–95 (8th Cir. 1975) (concluding that the defendant's criminal record exclusion policy had a disparate impact based on race by evaluating local population statistics and applicant data), *appeal after remand*, 549 F.2d 1158, 1160 (8th Cir. 1977).

<sup>77</sup> 457 U.S. 440, 442 (1982).

<sup>78</sup> *Id.* at 453–54

<sup>79</sup> 433 U.S. 321, 330 (1977).

<sup>80</sup> See, e.g., *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) (stating that "[a] consistently enforced discriminatory policy can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection").

<sup>81</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(i). See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). See also 42 U.S.C. § 2000e(m) (defining the term "demonstrates" to mean "meets the burdens of production and persuasion").

<sup>82</sup> 422 U.S. 405 (1975).

<sup>83</sup> 433 U.S. 321 (1977).

<sup>84</sup> 137 *Cong. Rec.* 15273 (1991) (statement of Sen. Danforth) ("[T]he terms 'business necessity' and 'job related' are intended to reflect the concepts enunciated by the Supreme Court in *Griggs v. Duke Power Co.* and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio*." (citations omitted)). Section 105(b) of the Civil Rights Act of 1991 provides that only the interpretive memorandum read by Senator Danforth in the Congressional Record may be considered legislative history or relied upon in construing or applying the business necessity standard.

<sup>85</sup> 401 U.S. at 431, 436.

<sup>86</sup> 422 U.S. at 430–31 (endorsing the EEOC's position that discriminatory tests are impermissible unless shown, by professionally acceptable methods, to predict or correlate with "important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated" (quoting 29 C.F.R. § 1607.4(c))).

<sup>87</sup> 433 U.S. at 331–32 (concluding that using height and weight as proxies for strength did not satisfy the business necessity defense because the employer failed to establish a correlation between height and weight and the necessary strength, and also did not specify the amount of strength necessary to perform the job safely and efficiently).

<sup>88</sup> *Id.* at 331 n.14.

<sup>89</sup> 523 F.2d 1290, 1293 (8th Cir. 1975). "In response to a question on an application form, Green [a 29-year-old African American man] disclosed that he had been convicted in December 1967 for refusing military induction. He stated that he had served 21 months in prison until paroled on July 24, 1970." *Id.* at 1292–93.

<sup>90</sup> *Green v. Mo. Pac. R.R.*, 549 F.2d 1158, 1160 (8th Cir. 1977) (upholding the district court's injunction prohibiting the employer from using an applicant's conviction record as an absolute bar to employment but allowing it to consider a prior criminal record as a factor in making individual hiring decisions, as long as the defendant took these three factors into account).

<sup>91</sup> *Id.* (referring to completion of the sentence rather than completion of parole).

<sup>92</sup> *Id.*

<sup>93</sup> 479 F.3d 232 (3d Cir. 2007).

<sup>94</sup> *Id.* at 235.

<sup>95</sup> *Id.* at 235, 236.

<sup>96</sup> *Id.* at 235.

<sup>97</sup> *Id.* at 244.

<sup>98</sup> *Id.* at 244–45.

<sup>99</sup> *Id.* at 247. *Cf.* Shawn Bushway et al., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, 49 *Criminology* 27, 52 (2011) [hereinafter *The Predictive Value of Criminal Background Checks*] (“Given the results of the current as well as previous [recidivism] studies, the 40-year period put forward in *EI v. SEPTA* (2007) . . . seems too old of a score to be still in need of settlement.”).

<sup>100</sup> *EI*, 479 F.3d at 248.

<sup>101</sup> Some states have enacted laws to limit employer inquiries concerning all or some arrest records. *See Background Checks, supra* note 25, at 48–49. At least 13 states have statutes explicitly prohibiting arrest record inquiries and/or dissemination subject to certain exceptions. *See, e.g.*, Alaska (*Alaska Stat.* § 12.62.160(b)(8)); Arkansas (*Ark. Code Ann.* § 12-12-1009(c)); California (*Cal. Lab. Code* § 432.7(a)); Connecticut (*Conn. Gen. Stat.* § 46a-80(e)); Illinois (775 *Ill. Comp. Stat.* § 5/2-103(A)) (dealing with arrest records that have been ordered expunged, sealed, or impounded); Massachusetts (*Mass. Gen. Laws ch.* 151B § 4(9)); Michigan (*Mich. Comp. Laws* § 37.2205a(1) (applying to misdemeanor arrests only)); Nebraska (*Neb. Rev. Stat.* § 29-3523(2)) (ordering no dissemination of arrest records under certain conditions and specified time periods); New York (*N.Y. Exec. Law* § 296(16)); North Dakota (*N.D. Cent. Code* § 12-60-16.6(2)); Pennsylvania (18 *Pa. Cons. Stat.* § 9121(b)(2)); Rhode Island (*R.I. Gen. Laws* § 28-5-7(7)), and Wisconsin (*Wis. Stat.* §§ 111.321, 111.335a).

<sup>102</sup> *See United States v. Armstrong*, 517 U.S. 456, 464 (1996) (discussing federal prosecutors’ broad discretionary authority to determine whether to prosecute cases and whether to bring charges before a grand jury); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (explaining same for state prosecutors); *see also Thomas H. Cohen & Tracey Kyckelhahn, Bureau of Justice Statistics, U.S. Dep’t of Justice, Felony Defendants in Large Urban Counties, 2006*, at 10, Table 11 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf> (reporting that in the 75 largest counties in the country, nearly one-third of the felony arrests did not result in a conviction because the charges against the defendants were dismissed).

<sup>103</sup> *Schware v. Bd. of Bar Exam’rs*, 353 U.S. 232, 241 (1957) (“The mere fact that a [person] has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.”); *United States v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006) (upholding a preliminary jury instruction that stated that a “defendant is presumed to be innocent unless proven guilty. The indictment against the Defendant is only an accusation, nothing more. It’s not proof of guilt or anything else.”); *see Gregory v. Litton Sys. Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (“[I]nformation concerning a prospective employee’s record of arrests without convictions, is irrelevant to [an applicant’s] suitability or qualification for employment.”), *modified on other grounds*, 472 F.2d 631 (9th Cir. 1972); *Dozier v. Chupka*, 395 F. Supp. 836, 850 n.10 (S.D. Ohio 1975) (stating that the use of arrest records was too crude a predictor of an employee’s predilection for theft where there were no procedural safeguards to prevent reliance on unwarranted arrests); *City of Cairo v. Ill. Fair Empl. Prac. Comm.*, 8 *Empl. Prac. Dec.* (CCH) 9682 (Ill. App. Ct. 1974) (concluding that, where applicants sought to become police officers, they could not be absolutely barred from appointment solely because they had been arrested, as distinguished from convicted); *see also EEOC Dec.* 74-83, ¶ 6424 (CCH) (1983) (finding no business justification for an employer’s unconditional termination of all employees with arrest records (all five employees terminated were Black), purportedly to reduce thefts in the workplace; the employer produced no evidence that these particular employees had been involved in any of the thefts, or that all people who are arrested but not convicted are prone towards crime in the future); *EEOC Dec.* 76-87, ¶ 6665 (CCH) (1983) (holding that an applicant who sought to become a police officer could not be rejected based on one arrest five years earlier for riding in a stolen car when he asserted that he did not know that the car was stolen and the charge was dismissed).

<sup>104</sup> *See State Criminal History, supra* note 37, at 2; *see also Background Checks, supra* note 25, at 17.

<sup>105</sup> *See supra* notes 39–40.

<sup>106</sup> *See Clark v. Arizona*, 548 U.S. 735, 766 (2006) (“The first presumption [in a criminal case] is that a defendant is innocent unless and until the government proves beyond a reasonable doubt each element of the offense charged. . . .”). *See also Fed. R. Crim P 11* (criminal procedure rule governing pleas). The Supreme Court has concluded that criminal defendants have a Sixth Amendment right to effective assistance of counsel during plea negotiations. *See generally Lafler v. Cooper*, 132 S. Ct. 1376 (2012); *Missouri v. Frye*, 132 S. Ct. 1399 (2012).

<sup>107</sup> *See supra* text accompanying note 39.

<sup>108</sup> *See e.g., Haw. Rev. Stat.* § 378-2.5(b). Under this provision, the employer may withdraw the offer of employment if the prospective employee has a conviction record “that bears a rational relationship to the duties and responsibilities of the position.” *Id.* *See also Conn. Gen. Stat.* § 46a-80(b) (“[N]o employer . . . shall inquire about a prospective employee’s past convictions until such prospective employee has been deemed otherwise qualified for the position.”); *Minn. Stat.* § 364.021(a) (“[A] public employer may not inquire or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.”). State fair employment practices agencies have information about applicable state law.

<sup>109</sup> *See generally Nat’l League of Cities & Nat’l Emp’t Law Project, Cities Pave the Way: Promising Reentry Policies That Promote Local Hiring of People With Criminal Records* (2010), [www.nelp.org/page/-/SCLP/2010/CitiesPaveTheWay.pdf?nocdn=1](http://www.nelp.org/page/-/SCLP/2010/CitiesPaveTheWay.pdf?nocdn=1) (identifying local initiatives that address ways to increase employment opportunities for individuals with criminal records, including delaying a background check until the final stages of the hiring process, leveraging development funds, and expanding bid incentive programs to promote local hiring priorities); *Nat’l Emp’t Law Project, City and County Hiring Initiatives* (2010), [www.nelp.org/page/-/SCLP/CityandCountyHiringInitiatives.pdf](http://www.nelp.org/page/-/SCLP/CityandCountyHiringInitiatives.pdf) (discussing the various city and county initiatives that have removed questions regarding criminal history from the job application and have waited until after a conditional offer of employment has been made to conduct a background check and inquire about the applicant’s criminal background).

<sup>110</sup> Several federal laws automatically prohibit employing individuals with certain felony convictions or, in some cases, misdemeanor convictions. *See, e.g.*, 5 U.S.C. § 7371(b) (requiring the mandatory removal of any federal law enforcement officer who is convicted of a felony); 46 U.S.C. § 70105(c) (1)(A) (mandating that individuals who have been convicted of espionage, sedition, treason or terrorism be permanently disqualified from receiving a biometric transportation security card and thereby excluded from port work employment); 42 U.S.C. § 13726(b)(1) (disqualifying persons with felony convictions or domestic violence convictions from working for a private prisoner transport company); 25 U.S.C. § 3207(b) (prohibiting individuals with a felony conviction, or any of two or more misdemeanor convictions, from working with Indian children if their convictions involved crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children); 18 U.S.C. § 922(g)(1), (9) (prohibiting an individual convicted of a felony or a misdemeanor for domestic violence from possessing a firearm, thereby excluding such individual

from a wide range of jobs that require such possession); 18 U.S.C. § 2381 (prohibiting individuals convicted of treason from “holding any office under the United States”). Other federal laws prohibit employing individuals with certain convictions for a defined time period. *See, e.g.*, 5 U.S.C. § 7313(a) (prohibiting individuals convicted of a felony for inciting a riot or civil disorder from holding any position in the federal government for five years after the date of the conviction); 12 U.S.C. § 1829 (requiring a ten-year ban on employing individuals in banks if they have certain financial-related convictions); 49 U.S.C. § 44936(b)(1)(B) (imposing a ten-year ban on employing an individual as a security screener for an air carrier if that individual has been convicted of specified crimes).

<sup>111</sup> *See* 29 C.F.R. § 1607.5 (describing the general standards for validity studies).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* § 1607.6B. The following subsections state:

(1) *Where informal or unscored procedures are used.* When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) *Where formal and scored procedures are used.* When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

*Id.* § 1607.6A, B(1)–(2).

<sup>114</sup> *See, e.g.*, Brent W. Roberts et al., *Predicting the Counterproductive Employee in a Child-to-Adult Prospective Study*, 92 *J. Applied Psychol.* 1427, 1430 (2007), <http://internal.psychology.illinois.edu/~broberts/Roberts,%20Harms,%20Caspi,%20&%20Moffitt,%202007.pdf> (finding that in a study of New Zealand residents from birth to age 26, “[a]dolescent criminal convictions were unrelated to committing counterproductive activities at work [such as tardiness, absenteeism, disciplinary problems, etc.]. In fact, according to the [results of the study], people with an adolescent criminal conviction record were less likely to get in a fight with their supervisor or steal things from work.”).

<sup>115</sup> *See Ohio Rev. Code Ann.* § 2913.02.

<sup>116</sup> 523 F.2d at 1298 (stating that “[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed”).

<sup>117</sup> 479 F.3d at 247.

<sup>118</sup> *See, e.g.*, Keith Soothill & Brian Francis, *When do Ex-Offenders Become Like Non-Offenders?*, 48 *Howard J. of Crim. Just.*, 373, 380–81 (2009) (examining conviction data from Britain and Wales, a 2009 study found that the risk of recidivism declined for the groups with prior records and eventually converged within 10 to 15 years with the risk of those of the nonoffending comparison groups); Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 *Criminology* 327 (2009) (concluding that there may be a “point of redemption” (i.e., a point in time where an individual’s risk of re-offending or re-arrest is reasonably comparable to individuals with no prior criminal record) for individuals arrested for certain offenses if they remain crime free for a certain number of years); Megan C. Kurlychek, Robert Brame & Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 *Crime & Delinquency* 64 (2007) (analyzing juvenile police contacts and Racine, Wisconsin police contacts for an aggregate of crimes for 670 males born in 1942 and concluding that, after seven years, the risk of a new offense approximates that of a person without a criminal record); Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology & Pub. Pol’y* 483 (2006) (evaluating juvenile police contacts and arrest dates from Philadelphia police records for an aggregate of crimes for individuals born in 1958, a 2006 study concluded that the risk of recidivism decreases over time and that, six or seven years after an arrest, an individual’s risk of re-arrest approximates that of an individual who has never been arrested).

<sup>119</sup> *Griggs*, 401 U.S. at 431.

<sup>120</sup> 523 F.2d at 1298; *see also Field v. Orkin Extermination Co.*, No. Civ. A. 00-5913, 2002 WL 32345739, at \*1 (E.D. Pa. Feb. 21, 2002) (unpublished) (“[A] blanket policy of denying employment to any person having a criminal conviction is a [*per se*] violation of Title VII.”). The only exception would be if such an exclusion were required by federal law or regulation. *See, e.g., supra* note 110.

<sup>121</sup> *Cf. Field*, 2002 WL 32345739, at \*1. In *Field*, an employee of ten years was fired after a new company that acquired her former employer discovered her 6-year-old felony conviction. The new company had a blanket policy of firing anyone with a felony conviction less than 10 years old. The court granted summary judgment for the employee because the employer’s argument that her conviction was related to her job qualifications was “weak at best,” especially given her positive employment history with her former employer. *Id.*

<sup>122</sup> Recidivism rates tend to decline as ex-offenders’ ages increase. A 2011 study found that an individual’s age at conviction is a variable that has a “substantial and significant impact on recidivism.” *The Predictive Value of Criminal Background Checks, supra* note 99, at 43. For example, the 26-year-olds in the study, with no prior criminal convictions, had a 19.6% chance of reoffending in their first year after their first conviction, compared to the 36-year-olds who had an 8.8% chance of reoffending during the same time period, and the 46-year-olds who had a 5.3% of reoffending. *Id.* at 46. *See also Patrick A. Langan & David J. Levin, Bureau of Justice Statistics, U.S. Dep’t of Justice, Special Report: Recidivism of Prisoners Released in 1994*, at 7 (2002), <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf> (finding that, although 55.7% of ex-offenders aged 14–17 released in 1994 were reconvicted within three years, the percentage declined to 29.7% for ex-offenders aged 45 and older who were released the same year). Consideration of an applicant’s age at the time the offense occurred or at his release from prison would benefit older individuals and, therefore, would not violate the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.* *See* Age Discrimination in Employment Act, 29 C.F.R. § 1625.2 (“Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old.”); *see also Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 600 (2004) (concluding that the ADEA does not preclude an employer from favoring an older employee over a younger one within the protected age group).

<sup>123</sup> *See* Laura Moskowitz, *Statement of Laura Moskowitz, Staff Attorney, National Employment Law Project’s Second Chance Labor Project, U.S. Equal*

*Emp't Opportunity Comm'n*, <http://www.eeoc.gov/eeoc/meetings/11-20-08/moskowicz.cfm> (last visited April 23, 2012) (stating that one of the factors that is relevant to the assessment of an ex-offender's risk to a workplace and to the business necessity analysis, is the "length and consistency of the person's work history, including whether the person has been recently employed"; also noting that various studies have "shown a strong relationship between employment and decreases in crime and recidivism"). *But see* Stephen J. Tripodi et al., *Is Employment Associated With Reduced Recidivism?: The Complex Relationship Between Employment and Crime*, 54 *Int'l J. of Offender Therapy and Comp. Criminology* 716, 716 (2010) (finding that "[b]ecoming employed after incarceration, although apparently providing initial motivation to desist from crime, does not seem to be on its own sufficient to prevent recidivism for many parolees").

<sup>124</sup> See Wendy Erisman & Jeanne Bayer Contardo, *Inst. for Higher Educ. Policy, Learning To Reduce Recidivism: A 50 State Analysis of Postsecondary Correctional Education* 5 (2005), <http://www.ihep.org/assets/files/publications/g-l/LearningReduceRecidivism.pdf> (finding that increasing higher education for prisoners enhances their prospects for employment and serves as a cost-effective approach to reducing recidivism); see also John H. Laud & Robert J. Sampson, *Understanding Desistance from Crime*, 28 *Crime & Just.* 1, 17–24 (2001), <http://www.ncjrs.gov/pdffiles1/Digitization/192542-192549NCJRS.pdf> (stating that factors associated with personal rehabilitation and social stability, such as stable employment, family and community involvement, and recovery from substance abuse, are correlated with a decreased risk of recidivism).

<sup>125</sup> Some employers have expressed a greater willingness to hire ex-offenders who have had an ongoing relationship with third party intermediary agencies that provide supportive services such as drug testing, referrals for social services, transportation, child care, clothing, and food. See Amy L. Solomon et al., *From Prison to Work: The Employment Dimensions of Prisoner Reentry*, 2004 *Urban Inst.* 20, [http://www.urban.org/UploadedPDF/411097\\_From\\_Prison\\_to\\_Work.pdf](http://www.urban.org/UploadedPDF/411097_From_Prison_to_Work.pdf). These types of services can help ex-offenders avoid problems that may interfere with their ability to obtain and maintain employment. *Id.*; see generally Victoria Kane, *Transcript of 7-26-11 Meeting, U.S. Equal Emp't Opportunity Comm'n*, <http://www.eeoc.gov/eeoc/meetings/7-26-11/transcript.cfm#kane> (last visited April 23, 2012) (describing why employers should partner with organizations that provide supportive services to ex-offenders).

<sup>126</sup> See generally *Reentry Mythbuster! On Federal Bonding Program*, *supra* note 16; *Work Opportunity Tax Credit (WOTC), Emp't & Training Admin., U.S. Dep't of Labor*, <http://www.doleta.gov/business/incentives/opptax/> (last visited April 3, 2012); *Directory of State Bonding Coordinators, Emp't & Training Admin., U.S. Dep't of Labor*, <http://www.doleta.gov/usworkforce/onestop/FBPCContact.cfm> (last visited April 3, 2012); *Federal Bonding Program - Background, U.S. Dep't of Labor*, <http://www.bonds4jobs.com/program-background.html> (last visited April 3, 2012); *Bureau of Prisons: UNICOR's Federal Bonding Program*, [http://www.bop.gov/inmate\\_programs/itb\\_bonding.jsp](http://www.bop.gov/inmate_programs/itb_bonding.jsp) (last visited April 3, 2012).

<sup>127</sup> This example is loosely based on a study conducted by Alfred Blumstein and Kiminori Nakamura measuring the risk of recidivism for individuals who have committed burglary, robbery, or aggravated assault. See Blumstein & Nakamura, *supra* note 118.

<sup>128</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(ii), (C). See also *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 998 (1988).

<sup>129</sup> See Exec. Order No. 12,067, 3 C.F.R. 206 (1978 Comp.).

<sup>130</sup> See 49 U.S.C. §§ 44935(e)(2)(B), 44936(a)(1), (b)(1). The statute mandates a criminal background check.

<sup>131</sup> See 5 U.S.C. § 7371(b) (requiring mandatory removal from employment of law enforcement officers convicted of felonies).

<sup>132</sup> See 42 U.S.C. § 13041(c) ("Any conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for dismissal of an employee. . . .").

<sup>133</sup> 12 U.S.C. § 1829.

<sup>134</sup> 46 U.S.C. § 70105(c).

<sup>135</sup> Other jobs and programs subject to federally-imposed restrictions based on criminal convictions include the business of insurance (18 U.S.C. § 1033(e)), employee benefits employee (29 U.S.C. § 1111(a)), participation in Medicare and state health care programs (42 U.S.C. § 1320a-7(a)-(b)), defense contractor (10 U.S.C. § 2408(a)), prisoner transportation (42 U.S.C. § 13726b(b)(1)), and court-imposed occupational restrictions (18 U.S.C. §§ 3563(b)(5), 3583(d)). This list is not meant to be exhaustive.

<sup>136</sup> See, e.g., federal statutes governing commercial motor vehicle operator's licenses (49 U.S.C. § 31310(b)-(h)), locomotive operator licenses (49 U.S.C. § 20135(b)(4)(B)), and certificates, ratings, and authorizations for pilots, flight instructors, and ground instructors (49 U.S.C. §§ 44709(b)(2), 44710(b), 4711(c); 14 C.F.R. § 61.15).

<sup>137</sup> See, e.g., federal statutes governing loan originator licensing/registration (12 U.S.C. § 5104(b)(2)), registration of brokers and dealers (15 U.S.C. § 78o(b)(4)(B)), registration of commodity dealers (7 U.S.C. § 12a(2)(D), (3)(D), (E), (H)), and registration of investment advisers (15 U.S.C. § 80b-3(e)(2)-(3), (f)).

<sup>138</sup> See, e.g., custom broker's licenses (19 U.S.C. § 1641(d)(1)(B)), export licenses (50 U.S.C. App. § 2410(h)), and arms export (22 U.S.C. § 2778(g)).

<sup>139</sup> See, e.g., grain inspector's licenses (7 U.S.C. § 85), merchant mariner's documents, licenses, or certificates of registry (46 U.S.C. § 7503(b)), licenses to import, manufacture, or deal in explosives or permits to use explosives (18 U.S.C. § 843(d)), and farm labor contractor's certificates of registration (29 U.S.C. § 1813(a)(5)). This list of federally-imposed restrictions on occupational licenses and registrations for individuals with certain criminal convictions is not meant to be exhaustive. For additional information, please consult the relevant federal agency or department.

<sup>140</sup> See 12 U.S.C. § 1829(a)(1). The statute imposes a ten-year ban for individuals who have been convicted of certain financial crimes such as corruption involving the receipt of commissions or gifts for procuring loans (18 U.S.C. § 215), embezzlement or theft by an officer/employee of a lending, credit, or insurance institution (18 U.S.C. § 657), false or fraudulent statements by an officer/employee of the federal reserve or a depository institution (18 U.S.C. § 1005), or fraud by wire, radio, or television that affects a financial institution (18 U.S.C. § 1343), among other crimes. See 12 U.S.C. § 1829(a)(2)(A)(i)(I), (II). Individuals who have either been convicted of the crimes listed in § 1829(a)(2)(A), or conspiracy to commit those crimes, will not receive an exception to the application of the 10-year ban from the FDIC. 12 U.S.C. § 1829(a)(2)(A).

<sup>141</sup> See *Fed. Deposit Ins. Corp., FDIC Statement of Policy for Section 19 of the Fdi Act, § C, "Procedures"* (amended May 13, 2011), <http://www.fdic.gov/regulations/laws/rules/5000-1300.html> [hereinafter *FDIC Policy*]; see also Statement of Policy, 63 Fed. Reg. 66,177, 66,184 (Dec. 1, 1998); Clarification of Statement of Policy, 76 Fed. Reg. 28,031 (May 13, 2011) (clarifying the FDIC's Statement of Policy for Section 19 of the FDI Act).

"Approval is automatically granted and an application [for a waiver] will not be required where [an individual who has been convicted of] the covered offense [criminal offenses involving dishonesty, breach of trust, or money laundering] . . . meets all of the ["*de minimis*"] criteria" set forth in the FDIC's Statement of Policy. *FDIC Policy*, *supra*, § B (5). These criteria include the following: (1) there is only one conviction or program of record for a covered offense; (2) the offense was punishable by imprisonment for a term of one year or less and/or a fine of \$1,000 or less, and the individual did not serve time in jail; (3) the conviction or program was entered at least five years prior to the date an application would otherwise be required; and (4) the offense did not involve an insured depository institution or insured credit union. *Id.* Additionally, an individual's conviction for writing a "bad" check will be considered a *de minimis* offense, even if it involved an insured depository institution or insured credit union, if: (1) all other requirements of the *de minimis* offense provisions are met; (2) the aggregate total face value of the bad or insufficient funds check(s) cited in the conviction was \$1000 or less; and (3) no insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction. *Id.*

<sup>142</sup> See *FDIC Policy*, *supra* note 141, § C, "Procedures."

<sup>143</sup> *Id.* But cf. *Nat'l H.I.R.E. Network, People With Criminal Records Working in Financial Institutions: The Rules on FDIC Waivers*, <http://www.hirenetwork.org/FDIC.html> ("Institutions rarely seek a waiver, except for higher level positions when the candidate is someone the institution wants to hire. Individuals can only seek FDIC approval themselves if they ask the FDIC to waive the usual requirement. Most individuals probably are unaware that they have this right."); *Fed. Deposit Insur. Corp. 2010 Annual Report, § Vi.A: Key Statistics, FDIC Actions on Financial Institution Applications 2008-2010* (2011), <http://www.fdic.gov/about/strategic/report/2010annualreport/chpt6-01.html> (reporting that between 2008 and 2010, the FDIC approved a total of 38 requests for consent to employ individuals with covered offenses in their background; the agency did not deny any requests during this time period).

<sup>144</sup> *FDIC Policy*, *supra* note 141, § D, "Evaluation of Section 19 Applications" (listing the factors that are considered in this waiver review process, which include: (1) the nature and circumstances underlying the offense; (2) "[e]vidence of rehabilitation including the person's reputation since the conviction . . . the person's age at the time of conviction . . . and the time which has elapsed since the conviction"; (3) the position to be held in the insured institution; (4) the amount of influence/control the individual will be able to exercise over management affairs; (5) management's ability to control and supervise the individual's activities; (6) the degree of ownership the individual will have in the insured institution; (7) whether the institution's fidelity bond coverage applies to the individual; (8) the opinion of the applicable federal and/or state regulators; and (9) any other relevant factors).

<sup>145</sup> See 49 C.F.R. §§ 1515.7 (describing the procedures for waiver of criminal offenses, among other standards), 1515.5 (explaining how to appeal the Initial Determination of Threat Assessment based on a criminal conviction). In practice, some worker advocacy groups have criticized the TWIC appeal process due to prolonged delays, which leaves many workers jobless; especially workers of color. See generally *Maurice Emsellem et al., Nat'l Emp't Law Project, A Scorecard on the Post-911 Port Worker Background Checks: Model Worker Protections Provide A Lifeline for People of Color, While Major Tsa Delays Leave Thousands Jobless During the Recession* (2009), [http://nelp.3cdn.net/2d5508b4cec6e13da6\\_upm6b20e5.pdf](http://nelp.3cdn.net/2d5508b4cec6e13da6_upm6b20e5.pdf).

<sup>146</sup> See 46 U.S.C. § 70105(d); see generally TWIC Program, 49 C.F.R. § 1572.103 (listing the disqualifying offenses for maritime and land transportation security credentials, such as convictions and findings of not guilty by reason of insanity for espionage, murder, or unlawful possession of an explosive; also listing temporarily disqualifying offenses, within seven years of conviction or five years of release from incarceration, including dishonesty, fraud, or misrepresentation (expressly excluding welfare fraud and passing bad checks), firearms violations, and distribution, intent to distribute, or importation of controlled substances).

<sup>147</sup> 46 U.S.C. § 70105(c)(1)(A)-(B).

<sup>148</sup> 46 U.S.C. § 70105(c)(1)(B)(iii).

<sup>149</sup> See 46 U.S.C. § 70105(c)(1)(A)(iv) (listing "Federal crime of terrorism" as a permanent disqualifying offense); see also 18 U.S.C. § 2332b(g)(5)(B) (defining "Federal crime of terrorism" to include the use of weapons of mass destruction under § 2332a).

<sup>150</sup> See 49 C.F.R. § 1515.7(a)(i) (explaining that only certain applicants with disqualifying crimes in their backgrounds may apply for a waiver; these applicants do not include individuals who have been convicted of a Federal crime of terrorism as defined by 18 U.S.C. § 2332b(g)).

<sup>151</sup> These positions are defined as "national security positions" and include positions that "involve activities of the Government that are concerned with the protection of the nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States" or "require regular use of, or access to, classified information." 5 C.F.R. § 732.102(a)(1)-(2). The requirements for "national security positions" apply to competitive service positions, Senior Executive Service positions filled by career appointment within the Executive Branch, and excepted service positions within the Executive Branch. *Id.* § 732.102(b). The head of each Federal agency can designate any position within that department or agency as a "sensitive position" if the position "could bring about, by virtue of the nature of the position, a material adverse effect on the national security." *Id.* § 732.201(a). Designation of a position as a "sensitive position" will fall under one of three sensitivity levels: Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive. *Id.*

<sup>152</sup> See *Exec. Order No. 12,968*, § 3.1(b), 3 C.F.R. 391 (1995 Comp.):

[E]ligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

<sup>153</sup> 42 U.S.C. § 2000e-2(g); see, e.g., *Bennett v. Chertoff*, 425 F.3d 999, 1001 (D.C. Cir. 2005) ("[E]mployment actions based on denial of a security clearance are not subject to judicial review, including under Title VII."); *Ryan v. Reno*, 168 F.3d 520, 524 (D.C. Cir. 1999) ("[A]n adverse employment action based on denial or revocation of a security clearance is not actionable under Title VII.")

<sup>154</sup> See *Policy Guidance on the use of the national security exception contained in § 703(g) of Title VII of the Civil Rights Act of 1964, as amended, U.S. Equal Emp't Opportunity Comm'n, II, Legislative History* (May 1, 1989), [http://www.eeoc.gov/policy/docs/national\\_security\\_exemption.html](http://www.eeoc.gov/policy/docs/national_security_exemption.html) ("[N]ational security requirements must be applied equally without regard to race, sex, color, religion or national origin."); see also *Jones v. Ashcroft*, 321 F. Supp.

2d 1, 8 (D.D.C. 2004) (indicating that the national security exception did not apply because there was no evidence that the government considered national security as a basis for its decision not to hire the plaintiff at any time before the commencement of the plaintiff's lawsuit, where the plaintiff had not been forthcoming about an arrest).

<sup>155</sup> Federal contractor employees may challenge the denial of a security clearance with the EEOC or the Office of Contract Compliance Programs when the denial is based on race, color, religion, sex, or national origin. *See generally* Exec. Order No. 11,246, 3 C.F.R. 339 (1964–1965 Comp.).

<sup>156</sup> 42 U.S.C. § 2000e-16(a).

<sup>157</sup> Robert H. Shriver, III, *Written Testimony of Robert H. Shriver, III, Senior Policy Counsel for the U.S. Office of Personnel Management, U.S. Equal Emp't Opportunity Comm'n*, <http://www.eeoc.gov/eeoc/meetings/7-26-11/shriver.cfm> (last visited April 23, 2012) (stating that "with just a few exceptions, criminal convictions do not automatically disqualify an applicant from employment in the competitive civil service"); *see also Reentry Mythbuster! On Federal Hiring Policies*, *supra* note 16 ("The Federal Government employs people with criminal records with the requisite knowledge, skills and abilities."). *But see supra* note 110, listing several federal statutes that prohibit individuals with certain convictions from working as federal law enforcement officers or port workers, or with private prisoner transport companies.

<sup>158</sup> OPM has jurisdiction to establish the federal government's suitability policy for competitive service positions, certain excepted service positions, and career appointments in the Senior Executive Service. *See* 5 C.F.R. §§ 731.101(a) (stating that OPM has been directed "to examine 'suitability' for competitive Federal employment"), 731.101(b) (defining the covered positions within OPM's jurisdiction); *see also Shriver*, *supra* note 157.

<sup>159</sup> 5 C.F.R. § 731.101(a).

<sup>160</sup> *See* 5 C.F.R. §§ 731.205(a) (stating that if an agency finds applicants unsuitable based on the factors listed in 5 C.F.R. § 731.202, it may, in its discretion, bar those applicants from federal employment for three years), § 731.202(b) (disqualifying factors from federal civilian employment may include: misconduct or negligence in employment; material, intentional false statement, or deception or fraud in examination or appointment; refusal to furnish testimony as required by 5 C.F.R. § 5.4; alcohol abuse without evidence of substantial rehabilitation; illegal use of narcotics, drugs, or other controlled substances; and knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force).

<sup>161</sup> *See id.* § 731.202(c).

<sup>162</sup> *Id.*

<sup>163</sup> *See generally Shriver*, *supra* note 157. *See also Reentry Mythbuster! On Federal Hiring Policies*, *supra* note 16 ("Consistent with Merit System Principles, [federal] agencies [and departments] are required to consider people with criminal records when filling positions if they are the best candidates and can comply with requirements.").

<sup>164</sup> *See generally EEOC Informal Discussion Letter* (March 19, 2007), [http://www.eeoc.gov/eeoc/foia/letters/2007/arrest\\_and\\_conviction\\_records.html#N1](http://www.eeoc.gov/eeoc/foia/letters/2007/arrest_and_conviction_records.html#N1) (discussing the EEOC's concerns with changes to OPM's suitability regulations at 5 CFR part 731).

<sup>165</sup> *See* Stephen Saltzburg, *Transcript of 7-26-11 Meeting, U.S. Equal Emp't Opportunity Comm'n*, <http://www.eeoc.gov/eeoc/meetings/7-26-11/transcript.cfm#saltzburg> (last visited April 23, 2012) (discussing the findings from the American Bar Association's (ABA) Collateral Consequences of Conviction Project, which found that in 17 states that it has examined to date, 84% of the collateral sanctions against ex-offenders relate to employment). For more information about the ABA's project, visit: Janet Levine, *ABA Criminal Justice Section Collateral Consequences Project, Inst. for Survey Research, Temple Univ.*, <http://isrweb.isr.temple.edu/projects/accproject/> (last visited April 20, 2012). In April 2011, Attorney General Holder sent a letter to every state Attorney General, with a copy to every Governor, asking them to "evaluate the collateral consequences" of criminal convictions in their state, such as employment-related restrictions on ex-offenders, and "to determine whether those [consequences] that impose burdens on individuals . . . without increasing public safety should be eliminated." Letter from Eric H. Holder, Jr., Att'y Gen., Dep't of Justice, to state Attorney Generals and Governors (April 18, 2011), [http://www.nationalreentryresourcecenter.org/documents/0000/1088/Reentry\\_Council\\_AG\\_Letter.pdf](http://www.nationalreentryresourcecenter.org/documents/0000/1088/Reentry_Council_AG_Letter.pdf). Most states regulate occupations that involve responsibility for vulnerable citizens such as the elderly and children. *See State Criminal History*, *supra* Note 37, at 10 ("Fifty states and the District of Columbia reported that criminal history background checks are legally required" for several occupations such as nurses/elder caregivers, day-care providers, caregivers in residential facilities, school teachers, and nonteaching school employees). For example, Hawaii's Department of Human Services may deny applicants licensing privileges to operate a childcare facility if: (1) the applicant or any prospective employee has been convicted of a crime other than a minor traffic violation or has been confirmed to have abused or neglected a child or threatened harm; and (2) the department finds that the criminal history or child abuse record of the applicant or prospective employee may pose a risk to the health, safety, or well-being of children. *See Haw. Rev. Stat.* § 346-154(E)(1)-(2).

<sup>166</sup> 42 U.S.C. § 2000e-7.

<sup>167</sup> *See Int'l Union v. Johnson Controls, Inc.*, 499 U.S. 187, 210 (1991) (noting that "[i]f state tort law furthers discrimination in the workplace and prevents employers from hiring women who are capable of manufacturing the product as efficiently as men, then it will impede the accomplishment of Congress' goals in enacting Title VII"); *Gulino v. N.Y. State Educ. Dep't*, 460 F.3d 361, 380 (2d Cir. 2006) (affirming the district court's conclusion that "the mandates of state law are no defense to Title VII liability").

## Appendix F: Scoping Worksheet, Neighborhood Conditions

| Existing Conditions Research Questions  | Impact Research Questions   | Indicators  | Data Sources  | Methods   |
|---|---|---|---|---|
| <b>Policy Background</b>  |   |   |   |   |
| What are the housing conditions in Englewood (homelessness, affordability, crowding, vacant, mobility/stability)? | How would this policy directly impact the levels of homelessness and affordability of housing in Englewood?       | % Homeless, % rent burdened,  | Census data, CPS (free and reduced lunch, homeless data), IDPH, CTA, CHA, CPD   | Review of existing literature; qualitative analysis of focus group data |
|   | How would this policy directly impact the prevalence of overcrowding in Englewood housing?                        | % overcrowded households  | Census data, CPS (free and reduced lunch, homeless data), IDPH, CTA, CHA, CPD   |   |
|   | How would this policy directly impact the number of vacant buildings in Englewood?                                | % vacant houses, % of boarded up or neglected/blighted houses   | Census data, CPS (free and reduced lunch, homeless data), IDPH, CTA, CHA, CPD   |   |
|   | How would this policy directly impact the levels of population mobility and stability in Englewood?               | % of population who relocated within the past year  | Census data, CPS (free and reduced lunch, homeless data), IDPH, CTA, CHA, CPD   |   |
| How many voluntary/civic organizations are active in Englewood?   | How would this policy impact the amount of active voluntary/civic organizations in Englewood?                     | # of active civic and volunteer organizations in Englewood  | New data: Inventory of active voluntary organizations; MetroEdge or other existing databases; Brief phone interviews with organizations | Surveys, organization social network analysis                           |
| What public services and amenities exist in the community?  | How would this policy impact the amount of public services and amenities available in Englewood?                  | # of grocery stores, # of public transit choices, # of childcare agencies, # of healthcare facilities, # of libraries                         | City of Chicago data; Online sources (Yahoo or Google Maps)   | Existing literature and/or GIS mapping                                  |
| What is the violent crime rate in Englewood vs. the City of Chicago?  | How would this policy impact the Englewood neighborhood's crime rates vs. the City of Chicago's crime rates?      | # Violent crimes in Englewood, # of violent crimes in the City of Chicago   | CPD crime data  |   |
| What is the current level of economic activity in Englewood?  | How would this policy impact the current level of economic activity in Englewood?                                 | # dollars leaked outside the community, # new business permits, # commercial foreclosures   | MetroEdge data (Claritas); County Foreclosure data; City business permits   |   |
| <b>Mental Health Outcomes</b>   |   |   |   |   |
|   | How will the amendment, as mediated by changes in neighborhood conditions, the impact mental health outcomes?     | Reported rates of anxiety, depression, substance use, and symptoms of PTSD  | Focus Groups, Perceived Safety Scale  | Qualitative data analysis, perceived safety score                       |
|   | How would the proposed policy, as mediated by changes in neighborhood conditions, impact mental health outcomes?* | Reported rates of social capital, psychological sense of community, happiness, life satisfaction, mental service utilization, family violence | Existing data; previous studies   | Existing literature, mapping, perceived safety score                    |

## Appendix F: Scoping Worksheet, Employment

| Existing Conditions Research Questions  | Impact Research Questions  | Indicators  | Data Sources  | Methods   |
|---|--|---|---|---|
| <b>Policy Background</b>  |  |   |   |   |
| What percentage of Englewood residents are employed?  | How will the proposed policy impact the number of Englewood residents who are employed?  | Current employment/ unemployment rates in Englewood   | Census/BLS and/ or IDES data on employment rates  | Review of existing literature; qualitative analysis of focus group data   |
| How do Englewood residents' employment rates compare to overall City of Chicago's employment rates?   | How will the proposed policy impact Englewood residents' employment rates when compared to overall City of Chicago employment rates?   | Current employment/ unemployment rates in Englewood and Chicago   | Census/BLS and/ or IDES data on employment rates  | Review of existing literature; qualitative analysis of focus group data   |
| Where do most employed Englewood residents work?  | How will the proposed policy impact the locations of where employed Englewood residents work?  | % or # of residents who work within 15 min commute; Average distance/time to work   | Census/BLS data (commute time); Focus group/survey data; NHTS; US Transportation Census | Review of existing literature; brief phone surveys with businesses; qualitative analysis of focus group data  |
| Where do Englewood residents look for work?   | How will the proposed policy impact where Englewood residents look for work?   | Self-reported locations of work and where jobs are sought   | Focus group/survey data   | Review of existing literature; brief phone surveys with businesses; qualitative analysis of focus group data  |
| In which job sectors are Englewood residents currently employed?  | How will the proposed policy impact the type of jobs/ job sectors in which residents of Englewood are employed?  | Employment rates, per sectors, per occupations .  | Census/BLS data   | Review of existing literature; brief phone surveys with businesses; qualitative analysis of focus group data  |
| How do employers in the Englewood feel about hiring people with a record of arrest?   | How will the proposed policy impact how employers in Englewood feel about hiring people with a record of arrest?   | % or # of employers in Englewood who ask for arrest record by neighborhood. % or # of people with arrest records in Englewood who are working | Existing studies; Focus Groups  | Review of existing literature; brief phone surveys with businesses; qualitative analysis of focus group data  |
| Is there a difference between the attitudes of employers in Englewood vs. elsewhere in the City concerning hiring people with a record of arrest? | How will the proposed policy impact attitudes of employers in Englewood vs. elsewhere in the City feel about hiring people with a record of arrest?                                  | % or # of employers who ask for arrest record by neighborhood. % or # of people with arrest records by neighborhood                           | Existing studies; Focus Groups  | Review of existing literature; qualitative analysis of focus group data   |
| Are employers informed about the laws around asking for arrest records?   | If the policy change is approved, how well informed will employers be about the regulations regarding asking about history of arrest? How well will these regulations be adhered to? | # of reported violations to existing laws/ regulations  | Existing studies or brief phone surveys/ interviews; focus groups                       | Review existing literature. Brief phone surveys with businesses (if resources permit); Review of online applications of sectors, occupations etc. populated by Englewood residents. Demographic Testing |
| How well are these laws and regulations adhered to currently?   | If the policy change is approved, how well informed will employers be about the regulations regarding asking about history of arrest? How well will these regulations be adhered to? | # of reported violations to existing laws/ regulations  | Existing studies or brief phone surveys/ interviews                                     | Review existing literature. Brief phone surveys with businesses (if resources permit); Review of online applications of sectors, occupations etc. populated by Englewood residents. Demographic Testing |
| <b>Mental Health Outcomes</b>   |  |   |   |   |
|   | How will the amendment, as mediated by changes in employment/unemployment, impact mental health outcomes?  | Reported rates of anxiety, depression, substance use, and symptoms of PTSD  | Focus Groups, Perceived Safety Scale  | Comparison of mental health indicators between employed & unemployed residents  |
|   | How would the proposed policy, as mediated by changes in employment/unemployment impact mental health outcomes?  | Reported rates of social capital, psychological sense of community, happiness, life satisfaction, mental service utilization, family violence | Existing data; previous studies   | Comparison of mental health indicators between employed & unemployed residents  |

## Appendix F: Scoping Worksheet, Income

| Existing Conditions Research Questions  | Impact Research Questions  | Indicators  | Data Sources   | Methods  |
|---|--|---|--|--|
| <b>Policy Background</b>  |  |   |  |  |
| What is the median income in Englewood?   | How would the proposed policy impact levels of income in Englewood be affected?  | Median household income in Englewood  | Surveys; Census data                                       | Community survey; review of existing literature  |
| How does the median income in Englewood compared to the City of Chicago's median income?                  | How would the proposed policy impact levels of income in Englewood be affected in comparison to City of Chicago's median income? | Median household income in Englewood and City of Chicago  | Surveys; Census data                                       |  |
| What are the average rates of pay for the different occupations that Englewood residents are employed in? | How would the proposed policy impact average rates of pay in Englewood?  | Average rate of pay in different occupations  | Census data; Illinois State data (IDES)                    |  |
| How many Englewood residents work in the informal economy?  | How would the proposed policy impact the # and % of Englewood resident(with arrest records?) working in the informal economy?    | # and % of Englewood residents reporting activity in informal economy   | Focus Groups (separated per age group and gender); surveys | Analysis of focus group data - to gauge "perception"; descriptive statistics (analysis of survey data) |
| What are the sources of income in the informal economy in Englewood?                                      | How would the proposed policy impact the sources of income in the informal economy in Englewood                                  | Reported sources of informal income for Englewood residents   | Focus Groups (separated per age group and gender); surveys | Analysis of focus group data - to gauge "perception"; descriptive statistics (analysis of survey data) |
| What is the average informal income in Englewood?   | How would the proposed policy impact the average informal income in Englewood?   | Average informal income in Englewood  | Focus Groups (separated per age group and gender); surveys | Analysis of focus group data - to gauge "perception"; descriptive statistics (analysis of survey data) |
| What percentage of Englewood residents earning informal income has an arrest record?                      | How would the proposed policy impact the percentage of Englewood residents earning informal income who have arrest records?      | % of Englewood residents who report arrest records and earning informal income  | Focus Groups (separated per age group and gender); surveys | Analysis of focus group data - to gauge "perception"; descriptive statistics (analysis of survey data) |
| <b>Mental Health Outcomes</b>   |  |   |  |  |
|   | How will the amendment, as mediated by changes in income, impact mental health outcomes?   | Reported rates of anxiety, depression, substance use, and symptoms of PTSD  | Focus Groups, Perceived Safety Scale                       | Comparison of mental health indicators between higher & lower income residents                         |
|   | How will the amendment, as mediated by changes in income, impact mental health outcomes?   | Reported rates of social capital, psychological sense of community, happiness, life satisfaction, mental service utilization, family violence | Existing data; previous studies                            | Comparison of mental health indicators between higher & lower income residents                         |

## Appendix F: Scoping Worksheet, Social Exclusion

| Existing Conditions Research Questions   | Impact Research Questions   | Indicators  | Data Sources   | Methods   |
|--|---|---|--|---|
| <b>Policy Background</b>   |   |   |  |   |
| What percentage of the population is/how many people are asked about arrest records when applying for jobs?  | If the amendment is enacted, will the percentage or number of people asked about arrest records change?   | % or # of employers who ask about arrest record (paying attention to sectors likely to employ Englewood residents); % or # of Englewood residents who report being asked about arrest records | Existing studies and/or new data collection  | Review of existing literature on arrest and employment.                 |
| What percentage of Englewood residents do not apply for jobs because of arrest records?  | If the amendment is enacted, will the percentage or number of people with arrest records who are applying for employment change?                                  | % of Englewood residents who report not applying for a job because of being asked about arrest records  | New data collection  | Focus groups/ structured interviews/ surveys                            |
| What percentage or number of unemployed people opt to self exclude (they aren't comfortable being around people who have jobs), which undermines their access to social capital (networks), which is necessary to find work. | How will the proposed policy impact the number of people who choose to exclude themselves from others due to having an arrest record?                             | # of Englewood residents who report excluding themselves due to unemployment/arrest record  | Existing studies/literature; focus groups  | Review of existing literature; qualitative analysis of focus group data |
| How does self exclusion undermine Englewood residents' access to social capital (networks), and how does this impact opportunities for employment?   | If the amendment is enacted, will the number of people who exclude themselves change? Will the policy change the number of people who now access social networks? | # of Englewood residents who report excluding themselves due to unemployment/arrest record  | Existing studies/literature; focus groups  | Review of existing literature; qualitative analysis of focus group data |
| How does the current practice of employers inquiring about history of arrest impact the number of eligible job applicants from Englewood?  | How will the proposed policy impact the number of eligible job applicants from Englewood?   | # of arrests in Englewood to estimate job applicants  | Arrest data for Englewood/ District 7  | Descriptive statistics  |
| How does this impact existing levels of employment?  | How would unemployment rates be impacted by proposed policy?  | Current employment/ unemployment rates of Englewood and Chicago; % of Englewood residents who report not applying for a job due to current policy   | Existing studies and/or new data collection; Employment data   | Focus groups/ structured interviews/ surveys                            |
| How socially cohesive/ socially excluded are residents of Englewood?   | How will the proposed policy impact social exclusion related to unemployment due to arrest records?   |   | Existing studies addressing: What is the connection between unemployment and social exclusion? How do people feel socially excluded to due unemployment? | Review existing literature on employment                                |
| <b>Mental Health Outcomes</b>  |   |   |  |   |
|  | How will the amendment, as mediated by changes in indicators of social exclusion, impact mental health outcomes?  | Reported rates of anxiety, depression, substance use, and symptoms of PTSD  | Focus Groups, Perceived Safety Scale   |   |
|  | How will the amendment, as mediated by changes in indicators of social exclusion, impact mental health outcomes?  | Reported rates of social capital, psychological sense of community, happiness, life satisfaction, mental service utilization, family violence   | Existing data; previous studies  | Existing literature   |
| <b>Vulnerable Populations</b>  |   |   |  |   |
| For all of the above questions, where possible, break out data for different age, race/ethnic, gender, non-English speakers, etc. groups   |   |   | Focus Groups   |   |

## Appendix G – Community Survey Excerpts from Resident Surveys: Questions About Demographics

---

### Date of birth:

\_\_\_\_ / \_\_\_\_ / \_\_\_\_  
MM DD YYYY

### Gender:

Male \_\_\_\_ Female \_\_\_\_

### Marital status:

Single \_\_\_\_ Married \_\_\_\_ Separated \_\_\_\_  
Divorced \_\_\_\_ Widowed \_\_\_\_  
Living with significant other \_\_\_\_  
Other (specify) \_\_\_\_\_

### What is your ethnicity?

African American \_\_\_\_ Asian \_\_\_\_  
Latino \_\_\_\_ Caucasian \_\_\_\_  
Other (please specify): \_\_\_\_\_

### What is the highest grade you completed in school?

Less than high school \_\_\_\_  
Some high school \_\_\_\_  
High school graduate \_\_\_\_  
Some college \_\_\_\_  
College degree \_\_\_\_  
Graduate degree \_\_\_\_

### How many people under 18 years of age in your household?

None \_\_\_\_ One \_\_\_\_ Two \_\_\_\_ Three \_\_\_\_  
Four \_\_\_\_ Five \_\_\_\_ Six or more \_\_\_\_

### Which best describes your annual household income?

Under \$15,000 \_\_\_\_  
\$15,000 to \$29,999 \_\_\_\_  
\$30,000 to \$44,999 \_\_\_\_  
\$45,000 to \$59,999 \_\_\_\_  
\$60,000 to \$74,999 \_\_\_\_  
\$75,000 to \$100,000 \_\_\_\_  
Over \$100,000 \_\_\_\_

### Are you currently employed?

Full-Time \_\_\_\_ Part-Time \_\_\_\_  
Unemployed \_\_\_\_ Retired \_\_\_\_

### If you are employed, how many hours per week do you work?

---

### Have you been unemployed at any time in the last 3 years?

No \_\_\_\_ Yes \_\_\_\_  
If yes, for how long? \_\_\_\_\_

### Is your spouse or someone else in your household employed?

Yes, Full-Time \_\_\_\_ Yes, Part-Time \_\_\_\_  
Unemployed \_\_\_\_ Retired \_\_\_\_  
No spouse or significant other \_\_\_\_

### If they are employed, how many hours per week do they work?

---

### Which of the following best describes your household financial situation?

Getting ahead/saving money \_\_\_\_  
Stable \_\_\_\_ Just able to pay bills \_\_\_\_  
Falling behind on bills \_\_\_\_

**Are you registered to vote?**

Yes \_\_\_ No \_\_\_

**Did you vote in the last Presidential election?**

Yes \_\_\_ No \_\_\_

**Did you vote in the last local election?**

Yes \_\_\_ No \_\_\_

**Are you currently living in Englewood?**

Yes \_\_\_ No \_\_\_

**What month and year did you move into this residence?**

\_\_\_ / \_\_\_

MM YYYY

**What month and year did you move into this community?**

\_\_\_ / \_\_\_

MM YYYY

**Have you ever been arrested?**

No \_\_\_ Yes \_\_\_

**If yes, how many times? \_\_\_\_\_**

**If yes, how many of those arrests led to convictions?**

---

**If yes, how much do you think your arrest record hinders your ability to gain employment?**

Very much \_\_\_ Much \_\_\_

Somewhat \_\_\_ Not at all \_\_\_

## Community Survey Excerpts from Resident Surveys: Questions Asked on Resident Surveys

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Presented below are sample items from the measures that the MHIA Team administered to our community sample of Englewood residents as part of the survey data collection. Note that only samples items are included because many measures are the intellectual property of their authors. Readers are referred to the full reference for each measure (provided below) for additional detail regarding specific metric properties of each measure.

### I. INFORMAL ECONOMY

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#### Sample questions:

- ① How often have you sold something hand-made by yourself to family, friends or neighbors?
- ② How often have you written bad checks?
- ③ How often have you used a payday loan service?

#### Measure name:

*Resource Generating Strategies Scale (RGSS; Pyles, 2007)*

#### Full reference:

Pyles, L. (2007). Measuring the informal economy: A validation study of the Resource Generating Strategies Scale. *Research on Social Work Practice, 17*, 466 – 473. doi: 10.1177/1049731506296823

### II. SOCIAL EXCLUSION

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#### Sample instructions to respondents:

“These questions ask you to think about experiences that some people have as they go about their daily lives. Please first determine how often you have each experience because of your race or racism... Next, use the scale in the second column to indicate how much it bothers you when the experience happens.”

#### Sample questions:

- ① Being ignored, overlooked, or not given service (in a restaurant, store, etc.)
- ② Others reacting to you as if they were afraid or intimidated
- ③ Being mistaken for someone who serves others (i.e., janitor, bellboy, maid)

#### Measure name:

*Racism and Life Experiences Scales – Daily Life Experiences (Racial Hassles) (DLE; Harrell, 1994)*

#### Full reference:

Harrell, S. P. (1994). *The Racism and Life Experiences Scales*. Unpublished manuscript.

**Additional sample instructions to respondents:**

“Below you will find listed some of these experiences; for which you are to indicate those that have happened to you or someone very close to you (i.e. a family member or loved one)... Please circle the number on the scale (0 to 4) that indicates the reaction you had to the event at the time it happened.”

**Additional sample questions:**

- ① You notice that crimes committed by White people tend to be romanticized, whereas the same crime committed by a Black person is portrayed as savagery, and the Black person who committed it, as an animal.
- ② Sales people/clerks did not say thank you or show other forms of courtesy and respect (i.e. put your things in a bag) when you shopped at some White/non-Black owned businesses.
- ③ You have been threatened with physical violence by an individual or group of White/non-Blacks.

**Measure name:**

*Index of Race-Related Stress – Brief Version (IRRS-B; Utsey, 1999)*

**Full reference:**

Utsey, S. O. (1999). Development and validation of a short form of the Index of Race-Related Stress (IRRS) – Brief Version. *Measurement and Evaluation in Counseling and Development*, 32, 149 – 167.

**III. SEVERITY OF MENTAL ILLNESS SYMPTOMS**

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**Sample instructions to respondents:**

“Below is a list of the ways you might have felt or behaved. Please indicate how often you have felt this way during the past week.”

**Sample questions:**

- ① I was bothered by things that usually don't bother me.
- ② I did not feel like eating: my appetite was poor.
- ③ I felt sad.

**Measure name:**

*Center for Epidemiological Studies – Depression Scale (CES-D; Radloff, 1977)*

**Full reference:**

Radloff, L. S. (1977). The CES-D Scale: A self-report depression scale for research in the general population. *Applied Psychological Measurement*, 1, 385 – 401.

**Additional sample instructions to respondents:**

“The BSI-18 test consists of a list of problems people sometimes have. Read each one carefully and select the number of the response that best describes how much that problem has distressed or bothered you during the past 7 days including today.”

**Additional sample questions:**

- ① Faintness or dizziness
- ② Feeling no interest in things
- ③ Pains in heart or chest

**Measure name:**

*Brief Symptoms Inventory – 18 (BSI-18; Derogatis, 2000)*

**Full reference:**

Derogatis, L. R. (2000). *The Brief Symptom Inventory-18 (BSI-18): Administration, Scoring, and Procedures Manual* (3rd ed.). Minneapolis, MN: National Computer Systems.

## IV. GENERAL HEALTH AND WELL-BEING

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**Sample questions:**

- ① In most ways my life is close to my ideal.
- ② I am satisfied with my life.
- ③ If I could live my life over, I would change almost nothing.

**Measure name:**

*Satisfaction with Life Scale (SWLS; Diener, Emmons, Larsen, & Griffin, 1985).*

**Full reference:**

Diener, E., Emmons, R. A., Larsen R. J., & Griffin, S. (1985). The Satisfaction with Life Scale. *Journal of Personality Assessment, 49*, 71 – 75.

**Additional sample questions:**

- ① Compared to one year ago, how is your health in general now?
- ② How often have you been less careful in work or other activities than you would like due to emotional problems (such as feeling depressed or anxious)?
- ③ How often have you felt you had a lot of energy?

**Measure name:**

*Short-Form 12 Health Survey (SF-12; Ware, Kosinski, & Keller, 1996).*

**Full reference:**

Ware, J. T., Kosinski, M., & Keller, S. D. (1996). A 12-item short-form health survey: Construction of scales and preliminary tests of reliability and validity. *Medical Care, 34*, 220 – 233.

## V. COMMUNITY MENTAL HEALTH

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### Sample questions:

- ① How likely is it that neighbors can be counted on to intervene in various ways if the fire station closest to their home was threatened with budget cuts?
- ② People in this neighborhood can be trusted. (Respondents indicate the degree to which they agree/disagree)
- ③ People in this neighborhood do not share the same values. (Respondents indicate the degree to which they agree/disagree)

### Measure name:

*Collective Efficacy Scale (CES; Sampson, Raudenbush, & Earls, 1997)*

### Full reference:

Sampson, R. J., Raudenbush, S. W., & Earls, F. (1997). Neighborhoods and violent crime: A multilevel study of collective efficacy. *Science*, 277, 918 – 924.

### Additional sample questions:

- ① I can get what I need in my neighborhood.
- ② I feel like a member of this neighborhood.
- ③ People in this neighborhood are good at influencing each other.

### Measure name:

*Brief Sense of Community Scale (BSOC; Peterson, Speer, & McMillian, 2008)*

### Full reference:

Peterson, N. A., Speer, P. W., & McMillian, D. W. (2008). Validation of a Brief Sense of Community Scale: Confirmation of the principal theory of a sense of community. *Journal of Community Psychology*, 36, 61 – 73.

## Appendix H. Focus Group Interview Guide

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The purpose of this meeting is to hear your ideas about your experiences living in Englewood and your thoughts about work opportunities for Englewood residents and what happens when people in Englewood can't find jobs. We are meeting with groups of men and women who live in Englewood to hear from community residents. We are also talking to community leaders and business owners. We want to learn more about what people in Englewood think about questions asked by employers about arrest records and how this might impact job opportunities for Englewood residents.

One of our goals is to use the information we gather from all the groups to work with policy makers and others in power to change laws requiring people to reveal arrest records when applying for work. This meeting will be audio recorded. The information that we gather from this meeting will only be presented in summary form. All personal information about you will be kept confidential. Does anyone have any questions so far?

### We would like to share some ground rules for the meeting with you before we start:

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- ① Use first names only
- ② Try to talk one at a time and allow everyone to say what they want to say
- ③ You don't have to answer questions you don't have to answer
- ④ We ask that you don't discuss anything that is said here outside of the meeting

### ICE BREAKER QUESTIONS:

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- ① How long have you lived in Englewood?
- ② Do you have family or close friends in Englewood?

### MAIN QUESTIONS:

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- ① What are the good things you can say about Englewood? Probe: Are there ways you see Englewood residents looking to make things better in the community?
- ② What are the challenges of living in Englewood? Probes: What is the relationship between the police and the community residents?
- ③ What do you think keeps people you know in Englewood from finding jobs? Probes: Have you found that arrest records keep you or other people you know in Englewood from getting jobs? Can you give us some examples? Do people stop looking for work after being arrested?
- ④ How do you see that not having a job affects people you know in Englewood? Probe: How have you noticed that people act, think or feel when they can't find work?
- ⑤ How do you see that people not being able to find jobs affects the Englewood neighborhood? Probe: What problems do you see in Englewood that you think may be caused by people not finding work?
- ⑥ Do men and women living in Englewood have similar or different experiences? Probes: Can you give us some examples? Do they have similar or different experiences with the police? Do they have similar or different experiences findings work with arrest records? Do they react differently or in the same way when they can't find work?

### **WIND-DOWN QUESTIONS:**

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- ⑦ How do you or other people you know make a living if they can't find a job?
- ⑧ What do you think would happen if the law didn't allow employers to ask if someone has been arrested when applying for a job?
- ⑨ Is there anything that you think it's important for us to know about that we have not asked you?

### **NOTE:**

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Use probes only if the first question does not reveal themes related to the impact of arrest on employment, social exclusion, and impact of unemployment on neighborhood conditions, social capital/sense of community, and mental health.

### **DEBRIEF:**

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We appreciate your participation in this meeting and we want to remind you that no personal identifying information will be shared with others. We ask that you not share any personal information about other participants with anyone outside the group. As previously mentioned, we plan to share information gathered from all of the groups with policy makers and people in power who will change laws requiring people to reveal arrest records when applying for work.

In closing, we want to encourage you to speak with us individually if you have additional questions or concerns. The experience of sharing your thoughts and feelings about Englewood and work opportunities may generate unexpected emotional reactions and we are available to talk with you about them after the end of the meeting. If you are interested in becoming more involved in addressing the issues that were discussed, we also have information about community organizations and resources that you may find helpful.

Thank you for talking with us today.

## Appendix I. Employer Interview Questions

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Name: .....

Title: .....

Name of Company/Business: .....

- ① What are your screening procedures for job applicants? Does your company do background checks that include records of arrest?
- ② What are your company's general perceptions about hiring applicants with a record of arrest?  
*Probe:* How much difference does it make whether an applicant is male or female?
- ③ How would your company handle an application from a person with an arrest record? How would your company handle an application from a person who had a conviction?  
*Probe:* Does the type of charges make a difference?  
*Probe (Company in Englewood):* How are the attitudes about hiring in Englewood similar or different from elsewhere in the City?
- ④ What is your understanding of the laws and regulations about asking applicants for arrest records?  
*Probe:* Are you familiar with the proposed EEOC amendment to prevent employers from asking for arrest records during the hiring process?
- ⑤ What impact do you think the passing of the proposed EEOC amendment or the enforcement of compliance with the current laws will have on your screening and hiring of applicants with arrest records?

## Appendix J: Data Collection and Statistical Modeling Methods

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This Appendix provides supplementary information on the methods and findings from primary data gathered for the MHIA. Data collection and findings for focus groups are presented first, followed by employer interviews. Survey data demographic findings are then presented to help the reader evaluate the sample collected for the statistical analysis. A detailed presentation of our structural equation modeling approach is presented. Specific information for model fit indices and model pathways are shown in table format.

### Focus Group Summary

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The focus groups were guided by the main research question: What is the impact upon the mental health of a community when employers use arrest records in making employment decisions? Research questions used to guide the formation of focus group questions include:

- ① What are residents' perceptions of impact of arrest record on employment?
- ② What are residents' perceptions of employment/unemployment on mental health?
- ③ What are residents' perceptions of the policy on individual and community mental health?

Responses were analyzed for themes related to the research questions and for relevance to the four social determinants assessed in the MHIA: employment, income, social exclusion, and neighborhood conditions.

#### ARREST/CRIMINAL RECORD AND EMPLOYMENT

Focus group participants described the impact of having an arrest or criminal record on seeking employment. Themes described included:

- Traditional employment is difficult to find, many perform odd jobs to earn money
- Discouragement from not finding employment can make some want to return to what they were previously doing to support themselves (selling drugs, etc.).
- Fear of being rejected by employers because of having an arrest record leads many to stop seeking employment
- Young African American males have a more difficult time obtaining employment than female counterparts because employers assume they are criminals

#### UNEMPLOYMENT AND INDIVIDUAL AND COMMUNITY MENTAL HEALTH

Participants agreed that unemployment and being excluded from employment based on arrest record could lead to depression, hopelessness, discouragement, and low self-esteem. Participants also agreed that the high number of residents in this predicament creates an overall feeling of “depression” within the Englewood community. Themes that were discussed included:

- People have lost hope in themselves and have lost hope in their community
- Crime and violence continue to get worse as young men see their arrest record will hold them back from employment
- Even those with employment feel the overall depression of living in the community, many feel “powerless” to change things

#### POTENTIAL IMPACT OF THE POLICY ON INDIVIDUAL AND COMMUNITY MENTAL HEALTH

All but one of the focus group participants were unaware of the current U.S. EEOC Policy Guidance on arrest records and employment decisions. When told of the amendment being proposed, participants unanimously agreed that employers should not use arrest records in hiring decisions. Opinions on how the amendment would impact mental health included:

- Increased opportunities for employment and a greater number of people would want to go out to look for jobs
- Self-esteem would improve because people would not be disqualified solely on their record
- Educating people about the Policy Guidance could lift community spirits, so people would feel empowered
- More people in the community would be eligible for jobs, so more people would feel better about themselves

## Employer Interviews Summary

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The MHIA Team conducted interviews with employers located in the Greater Englewood (Englewood and West Englewood) to help answer the overarching research question of the MHIA: What is the impact is the impact upon the mental health of a community when employers use arrest records in making employment decisions? In order to more develop a more comprehensive answer to this question, it was necessary to discern what the beliefs of Englewood employers are with respect to ① hiring individuals who have a history of prior arrest, and ② the current U.S. EEOC Policy Guidance. Consequently, interviews with Englewood employers were guided by the following questions:

- How do employers in Englewood feel about hiring people with a record of arrest?
- Are employers informed about the laws around asking for arrest records?
- How well are these laws and regulations adhered to currently?

The MHIA Team conducted a total of 10 interviews with employers. Qualitative thematic analysis was conducted to identify themes in the interviews that formed the basis of projected impacts of revision to the Policy Guidance.

### CHARACTERISTICS OF EMPLOYER RESPONSES TO INTERVIEW QUESTIONS INCLUDED

**(numbers are out of 10 respondents):**

#### ***Type of industry in which businesses were involved:***

- Sales and office (4 of 10)
- Service (3 of 10)
- Management, professional and related (2 of 10)
- Construction, extraction, maintenance and repair (1 of 10)

#### ***Does the business have a corporate office?***

- No (6 of 10)
- Yes (4 of 10)

#### ***Is the business located in Englewood proper (as defined by 2010 ACS Census Tracts)?***

- Yes (9 of 10)
- No (1 of 10)

#### ***Does the business have a practice of hiring Englewood residents?***

- Yes (9 of 10)
- No (1 of 10)

#### ***Does the business have a minimum educational requirement in order to be hired?***

- No (6 of 10)
- Yes (4 of 10)

***Does the business use screening procedures or have a formal application process when making hiring decisions?***

- No formal procedures (1 of 10)
- Personal references-“word of mouth” (3 of 10)
- Formal application (6 of 10)

***Does the business conduct background checks?***

- Yes (7 of 10)
- No (3 of 10)

***Does the background check include asking applicants about whether they have a record of arrests?***

- Yes (7 of 10)
- No (3 of 10)

***Do employers report that the gender of the applicant is considered in making hiring decisions?***

- No (8 of 10)
- Yes (2 of 10)

***Do employers report that the race or ethnicity of the applicant Black or White is considered in making hiring decisions?***

- No (10 of 10)
- Yes (0 of 10)

***If any applicant has a history of arrest, is the type of charge important when considering whether to hire?***

- Yes (8 of 10)
- No (2 of 10)

***Do employers report that have an understanding of the current EEOC laws and regulation?***

- No awareness or understanding (8 of 10)
- Some understanding (2 of 10)

***Are employers reportedly familiar with proposed revision to EEOC Policy Guidance?***

- No (10 of 10)
- Yes (0 of 10)

***Do employers report that they believe the proposed EEOC Policy Revision will have an impact on or change their current hiring practices?***

- No impact or change (9 of 10)
- Some impact (1 of 10)

## Survey Data Demographic Characteristics

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### AGE, MARITAL STATUS, AND RACE

Community survey participants consisted of a sample of 254 adults (18 years or older) who were self-identified Englewood residents. The mean reported age of the sample was approximately 40 years old ( $M = 40.32$ ,  $SD = 16.25$ ), and their ages ranged from 18 to 91 years old. More women (59.6%,  $n = 149$ ) than men (40.4%,  $n = 101$ ) completed the survey. Most were single (69.8%,  $n = 176$ ), followed by separated, divorced, or widowed (17.5%,  $n = 44$ ), and then married or living with a significant other (12.7%,  $n = 32$ ). The majority of participants identified their racial/ethnic background as Black or African American ( $n = 249$ , 98%).

### HOUSEHOLD INCOME, INCOME STABILITY, AND EDUCATION

Most community survey participants were of lower socioeconomic status (SES). Three-fourths of the reported that they earned a total household of income of less than \$15,000 (75.7%,  $n = 184$ ), followed by \$15,000 – \$29,999 (15.6%,  $n = 38$ ). Less than 10% ( $n = 21$ ) reported a total household income of \$30,000 or higher. Eleven survey respondents did not report their household income. Consistent with the distribution of household income in the survey sample, most participants reported they were either just able to pay their monthly bills (37.7%,  $n = 92$ ) or falling behind on monthly bills (34.4%,  $n = 84$ ); 18.0% ( $n = 44$ ) reported their monthly income as stable. Less than one-tenth (9.8%,  $n = 24$ ) indicated that they were either getting ahead or saving money from month to month.

Approximately one-third of participants (31.6%,  $n = 80$ ) reported having 11 years or fewer of education, 28.9% ( $n = 73$ ) had a high school diploma or an equivalent degree, another approximate one-third had completed at least one year of college (32.0%,  $n = 81$ ), and 7.5% ( $n = 19$ ) had a bachelor's degree or higher.

### EMPLOYMENT STATUS

Most participants (69.5%,  $n = 168$ ) were unemployed at the time of assessment, with the next most common employment status being part-time (13.6%,  $n = 33$ ), followed by full-time or retired (8.6%,  $n = 21$  for each). Over two-thirds (65.6%,  $n = 158$ ) reported that they had been unemployed at some point in time during the three years prior to the survey. Of those participants who were married or cohabitating with a partner, approximately one-half (48.6%,  $n = 72$ ) reported that their partner spouse/partner was also unemployed. Of the remaining participants, 29.1% ( $n = 43$ ) indicated their partner was employed full-time, 16.2% ( $n = 24$ ) were employed part-time, and 6.1% ( $n = 9$ ) were retired.

### CIVIC ENGAGEMENT

Most participants reported that they were registered to vote (93.3%,  $n = 235$ ). Participants also reported high involvement in the electoral process, with 81.1% ( $n = 206$ ) and 71.3% ( $n = 181$ ) indicating they had voted the 2008 Presidential and local elections, respectively.

### RESIDENTIAL HISTORY

The mean number of years resident had lived in their current residence was approximately 14 years ( $M = 13.9$ ,  $SD = 14.9$ ), which was slightly less than the average reported number of years residents had lived in Englewood ( $M = 19.9$ ,  $SD = 16.6$ ).

### ARREST AND CONVICTION HISTORY

Approximately two-thirds of the community survey sample had never been arrested (59.6%,  $n = 149$ ). Of those who reported they had been arrested, the average number of times arrested was approximate 5 ( $M = 4.8$ ,  $SD = 6.7$ ). Importantly, of those who reported they had been arrested, 40.0% ( $n = 36$ ) reported that their arrest had not led to a conviction. The average number of convictions reported in the community sample was less than two ( $M = 1.5$ ,  $SD = 2.5$ ).

Participants were somewhat divided on the perceived impact of their arrest history on their ability to gain employment. Although the largest proportion of participants indicated they believed their arrest records did not influence their ability to gain employment (40.9%,  $n = 56$ ), approximately one-third believed their arrested records hinder their ability to gain employment “very much” (33.6%,  $n = 137$ ). The remainder indicated they perceived their arrest history hindered their ability to gain employment either “somewhat” (18.2%,  $n = 25$ ) or “much” (7.3%,  $n = 10$ ).

## Statistical Modeling Methods

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As mentioned in Chapter X, the MHIA team used statistical analysis to test the hypotheses as shown in the pathway diagram. Specifically, structural equation modeling (SEM) techniques was used, with the pathway diagram specified as a structural regression model.

The goal of the statistical analysis is to describe the relationships between variables that contribute to mental health outcomes resulting from revision to U.S. EEOC Policy Guidance. Results are organized according to mental health outcome. The relationship of arrest records to mental illness is presented first, followed by the relationship of arrest records to well-being, and the relationship of arrest records to community mental health. For each section, initial hypotheses and findings are included.

In assessing relationships, those that are “significant” will be emphasized. A significant value is any test result that yields a probability value, or  $p$ -value, of .05 or lower. A  $p$ -value is the probability that the observed relationship under consideration is due to pure chance. Specifically, a  $p$ -value of lower than 0.05 indicates there was a less than 5% chance of obtaining the results of an analysis if the hypothesis was *not* correct.

An additional benefit of these analyses is that they permit the determination of which variables were directly related to each other as well as those that had indirect relationships. A direct relationship indicates that an increase in one variable is associated with an increase in another variable. An indirect relationship describes an association between two variables that is partially explained by an association with a third, intervening variable. Thus, an indirect relationship describes the change in one variable due to change in another variable.

### GENERAL SEM PROCESS

SEM starts with a hypothesis about a series of causal relationships. For example, a variable such as unemployment is hypothesized to cause another variable such as income instability, which in turn is hypothesized to result in mental health outcomes. Researchers often draw a path diagram illustrating the hypothesized relationships.

SEM analyses determine if those variables impact each other in the way that was hypothesized, and the strength of the relationships between variables. If the observed data do not support the initial hypotheses, alternative versions are tested, with the goal of identifying the one version that best represents the relationships between the variables based on the data collected. In evaluating fit, structural models that support hypotheses are indicated by a non-significant chi-square value (i.e., a Model  $\chi^2/M$  with a  $p$ -value that is *greater* than .05), a comparative fit index (CFI) or 0.90 or greater, a standardized root mean residual (SRMR) of 0.10 or lower, and a root mean-square error of approximation (RMSEA) less than .05 with a 90% confidence interval (90%CI) range of .00 - .10.

SEM techniques are useful when there may be a number of intervening variables that play a role between a starting and ending variable, as was the case in the MHIA. When an intervening variable significantly contributes to the relationship between two variables, the relationship is said to be an *indirect relationship*. For example, there may be a number of indirect relationships involved on the path from arrest history to community mental health outcomes, such as income instability or experiences of discrimination.

Below is a description of how variables were measured in the proceeding analysis, followed by findings from that analysis.

## How Variables were Measured in the MHIA

| Variable                              | Measure   |
|---------------------------------------|---|
| <b>Number of arrests</b>              | <ul style="list-style-type: none"> <li>① Reports from individuals of how frequently they had been arrested in the past</li> <li>② Reports from individuals of how many of their arrests had led to convictions (Note: number of convictions was not included in the SEM analysis)</li> </ul>  |
| <b>Employment</b>                     | <ul style="list-style-type: none"> <li>② Reports from individuals of their current employment status</li> </ul>   |
| <b>Income</b>                         | <ul style="list-style-type: none"> <li>① Reports from individuals of their income level</li> <li>② Reports from individuals of their income instability, defined as their perceived ability to pay bills and save money</li> </ul>  |
| <b>Social exclusion</b>               | <ul style="list-style-type: none"> <li>① Reports from individuals about how frequently they experienced several forms of racial discrimination</li> <li>② Reports from individuals about the severity of their perceived racism-related stress</li> </ul>   |
| <b>Individual-level mental health</b> | <ul style="list-style-type: none"> <li>① Reports from individuals using a measure of severity of depression symptoms</li> <li>② Reports from individuals using a measure of and severity of psychological distress</li> <li>③ Reports from individuals using a measure of general health and well-being</li> <li>④ Reports from individuals using a measure of life satisfaction</li> </ul> |
| <b>Community-level mental health</b>  | <ul style="list-style-type: none"> <li>① Reports from individuals using a measure of collective efficacy</li> <li>② Reports from individuals using a measure of psychological sense of community</li> </ul>   |

## RESULTS OF SEM ANALYSIS

First, the two full hypothesized models were tested to examine the ability of arrest history to predict severity of mental illness symptoms, and the ability of arrest history to predict well being. As discussed below, the hypothesized models were not supported by the data (see **Model 1: arrest records and mental illness symptoms** and **Model 3: arrests and community mental health** below). In the table below, the results for the tests of the original hypothesized model is presented in the row labeled **Hypothesized Full Model**.

| Model Fit Indices for Hypothesized and Revised Models |                                   |      |      |                 |
|---|-----------------------------------|------|------|-----------------|
| Model   | Model $\chi^2$ (df <sub>M</sub> ) | CFI  | SRMR | RMSEA (90% CI)  |
| <b>Hypothesized Full Model</b>                        | 42.36 (19)**                      | 0.94 | 0.04 | .07 (.04 - .10) |
| <b>Mental Illness Symptoms</b>                        | 9.67 (5)                          | 0.98 | 0.02 | .06 (.00 - .12) |
| <b>Well-Being</b>                                     | 2.24 (2)                          | 0.99 | 0.01 | .02 (.00 - .13) |
| <b>Community Mental Health</b>                        | 10.76 (6)                         | 0.97 | 0.03 | .05 (.00 - .11) |

Note: CFI = Comparative Fit Index; SRMR = Standardized Root Mean Residual; RMSEA = Root Mean-Square Error of Approximation.

\*  $p < .05$  \*\* $p < .01$

Consequently, three additional models were tested examining the respective influence of arrest history on severity of mental illness symptoms, well-being, and community mental health. For these additional models, employment was removed from the models tested due to non-significant path coefficients. The removal of employment status was associated with an improvement in model fit. Thus, SEM data in the MHIA does not include employment as a predictor variable in the models presented. The corresponding test results for these three outcomes are shown in the rows in the above table labeled **Mental Illness Symptoms**, **Well-Being**, and **Community Mental Health**.

**Model 1: arrest records and mental illness symptoms.** To assess the relationship between arrest records and mental illness symptoms, the survey data was fit to a structural regression model using maximum likelihood estimation in a way that tested the model that was hypothesized in the initial pathway diagram. This model was a poor fit with the survey data collected. A new model was specified that eliminated non-significant pathways. The data was fit to this new structural regression model, again using maximum likelihood estimation. In both the initial model and new model, mental illness symptoms was measured as a latent variable comprised of depression and psychological distress survey measures. Thus, greater mental illness symptoms corresponded to higher depression symptom severity and higher psychological distress. The new model fit the observed data. The results for the test of this model is presented in the above table in the row labeled **Mental Illness Symptoms**.

**Model 2: arrest records and well-being.** To assess the relationship between arrest records and well-being, the survey data was fit to a structural regression model using maximum likelihood estimation in a way that tested the model hypothesized in the initial pathway diagram. In the initial model, well-being was measured as a latent variable comprised of residents' self-reported measures of general health and well-being, and life satisfaction. This model was a poor fit with the survey data collected. A new model was estimated, again as a structural regression model using maximum likelihood estimation, and this new model fit the observed data well. In the new model the dependent variable was measured as general health and well being, and this model was a good fit to the observed data. The result for the test of this model is presented in the above table in the row labeled **Well-Being**.

**Model 3: arrests and community mental health.** Similar to the initial hypothesized model of the relationship of arrests and individual mental health, it was anticipated that arrests would be significantly and adversely influence community mental health processes. Community mental health was measured as a latent variable comprised of residents' reported collective efficacy and psychological sense of community. Thus, better community mental health processes corresponds to greater collective efficacy and greater psychological sense of community. Tests of the initial hypothesized model indicated that community mental health did not play a role in influencing the relationship of arrest individuals' severity of

mental illness symptoms and general well-being. Consequently, an alternative model using community mental health as a unique outcome was tested. As with the prior two models presented, a structural regression SEM was specified using maximum likelihood estimation. This model was a good fit to the observed data and was retained for reporting the influence of arrests on community mental health as its own outcome. The results for the test of this model is presented in the above table in the row labeled **Community Mental Health**.

## **RELATIONSHIP BETWEEN ARREST RECORDS AND MENTAL ILLNESS**

### **Initial hypothesis:**

Initially, the MHIA Team expected that individuals' arrest history would be associated with greater mental illness. We anticipated that arrests would influence mental illness through impacts on employment, social exclusion, income, and community mental health processes.

### **Findings:**

**Arrest history adversely influences the stability of household income.** Those individuals who had been arrested more frequently were more likely to experience income instability. These same individuals also reported greater social exclusion, as evidenced by more frequent experiences of discrimination and greater distress as a result of discrimination.

**Arrest history and social exclusion are related.** Our survey respondents who had been arrested more frequently were significantly more likely to report higher rates of social exclusion.

**Social exclusion and the stability of household income are related.** Those individuals who experienced greater social exclusion were also more likely to report greater income instability. These same individuals were also more likely to report greater severity of mental illness symptoms, lower well-being, and worse community-level mental health outcomes.

**Income instability adversely influences mental health outcomes.** Greater income instability was significantly related to greater severity of mental illness symptoms.

**Social exclusion and mental illness are related.** Greater levels of social exclusion were related to significantly worse mental illness severity symptoms.

To summarize, number of arrests was significantly associated with mental illness through direct relationships with social exclusion and income instability. That is, as individuals' number of arrests increased, so too did social exclusion and income instability. In turn, increases in social exclusion and income instability were directly related to increases in mental illness. The strongest direct relationships were between number of arrests and social exclusion, social exclusion and severity of mental illness, and social exclusion and income instability.

In this particular path analysis, three indirect relationships were found that can be summarized as a higher number of arrests was related to greater social exclusion, which in turn was related to greater income instability, which in turn was related to greater severity of mental illness. The strongest indirect relationship was between the number of arrests on severity of mental illness.

*Estimates of the above described relationships are presented in the table below.*

## Parameter Estimates for the Influence of Arrest on Mental Illness Symptoms

### Parameter

|                           |                           | Direct Effect  |       |              |
|---------------------------|---------------------------|----------------|-------|--------------|
|                           |                           | Unstandardized | SE    | Standardized |
| <b>Number of Arrests</b>  | ▶ Social Exclusion        | 0.065**        | 0.020 | .217         |
| <b>Social Exclusion</b>   | ▶ Income Instability      | .151*          | 0.069 | .155         |
| <b>Number of Arrests</b>  | ▶ Income Instability      | 0.042*         | 0.019 | .143         |
| <b>Income Instability</b> | ▶ Mental Illness Symptoms | 2.019*         | 0.925 | .139         |
| <b>Social Exclusion</b>   | ▶ Mental Illness Symptoms | 8.396***       | 1.362 | .592         |
| <b>Number of Arrests</b>  | ▶ Mental Illness Symptoms | 0.083          | 0.273 | .020         |

|                          |                           | Indirect Effect |              |
|--------------------------|---------------------------|-----------------|--------------|
|                          |                           | Unstandardized  | Standardized |
| <b>Number of Arrests</b> | ▶ Income Instability      | 0.010           | .034         |
| <b>Number of Arrests</b> | ▶ Mental Illness Symptoms | 0.654           | .153         |
| <b>Social Exclusion</b>  | ▶ Mental Illness Symptoms | 0.304           | .021         |

\*p < .05 \*\*p < .01 \*\*\*p < .001

## RELATIONSHIP BETWEEN ARREST RECORDS AND WELL-BEING

### Initial hypothesis:

Initially, the MHIA Team expected that arrest history would be associated with lower well-being. It was anticipated that arrests would influence well-being through impacts on employment, social exclusion, income, and community mental health processes.

### Findings:

Overall, the findings from the analysis of the relationship of arrest records to general health and well-being were similar to the findings for the relationship between arrest records and mental illness symptoms.

**Arrest history adversely influences the stability of household income.** Those individuals who had been arrested more frequently were more likely to experience income instability. These same individuals also reported greater social exclusion, as evidenced by greater reports of discrimination and race-related stress.

**Arrest history and social exclusion are related.** Participants who had been arrested more frequently reported significantly higher levels of social exclusion.

**Social exclusion and the stability of household income are related.** Individuals who experienced greater social exclusion were also more likely to report greater income instability.

**Income instability adversely influences mental health outcomes.** Greater income instability was significantly related to significantly lower general health and well-being.

**Social exclusion and mental health are related.** Participants who reported greater levels of social exclusion also reported significantly worse mental health, as evidence by significantly lower well-being.

To summarize, arrest history was significantly and directly associated with social exclusion, income instability, and well-being. Social exclusion was significantly and directly related to greater income instability and lower well-being. Lower well-being was significantly associate greater income instability.

Examination of indirect relationships suggested that the number of times an individual had been arrested was indirectly related to lower well-being through greater social exclusion and greater income instability. Thus, more frequent arrests were associated with greater income instability and greater social exclusion, which in turn were associated with lower well-being.

*Estimates of the above described relationships are presented in the table below.*

## Parameter Estimates for the Influence of Arrest on Well-Being

### Parameter

|                    |   |                    | Direct Effect  |       |              |
|--------------------|---|--------------------|----------------|-------|--------------|
|                    |   |                    | Unstandardized | SE    | Standardized |
| Number of Arrests  | ▶ | Social Exclusion   | 0.065**        | 0.020 | .255         |
| Social Exclusion   | ▶ | Income Instability | .198*          | 0.086 | .172         |
| Number of Arrests  | ▶ | Income Instability | .037*          | 0.019 | .127         |
| Income Instability | ▶ | Well-Being         | -0.138**       | 0.047 | -.184        |
| Social Exclusion   | ▶ | Well-Being         | -.148*         | 0.065 | -.172        |
| Number of Arrests  | ▶ | Well-Being         | -.007          | 0.014 | -.032        |

|                   |   |                    | Indirect Effect |              |
|-------------------|---|--------------------|-----------------|--------------|
|                   |   |                    | Unstandardized  | Standardized |
| Number of Arrests | ▶ | Income Instability | 0.013           | .044         |
| Number of Arrests | ▶ | Well-Being         | -0.017          | -.075        |
| Social Exclusion  | ▶ | Well-Being         | -0.027          | -.032        |

\*p < .05 \*\*p < .01 \*\*\*p < .001

## RELATIONSHIP BETWEEN ARREST RECORDS AND COMMUNITY MENTAL HEALTH

### Initial hypothesis:

It was originally hypothesized that the relationship between arrests and individual mental health would be partially influenced by community mental health. As noted above, this hypothesis was not supported by the initial structural regression model. Thus, a revised model was tested that specified community mental health as its own outcome variable. The results of this new model, which was a good fit to the observed data, are presented.

Overall, the findings from the analysis of the relationship between arrest records and community mental health findings mirrored the findings for the relationship between arrest records and mental illness symptoms, and number of arrests and general health and well-being.

### Findings:

**Arrest history adversely influences the stability of household income.** Those individuals who had been arrested more frequently were more likely to experience income instability.

**Arrest history and social exclusion are related.** Individuals who had been arrested more frequently reported significantly higher rates of social exclusion.

**Social exclusion and the stability of household income are related.** Those individuals who experienced greater social exclusion reported significantly higher income instability.

**Income instability adversely influences community mental health processes.** Greater income instability was significantly related to significantly lower community mental health.

**Social exclusion adversely influences community mental health processes.** Those individuals who reported greater levels of social exclusion also reported significantly lower community mental health.

To summarize, a greater number of arrests was significantly and directly related to greater income instability and greater social exclusion. Greater social exclusion was significantly and directly related to greater income instability. Finally, lower community mental health were directly, significantly influenced by greater social exclusion and greater income instability. The strongest observed direct relationships were among social exclusion and community mental health; income instability and community mental health; and numbers of arrests and social exclusion.

The analysis suggested an indirect relationship between number of arrests and community mental health through social exclusion and income instability. Specifically, the number of times an individual has been arrested was related to greater levels of social exclusion, which in turn was related to greater income instability, which in turn was related to lower community mental health.

*Estimates of the above described relationships are presented in the table below.*

## Parameter Estimates for the Influence of Arrest on Community Mental Health

### Parameter

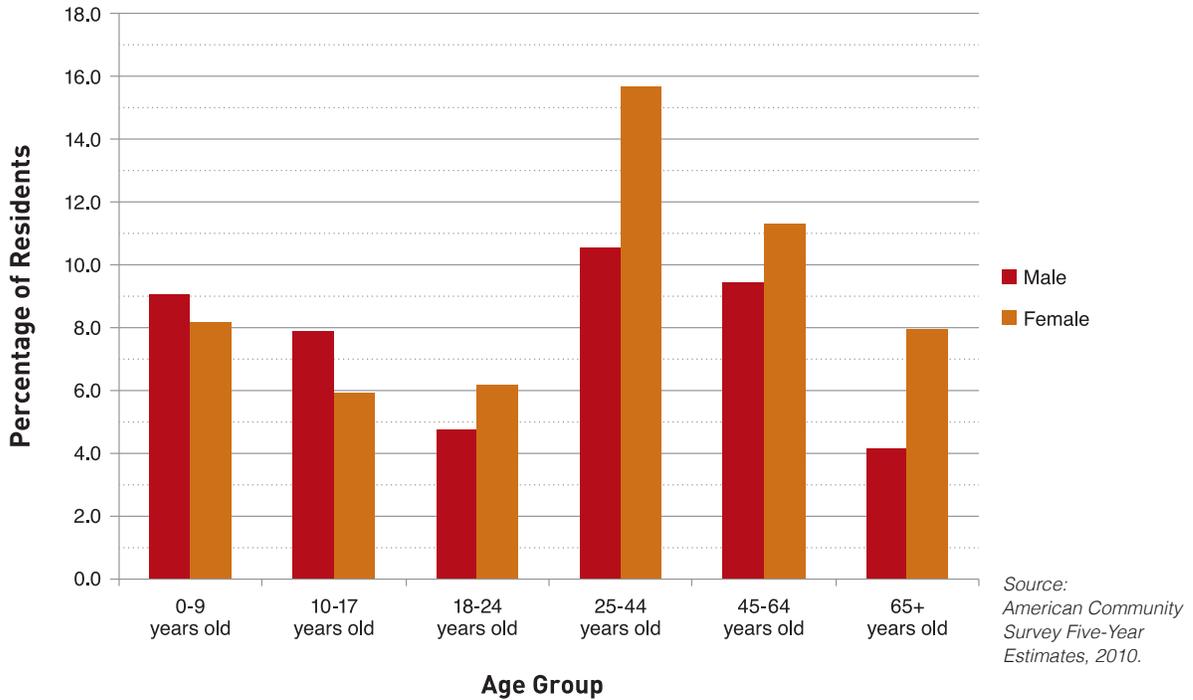
|                    |   |                         | Direct Effect  |       |              |
|--------------------|---|-------------------------|----------------|-------|--------------|
|                    |   |                         | Unstandardized | SE    | Standardized |
| Number of Arrests  | ▶ | Social Exclusion        | 0.044**        | 0.013 | .214         |
| Social Exclusion   | ▶ | Income Instability      | 0.190*         | 0.092 | .132         |
| Number of Arrests  | ▶ | Income Instability      | 0.045*         | 0.018 | .152         |
| Income Instability | ▶ | Community Mental Health | -0.137***      | 0.037 | -.360        |
| Social Exclusion   | ▶ | Community Mental Health | -0.267***      | 0.061 | -.487        |
| Number of Arrests  | ▶ | Community Mental Health | 0.005          | 0.01  | .048         |

|                   |   |                         | Indirect Effect |              |
|-------------------|---|-------------------------|-----------------|--------------|
|                   |   |                         | Unstandardized  | Standardized |
| Unstandardized    | ▶ | Standardized            | 0.013           | .044         |
| Number of Arrests | ▶ | Income Instability      | 0.008           | .028         |
| Number of Arrests | ▶ | Community Mental Health | -0.019          | -.169        |
| Social Exclusion  | ▶ | Community Mental Health | -0.026          | -.048        |

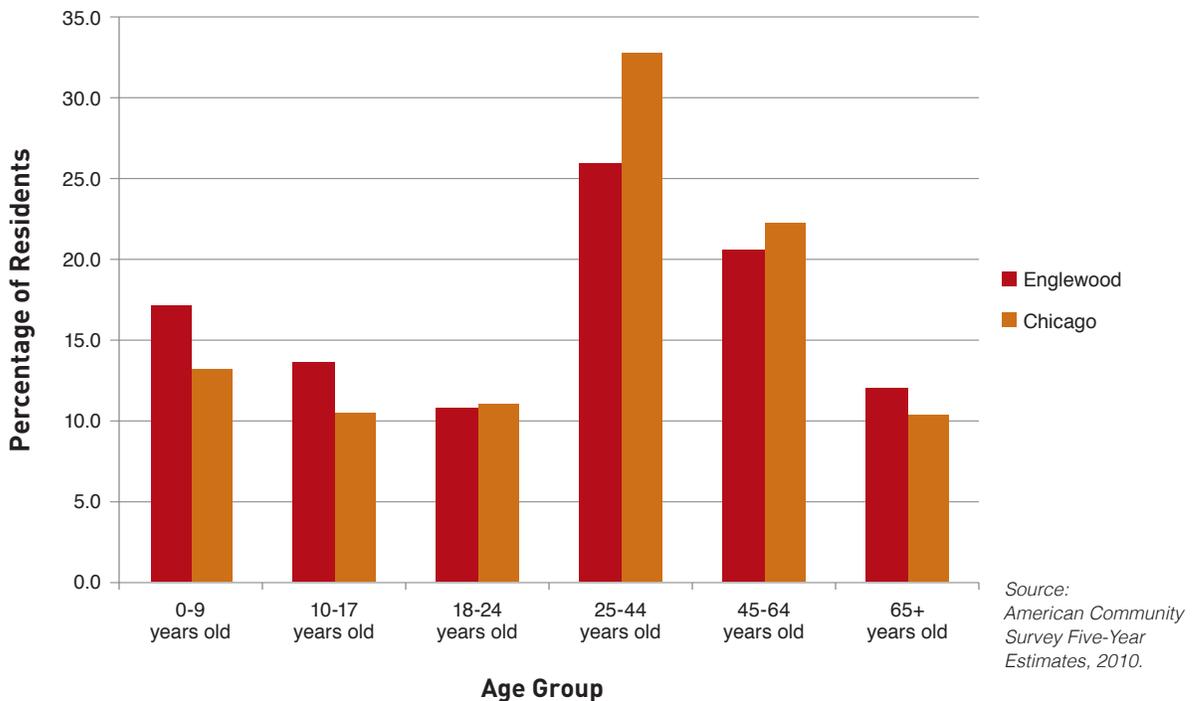
\*p < .05 \*\*p < .01 \*\*\*p < .001

## Appendix K. Data Tables and Figures from Assessment

**Figure 2. Percentage of Male and Female Englewood Resident by Age Group, 2010**



**Figure 3. Percentage of Englewood and Chicago Residents by Age Group, 2010**

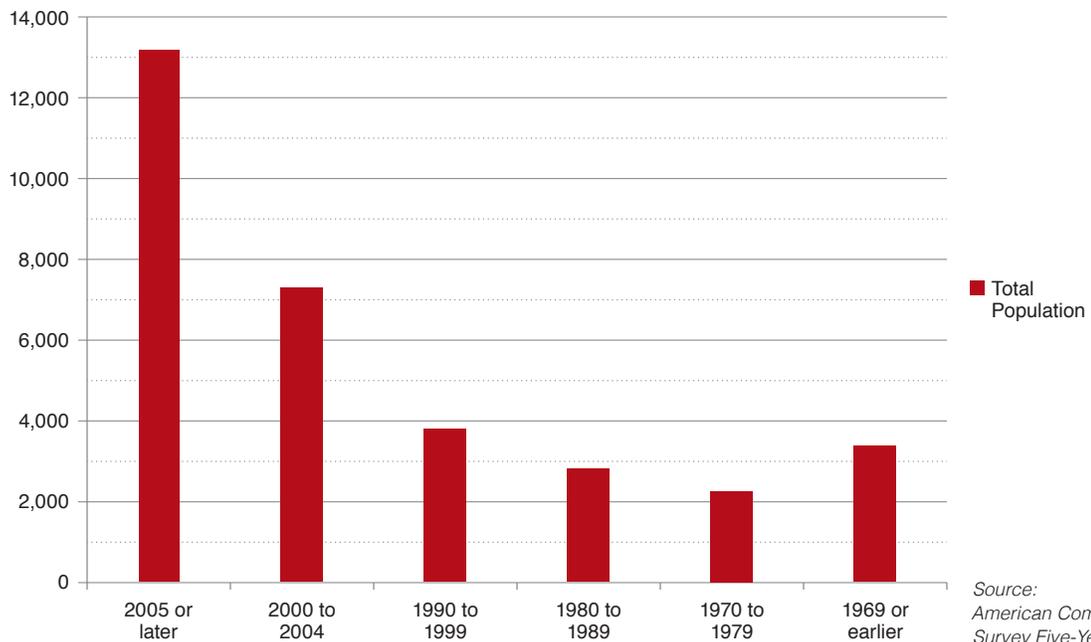


**Table 3. Distribution of Self-Identified Racial Background among Englewood Residents**

| Self-Identified Race                                     | %     | <i>n</i> |
|--|-------|----------|
| <b>One Race</b>  |       |          |
| African American   | 98.80 | 34,762   |
| Other Racial Background                                  | .15   | 52       |
| Non-Hispanic White                                       | 0.67  | 237      |
| <b>Two Races</b>   |       |          |
| African American and Non-Hispanic White                  | 0.24  | 84       |
| American Indian or Native Alaskan and Non-Hispanic White | 0.07  | 25       |
| <b>Three Races</b>                                       |       |          |
|  | 0.07  | 26       |

Source: American Community Survey Five-Year Estimates, 2010.

**Figure 4. Total Population by Household Tenure for Englewood Residents**



Source: American Community Survey Five-Year Estimates, 2010.

**Table 4. Estimates of Employment Industry for Englewood Residents**

| Industry   | %    | <i>n</i> |
|--|------|----------|
| Agriculture, forestry, fishing and hunting, and mining                                 | 0.2  | 18       |
| Construction   | 0.32 | 283      |
| Manufacturing  | 5.4  | 476      |
| Wholesale trade  | 1.1  | 92       |
| Retail trade   | 10.7 | 941      |
| Transportation and warehousing, and utilities  | 10.8 | 950      |
| Information  | 1.5  | 129      |
| Finance and insurance, and real estate and rental and leasing                          | 5.3  | 463      |
| Professional, scientific, and management, administrative and waste management services | 11.3 | 990      |
| Educational services, and health care and social assistance                            | 31   | 2,711    |
| Arts, entertainment, and recreation, and accommodation and food services               | 8.5  | 747      |
| Other services, except public administration   | 4.8  | 421      |
| Public administration  | 6.1  | 537      |

*Note.* Percentage and frequencies are based off of 2010 American Community Survey (ACS)

*Source:* American Community Survey Five-Year Estimates, 2010.

**Table 5. Sources of Informal Economy Reported by Survey Participants**

| Scale Item  | Used at Least Once |          | Used Once |          | Used More Than Once |          |
|---|--------------------|----------|-----------|----------|---------------------|----------|
|   | %                  | <i>n</i> | %         | <i>n</i> | %                   | <i>n</i> |
| Received money or goods from family, friends or neighbors as a gift?  | 68.7               | 173      | 17.5      | 44       | 51.2                | 129      |
| Received money or goods from spouse, boyfriend/ girlfriend or intimate partner as a gift?                                   | 64.4               | 161      | 13.2      | 33       | 51.2                | 128      |
| Provided a service to family, friends or neighbors for a fee?   | 63.5               | 160      | 13.1      | 33       | 50.0                | 127      |
| Received money or goods from family, friends or neighbors with expectations of some form of repayment?                      | 59.2               | 148      | 20.4      | 51       | 38.8                | 97       |
| Swapped or exchanged good or service with family, friends or neighbors?   | 52.2               | 129      | 17.0      | 42       | 35.2                | 87       |
| Received money or goods from spouse, boyfriend/ girlfriend or intimate partner with expectations of some form of repayment? | 50.6               | 127      | 13.1      | 33       | 37.5                | 94       |
| Sold something you purchased to family, friends or neighbors?   | 48.4               | 120      | 17.3      | 43       | 31.0                | 77       |
| Pawned personal or family items at a pawn shop?   | 46.2               | 115      | 40.0      | 16.1     | 30.1                | 75       |
| Sold recyclable items such as clothing or aluminum?   | 45.8               | 116      | 13.4      | 34       | 32.4                | 82       |
| Used credit cards to obtain goods?  | 43.2               | 105      | 10.3      | 25       | 32.9                | 80       |
| Sold something hand-made by yourself to family, friends or neighbors?   | 36.6               | 93       | 13.0      | 33       | 23.6                | 60       |
| Started your own small business or home-based business such as a daycare?   | 34.0               | 84       | 11.7      | 29       | 22.3                | 55       |
| Used credit cards for a cash advance?   | 33.3               | 81       | 7.8       | 19       | 25.5                | 62       |
| Used payday loan service?   | 32.5               | 79       | 11.9      | 29       | 20.6                | 50       |
| Used or sold items found in dumpsters and trash?  | 29.0               | 72       | 10.9      | 27       | 18.1                | 45       |
| Sold plasma or blood?   | 28.4               | 67       | 11.4      | 27       | 16.9                | 40       |
| Provided sex or sex acts for money or goods?  | 28.0               | 69       | 8.5       | 21       | 19.5                | 48       |
| Begged or panhandled?   | 27.8               | 68       | 7.8       | 19       | 20.0                | 49       |
| Sold illegal or prescription drugs?   | 27.7               | 67       | 9.1       | 22       | 18.6                | 45       |
| Wrote bad checks?   | 26.9               | 67       | 10.8      | 27       | 16.1                | 40       |
| Stolen or burglarized money or goods?   | 22.8               | 56       | 8.1       | 20       | 14.6                | 36       |
| Took out a second mortgage?   | 22.1               | 55       | 7.6       | 19       | 14.5                | 36       |

## Appendix L. Impact Predictions

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Following is in-depth explanation of how the MHIA Team reached its impact predictions.

**Direction** refers to a decrease or increase in the social determinant or mental health outcomes of interest. It is defined as:

- Decrease: revisions to the U.S. EEOC Policy Guidance are expected to be associated with lower rates, incidence, or levels of the social determinant or mental health outcome
- Increase: revisions to Policy Guidance are expected to be associated with greater rates, incidence, or levels of the social determinant or mental health outcome

**Likelihood** refers to the certainty of the predictions made by the MHIA Team. It is defined as:

- Unlikely/Implausible: there is substantial evidence against an influence or impact of Policy Guidance revisions on social determinants or mental health outcomes; or the projected impact is logically implausible
- Possible: the projected effect or influence of Policy Guidance revisions on social determinants or mental health outcomes is logically plausible, but the evidence supporting the projected effect may be limited or uncertain
- Likely: the project effect or influence of Policy Guidance revisions on social determinants or mental health is logically plausible with substantial and consistent supporting evidence as well as substantial uncertainties
- Very Likely/Certain: adequate evidence for a causal and generalizable projected effect of Policy Guidance revisions on social determinants or mental health outcomes
- Insufficient Evidence/Not Evaluated

**Magnitude** refers to the number of individuals likely to be impacted by Policy Guidance revisions, relative to the total target population. In the MHIA, magnitude ratings refer to the qualitative judgment of the overall number of individuals potentially influenced by changes in social conditions. It is defined as:

- Limited: Policy Guidance revisions are projected to be associated with impacts to no or very few community members, relative to target population size
- Moderate: Policy Guidance revisions are projected to be associated with impacts to a wide number of community members, relative to target population size
- Substantial: changes in EEOC Policy Guidance is projected to be associated with impact to most or all community members, relative to initial population size
- Insufficient Evidence/Not Evaluated

**Severity** refers to the level of impact on human functioning, well-being, or longevity, considering the affected community's current ability to manage health effects. In the MHIA, severity ratings refer to the strength of the projected effect on health outcomes; therefore, no severity rating is made for social determinants. It is defined as:

- Low: acute, short-term effects with limited or reversible effects/influence on functioning, well-being, or livelihood that are tolerable or entirely manageable within the capacity of the community health system; or a standardized model path coefficient with an absolute value of .10 or less
- Medium: acute, chronic, or permanent effects that substantially affect functioning, well-being, or livelihood but are largely manageable within the capacity of the community health system; or acute, short-term effects on functioning, well-being, or livelihood that are not manageable within the capacity of the community health system; or a standardized path coefficient with an absolute value between .11 and .49
- High: acute, chronic, or permanent effects that are potentially disabling or life-threatening, regardless of the community health system manageability; or effects that impair the development of children or harm future generations; or a standardized path coefficient with an absolute value of .50 or greater
- Insufficient Evidence/Not Evaluated

**Distribution** refers to whether the anticipated effects will be allocated equitably across populations, regardless of whether the projected effect will be adverse or beneficial. Also evaluated is whether the effects of Policy Guidance revisions might reverse baseline or historical inequities. It is defined as:

- Disproportionate Harms: projected disproportionate adverse effects that harm populations defined by demographics, culture, or geography
- Disproportionate Benefits: projected disproportionate beneficial effects to populations defined by demographics, culture, or geography
- Restorative Equity: projected effects that will reverse or undo existing or historical inequitable health-relevant conditions or health disparities
- Insufficient Evidence/Not Evaluated

## POLICY IMPACTS ON SOCIAL DETERMINANTS

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The MHIA Team predicted the impacts that Policy Guidance revisions could have on the following social determinants: *employment, income, social exclusion, and neighborhood conditions*.

An important qualification to the employment predictions is that they pertain to the potential *employability* of Englewood residents, rather than residents' employment status. Revisions to the Policy Guidance do not guarantee that applicants will, in fact, become employed. Instead, the policy revision creates additional provisions against employer inquiry into applicants' arrest history and makes it unlawful to use that history as a basis for hiring decisions (see the chapter "The EEOC Policy Chosen for MHIA Review" for further information).

**Employment.** The predictions for the social determinant of *employment* were based on the MHIA Team's assessment of the anticipated impacts of revisions to Policy Guidance on the following indicator:

- Number of employable Englewood residents

For the indicator of the number of employable residents, the following impacts were predicted:

- an increase in the number of employable residents of Englewood as a result of the Policy Guidance revisions.
- a *possible* likelihood because literature on the relationship of arrest record to employment has treated arrest records and conviction as synonymous, conflating these two distinct outcomes. Focus group participants also described experiences with the conflation of arrest record and conviction. Therefore, although one might reasonably expect increases in employability on the basis of policy amendment, the aforementioned tendency for employers to equate arrest record with conviction complicates efforts to make clear and consistent impact predictions. As a result, the likelihood of predicted impact is *possible* rather than *likely*.
- a *moderate to substantial* magnitude because changes to the Policy Guidance have the potential to influence many Englewood residents, based on police department data reporting a high number of arrests in Englewood, and findings from the MHIA survey that similarly report a high proportion of individuals who have been arrested in their lifetime.
- a distribution of impact effects that will result in *Restorative Equity*, due to the disproportionate distribution of arrest records among Englewood residents and the aforementioned possible impact of arrest records on Englewood residents' employability. This prediction is based on the assertion that residents of Englewood are more likely to have an arrest record relative to other Chicago neighborhoods and the comparatively higher levels of unemployment in Englewood compared to Chicago. To the extent that having an arrest history is associated with differential rates of exclusion from employment, policy revisions that legalize inquiry into arrest history may be associated with more equitable hiring decisions among employers.

**Income.** The predictions for the social determinant of *income* were based on the MHIA Team's assessment of the anticipated impacts of Policy Guidance revisions on the following three indicators:

- Income level of Englewood residents
- The ratio of Englewood income to City of Chicago income
- Number of sources of informal economy used by residents of Englewood as well as the frequency of their participation in the informal economy

For the indicator of the median income level of Englewood residents, the following impacts were predicted:

- an increase in the income level of Englewood residents.
- a *likely* overall increase in resident income levels. The rationale for this prediction is based on the current overall high level of unemployment in Englewood, the reportedly high proportion of arrest history among Englewood residents, and the documented association between income and employment status. In particular, it is anticipated that increased employability related to Policy Guidance revisions will be associated with increased resident income through the formal economy (i.e., employment).
- a moderate to substantial magnitude across all Englewood residents, because of the MHIA finding of the high proportion of community survey participants with an arrest history, irrespective of history of conviction.
- a distribution of the predicted impacts that will result in *Restorative Equity*, given the disproportionate representation of lower SES in Englewood.

For the indicator of the ratio of Englewood income to City of Chicago income, the following impacts were predicted:

- an *increase* in the median income of Englewood residents compared to the median income in the city of Chicago.
- a *possible* increase in median income of Englewood residents, as compared to the median income in the City of Chicago. A possible impact is predicted, based on the plausibility that increased employability will be associated with greater income through obtaining income through formal economic means. As with the above impact predictions, these results are qualified by noting that employability does not perfectly correlate with employment status, and prior research terminology is limited to the extent the literature fails to distinguish between arrest and conviction status. Thus, a conservative estimate of *possible* impact, rather than *likely*, is predicted.
- a *substantial* magnitude, based on both U.S. Census data and data from the MHIA survey indicating that, on average, individuals who live in Englewood are in the lower SES levels compared to the City of Chicago.
- as with the above predictions for the overall income level of Englewood residents, potential impact effects associated with increased employability are likely to increase the income level for residents of Englewood such that the disparity between this community and Chicago overall is narrowed. Thus, the distribution of impact effects on the social determinant of income as a result of change to Policy Guidance is estimated to have *Restorative Equity*.

For the indicators of number of informal economy sources and informal economy use, the following impacts were predicted:

- a *decrease* in the number of sources and use of informal economy for income.
- a *possible* decrease in sourcing and using the informal economy for income for Englewood residents, based on survey results finding that residents who had been arrested used a greater number of informal economy sources and that, on average, individuals who had been arrested had more frequent participation in the informal economy.
- Based on the rates of arrests that occur within Englewood, it is anticipated that the policy change will be associated with a *moderate* magnitude of impact.
- A distribution of impact effects associated with *Restorative Equity*, because changes to Policy Guidance may result in decreased informal economy use in favor of more formal sources of economic support (e.g., greater use of employment income for financial support). Thus, changes to Policy Guidance may partially reverse conditions that contribute to the use of income sources that are inconsistently available and, in extreme cases, illegal.

**Social exclusion.** The predictions for the social determinant of social exclusion were based on the MHIA Team's assessment of the anticipated impacts of Policy Guidance revisions on the following two indicators:

- Number of Englewood residents excluded from employment due to history of arrest records
- Self-exclusion from employment by residents of Englewood due to history of arrest records

For the indicator of number of Englewood residents excluded from employment due to history of arrest records, the following impacts were predicted:

- a *decrease* in exclusion due to history of arrest records.
- a *likely* impact based on survey findings indicating that greater number of arrests was significantly related to greater rates of self-reported social exclusion, and that rates of social exclusion indicators (e.g., discrimination and race-related stress) were greater for residents with a lifetime history of arrest compared to individual who had never been arrested.
- a *substantial* magnitude, based on the prior research documenting high prevalence rate of social exclusion indicators, specifically discrimination, and the MHIA findings indicating that arrest history was common among the community sample of Englewood residents.
- through reducing the influence of arrest records on the social determinant of social exclusion, the distribution of impacts is predicted to be associated with *Restorative Equity*.

For the indicator of self-exclusion from employment by residents of Englewood due to history of arrest records, the following impacts were predicted:

- a *decrease* in self-exclusion from employment.
- a *possible* impact, based on the finding that focus group participants reported revisions to Policy Guidance would be associated with greater overall willingness to expand their social networks and seek employment, as well as establishing social network connections that would facilitate the possibility of gaining future employment.
- a *substantial* magnitude, based on the prior research documenting high prevalence rate of social exclusion indicators, specifically discrimination, and the MHIA findings indicating that arrest history was common among the community sample of Englewood residents.
- through reducing the influence of arrest records on the social determinant of social exclusion, the distribution of impacts is predicted to be associated with *Restorative Equity*.

**Neighborhood conditions.** The predictions for the social determinant of *neighborhood conditions* were based on the MHIA Team's assessment of the anticipated impacts of revisions to EEOC Policy Guidance on the following indicator:

- the ratio of crime in Englewood to crime in City of Chicago

For the indicator the ratio of crime in Englewood to crime in City of Chicago, the following impact predictions were made:

- a *decrease* in the crime rate in Englewood.
- a *possible* impact, based on MHIA focus group results that suggested rates of crime in the Englewood community may decrease subsequent to Policy Guidance changes. Specifically, focus group data suggested that reduced ability to achieve income stability through traditional, formal economic means due to legal difficulties (e.g., ex-felon status) at least partially contributes to crime rates. These reports are consistent with prior research that has documented an association between crime rates, lower levels of income, and reduced rates of employment. An important qualification to these assertions is that focus group and literature review findings conflated in the literature of arrest history with conviction status. Consequently, a conservative estimate of a possible impact of change in Policy Guidance on the social determinant of neighborhood conditions is estimated.
- a *limited* magnitude, due to the relatively small number of Englewood residents involved in any sort of criminal activity. The MHIA community survey data indicates that less than half of the sample (40%) had an arrest record, and of this proportion less than half (40%) had a conviction. Of those who have been convicted, the majority of

participants reported having been between one and three convictions. Thus, the community findings suggest some of the crime incidence in Englewood may be attributable to a small segment of the Englewood population with a moderate to high encounter with law enforcement. Data on reasons for arrest and conviction was not collected, but many arrests and convictions in Englewood may reflect non-violent convictions (e.g., possession of controlled substance). It is therefore anticipated that Policy Guidance changes may impact the social determinant neighborhood conditions as measured by rates of crime for a small number of individuals relative to the overall Englewood population.

- distribution of effects associated with *Restorative Equity*, based on MHIA findings that indicate rates of crime in the Englewood community are higher relative to many other City of Chicago neighborhoods.

## **POLICY IMPACTS ON MENTAL HEALTH**

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The MHIA Team estimated the potential impact of Policy Guidance revisions on the individual and community mental health, as mediated by each of the social determinants mentioned above.

**Individual mental health outcomes.** The predictions for the individual mental health outcomes were based on the MHIA Team's assessment of the anticipated impacts of revisions to EEOC Policy Guidance on the following three indicators:

- individual mental health, mediated by employment
- individual mental health, mediated by income
- individual mental health, mediated by social exclusion

The following impacts were predicted for the indicator of individual mental health, mediated by employment:

- an increase in individual well-being.
- a likely impact, based the consistency of previously published research literature documenting association between employment and mental health.
- a medium severity of impact, based on the size of standardized path estimates obtained in SEM analysis of community survey data and qualitative data obtained from Englewood community focus groups.
- a distribution of impacts associated with Restorative Equity, based on the MHIA focus groups suggesting that arrest history is indirectly associated with lower well-being through reduced employment.

The following impacts were predicted for the indicator of individual mental health, mediated by income:

- a decrease in severity of depression and psychological distress.
- a likely impact, based on the obtained SEM models suggesting a statistically significant influence of arrest records on individual mental health outcomes as mediated by the social determinants of income.
- a low severity of impact, based on the size of standardized path estimates obtained in SEM analysis of community survey data.
- a distribution of impacts associated with Restorative Equity, based on the MHIA community survey data suggesting that arrest history is indirectly associated with greater severity of depression and psychological through greater income instability.

The following impacts were predicted for the indicator of individual mental health, mediated by social exclusion:

- a decrease in severity of depression and psychological, and an increase in well-being.
- a likely impact, based on the consistency of previously published research literature on the association between social exclusion (i.e. racial discrimination, non-racial discrimination) and mental health, and the obtained SEM models suggesting a statistically significant influence of arrest records on individual mental health outcomes as mediated by social exclusion.

- a high severity of impact based on the size of standardized path estimates obtained in SEM analysis of community survey data.
- a distribution of impacts associated with Restorative Equity, based on MHIA community survey data and focus groups suggesting the arrest history is indirectly associated with adverse mental health outcomes through and greater social exclusion.

**Community mental health processes.** The predictions for the *community mental health process* were based on the MHIA Team's assessment of the anticipated impacts of revisions to EEOC Policy Guidance on the following three indicators:

- community mental health processes, mediated by employment
- community mental health processes, mediated by income
- community mental health processes, mediated by social exclusion

The following impacts were predicted for the indicator of community mental health processes, mediated by employment:

- an *increase* in social capital and sense of community
- a *likely* impact of Policy Guidance changes on community mental health, based on prior research suggesting a relationship of arrest records and employment to community mental health processes (i.e., collective efficacy).
- a *medium* severity impact based the size of standardized path estimates obtained in SEM analysis of community survey data, and by qualitative data obtained from Englewood focus groups.
- a distribution of impacts associated with of *Restorative Equity*, based on MHIA community survey data and focus groups suggesting that arrest history is indirectly associated with adverse community mental health processes (i.e., lower psychological sense of community, lower collective efficacy) through reduced employment.

The following impacts were predicted for the indicator of community mental health processes, mediated by income:

- an *increase* in social capital and sense of community
- a *likely* predicted impact of Policy Guidance changes on community mental health, based on obtained SEM results that suggest a statistically significant influence of arrest records on community mental health process as mediated by the social determinants income.
- a *low* severity impact based the size of standardized path estimates obtained in SEM analysis of community survey data, and by qualitative data obtained from Englewood focus groups.
- a distribution of impacts associated with of *Restorative Equity*, based on MHIA community survey data and focus groups suggesting that arrest history is indirectly associated with adverse community mental health processes (i.e., lower psychological sense of community, lower collective efficacy) through greater income instability.

The following impacts were predicted for the indicator of community mental health processes, mediated by social exclusion:

- an *increase* in social capital and sense of community
- a *likely* predicted impact of Policy Guidance changes on community mental health, based on based on obtained SEM results that suggest a statistically significant influence of arrest records on community mental health process as mediated by the social determinant of social exclusion.
- a *high* severity impact based the size of standardized path estimates obtained in SEM analysis of community survey data, and by qualitative data obtained from Englewood focus groups.
- a distribution of impacts associated with of *Restorative Equity*, based on MHIA community survey data and focus groups suggesting that arrest history is indirectly associated with adverse community mental health processes (i.e., lower psychological sense of community, lower collective efficacy) through greater social exclusion.

The Adler School of Professional Psychology continues the pioneering work of the first community psychologist Alfred Adler by graduating socially responsible practitioners, engaging communities, and advancing social justice. The School offers graduate-level programs enrolling more than 1,000 students at campuses in Chicago and Vancouver, and through Adler Online.

The Institute on Social Exclusion (ISE) at the Adler School works to dismantle barriers that systematically block entire communities of people from rights, opportunities and resources—such as housing, employment, healthcare, civic engagement, democratic participation, and due process—that are normally available to members of American society and that are key to social integration.

The ISE launched the Center for the Social Determinants of Mental Health in September 2012. Its mission is to improve mental health and well-being, and to narrow health inequalities by changing social conditions, particularly those that impact the most vulnerable.

**Find this report online at [adler.edu/ise](http://adler.edu/ise)**

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