

*Serving the Employment Needs
of
Justice Involved Adults*

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*SAMHSA Adult Treatment Court Collaboratives
Webinar*

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What Is H.I.R.E.?

- A national advocacy project of the Legal Action Center, the only non-profit law and policy organization in the US whose sole mission is to fight discrimination against people with criminal records, histories of addiction, or HIV/AIDS and to advocate for sound public policies in these areas.
- A clearinghouse of information and a training and technical assistance provider related to the employment of people with criminal records.
- A network of over 8,000 members that include workforce development practitioners, elected officials and their staff, government agencies and job seekers, among others, representing all 50 states, the District of Columbia, the Virgin Islands, and Puerto Rico.

What does H.I.R.E. provide?

- Model legislation and briefing papers to support specific policy priorities that improve labor market outcomes for people with criminal records, including anti-discrimination, certificates of rehabilitation, or occupational licensing and employment standards.
- Smart solutions to employers to help them access qualified workers, protect themselves from negligent hiring concerns, and maximize cost-savings. We provide peer-to-peer exchange of ideas and innovative practices that can be utilized in your community or state.
- Advise about barriers to employment, including state laws that affect individuals with criminal records and effective strategies to address them.
- Information about research efforts that are relevant to workforce development and criminal justice initiatives.
- Information and advocacy on federal legislation that directly impact hard to employ populations, including people with criminal records.

Key Advocacy Priorities

- Supporting, expanding and strengthening programs proven effective in promoting the employment of people with criminal records.
- Providing support and financial incentives to employers who hire qualified men and women with criminal records.
- Prohibiting employers from using information about arrests that did not lead to conviction.
- Eliminating laws that categorically ban qualified people with a criminal record from employment.
- Promoting anti-discrimination policies that require employers to make individualized determinations about a job applicant's specific qualifications.
- Promoting sealing and expungement of arrests that did not lead to conviction or resulted in minor or no longer relevant convictions.

Juvenile vs. Adult Criminal Cases

- Criminal cases usually handled in one of three courts depending upon the age of the defendant, the seriousness of the crime committed and sometimes where the offense was committed:
 - (1) youth, juvenile, or family court;
 - (2) criminal, municipal, or district courts; and
 - (3) circuit or State supreme courts.
- Most states give juvenile courts jurisdiction over youth up to age 17 who commit a criminal offense.
 - 2 states send youth at age 16 into the adult court system (NC & NY)

Criminal Records: aka RAP Sheets

- What does RAP stand for?
 - Record of Arrest and Prosecution
- Records generated and maintained by:
 - Arresting agency
 - State Repository (state criminal justice agency)
 - Courts
 - Federal Bureau of Investigation

Understanding Background Checks

How do employers usually learn about job applicants' criminal records?

- They ask during the application process;
- If authorized by the law, they may get direct access to the state and or federal repositories;
- They get a criminal background report—often through private “consumer reporting agencies” that collect criminal record information from publicly available sources.

Criminal Records and Employment: Fair Credit Reporting Act

- Consumer report agencies are regulated by the Federal Fair Credit Reporting Act
 - The law authorizes criminal convictions to be reported, no matter how old the conviction, but...cannot include
 - Arrests more than 7 years before the report and
 - Other “adverse information” more than 7 years before the report.
 - Some states like California and New York have state FCRA laws that enhances protections for the consumer.

Criminal Records and Employment: Fair Credit Reporting Act (cont.)

EMPLOYERS' Responsibilities

- **Federal FCRA:** employer must get applicant's permission in writing before ordering a background check
- **Federal FCRA:** employer must give applicant a copy of the background check, if it contains any negative information, *before* denying job.
 - This enables applicant to clear up any mistakes and to advocate for him or herself based on what the report says
- Employers frequently fail to follow this law, and deny people jobs without showing them the negative report first.

Expungement/Sealing

- States offer a range of options for suppressing or eliminating a criminal record which can be called “sealing,” “expunging,” or “purging” a record.
- Each state has a different process and differing criteria as to what dispositions can be sealed or expunged.
- Each state has rules for dissemination and access allowances that apply to juvenile and adult records.

Employment Discrimination: What's the Law

- Federal protections for people in recovery? Yes, under the...
 - Rehabilitation Act of 1973
 - American with Disabilities Act

Both laws protect individuals who are in recovery from discrimination based on their past drug history when seeking employment and educational or other services.

- Federal protections for people with criminal histories? No, BUT...

Employment Discrimination: What's the Law?

- Discrimination based on a criminal record can be race discrimination in violation of Title VII of the Civil Rights Act of 1964 because of disparate impact of criminal justice system on people of color
- The federal Equal Employment Opportunity Commission (EEOC) has issued policy guidance on use of arrest and conviction records in hiring decisions, which:
 - Preclude employers from denying someone with a record employment based solely on their conviction record.
 - Requires employers to consider the length of time since conviction and whether it is related to the job being sought.

Employment Challenges Facing Individuals Returning to the Community

- Limited or no income
- Limited education and/or work experience
- Competing agency obligations and mandates
- Legal and practical issues (housing, child support, drug/alcohol addiction, etc.)
- Extent of criminal background checks and inaccuracy or mistakes on rap sheets
- Occupational bars and licensing restrictions – often unrelated to the type of crime for which an individual was convicted
- Lack of protection against discrimination
- Overcoming **stigma** of having a criminal record

Negligent Hiring Liability: What is it?

- An employer may be held liable for failing to exercise a duty of reasonable care in hiring safe and competent employees.
 - specifically, whether the employee had a history or propensity for harmful behavior;
 - whether the employer knew or should have known of the employee's propensities.
- State standards differ but an employer's reasonable efforts to check and consider a prospective employee's background will generally satisfy the legal requirements and eliminate the risk of liability on the employer's part.

Next Biggest Challenge

The Economy

Unskilled labor force for current economy

Jobs in 3 major industries:

- Healthcare--Nurses & Pharmacists
- Computers (Engineers)
- Energy Research

Organizational Challenges

- Lack of funding
- Limited workforce development experience
- Limited knowledge of legal barriers
- Limited ability to address all of a client's needs
- Limited relationships with correctional community
- Limited relationships with business community
- Internal organizational conflicts: staff attitudes, staffing and capacity of your organization to deal with an increasing number of male job seekers who bring new challenges.

Improving Employment Outcomes for Individuals

- Identify and connect clients to new vocational training opportunities.
- Address soft skills and other correlating issues that affect obtaining and sustaining employment.
- Assist clients in the process of cleaning up and being familiar with their RAP sheets and background checks (understanding the distinction between arrest and conviction, sealing and expungement, certificates of rehabilitation and other restoration of rights processes.)
- Counsel clients on answering criminal record questions completely, directly, and honestly.
 - Resource:
http://www.hirenetwork.org/pdfs/WorkingAhead/1Contents_Intro.pdf
- Assist clients with gathering evidence of rehabilitation.

Gathering Evidence of Rehabilitation

Applicants should collect the **best evidence** of rehabilitation that they can, and be able to:

- accurately *describe* their convictions & underlying circumstances
- *explain* how they have been rehabilitated

Gathering Evidence of Rehabilitation (cont.)

Evidence of rehabilitation can include letters/documentation from:

- Employers
- School & vocational training
- Alcohol/drug treatment
- Church, mosque, etc.



Evidence of Rehabilitation: What Should Letters Address?

Employer letter should address:

- what the job was and how long s/he worked there
- job responsibilities
- how well s/he performed the job
- whether s/he was promoted
- attendance record and whether s/he came to work on time, and
- motivation, responsibility and interaction with others.



Evidence of Rehabilitation: What Should Letters Address (cont.)?

School or job training letter should discuss:

- how long in school
- attendance and punctuality
- excellent grades, and
- motivated to learn and get ahead in life.



Evidence of Rehabilitation: What Should Letters Address (cont.)?

Alcohol/drug treatment or other counseling letter should discuss:

- great attendance
- clean/negative drug tests (best if for at least 6 months)
- showed excellent motivation and desire to change



Evidence of Rehabilitation: What Should Letters Address (cont.)?

Alcohol/drug treatment or other counseling letter should discuss (cont.):

- fully participated in programs
- got along well with others
- understood causes of past behavior and were committed to positive growth, and
- not a risk to the safety of others.



Evidence of Rehabilitation: What Should Letters Address (cont.)?

Clergy or volunteer program letter should discuss that the client:



- is responsible
- has made a good contribution to the work of the religious institution or other program, and/or
- is dedicated to your volunteer work/religious community.

Strengthening Organizational Effectiveness

- Staff education and professional development
- Include staff w/specialization in working with the population and hire from population you serve
- Develop and execute effective collaborations
- Utilize sector strategies
- Strengthen relationships with employers

Collaboration is Key!

- Partner with others that have a stake in the target population you serve.
 - Correctional agencies (Probation/Parole)
 - Faith and community-based organizations
 - Workforce development agencies
 - Educational institutions
 - Housing organizations
 - Mental Health providers
 - Case management/social service agencies

Strengthening Relationships with Employers

- Identify “friendly” employers and avoid those who cannot hire your consumers.
- Provide support to employers who are willing to hire people with criminal records (financial incentives—WOTC and other tax credits, federal bonding, no-cost human resource services). (See <http://www.hirenetwork.org/employer.html>)
- Be familiar with state and federal employment laws and occupational bars (pre-employment inquiries, standards regarding the consideration of conviction records, etc. (See <http://www.lac.org/roadblocks-to-reentry/>)
- Protect employers from negligent hiring (be familiar with the industry and legal standards--make appropriate job referrals and placements).
- Allow employers to trust their judgment of an individual after full consideration.
 - Resource: http://www.ppv.org/ppv/publications/assets/238_publication.pdf
http://www.hirenetwork.org/pdfs/From_Hard_Time_to_Full_Time.pdf

Advocacy & Workforce Development Resources

National Policy/ Federal Legislation (202) 544-5478 www.lac.org
State Specific Questions (212) 243-1313 www.hirenetwork.org
After Prison: Roadblocks to Reentry, www.lac.org/roadblocks-to-reentry
Advocacy Toolkits: www.lac.org/toolkits/Introduction.htm
Congressional legislative website, www.thomas.loc.gov

Federal Bonding Program, www.bonds4jobs.com
Work Opportunity Tax Credit, www.doleta.gov/business/incentives/opptax/

For information about various workforce development models visit...

Center for Employment Opportunities: www.ceoworks.org
Public/Private Ventures, Workforce Development Initiatives: www.ppv.org/workforce_development/
National Institute of Corrections: www.nicic.org
National Reentry Resource Center: www.nationalreentryresourcecenter.org
National Transitional Jobs Network: www.transitionaljobs.net
Safer Foundation: www.saferfoundation.org
Urban Institute, Justice Policy Center: www.urban.org
Vera Institute of Justice: www.vera.org

What more can you do?

“You must be the change you wish to see in the world...” -----*Gandhi*

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