Overcoming Legal Impediments to Hiring Forensic Peer Specialists

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As peer support roles have expanded in the delivery of mental health treatment and support services, it has become evident that individuals with serious mental illness who have had criminal justice system involvement can leverage that experience into a unique position to help engage and provide services to peers in earlier stages of recovery. As agencies have increasingly become committed to including these individuals as voluntary or paid Forensic Peer Specialists in treatment and support service teams, many have met daunting legal impediments to employment because of the very experience that makes their inclusion on these teams so valuable: criminal justice history.

Impediments

Among the major impediments to employment of Forensic Peer Specialists are:

- Employment laws that may prohibit hiring individuals with criminal histories
- Public information about a person's criminal justice system involvement that is often inaccurate or misleading
- Individuals lacking awareness of their current legal status or what information is available to potential employers

Employment Laws

Most states have laws that relate to hiring people with criminal histories, and agencies are often unaware of these laws as potential obstacles to employing Forensic Peer Specialists. While laws vary by state, all such statutes are intended to protect the public. Unfortunately, the same laws often block individuals in recovery from becoming self-supporting and active contributors to their communities.

Restrictive state employment laws and licensing requirements may apply to a variety of jobs or may be specific to positions in the human services fields. Typically, there is no consideration of the relevance of criminal history to the specific license or employment sought. Many states do provide avenues for flexibility or lifting of restrictions, but individuals and agencies are often unaware of these options.

Public Information

Public information about a person's involvement in criminal activity and culpability is often inaccurate or misleading. When individuals in a mental health crisis are arrested, it may be because the arresting officer is unaware of alternatives that provide safety or access to treatment. Therefore, the person's rap sheet, a record that details an individual's arrests and convictions, can be deceptive. Also, for a variety of reasons, rap sheets can be inaccurate. In some states, laws permit employers and licensing agencies to inquire about and consider arrests that never led to conviction. Many states allow access to records about arrests, incarceration, and conviction online. Since this information is not accompanied by any explanation, it is often misinterpreted.

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Current Legal Status

Individuals often do not know to ascertain their legal status, how to access information about their arrest history, or how to expunge arrest information. They also do not know what information is available to the public. When people with mental illness are arrested, it is often for minor offenses, and the individuals are released with the expectation of returning to court at a future date. Frequently, however, they do not understand they must return to court. When a person is homeless, the court may not have an address at which the person (the defendant) can be reached with

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a notification for a court date. If the person fails to appear in court, the judge may issue a warrant. Failure to appear in court is often a more serious charge than the original offense. These warrants are often left open and unresolved. Individuals may be unaware that these warrants exist until a potential employer does a background check.

Avoiding Impediments

Potential employers, employment programs, and Forensic Peer Specialist applicants can take proactive steps to avoid impediments to employment. These steps should include gaining an understanding of state employment laws and obtaining assistance with legal issues that might interfere with employment.

Awareness of Employment Laws

It is essential that both potential employers and those with criminal histories entering the work force become aware of state laws that are relevant to hiring individuals with criminal histories. Agencies that wish to hire individuals in recovery as Forensic Peer Specialists should be familiar with any restrictions affecting individuals with a criminal record in the expected job role. Also, it is essential to determine if the state issues "certificates of rehabilitation" or if it provides other avenues to allow flexibility or lifting of restrictions for hiring individuals with criminal histories. This responsibility is often delegated to the human resources division of an agency.

Preparing for Employment.

Providing Direction. Potential employers and employment services can help applicants by providing direction for resolving any active legal issues or to expunge arrests that have not led to conviction. For instance, in New York City, the Legal Action Center will assist individuals in obtaining copies of rap sheets and in challenging inaccurate information. The City of San Francisco's Public Defenders Office has a section dedicated to clearing inaccurate rap sheets. These services are free or fees may be waived.

Determining Legal Status. The job applicant should determine his or her legal status, (i.e., whether charges are pending, whether there has been a guilty plea and conviction, or whether there are any outstanding warrants). An individual with a criminal history should review his or her rap sheet on a regular basis, ensure its accuracy, and seek correction of any errors.

When conditions have been met or a sentence completed, individuals should obtain a written document, often called a certificate of disposition, as proof of successful completion of legal obligations. Individuals should explore whether it is possible to have arrests that did not lead to conviction expunged.

Vacating a Warrant. If a job applicant has any open warrants, steps must be taken to have them vacated. The first step is to restore the case to the court calendar. A defendant, prosecutor, or defense attorney can make a formal request (written or oral) to the judge to restore to the court calendar a case that was previously removed. Once this has been accomplished, the person can properly respond to the charges. A judge can vacate (dismiss) a warrant upon a motion of the defendant or the prosecution. The judge may determine that the warrant was issued in error, or the judge may decide to accept the defendant's explanation for not appearing or for other behavior. For example, the judge may accept an explanation such as failure to appear because the person was hospitalized for a psychiatric emergency. A judge may also be interested in quickly disposing minor cases where an individual is able to demonstrate his or her rehabilitation, including employment, treatment, volunteer work, participation in a training program, or successful completion of the conditions of a jail diversion program. It may take more than one court appearance to successfully dispose of the open case.

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It is important that individuals understand the legal consequences of "surrendering" to a court to vacate a warrant, and they should make an informed decision about doing so. The public defender's office (or other legal counsel) should be consulted.

Probation, Parole or Other Community Corrections. When individuals are sentenced to probation, remain under the supervision of state parole agencies, or have other court-imposed conditions of release, it can impact job responsibilities, job placement, and job retention strategies. For example, a position may be available for

Glossary

Rap Sheet – An official record that details arrests and convictions.

Certificates of Disposition – An official court document detailing the case and certifying how a criminal case was resolved. It indicates the charges, defendant's plea, case disposition (found guilty or not), sentence or fine that was imposed, whether the defendant successfully served the sentence or met other conditions that were imposed.

Open Warrant – An order to appear in court or to provide information to the court. Warrants can be issued if an individual fails to make a required appearance in court, parole, probation, or fails to pay a fine without being excused by the court.

Vacate Warrant – The judge can determine that a warrant is no longer in effect.

Restore to Court Calendar – A defendant, prosecutor or defense attorney can make a formal request that the judge put a case back on the calendar that was previously removed from the calendar. Once a case is restored to the calendar, the individual can properly respond to any charges.

Disposed – When a case has been resolved by dismissal, sentencing or completion of conditions.

a Forensic Peer Specialist to provide jail in-reach, but the applicant's active parole or probation status may prohibit entry to a correctional facility. Joint efforts between correctional agencies, the courts, human service employers, and the individuals with criminal backgrounds can remove some obstacles. Some successful joint efforts include asking the courts to modify orders and conditions of release or requesting early termination of parole or probation.

Mitigating Evidence. Job applicants with criminal histories who are subject to background checks may have an opportunity to offer mitigating evidence supporting their application for employment. Individuals should begin to collect supporting documents at the earliest opportunity. This evidence might be obtained from a variety of sources:

- Division of Parole or Probation (letter of reference or good conduct; documentation of completion of treatment or other conditions)
- Applicant's prospective and/or former employer(s) (letters of support)
- Treatment providers (letters indicating achievements in recovery and rehabilitation milestones)
- Educational and vocational records (including peer specialist training programs)
- Community members who know the applicant (letters of support)

Future Directions

Forensic Peer Specialists are not only an important source of support for others in recovery, but also they are a potential resource for interrupting the cycle of arrest and recidivism. However, to utilize this resource, states will have to re-examine laws relating to the employment of people with criminal histories and adopt policies and practices that facilitate successful reintegration in society. Individuals seeking employment as Forensic Peer Specialists should take proactive steps to avoid impediments where they can. Employers and programs committed to full employment of this population must be proactive and dedicate staff to manage these issues. Partnerships with consumer-run programs can help fulfill this need.

Resource

Legal Action Center, (2004). After prison: Roadblocks to re-entry, A report on state legal barriers facing people with criminal records. Retrieved from the internet at www.lac.org/roadblocks.html.

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