JOB DEVELOPMENT FOR PEOPLE WITH CRIMINAL HISTORIES

Jessica S. Oppenheim, Esq.
Director, Criminal Justice Advocacy Program
The Arc of New Jersey

Katelynne Collick
Coordinator, Employment and Transition Services
Division of Developmental Disabilities

What is the Issue?

♦ Just like people in general population, most people with intellectual and/or developmental disabilities are law-abiding citizens

♦ Nonetheless, individuals with I/DD can become involved as defendants accused of crimes, and as victims or witnesses to crime.

According to CareerBuilder.com:

♦ 65 million Americans have some variety of criminal offense record. Over 5.6 million Americans—nearly 1 in 40 adults—were in prison or had served time there, and almost 4 million other Americans were under supervision in the community—probation or parole.

♦ 51% of employers have hired someone with criminal record when legally able to do so.

♦ Businesses that have hired ex-offenders have been pleased with their work and have found them to be good productive employees.
While the use of criminal background checks has soared, the share of the U.S. population with criminal records has risen to over one in four adults.

The National Employment Law Project reported that over 90% of companies use background checks in their hiring decisions.

This impacts people with I/DD even more.

Criminal Justice Advocacy Program

- Program identifies and outlines community based services which can be incorporated into probation conditions for defendants with developmental disabilities.
- The goal is to increase success in the community.
- The CJAP serves as the liaison between the criminal justice and human service systems.
- Experience with people with I/DD and criminal involvement.

Overview of Offender w/ I/DD

- Male
- Mild to Moderate Intellectual Disability or Autism Spectrum Disorder most common
- Unemployed
- Aware of and try to hide disability
- Ages 20 – 40
- Sex Offenses
More Obstacles than non-I/DD

- Offenders w/ I/DD more likely to plead guilty to original charges than non-disabled cohorts
- More likely to spend more time incarcerated
- More likely to be denied parole

Definitions

- **Felony** – Crimes punishable by at least one year of prison time. In New Jersey, indictable offense or crime.
- **Misdemeanors** – Less severe charges punishable by a fine or jail time less than one year. In New Jersey a disorderly persons or petty d.p. offense.
- **Pre-Trial Intervention (PTI)** - A program that diverts certain offenders from the ordinary criminal justice process.

Pre-Trial Intervention (PTI)

- Must be first indictable offense
- Facts of the case are taken into consideration individually
- Desire of victim to forgo prosecution
- During PTI supervision charges are “inactive”
- After successful completion of PTI the complaint, indictment or accusation will be dismissed with prejudice
Conditional Dismissal Program
♦ Municipal Courts also have a PTI program called the Conditional Discharge program
♦ For first offenders charged with certain disorderly persons offenses

Convictions Only
♦ Employer should only be considering matters that result in a conviction
♦ At least one-third of felony, or indictable, arrests do not result in a conviction
♦ Background checks often include inaccuracies

Expungement
♦ Expunging - the extraction and isolation of all records on file concerning a person’s detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.
♦ A full guide describing how to expunge your criminal record is available on-line at www.pdnj.state.nj.us or www.njcourtsonline.org
Eligibility for Expungement

- Indictable offense - crimes punishable by 6 months jail time or more.
- Disorderly persons offense - Crime punishable by less than 6 months of jail time. (Municipal court)
- Violation of municipal ordinance
- May only have 1 indictable offense in any state. Must wait 10 years from the conviction (Now 5)
- May not have more than 2 disorderly persons convictions after the indictable offense
- Must wait 5 years from d.p. conviction (Now 3)
- Municipal Ordinances – 2 years from conviction or completion of probation/parole, and payment of fines.
- PTI – 6 months from completion

New Expungement Statute eff. 4/18/16

- Intent is to expand availability of expungement to make it easier for people to expunge convictions
- Give Court more discretion in waiving fines and penalties, waiving fees and in granting petitions for expungement

New Expungement Statute

- Reduces the waiting period for disorderly persons offenses (misdemeanors) from 5 to 3 years
- Reduces the waiting period from 10 to 5 years for Crimes
  - When everything is complete except the 10 year time, including penalties and fees are paid
  - At least 5 years have gone by
  - Person unable to pay fines due to compelling circumstances
Not Eligible for Expungement

♦ Not Guilty by Reason of Insanity (NGRI)
♦ Convictions which may not be expunged
  • Murder
  • Perjury
  • Kidnapping
  • False Swearing
  • Aggravated Sexual Assault
  • Human Trafficking (new)
  • Selling or Mfg. child pornography (new)
  • Robbery
  • Conspiracies or attempts to commit such crimes
  • No Motor Vehicle including DUI

Arrests

♦ Arrest information can always be expunged
♦ Ensure that people do expunge arrest information that did not result in a conviction.
♦ Contact County Clerk’s Office or go on njcourtsonline.org to check. Never assume that the dismissal is enough.

Getting criminal records

♦ Have the person sign a Release of Information
♦ Contact the municipal or county court where the offense occurred
  – Criminal Case Management
  – Contact Info at
  – www.njcourtsonline.org
♦ Ask person you are working with for information on past history with: Pre-Trial Intervention, Expungement, Case Dismissal
**Megan’s Law**

Registration and Community Notification Laws

Convicted or Adjudicated Delinquent of a listed sex offense

All offenses that require Megan’s Law Registration cannot be expunged

---

**Under Current Law**

- Tier Determination made by the Court:
  - Tier 1 low risk to reoffend
  - Tier 2 Moderate risk to reoffend
  - Tier 3 High risk to reoffend

Notification about Tier 3 offenders is made to employers by Prosecutor’s Office

---

**Internet Registry**

- Only some offenders end up on a registry that you can see
- All sex offenders register, but not all sex offender registrations are available on the internet registry
- All Tier 3s and some Tier 2s
- No tier 1 on internet
Parole Supervision for Life

- In addition to registration and notification
- Mandatory sentence for some offenders convicted of certain sex offenses—Not all persons subject to registration and notification are on PSL
- Does not apply to juveniles

Parole Supervision for Life

- Individual will have a parole officer
- List of conditions to be met
- Only aspect of “Megan’s Law” that impacts on a person’s living arrangements and employment situation

Job Developing

- Know your Jobseeker
  - Make sure the person has the skills to do the job and the environment is supportive
  - Consider Criminal History
  - Job match is key!
- Use your Network and Build New Connections
  - Social Capital and Influential People
- Research employers and businesses
  - Do they hire people with a criminal past?
- Have patience
  - It may take some time and a lot of follow-up
Discussing Criminal History with the Jobseeker

- Have you ever been arrested before? If so, for what?
- Where did you go to court?
- Did you have a Probation Officer? Parole officer? Explain.
- Have you ever been to jail? If so, Where? Why? When? How long?
- Do you have any documentation?

Tips during the Interview

- Make a good First Impression
  - Dress the part
  - Have a good strong handshake
  - Make eye contact
- Be honest
  - Don't try to hide anything or make promises you can't fulfill
  - Most employers will have you sign off on a background check
- Focus on strengths and positive attributes
  - What are some skills you have that sets you apart from other candidates?
- Community Involvement
  - Volunteering?
  - Social groups?
  - Religious groups?
  - Recreation?

How do I Explain?

- When someone asks about a criminal history:
  - Focus on what you’ve learned
  - Include any actions taken toward rehabilitation
    - Classes, earned a degree, other experiences that make you an asset to the business
  - Stay positive
  - Bring the conversation back to how you are the best fit for the job
Ease Concerns

Employers usually have two things in common when they are hiring:
1. How will this help me make money?
2. How will this help me cut costs?
   ♦ Describe what makes you an ASSET
   ♦ Describe how you can help them cut costs

Always maintain the relationship with the employer

The Application

What can they ask?

Arrests and Criminal Convictions

♦ After March 1, 2015, employer with 15 or more employees may not ask about an applicant’s criminal history until after the initial interview
♦ Exceptions:
  – Job is in law enforcement, corrections, the judiciary, homeland security, or emergency management
  – Where a criminal record background check is required by law, rule, or regulation and where an arrest or conviction may preclude the applicant from holding the position
  – Position is part of an effort by the employer to hire persons who have been arrested or convicted of a crime
True or False?

On an initial Application

An Employer can ask me......

Have you ever been convicted of a Felony?

Do you have a criminal record?
Do you have a parole officer?

But, I Still Get These Questions!

- Why?
  - Report your finding to the EEOC, advocacy groups, the HR department for that business
  - If possible, do not answer it
  - If you must answer, how do you answer it?
    - If legally they can't ask the question.....

Examples of Restricted Occupations

- Airport Screener
- Armored Car Crew
- Bank Teller
- Child Care
- Delivery Driver
- Public Safety Officer
- Residential installers
Take the long-term view

- An ex-offender needs to take the long view and have the faith and patience that the criminal matter will eventually be put behind them.
- A person must rebuild their résumé over time. And as time goes by, the criminal offense becomes less of a factor.
- Take some time to build skills that make you an attractive candidate to an employer.
- Some times the dream job isn’t readily available, recognize the steps you can take to get there.

Manager Feedback

- 31% of hiring managers recommended volunteering
- 68% percent of hiring managers recommended being up front and honest about the conviction and stress what was learned from it.
- 48% percent of hiring managers recommended being willing to work your way up.

Tax Credits

- The Work Opportunity Tax Credit (WOTC) is a federal tax credit to reduce the federal tax liability of private for profit employers to be used as an incentive for employers to hire individuals from eight different targeted groups: TANF recipients, veterans, ex-felons, high risk youth, summer youth, Food Stamp recipients, SSI recipients, and vocational rehabilitation referrals.
  www.nj.gov/labor/
Resources
- NELP.org
- DRNJ.org
- isseek.org
- hirenetwork.org/content/new-jersey
- Expungement-Legal Services of New Jersey hotline: 1-888-LSNJ-LAW or 1-888-576-5529
- Expungement-Volunteer Lawyers for Justice (973)645-1955
- EEOC: 1-800-669-4000 or info@eeoc.gov

QUESTIONS ??
Jessica S. Oppenheim, Esq.
Director, Criminal Justice Advocacy Program
The Arc of New Jersey
732.246.2525 joppenheim@arcnj.org

Katelynne Collick
Coordinator, Employment and Transition Services
Division of Developmental Disabilities
609.632.2257 Katelynne.Collick@dhs.state.nj.us