



Ex-Offender Employment Opportunities

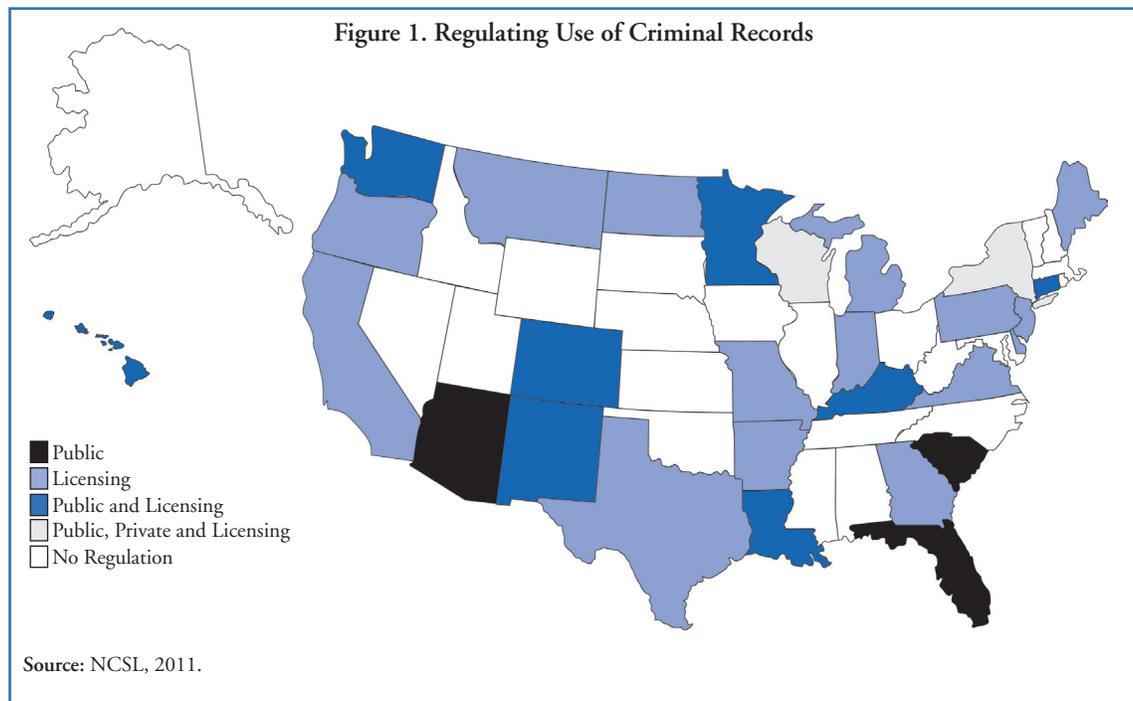
By Erin Kincaid and Alison Lawrence

July 2011

One of the first requirements for an offender who is released from prison is to obtain a job. Employment increases an ex-offender's opportunities to obtain housing and health care, comply with court-ordered debts such as restitution and child-support, and support himself or herself and family. Having a criminal record usually makes it more difficult for an ex-offender to find a job, especially a well-paying one. Those who have served time in prison can expect to earn about 40 percent less in annual wages compared to people in similar circumstances who have not spent time in prison, according to a 2010 study by the Pew Center on the States. State policies seek to balance business interests with employment opportunities that help ex-offenders become productive members of the community.

Hiring Regulations

To support ex-offender reintegration into society, some states have adopted policies that encourage employment opportunities for eligible applicants. A Connecticut law declares that, "the ability of returned offenders to find meaningful employment is directly related to their normal functioning in the community," and therefore prohibits denial of public employment or a professional license based solely on a prior conviction. At least 27 states limit or prohibit the use of criminal records in public or private employment and for licensing eligibility (Figure 1).



In the absence of state-regulated hiring policies, the Equal Employment Opportunity Commission's (EEOC) conviction record policy may apply. In line with Title VII of the Civil Rights Act of 1964, the EEOC has determined that denying employment on the basis of conviction alone has an adverse effect on minorities, unless there is a justifiable "business necessity."

Disqualifications

State laws generally allow denial of employment if the conviction is job-related or otherwise justified. In North Dakota, for example, a professional license can be denied if the conviction has a "direct bearing upon a person's ability to serve the public" or if it is determined the individual has not been sufficiently rehabilitated.

Most states have other defined circumstances under which an ex-offender may be disqualified from employment. Often, background screening is required for applicants seeking jobs that deal primarily with vulnerable populations, including children, the elderly and those unable to care for themselves due to mental or physical disability.

Felony records typically disqualify an applicant from such positions, while some state laws provide opportunities to lift disqualifications at certain time periods. In Florida, for example, disqualification may be lifted if the applicant has successfully completed all supervision requirements for a misdemeanor conviction or if at least three years have elapsed since completion of supervision for a felony offense. The applicant also must show that he or she is rehabilitated based on evidence, including the circumstances of the crime and behavior since the criminal act.

Proof of Rehabilitation

Establishing proof of rehabilitation allows an ex-offender to have occupational disqualifications lifted and also

may provide incentive to become a law-abiding and productive citizen. States have adopted various methods to determine rehabilitation for employment purposes, including administratively issued certificates, passage of time, or consideration of evidence provided with an employment application.

California, Illinois, New Jersey, New York, North Carolina and Ohio authorize administrative certificates of rehabilitation. Under the New York law, the court or parole board may grant a certificate if it is determined that doing so is consistent with both rehabilitation of the offender and public interest. A minimum waiting period also must be met if the offender has prior convictions.

In Arkansas, an ex-offender is deemed rehabilitated for purposes of occupational licensing five years after release from prison and completion of any community supervision, and if there have been no subsequent arrests. Minnesota, Montana and New Mexico also provide a presumption of rehabilitation after a certain time.

In New Jersey, an applicant may establish proof of rehabilitation through evidence of good conduct in either prison or the community; completion of treatment; successful participation in educational courses, vocational training, or work-release; or a recommendation from his or her probation or parole officer. Minnesota, Montana and North Dakota accept similar types of evidence as proof of rehabilitation for employment or licensing.

Applications

States also regulate how a criminal record is used during the application process. Laws in five states—Connecticut, Hawaii, Massachusetts, New Mexico, and Minnesota—and the District of Columbia and a number of cities and counties limit the use of criminal records during the hiring process. "Ban the box" policies—so called because of the box an applicant must check on an

application if he or she has a criminal record—prohibit an employer’s inquiry into an applicant’s criminal history on the initial written application. Hawaii’s law—the first in the country—was adopted in 1998. It permits inquiry into and consideration of a conviction only after a conditional offer of employment has been made. While Hawaii, Minnesota, and New Mexico laws apply only to state and local government jobs, Connecticut and Massachusetts’ apply to both public and private employers.

Record Clearing

Record-clearing mechanisms such as expungement and sealing limit or prohibit noncriminal justice access to the records. A cleared record is unavailable for most or all background checks, does not have to be reported on employment applications, and may lift occupational disqualifications. Record-clearing also can restore some civil rights and public benefits lost as a result of a criminal conviction, such as the right to vote, access to public housing, and eligibility for food stamps and Medicaid.

A few states, however, do not allow a conviction to be expunged unless it is overturned, there is a pardon or there was a mistake. In some other states, narrow categories of offenders are eligible for expungement. Where expungement, sealing and other remedies are offered, the eligible offenses and record types, required waiting periods and other limitations vary.

In 2010, the Massachusetts General Court addressed the effects of criminal records on ex-offender hiring policies with the Criminal Offender Record Information (CORI) Reform Act. In addition to implementing ban the box, the act:

- Reduces the waiting period for sealing crime records from 15 years to 10 years for felony convictions and from 10 to five years for misdemeanors;

- Prohibits dissemination of a record that is eligible to be sealed even if action has not yet been taken to seal that record; and
- Requires employers to receive written permission from an applicant before requesting a criminal history record.

A number of other states have acted in recent years to expand eligibility for expungement and sealing, generally targeting drug possession crimes or offenders who successfully complete a drug treatment program. Arkansas authorized judges to expunge a record upon an offender’s successful completion of a drug court program. Colorado and Nevada decreased the waiting period before a person is eligible to apply to have his or her record cleared. Hawaii allowed first-time drug offenders who have completed treatment and other conditions set by the court to apply for expungement. Mississippi and New York expanded the pool of eligible offenses. Mississippi’s law allowed application for expungement for some low-level felonies such as possession of a controlled substance and larceny. New York authorized expungement of records for offenders who successfully complete a drug-diversion treatment program.

Employer Liability and Incentives

Employers use background checks to identify applicants who, if hired, could pose a risk to the integrity of the business, other employees or the public and thus place the employer at risk of liability for negligent hiring practices. Employer liability may be limited in some states, however, due to legal restrictions on access to criminal records during the hiring process—such as ban the box—that limit the employer’s notice of a potential employee’s criminal record.

In a few states, laws offer employers protection from a negligent hiring claim under certain circumstances. For example, in New York an employer is generally not li-

able if the decision to hire was made after considering the relationship between the applicant's conviction and the employment sought, and whether the person would pose any risk to property or public safety.

Ex-offenders may not be hired even if they are qualified for the job because insurance companies typically will not provide fidelity bonds—which cover an employer's economic losses resulting from an employee's criminally dishonest action—for at-risk employees, like those with criminal records. The Federal Bonding Program offers fidelity bonds for ex-offenders and other at-risk job seekers designated "not bonded" by commercial insurers. While the federal program covers an employer's economic losses, it does not shield employers from liability for poor workmanship or job injuries.

Some states—including California, Illinois, Iowa, Louisiana and Maryland—offer tax credits to private employers that hire ex-offenders. Iowa allows small businesses a 65 percent credit on wages paid to newly hired employees with a criminal history. Louisiana offers a job credit to employers that hire certain ex-offenders. To qualify, the ex-offender must have successfully completed a prison-based, boot camp-type therapeutic program and been employed for six consecutive months.

The Federal Work Opportunity Tax Credit is available nationwide to private businesses that hire ex-offenders and other target groups of people who consistently face employment barriers. To receive the credit, an employer must hire the new employee within one year of conviction or release from prison. The credit amount is based on wages paid and number of hours worked by the employee during the first year of employment.

Skills Training and Reentry Services

Prison and community-based education and experience-building programs offer offenders job-related training

necessary to become competitive in the job market.

In 2008, the Ohio General Assembly established the Ex-Offender Reentry Coalition and provided a framework to address ex-offender employment as part of long-term investment in the state's economy. The coalition identifies available funding and offers technical support for state and local agencies that provide offender reentry programs. Reentry programs address education, family skills, healthy living, and offer substance abuse treatment, employment resources, mentorship and housing assistance. The coalition also monitors the use of evidence-based practices and inter-agency coordination of the reentry programs and makes recommendations to the legislature and state agencies for reducing barriers to successful reentry.

Federal Support

The federal Second Chance Act of 2007 (SCA) provides grants to states, local governments and community-based organizations to establish innovative and evidence-based reentry programs, including vocational training and employment assistance.

The Wisconsin Department of Corrections' Windows to Work program used SCA funds to develop and expand job and life skills training programs. Beginning six months prior to release from prison, offenders attend weekly classes on interviewing skills, current job market information and money management. Offenders also work with a reentry coach to develop a personal reentry plan. Upon release, an offender continues to meet with the coach to ensure implementation of his or her plan and for continued access to employment resources. All program participants in 2008-09 obtained employment within 60 days of release, and 84 percent of those participants kept their jobs for six months or more.

The National Employment Law Project estimates one in four U.S. adults has a criminal record. This number emphasizes not only the widespread effect of criminal records on American job seekers, but also the implications for employers' hiring pool. To improve employment prospects for ex-offenders, states have adopted policies to encourage their employment, addressed employer liability and hiring incentives, expanded eligibility for record-clearing policies, and supported employment training and reentry programs.

Selected Resources

Bureau of Justice Assistance, Second Chance Act of 2007
<http://www.ojp.usdoj.gov/BJA/grant/SecondChance.html>

**Federal Bonding Program,
U.S. Department of Labor Initiative**
<http://bonds4jobs.com/>

**Federal Work Opportunity Tax Credit,
U.S. Department of Labor**
<http://www.doleta.gov/business/incentives/opptax/>

**National Conference of State Legislatures,
Criminal Justice Program**
<http://www.ncsl.org/Default.aspx?TabID=756&tabs=951,62,94#951>

National Employment Law Project
<http://www.nelp.org>

**Pew Center on the States, "Collateral Costs: Incarceration's
Effect on Economic Mobility"**
http://www.pewtrusts.org/our_work_report_detail.aspx?id=60960

Public Welfare Foundation
www.publicwelfare.org/Home.aspx

Society for Human Resource Management
<http://www.shrm.org/Pages/default.aspx>

Acknowledgments

This report was prepared under a partnership project of the National Conference of State Legislatures Criminal Justice Program in Denver, Colo., and the Public Welfare Foundation in Washington, D.C. The project is designed to inform state legislatures on policies related to ex-offender employment and successful offender reentry. NCSL gratefully acknowledges Seema Gajwani, program officer for Criminal and Juvenile Justice at the Public Welfare Foundation, for support and assistance to NCSL and state legislatures.



The National Conference of State Legislatures is the bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories.

NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues and is an effective and respected advocate for the interests of the states in the American federal system. Its objectives are:

- To improve the quality and effectiveness of state legislatures.
- To promote policy innovation and communication among state legislatures.
- To ensure state legislatures a strong, cohesive voice in the federal system.

The Conference operates from offices in Denver, Colorado, and Washington, D.C.



National Conference of State Legislatures
William T. Pound, Executive Director

7700 East First Place 444 North Capitol Street, N.W., #515
Denver, Colorado 80230 Washington, D.C. 20001
(303) 364-7700 (202) 624-5400

www.ncsl.org

© 2011 by the National Conference of State Legislatures. All rights reserved.
ISBN 978-1-58024-636-1