



TECHNICAL ASSISTANCE and CONTINUING EDUCATION

TACE CENTER: REGION IV

*A Project of the Burton Blatt Institute at Syracuse University
in collaboration with the DBTAC: Southeast ADA*

JOB BARRIERS FACING PEOPLE WITH DISABILITIES OVERCOMING CRIMINAL RECORDS

Event Date: March 10, 2010

Presenters: Stephan Haimowitz

Facilitator: Steffany Stevens

Overview

Steffany Stevens: Welcome to TACE Region IV Webinar: Job Barriers Facing People with Disabilities Overcoming Criminal Records. Today is Wednesday, March the 10th and I'd like to say welcome everyone to our webinar. My name is Steffany Stevens and I am a member of the Southeast TACE Region IV Team. I want to welcome back many of you who have participated in many of our webinars and those of you who are joining us for the first time. As most of you already know the mission of the Southeast TACE Region four center along with our other nine counter parts across the country is to work together and work together to improve the quality and effectiveness of vocational rehabilitation services. The primary purpose is enhance employment outcomes for individuals with disabilities. Our TACE works in the eight southeastern states, and we have the largest region to serve and we are very proud of that and we are working with some great people. As you know, we serve Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. Our TACE is a collaboration with the DBTAC, the Southeast ADA Center. Both the TACE and the DBTAC are managed with the Burton Blatt Institute at Syracuse University. We are hosting quite a few webinars this year and most of you have signed up for those, for the ones that are great interest to you. If you check our website and you do not seed a webinar that is of interest, please feel free send us an e-mail and let you us know what you need. All the instructions on our webinar are provided on this site and of course, if you need any assistance with registration, please feel free to contact our staff. Just a

quick note about the webinar system, we use a system that is fully accessible to everyone regardless of their disability and/or assistive technology that might be used with a computer. This system makes it possible for us to conduct workshops over the Internet from just about any computer with an Internet connection and web browser. Unfortunately there are computer issues that you have reported to us that are inherent to your systems and are beyond our control. That is why it is important for you to check your systems prior to this session. Staff is available upon request to work with you in advance of the session. After today's webinar, we will hear our presenter Stephan Haimowitz. Stephan will present the webinar. If any questions arise, please feel free to type them in our public chat area. Then we would address the questions after the webinar. So if you have any that come up during this, feel free to type them in the public chat and we will get to those after the webinar during our question and answer period. Now I would like to introduce to you Steven Haimowitz. Steven Haimowitz has addressed disability law and policy issues in diverse roles, including class action litigator, psychiatric hospital administrator, state agency attorney, and bio ethics consultant. At Syracuse University's Burton Blatt Institute, he has authored research papers contrasting international approaches to minimum wage policy and emergency planning strategies and currently leads initiatives to increase employment opportunities for people with disabilities including strategies to overcome criminal records. He was a member of a team selected by the US Department of Health and Human Services to conduct the first evaluation of the protection and advocacy for individuals with mental illness program. He has reviewed jail diversion, grant proposals for the US Department of Justice, and serves as a peer reviewer for the Journal of Psychiatric Services. Steven provides technical assistance training on such matters as the ADA, the right to refuse treatment, collaboration between disability and legal agencies, fulfillment of institutional reform litigation and protection of research participants. He has advised the Arizona Health Department, National Committee for Quality Assurance, Cook County Court System, and the Governor of Guam; lectured at Cornell University Medical School, State University of New York's School of Criminal Justice, and Harvard Training

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Program for State Mental Health Commissioners and led the effort to gain recognition of American sign language by the NY State Regents. His writing on mental health courts, community re-entry after incarceration, end of life care and the rights of people who are deaf have appeared in psychiatric services, American journal of Bio Ethics, Hastings Center Report and books published by the Yale University Press and the New York State and American Bar Association. I would now like to welcome Steven Haimowitz and thank you Steven so much for bringing your expertise to TACE Region IV. I will now turn the webinar over to you. You can begin now Steven. Thank you so much.

Steven: Okay. Thanks Steffany. I hope you can hear me okay. Thanks to TACE Region IV for hosting today's session and welcome to everyone for joining us today. I hope in the next hour or so to provide some concrete and specific information that can be helpful to folks in the VR and related systems and working with individuals who are addressing their own disabilities and who in the course of their lives have come in contact with the criminal justice system. Obviously folks have a number of challenges that the criminal records may make much more difficult, which we'll talk about in a moment. Again thanks to Steffany and Celestia for helping me with the technology issues, which my background does not include much in the way of skills, so I hope the presentation goes smoothly and we'll move to the first slide.

Slide 2: Disability and Criminal Justice

As I'm sure people are aware if you went to your local jail that is the pre-trial facility in your area, in your county or city that incarcerates individuals who were charged with an offense who have not yet had a trial or been adjudicated. Or if you went to the larger facilities run by the state in which people who have been sentenced to prison sentences for crimes where they are incarcerated, you would find a significant, sometimes astounding proportion of those individuals are folks with mental disability or substance abuse or both, of some kind. The estimates and the research varies dramatically. Estimates ranging from the vicinity of 16% to other studies have that have found upwards of more than half of the folks have some kind of mental disability and/or some

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kind of substance abuse problem often occurring simultaneously. Increasingly the research is showing that those folks are more and more individuals who have served our country in Iraq and Afghanistan; veterans who I'll talk about in a moment who return with disabilities linked to/or are the result of their experience in the war zones. We also note that research continues on trying to, to unravel the relationship between mental illness and substance abuse, and other criminogenic factors. That is we know that someone who is mentally ill does not necessarily engage in criminal behavior and we know that people that are have long rap sheets or criminal records don't necessarily have mental illness. We know there's a great deal of overlap and we're beginning to find out what some of the relationships are. We thought at one point that the people had mental illness if we can get them into treatment that would solve the criminal behavior problem. Turns out it's not as simple. Colleagues like Jennifer Skeem at the University of California and others have done research and if someone has mental illness, but they also have some of the major criminogenic factors like problems with, problems solving skills, difficulties in problems solving skills or anger management or engaging in histories of seeking risky behaviors or associating with other criminals or substance abuse, those conditions which are not limited to people with mental illness oftentimes end up getting people into this, what we call the revolving door. We are beginning to understand that a little more but it will take a good bit more research to understand in ways that have practical meaning for us, but let's think about for a moment once somebody gets that, that criminal record, once there is an arrest, and you sometimes an arrest has a lifelong set of consequences for an individual, but certainly a conviction, there are any number of different ways from voting to getting credit, to housing, that can come up in a child custody proceeding and our focus today is going to be on the implications and impacts for people seeking employment when there is a criminal history.

Slide 3: Impacts of a Criminal Record

Moving to slide three, someone with a criminal history - that has a dilemma. Either they're honest and up front in the job application process and answers the various kinds

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of questions that are asked on job application forms and they'll also be asking in interviews, do you have a criminal record? Have you ever been convicted of a felony, etc., etc. It is something that people when they say, yes, or if they agree to talk about if they disclose, there's a very high rate of employers who will say as a matter of policy, we don't hire individuals with criminal records, sorry.

Slide 4: Employment Impacts

Knowing this, many people who have criminal records do not disclose in the job application process, and when their background is subsequently checked by the employer, even if they were working for a couple of months and were good solid, productive employees, very frequently people will be fired for having filed a false job application. We know today that increasingly employers are checking people's criminal histories. The professional association -- excuse me. The Professional Association of Human Resource Managers indicates that today about 80 to 85% of all employers will do some sort of background check and we also know that criminal records are far more readily available today than they have ever been in the past. They are available on the public websites of any number of law enforcement agencies and court systems, there are private search companies who will do the research, and there are three national credit reporting agencies that have reports on all of us, that have all of our borrowing histories and criminal histories are reported on those credit reports as well.

Slide 5: Controversy

Moving to slide five, there's a controversy as there has been for some time as it ebbs and flows. On the one hand, this is not, when an employer says they're not hiring somebody, there is not simply bias of a racism kind of feeling that is found in all employers because the data on recidivism shows us that in fact people who have criminal histories do, in fact, tend to recidivate, to get involved in criminal justice problems again. On the other hand, it is very difficult to predict with any precision as to any given individual with any history including criminal background, whether or not that person is going to be a recidivist again. We have other controversies related to our

efforts to try to reduce the risks that vulnerable populations are exposed to so that in working and hiring staff to work with children or in hiring staff to work with elderly or severely disabled individuals, there are often, there are increasingly jobs around the country that require background checks and some require that people with criminal histories are not hired for certain jobs, and then there are other just jobs themselves that are most frequently in the law enforcement field in which having a criminal history is considered to be an automatic disqualification.

Slide 6: A Case in Point

One case in point that people may have heard about because it has received a great deal of public attention involves a gentleman who I've gotten to know, named Holsvaldo Hernandez. Holzvaldo grew up in a tough part of New York City and in 2002, when he was 19, he was stopped by the police and found, his car searched, and he was found to have in his possession in the car a gun, which in New York is a crime; possession of an unregistered gun. He served six months in jail for that offense. He then decided to turn his life in a different direction; he joined the Army. He served as a paratrooper in Afghanistan in the 82nd Airborne where he was awarded numerous decorations and citations. They wanted him to stay in the service but he decided that he wanted to go back to his home community and serve the community as a role model. He went to court and the article in the Times and also reported in the New York Post and Daily News, there was a feature on ABC News. He was able to go to court to issue an order under New York law, which again, the laws, we're going to talk about in a moment, it's different in every state, but a law that said we're going to give you a Certificate of Rehabilitation. Not with standing that, he was not able to get a job, and was not able today to get a job with the New York City Police Department because of his criminal record. This story continues, and I'll get back to Osvaldo in a minute.

Slide 7: Re-thinking Long Term Impacts

But moving to slide 7, the judge in that case, and this matter went before the same judge which sent him to jail in 2002, talked about the idea of the criminal justice system

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is to have people pay for their offenses, but then the whole point is for someone who makes a mistake to have a chance to reclaim their life, and he said that's what Osvaldo Hernandez has done. There's also a change underway in the country in terms of public policy. Congress passed and the president signed the Second Chance Act, and we'll talk about some programs in your communities that are getting Second Chance Act funding a little bit later. But there's a new policy at the federal level, but in many parts of the country, in which the issue isn't what's fair for the person who has had the criminal history, the issue is what's the point, how do we serve the public interest? We know that people getting their lives back together and employment being a very important part of that restorative, rehabilitation process, we know that if people are able to get jobs and stabilize their lives, that recidivism, returning to crime is diminished and therefore the public interest is served. So we have some changes underway, slowly as they are, we have some public policy changes moving in the direction and rethinking what should be our approach in dealing with people with criminal histories.

Slide 8: The Case Continues

Moving back to Osvaldo for a moment, he was able to get a pardon from the Governor of New York just for the turn of the year last year. I can't tell you what is going to be the ultimate outcome because subsequent to getting the pardon, Osvaldo was recalled to active duty. He is now serving his country once, again, in the Middle East.

Slide 9: Strategies to Overcome a Record

So let's talk about what some of the strategies in working with individuals who have criminal records. There are a couple different types, and we'll talk first about three. One is in some states, there are laws, which in one way or another, limit an employer's discretion in making hiring, retention and promotion decisions in thinking about and using an individual's criminal record. We'll talk about that in a moment. There are laws in most states which create tools of one kind or another to allow people to cleanse or expunge their record. There are many different terms used in the various states and we'll talk a little more in detail about them in a second. I use the term expunge to try to

cover all those terms. Again, it's important to understand that both of these kinds of laws are state laws, and so you need, and I'll give you some ideas in a moment about how to find out the state laws in your state, there aren't general answers that cover everybody because it is so state specific. On the other hand, there is a Federal Bonding Program which is available and administered in almost all of the states, which is a state operated program and we'll talk about the Federal Bonding Program and how it encourages and supports employers hiring people that are at risk. Turning to laws that impact or limit an employer's use of a criminal record, these laws merely require the employer usually to make an individualized determination, they prohibit having a ban or a company policy that says, we do not hire people with criminal records. They don't require the person to be hired, and they don't, they don't require the employer to make a job offer, they don't require the employer to give the person a second chance. But they do require generally an individualized assessment and again, it varies by state to state. Sometimes the law applies to public employers, state counties, city, and municipal agencies. Sometimes it applies to public licensing bodies. In many states, you have to have a license to be a lawyer, to be a barber, to be a locksmith, to be a truck driver. And in some states, they apply to private employers.

Slide 11: Individualized Assessment

Again what they require is that the individual employer who is aware of a job applicant's criminal history to make an assessment often in writing of the person's qualifications, you know the standard background qualifications, and, moving to slide 11, to look at the specific circumstances of the person's offense, how old they were, was there something going on that explained this behavior, how serious was it, how much time has elapsed since that offense, what has the person done to try to get their record, put themselves together, what have been the rehabilitation efforts, what have been the outcomes and how quickly does that offense relate to and to what extent does it relate to the specific duties and responsibilities of the job or license in question.

Slide 12: Federal Fair Credit Reporting Act

Moving to slide 12, there's also a Federal law called the Federal Fair Credit Reporting Act, and you can see the relevant parts of it at the website indicated. If an employer plans to take any adverse action in part based upon information in a credit report, that included a criminal history, they must give the person a copy of the report, and a summary of the consumer's rights, which includes a mechanism for correcting errors before the employer takes any action. This is important because one of the things that we know to be a fact is that the rap sheets that are maintained by centralized criminal justice record agencies in each of the states, again the state functions, but also has their own system, but all of these systems are for a variety of reasons, very prone to keeping records that have erroneous information in them. They get people mistaken with other people with similar names all the time; notwithstanding social security numbers and fingerprints. There are arrest records, excuse me, in which the person was found not guilty of the offense and that information is not contained in the person's record, so this ability to correct errors that is guaranteed by the Federal Fair Credit Reporting Act is important.

Slide 13: Expungement Tools for Individuals

Now, moving to slide 13. Another mechanism, again, the names vary widely, I call it generally expungement. In very many states there are mechanisms which allow a person, usually by going to court, making an application to a court, and meeting certain criteria to expunge or seal or set aside a record or to get what's called a certificate of rehabilitation, the standard and procedures, the standards vary widely. Requirements are, what offenses are eligible, how, how long one has to wait, whether certain jobs for which expungement will not be permitted to be effective. But it generally requires a court petition with the person's record and attending a hearing and sometimes the prosecutor, the prosecutor has to be given notice, but sometimes they show up, but usually if the person's record is clean since the time of the offense, they do not show up. Some states, the victim has to be notified and the victim can show up, most times that does

not happen. There is a vehicle and we'll talk how to find the law in your state in a moment, for cleaning a record.

Slide 14: Federal Bonding Program

There is also as I mentioned a little bit ago, the Federal Bonding Program, this is a federally funded program and you can find information at the website indicated, this is a state administered program. That is you go down to the Federal Department of Labor, you go to a state coordinator in your state, and it is for a government federally funded program, a relatively straightforward application process. Most employers, many employers, when they hire new employees will get a bond from a private insurance company that is to protect the employer against theft or loss from the behavior of the employee, from the new employee during the first X months of employment. Well the private, the private insurance industry will not give a bond for someone with a criminal record, so the Federal Government, since 1966, has stepped in and they will cover losses up to \$5,000, generally \$5,000, sometimes larger amounts more for employee dishonesty. It is free to the employer for six months, and then she or he can hire, purchase the policy and extend it if they want. Again, it is a relatively simple process, and we're never quite sure why it isn't used more in the 43,000 times it has been used since 1966. It has a phenomenally high success rate. So the Federal Bonding Program State Coordinator in your state is someone that you should be familiar with if you are in the system and working with people with criminal histories and people with those histories are related to mental disabilities or substance abuse disabilities.

Slide 15: How to Use these Strategies

Moving to slide 15. There are two resources that are quite helpful online that can get you into the information that you need to know what the state law is in your state, as well as how to find an individual in your state or how an individual him or herself find their accurate criminal histories. The national H.I.R.E. Center and I think if I remember correctly, it's an acronym for Helping Incarcerated Individuals Re-enter through Employment, that's a public national interest center. At that website they have state

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summaries of all the states. They have also published guides for specific documents which we'll look at in a moment for 6 or 7 of the states. But that's a very helpful link, as is this FindLaw link also listed there. FindLaw is, at this particular system, links you to the public information maintained by the legal agencies in, I believe, 49 of the 50 states. That is the attorney general's office, the state court system, different agencies in each state will have information listed that will enable you to understand what materials and web links they have for finding a person's criminal record and what the legal standards are for either expungement or the legal standards which limit or impact the employer's discretion. Many of these web links will also have the forms themselves and you can download the form, the person can download the form and fill them out and begin the process.

Slide 16: Possible Assistance

People often ask there are ways, moving to slide 16, there are ways of getting legal assistance. There are usually advocacy organizations, whether it's civil legal services or the Public Defender's Office or Prisoner Rights Organization in your state. Many of which, I wouldn't say most, but many of which, will have materials or a person who has some background that can be helpful in getting the process rolling. You can also just Google or Bing expungement and put your state's name in and you'll generally get a list of links to lawyers, private lawyers, in your state who will handle these type of matters for a fee. If you're working with a veteran, there are often times lawyers who are veterans who will help other veterans, what is called pro bono. They will do it without charge or for free. But the important point is that, while there may be value in getting some assistance, and you'll see on many of the websites linked in web blog, the court will say you do not need to have a lawyer to start this, to do this process, you can fill out the forms yourself, file them with the court and the court will tell you when to come to the hearing. So while filing, or getting a lawyer is not absolutely necessary, and many times these forms are design for people to do with them without a lawyer, preparation for looking for a job and dealing with these matters really is important.

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Slide 17: Job Applications and Interviews

Turning to slide 17. Excuse me. It is important when you're working with someone with a criminal history, particularly if that someone's history is a result of a mental or substance abuse disability is to make sure the person is prepared to handle the interview and application process. If there is an application question, it is a big mistake to leave it blank or to just say, will discuss at interview. If the person is, if the question is asked, sometimes it is appropriate to say, yes, and I would like to explain what happened and my subsequent rehabilitation with you at an interview. It is important to not just leave it blank or just say okay, we'll talk about it when I see you. The person has to be able to be more forthright than that. And the person has to be able to be able to talk comfortably about it, and that's why we encourage people to do practice interviews and again if you're working with a veteran, and you're in contact with a veteran organization, there are often times men and women in that business who will do mock interviews to help folks get themselves back on the right track. It is also critically important to answer the questions on the application and particularly in the interview honestly. What that also means is, understanding the terms that are used. If you're asked, if a person is asked, have you ever been convicted of a felony, but the person was convicted of a disorderly person's offense, then the honest answer is no. So you need to know the differences between the felony offense, misdemeanor, disorderly persons, cases that are appearance tickets. There are different terms used in different states, that's, again what you can find on the websites that we mentioned before. It's also important for people to understand as they sometimes do not, that a person, who has a record, has a conviction, even if they never served a prison sentence. If they were found guilty or plead guilty and received a suspended sentence, or a fine or community service, as well as if they served probation or if they served parole, which occurs after a prison sentence, any of those outcomes of a criminal proceeding indicates a person was convicted, if that is what has happened, then the person has to answer yes, and explain in the interview what happened. And that's more how we'll get to how you actually talk

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about it. You want the person to be brief, you want the person not to say, it wasn't me, it was the other guy.

Slide 18: Job Applications & Interviews (cont.)

The person has to be brief, accept responsibility, next slide. And then talk about what's changed since that time, how much time has elapsed, if it was military service, if the person has gotten into, whether it's a substance abuse treatment program or whether the person's got their GED or has taken a couple courses in computers, if person has done community volunteer work, if the person is involved with the church. Any and all of those indicators are things which can make the hiring individual think, okay, this person is not the same individual that committed that act. If the person has, if the job applicant has good information it in that history you want to be able to make sure that person brings documentation with him or her to the job interview. Whatever document, whether it is a letter of commendation from the military, or a letter of reference from a clergy person, any and all information. If the person is showing that they have turned things around, that is the information that you encourage to have with them, and bring with them to the interview. You also want them to bring information about the Federal Bonding Program, that is the state office, the state version of the Federal Bonding Program, a name and phone number and email of a state coordinator. I think it's a good idea to have already downloaded or obtained an application form and the program description and give that to the hiring interviewing person and say, look, here's what I can tell you about what this program does, and here's the indication of how earnest I am about this. I've taken the first couple of steps. Anything like that is helpful in getting the focus away from the person who committed that offense some time ago and the person who is here in front of the hiring individual ready to do a good job. I think that it's a good idea if the person is not hired to follow up with a letter describing the information that we just talked about, if there's a state law which, which is relevant, refer to that state law, whether it's limiting in terms of the employers' use of the information or any expungement efforts, and request that the person, the employer reconsider the decision to give this person another chance.

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Slide 19: Quick Look at 2 States' Laws

Let's look, in the next slide, just look at two states. And I picked Florida because it's in the southeast region and then Virginia, because it's just, it's a neighboring state. I think there's some interesting information and comparisons that you can make, and like I said before, some of the laws that are most helpful to people with criminal histories are found in states outside the south, but you can now see these laws being considered in southern states. Again Florida and Virginia are both states in which you can go online at HIRE website, and get a full complete guide to dealing with overcoming criminal issue barriers in those two states.

Slide 20: Florida

If you'll look at Florida, you can see that for example, the second point: discrimination is warred by public employers and occupational licensing agencies. So if a person in Florida is looking for a job in the public sector or in a job where they need a state license, there are some protections in Florida law.

Slide 21: Virginia

In Virginia, the law again is a little bit different. It says a public authority cannot deny a license based upon prior conviction unless that conviction is directly related to the license or the profession sought.

Slide 22: HIRE's Virginia Guide

This is an example of the table of contents from the HIRE Guide, which is available for folks in Virginia and my understanding is that in addition to a guide for Florida, they are considering guides for one or two other states in the south. This will just give you an idea of how detailed and helpful these guides can be.

Slide 23: HIRE's Virginia Guide (Illustrations)

I'm now on slide 23. Now changing focus for a moment. There are other programs that are popping up around the country that are designed to what's called: slow the revolving door. There are lots of federally funded programs in communities, including in the southeastern states, in which there are efforts to try to develop collaborations between

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human services agencies and criminal justice agencies, which as you are no doubt have experience, there can be friction and trouble working together, and the reality is, is that the staff who work for human services agencies including vocational rehabilitation agencies are often times going to be involved and interact with people in the criminal justice system whether they want to or not, because so many folks, so many clients overlap all of those systems. And increasingly everyone is seeing the social science research showing how employment is a key element in recovery from a mental disorder or substance abuse, as well as a key element in, a key factor in, why we understand whether people can avoid recidivism, avoids returning to the criminal justice system. There are basically two types or kinds of programs here. One are called diversion programs and diversion is the basic idea of can you intervene, particularly people who are charged with relatively minor or nonviolent offenses. Can you get people early in the system out of the criminal justice mechanism and into some sort of treatment program perhaps treatment with appropriate supervision? Can you break the cycle? Can you find out what happened before and for many of these folks there have been a number of interactions between them and human services and mental health and substance abuse and criminal justice system. Can you find out what it is that it will take, that hasn't happened before, that get them to turn things around? The federal government and the Department of Health and Human Services has an agency called the Substance Abuse and Mental Health Services Administration and they fund a range of program models that are being incorporated all across the country. The most well known police training model comes out of Tennessee, out of Memphis, called the Crisis Intervention Training Program (CIT), in which a quarter of the police officers are trained, specially trained, in handling people who are in mental health crises, differently, and getting them into a mental treatment program. There are programs set up at booking stations in police offices, jails, to do jail diversions, there are programs set up in courts, to get people identified quickly, and we'll about in a moment some of these different models.

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Slide 23: Diversion

So there's diversion, and that is trying to get people out at the front door if they can be better served by a human services agency and again human services agencies are increasingly recognizing the evidence showing that employment is one of the key services that can get people into a better path. The other kind of program is called reentry. And that is looking at folks who are in incarcerated facilities, usually state prisons, who are serving time and who are, for whom the idea is how do we begin planning, before the person is eligible for parole, how do we begin planning the kinds of individualized services that will best enable them and the community together to address the risk factors for re-incarceration. This is a federal program administered by the United States Department of Justice under a law that was enacted two years ago, the Second Chance Act. And we'll talk a bit about some of the grants and specific grants that are available and have just been awarded to your states. As I said the diversion programs range from police training to jail screening. There are also, you're undoubtedly familiar with, drug courts, and more recently mental health courts, specialized courts, in which the issue is not guilt or innocence, did the act occur or did the act not occur, is the person who did it or not, but in their variety of different models being studied very carefully, can we find that if the person's behavior was related in a significant way to a mental illness or substance abuse, and again they often come together, can we find a way to get that person into an appropriate service or setting that protects the community because it gives that person the opportunity to get the help they need, to take the responsibility for their own lives that they need to take and get them out of criminal justice settings. There are two main - Okay I am being asked to stop for a second. The captioner does not have sound. So I am going to stop for a second.

Slide 25:

Great. Sorry everyone. But I know we're know, I know for sure, I'm sure we all know. This technology sometimes is a little ahead of our ability to have it the way we want it all the time. We're back on slide 25. And just let me go back and put that in context. We've been talking about a couple of strategies that are available to folks in the DR settings,

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working with individuals with disabilities that have gotten in trouble with the law. We talked about what those criminal records often look like. We talked about the laws in some locations that an employer's discretion in considering criminal records. We talked about some of the vehicles to expunge a record, we talked about a Federal Bonding Program and now we're just moving towards the couple of other available programs that you might as well know about in your community because of the opportunities for collaboration that it provides to help put together individualized services that can help kinds of folks we're talking about. So we talked about the policy training and the jail screenings, the drug courts, the mental health courts, which are often times interested in having a vocational component of a plan that is being developed for someone who is looking to get out of the cycle of the criminal justice system, out of that revolving door and back into a economically independent, productive life. There are so many programs that are now in existence across the country, including in the southeastern states, that the best way to find the programs of the diversion type that are in your area is to get a hold of the folks at the National GAINS Center, which is a group that is funded by the federal government, their website and their 800 number, are open on the screen. They're actually located up here in the Albany, New York area which is where I live and work, though I'm part of the Burton Blatt Institute at Syracuse University, I'm actually located here in Albany, which is a pretty good distance away from Syracuse. The other organization that provides really good information is the, it's called the Consensus Project. The counsel and state governments, a couple years ago, basically an arm of the National Governors Association, they decided that these criminal justice mental health disability initiatives are such a growing importance on a whole host of public policy levels that they created a project, and if you go to that website or call those folks, you can very readily find a whole different range of categories, the kinds of services that are available in your community, who's doing what, who the contact people are, what the mechanisms for evaluation are, and you can find often times a real link that enables people at the vocational rehab world, get services or leverage services from other

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organizations to help serve individuals who their serving who have these kinds of background.

Slide 26 – 29: Reentry “2nd Chance” – Florida, Kentucky, S. Carolina, Tennessee

Turning to slide 26 is well as in the next couple of slides. The Second Chance Act that was enacted by the Federal Congress and signed by the president a few years ago. Last fall began issuing its first set of grants and on the slides, we don't need to go through them individually in detail, but you can see I have listed, I believe these are all, but there may have been some later grantees. I have listed the second chance, the Reentry Second Grant Program. The Second Chance Grant Programs in the southeastern states. This is the next couple of slides, and the programs, some of these are whole programs that provide staffing and services, some of them are mentor programs or people in the community who are interested in providing assistance and support and guidance on a one on one basis will be available to work with clients that you may have, and help them in a sort of very individualized way, figure out what, if anything, need to do, what the steps are, what the priorities are available for them. I urge you to take a look at the programs in your community and see if there are some linkages and collaborations that are going to enable you to better serve people who come from the kinds of backgrounds that we've been talking about. Lets conclude before we open it up for questions and discussion, there are some positive signs, I think the Diverging Program, in particular the Second Chance Act programs show you that at a national level, there is some recognition that if we're going to break this cycle that many people are, are just stuck in this revolving door, we need to take some chances and we need to think about, not public safety, but thinking about making more individualized decisions about people who have had criminal problems in their past.

Slide 31: Positive Signs

This takes a form at a very local level in many communities around the country, there are efforts underway, oftentimes led by local social justice or religious advocacy communities to get the city to adopt an ordinance, laws that are passed by city

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legislators are usually call ordinances. They call them Ban the Box Ordinances and what that seeks to do is to have this city remove from the job applications, there is the standard form applications that everybody here uses, take those boxes out that say check here if you have a criminal record. It doesn't mean that the criminal record can't be considered but it means the person can't be screened out without an interview. We have some research that shows that the people with the criminal history can get to the interview stage, can make their own reality and movement forward clear to a perspective employer, they can have a much better outcome than these bans which prevent, the boxes on the interview form that prevent people from even getting an interview. So in a number of cities, those job applications for city jobs have been changed to eliminate that box saying check here if you have a criminal history. Some of those ordinances extend to city vendors. If a company wants to do business with a city, they too have to ban, you know ban the box, change their job applications. And at a different level there are states now, Massachusetts being one, in which there was a rally last year, to shorten the waiting period for allowing a person to seal their conviction and that bill is supported by the governor of the state of Massachusetts. So there are some positive steps.

Slide 32: Changing Policy

There was an editorial in the New York Times at the end of last year saying as a matter of public policy, this is the right way to go in terms of dealing with recidivism. It was talking about a bill that was before the legislature of New Jersey, similarly trying to make it a little more flexible in terms of allowing people to show that they had been rehabilitated and to get their criminal history records cleansed.

Slide 33: The Reality

Move to slide 33, in terms of being truthful, the reality is while there are positive signs, the truth is that these folks present some of the most difficult situations and challenges for people in vocational rehabilitation and human services generally. It is difficult, it remains difficult and even with all the positive signs, it will remain difficult to escape

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having a criminal record. But in my opinion, in my senses, it is worth making the effort for a number of reasons. One is that there are occasions in which employers who would have otherwise said no to a person, will say I'll give this person a try if they know that number one, the individual, him or herself has made efforts to try to turn their life around, if they're working with counselors, like the ___ folks who understand the issues around criminal histories and who are helping the person present the argument for why their lives have been changed. Sometimes the simple fact of following up, I've heard an employer say, you know, the fact that you went and not the Federal Bonding information showed me that you were serious about this job. Employers understand that for some of these folks, this is their last best hope and that a lot of individuals in these circumstances make good employees because their life prospects are so dependent upon making this change and when hiring people off the street, you know young people where the training costs are so high, the turnover is so great, sometimes people who are formally thought of as at risk can make better employees than these people, that is the business case for hiring these people, that is the information out there as well. And lastly, going back to Oswaldo Hernandez, who I mentioned before, served time for possession of a gun in New York City and later went onto serve his country and is now again serving his country, but in the interim has tried to become a New York City police officer. When I asked him, you know, if this doesn't work out, if you don't get what you're looking for, you don't get a chance to serve on the New York City Police Department after all this effort and all this struggle, will it be worth it? His answer is "damn yes." You know, no matter what, I will define who I am. I will not walk around the rest of my life with, with a label of a felon. It doesn't matter that other people what other people think. It matters what I say I am and what I do, and if I don't succeed, I still will have shown that I can make an impact in determining the identity of Oswaldo Hernandez to the world, so I would suggest to you as well, that there is value in trying to take on criminal histories. Sometimes it works. Sometimes you can get an expungement, sometimes the law will work. It doesn't always. But even when the law doesn't work, there is value at least in my experience and opinion to helping people try

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to define themselves by their own actions, by taking responsibility for what they do and I think that someone's criminal history is an important way for some folks to have the chance to do that. So with that, Steffany I'll turn it back to you, and we can have a discussion and try to answer some questions.

Slide 34: Comments & Questions

If you have any questions for Steven please type them in the public chat and Steven, I'm going to go back to the first question I saw, just one moment.

Question: Okay, the first question is from Lorie Clark and it says how long does it take for their rights are restored after convictions or felony?

Answer: Okay, again let me just provide an overview. The law varies in each of the states. Generally a person that has an arrest that does not have a conviction can get that record cleansed or expunged immediately at the conclusion, however the case concludes; similarly if the person is found not guilty. For all matters in which there is a conviction, the laws vary. Sometimes, there is a period of time, generally in years, from a particular outcome, so in some cases if the sentence was suspended as opposed to if the person is on probation, as opposed to if the person served a period of incarceration or a person was on parole subsequent to incarceration, there is generally a period of time, it can go from a number of years from any one of those events. Sometimes it's done by the classification of the offense, so if there's a conviction for a misdemeanor, it's, you know, let's say for example three years is a conviction for a felony, it could be five years, a conviction for a disorderly persons offense, it might be one year. These are all state specific and you need to go to one of those websites that is listed in the materials and look up your state and you'll find those time frames pretty readily.

Question: The next question is from Julie Wade and she says we have been told that there really is not a Federal Bond Program in Kentucky, even though we are told it is supposed to exist. Is this true?

Answer: Well, I can't answer that. I really don't know the specifics. As I recall, and you can go to the website, I believe there is listed on the Federal website, a state program in Kentucky and a State Coordinator. I would contact that program and if those services are not available, that is something you might want to communicate with the US Department of Labor, which believes that they're funding a Federal Bonding Program in that state, if it's listed on the website.

Question: Our next question is from Tonya Askew, does expungement apply to numerous offenses committed on different days?

Answer: Again, it varies. In some states for example, if you're seeking to expunge in the areas of misdemeanors, a person can get more than one misdemeanor expunged. But if you're seeking to expunge a felony, you can only expunge one. But again, I want to make clear, these are all state specific statutes, so that, this question can only be answered by looking at the law that summarized on those websites.

Question: The next question is Tracy Roney and she says does the bond coverage vary from state to state?

Answer: Yes. But the way that I'm familiar with it varying is only in the sense of the amount coverage. Some states it's \$5,000 and some states it's \$10,000, I believe other states it goes as high as \$25,000. But it's my understanding that other than the amount, there are no other, or that I'm aware of at least, there are not other limitations that vary in terms of who's eligible. My understanding is that anyone with a criminal history can make the application through their state coordinator and have that, that information and applications verified and have the bond issue pretty readily. The person has to be, I believe in many states the person has to have a tentative job offer, and identified employer, but that's the only requirement that I'm familiar with.

Question: The next question, hold on just a second. The next question is from Debra, she says I don't understand -- just a second. She says I don't understand the bonding

program at all. Does every employer have to bond every employee, and does it cost a company more to bond an employee with a criminal background?

Answer: Okay. Perhaps I wasn't clear, it is a little confusing. What a bond is, is essentially an insurance policy, and in the private sector most, I don't know about most, many businesses that hire people at entry level positions, they themselves want to protect themselves, so let's say the retail industry is running a big store, and you have lots of, you're selling electronics, valuable electronics, many employers will when they hire someone new, go to insurance company and purchase a bond, an insurance policy that protects the employer, so if the new employee steals, the insurance company pays for that loss. So the employer pays a premium to an insurance company. Those private insurance companies that are, you know, hired by private retailers, they will not issue a bond, an insurance policy for an employee who has a criminal history. So what the Federal Government did was come up with its own bonding mechanism. If a person applies for a job with a retailer, let's say one of these electronic retailers, and that person has a criminal history and the employer could not get, because of the criminal history, a private bond from an insurance company, they can get a bond for that individual through this, what's called the Federal Bonding Program, which is administered at the state level. So there's an insurance certificate issued that is addressed to that employer and that new employee, and were that employee to commit a theft in the period of the bond, usually the first six months, then the insurer, the Federal Government, would pay for the loss. But the reality is, the data shows, that if 43,000 bonds that had been issued since this program was first created, they had not had to pay off, there hadn't been problems in 99% of the 43,000 bonds. So it's an option for the employer with the Federal Government is really putting its money where its mouth is in trying to provide insurance coverage for at risk new employees to encourage employers to hire them.

Question: Okay. The next question is from Chris Heron and Chris says does this also apply to juveniles?

Answer: I'm not sure if you're asking about the bonds or the overall discussion. I believe, well let's go back for a minute. As a general proposition, most jurisdictions in the most jurisdictions in the country, juveniles and the age varies, but juveniles can who get into trouble are considered not criminals. They are juvenile delinquents or youthful offenders; there are a variety of different terms and except for the most serious, violent offenses, legal problems that adolescents usually up to the age of 18, get involved with are handled in a juvenile justice system. And those records as a general proposition are not public information the way adult criminal records are. So juveniles, again, most juveniles, everybody except those who are charged with the most serious violent offenses, are not considered part of the adult criminal justice system, and what we're talking about today really does apply to adults.

Question: Okay. So the next question is from Vicki Winters and she says, is there a cut on age limits for expungements? And I think you may have talk about that just a second ago.

Answer: Yeah, I mean, if I understand the question, an expungement or whatever it's called in a particular state, concerns adult criminal records. In most jurisdictions the records or histories that are created in juvenile court proceeding are what's called seal, that is, they are not available to the general public and therefore there is generally not an expungement mechanism for youngsters who are treated as youngsters in the juvenile justice system.

Question: The next question is from Michael Wachee. What is an average amount of time that should elapse since conviction before an individual can begin to look for employment?

Answer: Well, first of all let me say, in terms of looking for employment, I don't think there should be any delay. That is even though there are many employers, in truth, have either written policies or the culture of their organization is such that that are not going to hire somebody with a criminal record. There are businesses that will hire

people with histories, it's like any other number of examples, frequently it's somebody who owns a business and has themselves a kid or a brother or a relative who has gotten into trouble and they are capable of understanding that people make mistakes and people do turn their lives around, so I mean, there are employers who will consider the job applicant who meets the qualifications even though that person may have, you know, criminal history. Now, with regard to applying for one of the legal mechanisms, whether it's expungement or sealing, or whatever it might be called, again that's stated specifically in statute. It usually is a couple of years, that is, it depends upon the seriousness of the offense, but in terms of the law premise, the person has had to show that a period of time has elapsed in which they have not re-offended and then they can meet the qualifications under the statute or law to get again, expungement, sealing, certificate of rehabilitation, whatever it might be called. But to answer your question, I don't think there's any reason for a person to wait because they have a criminal record. I think it's much harder, and I think you want to have as much intelligence of the business community as you can to try to find where there are companies that have hired people that have okay outcomes by hiring people with criminal records, but in terms of the law, there is a prescribed waiting period in which the person has to be free of criminal problems.

Question: The next question is from Lee Massy. Can an arrest record be removed even if there was no conviction?

Answer: The good news here is, almost always the answer is yes. For the same reason that you know, in our criminal justice trial system, people start out with the presumption of innocence. If a person is arrested, that may mean that there was probable cause, but that is not the burden or standard of proof for any sort of criminal responsibility, so if a person was arrested and the case did not end up in a conviction, again a conviction could mean either at a trial or with a plea of guilty. If the case did not end up with a conviction, then that arrest record almost always can be cleansed or sealed or eliminated from the person's record as soon as the proceeding is disposed of,

however that happens. It's a little bit difficult to say when that is, because sometimes the prosecutor just drops the case, and the individual who was accused never hears of an outcome. That's one of the reasons why it's necessary to get that person's rap sheet and see what it says and it may also involve going back to the clerk or the district attorney's office or the court clerk in whatever county or city this happened in and get a document that says this case was not prosecuted. But the answer is to the question is, if the person was arrested and no criminal finding occurred, that record should not exist, should not stand in the way of getting, preventing the person from getting the job. One other area that's a little more hazy which is why I didn't talk about it in the main proceeding, there are some rulings of the Federal Equal Employment Opportunity Commission which talks about the Civil Rights Act and acknowledges that people, that African Americans and other people of color live in neighborhoods in which contact with the police is much more frequent than in other neighbors, and consequently have arrest records and there are, there are some opinions and some decisions of the Equal Opportunity Employment Commission that really do speak to the requirement that legal systems cleanse their records of arrest histories that did not result in prosecutions or convictions because it has a disparate or unfair impact on a particular minority community. But that's a legal issue that one might have to do a little research or contact an attorney who works in this area to see how that might be helpful. But as a general proposition for arrest records, should be erased, should not stand in anyone's way for getting a job.

Question: Our next question is from Jenny Manhart and she says, with the condition of the current economy, just one second. She says, with the condition of the current economy, unemployment rate is 15% in North Carolina. How can we project the client in the most positive way without having to request reconsideration? It seems an employer could state there is a more qualified candidate and not give the reason our client wasn't hired.

Answer: Obviously that's a good question and not one that I'm terribly confident I can adequately answer. I think that one of the approaches is my colleagues and others and myself included who believe that there is a business case to be made for hiring people with disabilities, including people with mental and substance abuse disabilities that have had problems with the law. I think the business case is that for such individuals; number one, who have shown the wherewithal to try to turn their lives around; and two for whom a job is, not to sound overly dramatic, but is their lifeline to a different future that the employer understands and we have some experience for example in Walgreens, one of the bigger drugstore chains in the country, is very much, and we can put you in touch with folks and information, very much in following the Walgreens story, they go out of their way to encourage and recruit and hire people with disabilities, including people with, of, the background we're talking about because they find that in terms of once the person is trained and starts to work, that it turns out in terms of their consciousness, in terms of their loyalty, in terms of their longevity in the job. They make some of the best workers because the job is so central to them being able to keep independent lives. So you know, to think that I think there's an answer to your question, so many people are out of work and so many people are struggling and there may well be people who have had more experience or expertise in a particular field, why an employer should take a chance on someone who has a blemished record, I think it's in part because that blemish makes this job that much more critical to this person's sense of their future.

Question: So Steven, is there any way that, that we can assure that the client be given the same chance to interview as a non-criminal? Since the interview is the only setting in which the client has a chance to explain their rehabilitation.

Answer: I'm afraid not. There's not to my knowledge any legal mandate that requires that the person be afforded an interview. But I can say that for example, in some states, New York, being one, the law, which was recently expanded in this area, it's called the Employer Education Act which says that you have to make an individual individualized

judgment about a person if you consider their criminal record, that requires the determination and evaluation be given to the person in writing within 30 days of the decision, and if that does not occur, that is enforceable as a violation of the New York State Human Rights law, which again is not as aggressive of an approach as one might hope for, but other than an example like that, I don't know of any law that requires an employer to provide an interview. But I also think that for example in the communities in which there have been band the box campaigns, lots of time things change, not only because of law but because of culture, and if there are people in the community, and leaders in community organizations and in political organizations that make a point of speaking about these issues, you could sometimes see employers step back and approach these questions with a more open mind.

Question: How about sexual offenders? Do you have any tips on how to work with these individuals? And this question came from Marianne Fuller.

Answer: Well, thanks Marianne for throwing me such an easy question. No, I think it's safe to say that sexual offenders are probably the most difficult group to try to work with and to think, it is not likely, at least from my vantage point to think that the law is going to provide very many breaks to somebody with that kind of background. I mean again, we could have a policy discussion about whether that makes sense or whether that ends up introducing more sexual offenses but the answer to your question is, many of the protections or tools that, that we have been talking about, are much, they are likely positive impacts to individuals, it's going to be with individuals who have what are probably more characterized as more sympathetic backgrounds, and in particular, it can be said that problems with the law were the result of mental disability or substance abuse or both, and people, those individuals have subsequently gotten into, you know, treatment programs and are, you know, succeeding at getting their challenges managed.

Question: Okay. The next question comes from Wire Grass Rehab Center, and it says does the bond program apply to CRPs or only employers?

Answer: I'm afraid that I'm not familiar with the acronym CRP. Certified Rehabilitation Program, maybe? In any event, the bonding program, the Federal Bonding Program to my knowledge, is available for employers across the board. There may be limitations that I'm not aware of, but, you know, again, the answer to the question would be available at the website for the Federal Bonding Program and/or at the State Bonding Program website.

Question: Okay. The next question is from Marianne Leonard. How much do the bonds cost the employee after the initial six months and also if the first job doesn't work out for any reason, can the bond be carried over to the next job if within six months?

Answer: As for the first part of the question, if the bond is, is free, there is no charge to the employer. The employer gets the benefit of the insurance protection without paying any premium. The federal government handles all of that. And again, that bond is usually limited to six months. If, it is my understanding, that if the person left the job before the six months, the bond would not be transferred. The person would have to apply for a bond, a second bond through the state bonding coordinator.

Question: This question is from Julie Wade. We have been told by public defenders and prosecutors that you can't really expunge felonies, or is this true or is this state specific?

Answer: It could be true. I don't know. It's state specific. You look to the website and see what the rules are in your state. In some states, felonies have the longest waiting period, but can be expunged, but I'm pretty confident that it is also true that in some states felonies cannot be expunged. It really is a state law question.

Question: Okay. the next question -- Just one second for the next question. There's a question from Julie Wade. It says doesn't a federal felony have to be expunged by the president?

Answer: Yes and it's not called expungement, it's called a presidential pardon, and, in fact, it goes through a special office of the US Department of Justice and then it goes to the president. The president generally does this once a year right around the December holidays. It is very, very few people get presidential pardons. But it is also true that most convictions, most of the criminal justice system occurs at a state level.

Question: Okay. The next question is from Tony Alan. Are there ways to get background checks for employment purposes without having to go through your local police department or paying a fee to a company through the Internet?

Answer: Well, the, probably most reliable way is through a law enforcement agency, although, again, the law enforcement agency records are oftentimes missing information or inaccurate, but probably the record with the least mistakes is obtained by going through a law enforcement agency and you are correct, you know, that's not a very pleasant process; you have to get fingerprinted, there's a fee, usually there's a mechanism to get that fee waived if the person is not a person of, you know, is not working. You can ask anybody, including all of us; we're entitled under federal law to get free copies of our credit records from the three national credit reporting system companies. Excuse me. I forget how frequent it is, once a year, once every few years, I forget the actual frequency. But that is one way you can get it free and relatively easily a person can get his or her own record, at least the record that's maintained in the credit reporting system. To get the legal system records, you can only get that through a legal or judicial agency in your jurisdiction.

Question: The next question is from Regina McDonald. How many times can a person apply for bonding?

Answer: I don't know to tell you the truth. To my knowledge, there are not limits, but I guess it's possible that there are limits at state programs that I'm not familiar with, but the answer is, I don't, I don't really know, but there may exist limits, I'm not really sure.

Question: The next question is from Tracy Rony. What are the requirements for a person to get bonded? For instance, is it only for people who are recently released from prison or someone who just has a felony record?

Answer: As a general proposition, anyone with a criminal history can apply and who has a tentative employer, a tentative job, can apply for the federal bond, and will be granted that bond. The criteria are quite open and relaxed and I think it's a fairly simple application form that gets processed pretty quickly. So it's a fairly easy program to work with.

Question: Nicole Garrett says, does a person with criminal history apply or the employer apply?

Answer: The person with the criminal history applies, but usually they either have to provide the name, address and phone number of the employer who has offered them a tentative job or they have a form that the employer has to sign and then the individual submit that with the application.

Question: And the next question from Tonya Register: Are tax credits incentives available to employers who hire individuals with a criminal history?

Answer: Yes there is a very under-utilized and relatively modest tax credit at the federal level that's available for hiring people with a variety of at-risk factors. The answer to your question is yes. The side comment is that what you sometimes hear from employers is that the paperwork in this instance, for the tax credit, is more cumbersome than it's worth. That's what I was meaning when I was talking about the bonding program, that application process is relatively simple and straightforward. The tax, the tax credit is rather is more like many federal programs, a bit more cumbersome.

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Question: Okay. Are there anymore questions at this time? The question comes from Jenny Manhart. To clarify, does the bonding only apply to first year out of prison? Steven we had one more question, and it said, does the bonding only apply to first year out of prison?

Answer: No. The bonding is available without regard to when the criminal problem occurred. I think from what I'm seeing on the little colloquy on the right that the year issue has to do with when the tax credit is available not the federal bonding program.

Closing

Okay. Well, thank you very much. I'm going to go ahead and provide some closing remarks. I encourage all of our participants to please fill out the needs assessment form and to also fill out our form today. I want to thank Steven for bringing us his expertise, and we appreciate the time you have taken to present your expertise to our audience. And I want to remind all the participants that a transcript of the session along with all handouts will be posted and available on our TACE website within approximately two-weeks of this session and this session has been approved for CEU credit and CRC credit is still pending. As with all presentations that offers so much information, if there are any questions that come up after the webinar, please feel free to send us an email and we will forward those questions on to Steven so that he can get them answered. Please remember to complete your evaluation of today's session. Your feedback is very important to our continued planning so we may address your specific need and concerns. Thank you so much for attending our session and have a great day.