

Job Barriers Facing People with Disabilities

Overcoming Criminal Records

Stephan Haimowitz, J.D.

Burton Blatt Institute

Syracuse University



Burton Blatt Institute
SYRACUSE UNIVERSITY



Disability & Criminal Justice

People with Mental Illness

- Significant percent of arrestees, county jail detainees, state prisoners
 - Increasingly, Iraq / Afghanistan veterans
- Research continues on complex interactions
 - MI, substance disorders & criminogenic factors

Impacts of a Criminal Record

Numerous, Significant, Life-long

- Voting
- Credit
- Housing
- Child custody
- Employment

Employment Impacts

Applicant discloses record >> employer won't hire

Worker who didn't disclose >> fired for "false job application"

Criminal records are increasingly available

- On public websites
- From numerous private search companies
- From the 3 national credit reporting agencies

Controversy

- **Data on recidivism vs. predicting individual behavior**
- **Protecting vulnerable populations**
- **Nature of certain jobs**

A Case in Point

The New York Times

N.Y. / Region

Judge Supports Soldier With Police Record Seeking to Join Force

By ANNE BARNARD
Published: November 13, 2008

They called themselves a "band of brothers," and they all wore their paratrooper badges as they stood in front of the judge: Specialist Osvaldo Hernandez, recently returned from a 15-month tour in Afghanistan; his lawyer, James D. Harmon Jr., a former prosecutor who served in Vietnam; and their expert witness, Randy Jergensen, a retired New York police detective who parachuted into battle in Korea.



Ull Seit for The New York Times
Specialist Osvaldo Hernandez in court with Randy Jergensen, center, his expert witness, and his lawyer, James D. Harmon Jr.

They appeared in court on Thursday to argue that Mr. Hernandez, who served a year on [Rikers Island](#) for illegal gun possession, a felony, before joining the Army, had turned his life around so impressively that he deserved the judge's help to realize his dream: joining the New York police force.

Justice Barry Kron, who had presided over Mr. Hernandez's guilty plea in State Supreme Court in Queens in 2002, granted their wish Thursday by issuing a certificate that restores certain civil rights that New York State strips from felons, such as the right to vote, and prevents employers from automatically refusing to hire them. On Monday, his parole board had issued a certificate of good conduct that allows him to apply to carry a gun legally and states explicitly that the board would not object to his bearing arms as a police officer.

Judge Supports Soldier With Police Record Seeking to Join Force

New York Times, November 14, 2008 Page A-25

<http://www.nytimes.com/2008/11/14/nyregion/14soldier.html>

Rethinking Long-Term Impacts

NY Judge Henry Kron (sent Hernandez to jail in 2002)

- “The whole point is for someone who’s made a mistake to have a chance to reclaim their life.”

“Second Chance Act” (2008) - new direction in federal policy

- The point is that employment reduces recidivism

The Case Continues

The New York Times

Paterson Pardon Aids Soldier in Bid to Join Police Dept.

By AL BAKER
Published: December 29, 2009

A soldier whose gun possession conviction barred him from joining the New York Police Department was given a second chance on Tuesday when Gov. [David A. Paterson](#) announced that he had pardoned him.

The pardon, the governor's first this year, means that the soldier, Specialist Osvaldo Hernandez, a former paratrooper in the Army's 82nd Airborne Division, can fulfill [his dream](#) of joining the Police Department or another law enforcement agency once he is released from active duty, according to a statement from the governor's office.

Specialist Hernandez, 27, was recalled to active military duty in August after serving a 15-month tour in Afghanistan that began in 2007, according to the governor's office and his lawyer, James D. Harmon Jr.

A native of Queens, Specialist Hernandez is expected to redeploy to Afghanistan in January with an infantry unit of the Connecticut National Guard, Mr. Harmon said.

Over the years, Specialist Hernandez's story has become familiar for its redemptive qualities.

Paterson Pardon Aids Soldier in Bid to Join Police Department

New York Times, December 30, 2009 Page A-23

<http://www.nytimes.com/2009/12/30/nyregion/30soldier.html>

Strategies to Overcome a Record

- 1. Laws which impact employers' use of criminal records**
- 2. Laws in most states create legal tools for individuals to “expunge” their record in some way**
Note – both types of laws vary widely state to state
- 3. Federal Bonding Programs, available in most states**

Laws Impacting Employers Use of Criminal Record

- Laws restrict an employer's discretion in considering these records but don't require hiring
- Can apply to
 - Public employers
 - Public licensing agencies
 - Private employers
- Usually require an *Individualized Assessment* of the applicant's qualifications and of ---

--- Individualized Assessment

- Age at time of the offense, any mitigating circumstances
- Seriousness of offense
- Time elapsed and record since the offense
- Rehabilitation efforts and outcomes
- How the crime relates to the specific job or license

Federal Fair Credit Reporting Act

If an employer plans to take “adverse action” based even in part on a credit report, he/she must give the person –

- a copy of the report
- a “Summary of Consumer Rights,” including error correction **before taking that action**

<http://www.ftc.gov/bcp/edu/pubs/business/credit/bus08.shtm>

Expungment Tools for Individuals

Most but not all states have, many different terms are used

- Expungment / Sealing / Setting Aside / Certificate of Rehabilitation

Requirements vary greatly

- offences which are eligible
- mandatory waiting period
- certain jobs / licenses are excluded

Procedures are generally similar

- Filing a court petition, with records attached, attend hearing

Federal Bonding Program

Funded by the US Dept of Labor

- Program information
<http://www.bonds4jobs.com/index.html>

Bond gives employers incentive to hire “at risk” individuals

- Covers loss up to \$5K loss from employee dishonesty
- Free to employer for 6 months, then she/he can purchase
- Relatively simple application process – contact state coordinator
- Since established in 1966, 99% success rate (43,000 bonds issued)
- State coordinators <http://www.bonds4jobs.com/state-coordinators.html>

How to Use These Strategies

Obtain the state law and the person's criminal record

- National H.I.R.E. Center – state summaries and guidance for advocates
<http://www.hirenetwork.org/>
- FindLaw – links to each state's own public resources
<http://criminal.findlaw.com/crimes/expungement/>

Possible Assistance

- **Advocacy Organizations**
 - Legal Services, Public Defenders, Prisoner's Rights
- **Google “expungment in _____ (your state)”**
 - Private lawyers who will handle for a fee
- **If a vet, Veterans Organizations**
 - Vets who are lawyers may help “pro bono” (free)
- **Lawyer is usually not necessary, *BUT PREPARATION IS***

Job Applications & Interviews

Prepare to handle the criminal record question

- Do not leave application question blank or say “will discuss at interview”
- Do practice interviews (vets in that business)

Answer what is asked truthfully

- know the differences - felony, offense, misdemeanor, disorderly person
- conviction includes suspended sentence, fines, probation, parole

Give a summary of the offense

- Be brief, accept responsibility

Job Applications & Interviews (cont)

Fully explain what's changed & provide documentation

- Military service
- Rehabilitation / treatment
- Education / work
- Community service / church involvement

Provide Federal Bonding information

- State coordinator's name, phone and email
- Program form and description

If not hired, send a letter recounting the above, refer to state law if relevant, and request reconsideration

Quick Look at 2 States' Laws

- **Very simplified overview of the relevant laws**
- **Free HIRE guides for FL and VA available online**
<http://www.hirenetwork.org/>

Florida

1. Person may Seal or Expunge a Criminal Record

- Not adjudicated guilty of acts stemming from activity to which petition pertains
- Has never sealed or expunged record under this section or in another state
- Does not have another petition pending before the court

2. Criminal records may be accessed by employers.

- After a record is sealed/expunged only certain entities have access to it and it will not appear on your record if an employer requests your record
- Discrimination is barred by public employers and occupational licensing agencies.

Virginia

- 1. Misdemeanor and Felony are not expugnable, but the following are:**
 - Acquittals
 - Cases resolved in the accused favor
 - Pardons
 - Identification misuse
- 2. Occupational licensing authorities are *prohibited* from denying a license based upon prior criminal conviction unless the conviction “directly related” to the license sought.**

HIRE's Virginia Guide

- What Is A “Rap Sheet”? 1
- Who Can See Your CCRE Rap Sheet? 1
- Why You Should Review Your Rap Sheet 2
- How To Get A Copy Of Your Rap Sheet 3
- How To Read Your Rap Sheet 4
- What To Look For On Your Rap Sheet 5
- Arrests That Happened When You Were A Youth 6
- Cleaning Up Your Rap Sheet 8
- Correcting Mistakes 8
- Expunging Police And Court Records 9
- What You Can Do About Your Misdemeanor And Felony Convictions 14
- Completing Employment Applications 20
- What Must I Disclose About My Criminal Record? 20
- Seeking A Job That Has A Statutory Bar Or License Requirement 21

HIRE's Virginia Guide (Illustrations)

Illustrations

- Sample CCRE Rap Sheet..... 7
- Model Letter #1, Letter To Court Requesting Certified Copy Of An Order ...10
- Model Letter #2, Letter Requesting Correction Based Upon Error
Concerning Arrest Information..... 11
- Model Letter #3, Letter Requesting Correction Based
Upon Error Concerning Final Disposition Of Case 12
- Model Letter #4, Cover Letter To Send To Court
With An Expungment Petition 15
- Model Letter #5, Letter Requesting An Application
For Restoration Of Civil Rights 18

Slowing the “Revolving Door” Programs

Human services - criminal justice collaboration

- Agencies often struggle serving many of the same people
- Employment a key element in recovery

Diversion

- Getting people into treatment services
- SAMHSA funds a range of program models

Reentry

- Individualized planning aimed at risk factors for re-incarceration
- DOJ “Second Chance Act” Grants

Diversion

- **Police Training /Jail Screening**
- **Drug Courts and Mental Health Courts**
- **Find local contacts**
 - National GAINS Center
<http://www.gainscenter.samhsa.gov/html/>
(800) 311-GAIN
 - Council on State Governments Consensus Project
<http://consensusproject.org/>
(212) 482-2320

Reentry “2nd Chance” Florida

- **Department of Corrections OARS Project**
Jacksonville area
Rusty McLaughlin
McLaughlin.Rusty@mail.dc.state.fl.us
(850) 414-2781
- **Mount Olive Development Corporation Project Rescue.**
Broward Country area
Jacqueline Selders
jselders357@bellshouth.net
(954) 767-9919

Reentry “2nd Chance” Kentucky

- **Department of Corrections Reentry by Design
Prisoner Reentry Initiative**
Jefferson county area
Brigid Adams
Brigid.Adams@Kky.gov
(502) 564-4726

Reentry “2nd Chance” N. Carolina

- **Parker House Foundation - Project Reach1 Teach1**
Mecklenburg County area
Grady Parker
parkerhousefoundation@gmail.com
(704) 615-8705

Reentry “2nd Chance” S. Carolina

- **Alston Wilkes Society**
Pre-Release and Post-Release Mentoring Services
Richland, Greenville and Spartanburg Counties
Anne Walker
sannewalker@alstonwilkessociety.org
(803) 799-2490

Reentry “2nd Chance” Tennessee

- **City of Memphis - Back on Track**

Memphis

Pamela Small

pamela.jacksonsmall@memphistn.gov (901) 576-6518

- **Project Return - Coaching for Life**

Metropolitan Nashville-Davidson County

Bobby Daniels

Bobby@projectreturninc.org (615) 327-9654 x 21

- **Families of Incarcerated - Doorway Re-Entry Program**

Memphis and Shelby County

Marquetta Moore

mmoore@familiesofincarcerated.org (901) 726-6191

Positive Signs

- **Ban the Box Ordinances – city jobs**
 - Eliminate “Have you been . . . ” from application form
 - San Francisco, Minneapolis, Baltimore New Haven
 - Some extend to city vendors
- **Massachusetts** – Last July, 300 people rallied at the Capitol for a bill to shorten waiting periods to seal convictions, supported by the Governor

Changing Policy

The New York Times

Opinion

EDITORIAL

Smart Answers to Recidivism

Published: December 24, 2009

Faced with soaring prison costs, states are finally focusing on policies that would help former prisoners stay out of jail after they are released. Some legislatures are reshaping laws that land parolees back inside for technical violations that should be dealt with on the outside. More than a dozen cities and counties have taken steps that make it easier for qualified ex-offenders to land government jobs, except in education and law enforcement and other sensitive areas from which people with convictions are normally barred by law.

Still, the nation as a whole needs to do much more about laws that marginalize former offenders — and often drive them back to jail — by denying them voting rights, parental rights, drivers licenses and access to public

housing, welfare and food stamps, even in cases where they have led blameless lives after prison.

New Jersey — a state with a terrible record of marginalizing former prisoners — could lead the way. Before the State Legislature in Trenton is a comprehensive package of reforms that would help ex-offenders rejoin society's mainstream and lower the chances, and costs, of recidivism.

Smart Answers to Recidivism

New York Times- Editorial/Letters

Friday December 25, 2009 A-30

<http://www.nytimes.com/2009/12/25/opinion/25fri1.html>

The Reality

- **These clients present some of the most difficult challenges.**
- **Escaping criminal justice involvement -- possible but difficult.**
- **Making the effort can have significant benefits.**

Comments & Questions

Resources

- **Federal Fair Credit Reporting Act**
<http://www.ftc.gov/bcp/edu/pubs/business/credit/bus08.shtm>
- **Federal Bonding Program**
<http://www.bonds4jobs.com/index.html>
- **National H.I.R.E. Center**
<http://www.hirenetwork.org/>
- **FindLaw**
<http://criminal.findlaw.com/crimes/expungement/>
- **National GAINS Center**
<http://www.gainscenter.samhsa.gov/html/>
- **Council on State Governments Consensus Project**
<http://consensusproject.org/>

Contact Information

Stephan Haimowitz, J.D.

Burton Blatt Institute, Syracuse University

email: sjhaimow@law.syr.edu

THANK YOU!

TACE Center: Region IV

Toll-free: (866) 518-7750 [voice/tty]

Fax: (404) 541-9002

Web: TACEsoutheast.org

My TACE Portal: TACEsoutheast.org/myportal

Email: tacesoutheast@law.syr.edu

Education Credits

CRCC Credit - (2.0)

Approved by Commission on Rehabilitation Counselor Certification (CRCC)

- By **Tuesday, April 6, 2010**, participants must score 80% or better on a online Post Test and submit an online CRCC Request Form via the MyTACE Portal.

CEU Credit - (0.2)

Approved by the University College at Syracuse University

- Site Coordinators must distribute the CEU form to participants seeking CEU credit on the day of the webinar.
- Site coordinators must submit CEU form to the TACE Center: Region IV by fax (404) 541-9002 by **Tuesday, April 6, 2010**.

My TACE Portal: TACEsoutheast.org/myportal

**For CRCC credit, you must reside in the 8 U.S. Southeast states served by the TACE Region IV [AL, FL, GA, KY, MS, NC, SC, TN]. If beyond TACE Region IV, you may apply for CEU credit.

Disclaimer

*This presentation was developed by the **TACE Center: Region IV ©2010** with funds from the U.S. Department of Education, Rehabilitation Services Administration (RSA) under the priority of Technical Assistance and Continuing Education Projects (TACE) – Grant #H264A080021. However, the contents of this presentation do not necessarily represent the policy of the RSA and you should not assume endorsement by the Federal Government [34 CFR 75.620 (b)].*

Copyright Information

***This work is the property of the
TACE Center: Region IV.***

Permission is granted for this material to be shared for non-commercial, educational purposes, provided that this copyright statement appears on the reproduced materials and notice is given that the copying is by permission of the authors. To disseminate otherwise or to republish requires written permission from the authors.