

Criminal Record

Also called ex-offender status

Description of the Disability

As with the topic of loneliness (see entry), having a criminal record is not a disability, but it can be associated with certain disabilities and may present additional barriers to employment for individuals with disabilities. Employers have the legal right to ask about one's criminal record during an interview or job application and it is very important to deal with the issue honestly. If an individual lies about their record and the employer finds out, even after the person has been hired and successfully employed for months or years, many organizations require that the person be fired. The person needs strategies to deal with the criminal record up front when seeking employment instead of trying to hide it.

There are three types of criminal violations: Petty Offenses, Misdemeanors, and Felonies. A **Petty Offense** is a minor incidence such as a traffic ticket, littering, noise violation, etc, and the punishment is usually a fine. A **Misdemeanor** is a more serious crime, such as assault, minor shoplifting, or vandalism. These usually involve an arrest, a trial or hearing, and possibly a fine or jail time (less than one year) as punishment. A **Felony** is the most serious type of crime, including actions such as arson, murder, rape, and robbery. Punishment is usually a year or more of prison time and possibly a fine.

Individuals convicted of a misdemeanor or felony may be placed on **Probation** as an alternative to serving prison time. During probation the individual may have to go through drug counseling, meet with a probation officer regularly, perform community service, or meet other requirements of the probation. Alternatively, individuals who have some or all of their prison term may be released on **Parole** as an alternative to completing the prison term. During their time on parole, the individual may have to meet requirements similar to those for probation, including meeting with a parole officer on a regular basis. If the individual violates the terms of probation or parole, he or she can be sent to prison.

Most employers have a question about criminal background on their employment application form, but different employers may ask for different levels of disclosure. Some application forms ask only about felony convictions. In that case, a person who committed a petty offense would not have to report it. Similarly, a person arrested for a misdemeanor or felony charge that was later dropped would not have to report it, because there was no conviction. Even if the person's case went to trial, if he or she was found not guilty it would not have to be reported.

On the other hand, some employers in high security industries, such as banking or law enforcement, may ask if the person has ever been arrested or charged with anything other than a traffic violation. In that case, petty offenses, misdemeanors, and felony charges, even if later dropped, would all have to be reported. The individual needs to be very clear about what the application form asks and about the details of his or her history. If the individual is uncertain about any of the details of their record, it is worth contacting the local court to get the facts. Specific ways to deal with these application questions are discussed below.

Other Issues

In addition to employers' concerns, a criminal record can cause other barriers to independent living and employment. Someone with a felony drug conviction cannot get federal welfare benefits or food stamps (although some states are working on ways around this, so contact your state agency for confirmation). A person with a conviction for sex crimes, drug offenses, or a violent crime may be barred from public housing for several years or for life. Felony convictions, prison terms, and residential drug treatment programs can be serious obstacles for parents trying to get or keep custody of their children or keep parental rights. People with certain types of felony convictions, such as sex crimes, may not be eligible for jobs as care providers, such as child care, nursing homes, teaching, or health care. This can vary from state to state, so check with your relevant state agencies.

People Newly Released From Prison

There are some unique issues facing people who are just getting out of prison compared to those who have been out for several years or who paid a fine but never served prison time.

Immediate Employment. People getting out of prison are usually very concerned about getting some income right away, since they probably have little or no money on which to live. Many ex-offender employment programs meet this immediate need with **Transitional Employment** – temporary, part-time, low-skilled jobs that keep the person active and engaged during the slower, more thorough traditional job search. The person's need for transitional employment may be more urgent than the counselor's need to conduct a vocational evaluation or other career assessments (except as needed for VR eligibility), which could be put off for a little while. Many employment specialists for ex-offenders consider transitional employment a type of assessment, since it demonstrates the person's basic workplace behavior such as dependability, promptness, ability to follow directions, and attention to detail. More importantly, it gives the ex-offender the beginnings of a sense of stability, purpose, and re-integration into the community.

Workplace Culture A second possible issue for individuals just released from prison is difficulty adjusting to workplace culture after living in the prison culture. Work skills such as time management, cooperating with co-workers, and respecting authority may not be as important in the prison culture, and it can sometimes be difficult for recently released ex-offenders to adjust to the differences. Individuals may need some training, counseling, or work experience to help with this transition. Again, transitional employment can help identify any such issues.

Self-Direction. Difficulty with personal time management and self-direction may also be an issue. In prison, someone else told the person when to get up, when to go to bed, what to do during the day, etc. Someone else gave them the basic food and clothing they needed. Once they are released, they may have trouble learning how to direct themselves into a daily routine and keep track of the things they need to do. Again, some life-skills training or counseling may help.

Wage Garnishing. Some individuals just released from prison face significant obligations for child support. Non-custodial parents can be charged for unpaid past child support (plus interest) even if they were in prison at the time and had no income with which to pay. Once their employment is reported, the local child support enforcement agency may begin taking portions

of any new income to meet both current and past payments. It is not unusual for an ex-offender to face several thousands of dollars of debt to family services. Some people object to meeting this obligation and see the garnishing as a disincentive to work – they would rather be unemployed than work and have most of their paycheck garnished. Vocational counselors may be able to intervene with the child support enforcement agency to work out a payment schedule that matches the person's income. That arrangement makes it easier to convince the person to find a job and still keeps some child support money going to the family. Some states provide mediation services for this situation through their division of family services.

Parole/Probation Demands. Individuals on parole or probation may face significant time demands from the conditions of their parole or probation. They may need to attend drug counseling, submit to random drug screenings, comply with day reporting, attend court hearings, participate in other mandated programs, or have parole/probation officer meetings. They may also be dealing with appointments and phone calls to arrange basic social services. They will need flexible work schedules to let them meet these other demands.

Reconnecting. An individual just released from prison may have trouble getting the community services they need. They have often been away for several years and things have changed: social service agencies have merged or moved, phone numbers have changed, staff contacts have left, etc. In addition, families may have moved and children have grown. The person may have trouble finding the basic social supports they need. They may need a case manager to help coordinate their needs.

Coexisting Disabilities

Any disability can coexist with a criminal record, but some are more common than others. They include:

- Substance Abuse
- Learning Disabilities
- Mental Illness

Incidence Statistics

- 83% of offenders violating parole or probation were unemployed at the time of arrest.
- 74% of ex-offenders rated employment as their top post-release problem.
- 80% of incarcerated men and women are significantly involved with drug and alcohol abuse.
- People employed full time or who attended post-secondary school before entering prison had a return to criminal activity at a rate of 25.6, compared to 60.2% for others.
- People leaving prison who arranged post-release employment ahead of time returned to criminal activity at a rate of 27.6% compared to 53.9% for those with no plans
- A Georgia-based study found that skill level and work experience had more impact on employability than ex-offender status

- In Texas, 23% of participants in an employment services project were later re-imprisoned, compared to 38% of those not participating. This is one of the few studies showing positive results for an employment program (see discussion under Treatment section below)
- 63% of men in prison are fathers, 78% of women are mothers. Most have lost custody of their children.
- An unemployed offender is 3 times more likely to return to prison than an offender who has a job.

Common Treatments, Medications, and Side Effects

Having a criminal record is not a “treatable” condition, but criminal justice researchers do think of recidivism as a possibly treatable condition. **Recidivism** is the relapse into criminal activity by a person after they have been convicted of an initial crime.

Providing employment services is one popular approach to reducing recidivism. Unfortunately, the results of this “treatment” have been mixed. In the 1970s and 1980s there were a lot of pilot programs providing employment services to ex-offenders as they got out of prison. Follow-up research showed this did not significantly reduce recidivism. On the other hand, research in the 1990s examined factors influencing lower recidivism and found that employment was very important. People who had found jobs (usually without formal employment services) were less likely to be convicted of a crime later.

No one knows exactly what these conflicting results mean, but there are several possible explanations. The jobs generated by the employment services may not match individual career needs as well as the jobs individuals find for themselves. Or it may be that there is something different about the kinds of jobs individuals find for themselves, such as salary range, long-term stability, opportunities for advancement, or engagement with the community. On the other hand, maybe people who are less likely to relapse into crime also happen to be better at finding employment on their own – in which case employment services will not change anything. No one really knows.

Despite these confusing results, criminal justice workers continue to believe intuitively that employment and community re-integration are important for reducing recidivism. Most states have an office of offender rehabilitation services in their corrections department, and many states have non-profit organizations helping ex-offenders find jobs. There is also an Office of Correctional Job Training and Placement at the National Institute of Corrections.

There are some programs that propose to “treat” offenders with counseling to reduce recidivism and improve community integration. Two widely-marketed examples are Moral Reconditioning Therapy and Reasoning and Rehabilitation Therapy.

Moral Reconditioning Therapy is based on a theory of moral development (reconditioning is a psychological term for thoughts or impulses that lead to activity). It proposes that offenders are stuck in lower stages of moral reasoning and, through workbooks and guided activities, can be moved to higher

levels. In addition, the program stresses self-evaluation, positive reinforcement, strengthening of self-identity, and the ability to delay gratification. The company that sells the program markets it as a treatment for substance abuse as well as for recidivism.

Reasoning and Rehabilitation Therapy is an information processing approach to reducing recidivism developed in Canada in the late 1980s. It focuses on training in problem solving, awareness of consequences, and ends-means reasoning as ways to improve behavior.

A review of both programs by the Washington State Department of Corrections concluded that there is mixed evidence of modest effectiveness for each. Despite the enthusiastic marketing literature, the report concluded that much of the research cited had problems in sampling or other areas of research design.

Possible Functional Issues

- High loyalty to employers who give them a chance
- Little or no work history
- Limited time management and self-direction skills
- Limited experience with workplace social skills
- Limited ability to adjust to new social situations
- Externally imposed time commitments for probation/parole meetings, mandatory drug testing, court hearings, etc.
- Possible co-existing substance abuse issues
- Limited transportation availability
- No high school diploma or GED

Responding to Employers' Concerns

Questions about a person's criminal record on an employment application act as a pre-interview filter, and it is important that the person not get shut out of appropriate job possibilities before having a chance to sell themselves in person with an interview. In addition, many employers have concerns, both realistic and unrealistic, about hiring someone with a criminal record. It is best to address these concerns in person with an interview or meeting. Here are some useful strategies:

- Look for job ads that ask for a resume rather than an employment application before the interview.
- Look for jobs where there is a personal acquaintance or contact who can introduce the person directly to the boss. This type of introduction lets the person market himself or herself before discussing the past.

- Focus on selling the individual's skills, experience, and attitude. If the person received any relevant work experience, management experience, or training while in prison, be sure to mention it.

If the individual has to fill out an application form before the interview, there are several ways to side step the criminal record question without lying about it. The individual can:

- Write "will discuss during interview" next to the question without checking yes or no
- Leave the question blank and address it in the interview
- Write a short note next to the question ("Theft when I was 20," "DUI – have been sober 5 years," "12 years ago – good work history since")

During the interview, there are several things the individual can do to openly address the employers concerns. The person should:

- Express remorse about the offense and take responsibility for the actions, give answers that do not blame society or the criminal justice system.
- Assure the employer that they have learned their lesson and will not break the law again.
- Assure the employer that they know they have a lot to lose if they break the law again.
- Describe how much the job would mean to them
- Emphasize any differences between the offense involved and the employers business. For example, a felony drug possession offense does not involve theft or damage to property
- Describe the job opportunity as a chance to compete with everyone else on equal terms, not as a special favor
- It may be useful for the person to disclose their disability when discussing their criminal record. The presence of a learning disability, for example, could help explain why a person struggled with school, dropped out, and ended up in trouble. However, it is important that they do not appear to blame the criminal act on the disability.

The VR counselor can help by

- Emphasizing to the employer that the counselor will be checking on the person's progress following employment, and intervening with appropriate supports if any problems crop up
- Emphasizing how the person has improved themselves and accepted responsibility
- Explaining that the counselor lives in the community, too, and feels comfortable knowing the person will be working and living there
- Discussing the Work Opportunity Tax Credit with the employer (see below)
- Lobbying with company officers to modify any company policies against hiring ex-offenders

Federal Incentives for Employers

Tax Credits. There are two possible tax credits available to employers who hire individuals with a criminal record. The most relevant is the **Work Opportunity Tax Credit** for hiring a person with a felony conviction. This is a tax credit of up to \$2,400 for the first year of employment. However, the employer must hire the person within one year after the conviction or release from prison, the person must be from a low-income family (70% or less of the Federal Lower Living Standard), and the credit only lasts for one year. There is some paperwork to file before the official employment date and a form that must be filed within 21 days after the employment date. This tax credit has been in place since 1996, but the federal government usually re-evaluates and renews it every one or two years, so you should confirm with your state Workforce Development Office that it is still in place.

Alternatively, there is the **Welfare to Work Tax Credit** if the person or their family has gotten TANF funds for 18 months or has “timed out” of TANF eligibility. This provides a credit of up to \$8,500 per person over the first two years of employment. However, the employer can only use the credit once, so they must wait until the end of two years to get the full amount. Also, the employer can only use one of the two tax credits (Work Opportunity or Welfare to Work) for a particular employee. As with the Work Opportunity Tax Credit, the employer must complete some initial paperwork to confirm eligibility before hiring the person.

Federal Bonding. There is also a Federal Bonding Program available, which issues bonds to employers who hire an individual with a criminal record or history of substance abuse. The bond acts as a kind of insurance of \$5,000 against any loss due to theft or damage by the individual. The federal government gives each state a limited number of free bonds and states can purchase additional ones at a small cost. Unfortunately, job specialists find that, although it sounds good on paper, in reality employers either trust an individual enough to hire them or they do not, and the presence of a free bond does not change the situation. Your state’s Workforce Development office has more information.

Initial Interview Considerations

Initial Questions

- How would they describe the stability of their family life?
- How permanent is their living situation? Do they expect it will last a while or do they still need to find something long-term?
- Do they know the details of their criminal record? (For example, was it a misdemeanor or felony charge? Were they convicted or just charged?)
- Have they had any other encounters with the police?
- If they have a parole or probation officer, how often do they see the officer?
- Do they have any court appearances in the near future? Will that affect their work schedule?
- What other court-mandated meetings or activities do they have to attend, if any?

- What social activities or groups are they involved in?
- Do they have any hobbies?

Initial Observations

- How comfortable does the person appear when discussing their criminal record? If they are nervous about it, they may make potential employers nervous.

Possible Accommodations

- Transitional employment – temporary, part-time work immediately available to help the person keep some money coming in, get used to a work routine, and demonstrate their work habits. Working for a temp service.
- Flexible work schedule
- Job seeking training
- Job coaching
- Coordination between parole/probation officer, VR counselor, and employer
- Family counseling, individual counseling
- Case management to ensure social supports
- Basic adult education courses, especially if they are trying to get their GED
- VR funded apprenticeship, OJT (see below)
- Contact with local judges, parole officers, or legal professionals who may know of employers in the community who hire ex-offenders.

Career Planning Issues

- A VR-paid apprenticeship may be a useful strategy with some employers. It allows the person to get on the job training and allows the employer to get to know the person before committing to hiring. This can be identified as a type of On-the-Job Training for paperwork purposes.
- An unstable family situation can significantly interfere with job retention. The individual and VR Counselor should explore the stability and support provided by the individual's family and home life. Counseling or other supports may be useful. In particular, women with criminal records are at higher risk for domestic violence.
- Contact your state's Offender Rehabilitation Services Division of the Department of Corrections for possible employers interested in ex-offenders or for any special programs offered in your area.
- Many ex-offenders easily find work in construction. Counselors and clients should approach these jobs cautiously as a career choice. Construction work tends to be cyclical with the economy, seasonal, and have a high turnover rate. Individuals pursuing this as a

career goal will need sufficient supports to sustain them through sudden periods of unemployment. On the other hand, construction may be a useful transitional job as the individual pursues more dependable employment elsewhere.

- For some individuals, recidivism (a relapse into criminal activity) may be similar to relapses in substance abuse. Some individuals with substance abuse do stay sober the first time, or even the second or third time (see entry on Substance Abuse). When a person shows this type of pattern with drugs, they deserve a chance to try again, but the burden of proof is on them to show they can stay sober and dependable. Similarly, a person with a pattern of criminal recidivism may need a transitional job situation to prove he or she can stay out of trouble for a period of time before the VR system makes a serious investment in career training.

Emerging Issues

- The relationship between job placement and recidivism
- Improving job retention
- Addressing employers' concerns about hiring ex-offenders

Additional Information Resources

- National Institute of Corrections, Office of Correctional Job Training and Placement – provides training for job placement specialists, including online curricula (you may have to hunt a little for it) and resources - www.nicic.org/about/divisions/ocjtp.htm
- Open Society, Criminal Justice Initiative - Various reports and initiatives - www.soros.org/crime/
- Work Opportunity Tax Credit page at the Department of Labor's web site - www.workforcesecurity.doleta.gov/employ/wotcdata.asp
- Safer Foundation – Chicago-area ex-offender support project. Has white papers and resources in library section - www.safer-fnd.org
- Moral Reconciliation Therapy – a marketing site for the Moral Reconciliation treatment system, the site also has a useful links section - www.moral-reconciliation-therapy.com
- Regional Resource: South Forty Corporation (New York City) - www.osborneny.org/south_forty.htm
- Regional Resource: Better People (Portland, Oregon) - www.betterpeople.org
- Regional Resource: Alston Wilkes Society (South Carolina) - www.alstonwilkesociety.org
- Regional Resource: Alvis House (Dayton, Ohio) - www.alvishouse.org