

Criminal Records: Barriers to Employment and Re-Entry to Society

The arrests of people who have never been convicted of any crime still show up on most background checks. There are a variety of reasons a person may have been arrested and not convicted, ranging from mistaken identify, dismissal of the charges or a finding of not guilty by a judge or jury. Background checks with detrimental information (accurate, clear and timely or not) could result in severe consequences for the subject of these reports. These consequences could prevent them from obtaining services related to public benefits, housing, jobs, etc. Ironically, the denial of these services and opportunities would impair their ability obtaining gainful employment, making successful re-entry far more difficult.

For those who have been convicted and were incarcerated, they are expected to become self-supporting upon their release, which generally means they need to seek employment. It is important that their background checks be accurate, as well as understandable by potential employers. Arrest records and convictions can sometimes lead to a vicious cycle of more arrests and barriers that increase the likelihood of returning to prison. Because of the enormous number of people who have been in prison in the U. S., an opportunity for them to become employed to have a productive life in society is preferable.

If a conviction prevents a person from obtaining employment, it could lead to failure to pay child support, suspended driver's license, charges related to driving without license, with the result of going back to prison. Preventing a significant number of people with criminal records from entering the workforce will have serious repercussions on the economy. Many of the leading sectors of the national economy are inclined not to hire these potential workers and have fewer consumers. These include health care, retail, private security, hospitality, and many others sectors and industries. Providing second chance to those with records would help their efforts to become socially and economically responsible, and it helps local economy.

Increasing number of arrests and usage of criminal background checks

A recent report by the National Employment Law Project states that 65 million adult Americans have either an arrest or conviction in their record, even though some records are inaccurate. Advocates agree that employers may have legitimate safety and security concerns to avoid liability and ensure a workplace that attracts talent without fear of crimes. However, the routine usage of background checks may inappropriately deny people the opportunity for employment.

http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1

These background checks often omit information critical to understanding the actual circumstances. For example, background checks have been found to contain inaccurate, misleading and prejudicial information. There have been situations in which people with similar names were the subject of erroneous reports. In addition, there are arrest reports on people who were wrongfully arrested and

have never been convicted. For those who have been convicted, employers may incorrectly assume that such person would commit similar or other crimes in the future, especially if the convictions were decades earlier.

Accurate, comprehensive and timely criminal background checks can help employers screen out potential employees who could be undesirable. However, according to the National Association of Professional Background Screeners, it is difficult to conduct effective and accurate background checks for reasons such as:

- There is a wide variation from state to state and county to county, in terms of procedures, timeliness and accuracy.
- The background screening process is often not regulated.
- Employers may not know how to evaluate the information on the background screening report.



The National Association of Professional Background Screeners and others are working toward developing best practices to address the difficulties with background screenings. They have developed an accreditation process, but most background checkers are not accredited.

<http://www.napbs.com/i4a/pages/index.cfm?pageid=1>

According to a survey conducted by the Society for Human Resource Management (SHRM) published in July 2012, 69% of organizations reported that they conduct criminal background checks on all of their job candidates (compared to 92% in 2010). About half of organizations conduct criminal background checks to reduce legal liability for negligent hiring and to ensure a safe work environment for employees. The top two convictions that are very influential in the decision not to extend a job offer are violent felonies (96%) and nonviolent felonies (74%). However, 58% of organizations allow job candidates to explain the results of their criminal checks before the decision to hire or not to hire is made.

<http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>

Most arrests are for minor non-violent crimes. According to the FBI's Uniform Crime Reporting (UCR), nationwide law enforcement made an estimated 12,408,899 arrests in 2011. Of these arrests, 534,704 or 4.3% were for violent crimes (murder, rape, robbery and aggravated assault). The UCR program does not collect data on citations for traffic violations.

Background checks disproportionately impact minorities

According to the FBI's UCR, in 2011, arrests were categorized by race, age and type of offense:

- 69.2% of all individuals arrested were white, 28.4% were black, and 2.4% were of other races.
- Of all juveniles (individuals under the age of 18) arrested in the nation, 65.7% were white, 32.0% were black, and 2.3% were of other races.

- Nearly 70% (69.7) of all adults (18 years of age and over) arrested in 2011 were white, 27.9% were black, and 2.3% were of other races.
- White individuals were arrested more often for violent crimes than individuals of any other race, accounting for 59.4% of those arrests.
- The percentages of white adults and black adults arrested for murder were similar, with 48.2% being white, and 49.4% being black.
- Juveniles who were black accounted for 51.4% of juvenile arrests for violent crimes.
- Juveniles who were white accounted for 62.4% of juvenile arrests for property crimes.
- Of the juveniles arrested for driving under the influence, 91.6% were white.
- Juveniles who were white accounted for 72.9% of the persons under 18 who were arrested for arson in 2011.

As the above data shows, although African Americans account for about 14% of the United States population, they accounts for slightly more than 28% of all arrests. Having a criminal record disproportionately impacts among African Americans in the labor market as it is more likely than whites to experience higher arrest records and racial discrimination.

By looking at the violent crime arrests, juveniles who were black accounted for 51.4% of juvenile arrests for violent crimes. An overwhelming number of employers report that having a violent crime in a person's record would prevent that person from obtaining employment, and that could be one among the many factors that we see a higher unemployment rate among African American youth nationwide and locally.

<http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-43>

A 2009 study by the Economic Mobility Project and the Public Safety Performance Project of the Pew Charitable Trusts reports that one in 87 working-aged white men is in prison or jail, compared with 1 in 36 Hispanic men and 1 in 12 African American men. And when you look at young African American men (20 to 34-year-old), the ratio becomes 1 in 9. The report also documents that more of this age group without a high school diploma or GED are currently behind bars (37%) than employed (26%). This is a clear indication that higher numbers of young male African Americans are disproportionately incarcerated.

[http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf)

Removing Barriers through enforcement and legislation

It is no minor task to overcome barriers to employment that those with criminal record face, particularly where incarceration is heavily concentrated among young men of color. Advocacy and civil rights groups have pressed the need to expand protection from employment discrimination to the millions that are negatively impacted by criminal background checks.

The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces the nation's laws against employment discrimination. In 2012 the Commission updated its guidelines on the issue of the criminal background checks that it had first released in 1987. The guideline emphasizes an employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended. It focuses on employment discrimination based on race and national origin, and provides information about criminal records, employer practices, and Title VII.

According to the EEOC, the guidance differentiates arrests from convictions, and clearly states that employers may not deny employment based on a conviction unless the offense is job-related. The guide is seen as one that allows employers can safeguard their business interests while workers re-entering back to society will not face unnecessary and discriminatory barriers to employment.



http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf

In the state of Tennessee, Governor Bill Haslam has signed an amendment to Tennessee Code Annotated, Title 40, Chapter 32, relative to the expungement of certain criminal records, and went into effect on July 1, 2012. The state law allows those who have been convicted of certain non-violent felonies (Class E) or misdemeanors to have records expunged from their Tennessee criminal history. According to Tennessee District Attorneys General Conference, The New Expungement Statute –only applies to Class E Felonies and Misdemeanors, but does not apply to all Class E Felonies and Misdemeanors.

<http://www.tndagc.com/expunge/Expungement%20Checklist.pdf>

Because of the complexity of the expungement process, Davidson Criminal Court Clerk's Office has been providing both educational and a streamlined application process to organizations that assist those seeking to have their records expunged. Many of those who could potentially benefit from this new law will be able to have their barriers to obtaining employment and other benefits removed.

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