THE CRITICAL CHALLENGE OF REENTRY

Given the large number of people in prison there are many coming back.

➢ In the United States there are over 2,310,000 people in federal penitentiaries, state prisons and local jails.
➢ 97% of them are coming home.
➢ Over 4,000 are returning to the Grand Rapids community in 2009.

If the reentry of these individuals is done poorly, there will be a steep price to pay in terms of:

➢ Further family disintegration.
➢ Increased cost of law enforcement.
➢ Higher crime rates.
➢ Numerous citizens returning to prison at a cost of approximately $30,000 per year.

If the reentry process is done well, we will see:

➢ Safer neighborhoods.
➢ Reunited families.
➢ Lower cost for corrections.
➢ New productive and contributing citizens.
The recent interest in “reentry” has been nothing short of remarkable. At the national level, both the Clinton and Bush Administrations have promoted major initiatives to improve prisoner reentry. The State of Michigan has enacted the Michigan Prisoner Reentry Initiative (MPRI) with new thinking, services and results. While these changes are promising, the problems and costs remain immense.

RERC

The RERC (Reentry Employment Resource Center) is a not-for-profit agency created in 2007 by the Reentry Roundtable, a coalition of Kent County agencies, service providers, correction personnel, employers and returning citizens and their families. The RERC serves as a single point of contact, coordination and advocacy for reentry in the greater Grand Rapids community.

Employment is one of the biggest barriers to reentry. Released citizens begin searching for employment soon after returning home, and for most, this process involves deep and constant frustration. In many cases, underneath this frustration is the motivation to live a meaningful and productive life. The RERC is working to bring that motivation to the surface and tap into it with employment opportunities leading to improved lives and safer communities.

Keys to successful reentry.

Throughout the country, we are beginning to see reentry programs demonstrating unusual success. These programs consist of at least four elements:
➢ Improved pre-release training of prisoners.
➢ A smooth and well planned transition back to the community.
➢ Wrap-around supports for the first six to twelve months in the community.
➢ A job; first transitional, then long term.

Successful reentry depends upon making sure that released prisoners can earn a living wage upon their return to the community. A job engages the returning citizen in positive activity and provides income for the minimum necessities of life, e.g. food, shelter and transportation.

The challenge of finding work and shelter is staggering. As each day passes without the ability to earn, the returning citizens become more likely to drift inexorably back to the environment and relationships that contributed to their initial incarceration. Job opportunities for people with criminal records are very scarce. Yet Michigan’s corrections budget exceeds 2.2 billion dollars and more than half of released inmates re-offend within less than three years. Unless returning citizens can find work, we will all pay for their reincarceration.

Korey was a troubled teen. With an absent father and an overworked mother, Korey become rebellious and looked for solutions with the wrong people and in the wrong places. Korey made some bad decisions and was incarcerated for two years. Upon being released he was faced with many challenges, but with the help of RERC and Hope Network, Korey was given a second chance.

“I am now married to a wonderful Christian woman with whom I have 2 beautiful children and I work for Hope Network. Hope considered me for the position that I now hold and gave me the chance that I needed.”

Korey
Returning Citizen
Workforce Development
Hope Network
Why should you consider employing a returning citizen?

➢ It’s the right thing to do.
➢ It promotes rebuilding of damaged relationships between the former offender and their family, spouse and children.
➢ It reduces recidivism and the tax burden of warehousing prisoners.
➢ It assists the returning inmate in becoming a productive member of our community.
➢ It promotes a safer community for all of us.

How do you benefit by hiring returning citizens?

➢ These employees can be highly motivated because they are grateful to be given a second chance.
➢ These employees may be required to be employed as part of their probation or parole; employers can work with probation or parole agents if any problems arise.
➢ These employees often have access to support services, which can help them to succeed at work.
➢ Your company may be eligible for tax credits.
➢ Your company may be eligible for free fidelity bonding to protect against the risk of theft.

How can you hire returning citizens successfully?

➢ Work with the RERC or another good workforce development agency in our community.
➢ Require pre-work training, good selection and successful transitional employment.

“He just earned his first raise this week. His attendance, work ethic and teamwork have been great.”

-Vahn Miller
Midwest Safety
➢ Take advantage of available case management services immediately to overcome barriers and hurdles that may interfere with successful employment.
➢ Work with returning citizens who have mentors and community support.
➢ Develop a prospective plan with the returning citizens which addresses potential pitfalls.
➢ Provide good on-the-job training and supportive supervision.

“[He] is doing an exceptional job... He is quick with changes and has been a good communicator... he has been a great asset to the Rockford General Trades Team.”

-Dan Clappison
Rockford Construction
“My experience with the reentry program has been very rewarding and humbling. We understand that partnering with the RERC not only supports re-entering citizens as they look to better their lives; we are supporting our community. The partnership with the RERC has been great, as we are able to receive references on referred candidates. The endorsements from the RERC continue to help our managers understand the value in pursuing and hiring candidates that are re-entering citizens.”

Alexis Howard
Coordinator, Recruitment & Retention
Saint Mary’s Health Care
What questions can I ask a job applicant?

You can ask whether an applicant has been convicted of a crime, and, if so, when, where, and for what offense. You may also ask if the applicant has any pending felony charges. However, you may not ask about arrests—whether for felonies or misdemeanors—that did not result in conviction. In some cases, applicants have had their records sealed, meaning that the applicant’s record is not available to the public. Employers (with some exceptions for law enforcement) cannot ask about sealed records.

At what point in the hiring process can I ask about an applicant’s criminal background?

Legally, you can ask about an applicant’s record at any point in the hiring process. Although employment practices vary, it is becoming more common to wait until the end of the hiring process, and then make an offer contingent upon clearing a background check. This allows the employer to identify the best possible candidate for the job, and then determine whether that person’s record, if any, is relevant to the position in question.

“I learned what it means to have integrity. It all starts with integrity.”

-RERC Candidate
Do I need the applicant’s permission to do a background check?

Yes, in most cases. Criminal record checks are covered by the Fair Credit Reporting Act, which requires written consent of the job applicant. Although there are some situations where consent may not be required, to protect your company you should always get written permission before doing a check.

How accurate are criminal background checks?

Criminal background checks are tremendously unreliable.

- It is very common for background checks to show a record when the applicant does not actually have one. These “false positives” often occur where reports are based on name matches, since many people can have the same name.
- Background checks also frequently do not show convictions even when the applicant does have a record. These “false negatives” occur because of sloppy reporting by background check companies or because courts do not report all convictions to record repositories.
- Many records do not contain up-to-date information. For example, a case that has been dismissed may look like an open arrest warrant.
- Reports frequently show the same conviction multiple times, making it incorrectly appear that an individual has multiple convictions.
- Conviction information is often simply wrong.

Never rely on a criminal background check without talking to the job applicant first.
How do I read a background check?

Background check reports can be confusing to read. Moreover each court system in the country has different practices and each background check company reports this information in a different way. If you are working with a job placement agency to recruit candidates, the agency may be able to help interpret the information. To minimize confusion, it is a good idea to centralize the background check process, so that the person responsible for reading reports can learn how to read them correctly. You can also ask the background screening company, the courts, or the job applicant for help in interpreting what the report means.

The applicant claims the record does not belong to him or her. What steps should I take?

Contact the background check company and ask the company to recheck the information provided. You can also check with the courts directly, since court records are generally more accurate than those provided by background check companies. If there is a match on the name, check whether other data—such as the date of birth and social security number—also match. In addition you should always give applicants the opportunity to prove that the record does not belong to them. Advise the applicant to contact the background check company about correcting the record. More information about correcting errors on records is available at: reentry.mplp.org.
I am planning to deny employment based on the applicant’s criminal record. Do I need to give the applicant a copy of the background check report beforehand?

Yes. If you are planning to make an adverse employment decision, such as denying employment or terminating an employee, based on a criminal background check, you must provide a copy of the report to the job applicant before making that decision. This requirement is designed to allow job seekers to address any errors in the report. The Fair Credit Reporting Act requires that an employer also give an applicant an adverse action notice before denying that applicant based on a report. The notice gives the applicant the information necessary to dispute the accuracy of the report.
I’ve used a background check to deny employment or to terminate an employee. What do I do now?

After making a decision based on a commercially prepared background report, you must provide the name, address and phone number of the credit reporting agency that provided the report. You must also provide a copy of the Federal Trade Commission’s Summary of Consumer Rights, which explains to applicants how they can dispute the completeness or accuracy of the report with the background check company. You can get a copy of the Summary of Consumer Rights from the company that prepared the background check.

With whom should I share information about an employee’s criminal record?

Record information is highly sensitive, and should be shared only with those in the company who have a legitimate business reason to know that information. In addition, the Fair Credit Reporting Act, which covers background check reports, allows employers to get such reports only for employment purposes. To avoid liability for misuse of background check reports, you should limit access to this information in the same manner as you limit access to other sensitive employee information.

My company won’t hire anyone with a felony. Is that legal?

In most cases, no. In some industries there are laws that prohibit you from hiring certain individuals with criminal records. However, unless your company is prohibited by law from hiring people with felony convictions, you should not have a blanket policy against hiring this population.
Because policies prohibiting the employment of people with criminal records have a significantly greater impact on people of color, such policies can violate anti-discrimination laws. If a policy has an adverse impact, the employer must show that the criteria used have a demonstrable relationship to successful job performance. The employer must also show that there are no other job-related criteria that could be used that would not have such an adverse impact.

The Equal Employment Opportunity Commission recommends that employers consider the nature and gravity of the offense, the time since conviction, and the nature of the employment tasks before disqualifying an individual from employment based on the individual’s criminal background.

**How do I protect my company against claims of discrimination against people with records?**

Employers who have a “no-felon” policy may be the target of discrimination lawsuits. To help protect your company, you should adopt a policy that looks at factors like the length of time since conviction, circumstances of the offense, number of convictions, rehabilitation, employment record since conviction, and nature of the job. (A sample hiring policy is included at the end of this booklet.) You should ask only about convictions related to the job for which they are being considered, and you may also want to limit your questions to more recent convictions. In cases where you deny employment based on a person’s criminal record, you should document that you have considered the factors listed above.
I need to fire someone who has a criminal record. How do I avoid a discrimination claim?

As in any case where you terminate an employee, you should document the basis for the termination. Because of equal opportunity laws, it can be illegal to fire someone simply because they have a criminal record. However, if an employee’s job performance is unsatisfactory, or the employer has some other valid, non-discriminatory reason for the discharge, there is nothing illegal about terminating an employee who has a criminal record.

What if the law says I can’t hire people with records?

There are some industries—particularly long-term care, education, childcare and transportation—where there are laws and regulations disqualifying some people with records from working in that industry. These rules are often very complicated, and may include exceptions for people with a work history in the field, or may allow for an appeals process. Make sure that your human resources office understands exactly who is and is not eligible to work in your company. For more information about the rules in particular industries, go to: reentry.mplp.org.
Should I be concerned about negligent hiring lawsuits?

Negligent hiring lawsuits, which are fairly rare, typically involve a claim by a customer who was harmed by an employee, and who argues that the employee should never have been hired for the job in question. If an individual is being hired for a position that does not involve contact with the public—such as production work—negligent hiring is generally not an issue.

If the position does involve contact with the public, the courts have made it clear that the mere fact that an employee has a criminal record does not establish a claim for negligent hiring. Rather, the question is whether the employer used reasonable care in hiring. You can help protect your company by adopting a policy of considering convictions on a case-by-case basis. If you conduct criminal background checks, it is important to document that you have reviewed the results prior to hire, and have concluded that the applicant is an appropriate hire for the position in question. Documenting reference checks is also helpful.

Will my insurance rates increase if I hire individuals with records?

Insurance companies do not typically request this type of disclosure regarding employees, and therefore, it should not increase your rates. Insurance companies typically rate based on claims information.

Can I get Federal Bonding for employees with records?

Yes. Under the Fidelity Bonding Program, the federal government will issue free business insurance coverage against theft if you hire a job applicant with a criminal record. Bonds can be obtained instantly and last for six months.
Bonding protects employers against theft by employees.

Fidelity bonds are available free of charge when you hire returning citizens.

Bonds are easy to obtain. An employer simply writes a letter to a Michigan Works! agency stating that employment is being offered conditional on the worker receiving a Fidelity Bond.

Bond coverage is based on the value of the property at risk and is issued in amounts of $5,000 to $25,000.

Bond insurance carries no deductible amounts.

Bond insurance expires after six months. However, the employer may purchase continued coverage from the McLaughlin Company.

To obtain a bond, contact a Michigan Works! Agency at 800-285-WORKS. Additional details about the program can also be obtained from the Department of Energy, Labor and Economic Growth’s bonding coordinator at 313-456-3169.
Can I get a tax credit for hiring a person with a record?

Yes. The Federal Work Opportunity Tax Credit (WOTC) provides up to $2400 in tax credits if you hire an individual who was convicted of a felony or was released from incarceration within one year of the hire date. You may also be eligible for a tax credit for individuals with older convictions, if those applicants fall into one of the other tax credit target groups, such as welfare recipients or disabled veterans. Additional credits are available for hiring veterans and welfare-recipients. You could receive up to $9000 in tax credits over two years.

- To obtain a tax credit, you must fill out IRS Form 8850 and ETA Form 9061, which are available at www.michigan.gov/uia. Then mail those forms to the WOTC Unit at the Unemployment Insurance Agency.
- There is no limit to the number of hires who can qualify an employer for these tax savings.
- For more information, call the WOTC Unit at 1-800-482-2959.

Can my employees get their records sealed?

Maybe. If an individual has only one conviction, and the offense or release from incarceration occurred more than five years ago, the individual may be able to get that conviction removed from his or her record. This is called “expungement.” More information is available at reentry.mplp.org.
SAMPLE HIRING POLICY FOR PEOPLE WITH RECORDS

Felony Convictions or Pending Felony Charges
Policy & Procedures.

1. Inform the applicant that a background check will be conducted by an outside agency to determine if the client has any felony convictions or pending felony charges, which may result in a conviction.

2. Inform the applicant that a conviction is not an absolute bar to employment, but that each applicant’s criminal history will be reviewed on a case-by-case basis.

3. Obtain the applicant’s written consent to do the background check.

4. Once the results of the criminal record check are returned, provide a copy to the applicant, along with a copy of the Federal Trade Commission’s Summary of Consumer Rights. Give the applicant the opportunity to correct any errors on the report.

5. If the background check shows that the applicant has a felony conviction or pending felony charge, the Director of Human Resources will follow the EEOC guidelines, and will consider the following factors in relation to the conviction record:
   - Length of time since the conviction(s)
   - Circumstances of the offense(s)
   - Number of convictions
   - Applicant’s employment record since the conviction(s)
   - Rehabilitation
   - Nature of the job in question

6. Upon completion of the review, the Director of Human Resources will determine eligibility for employment.
CONTACT INFORMATION

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FOR MORE INFORMATION ON TOPICS COVERED IN THIS BOOKLET PLEASE SEE:

Michigan Prisoner Reentry Initiative
www.michpri.com

Workforce Opportunity Tax Credit
www.doleta.gov/business/Incentives/opptax
www.michigan.gov/uia/0,1607,7-118--78849--,00.html

Fidelity Bonding Program
www.bonds4jobs.com
www.michigan.gov/fidelitybonding

Michigan Reentry Law Website
reentry.mplp.org
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