

SOUTHEAST WISCONSIN RE-ENTRY EMPLOYMENT EXPO

“Working with Our Neighbors”

Gateway Technical College Horizon Center

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RE-ENTRY MYTHBUSTERS



Racine Vocational Ministry, Inc.



Kenosha Unity
Coalition



MYTH: Access to juvenile criminal records is strictly limited.

FACT: Privacy of juvenile court records has eroded over the years. In many cases criminal justice professionals – and in some cases others – can access information about an individual stored in state repositories.

Data collection systems are designed to collect, record, and report information on each felony and serious misdemeanor arrest that occurs in a state, as well as the court's response to the arrest. These records may be used for many purposes, mostly for background checks including identification, employment, security, adoption, immigration/international travel/visa, licensing, assistance in developing suspects in a criminal investigation, and for enhanced sentencing in criminal prosecutions. This information is accumulated into what is commonly known as a "RAP Sheet" (Record of Arrest and Prosecution). This information is linked to a person through fingerprints.

Some state repositories collect information on juvenile arrests and some do not. **Some states with juvenile information report this information when it is requested by a criminal justice entity (e.g., law enforcement, prosecution) and some do not. When a potential employer requests criminal history information on a juvenile applicant, some states will provide some or all of the recorded juvenile information, and some do not.**

Sealing of juvenile court records means placing them in a separate file or other repository that is not accessible to the public.

Expungement refers to court records that are considered to have never existed or the destruction of those records. Destruction of such records, however, does not always mean actual destruction, but rather placing a juvenile's records in a separate file where only certain parties can access them, usually with a court order.

The fact is that the privacy of juvenile court records has eroded over the years. **Persons interested in juvenile justice issues should know the policies and practices of their state's criminal history repository.**

As technology advances, it is likely that the contents of each state repository will grow to include more and more information on juvenile matters. Given that the information will be collected and stored, the concerns for juvenile justice should focus on the repository's retention and dissemination policies, especially dissemination to potential employers. The questions to ask are:

- Should any juvenile records be reported when a request is made by a potential employer?
- Should reporting be limited to only those matters in which the youth was adjudicated delinquent?
- Should there be criteria established to expunge juvenile information housed in a repository after a certain period of time?
- If a court expunges or seals the juvenile court records on a youth should (and is) the information housed in the state criminal history repository also be expunged or sealed?
- How can juveniles determine if their information is in a repository --- and if it is accurate?

For More Information:

ABA's Juvenile Collateral Consequences Database

<http://www.beforeyouplea.com>

Can Sealed Juvenile Court Records ever be Unsealed or Inspected?

http://www.ncj.org/PDF/Snapshots/2010/vol15_no5_Sealedrecordsth_atcanbeunsealed.pdf

Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment, and Treatment in the Juvenile Justice System

<http://www.ilc.org/files/publications/protectingyouth.pdf>

What is a REENTRY MYTH BUSTER?

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Because reentry intersects with health and housing, education and employment, family, faith, and community well-being, many federal agencies are focusing on initiatives for the reentry population. Under the auspices of the Cabinet-level interagency Reentry Council, federal agencies are working together to enhance community safety and well-being, assist those returning from prison and jail in becoming productive citizens, and save taxpayer dollars by lowering the direct and collateral costs of incarceration.

For more information about the Reentry Council, go to: www.nationalreentryresourcecenter.org/reentry-council

BUSTER!

A Product of the Federal Interagency Reentry Council

MYTH: The Federal Government's hiring policies prohibit employment of people with criminal records.

FACT: People with criminal records are eligible to compete for the vast majority of federal jobs.

The Federal Government employs people – including some who may have criminal records – that possess the requisite knowledge, skills and abilities.

Consistent with Merit System Principles, agencies generally are required to consider people with criminal records when filling positions if they are the best candidates and can comply with requirements.

For most federal jobs, questions regarding criminal history do not appear on initial job applications. However, individuals seeking admission to the civil service are generally asked to complete a Declaration for Federal Employment (OF 306) and undergo an investigation to establish “suitability” or fitness for employment at some point in the hiring process.

The principal issues for agencies as they consider hiring people with criminal records involve making determinations related to:

- An individual's character traits and conduct to determine whether employment would or would not protect the integrity and promote the efficiency of the service.
- Whether the past criminal conduct, by its nature, is incompatible with the core duties of the job.
- Whether employment of the individual in the department or agency is consistent with the interests of national security.

- The nature, seriousness, recency, and circumstances of the individual's criminal activity, and whether there has been rehabilitation or efforts toward rehabilitation.

People with criminal records are eligible for employment in the vast majority of federal jobs. For a few positions, they may not be eligible because specific laws or statutes prohibit employment, depending on the crime committed. For example:

- A handful of federal laws, like those prohibiting treason, carry with them a lifetime ban on federal employment.
- Others, like the criminal statute for inciting a riot, prohibit federal employment for a certain number of years.
- The Bond Amendment imposes restrictions related to national security positions.

For More Information:

OPM Contractor Fitness Adjudication Best Practices Guide, click [here](#).

Suitability Determinations Criteria, click [here](#).

Bond Amendment, click [here](#).

Federal Background Investigations, click [here](#).

For Additional Reentry Myth Busters, click [here](#).

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MYTH BUSTER!

January 2017

A Product of the Federal Interagency Reentry Council

MYTH: An employer can get a copy of your criminal history from companies that do background checks without your permission.

FACT: According to the Fair Credit Reporting Act (FCRA), employers must get one's permission, usually in writing, before asking a background screening company for a criminal history report. If one does not give permission or authorization, the application for employment may not get reviewed. If a person does give permission but does not get hired because of information in the report, the potential employer must follow several legal obligations.

Key Employer Obligations in the FCRA

An employer that might use an individual's criminal history report to take an "adverse action" (e.g., to deny an application for employment) must provide a copy of the report and a document called **A Summary of Your Rights under the Fair Credit Reporting Act** before taking the adverse action.

An employer that takes an adverse action against an individual based on information in a criminal history report must tell the individual – orally, in writing, or electronically:

- the name, address, and telephone number of the company that supplied the criminal history report;
- that the company that supplied the criminal history information did not make the decision to take the adverse action and cannot give specific reasons for it; and
- about one's right to dispute the accuracy or completeness of any information in the report, and one's right to an additional free report from the company that supplied the criminal history report, if requested within 60 days of the adverse action.

A reporting company that gathers negative information from public criminal records, and provides it to an employer in a criminal history report, must inform the individual that it gave the information to the employer or that it is taking precautions to make sure the information is complete and current.

If an employer violation of the FCRA is suspected, it should be reported to the Federal Trade Commission (FTC). The law allows the FTC, other federal agencies, and states to take legal action against employers who fail to comply with the law's provisions. The FCRA also allows individuals to take legal action against employers in state or federal court for certain violations.

For More Information:

See [Background Checks: Tips for Job Applicants and Employees](#) from the FTC and [Background Checks: What Job](#)

[Applicants and Employees Should Know](#) from the Equal Employment Opportunity Commission and the FTC.

The FTC works to protect consumers from violations of the FCRA and from fraudulent, deceptive, and unfair business practices in the marketplace, and to educate them about their rights under the FCRA and other consumer protection laws.

To file a complaint or get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a video, [How to File a Complaint](#) to learn more.

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MYTH: People with criminal records are automatically barred from all employment.

FACT: An arrest or conviction record does NOT automatically bar individuals from all employment

On April 25, 2012, the U.S. Equal Employment Opportunity Commission issued its *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, as amended (Title VII), 42 U.S.C. § 2000e. The Guidance updates, consolidates, and supersedes the Commission's 1987 and 1990 policy statements on this issue, as well as the relevant discussion in the EEOC's 2006 Race and Color Discrimination Compliance Manual Chapter. These rules apply to all employers that have 15 or more employees, including private sector employers, the federal government, and federal contractors. Below are answers to common questions about the Guidance.

1) Does this Guidance prohibit employers from obtaining and using criminal background reports about job applicants or employees? No, the Guidance does not prohibit employers from obtaining or using arrest or conviction records to make employment decisions. The EEOC simply seeks to ensure that such information is not used in a discriminatory way.

2) How could an employer use criminal history information in a discriminatory way? Two ways -- First, Title VII prohibits disparate treatment discrimination. Employers should not treat job applicants or employees with the same criminal records differently because of their race, national origin, or another protected characteristic (disparate treatment discrimination). Second, Title VII prohibits disparate impact discrimination. Employers should not use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will

be a responsible, reliable, or safe employee. In legal terms, it is not "job related and consistent with business necessity."

3) How would an employer prove "job related and consistent with business necessity"? Is it burdensome? Proving that a criminal record exclusion is "job related and consistent with business necessity" is not burdensome. The employer can prove this if it (1) considers at least the nature of the crime, time since the criminal conduct occurred, and the nature of the job in question, and (2) gives an individual who may be excluded by the screen an opportunity to show why he or she should not be excluded.

4) Why should an arrest record be treated differently than a conviction record?

An arrest record does not establish that a person engaged in criminal conduct. Arrest records may also be inaccurate (e.g., mistakenly identify the arrestee) or incomplete (e.g., do not state whether charges were filed or dismissed against the arrestee). Thus, an arrest record alone should not be used by an employer to take an adverse employment action. But, an arrest may trigger an inquiry into whether the conduct underlying the arrest justifies an adverse employment action.

For More Information:

EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII:
http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

EEOC Questions and Answers About the EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII:
http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm

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MYTH: Businesses and employers have no way to protect themselves from potential property and monetary losses should an individual they hire prove to be dishonest.

FACT: Through the Federal Bonding Program (FBP), funded and administered by the U.S. Department of Labor (DOL), fidelity insurance bonds are available to indemnify employers for loss of money or property sustained through the dishonest acts of their employees (i.e., theft, forgery, larceny, and embezzlement).

Job seekers who have in the past committed a fraudulent or dishonest act, or who have demonstrated other past behavior casting doubt upon their credibility or honesty, very often are rejected for employment due to their personal backgrounds.

The FBP is an employer hiring incentive that guarantees the job honesty of at-risk job seekers, including formerly incarcerated individuals. The DOL provides state workforce agencies with a package of promotional bonds to provide a base and incentive to employers and others to participate.

Beyond the promotional bonds, additional bonds may be purchased from the bonding agent by states, localities, and other organizations providing reentry services.

- Employers receive bonded employees free-of-charge which serves as an incentive to hire hard-to-place job applicants.
- The FBP bond insurance was designed to reimburse the employer for any loss due to employee theft of money or property with no employer deductible.
- This tool has proven to be extremely successful with only 1% of the bonds ever issued resulting in a claim.

For More Information:

Federal Bonding Program Homepage:

<http://www.bonds4jobs.com/index.html>

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REENTRY MYTH

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MYTH: Employers have no federal income tax advantage by hiring an ex-felon.

FACT: Employers can save money on their federal income taxes in the form of a tax credit incentive through the Work Opportunity Tax Credit (WOTC) program by hiring ex-felons. An ex-felon under WOTC is an individual who has been convicted of a felony under any statute of the United States or any State, and has a hiring date which is within one year from the date of conviction or release from prison.

The main objective of this program is to enable certified employees to gradually move from economic dependency to self-sufficiency as they earn a steady income and become contributing taxpayers. At the same time, participating employers are compensated by being able to reduce their federal income tax liability. The Work Opportunity Tax Credit program (WOTC) joins other workforce programs that help incentivize workplace diversity and facilitate access to good jobs for American workers.

THE WOTC: For each new ex-felon hired, the credit is 25% of qualified first-year wages for those employed at least 120 hours, or \$1,500; and 40% for those employed 400 hours or more, or \$2,400.

TARGET GROUPS: The WOTC is a federal tax credit used to reduce the federal tax liability of private-for-profit employers. Employers can hire individuals from the following 9 target groups, which have traditionally faced significant barriers to employment:

- Qualified TANF Recipients
- Qualified Veterans
- Qualified Ex-Felons
- Qualified Designated Community Residents (DCR)
- Qualified Vocational Rehabilitation Referrals
- Qualified Summer Youth
- Qualified Food Stamp Recipients
- Qualified Supplemental Security Income (SSI) Recipients
- Qualified Long-Term Family Assistance Recipients

APPLICATION PROCESS: There's no limit to the number of "new" ex-felons an employer can hire to benefit from these tax savings. Employers apply for and receive a WOTC certification for each new hire from their State Workforce Agencies. There's minimal paperwork needed to qualify and claim the tax credit!

For More Information:

<http://www.doleta.gov/wotc>

<http://www.irs.gov>

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