

Working with Ex-Offenders: What Community Rehabilitation

Providers Need to Know - Transcript

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Lynda Leach, Facilitator: Welcome everyone to the RSA Region V CRP-RCEP monthly teleconference. I'm Lynda Leach at the University of Illinois and we have Maria Anderson on today to talk about the importance of background of checks for ex-offender employment.

Maria Anderson: Good afternoon, it's my pleasure to present you with some information that will hopefully make your jobs a little easier when working with the ex-offender population.

I'm going to be covering a few topics that I feel are critical to working with ex-offenders: background checks, a little bit on off-limit jobs, and some employer incentives.

Feel free to jot down your questions. There will be time at the end of the presentation to ask questions.

In regard to background checks, I would like to address some common myths you may have heard from your clients.

Please go to SLIDE 1:

Myth 1: Employers can only check back for the past seven years.

Not true, every state is different. Some "employers" may only be interested in convictions for the past 3 years, 5, 7 or 10 years. How far back they can actually go depends on what the state will release. Most states release criminal history information back to age 18. However, Ohio will release juvenile records.

Take a look at SLIDE #2:

Fair Credit Reporting Act Governs the use of Criminal History Records; Amended in 1998 to eliminate any restrictions on how far back conviction records could be reported. So there is no set limit. It's what the state will release, combined with how far back the employer wants to look.

Please go to SLIDE #3 to take a look at some more myths:

Myth 2: They need my signature to get my record.

Not true, many states release criminal history information as "public information" and don't require a signature. All of the states in Region V release some criminal history information publicly. Various methods exist: on the Internet, mail in a request, etc. In Michigan, you can access criminal history information for \$10.00 with a credit card on the Internet - they update the site daily.

Myth 3: They can't find out exactly what happened.

Not true, many counties will release the actual complaint that was filed at the time of arrest as public information. The complaint is the report a police officer fills out when they've responded to a crime or incident. It spells out what happened in detail. You can go to the county, get the case number and request the record. You can usually get copies for a nominal fee.

Myth 4: Well, I'll just get that taken off my record.

It's not that simple. Most states either won't remove convictions from a record or are very restrictive in allowing it. Some won't allow certain types of offenses to be removed at all. For instance, in Minnesota they won't remove certain sex offenses.

Depending on the state, a pardon can be an option to remove an offense, but those are difficult to obtain and sometimes the offense isn't removed from the record. It will just have the words "pardoned" next to the conviction information.

Myth 5: My record will go away after so many years.

Not true, some states maintain records indefinitely or until the person dies.

So these are just a few myths that typically float around the ex-offender grapevine. Hopefully, this will help you to address them better as you hear these from your client.

Moving on to the main focus of this presentation, I picked the subject of background checks because you really can't come up with a viable employment plan without conducting a background check through your state agency.

One of the things I do here in Minnesota is consult for rehabilitation services and state services for the blind. I work with counselors and ex-offender clients in a number of areas. I **won't** work with a client unless I have a copy of the background check and I'll give you my reasons why.

First, I've given you a handout called "**Background Checks.**" It lists the agencies that maintain state criminal background records for each state in Region V. You can contact them if you have questions as to how to obtain a copy of someone's record, what information is released, how you can correct a record, how much it costs, etc.

By simply going to the website, you can find most of the information you need under “frequently asked questions.” Lastly, I’ve also given you the FBI web site for background checks. I will touch on this later.

My focus today is to stress the importance of why the check should be done. Let me give you Maria’s top ten reasons to do a background check.

SLIDE #4

Reason ONE: You can’t believe the client.

One of the characteristics of the ex-offender population is the fact that they can be notorious liars. It’s because of what they do and what they’re into. They have to lie to cover up their actions.

If this goes on long enough, it becomes an ingrained process and they habitually manipulate the truth. This really applies to your career criminal and not so much the one time offender. So, just because the client “says” they have no felonies, doesn’t mean that’s the case.

You **have to** verify your facts before you can move forward with employment, placement, and training options. The only true source of criminal history information is to obtain the record directly from the state agency that compiles it. If your client comes in with other documents, don’t settle for those as valid.

They may be old, there may be pages removed. It may be a county record, which wouldn’t show convictions in other counties. I’ve seen this happen too many times. And the client usually gets away with it because the counselor doesn’t know any differently. That’s part of why I do staff training.

So let me touch on a few points in regard to the criminal record itself.

Criminal history information is available at the state (through the agencies I’ve put on your handout) and is also maintained at the county. The state will have the criminal history for the entire state. And as I mentioned, each state has its own rules on what on it will release.

It should be noted, the state record is only as good as what the counties report. If a county doesn’t report it to the state, the offense won’t show up on the state record, but will show up on the county record.

Sometimes the state record will list an arrest and charge - then list it as “pending.” That could actually be a conviction but the county didn’t report the result or disposition to the state. * Ideal scenario is to check both the state and the county in which the person has been living.

Many states release criminal history information at the county level as “public.” This means you can go to the clerk of courts and obtain information without needing a release or signature. Some counties post it on the Internet - check for when it was updated for accuracy reasons. What is released at the county is normally information for that county only.

Another common practice at the county level is to release arrest information for that county. Typically the state agency doesn't release arrest information, they just release conviction information. So if you want to know if someone has been arrested, I would check the county first. Unfortunately, you would have to check each county individually to get the entire arrest record.

Reason TWO to do the check is to ensure you're not putting someone through training in a field in which they can't work.

When someone is convicted of a crime there are often "collateral sanctions to the conviction." This means there might be "bars" or restrictions to some employment positions or professional licenses. This is an important issue when developing the employment plan and choosing training options for your client.

Take a look at SLIDE #5: Equal Employment Opportunity Commission (EEOC)

- EEOC outlaws blanket exclusions for hiring ex-offenders (which means an employer can't simply deny someone because they have a record). However, EEOC does allow arrest or conviction records as evidence in an employment decision, provided the employer considers three things:
- Nature and gravity of offense (what type and how severe) check fraud vs. assault
- The time that has passed since the arrest
- The nature of the job held or sought (what type of work)

The specifics on restrictions would be contained in your state statutes, laws, and administrative codes. Those can be found on the individual state websites but would require quite a bit of research. Believe me I know. I've done it for numerous state trainings.

Before you sponsor anyone in a training program, I would highly recommend you contact the agency that might oversee or license those positions. They can tell you the effect the conviction will have on someone working in that field.

There are also agencies that will oversee positions where individuals will be working with vulnerable adults. For instance in Wisconsin, it's the Department of Health and Family Services.

Take a look at SLIDE #6:

These are typically your off-limit categories (old, sick, disabled, mental and chemical health issues, kids,)

Other positions that will heavily scrutinize someone with a record include:

1. Positions of trust (banking, security jobs)
2. Licensing divisions will also consider records for some occupational licenses (barber, physical therapist)
3. Positions highly scrutinized for character or moral turpitude (police officer, teachers, psychologists)
4. Positions with access to personal information: Social security number, date of birth, drivers license number (that's because of identity theft)
5. Positions where you're exposed to sensitive information: Medical information medical records / medical transcription / even some administrative positions where you have access to people's

personal info)

It should be noted: not all occupations flatly bar someone. Some statutes will say:

- May disqualify
- Some say - must show evidence of rehabilitation, with each state having its own definition of what constitutes rehabilitation. Illinois actually has a certificate of rehabilitation and good conduct that they can issue to certain ex-offenders.
- Laws and policies change, so it's best to contact the agency for the most up-to-date information.

You should also know that background screening can be done for volunteer workers.

Look at SLIDE #7:

October 1998: Public Law 105-251. Organizations and businesses dealing with children, elderly, and the disabled may now use national fingerprint-based criminal history checks to screen volunteers and employees with relevant criminal records. Not all states screen volunteers, but most do.

So back to our top ten: **Let's go to SLIDE #8**

What I've just discussed on off-limit jobs leads to reason #2:

Ensure you're not putting someone through training in a field in which they can't work.

I've seen this happen too many times because the counselor is just accepting what the client says. And we've already talked about believing what the client says. I've even seen clients show up with letters from schools saying they can work in that field. Well, remember the school wants their money. And the school may not be aware of state laws barring the individual from working in that field.

Reason THREE to do the check: Ensure you're not placing someone in a job that's off limits.

Knowing what a person has on their record is critical to the employment plan. There's nothing more devastating for our clients than getting a job and being let go a week later because the state won't allow them to work there. There are many ex-offenders who have lost their careers because they can no longer work in their field.

* As a side note, something that temp agencies tend to do. They place a client but don't tell the employer they have a record. Then when the contract with temp is up, 60 or 90 days - whatever, the employer runs the check and let's the client go. So you may want to ask temp agencies if they inform the employer that the individual has a record, or have your client ask this.

Reason FOUR: There could be things on the record that they didn't do.

- One of my clients was having a hard time getting a job. We requested her background check and what came back was - two felony convictions for injury to an unborn child. She never did that.

All the BCA (that's the MN State Agency that maintains criminal records) could say was: Someone must have punched in the wrong statute number.

Apparently, that had been on her record for years. No one ever got a copy of the record. Needless to say we had that corrected. So sometimes the information is just wrong.

- Another client had one DWI and wasn't getting any interviews. We requested the report: it was 7 pages long with 10 alias's listed (her friend was using her name). I could give you a ton of examples. Bottom line is the client needs to make sure it's correct.

Reason FIVE to do the check: Verify the court orders were fulfilled.

- Some clients get an expungement to remove the offense from their record. But was it actually removed? Sometimes records can be expunged at the county, but not at the state level, so the client is running around saying they have a clean record. Depending on where the employer runs the check the conviction could still show up. Then the employer accuses the client of lying and lets the client go.
- Sometimes an individual will be convicted of a felony. If he/she completes certain requirements the offense will be downgraded to a misdemeanor. By reviewing the report you can verify this change was actually made and that it didn't slip through the cracks.
- Both levels should be checked in this case: the state and county.

Please go to SLIDE 9:

Reason SIX to run the check: To make sure you're not misleading the employer.

- It's not uncommon that our clients don't remember things they've done in the past. You don't want them to mislead the employer by telling them something that isn't accurate. The employer will automatically assume it's an attempt on our client's part to mislead them versus an honest mistake.
- I had a client who was marking "yes" on applications where it asked if he had a felony conviction. We got his record from Illinois and guess what? He didn't have any felonies. They were all misdemeanors. But he thought he did and that's what he was telling people.

Reason SEVEN: To protect yourself, your agency, and society.

- Under the heading of - To protect yourself: - I had a situation where a counselor was getting very bad vibes from her client. We got the record and found he had a number of violent offenses on his record. She asked me to find out what I could because he was making her feel very uncomfortable. She basically felt very threatened.

I got a copy of the complaints that were filed from the county. He had a history of doing some pretty violent acts against women and not just women he knew, but strangers. Based on that she changed her mode of operation when dealing with him.

- Under the heading of: To protect your agency and society - let's do this scenario.

A client wants to do some volunteer work. The counselor suggests maybe they can help out with some bible study classes for kids at their church, or help out at the Y. AND let's say that state doesn't do background checks on volunteers.

A few months later there's an incident. That client tried to molest a child. If he had done something to your kid - wouldn't you be asking the questions, how did he get that job? Didn't they know he was a

sex offender? And wouldn't you feel like the people who referred him there were responsible for not checking that out? I know I would feel that way. So always check to protect yourself, your agency, and society.

NOTE: Not all sex offenders in every state have to register or are monitored.

NOTE: Always ask for permission to speak with the probation officer or parole officer to find out if there are any restrictions. For instance, a sex offender might not be able to be in the presence of minors.

- You may think a custodial position in a hotel is fine, but if there are restrictions. It won't work. They could be passing kids in the hallways or on elevators.

- Child pornography on the Internet; There may be a restriction that access to the Internet is prohibited. So going to school in the computer field is not appropriate (maybe if they're building them but not operating in them.)

Reason EIGHT: You need to see exactly what the employer sees.

Some states have what we call diversion programs. This is where an individual is not convicted of the offense. They're placed in a program and if they complete the requirements of the program, the charge is dismissed. The issue here is what will show up on the background check - each state is different.

If it does show up on the background check - the individual can mark "no" to a conviction on the application, but I would suggest they bring it up in the interview. I've gotten tons of phone calls from staff saying their client marked "no", but it came up on the background check and the employer let them go because they weren't up front and honest about it.

Reason NINE: So you can coach your client on how to discuss their record with an employer.

Not much needs to be said on this one, it's pretty straight forward. How can you help them discuss their record if you don't know what's on it?

Reason TEN: Check offender status

Some reports will indicate an offender is a multi-state offender. That means your client has a record in another state or has a federal record. You can use this to prompt the question when interviewing the client. "Do you have a record anywhere else?"

You might consider running a background check in states they have previously lived in to see what shows up. It's common for ex-offenders to jump from state to state, especially the sex offenders.

I often get asked how can I get a copy of someone's record from another state? I would suggest going to that state's main website and doing a search on criminal background checks. They will post how to send for one, who can get it, what is released, how much it costs, etc. Private sites on the Internet aren't always accurate.

Another option is to obtain a check for the entire country. Have the individual send for an FBI background report. Only the individual can get their own record, we can't.

This will show the person's entire record throughout the United States to include any federal offenses. I've given you the web site on your handout. You can go there to find out what the client has to do to get one. (Procedures / Cost).

FBI reports can be accessed by certain state agencies. For example, if someone is applying to be a child care provider or CNA - your state may require the FBI check.

That goes back to what I was mentioning in off limit jobs / careers. Something to keep in mind: You may find contradictory information. The county might show one thing, the state something else, the FBI something different.

Many people go to private agencies to run the check. Sometimes their information doesn't match. All you can do is obtain whatever information you can for the 10 reasons I gave you.

Sometimes I get asked - what if the information is wrong.

If an individual finds the information on a report is incorrect, there is always an avenue to get it corrected. I know of many cases where a private agency reported incorrect information.

When the individual contacted them to correct it, they did take action to change it. Unfortunately, by then the company was no longer interested in hiring the individual even though they proved the record was wrong.

If the state data is incorrect, they will want the county that reported it to notify them of the error. So that's where the client needs to start - at the county where they were charged.

They might have to obtain some form of documentation to prove the information isn't accurate. Once again, check your state web site. It should have the correct procedures to follow.

What if your agency doesn't support doing background checks on clients?

I would suggest you use the ten reasons I gave you to justify why it's imperative to do the check. I have seen agencies put people through training in a field in which they couldn't work.

I've seen counselors go with the clients "word" and get burned. I've seen things on people's records they didn't do. I could go on and on. It happens and it shouldn't.

With some individuals, this is a major safety issue. I feel we have a moral obligation to ensure we're not setting up a scenario where we're putting others at risk.

As I mentioned earlier, I won't work with a client unless I have the report. How can I advise properly, without having all the facts? You should have all the facts too.

I understand this topic might be uncomfortable for some people. You may be thinking your client will get defensive if you ask for their permission to run the check. I would suggest you approach it from this perspective:

Take a look at SLIDE #10:

Here is a script you can use with the client when discussing getting the record.

- We need to get the background check to make sure whatever information is out there is correct.
- You know sometimes people use other people's names and you could have something on your record you didn't even do.
- So, we need to see what the employer is going to see so we can address it.

* In other words, come from the perspective of you're trying to help them. That way you are coming across in a mode of trying to protect the client vs. being nosy or threatening.

If they don't want to cooperate in obtaining the record, that should tell you something. I've had rehab clients who suddenly disappeared from services when they were told we needed to run the check.

I hope I've made clear the importance of doing a background check. It's a serious issue that needs to be addressed and implemented by all agencies who work with employment and training issues. I feel it's a necessary step to protect the client, yourself, your agency and the public.

Now I'd like to talk about something a little more positive and that would be the incentives available to hiring ex-offenders. There are two programs available. The Federal Bonding Program and the Work Opportunity Tax Credit Program. (WOTC)

I've given you a handout entitled Bonding and WOTC. The handout has the state bonding coordinators posted on the federal web site, state web site if available, and indicates if there is a handout for an outline of the state program and / or a brochure. It also lists the Federal Bonding Web Site and how an agency can purchase bonds on their own.

First of all lets cover the Bonding Program.

Please go to Slide 11:

- Federally Funded Program (available to all states, but not all participate)
States go to the government to purchase the bonds and then distribute to clients.

* I need to mention currently Indiana has not funded the bonding program for the past two years. A few free ones are available each year.

Agencies can purchase bonds on their own. I gave you the information on how to do that on the handout for Bonding and WOTC. You can go to the website to see the prices. Cost right now is 25 bonds for \$2,450 (\$98.00 per bond). They're cheaper if they're bought in bigger packages.

Point #2: Any offender can use this. It doesn't matter what type of offense or level of offense: misdemeanor / felony, misdemeanor, DWI / assault, prostitution – It doesn't matter.

- The bond protects the employer against theft of money or property.
- The client is covered for 6 months * Illinois will extend an additional six months.

- After 6 months Travelers Property Casualty will cover (someone has to pay either the employer or the client). The first six months of coverage is free to the employer and the client.
- The client has to be convicted of the crime in order to file against the bond (they can't just accuse them).

Take a look at Slide 12:

These are some areas where states will vary on how they administer the program:

- Coverage: Up to \$25,000 (some will only do \$5,000)
- Full time only (some say 40 hours is full time, others say 30 hours) some say part time is okay) Temp to Perm (some say Yes, No, It depends)
- If they can use for Promotional Purposes - The purpose of the bond is to obtain employment but if they're working and need it for a promotion, they can get it.
- Whether or not they can use the program more than once varies.
- Who they should contact to obtain coverage (One stop, Work One Center, Workforce Center, State Rep, etc.)
- Who should do the contacting (employer or client)?

Please go to Slide 13:

This slide shows the categories of people who will typically be denied bonding coverage from an employer or insurance carrier because they're considered high risk. The first category: our clients - for purposes of this presentation: record of arrest, conviction or imprisonment.

Under the Federal Bonding Program all of these categories are covered. However, you need to check with your state rep or refer to the handouts I gave you for each state to make sure you know how it works in your state.

The people who really need to push this program to an employer are people with records of drug, theft, or prostitution. Employers associate these types of crimes with: You're going to steal from me. What better way to put an employer's mind at ease by having them explain they're covered and it doesn't cost the employer anything.

You should get in touch with your state rep, find out the specifics and get a copy of a brochure your client can use to show the employer. The handouts I've given you were taken off the Internet and something better may be available.

Have your client carry the handout to the interview and when they're done talking about what's on their record - they should explain the program to the employer and show them the handout.

It's very important that they show the employer the handout. Many employers don't know about this program and will insist they're not bondable.

One last comment on bonding: Two categories that are not bondable: self-employed and currently working (unless for promotional purposes). When the employer makes the client a job offer - that is

when action to obtain the coverage should start. They don't get bonded ahead of time - it's when the job offer is made.

The second employer incentive is the Work Opportunity Tax Credit.

Please go to Slide 14

Hopefully you are already aware of this program. On the Bonding and WOTC Handout I gave you, I listed the state web site and indicated if there was a handout or brochure for your state. I also listed the Federal Website and some of the changes that took effect this year.

The low-income requirement for felony offenders was dropped, as of 2007. That should help some of our clients. I'd like to explain the fourth bullet on the slide in a little more detail: "Within one year from last conviction of release from incarceration."

If I get convicted of a crime today and all I get is probation. Then starting today, I would have one year and one year only that I could push this program to an employer.

If I get convicted of a crime today and get six months in a workhouse or five years in prison (doesn't matter, I get incarcerated), then the day I'm released from incarceration starts the one year and one year only that I can push this program.

If I have a probation violation and I get sent back again to workhouse / prison again for the same case, that doesn't start the clock again.

You can also see on slide 15: Other categories are covered under this program. Rehab Client is one of the categories. So if clients don't have a record, they would be able to use this program under that heading.

Very important to emphasize to your client: The employer has to get the paperwork in during the first 28 days or they won't be eligible for the credit.

You should contact your state coordinator and get a copy of the brochure your client can use. You need to make sure your handout has the new changes on it.

So once again, the client talks about what's on their record, then hits the employer with the bonding and tax credit programs as a way to say: Here are two good reasons to hire me even though I have a record.

Based on the time - I'll wrap this up and give you an opportunity to ask me some questions.

I'd like to reiterate the importance of running the background check and hopefully I've given you sufficient justification for why you should. It is critical.

I would also stress the importance of the Bonding and Tax Credit Programs. I've seen these two programs make the difference in someone getting a job with a record, tons of times. In particular, the Bonding Program.