

The U.S. Equal Employment Opportunity Commission

Meeting of November 20, 2008 – Employment Discrimination Faced by Individuals with Arrest and Conviction Records

Statement of B. Diane Williams President and CEO, Safer Foundation

First of all thanks to the EEOC Commission for inviting me to contribute to this discussion. My name is Diane Williams and I am the President and CEO of the Safer Foundation, an Illinois and Iowa-based, not-for-profit organization that provides institution and community based reentry services to formerly incarcerated persons. The Safer Foundation also manages two residential Adult Transitional Centers and a Halfway Back Center in the North Lawndale community in Chicago under contract to the Illinois Department of Corrections.

The mission of the Safer Foundation is to reduce recidivism by supporting, through a full spectrum of services, the efforts of people with criminal records to become employed, law-abiding members of the community. Our focus is on assisting them to obtain and retain long term employment. Last year, we provided services to over 9,300 men, women, and youth with criminal records. Of those, one third were placed in jobs. The total number of people we served also includes those that were still incarcerated at the end of the fiscal year as well as those that moved out of locations where Safer operates.

A Criminal Record Matters

Voltaire once famously wrote that work keeps at bay three great evils: boredom, vice and need. Given that Voltaire lived during the 18th century it has been known and accepted, at least that far back and probably further, that work is an essential cornerstone of a successful society. In fact every day when we turn on the news we see how the fragile state of our economy is fraying the fabric of our society on a national and global scale. Voltaire's position is further supported by the recent research which indicates that people who are attached to the workforce post prison are far less likely to recidivate.

I don't have to tell you that there are many unemployed people in the United States today who don't have a criminal record. However, we can not pretend that the existence of a criminal record isn't particularly devastating for many out there that are looking for jobs. This has always been the case regardless whether our economy is up or down. Harry Holzer, professor of public policy at Georgetown University, has done significant amounts of research and writings on barriers to employment, particularly for people with criminal records. In a survey conducted with over 600 employers, fewer than 40 percent of employers indicated they probably or definitely would be willing to accept an applicant with a criminal record. This means a significant percentage of employers probably would not. The reasons Holzer was able to ascertain as to why this is the case are consistent with the experiences of our own sector managers at Safer. Our sector managers serve as a liaison between Safer clients and employers and also build a rapport with employers with an eye towards developing a long term, mutually beneficial relationship. Employers have communicated to our managers a host of reasons including the perception of higher liability and safety concerns in the work place, higher insurance rates, perceptions of criminality and fear of loss of business amongst others. The reasons given are highly consistent with Holzer's findings.

However, the number one reason that was given by our sector managers when asked was blanket company policy either totally excluded any one with a criminal conviction or required a lengthy amount of time to have passed (usually a minimum of seven years, often times ten) since the last conviction. In a study conducted amongst Safer sector managers fewer than one fifth of businesses contacted by Safer actually hire Safer clients. This low percentage is in spite of the evidence provided by Holzer and others that having a third party intermediary involved actually increases the likelihood that a person

with a criminal record will be hired by a business.

Holzer's studies have found and our sector managers confirm that smaller sized businesses are the most likely to consider hiring people with criminal records, particularly if they are able to rely on a third party intermediary to do all the background checking. We also have found that the industries most likely to hire Safer clients include the service industry (28%); manufacturing (26%); food (22%); warehouse (21%); and construction (3%). Previous trends have shown that industry sectors with the highest job growth rates in Illinois are: transportation, warehousing and logistics, healthcare, food and hospitality. Sectors in Illinois that previously experienced the greatest need for skilled workers are manufacturing and construction. However, in the last three to six months, due to the economic downturn, all of the growth industries have significantly slowed (particularly manufacturing and construction) except for healthcare from which people with criminal records are often legally barred.

In 2002, the Egan Urban Center at DePaul University worked with the Safer Foundation and its Council of advisors to Reduce Recidivism through Employment (CARRE) to conduct a review of Illinois' occupational licensure policies regarding people with criminal records. The study reported that in 2001 there were 98 statutes governing licensure in Illinois, 57 of which had stipulations regarding applicants with criminal convictions, affecting potential employment opportunities in 65 various occupations. The statutory restrictions either absolutely barred individuals with criminal records or generally did so by use of a "good moral character" standard. The impact of a criminal record is further exacerbated by the fact that most states allow employers and occupational licensing agencies to deny individuals with any kind of criminal record a job or license, regardless to the arrest outcome, seriousness or time that has passed. The Legal Action Center reports in its *After Prison: Roadblocks to Reentry Report* (2004) that thirty-six states allow all employers and occupational licensing agencies to inquire about, consider and make hiring decisions based on arrests that never led to convictions.

Based on the aforementioned Illinois occupational licensing research, advocates and policymakers sought to create Illinois legislation to relieve barriers to occupational licenses, and therefore to employment. It was a strong first step in legislative reform. The National Helping Individuals with Criminal Records Reenter through Employment Network (HIRE) recommended the creation of Certificates modeled after New York's Certificate law (New York Correction Law Article 23 §§ 700 - 706), which serves as evidence of rehabilitation and allows individuals with criminal convictions to apply for a Certificate that restores many rights lost as a result of a conviction, such as eligibility for certain types of jobs or occupational licenses. Though we have been able to chip away at some of those unnecessary barriers that prevent people with records from being considered for certain licenses, there is still much more work to be done on the state and most certainly on the federal level.

Race Matters

Devah Pager has done extensive research to show the impact race has on hiring decisions in the private business community. As she is here today to discuss those findings, I won't dwell too much on this particular topic. But, it cannot be stressed enough that across the board, race does make a significant difference in employment opportunities for people of certain ethnicities and particularly those that also have a criminal record. A definitive influence on business owners and hiring managers is that indelible image of Willie Horton. That image is a proxy that preys on the deep seeded fears of many. The combination of race and a criminal record can be devastating for the millions of African and Latino Americans who aren't Willie Horton that are denied a chance to become productive citizens of society.

Today we are here to focus on employment; however, it would be remiss of us not to acknowledge the bigger picture. Bruce Western is a professor of sociology at the Harvard Kennedy School of Government. Western's work has focused on the role of incarceration in social and economic inequality in American society. He submits that imprisonment has become a "normal" life event for young African American men without a college education. Given that according to the US census bureau, less than eight percent of young African American men have graduated from college, this is a highly significant assertion to make.

To support this conclusion, Western looks to the statistics that show that for African American men born in the late 1960s or later with less than a high school diploma, 60% have a prison record. For all African American men born between the years 1965-1969, they are 41% more likely to be imprisoned than to obtain a bachelor's degree. This paired with Devah Pager's findings regarding the effects of a criminal record on employment prospects provides a particularly sobering look at the economic picture for the African American community and the US at large.

Accountability and Action is Necessary

According to research collected by Stephen Raphael, professor at the Goodman School of Public Policy at UC-Berkeley and Rudolf Winter-Ebmer, professor of economics at the University of Linz, Austria, there is a concrete link that can be made between unemployment and higher crime rates. They find not only a significant correlation but a quantitatively large impact on several crime categories. Based on statistics taken from the FBI's Uniform Crime Reports across the US from 1970-1993, they were able to deduce that a drop of two percentage points in unemployment could mean a nine percent decline in burglary, 14% in rape and 30% in assault. To break that down to actual numbers, they found that based on looking at how crime and unemployment overlapped over a 23 year period, that in a sample year (1992) had unemployment been one percentage point higher, there would have been 500,000 more crimes in the United States. They concluded that if there were improved prospects for jobless workers, further declines in crime rates would be inevitable. An estimated 1,079,000 adults were convicted of a felony in state courts nationwide in 2004. In 2007, the FBI estimated that 14,209,365 arrests occurred nation wide. This year, some 600,000 inmates will be released from prison in the United States. These are significant numbers of people that now carry arrest and conviction records. In fact, according to the Bureau of Justice Statistics in 2003 there were 71 million criminal records in the criminal history files of state criminal history repositories. Even taking into account that there are people who have records in more than one state this is still an astonishing number. Those are millions of people who stand to be unemployed members of our community due to discriminatory company policies.

We know that having a criminal record matters, we know that race matters, yet these are static factors. However, that does not mean that we have to be stuck in a cycle, accountability exists on all levels. As stated earlier at the Safer Foundation, our area of focus is specifically on people with criminal records. In FY 2007, the Safer Foundation provided job opportunities to over 2700 people with criminal records job, 315 clients attending Safer educational classes earned their GEDs better positioning them for employment opportunities at increased wages. Though we are glad to have been able to help so many people, unfortunately that still leaves thousands of people in the state of Illinois alone without the supportive services that are necessary to help them get to where they need to go. But beyond preparing people for the workforce we need the government's help in implementing policies and incentives that will position people with criminal records for opportunities.

I could sit here all day and tell you stories recounting the negative experiences that our clients have had seeking out jobs. The feeling that comes over them when they are confronted with that box on the front page of a job application that says "have you ever been arrested or convicted of a crime?" they know that checking that box is as good as effectively shutting the door on a job prospect. They have seen all too often the look that comes over a hiring manager's face when they ask that dreaded question and our clients are forced to respond that they have been convicted of a crime. It doesn't matter that they have successfully completed their sentence and parole, or that they have received thorough vocational and educational training for job placement, or that they are committed to becoming productive law-biding citizens in order to take care of their family. All that matters is that once upon a time they made a mistake for which they must pay for over and over again. We have clients who refuse to leave low wage jobs sorting garbage in the heat of Chicago summers because they have been rejected so often that they are afraid to seek higher paying jobs with greater benefits.

I am pleased to say that we work with many businesses that step up to the plate on their own account and are willing to take a chance on someone with a criminal record and have been happy with the results. However we know far too many employers that are unwilling to do that on their own accord.

We have a major cable company that sits on our employer advisory board but still refuses to hire a person with a criminal record. This is not the exception, it happens more than it should. It is hard to tell someone that it is worth the effort to go back to school, walk away from the easy money and allure of the streets, take low wage jobs, sort garbage in the middle of a Chicago heat wave, when at the end of the day they will never have an opportunity to move beyond minimum wage no matter how hard they work and how many skills they acquire. It is hard to tell them to stay positive when they may not even get the chance to go into a minimum wage job because they may be automatically disqualified for consideration altogether. Frankly, there are millions of people out there that at any given moment could be one closed door away from recidivating.

Recommendations

We ask that the EEOC support the following recommendations to encourage the employment of qualified individuals with criminal records:

1. **Make people with criminal records a protected class.**
 - a. Ban discrimination against people with criminal records by both public and private employers and occupational licensing agencies. Include individuals in the same category as other the protected status of race, gender, age, and religion.
 - b. Encourage employers to make individualized determinations about a job applicant's specific qualifications and prohibit flat bans against the hiring or employment of people with criminal records.
 - c. Encourage employers to consider other factors in a person's history that may mitigate the criminal record such as evidence of rehabilitation, Require that disqualifying crimes must be directly related to job requirements.
2. **Expand "Ban the Box."**
 - a. Remove the question "Have You Ever Been Convicted of a Misdemeanor or a Felony?" from the job application form.
 - b. By doing this, we allow more people to be considered for employment, wait to assess the record – rather than use it as a filter, and we set a great example for private employers to do the same.
 - c. This is not an attempt to repress information needed to make a hiring decision. The question is simply asked later in the process.
3. **Reform FBI rap sheets utilized by businesses screening applicants.***
 - a. Ensure rap sheets contain complete information.
 - b. Create oversight to make sure that rap sheets are checked regularly to ensure accuracy.
 - c. Reevaluate including "non serious offenses."
 - d. Reconsider including arrests which result in no formal charges being filed.
 - e. Make sure rap sheets are being updated.
4. **Make sure that employees and job candidates are provided rap sheets when they are requested by a business, prior to adverse action by the employer.***
5. **Prohibit employers and other non-law enforcement agencies from inquiring about or using information about arrests that did not lead to conviction or missing dispositions on criminal record reports issued by the Federal Bureau of Investigation.****
6. **Enact a federal standard based on recommendations outlined in the Equal Employment Opportunity Commission guidance on the use of background checks for employment purposes when screening applicants with arrest and conviction records. ****

- a. While we believe that assessing all applicants on individual bases serves the best interests of employers, applicants and the public, it may be determine that using a matrix or categorical rules to screen applicants is preferable.
 - b. In such cases where categorical bans are recommended, there should be time limits based on the severity of the criminal history and how old the conviction record.
 - c. Suitability criteria also should only include disqualifying offenses that are related to the job.
7. **Require that all current and future legislation that authorizes the disqualification of individuals with criminal records includes a waiver/appeal process whereby the applicant can challenge inaccuracies in criminal record reports, present evidence of rehabilitation and other mitigating information relevant to their criminal history and rehabilitation. ****
- a. The applicant should always be able to present this information even if they fall within categorical time limits on eligibility.
8. **Require all current and future legislation that authorizes the use of criminal background checks for employment related purposes to include a provision that designates an independent body to make fitness determinations rather than individual employers.****

** Mentioned by crime hearing testimony provided by representative of NELP*

*** Recommendations given to Congressman Danny Davis at a hearing by a representative of the HIRE Network*

Conclusion

I'd like to conclude with another quote, this one from Sigmund Freud "Work has a greater effect than any other technique of living in the direction of binding the individual closely to reality; in his work, at least, he is securely attached to a part of reality... the human community." As I mentioned earlier, in 2007, Safer Foundation provided services to over 9,300 people with criminal records seeking assistance and support with finding employment and other needed services. Between 2000 and 2005 the number of people coming to us for help doubled. If the current trend continues, close to 10,000 people will come to Safer in 2009. Based on the magnitude of the need and the consequences to public safety for not addressing this need, the Safer Foundation continually works toward developing cost-effective, high impact solutions and models of workforce development that meet the unique needs of our clients and employers.

Success can be seen in our results. According to Loyola University, only 22% of Safer Foundation clients recidivate after reaching 30 days of employment retention. This represents a 58% reduction from the Illinois recidivism rate of 51.5% and a 67% reduction from the national recidivism rate of 67.5%. The bottom line is that work works. Employment is critical to public safety; people who work are less likely to be engaged in criminal behavior and are more inclined to feel invested in the community. By focusing on policies that assist people in gaining employment or at least minimize barriers people face when seeking employment, the government will be doing a greater service by empowering members of the community and creating a sense of accountability and responsibility. We must always remember that we are talking about people who have the same basic needs as any other person on this planet. They need to eat, have shelter, and care for their families. With the right policies in place they can satisfy those needs through legal means.

This page was last modified on November 20, 2008.