JOB DEVELOPMENT FOR PEOPLE WITH CRIMINAL HISTORIES
What is the Issue?
According to CareerBuilder.com:

65 million Americans have some variety of criminal offense record.

Over 5.6 million Americans—nearly 1 in 40 adults were in prison or had served time there

Almost 4 million were under supervision in the community—probation or parole.
EMPLOYERS USING BACKGROUND CHECKS

- Use Checks: 90%
- Don’t Use Checks: 10%
Overview of Offender w/ I/DD

- Mild to Moderate ID or Autism Spectrum Disorder
- Unemployed
- 20-40
- Aware of and try to hide disability
- Sex Offenses
More Likely To....

Plead guilty to original charges

Spend more time incarcerated

Be denied parole
Laws & Lingo
ADA

• Americans with Disabilities Act provides civil rights protections for individuals with disabilities in employment, public accommodation, government services and transportation
• Title I provides protection in employment practices of private employers with more than 15 employees
ADA

• Employee still has to be qualified for the job
• Employer does not have to give preference over another applicant
• Applies to private and public employers
Definitions

**Felony** – Crimes punishable by at least one year of prison time. In New Jersey, indictable offense or crime.

**Misdemeanors** – Less severe charges punishable by a fine or jail time less than one year. In New Jersey a disorderly persons or petty d.p. offense.

**Pre-Trial Intervention (PTI)** - A program that diverts certain offenders from the ordinary criminal justice process.
Pre-Trial Intervention (PTI)

• Must be first indictable offense
• Facts of the case are taken into consideration individually
• Desire of victim to forgo prosecution
• During PTI supervision charges are “inactive”
• After successful completion of PTI the complaint, indictment or accusation will be dismissed with prejudice
Conditional Dismissal Program

- Municipal Courts also have a PTI program called the Conditional Discharge program
- For first offenders charged with certain disorderly persons offenses
Expungement-NEEDS UPDATE

• Expunging- the extraction and isolation of all records on file concerning a person’s detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

• A full guide describing how to expunge your criminal record is available on-line at www.judiciary.state.nj.us or www.njcourtsonline.org
New Expungement Statute eff. 3/2017
New Expungement Statute

• Reduces the waiting period for disorderly persons offenses (misdemeanors) from 5 to 3 years
• Reduces the waiting period from 10 to 5 years for Crimes
  • When everything is complete except the 10 year time, including penalties and fees are paid
  • At least 5 years have gone by
  • Person unable to pay fines due to compelling circumstances
Eligibility for Expungement

**Conviction**

- **Indictable Offence**
  - ≥ 6 months jail time
  - 1 in ANY state
- **D.P.**
  - < 6 months jail time
- **Municipal Ordinance**
  - 1st Offence

**Wait to Apply**

- 5 Years
- 6 months from PTI end
- 3 Years
- 2 years

Ineligible after
Not Eligible for Expungement

- Not Guilty by Reason of Insanity (NGRI)
- Convictions which may not be expunged
  - Murder
  - Any Megan's Law Offence
  - Perjury
  - Kidnapping
  - False Swearing
  - Human Trafficking (new)
  - Selling or Mfg. child pornography (new)
  - Robbery
  - Conspiracies or attempts to commit such crimes
  - No Motor Vehicle including DUI
Arrests

• Arrest information can always be expunged
• Ensure that people do expunge arrest information that did not result in a conviction.
• Contact County Clerk’s Office or go on njcourts.org to check. Never assume that the dismissal is enough.
Getting criminal records

• Have the person sign a Release of Information

• Contact the municipal or county court where the offense occurred
  • Criminal Case Management
  • Contact Info at www.judiciary.state.nj.us
  • www.njcourtsonline.org

• Ask person you are working with for information on past history with: Pre-Trial Intervention, Expungement, Case Dismissal
Convictions Only

- Employer should only be considering matters that result in a conviction

- At least one-third of felony, or indictable, arrests do not result in a conviction

- Background checks often include inaccuracies
BAN THE BOX

• Refers to statutes which seek to “ban” the “box” found on job applications for applicants to check if they have a criminal conviction

• More than 14 states and many municipalities have passed similar bans since first passage in 1998
• Statutes only prohibit a private employer from inquiring about criminal history UNTIL a conditional job offer has been made

• Offer can be revoked if the offense is deemed relevant to the job
In New Jersey

- On March 15, 2016, Opportunity to Compete Act was passed.
- Applies to any employer employing 15 or more employees.
- Intent of the statute is to give employees a fair shot at an initial interview without having to reveal criminal history.
- Employer can ask about criminal background, just not on the application or during initial interview.
Parole Supervision for Life

• In addition to registration and notification

• Mandatory sentence for some offenders convicted of certain sex offenses—Not all persons subject to registration and notification are on PSL

• Does not apply to juveniles
Parole Supervision for Life

- Individual will have a parole officer
- List of conditions to be met
- Only aspect of “Megan’s Law” that impacts on a person’s living arrangements and employment situation
Development
Know your Jobseeker

Know the Barriers

Choose the Direction

Have Patience
Discussing Criminal History with the Jobseeker

• Have you ever been arrested before? If so, for what?
• Where did you go to court?
• Did you have a Probation Officer? Parole officer? Explain.
• Have you ever been to jail? If so, Where? Why? When? How long?
• Do you have any documentation?
Tips during the Interview

Make a good First Impression
Know the Culture
C.P.R.
C.P.R.

**C:** Provide *Contrast*

**P:** Stay *Positive*

**R:** *Redirect* to Benefits
C: Provide Contrast

• When someone asks about a criminal history:
  • Focus on what you’ve learned
  • Include any actions taken toward rehabilitation
    • Classes, earned a degree, other experiences that make you an asset to the business
P: Stay Positive

Anticipate Doubts and Judgements

(Mis)Perception > Reality
Employers usually have three concerns when hiring:

Will this hire fit in with my people?
Will this hire fit our existing processes?
Will this hire increase our productivity?
The Application

What can they ask?
Arrests and Criminal Convictions

• After March 1, 2015, employer with 15 or more employees may not ask about an applicant’s criminal history until after the initial interview

• Exceptions:
  • Job is in law enforcement, corrections, the judiciary, homeland security, or emergency management
  • Where a criminal record background check is required by law, rule, or regulation and where an arrest or conviction may preclude the applicant from holding the position
  • Position is part of an effort by the employer to hire persons who have been arrested or convicted of a crime
True or False?

On an initial Application
An Employer can ask me......
Have you ever been convicted of a Felony?
Do you have a criminal record?
Do you have a parole officer?
But, I Still Get These Questions!

• Why?

• Report your finding to the EEOC, advocacy groups, the HR department for that Business

• If possible, do not answer it

• If you must answer, how do you answer it?
  
  If legally they can’t ask the question…..
ADA COMPLAINTS

• Complaints can be filed with federal agencies such as the Division of Civil Rights, US Department of Justice
• Complaints can be filed with state agencies such as the Division of Civil Rights, NJ Department of Law and Public Safety
Other Complaints

• Complaints of possible violations of the statute can be made to the Department of Labor and Workforce Development
• There is a complaint form at their website
• The statute does not provide for a private right to sue-recourse is to file complaint with Department of Labor
Tax Credits

The Work Opportunity Tax Credit (WOTC) is a federal tax credit to reduce the federal tax liability of private for profit employers to be used as an incentive for employers to hire individuals from eight different targeted groups: TANF recipients, veterans, ex-felons, high risk youth, summer youth, Food Stamp recipients, SSI recipients, and vocational rehabilitation referrals.

www.nj.gov/labor/
Manager Feedback

• 31% of hiring managers recommended volunteering

• 68% percent of hiring managers recommended being up front and honest about the conviction and stress what was learned from it.

• 48% percent of hiring managers recommended being willing to work your way up.
Resources

• NELP.org
• NJLEG.gov
• DRNJ.org
• isseek.org
• hirenetwork.org/content/new-jersey
• Expungement -Legal Services of New Jersey hotline: 1-888-LSNJ-LAW or 1-888-576-5529
• Expungement-Volunteer Lawyers for Justice (973)645-1955
• EEOC: 1-800-669-4000 or info@eeoc.gov
QUESTIONS ??

Jessica S. Oppenheim, Esq.
Director, Criminal Justice Advocacy Program
The Arc of New Jersey
732.246.2525 joppenheim@arcnj.org

Wesley E. Anderson
Director, Training & Consultation Services
The Arc of New Jersey
732.609.7022 wanderson@arcnj.org