

Wisconsin's Criminal Records Deserve a Second Look*Legal Action Center study identifies potentially misleading barrier to hiring*

By Caroline Goyette

Is it our best moments, or our worst, that define us as individuals? When people make mistakes, how willing are we as a society to allow, much less help, people move past them? A two-year study just released by the Legal Action Center in New York examines these very questions as they relate to barriers state laws create for people with criminal records. Unfortunately, the answers for many states suggest that a run-in with the law--regardless, in some cases, of the final charge or even the outcome--could affect you for the rest of your life.

The Study

According to the Legal Action Center (LAC), more than 630,000 people are released from state and federal prison each year, while hundreds of thousands more exit local jails. Upon release, these individuals face a range of federal and state legislation restricting their rights to vote or get driver's licenses, their ability to receive public assistance, and other necessities for functioning in society.

Yet, until now, "There had never been a comprehensive compendium of all that state legal information in one place, (which) really limited policymakers and advocates' ability to address prisoner reentry issues," says Debbie Mukamal, co-author of the study and staff attorney and director of LAC's National H.I.R.E. network, an organization that helps people with criminal records secure employment.

The goal of the two-year, exhaustive study was to begin to understand those legal restrictions and policies, and to evaluate how such policies affect people's ability to successfully reintegrate with society. To this end, the study, the results of which are available in a report entitled, "After Prison: Roadblocks to Reentry. A Report on State Legal Barriers Facing People with Criminal Records," provides a listing of laws and policies creating barriers in each state; grades each state on the degree to which its policies help or hurt those seeking reentry; and offers recommendations for change.

The Results

"Overall, we found significant hurdles for people in nearly every category of their lives," says Mukamal.

States were ranked based upon the scores they received in each of the following seven categories: employment, housing, benefits, voting, access to criminal records, parenting and driving. "Roadblocks" counted as points, so the greater the number of roadblocks a state presented, the higher--and worse--the score.

New York received the best score of all the states; California, Maine, Oregon, Utah and Michigan also performed well. Colorado scored the worst, followed by South Carolina, Georgia and Virginia. The study found no correlation between a state's overall score and geographic size, population or the number of people being released from prison.

Wisconsin: A Progressive State?

Wisconsin received an average score, ranking 21st overall. The state scored best in the areas of employment and adoptive and foster parenting (zero roadblocks in both categories). Its problem areas included access to criminal records (eight out of 10 roadblocks) and public assistance and food stamps (seven out of 10 roadblocks).

The perfect score in employment was the result of the Wisconsin Fair Employment Act, which stipulates that employers cannot discriminate on the basis of an applicant's arrest or conviction record unless the crime is substantially related to the work to be done (Wis. Stat. 111.335).

Although Wisconsin's employment statute is much better than what's on the books in most states, there are still difficulties with the law.

Ray Dall'Osto, Milwaukee defense attorney and former legal director of the Wisconsin ACLU, notes that, "because of 20 to 25 years of administrative case law, the (employment) law, while good on its face and on the books, is not as protective as it once was."

Broad readings of the law by the Equal Rights Division have expanded the list of what can be considered "substantially related" to any given job, and in effect "loosened" the law to the point where "the exceptions swallow the whole," says Dall'Osto, who is also former chief public defender of Milwaukee.

Other factors further complicate the application and effectiveness of the law, including, most notably, the availability of criminal records on the Internet. The Legal Action study isolated the employment category (in which Wisconsin did well) from the criminal records category (in which Wisconsin did poorly), but, as the LAC and local attorneys point out, it's important not to overlook the connection between the two.

"If records are easily available on the Internet, employers can be looking at that information and using it against people, even if they're not technically supposed to," explains Paul Samuels, president and director of the Legal Action Center and co-author of the study.

In Wisconsin, adult criminal records are considered public information. The Department of Justice Crime Information Bureau (CIB) in Madison makes background criminal record checks available online or by mail to the public for a fee.

"It's very important to understand that a CIB report is an arrest record," says David Pifer, director of Special Programs for Legal Action of Wisconsin. Each arrest begins a "cycle" that should include all subsequent events (whether the person was charged, convicted, sentenced, etc.).

It's the existence of "incomplete cycles," a failing on the part of public government and the CIB, Pifer suggests, that can cause people problems. The incomplete record "shows the arrest, shows the person was charged, but doesn't tell you anything else Employers looking at that often assume the person was convicted." It's more likely, he says, that incomplete records result from dismissals or no prosecution.

In defense of the CIB, Mike Roberts, administrator of the Division of Law Enforcement Services (which is responsible for the CIB), explains, "The fight to make sure the appropriate final outcome of a case is placed on the record is a problem all over the U.S." Compared to other states, he maintains, Wisconsin is ahead of the game.

"Ideally, you'd have 100% (completion) of every record, and that's what we're after," Roberts says.

In the meantime, the DA's office has been responsive to requests for reviews of incomplete records. "We are very lucky in Milwaukee County in that we have a district attorney who is sensitive to this issue," Pifer says. However, he notes, most people don't know that incomplete records is something to watch out for, nor do they know what to do about it when they see it.

Updating an incomplete CIB record is critical, Pifer says, because as soon as any cycle shows a dismissal, acquittal, or no prosecution, an individual has a right to have the arrest cycle removed from their criminal record.

Another problematic issue, Dall'Osto and Pifer note, involves the Consolidated Court Automation Program (CCAP), the statewide computer network which can be used by the general public to access court records. CCAP is available to anyone with an Internet connection, costs nothing, and requires only a person's name to produce court records. With the exception of expunged and confidential cases (such as mental health cases,

child abuse or neglect cases), all court case history appears on CCAP, regardless of whether or not a person is convicted.

"People are doing down-and-dirty criminal background searches on CCAP. There's a real risk to that," Pifer says. "First of all, there's no guarantee the record's accurate, and second, most employers don't discern a difference between arrests and convictions."

Because date of birth isn't required (although it can be used) to pull records, there's even a question of whether a person conducting a CCAP search is looking at records for the correct person.

In the case of both CCAP and CIB records, potential misunderstanding by a lay person is a real problem, separate from the issue of whether the record is complete or not.

"Let's say you picked up a rinky-dink charge involving you and some college or high school buddies," says Dall'Osto. "Wisconsin says you're an adult for criminal purposes at age 17 now... "Even if (after a complaint was filed with the court), the case was dismissed, or the criminal charges ended up being just a ticket, you'll see all the original charges on CCAP. You should see at the end of the CCAP notation how the case was disposed of, but most people, if they're not lawyers, don't understand what that means. If I'm an employer, and I run your name on CCAP, boom--I want to see what comes up, and maybe I won't even hire you. A lot can be done even before your first interview."

"Is that good or bad?" he continues. "It depends. I'm saying it's unprecedented."

"My view is all but the most sophisticated employers look at a record and conclude that if you were charged, you must have done something wrong. Therefore, it doesn't matter to the employer whether you were convicted or not. Unfortunately for many folks in the low-income community, and particularly in the minority community, they know that's not true (that a charge indicates guilt). They may not have done anything wrong, but that (assumption) is out there," says Pifer.

"Employers are at risk, if they don't know what they're doing, of violating Wisconsin's nondiscrimination statutes," Pifer says.

The issue of record-expungement was another reason for Wisconsin's poor score in the "access to criminal records" category. There is no method for expungement in Wisconsin. The only exception is for a person who has committed a misdemeanor under the age of 21; in this case, the judge must discuss expungement at the time of sentencing.

"Expungement is a big issue," says Pifer, "because there's no method for somebody 20 years later to go to court and say, 'Look, I've been a good person, I've done everything right, will you take this off my record?' The only way to do that is to go to the governor, which is 1) extremely time consuming, 2) political to some degree, and 3) they don't pardon many people."

Public Assistance and Food Stamps

The other main area posing trouble for Wisconsin, in the Legal Action Center's view, concerns public assistance and food stamps.

The study examines states' handling of a 1996 federal welfare law that placed a lifetime ban on anyone convicted of a drug-related felony from receiving federally funded food stamps and cash assistance. States had the option of accepting the ban in its entirety, limiting the ban through legislation, or eliminating it altogether.

Samuels explains the Legal Action Center's position on the ban: "If somebody has committed a drug felony and done their time, why then impose a lifetime punishment that will prevent them from having a place to live or put food on the table. We think that's unfair, unnecessary and really counter-productive policy."

Wisconsin chose to limit the ban by requiring submission to drug testing. Individuals who test positive for drugs--instead of receiving drug treatment--face reduced benefits.

Many argue that the policy overlooks--or undermines--the difficulty of overcoming a drug addiction, and puts extreme pressure on a former addict trying to stay clean and become a productive member of society.

"It's insane to think that overnight any of us can change," especially those battling longtime behavior problems or addiction, says Kit Murphy McNally, executive director of the Benedict Center, a Milwaukee nonprofit agency that works with victims, offenders and the community to promote a fair system of criminal justice.

Some states make it possible for persons who enter or complete drug treatment to avoid the lifetime ban, policy the Legal Action Center views as more productive.

"We think that Wisconsin's (provision) is better than simply imposing a full ban, but we don't think that's as good as eliminating it altogether, so that's why Wisconsin still got a not very good score," Samuels explains.

Public safety is also a concern of the LAC.

"If you make it more difficult for somebody to have food, clothing and shelter, then that actually threatens public safety, because they're more likely to go back to committing crimes than if they have the sustenance they need to live," says Samuels.

McNally points out that what people just released from prison need more than anything else is support.

"We could change so much if we'd focus on making support available to people," she says. Unfortunately, often when people come back, "there's no support, anywhere, there's anonymity. They're told to do things (by their probation officer, etc.) but have very little support for actually doing it."

Justice, Empathy for Us All

One of the particular concerns of the Legal Action Center regards the large number of African Americans and Latinos affected by these state and federal policies.

"There is a disproportionate number of minorities arrested, convicted, imprisoned, and then, because of the way things work, re-imprisoned," states Mukamal.

The Legal Action Center hopes that by calling this and other issues to states' attention, the country as a whole can begin working towards change.

But in terms of public perception and attitudes, change may be a long time coming.

"There's almost a knee-jerk intolerance, particularly among talking heads on the radio, for anyone who's had a run-in with the criminal justice system, including drunk driving," Dall'Osto observes. "People have to understand that people make mistakes, and it's really not until your son, your daughter, your family member, or you, make the mistake and run afoul of the law, (that they do).

"And are you forever made to pay and to become a second class citizen because of that?"

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