

## Bridging the Line Between Protecting Clients' Confidentiality and Offering Quality Referrals to Employers

Roberta Meyers-Peebles

One of the most valued rights in America is the right to privacy. Federal and state laws prohibit the dissemination of certain types of personal information in an attempt to ensure that this right is enforced. However, when it comes to the privacy of criminal records, most Americans agree that the public's access to this information overrides the individual's right to privacy. The United States Bureau of Justice Statistics recently published a report which details the extent to which states have made their criminal

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## The Power of the Legislature and Its Members: What Every Advocate Needs to Know

Alexa Eggleston and Susan Hallett

Advocates for individuals with criminal records often encounter unfair policies and practices that hinder rather than help their clients. Changes to such policies in the form of rules, regulations and laws, require the support and commitment of the legislators who often have a role in their creation. In order to obtain the support from a legislator necessary to effect change, the responsibility often falls on the advocacy community to persuade them of the validity and necessity of the desired change. In particular, policy changes concerning the employment discrimination and occupational bars and licensing restrictions that impede individuals with criminal histories are particularly difficult and are not an easy sell. Because many people, including legislators, do not feel comfortable embracing such changes without considerable education and constituent support, advocates play an especially important role in educating the legislature and providing examples of why a certain policy change would be an effective and good public policy decision.

In order to educate others about the need to effectively change discriminatory policies and practices, advocates first need to educate themselves. It is important to understand the current policy, regulation or law that they want to change, as well as the process for changing it. It is also important to determine who has the power to change a certain policy, rule or regulation. While the process typically involves legislators on the local, state or federal level, it can also involve appointed commissioners on a state level who are responsible for promulgating rules and regulations. For example, in Illinois, advocates who were interested in removing the occupational bars for people with criminal records recognized that the policies were state-wide and could most effectively be addressed through state legislation creating certificates of rehabilitation.

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justice information automated for easier public access (<http://www.ojp.usdoj.gov/bjs/pub/pdf/sschis01.pdf>).

Even though there are few protections governing the dissemination of criminal records, there is often a question about whether and to what extent it is appropriate for employment specialists to divulge the criminal histories of their clients to their employer partners. Considering the twin goals of maintaining a professional and trustworthy relationship between these partners and of securing employment for clients, the available choices often pose an ethical dilemma.

The first things to be taken into account are the laws governing a person's obligation to reveal their criminal history in this setting. Job applications are legal documents and some jobs have statutory bars that exclude people with certain types of convictions, albeit, some state offer mechanisms to remove these barriers. (See forthcoming Certificates of Rehabilitation briefing paper on our "Policy and Issues" page). Moreover, some federal and state laws have provisions that allow the formerly convicted to seal or even expunge conviction records. Once a case has been sealed or expunged, in most cases, an applicant is no longer required to reveal it to the employer. In addition, some job applications only ask about criminal convictions, as opposed to non-criminal convictions (i.e. violations or infractions). Some employers only request a limited amount of criminal history for a specific period of time. Therefore, job developers must familiarize themselves with the client's conviction history and the federal, state and local laws that affect the legal status of their clients.

Employers may want to know a little more about the individuals who are referred for a specific job. Answer honestly, but you should not divulge any more information than is required on a job application. Keep your conversations about your client's conviction history brief and pointed. Your disclosure should be limited to the nature of the conviction (i.e. drug related, larceny, belligerence) and the date it occurred. Also, in a very professional way, the potential employer should be told that the conviction information of the job applicant should only be shared with other employees who have a need to know this information as part of their job responsibilities.

Clients should be prepared to discuss their criminal record information in further detail if it becomes necessary and should be encouraged to focus upon their positive successes since the conviction. It is extremely important that you have a conversation about disclosure

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When advocating for a specific change, legislators need to be educated on the number of individuals that will be affected, as well as how the requested change will impact the individuals it is meant to serve, the systems through which the change will occur and the larger constituent community as a whole. The ability to supply a legislator with a complete picture of the problem and a viable solution will increase the probability of a successful change. When advocating for change, it is important to be a resource to the legislator, so advocates should be ready to answer questions about the issue they are advocating on as well as inquire about any additional information or data he or she may need. Also, supplying a legislator with written letters of support for the proposed changes from various affected representatives of the community helps them to understand the nature of the problem and range of support for the change. If a legislator or other policymaker knows that a particular change has support from their constituents, they are often more likely to act by reaching out to the community about the issue and creating a viable solution.

In addition to presenting a policy maker with facts and figures about a problematic policy or law, it can also be effective to provide them with evidence about social issues related to the particular policy that needs to be changed. For example, children of incarcerated parents often fall through the cracks until they themselves commit a crime and are incarcerated. For this reason, strengthening the families of incarcerated individuals through re-unification, when possible and appropriate, and the provision of other supportive services to build strong families are important issues that resonate with policy makers. Families are strengthened when the individuals with responsibility for supporting them are gainfully employed. Also, self-esteem and self-worth are developed when an individual is employed and sees him or herself as productive and being able to contribute to society in general. Our communities grow in strength when individual members grow.

Elected legislators will try to serve the needs of the people they represent if they are informed of what those needs are. The advocacy and practitioner communities can and should play a key role in educating legislators about the issues that their clients face, particularly issues that are viewed as more contentious or controversial, such as the issues that individuals with criminal records face when they return to the community and try to move on with their lives. While not-for-profit organizations are not allowed to lobby, educating local legislators is not considered lobbying and is vital to effecting change. It is important for advocates to meet on a regular basis with

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on your part and his prior to your client going out on the interview. Hence, your client will understand what information will be shared with your employer partners and this can ultimately make your client feel more comfortable about disclosing information honestly to the employer.

Remember that you have the dual role of building customer trust by way of your employer partners and your client base. You are the binding link and bridge between the two. ❖

### *Upcoming Conferences of Interest*

Nov. 13-14, 2003

**Working Ventures and California Workforce Association  
"Getting Back to Work: Employment Strategies for  
People with Criminal Records"**

San Francisco, CA

Contact: [www.ppv.org](http://www.ppv.org)

Dec. 4-5, 2003

**P/PV: Working Ventures  
Success at Work: Keys to Staying Employed and  
Advancing to Better Jobs**

Washington, DC

Contact: Brian Rolon

Tel: 212-822-2413

Email: [brolon@ppv.org](mailto:brolon@ppv.org)

[www.ppv.org](http://www.ppv.org)

Dec. 6-7, 2003

**Center for Policy Alternatives' 2003 Summit on the States:  
Progressive Solutions Built on American Values**

Capital Hilton Hotel

Washington, DC

Contact: [www.stateaction.org/summit/](http://www.stateaction.org/summit/)\*

Scholarships are available on a limited basis; contact Jen Ray at (202) 956-5142 for more information.

Dec. 11-12, 2003

**The Workforce Alliance's 2003 National Conference:  
"Bringing It Back Home: Advocating for Workforce  
Training After the Reauthorizations"**

Capital Hilton

Washington, DC

Contact: <http://www.workforcealliance.org>

Jan. 13-14, 2004

**P/PV: Working Ventures  
Becoming Outcomes-Driven: Using Data to Improve  
Performance**

Indianapolis, IN

Contact: Brian Rolon

local legislators to establish a relationship with them and to keep them informed of the issues that are dealt with by their agency on a daily basis. However, in order to gain the support of a legislator it is also important to have the support of the local community. By engaging local residents and helping them to form coalitions consisting of community-based organizations, churches and other concerned individuals, advocates can ensure that local legislators are also hearing from the community members that are affected by their legislative decisions and policy recommendations. ❖

## From the Media to Practice

*This is the fifth of a series in which we highlight an issue raised by a recent press article.*

Glenn Martin

A recent article by Fox Butterfield in the *New York Times* (see

<http://www.nytimes.com/2003/10/22/national/22ME-NT.html?ex=1067833371&ei=1&en=9a563a5c69618642>

) highlights a study conducted by Human Rights Watch on the utilization of correctional facilities as our "nation's default mental health system." According to the study, the number of people incarcerated who are "mentally ill" is a staggering 1 out of every 5 of the 2.1 million people currently incarcerated in America's jails and prisons (to read the entire study, visit

<http://www.hrw.org/reports/2003/usa1003/>.

This translates to over 420,000 individuals, most of whom will be reentering society without much needed mental health treatment. Also, because correctional facilities are ill-equipped to handle this population, inmates often return to society with compounded mental health issues. The dual barrier of a conviction record and the stigma and prejudice associated with mental illness creates a multitude of dynamics to be considered for providers and policy makers who play a role in the transition of this population of potential jobseekers.

It is important to remember that psychiatric disabilities receive the same protection under the Americans with Disabilities Act (ADA) as physical disabilities. Under the ADA, the term "disability" means (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual, (2) a record of such an impairment; or (3) being regarded as having such impairment. A qualified applicant cannot simply be denied a job due to his or her mental condition if, under *reasonable accommodations* that do not result in an undue

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**Jan. 15-16, 2004**  
**P/PV: Working Ventures**  
**Getting Back to Work: Employment Strategies for Ex-offenders**

New Orleans, LA  
 Contact: Brian Rolon  
 Tel: 212-822-2413  
 Email: [brolon@ppv.org](mailto:brolon@ppv.org)  
[www.ppv.org](http://www.ppv.org)

**Feb. 10-12, 2004**  
**P/PV: Working Ventures**  
**Working with Employers: Keys to Building Strong Relationships**

San Antonio, TX  
 Contact: Brian Rolon  
 Tel: 212-822-2413  
 Email: [brolon@ppv.org](mailto:brolon@ppv.org)  
[www.ppv.org](http://www.ppv.org)

**Feb. 18-20, 2004**  
**Women Work! 2004 National Conference, Celebrating 25 Years of Transitions & Triumphs**

Washington Wyndham Hotel  
 Washington DC  
 Contact: [www.womenwork.org](http://www.womenwork.org)

**March 14-16, 2004**  
**National Association of Workforce Boards Forum 2004: "A Skilled Workforce-A Stronger Economy"**

Renaissance Washington DC Hotel  
 Washington, DC  
 Contact: NAWB  
 Tel: 202-775-0960  
 Fax: 202-775-0330  
 Email: [nawb@nawb.org](mailto:nawb@nawb.org)  
[www.nawb.org/forum2004.default.asp](http://www.nawb.org/forum2004.default.asp)

**March 21-24, 2004**  
**National Correctional Industries Association Enterprise 2004 National Training Conference and Exposition: "Transformation: The Challenge of Change"**

Adams Mark Hotel  
 St. Louis, MO  
 Contact: NCIA  
 Tel: 410-230-3972  
 Fax: 410-230-3981

**April 14-16, 2004**  
**Center for Mental Health Services & Criminal Justice Research First Biennial Conference: "Reentry to Recovery: People with Mental Illness Coming Home from Prison or Jail"**

hardship on the business, the applicant is able to perform the essential job functions of the position sought. Each case must be scrutinized on a case-by-case basis, since workplaces and jobs vary. For more information on protection afforded to individuals under the ADA, contact a local attorney (see the [Resources and Assistance](#) area of our website or go to <http://www.usdoj.gov/crt/ada/adahom1.htm>).

The federal government offers a tax incentive to businesses that make certain reasonable accommodations available to disabled jobseekers. Two tax incentives are available to businesses to help cover the cost of making access improvements. The first is a tax credit that can be used for architectural adaptations, equipment acquisitions, and services such as sign language interpreters. The second is a tax deduction that can be used for architectural or transportation adaptations (for more information, see <http://www.usdoj.gov/crt/ada/taxpack.htm>).

Jobseekers with marginal mental health issues sometimes only require basic support services in order to succeed in the job market. Collaboration can be a valuable tool to address these issues. Often, your state or local Department of Corrections (see the [Resources and Assistance](#) area of our website), including probation and parole, may be instrumental in referring someone under supervision to appropriate treatment services, including anger management and therapy for schizophrenia, depression and anxiety disorder. With differing degrees of case management and treatment by a professional, individuals with these disorders are able to maintain control of their illness and are more likely to receive preemptive treatment. Although privacy rules would not allow an employer to be privy to mental health treatment information, he or she may feel more comfortable knowing that the client is being treated by a professional and has a mechanism to deal with episodes which may occur. The American Association of Community Psychiatrists published a "Position Statement on Post Release Planning" which highlighted the problems with and their recommendations concerning this issue (visit <http://www.wpic.pitt.edu/aacp/finds/postrelease.html>).

The Human Rights Watch study points out that the prison population is growing by "leaps and bounds without paying much attention to who in fact is being incarcerated." Until this trend reverses, employment prospects and increased public safety will diminish unless those who create policy employ and assist these clients during reentry. Proactive measures must be taken to

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### ***H.I.R.E. on the Hill***

#### Federal Advocacy Update\*

#### **Senate Passes the "Mentally Ill Offender Treatment and Crime Reduction Act of 2003"; Legislation Includes Provisions to Increase Collaboration Between Criminal Justice, Mental Health, and Addiction Treatment Systems.**

This week, the Senate passed S. 1194, the "Mentally Ill Offender Treatment and Crime Reduction Act of 2003," by unanimous consent (no Senator objected to the approval of the legislation). Senator Mike DeWine (R-OH), Chairman of the Substance Abuse and Mental Health Services Subcommittee of the Health, Education, Labor and Pensions (HELP) Committee, sponsored the bill with Senators Maria Cantwell (D-WA), Richard Durbin (D-IL), Orrin Hatch (R-UT), Pete Domenici (R-NM), Charles Grassley (R-IA), and Patrick Leahy (D-VT). The legislation was referred to the House Committee on the Judiciary after passing the Senate. Representative Ted Strickland has sponsored a companion bill in the House, H.R. 2387, that also was referred to the House Judiciary Committee.

S. 1194 would address the significant number of adults and youth with mental health and substance abuse disorders who are incarcerated or who come into contact with the criminal justice system because of their illness. States would be eligible to receive grants to plan and implement programs for adult and youthful offenders that would simultaneously promote public safety and public health. For additional information on S. 1194, please see <http://www.lac.org/news/wvr/2003/roundup103103.pdf>.

increase employment opportunities for this population. Collaboration and the utilization of available resources can create a win-win situation for the stakeholders in the reentry process, including the client, the employer and the public at large. ❖

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**Senate Health, Education, Labor and Pensions (HELP) Committee Passes Workforce Investment Act Reauthorization Legislation: Some Provisions May Increase Help For Hard-to-Serve Populations, Including Individuals with Disabilities and Criminal Records.**

The Senate Health, Education, Labor and Pensions (HELP) Committee recently passed legislation that would reauthorize the Workforce Investment Act of 1998 (WIA). The bi-partisan legislation, entitled "Workforce Investment Act Amendments of 2003" was sponsored by Senator Mike Enzi (R-WY), Chairman of the Employment, Safety and Training HELP Subcommittee and co-sponsored by Senators Judd Gregg (R-NH), Chairman of the HELP Committee; Edward Kennedy (D-MA), Ranking Member of the HELP Committee; and Patty Murray (D-WA). Although the legislation does not specifically address the need for services for individuals with criminal records or individuals with alcohol or drug addictions who need job training and skill development, it does give States the flexibility to address the barriers often faced by low-wage workers, individuals with disabilities and hard-to-serve populations, including individuals with criminal records.

Key provisions which could impact the delivery of workforce development services for these individuals include:

- Expanding the definition of "hard-to-serve" populations to include low-income individuals, individuals with disabilities, ex-offenders and other such groups that the Governor determines to be hard-to-serve;
- Requiring State Workforce Investment Boards to develop statewide strategies for providing effective outreach to employers and individuals, including hard-to-serve populations, and strategies that would increase the availability of skills training, employment opportunities, and career advancement for hard-to-serve populations;
- Requiring the State plan developed by the Governor and State Workforce boards to specify how the State will serve the employment and training needs of hard-to-serve populations and individuals with disabilities; and

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**Hot Off the Press:  
Recent Reports**

**All in One Stop? The Accessibility of Work Support Programs at One-Stop Centers** is a recent study by the Center for Law and Social Policy (CLASP) that evaluates the relative success of one-stop centers. See: [http://www.clasp.org/DMS/Documents/1063733515.9/one-stop\\_rpt.pdf](http://www.clasp.org/DMS/Documents/1063733515.9/one-stop_rpt.pdf)

**Skilling the American Workforce "On the Cheap": Ongoing Shortfalls in Federal Funding for Workforce Development** is a new analysis by The Workforce Alliance of inflation-adjusted funding for 19 federal workforce development programs over the past 10-15 years. See: <http://www.workforcealliance.org/twa-funding-analysis-09.pdf>

**Ill Equipped: U.S. Prison and Offenders with Mental Illness**, a report by the Human Rights Watch. See: <http://www.hrw.org/reports/2003/usa1003/>



**ONLINE RESOURCES**

**WorkforceUSA.net** is a new web-based virtual library devoted to the field of workforce development. Developed with funding from the U.S. Department of Labor, the Ford Foundation, and the Rockefeller Foundation, the site offers tools, policy and regulatory analyses, evaluation results, and case studies. The development strategy such as building career ladders or addressing skills shortages. See: <http://www.workforceusa.net/home/index.cfm>

**The Urban Institute** has initiated a Reentry Roundtable listserv. To join, send an email to [jpc@ui.urban.org](mailto:jpc@ui.urban.org) with "JPC Reentry Listserv" in the subject line. If you have any questions, please email [jpc@ui.urban.org](mailto:jpc@ui.urban.org).

- Funding the development of strategies for effectively serving hard-to-serve populations, the coordination of programs and services among WIA one-stop service centers, and assistance to help hard-to-serve populations, including individuals with disabilities, navigate multiple services and activities.

For additional information on this legislation, please see

<http://www.lac.org/news/wwr/2003/roundup101003.pdf>

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## **Meet the H.I.R.E. Network Staff: ROBERTA MEYERS-PEEPLER**

I am the Field Educator and Organizer for the National H.I.R.E. Network. I provide technical assistance and training to local advocates and service providers around the country on issues that affect employment opportunities for people with criminal records. I am responsible for working directly with local advocates in identifying public policy priorities, developing appropriate advocacy strategies, mobilizing people with criminal records and their families, and undertaking advocacy efforts.

Prior to assuming this position, I worked as a Legal Assistant at the Legal Action Center for close to ten years. In this capacity, I helped over 1000 individuals with criminal records clean up their New York State rap sheets, as well as advised them about their legal rights when seeking employment. I also provided technical assistance and training to New York State parole and probation officers, service providers, and prison pre-release staff throughout New York State on matters related to criminal records and employment discrimination.

During those years, I quickly learned about the numerous limitations and barriers that have been erected through legislation that not only punish people with criminal records, but also their families and their communities. I have made the commitment personally and professionally to challenge many of these overly punitive policies because they affect my family and my community. My commitment to the mission of the National H.I.R.E. Network is conjoined with my assent of these words from Angela Davis, "Indeed, the fundamental prerequisite for empowerment is the ability to earn an adequate living."

I encourage you to [contact me](#) if you are in need of technical assistance or training about the legal and policy employment barriers that exist in your state or community and strategies to overcome them. Advocacy, collaboration, coalition building, and constant dialogue among all of the stakeholders are some of the solutions. Let's talk about the others! ❖