Post-release Employment Seminar
Institute of Criminology, Sydney Law School
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Employer use of Police Record Checks

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• Australia: 425,000 (2000-1) -> 2.7m (2009-10) requests to CrimTrac
• UK Criminal Records Bureau 3.8m disclosures (2008-9)
• 80% of US employers make record checks
• 36% UK employers would exclude all ex-offenders from recruitment process
Transfer of information

• CrimTrac:
  – transfer across states
  – plans to liaise with UK Criminal Records Bureau
A criminal record is not as uncommon as you might think

• Who may be affected?
  – Australia: over 600,000 people convicted (2007-8: ABS)
  – Canada: 20 per cent of men and five per cent of women aged between 15 to 69 years old have a criminal record.
  – UK: 27% men and 6% women have at least one conviction (UK Home Office 2001)
Impacts of criminal conviction on employment decision making

• Reality issues
  – Loss of personal skills
  – Loss of job skills

• Prejudice / discrimination
Possible drivers

• Metcalf et al (2001): undesirable; alien
• Holzer (2007): lack of skills; untrustworthy; liability for negligent hiring.
• Fahey (2006): risk of reoffending; not wanting to be first to hire after release; lack of job skills; ‘soft’ skills eg communication and reliability.
• Backman (2010): easy access to info; mandatory checks in one sector suggest checks for others, and heightens sense of risk.
Ex-offenders were rated less likely to obtain employment than people with a chronic illness, physical disabilities or communication difficulties. Only applicants with intellectual or psychiatric disabilities were rated lower: Graffam et al (2004)
Why do employers check criminal records?

Because they have to:

• Legislative requirements
• Concern about legal liability
Because they can:
- freedom of contract
- risk/ protection
• Employment can reduce re-offending by between one third and one half;

But

• 60% of ex-offenders are refused jobs because of their criminal record

(Breaking the Circle UK 2002)
Legislative schemes aim to limit the impact of a criminal record

- Anti-discrimination
- Privacy
- Spent convictions
Programs encourage employers to employ ex-offenders

- Australia: state schemes
- UK:
  - Reducing re-offending through skills and employment (2006)
  - Reducing Re-offending Corporate Alliance
  - CIPD Employing ex-offenders: a practical guide
- Europe: EQUAL
- US: Second Chance Act; state schemes
Research on employer perceptions
(LSB funded: Heydon, Naylor, Paterson, Pittard 2008)

Research with lawyers (2008): employer concerns included

• How to evaluate a positive check
• How to manage the information over time
• Impact of anti-discrimination laws
Current research: some preliminary findings
(ARC Linkage project: Heydon (RMIT), Naylor, Paterson, Pittard (Monash))

• Survey and interviews with human resources managers (ongoing)

• Practice varies:
  – Eg manufacturing: limited use of checks
    • Not wishing to unnecessarily limit labour pool

• Triggers for introducing checks
  – Regulatory requirements
  – Serious misconduct case: relevant prior history
  – ‘everyone else doing checks’
Purposes of checks

• Regulatory/ licensing obligation (34%)
• Risk to customers (23.5%)
• Risk to other staff (20%)
• Risk of similar reoffending (16%)
• Risk of general misconduct (12%)
Where a record is found

Importance of dialogue with applicant:

- *we would investigate the type of offence committed and see how relevant it was to the position we were advertising.*
- *Whether there is any potential to compromise safety of employees, professional integrity or finance*
- *a person convicted of fraud would not be hired in a finance position but they would be considered for roles where responsibilities did not include financial aspects. Candidates who had committed crimes involving violence would generally not be considered for employment.*
Observations to date

• Ex-offenders self-exclude
  – Dialogue process preferred
  – Prefer to do check late in the process
• Discomfort about extent and level of information provided in checks
• Uncertainty as to how to evaluate seriousness/relevance of information
• ‘zero tolerance’ can be unfair
• Rehabilitation issues should not be forgotten