
Barriers to Reentry:

Legal Strategies to Reduce Recidivism and Promote the Success of Ex-offenders

By Miriam J. Aukerman

When Clara was fifteen, she and her best friend discovered that they were being “two-timed” by the same boy. Outraged, the girls went over to the boy’s house, entered through an open door, and placed the boy’s collection of Playboy magazines on the kitchen table so that he would get in trouble when his mother got home. But it was the girls who got in trouble. Clara ended up with a felony-level juvenile adjudication for breaking and entering. Now, almost thirteen years later, Clara – whose only other run-in with the law was a failure to get a dog license – is married, has three kids, and wants to work as a nurse’s aid to support her family. But Clara cannot even get her nursing degree, because her school requires clinical work in a nursing home, and under a new Michigan law, individuals with felony records cannot work in nursing homes.¹

THE PICTURE IN MICHIGAN

Clara, like millions of other ex-offenders, has discovered that if you make a mistake, society will continue to punish you long after your sentence is done. Ex-offenders face not only the social stigma of a criminal conviction, but also tremendous legal obstacles. This combination of social and legal barriers prevents many ex-offenders from finding employment, reuniting with their families, or securing stable housing. Unsurprisingly, 40% of released inmates in Michigan are unable to overcome these hurdles, and return to prison within four years. Each such cycle costs the state \$224 million dollars per year.²

How many people suffer the consequences of a criminal record? While exact figures are difficult to come by, the U.S. Department of Labor has estimated that about one-quarter of the adult population lives a substantial portion of their lives having a criminal record.³ One in 37 Americans has had prison experience, with 17 percent of African-American men, 7.7 percent of Hispanic men, and 2.6 percent of white men having served prison time.⁴ In Michigan, the prison population has grown since 1975 at 38 times the rate of the general population, with approximately 48,000 people now behind bars.⁵ Almost 1,000 Michigan prisoners return to the community each month.⁶ In addition, some 16,000 Michiganders are on parole,⁷ almost 174,000 Michiganders are on probation,⁸ and an untold number still struggle with the consequences of convictions that are years or even decades old.

Because there are so many potential civil consequences to a criminal conviction, this article can only provide an overview of a few of the most serious issues ex-offenders

face in the areas of employment, family law, and housing.⁹ The article also discusses some of the existing legal strategies that counsel can adopt to minimize the civil consequences of criminal convictions, and then considers what the bar, courts, and policy makers can do to reduce recidivism and encourage reintegration of ex-offenders.

PROMOTING THE EMPLOYMENT OF EX-OFFENDERS

Employment at a decent wage is strongly correlated with lower rates of reoffending. According to one estimate, a 10 percent decrease in an individual’s wages is associated with a 10-20 percent increase in criminal activity and likelihood of incarceration.¹⁰ Unfortunately, studies show that two-thirds of all employers will not knowingly hire an ex-offender.¹¹ Moreover, by law many former offenders are barred from a variety of professions. In order to maximize the employment prospects and reduce the recidivism risk of ex-offenders, counsel assisting such individuals should be aware of (1) the limited employment rights that ex-offenders do have, (2) the statutory restrictions on ex-offender employment, and (3) the federal financial incentives to encourage the hiring of ex-offenders.

1. Employment Rights of Ex-Offenders

Although it is widely assumed that employers have an absolute right to reject job applicants based on their criminal records, in fact there are several legal protections available to ex-offenders. First, with the exception of law enforcement, an employer or employment agency “shall not in connection with an application for employment ..., or in connection with the terms, conditions, or privileges of employment . . . request, make, or maintain a record of information regarding a misdemeanor arrest, detention or disposition where a conviction did not result.”¹² This statutory prohibition does not extend to “information relative to a felony charge before conviction or dismissal.”¹³

Second, for African-American and Hispanic ex-offenders, adverse employment decisions based on criminal records may constitute race discrimination in violation of Title VII of the Civil Rights Act of 1964.¹⁴ Because African-Americans and Hispanics are disproportionately represented within the criminal justice system, courts have held that blanket policies prohibiting the employment of ex-offenders have a disparate impact on minority job seekers.¹⁵ Accordingly, the Equal Employment Opportunity Commission has issued several policy statements under which the exclusion of persons from employment based on their

conviction records violates Title VII unless the employer demonstrates a business necessity for the exclusion. Three factors are relevant to business necessity:

- (A) The nature and gravity of the offense;
- (B) The time that has passed since the conviction and/or completion of the sentence; and
- (C) The nature of the job held or sought.¹⁶

In other words, under most circumstances an employer cannot adopt an outright prohibition on the employment of ex-offenders, but must consider the individualized circumstances of potential employees.

A third legal protection for ex-offenders in Michigan is that there are limits on the use of criminal records in licensing decisions. Under MCL 338.42, a criminal conviction shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the offense is not reasonably related to the occupation or profession for which her or she seeks to be licensed.

In addition, licensing boards or agencies cannot use certain criminal records at all in determining good moral character.¹⁷ Moreover, rules must be promulgated for each licensing board or agency prescribing the offenses that the department considers indicate that the person is not likely to serve the public in a fair, honest, and open manner.¹⁸

To summarize, while the employment rights of ex-offenders are limited, neither employers nor governmental agencies can adopt blanket policies discriminating against ex-offenders.

2. Statutory Barriers to Employment: The Example of Michigan's New Nursing Home Law

The employment prospects of ex-offenders are hampered not only by the reluctance of employers to hire individuals with criminal records, but also by outright prohibitions on employment of ex-offenders in certain fields. These restrictions stem both from federal¹⁹ and Michigan law. Since a survey of these restrictions is beyond the scope of this article, an example of one such statute will be analyzed to demonstrate the impact of occupational restrictions on ex-offenders, the necessity of reviewing such legislation carefully to determine its reach, and the potential for challenging such laws and policies.

In May 2002, a new Michigan statute went into effect preventing persons with any felony conviction within the last 15 years or one of several specified misdemeanor

convictions within the last 10 years from working in nursing homes, county medical care facilities or homes for the aged.²⁰ Based on the experience of Western Michigan Legal Services, which has been flooded with requests for assistance from low-income clients like Clara, the law has forced many qualified and experienced caregivers out of the nursing home field, while simultaneously preventing many promising candidates from starting careers in this area. In many cases those clients, who are typically low-income mothers, are unable to find other work, and end up on welfare.

Despite the draconian impact of the new law, counsel who advise either nursing home facilities or their employees should recognize that some ex-offenders can continue to work in the health care field. First, the law "grandfathers in" employees who were employed by a health facility before the effective date of the act, that is before May 10, 2002.²¹ Second, the law applies only to individuals "who regularly provide" direct services to patients or residents.²² Thus nursing homes should not disqualify ex-offenders from positions where they have limited patient contact. Third, the law applies only to "convictions," and therefore should not be applied to juvenile adjudications, which by definition are not convictions. Finally, although many hospitals and home health care agencies appear to be relying on this law to justify prohibitions on ex-offender employment, in fact that law applies only to nursing homes, county medical care facilities, and homes for the aged, not to hospitals.²³

It is questionable whether this law – or similar laws, which place broad restrictions on an individual's ability to pursue a chosen profession and do not provide for individualized assessments – pass constitutional muster. In Pennsylvania, a law that prohibited ex-offenders from working in nursing homes was struck down by the state Supreme Court because it "does not bear a real and substantial relationship to the Commonwealth's interest in protecting the elderly, disabled, and infirm from victimization, and therefore unconstitutionally infringes on the Employees' right to pursue an occupation."²⁴ Similarly, a Massachusetts court struck down a state policy providing that persons convicted of certain crimes were subject to a mandatory disqualification for jobs within the Office of Health and Human Services.²⁵ The court found a procedural due process violation in the failure to provide an opportunity for ex-offenders to rebut the inference that they are unfit to work in the human services field.

3. Encouraging Employers to Hire Ex-Offenders

Attorneys working with either employers or ex-offenders should be aware of several programs that provide financial incentives for the hiring of ex-offenders. First, the Work Opportunity Tax Credit provides a federal tax incentive for employers to hire former offenders. Employ-

ers who hire low-income ex-felons who were convicted or released within one year of hire are eligible for the credit, which is worth up to \$2,400 per worker. Ex-felons who were convicted or released more than a year ago may fall under one of the other target groups for the credit, which include physically or mentally disabled individuals and recipients of welfare, food stamps or SSI.²⁶

A second program is designed to address the fact that private bonding agencies often reject job applicants with criminal histories, thereby preventing ex-offenders from obtaining positions with companies that require bonding. The Federal Bonding Program makes no-cost fidelity bonds available to protect employers who hire ex-offenders. The bond is typically for \$5,000 (although coverage up to \$25,000 may be allowed) and insures the employer against theft, forgery, larceny or embezzlement. Of the 40,000 job applicants who have been bonded through the program, 99% have turned out to be honest employees.²⁷

THE FAMILY LAW CONSEQUENCES OF CRIMINAL CONVICTIONS

Over 10 million children in the United States have parents who were imprisoned at some point in their children's lives, and about 1.5 million children have parents who are currently in prison.²⁸ In Michigan, 53% of males and 59% of female prisoners have minor children.²⁹ Imprisonment results in a range of family law consequences which may represent a greater loss to the parent than the loss of freedom itself. Two of the most common issues are termination of parental rights and the accumulation of unwarranted, incarceration-related child support arrears.

1. Keeping Families Together through Appropriate Pre-Incarceration Planning

Parents who are incarcerated risk losing their children forever. As one commentator has noted, "particularly with respect to incarcerated mothers, imprisonment of a parent disrupts intact, viable families. The overwhelming majority of incarcerated mothers were active parents to their children prior to their incarceration and intend to continue in that role after release."³⁰ Whether or not these parents will have the opportunity to reunite with their children depends not just on the length and nature of the sentence, but also on the child's placement during the parent's incarceration. Legal advice at this stage can be critical in ensuring that families can be reestablished upon the parent's release.

MCL 712A.19(3)(h) provides that a parent's rights may be terminated if "[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody within a reasonable time considering the child's age."³¹ Thus, while there are

also many other grounds for termination,³² parents who will be imprisoned in excess of two years are in particular danger of termination.

The risk that incarceration will permanently tear apart a family can be greatly reduced through appropriate pre-incarceration child placements, which keep the child out of foster care. In order for a termination to occur, the probate court must have jurisdiction over the child. The probate court has jurisdiction, *inter alia*, over a child "who is without proper custody or guardianship."³³ Significantly, Michigan's appellate courts have repeatedly found that if a parent makes satisfactory arrangements for the child's welfare during the parent's incarceration, the child is not "without proper custody."³⁴ Since the court lacks jurisdiction over the child, the parents' rights cannot be terminated.

The best placement for the child will depend on each parent's specific circumstances. In a marital family, children may be left with the other parent, though there is always a risk that the incarcerated parent's rights will be terminated either because the non-incarcerated parent runs into problems with the law or child protective system, or because the non-incarcerated parent seeks a divorce and, subsequently, a step-parent adoption.

A non-custodial parent generally will have little say about the child's placement. A custodial parent facing incarceration in excess of two years will generally be well-advised to place his or her children with alternate caregivers. This may involve agreeing to a change of custody, if the other parent is an appropriate caregiver. If placement with the other parent is inappropriate or impossible, a custodial parent should consider granting a limited guardianship to grandparents, relatives, or other potential caretakers. While each client's situation will be different, placing a child under a limited guardianship rather than a regular guardianship will often make it easier for the parent and child to be reunified once the parent is released from incarceration. Limited guardianships are based on the consent of the parents, and require the parties to develop a limited guardianship placement plan.³⁵ By contrast, regular guardians may be appointed over the parents' objections under a variety of statutorily-prescribed circumstances, including parental incarceration.³⁶ While limited guardianships can be terminated upon a showing that the parents have substantially complied with the limited guardianship placement plan,³⁷ termination of a regular guardianship is more complicated, and generally requires a showing that this is in the child's best interests.³⁸

Since guardianships can be difficult to set aside once issued, and since they involve the suspension of parental rights, parents facing shorter periods of incarceration are often better off not placing their children under a guardianship. In order to reduce the risk that a guardianship will be issued over the parent's objections, parents should provide

a power of attorney to the child's temporary caregiver. If the parent fails to provide a power of attorney, the parent is "permit[ing] the minor to reside with another person and ... not provid[ing] the other person with legal authority for the minor's care and maintenance," which is one of the bases for authorizing a guardianship.³⁹

Regardless of where a child is placed during the parent's incarceration, parents should be advised that if they want to avoid termination of their parental rights and if they want to retrieve their children from a guardianship upon release, the parents must maintain contact with the child during the parent's incarceration. Parents should keep records not only of any financial support they provide, but also of their efforts to remain involved in their children's lives, whether through calls, letters, or prison visits.

2. Easing the Burden of Huge Child Support Arrears

Many of the parents who enter prison, particularly fathers, are non-custodial parents with existing support orders. These parents are almost always financially unable to pay support while incarcerated, and therefore typically leave prison with huge arrearages. Ex-offenders who do find work often discover that much of their meager paycheck is going to pay back support. This is not only a huge disincentive to lawful employment, but may make it difficult or impossible for the ex-offender to survive on what little of the paycheck is left. Moreover, show causes and bench warrants are common, which may cause ex-offenders to get in trouble with their probation or parole officers, and may even result in reincarceration.

In principle, since support obligations are based on an ability to pay, incarcerated parents who lack the ability to pay should not be required to pay support. Thus, the Court of Appeals has held that "where a noncustodial parent is imprisoned for a crime other than nonsupport that parent is not liable for child support while incarcerated unless it is affirmatively shown that he or she has income or assets to make such payments."⁴⁰ The difficulty arises under MCL 552.603(2), which provides that a support payment "is not, on and after the date it is due, subject to retroactive modification." Thus, although a prisoner has no obligation to pay support, once the support has accrued, a prisoner usually cannot get the arrearage modified.⁴¹

In order to avoid ending up with a huge child support arrearage, an offender simply needs to file a motion to modify support when the offender is first incarcerated. Defense counsel should routinely advise clients who are non-custodial parents to file such motions.⁴² Unfortunately, offenders who already have accumulated large support arrearages while incarcerated have few options for eliminating this back support obligation, no matter how unwarranted it is. The first step is to determine whether the arrearage is

owed to the state or to the other parent (or another private individual, such as a guardian). If the support is owed to a private individual, the parties may be able to reach an agreement to waive part or all of the back support. If the back support is owed to the State of Michigan, the payor should contact his or her Friend of the Court office to determine whether the Friend of the Court can assist in reducing back support or modifying ongoing payments.

So long as Michigan does not automatically suspend child support upon a non-custodial parent's incarceration, many parents are likely to leave prison owing thousands of dollars in back support, even though that support obligation should never have accrued in the first place. The ex-offender's inability to get out from under this crushing financial burden represents yet another barrier to reentry.

LOSING ACCESS TO AFFORDABLE HOUSING

As of 1999, there was no jurisdiction in the United States where a full-time minimum-wage worker could afford the fair market rent for a one-bedroom in his or her community.⁴³ Access to affordable housing can be a particular problem for ex-offenders, many of whom are homeless upon release from prison, are unable to find stable employment, and are rejected by private landlords. While subsidized housing provides a limited safety net for other low-income people – though demand far outstrips supply – many ex-offenders, and their families, are ineligible for federally subsidized housing.

Criminal convictions affect both admissions and evictions decisions. Managers of federally funded housing must deny admission to individuals who were evicted from federally-assisted housing for drug-related criminal activity within the last three years.⁴⁴ Denials are also mandatory where a household member is currently using illegal drugs or abusing alcohol in a manner that interferes with other residents.⁴⁵ However, the household can be admitted if the offending individual has successfully completed a drug rehabilitation program or if the circumstances leading to the eviction no longer exist (i.e. the offending household member is no longer part of the household).⁴⁶

Federal regulations permit, but do not require, public housing agencies to deny housing if a household member has engaged in (1) drug-related criminal activity; (2) violent criminal activity; or (3) other criminal activity that would adversely affect health, safety or the peaceful enjoyment of the premises.⁴⁷ In order to serve as a basis for a denial, past criminal conduct must have occurred "during a reasonable time" prior to the admission decision.⁴⁸ While the regulations are silent on how recent a conviction must be in order to have occurred within a reasonable time, commentary by the Department of Housing and Urban Development suggests that a reasonable time period is five years.⁴⁹

Public housing authorities must include a provision in the lease agreement that both the tenant and the tenant's family can be evicted for "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off the premises" by a tenant, household member, guest, or other person "under the tenant's control."⁵⁰ In *Department of Housing and Urban Development v. Rucker*, the United States Supreme Court recently decided that this language allows public housing authorities to evict innocent tenants for the criminal behavior of household members or guests, whether or not the tenant knew, or should have known, about the illegal activity.⁵¹ For example, one of the tenants in *Rucker* was a grandmother whose mentally disabled daughter was found with drugs three blocks from the apartment. The Court held the eviction to be authorized, even though the tenant had regularly searched her daughter's room for drugs and had never found anything.⁵² Thus, evictions based on criminal conduct can result in homelessness not just for the offender, but also for that offender's entire family.

In most screening and eviction actions, public housing authorities may consider a variety of circumstances, such as the seriousness of the offending action, the effect that denial of admission or termination of tenancy would have on non-offending household members, and the rehabilitation of the offender.⁵³ Therefore, attorneys working with ex-offenders to secure housing should seek to ensure that housing authorities exercise their discretion in those cases where exclusion is not mandatory.

EXPUNGEMENT: HOPE FOR THE LUCKY FEW

Expungements provide one of the only forms of relief from the severe civil consequences attached to criminal convictions.^{54,55} Because the statutory criteria for expungements are narrowly drawn, and because the ultimate decision is a discretionary one, most ex-offenders will be unable to clear their records. Still, where applicable, expungement is a powerful tool to free eligible ex-offenders from the burdens of a criminal record.⁵⁶

A motion to set aside a conviction may only be brought by a person "who is convicted of not more than 1 offense."⁵⁷ The term "offense" has been interpreted broadly to apply to both felonies and misdemeanors.⁵⁸ Thus, a person who merely has two misdemeanors is ineligible for an expungement. Multiple convictions arising out of the same incident are considered separate offenses, and once again make the petitioner ineligible for an expungement.⁵⁹

A person is not eligible for an expungement until five years after sentencing, or five years following the completion of any term of imprisonment, whichever occurs later.⁶⁰ Moreover, certain offenses are never expungable. Those

offenses are: (a) a felony or attempt to commit a felony for which the maximum punishment is life imprisonment; (b) a conviction for a violation or attempted violation of MCL 750.520c, 750.520d, or 750.520g (criminal sexual conduct in the first, second, or third degree, or assault with intent to commit criminal sexual conduct); or (c) a conviction for a traffic offense.

If a person meets the statutory criteria, then it is within the court's discretion to grant an expungement. The nature of the offense alone does not preclude setting aside an offender's record.⁶¹ Rather, in exercising its discretion, the court must balance the "circumstances and behavior" of the petitioner against the "public welfare."⁶² Thus, the Court of Appeals has regularly reversed lower courts that have focused on the nature of a defendant's conviction, rather than the defendant's conduct subsequent to conviction.⁶³

THE TASK AHEAD

Because the social and legal barriers faced by persons with criminal records severely diminish the chances that these individuals will successfully reestablish themselves, prosecutors, defense attorneys, and the courts should attempt to ensure that decisions made at the front end of the criminal justice system do not place unnecessary burdens on the ability of defendants to become productive citizens upon release. Similarly, civil legal aid offices and private civil counsel should be prepared to address the unique legal problems faced by ex-offenders. Finally, policy makers should seek to encourage reintegration rather than recidivism by reducing the social and legal barriers to reentry.

What Defense Counsel Can Do

- Research the occupational consequences of particular convictions in order to maximize an offender's employment opportunities post-conviction. Structure plea deals, where possible, so that a client's conviction will not prevent him or her from working in his or her chosen field.
- Advise custodial parents regarding placement of their children during incarceration, or refer such clients to the private bar or civil legal aid offices for pre-incarceration child placement planning.
- Press for sentences and custodial placements that will maximize a client's opportunities for family contact during incarceration.
- Advise non-custodial parents that upon incarceration they should file motions to eliminate or modify child support.
- Determine whether a particular conviction will cause the client to lose access to public housing, or cause the client's family to be evicted.
- Ensure, if possible, that first-time offenders will be

eligible for expungements by insisting that there is only one conviction on one count.

What Prosecutors Can Do

- Structure charging decisions and plea agreements in order to maximize an offender's opportunities for employment upon release. Particularly where offenders do not have a prior felony record, consider whether the benefits of obtaining a felony conviction are worthwhile, given the likely impact of a felony record on the offender's ability to reintegrate successfully upon release.
- Press for sentences and custodial placements that will maximize an offender's opportunities for family contact during incarceration.
- Assist civil legal aid offices and private counsel seeking to prevent the eviction of entire families based on the offender's conduct by clarifying where culpability lies.
- Structure charging decisions and plea agreements for first time offenders in ways that leave open the opportunity for a later expungement if the offender is rehabilitated. Seek a single conviction, rather than multiple counts, for offenses arising out of one transaction.
- Support expungements for eligible, rehabilitated offenders.

What Judges Can Do

- Advise criminal defendants of the civil consequences of their convictions before accepting a plea or when imposing judgment. In the alternative, advise defendants to discuss the civil consequences of the conviction with counsel before agreeing to a plea.
- Devise sentences that are structured to maximize the chance that an offender, after receiving an appropriate punishment, will be able to find work, obtain stable housing, and reconnect with family.
- Structure sentences in order to maximize a client's opportunities for family contact during incarceration.
- Order reunification services and parenting time for incarcerated parents before deciding whether to terminate those parents' rights.
- Insist that managers of federally-funded housing exercise their discretion to consider each household's circumstances in making admission and eviction decisions based on criminal conduct.
- Encourage plea agreements that preserve the possibility of expungement for first time offenders.
- Exercise discretion in favor of ex-offenders by granting expungements where there is evidence of rehabilitation.

What Civil Legal Aid Offices and Private Civil Counsel Can Do

- Educate employers, job placement agencies, and clients about the employment rights of ex-offenders.
- Advise employers to develop hiring policies that conform with the Title VII requirements; i.e. to consider the nature, age, and relevance of an applicant's convictions.
- Challenge occupational barriers, licensing restrictions, and company policies that represent blanket prohibitions on the employment of ex-offenders.
- Provide pre-incarceration child placement planning assistance.
- Help ex-offenders to clear up incarceration-related child support arrears.
- Assist ex-offenders who are denied access to public housing, by encouraging public housing authorities to use their discretion, where applicable, to consider such factors as the age of the conviction and the offender's rehabilitation.
- Assist ex-offenders in obtaining expungements where eligible.

What Policy Makers Can Do

- Encourage the employment of ex-offenders by ensuring that state laws and policies do not unnecessarily restrict ex-offenders' employment opportunities; require consideration of the age of the conviction, the relationship of the offense to the job, and the offender's rehabilitation.
- Improve tax credits, bonding, and other programs to encourage employers to hire ex-offenders.
- Provide resources for employment programs targeted at the special needs of ex-offenders.
- Fund programs to preserve family ties between offenders and their children; require child welfare workers to remain in touch with incarcerated parents.
- Require that the DOC and local Friend of the Court offices communicate so that child support payments are automatically suspended upon imprisonment in a DOC facility.
- Provide financial support for transitional housing for ex-offenders.
- Work with public housing authorities to develop reasonable policies to allow rehabilitated ex-offenders access to subsidized housing; require public housing authorities to consider household circumstances before evicting entire families based on one individual's criminal conduct.
- Expand access to expungements so that individuals who have more than one conviction but can demonstrate rehabilitation have the opportunity to clear their records.
- Develop a process for the restoration of an ex-offender's civil rights – such as the certificates of rehabilitation used

in some states – to free rehabilitated ex-offenders from the civil liabilities associated with past convictions.

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Endnotes

- ¹ The author is currently representing Clara (not her real name) on the question of whether the statute applies to juvenile felony adjudications.
- ² This figure assumes a two year stay upon reincarceration. See Michigan Office of the Governor & the Department of Corrections, Summary of Technical Assistance Initiatives for Prisoner Reentry (July 1, 2003), at 2.
- ³ Debbie Mukamal, From Hard Time to Full Time: Strategies to Help Move Ex-Offenders from Welfare to Work 3 (U.S. Department of Labor, Employment and Training Administration, Division of Welfare-To-Work, June 2001), <http://www.doleta.gov/documents/hard.html>.
- ⁴ Bureau of Justice Statistics, Prevalence of Imprisonment in the U.S. Population, 1974-2001, Aug. 2003, NCJ 197976, www.ojp.usdoj.gov/bjs/pub/pdf/piusp01.pdf.
- ⁵ Some Facts About Michigan Prisons, PRISONS AND CORRECTIONS FORUM (State Bar of Michigan Prisons and Corrections Section, Lansing, MI) Winter 2001, at 12.
- ⁶ Bill Johnson, Judge puts educating inmates to test?, DETROIT NEWS, Aug. 23, 2002, <www.detroitnews.com/2002/editorial/0208/239/a11-569044.htm>.
- ⁷ Figures are for 2000. U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRENDS IN STATE PAROLE, 1990-2000 (NCJ 184735) 3 (2001).
- ⁸ Figures are for 2000. U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PROBATION AND PAROLE IN THE UNITED STATES, 2000 (NCJ 188208) 4 (2001).
- ⁹ There are a wide variety of other civil liabilities resulting from criminal convictions, including severe immigration consequences, restrictions on public benefits, loss of drivers' licenses, loss of access to public benefits, limitations on gun ownership, limitations on the right to vote or serve on a jury, etc.
- ¹⁰ See Urban Institute, From Prison to Home: The Dimensions and Consequences of Prisoner Reentry (2001) at 31.
- ¹¹ Jeremy Travis et al., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 35 (2001).
- ¹² MCL 37.2205(a)(1).
- ¹³ Id.
- ¹⁴ 42 U.S.C. §2000e-2(k).
- ¹⁵ See, e.g., *Gregory v. Litton Sys., Inc.*, 316 F. Supp. 401(C.D. Cal. 1970), modified on other grounds, 472 F.2d 631 (9th Cir. 1972); *Green v. Missouri Pac. R.R. Co.*, 523 F.2d 1290 (8th Cir. 1971).
- ¹⁶ Policy Statement on the Issue of Criminal Records Under Title VII of the Civil Rights Act of 1964, as amended, 42

U.S.C. §2000e et seq. (1982) (Feb. 4, 1987); in II EEOC Compliance Manual § 604; Policy Statement on the Use of Statistics in Charges Involving the Exclusion of Individuals with Conviction Records from Employment (July 29, 1987), in II EEOC Compliance Manual App. § 604-B.

- ¹⁷ See MCL 338.43(1). Records which may not be considered include records of arrests not followed by convictions; records of convictions that have been vacated or reversed; records of arrests or convictions unrelated to the person's likelihood to serve the public in a fair, honest and open manner; and records of an arrest or conviction for a misdemeanor for which a person may not be incarcerated.
- ¹⁸ See MCL 338.43(3). In the absence of such rules, all felonies are considered relevant to likelihood of a person to serve the public in a fair, honest, and open manner.
- ¹⁹ See, e.g., 49 U.S.C. §§44935(e)(2)(B) and 44936 (airport security screeners); 15 U.S.C. §5902 (armored car crew members); 29 U.S.C. §1111 (positions in employee benefit plans).
- ²⁰ MCL 333.20173. The relevant misdemeanor convictions are those "involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult." MCL 333.21073(1)(b).
- ²¹ MCL 333.20173(2). Although the statute is not explicit, a plain reading of its language suggests that an individual is "grandfathered in" not just for a position held before May 10, 2002, but also for subsequent job changes. This interpretation also makes sense from a policy perspective, as employees with criminal records would otherwise be chained to a particular job, with no ability to change positions in light of their personal or professional circumstances.
- ²² MCL 333.20173(1).
- ²³ MCL 333.20173(1).
- ²⁴ *Nixon v. Commonwealth of Pennsylvania*, 2003 Pa. LEXIS 2604, at *30-31 (Dec. 30, 2003).
- ²⁵ *Cronin v. O'Leary*, NO 00-1713-F, slip op. at 6-9 (Mass Super. Ct. Aug 9, 2001), www.sociallaw.com/superior/00-1713-F.html.
- ²⁶ See Department of Consumer and Industry Services, Employers: 9 New Ways Employers Can Earn Federal Income Tax Credits, www.michigan.gov/documents/ua_wotc-brc_3108_7.pdf; Department of Consumer and Industry Services, Employers: 9 New Ways Employers Can Earn Federal Income Tax Credits, http://www.michigan.gov/documents/ua_wotc-brc_3108_7.pdf. The credit is currently authorized only through December 31, 2003, although it is anticipated that the credit will be renewed.
- ²⁷ See U.S. Department of Labor, Federal Bonding Program, www.doleta.gov/documents/fedbonding.asp; National HIRE Network, Federal Bonding Program, www.hirenetwork.org/fe_bonding.html.
- ²⁸ Amy Hirsch, et al., EVERY DOOR CLOSED: BARRIERS FACING PARENTS WITH CRIMINAL RECORDS, Center for Law and Social Policy (2002), at 1, 7.
- ²⁹ Michigan Office of the Governor & the Department of Corrections, Summary of Technical Assistance Initiatives for Prisoner Reentry (July 1, 2003), at 2.
- ³⁰ Philip M. Genty, Procedural Due Process Rights of

Incarcerated Parents in Termination of Parental Rights Proceedings: A Fifty State Analysis, 30 J. FAM. LAW 757, 759 (1991-92).

31 MCL 712A.19b(3)(h).

32 See MCL 712A.19b(3).

33 MCL 712A.2(b)(1).

34 See, e.g., *In re Taurus F.*, 415 Mich 512, 535 (1982); *In re Curry*, 113 Mich App 821 (1982); see also MCL 712A.2(b)(1)(B).

35 See MCL 700.5205.

36 See MCL 700.5204.

37 MCL 700.5209(1).

38 See MCL 700.5209.

39 MCL 700.5204(2)(b).

40 *Pierce v. Pierce*, 162 Mich. App. 367, 370 (1987).

41 See *McLaughlin v. McLaughlin*, 255 Mich. App. 475, 476 (2003).

42 In pro per packets which address the relationship between child support and incarceration, and which provide information on how to file a motion to modify support are available from Western Michigan Legal Services.

43 Hirsch, *supra* at 43.

44 24 C.F.R. §5.854; 24 C.F.R. §882.518; 24 C.F.R. §960.204(a)(1).

45 24 C.F.R. §5.857; 24 C.F.R. §882.518(a)(1)(iii) and (b)(4); 24 C.F.R. §960.204(a)(2) and (b). Housing authorities must also deny admission to persons who are subject to a lifetime registration requirement under a state sex offender registration program, see 24 C.F.R. §5.856; 24 C.F.R. §882.518(a)(2); or who have ever been convicted of methamphetamine production on public housing premises, see 24 C.F.R. §882.518(a)(1)(ii); 24 C.F.R. §960.204(a)(3).

46 24 C.F.R. §5.854(a); 24 C.F.R. §882.518(a)(1)(i); 24 C.F.R. §960.204(a).

47 24 C.F.R. §5.855; 24 C.F.R. §882.518(b); 24 C.F.R. §982.553(a)(2)(ii).

48 24 C.F.R. §5.855(a); 24 C.F.R. §882.518(b); 24 C.F.R. §982.553(a)(2)(ii).

49 Final Rule, Screening and Eviction for Drug Abuse and Other Criminal Activity, 66 FR 28776 (May 24, 2001) (“The reasonable time period is still left up to the owner (or PHA) to determine in its admissions policies....While HUD considers that five years may be a reasonable period for serious offenses, depending on the offense, some PHAs or owners may not agree.”).

50 42 U.S.C. §1437d(l)(6).

51 *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 130 (2002).

52 *Rucker v. Davis*, 203 F.3d 1113, 1117 (9th Cir. 2001).

53 24 C.F.R. §5.852; 24 C.F.R. §960.203.

54 In pro per packets for expungements can be obtained by contacting Western Michigan Legal Services.

55 Like adult convictions, juvenile adjudications can be set aside. The applicant must not only meet the same criteria as for an adult expungement, but must also be at least 24 years old. See MCL 712A.18e.

56 When a conviction is set aside the petitioner is considered not to have been previously convicted for most, but not all, purposes. For example, the conviction can still be considered for sentencing purposes if there

are subsequent offenses. Nor does an expungement prevent an action by a victim for civil damages or allow for the remission of any fines or costs. See MCL 780.622; 780.623.

57 MCL 780.621(1).

58 *People v. Grier*, 239 Mich. App. 521, 523 (2000); *People v. McCullough*, 221 Mich. App. 253 (1997).

59 *People v. Blachura*, 176 Mich. App. 717, 719 (1989).

60 MCL 780.621(3).

61 *People v. Boulding*, 160 Mich. App. 156, 158 (1986).

62 MCL 780.621(9).

63 *People v. Rosen*, 201 Mich. App. 621, 623 (1993); *People v. Van Heck*, 252 Mich. App. 207 (2002).