
I. Is It Illegal for Employers to Discriminate?

While the answer is not as simple as the question, the answer is often “yes.”

Protections for People in Recovery from Alcohol or Drug Dependence

Two **federal laws** address directly the issue of employment discrimination against individuals with past or current alcohol or drug problems. They are the federal **Rehabilitation Act** of 1973¹ and the **Americans with Disabilities Act** of 1990.² These laws encompass all areas of employment discrimination, including the hiring and firing of employees and terms and conditions of employment.

The Rehabilitation Act prohibits discrimination against persons with a past or current “**disability**” (as well as those who are perceived to have a disability) who are otherwise qualified to perform the job they seek or hold. Under this Act (like the Americans with Disabilities Act described below), a “disability” is defined as a physical or mental impairment that substantially limits one or more of an individual’s major life activities, including working, learning, performing manual tasks, and caring for one’s self.

Both the federal agencies responsible for implementing and enforcing the Act, and federal courts in a number of cases, have ruled that individuals in recovery from alcoholism or drug dependence, including those in methadone treatment, are covered by the law’s definition of individuals with “disabilities.” The Act forbids employers from discriminating against job applicants and employees because of their history of or treatment for alcohol or drug dependence, if those individuals are qualified to perform their jobs. Being “qualified” for employment means being able, with or without a reasonable accommodation, to perform the essential functions of a job.

In 1990, the Act was amended to exclude individuals who “**currently** engage in the **illegal use of drugs**” from protection. While the Act states that individuals in recovery, including those in treatment (both drug-free and in methadone treatment) who are no longer illegally using drugs, are protected, courts have held that there needs to be a sufficient

¹ 29 U.S.C. §§ 701 *et seq.*

² 42 U.S.C. §§ 12101 *et seq.*

period of time that someone is in recovery before they can be protected under the Act. The Act continues to protect individuals with current as well as past alcohol problems who satisfy the definition of disability and are qualified for the jobs they hold or seek.

The Rehabilitation Act applies to private employers who hold federal government contracts, and to both private and public employers who receive federal grants or aid. The Act also applies to the federal government itself.³

The Americans with Disabilities Act (ADA) extends the Rehabilitation Act's prohibition against disability-based discrimination to most employers, private and public. The ADA prohibits employers from discriminating against a "qualified individual with a disability" and requires, as does the Rehabilitation Act, that employers make "reasonable accommodations" to the known physical or mental limitations of a qualified individual with a disability. Title I of the ADA covers private employers and state and local government agencies with more than fifteen employees, whereas Title II of the ADA applies to government employers without regard to the number of employees they have.

The ADA defines a "disability" as a past, current or perceived "mental or physical impairment" that "substantially limits" one or more of an individual's major life activities, such as those as noted above.

The federal agencies charged with implementing and enforcing the ADA and a number of federal courts have ruled that alcohol and drug dependence are — or in individual cases can constitute — substantially limiting impairments under this definition. The law requires this determination to be made on an individualized, case-by-case basis, examining how the condition affects the particular person's functioning. As in the Rehabilitation Act, however, the ADA's definition of an individual with a "disability" does not include an employee or job applicant who currently engages in illegal drug use.

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In sum, individuals in recovery from drug dependence (including those enrolled in rehabilitation programs), and those erroneously perceived to be drug dependent, have been and in many, if not most, cases will be recognized as individuals with a "disability" under the ADA. This is also the case with recovered, current, and perceived alcoholics. If these individuals are "qualified" for the job in question — which, like the Rehabilitation Act, means able to perform the essential duties of that job, with or without reasonable accommodation — the ADA protects them from discrimination.

³ The law's nondiscrimination provisions are contained in sections 501 through 504 of the Act, 29 U.S.C. §§ 791-794.

Illinois has its own fair employment law, the **Illinois Human Rights Act**.⁴ The Human Rights Act prohibits discrimination against a person on the basis of a “physical or mental handicap” that is unrelated to the person’s ability to perform the duties of the job in question. For the purposes of complaints based on handicap, this law applies to any person employing one or more employees in the state of Illinois.⁵

The Illinois Human Rights Act defines a “handicap” as:

“a determinable physical or mental characteristic of a person, including but not limited to a determinable physical characteristic which necessitates the person’s use of a guide or hearing dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic is unrelated to the person’s ability to perform the duties of a particular job or position.”⁶

Like the ADA, a person is covered if he is currently disabled, has a history of being disabled, or is perceived by the employer to be disabled.⁷

The Illinois Human Rights Act explicitly excludes from protection people who are **currently** engaging in the illegal use of drugs or alcohol.⁸ However, there are circumstances under which a person with a **past history** of drug or alcohol abuse would be covered.⁹ In particular, an employee or applicant who has successfully completed treatment or is currently participating in treatment and no longer using drugs illegally, or who is erroneously regarded as engaging in illegal drug use could be covered.¹⁰ To qualify as a “handicap” under the law, one must be able to prove that: (1) the condition of past alcohol or drug abuse arises from or constitutes the equivalent of a disease or functional disorder; and (2) the handicap is unrelated to the person’s ability to perform the job in question.¹¹ The regulations implementing the law make it clear that when an individual’s alcoholism or drug dependence result in excessive absence or tardiness, or intoxication at work, it will be presumed to affect his ability to perform the job.¹²

An employer is allowed to develop and administer reasonable policies or procedures to ensure that an applicant or employee is no longer using illegal drugs. These procedures can include drug testing.¹³

⁴ 775 ILL. COMP. STAT. 5/1-102 to 105.

⁵ 775 ILL. COMP. STAT. 5/2-101(B)(b).

⁶ 775 ILL. COMP. STAT. 5/1-103(I); ILL. ADM. CODE tit. 56, § 2500.20.

⁷ ILL. ADM. CODE tit. 56, § 2500.30(a).

⁸ 775 ILL. COMP. STAT. 5/1-103(I)(1) and 5/2-104(C)(1).

⁹ 775 ILL. COMP. STAT. 5/2-104(C)(2), ILL. ADM. CODE tit. 56, § 2500.20(c), and Habinka v. Human Rights Comm., 548 N.E. 2d 702 (1st Dist. 1989).

¹⁰ 775 ILL. COMP. STAT. 5/2-104(C)(2).

¹¹ 56 ILL. COMP. STAT. 2500.20(c)-(d).

¹² ILL. ADM. CODE tit. 56, § 2500.20(d)(2).

¹³ 775 ILL. COMP. STAT. 5/2-104(C)(2).

The City of Chicago has its own **Chicago Human Rights Ordinance**¹⁴ (City Ordinance) which applies to any employer with one or more employees in the city of Chicago.¹⁵ This ordinance prohibits discrimination against an individual in any term or condition of employment based on an individual's disability.¹⁶ Employers can reject a person with a disability based on evidence that the individual would be "demonstrably hazardous to the health or safety of that person or others, or that such employment would result in behavior or production below acceptable standards applied to all other employees."¹⁷

The City Ordinance's definition of "disability" is almost identical to the Illinois Human Rights Act's definition of "handicap." "Disability" means (1) a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder including, but not limited to, a determinable physical characteristic which necessitates a person's use of a guide, hearing or support dog; or (2) the history of such characteristic; or (3) the perception of such a characteristic by the person complained against.¹⁸ The definition includes physical or mental impairments that substantially limit one or more major life activities of a person, such as caring

for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.¹⁹

It is unclear whether the City Ordinance's definition of "disability" would cover **current** drug or alcohol abuse because the City law, unlike the State law, does not address this issue. However, the Chicago Commission on Human Relations, the agency responsible for enforcing the City Ordinance, has indicated that **past** history of drug or alcohol abuse could qualify as a disability.²⁰ As with the Illinois Human Rights Act, coverage of persons with a history of drug or alcohol abuse must be determined on a case-by-case basis.

Cook County also has its own **Human Rights Ordinance** (County Ordinance) which prohibits discrimination on the basis of disability against any individual in hiring, compensation, discipline, and any other condition of employment.²¹ This ordinance applies to any private employer with one or more employees if its principal place of business is in Cook County or the employer does business in Cook County.²² Public employers (federal, state, or local) are not covered under the County Ordinance. The County Ordinance applies to employment that takes place in Cook County, as well as discrimination that occurs in Cook County.²³

¹⁴ Chicago Muni. Code § 2-160-010.

¹⁵ Reg. § 100(11).

¹⁶ Chicago Muni. Code § 2-160-030.

¹⁷ Reg. § 365.120.

¹⁸ Chicago Muni. Code § 2-160-020(c).

¹⁹ Reg. § 100(9).

²⁰ *Coats v. Chicago Housing Authority*, CCHR No. 98-H-241 (May 6, 1999). Also, conversation with Carolyn Dallinger of the Chicago Commission on Human Relations (October 2001).

²¹ Cook County Human Rights Ordinance, No. 93-0-13, § III(B)(1).

²² Cook County Human Rights Ordinance, No. 93-0-13, § II(E)(1).

²³ Cook County Human Rights Ordinance, No. 93-0-13, § III(A).

The County Ordinance, like federal law, defines “disability” as (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 an impairment.²⁴ This definition explicitly excludes impairments relating to the illegal use, possession or distribution of controlled substances.²⁵ The County Ordinance does not address directly the coverage of persons with current alcohol problems or histories of drug dependence or alcoholism. The Cook County Commission on Human Rights has not issued any decisions regarding the coverage of

There is no federal statute that specifically protects individual with criminal records from employment discrimination.

individuals with a history of alcohol or drug use.

The state and federal disability discrimination laws may protect

a client like John who has a history of drug dependence and treatment. First, evaluate whether he is covered by one of these statutes. For example, if John is currently using illegal substances, neither the ADA nor the state or local laws would protect him from discrimination based upon his current illegal drug use. But if he had a drug dependence problem that affected his ability to function in the past and is now in recovery, the ADA, the Illinois Human Rights Act, and the City Ordinance most likely protect him against discrimination on the basis of disability. It is unclear whether the County Ordinance protects John.

The remedies available to persons who believe they have been subjected to discrimination in violation of the federal, state, and/or local laws discussed above are described in Chapter V of this manual.

Protections for Ex-Offenders

There is no federal statute that specifically protects ex-offenders from employment discrimination. However, a policy of denying people jobs on the basis of arrests not followed by convictions, and policies that bar those with criminal records from employment, have been ruled illegal as applied to racial minorities under **Title VII of the Civil Rights Act of 1964**. Since minorities are arrested and convicted at a greater rate than their percentage of the population, courts have found that such policies have a racially discriminatory effect absent a business justification. So, in some cases, a refusal to hire on the basis of a criminal record may be illegal race discrimination under federal law.

The **Illinois Human Rights Act** provides some protection for persons with criminal records. The Illinois Human Rights Act does not prohibit an employer from asking about or considering an applicant’s conviction history when making employment decisions.²⁶ The Act does, however, prohibit employers, employment agencies, or labor organizations from asking applicants about any information on an applicant’s criminal history record that has been **sealed or ordered expunged**.²⁷ It also prohibits employers

²⁴ Cook County Human Rights Ordinance, No. 93-0-13, § II(C).

²⁵ Cook County Human Rights Ordinance, No. 93-0-13, § II(C).

²⁶ 775 ILL. COMP. STAT. 5/2-103(B).

²⁷ 775 ILL. COMP. STAT. 5/2-103(A).

from using expunged criminal history records as a basis for refusal to hire, discharge, disciplinary action, or to determine privileges or conditions of employment.²⁸

How can you use Illinois law to assist John in his job search? The first step in preventing ex-offender employment discrimination is to obtain John's rap sheet so you can familiarize yourself with its contents, ensure its accuracy, and assist him in having any arrests or juvenile adjudications that are eligible for expungement removed from his rap sheet. (See p. 16.) John's criminal history must be reviewed to determine whether the offense is related to the job or any occupational license he may need for a job. This will enable you to make the most appropriate job referrals.

The remedies available to persons who believe they have been subjected to discrimination in violation of the federal or state laws discussed above are described in Chapter V of this manual.

Illegal Pre-employment Inquiries

The simplest way for a prospective employer to learn about John's criminal record and substance abuse history is to ask about it on a job application or during an interview. One of the most serious practical barriers to employment John might face is the bias and stigma

associated with his criminal and substance abuse history. Many employers are hesitant to hire applicants like John because of stereotypes unrelated to his ability to perform the job. However, if you and John are familiar with the legal standards that govern what employers may ask about criminal records and substance abuse history, you can prepare John for a successful job search.

Inquiries About Alcoholism or Drug Dependence History

The federal **Rehabilitation Act** and the **ADA** both limit the kinds of pre-employment inquiries an employer can make about whether or not a job applicant has a current or former disability. Employers may **not** ask job applicants about whether they have or have had a disability, or about the nature or severity of a disability, before a job offer has been made. An employer may only ask questions about whether an applicant can perform the duties of the job before making that person an offer of employment.

As discussed above, the definition of "disability" under both the Rehabilitation Act and the ADA includes a history of alcohol or drug dependence (see pp. 1-2). Asking job applicants a question such as "Have you ever had an alcohol or drug problem?" is therefore an illegal pre-employment inquiry under these federal laws. Employers could, however, ask about current illegal drug use because

²⁸ 775 ILL. COMP. STAT. 5/2-103(A).

individuals with current problems are not protected against discrimination.

Pre-employment medical examinations are also prohibited by these federal laws. However, after making a job offer to an individual, an employer may make medical inquiries and/or require the individual to undergo a medical examination before beginning work. In addition, the employer may condition the job offer on the satisfactory results of such medical examinations or inquiries. But the employer may not use this information in a discriminatory manner. Remedies for violations of the Rehabilitation Act and ADA are discussed in Chapter V of this manual.

NOTE: The ADA explicitly provides that a **drug test** (such as a urinalysis) is **not** a medical examination for purposes of these provisions. This means that employers **may** require job applicants to undergo pre-employment drug tests and may require employees to submit to drug tests without violating the ADA (although other laws may govern whether and when such testing by employers is permitted). But if a drug test reveals information about an applicant's or employee's disability — for instance, a test may reveal an individual's participation in methadone treatment and, if so, his history of heroin addiction — it is illegal for the employer to use this information in a discriminatory manner by refusing to hire or fire the individual on the basis of this information. On the other hand, a test to detect alcohol use is considered a

medical examination under the ADA and can be given only after a conditional offer of employment.

Regulations issued to implement the **Illinois Human Rights Act** also limit the types of inquiries an employer can make about an applicant's "handicap."

Employers are prohibited from requiring a job applicant to disclose all disabling conditions but may ask applicants to identify conditions that may impair their ability to

perform the position being sought.²⁹ Pre-employment physical and psychological examinations are permitted

Employers may require job applicants to undergo pre-employment drug tests and may require employees to submit to drug tests without violating the ADA.

of all applicants who have been found qualified for a position to determine whether they are capable of performing the activities necessary to the job.³⁰

Similarly, the **Chicago Human Rights Ordinance** prohibits an employer from requiring a job applicant to disclose a disability prior to being hired unless the employer can demonstrate that the inquiry is related to a bona fide occupational qualification.³¹ The Cook County Human Rights Ordinance does not address this issue directly.

In John's case, as with all applicants, he should be advised that under the federal law, an employer may not lawfully ask about his history of drug or alcohol

²⁹ ILL. ADM. CODE tit. 56, § 2500.60(a).

³⁰ ILL. ADM. CODE tit. 56, § 2500.60(b).

³¹ Reg. § 320.110.

dependence and treatment prior to a conditional offer of employment. An employer may, however, ask at any time in the application process whether he currently engages in the illegal use of drugs. It also seems clear, although less tested, that these standards apply under both the Illinois and Chicago laws.

Persons who believe they have been asked or denied employment because of illegal pre-employment inquiries about their alcohol or drug problems may file complaints with the federal or state agencies charged with enforcing these anti-discrimination laws or in state or federal court, as discussed in Chapter V.

Inquiries About a Criminal History

No federal or state law prohibits employers from asking job applicants if they have ever been **convicted** of an offense; and employers may legally consider an applicant's conviction(s) in making hiring decisions. And, if an applicant provides

false information about his criminal history, either on an application or in an interview, and the employer discovers the deception, the employer can deny employment to or fire the individual.³²

The **Illinois Human Rights Act** makes it illegal for any employer, employment agency, or labor organization to ask about arrests or criminal history record information that has been expunged or sealed.³³ When responding to questions such as "Have you ever been arrested?" or "List all of your arrests," an individual must only reveal those arrests that have not been expunged. The Act prohibits these entities from using such information as a basis to refuse to hire, promote, or select for training or apprenticeship, segregate, discharge, or discipline the applicant or employee. Individuals who have been asked illegal questions, or have been denied employment on the basis of arrests that did not lead to conviction, may file a complaint with the Illinois Department of Human Rights (see Chapter V).

³² Illinois is an employment-at-will state.

³³ 775 ILL. COMP. STAT. 5/2-103.

II. Dealing with a Criminal Record

Kinds of Offenses

Being familiar with your client's criminal record will help you make appropriate job referrals for your client. It is, therefore, important to understand the process for obtaining a rap sheet in Illinois, as well as what it contains.

In particular, it is useful to know the type of offense(s) your client has been convicted of, as employment restrictions are sometimes defined by the class or severity of offense. An "offense" means a violation of any Illinois penal statute.³⁴ For the sake of this discussion, let us also assume that, in addition to being convicted for drug possession (a felony) two years ago, John was arrested, but not convicted, for theft five years ago.

In Illinois, the following types of offenses are recognized:

Petty Offense: Any offense for which a sentence of a fine is provided. One example of a petty offense is tampering with public notices.

Misdemeanor: Any offense for which an individual may be sentenced to a term of imprisonment for less than one year. A misdemeanor is considered a criminal

offense. Common misdemeanors include disorderly conduct, prostitution, and gambling.

Felony: A serious criminal offense for which an individual may be sentenced to death or to a term of imprisonment in a penitentiary for one year or more. A felony is considered a criminal offense. Common felonies include robbery and burglary.

Business Offense: A petty offense for which the fine is in excess of \$1,000.

Juvenile Delinquency Adjudication: An act committed by a person under the age of seventeen that would be a crime if committed by someone over seventeen years of age.

Whether an offense is considered a criminal conviction — and thus required to be listed on an employment application — depends on the disposition of the crime.

Special Dispositions of Charges

Often criminal charges are disposed of by procedures other than a conviction or

³⁴ 720 ILL. COMP. STAT. 5/2-12.

acquittal at trial. In Illinois, these procedures include:

Dismissal: The equivalent of an acquittal. All charges are dropped and the accused retains the same status he had prior to the arrest. A case ending in a dismissal **is not** considered a criminal conviction.

Supervision (Followed by Discharge and Dismissal): Applies in most misdemeanor cases. After an individual pleads guilty, the court may defer further proceedings and place the individual on supervision for a period of time (not to exceed two years). The court may also require the individual to comply with certain conditions. If the person successfully completes the period of supervision, the court will discharge him and dismiss the case. Supervision followed by discharge and dismissal **is not** considered a conviction under Illinois law.³⁵

Conditional Discharge: A sentence for a conviction although it may not involve any imprisonment. This is a sentence that requires an individual to comply with conditions set by the court. Individuals sentenced to conditional discharge are not required to report to a probation officer. If an individual fails to comply with the conditions set by the court, the discharge can be revoked. Conditional discharge **is** considered a criminal conviction.³⁶

Periodic Imprisonment: Requires an individual to report to a correctional

facility (usually a county jail) daily for a set period of time specified by the judge. Individuals sentenced to periodic imprisonment are able to remain in school or work while serving the sentence.³⁷ A sentence of periodic imprisonment **is** considered a criminal conviction.

Home Confinement: Requires an individual to remain in his home for a period of time specified by an order of probation.³⁸

Dispositions for Drug-Related Offenses

In addition to the dispositions listed above, Illinois has special dispositions for drug-related offenses.

Probation Followed by Discharge and Dismissal: Is available at the discretion of the sentencing court for first-time drug offenders convicted of certain drug possession offenses.³⁹ The term of probation is two years. The sentencing court can require the individual to submit to certain terms as a condition of probation, including periodic drug testing, community service, substance abuse treatment, and employment. If the individual fulfills the terms and conditions of the probation, the court will discharge the individual and dismiss the proceedings against him. This disposition **is not** considered to be a criminal conviction for purposes of employment. If the individual is subsequently convicted of a drug offense within five years, the discharge and dismissal can be considered

³⁵ 730 ILL. COMP. STAT. 5/5-1-21.

³⁶ 730 ILL. COMP. STAT. 5/5-1-4.

³⁷ Criminal Sentencing: Questions and Answers on the Criminal Justice System in Illinois, Criminal Justice Information Authority (April 2000).

³⁸ Criminal Sentencing: Questions and Answers on the Criminal Justice System in Illinois, Criminal Justice Information Authority (April 2000).

³⁹ 720 ILL. COMP. STAT. 550/10 and 570/410.

for purposes of sentencing. This special disposition is available only once to an individual.

Treatment as a Condition of Probation:

If the court believes the individual convicted of a crime suffers from alcoholism or drug addiction, and is likely to benefit from substance abuse treatment, the court may sentence the individual to probation subject to the condition of attending a designated substance abuse treatment program.⁴⁰ This option is discretionary and is only available if the crime is non-violent.⁴¹ If the individual successfully completes the terms and conditions of the probationary sentence, including the treatment component, and has not previously been convicted of any felony offenses, the court may vacate the conviction and dismiss the proceedings.⁴² If the conviction is vacated, the person **is not** considered to have a criminal conviction. However, this decision is discretionary and the court will consider the circumstances of the offense, criminal history, character, and condition of the individual.

Proceedings Involving Minors

In Illinois, a person under seventeen years of age is considered a minor and not criminally responsible for his conduct. In general, a person under seventeen who is accused of taking part in conduct that would otherwise subject him to criminal charges will be processed in Juvenile Court, and, if found guilty, will be adjudicated a delinquent offender. There are laws in Illinois where youth, as young

as age thirteen, who are accused of serious crimes, can be tried in adult criminal court.⁴³ Any person seventeen years or older is considered an adult and may be tried and convicted of criminal charges.

Getting and Cleaning Up Arrest and Conviction Records

As part of the pre-application process for clients with criminal histories, your client should obtain copies of arrest and conviction records and become familiar with the reported information. This is extremely important for several reasons. First, criminal history records are publicly available to employers and other citizens through the Illinois State Department of Police.⁴⁴ In addition, employers can often obtain this information from several other sources, including local law enforcement agencies, the FBI, and consumer reporting agencies. It is important to ascertain exactly what information the employer will obtain whenever possible so that problem areas can be addressed directly. This is especially crucial if the criminal record reveals a history of alcohol or drug dependence. Some examples might be a criminal record that reveals a conviction for possession of drugs or driving while intoxicated, or shows that an individual was required to enter or remain in a treatment program as a condition of probation or in lieu of some other punishment.

⁴⁰ 20 ILL. COMP. STAT. 301/40-10.

⁴¹ 20 ILL. COMP. STAT. 301/40-5.

⁴² 20 ILL. COMP. STAT. 301/40-10(e).

⁴³ 705 ILL. COMP. STAT. 405/5-805(3).

⁴⁴ 20 ILL. COMP. STAT. 2635/2.

Second, arrest and conviction records often contain errors or information that should not be reported. If your client finds this out early in the process, steps can be taken to correct the records before the employer sees them.

Third, often your client will not know the disposition of certain charges or will have forgotten some arrests. Finding out the details will enable the client to present his criminal record to employers in the most accurate and straightforward way possible. Clients who present inaccurate information to employers are frequently

rejected or fired for “lying” during the application process, even though they did not intend to mislead. There is often little anyone can do to help a client in this situation (see p. 34).

NOTE: Obtaining and cleaning up criminal records often takes a

long time — frequently as long as several months. Clients, like John, should begin the process as early as possible in the search for employment — perhaps even before beginning the actual job hunt.

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How to Get Copies of Arrest and Conviction Records

Illinois State Adult Records

In Illinois, the Department of State Police, Bureau of Identification (BOI) is responsible for collecting, maintaining, and disseminating criminal history record information on a “rap sheet.” Criminal history record information is publicly available to employers and other citizens.⁴⁵ Individuals are also entitled to view their own criminal history records. Employers requesting an applicant’s criminal history record must obtain a signed release from the applicant and keep the release on file for at least two years.⁴⁶

A rap sheet contains identifying information such as name, sex, race, date of birth, Social Security Number, criminal information about previous arrests, convictions, juvenile history if the individual was tried as an adult, and sentencing history.⁴⁷

Clients, like John, can obtain their rap sheets through any state law enforcement agency or correctional facility.⁴⁸ To see his criminal history record, John must fill out an Access and Review card and be fingerprinted.⁴⁹ The agency can charge a fee for this service.⁵⁰ The agency will contact John within ninety days to give him an opportunity to review his record.⁵¹

⁴⁵ 20 ILL. COMP. STAT. 2635/5.

⁴⁶ 20 ILL. COMP. STAT. 2635/7.

⁴⁷ ILL. ADM. CODE tit. 20, §§ 107.410 and 1530.10.

⁴⁸ ILL. ADM. CODE tit. 20, § 1210.20(a).

⁴⁹ ILL. ADM. CODE tit. 20, § 1210.20(b).

⁵⁰ ILL. ADM. CODE tit. 20, § 1210.30.

⁵¹ ILL. ADM. CODE tit. 20, § 1210.20.

Illinois State Juvenile Records

Juveniles, their parents or legal guardians, criminal justice agencies, and the juvenile's attorney are permitted access to the juvenile's criminal records.⁵² In cases involving sex offenses, the victim and his attorney also have access to this information.⁵³ However, most juvenile arrest information is kept in Juvenile Court files and **is not** available to the general public except under special circumstances. Whether the general public has access to juvenile information depends on the seriousness of the minor's offense or whether the minor committed this same type of offense previously.⁵⁴ In certain cases, the name, address, and offense of a minor – but not the entire court file – are available to the general public.⁵⁵

In limited circumstances, a juvenile's criminal record may be made available to the minor's school or potential employers, including law enforcement agencies, correctional institutions, and fire departments.⁵⁶ If an applicant is applying for a law enforcement position, the law enforcement agency is permitted to view juvenile court records of those adjudicated a delinquent minor.⁵⁷

Other State and Federal Records

Clients with a criminal history in more than one state should get a rap sheet from each state in which they were arrested or, alternatively, a copy of their federal rap sheet from the Federal Bureau of Investigation (FBI).

Your clients may obtain a copy of their **FBI rap sheet**, which contains arrest and conviction records from all fifty states plus any federal criminal history information, by requesting it in writing from:

U.S. Department of Justice
Federal Bureau of Investigation
1000 Custer Hollow Road
Clarksburg, WV 26306

The letter must specify that the individual is making a request “under the Freedom of Information Act” for his FBI record. Included with the request for records should be the applicant's name and current home address, the place and date of birth, and a set of fingerprints. Fingerprints can usually be obtained from a local police department or criminal court. Charges for this service vary and you should call ahead to find out what they will be. A certified check or money order for the \$18 processing fee (payable to the U.S. Treasurer) must also be included with the letter. The processing fee can be waived if proof of indigence is included with the application. A stamped, self-addressed envelope should also be included.

Federal rap sheets contain state arrest and conviction records as well as records of federal offenses. However, it is worthwhile to consider whether the information contained in the federal rap sheet is worth the time and expense involved in obtaining it. Except for banks and federal agencies, most employers will obtain state rap sheets. In addition, FBI

⁵² 705 ILL. COMP. STAT. 405/1-8(A).

⁵³ 705 ILL. COMP. STAT. 4/5-901(A).

⁵⁴ 705 ILL. COMP. STAT. 405/1-8(C).

⁵⁵ 705 ILL. COMP. STAT. 4/5-901.

⁵⁶ 705 ILL. COMP. STAT. 405/1-8(E) and (F).

⁵⁷ 705 ILL. COMP. STAT. 405/5-901(7).

records are often more incomplete or inaccurate than state records. As discussed before, it is best to ascertain exactly what information the employer will have and plan accordingly.

Access to, and Limits on Dissemination of, Criminal History Records and Information

When an individual requests access to his own criminal history record information, all arrests, convictions, and sentencing history will be disclosed. When an employer requests an applicant's criminal history record, the employer will receive conviction and sentencing history, but no arrest information. The one exception is for an employer that is a criminal justice agency; those employers will receive arrest history, in addition to conviction and sentencing information. In limited circumstances, an employer may also receive information about an individual's juvenile criminal history (see p. 13).

Some employers routinely screen prospective employees by obtaining background investigation reports from a consumer reporting agency. "**Consumer reporting agencies**" (also known as credit reporting or background investigation agencies) are firms that prepare reports on individuals for employment, credit, or insurance purposes. Their reports often contain information about the individual's criminal record, employment history, credit rating, and sometimes past drug or

alcohol problems. The agencies gather this information by checking public records (such as court files) and by talking to former employers and others about the person.

Consumer reporting agencies are regulated by the **federal Fair Credit Reporting Act**.⁵⁸ This law, which applies to jobs that have a salary of less than \$75,000, limits the information about an individual's criminal record history that can be included in a "consumer report." This law also limits the uses of consumer reports. While many states have their own version of the federal law, Illinois does not. Illinois relies entirely upon the federal regulations for consumer protection.

The Fair Credit Reporting Act forbids the reporting of certain negative information that is more than seven years old. For example, information about arrests not leading to conviction may only be reported if they have occurred within the last seven years or the statute of limitations has not expired. Conviction information, however, can be reported regardless of when it occurred.⁵⁹

In addition, the Fair Credit Reporting Act contains protections against inaccurate reports. It is a violation of the federal law for a consumer reporting agency to report any information which it has reason to know is inaccurate. The law requires that agencies "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual . . ."⁶⁰

⁵⁸ 15 U.S.C. § 1681.

⁵⁹ 15 U.S.C. § 1681(c)(a).

⁶⁰ 15 U.S.C. § 1681e(b).

Before requesting a report about a job applicant from a consumer reporting agency, an employer must notify the applicant that a report may be requested. If an “investigative consumer report” is to be obtained, the applicant must first sign a written authorization consenting to the preparation of the report. (An “investigative consumer report” is a consumer report for which information is gathered through personal interviews and written records.) If an employer does obtain a consumer report, the employer must give the individual the consumer reporting agency’s name and address upon written request. The person can then contact the consumer reporting agency, which is required to give him a copy of the report and any other information in the agency’s files concerning him.

If inaccurate or incomplete information appears in a consumer reporting agency’s file, the individual should notify the agency. The agency has an obligation under the Fair Credit Reporting Act to promptly reinvestigate and correct any errors. If the agency finds that an item was in error, it must, upon request, notify any employer who was given the erroneous information during the previous two years about the correction. If the agency, after reinvestigating, still believes that the information is complete and correct, the individual has the right to file a statement with the consumer reporting agency concerning the dispute. Any future reports made by the agency containing that information must state that the information is disputed and include the person’s statement.

It may be wise for John to obtain a copy of his consumer report prior to beginning his job search. First, John can familiarize himself with the contents of his report so that he will be aware of the information prospective employers are receiving. He will also be prepared to dispute any inaccurate information or items with either the consumer reporting agency or the source of the information. Correcting inaccuracies before the potential employer discovers them will alleviate the damage caused by an inaccurate report. If John certifies that he is on welfare or unemployed and planning to seek employment within sixty days, he can receive one free report within a twelve month period.

If inaccurate or incomplete information appears, the consumer reporting agency has an obligation under the Fair Credit Reporting Act to promptly reinvestigate and correct any errors.

How to Correct Mistakes on a Criminal Record

Once your clients have familiarized themselves with their criminal record, they should try to clean up any mistakes that appear on their rap sheet. Some common mistakes are arrests that have no dispositions, erroneous or incomplete sentencing information, and duplication of entries (which may make one arrest and conviction look like several). Such errors or omissions may make your client’s record appear more serious than it really is.

If a client finds errors on his criminal history record, he may challenge the

information by submitting a written request to the Department of State Police to fix the record.⁶¹ If he is not satisfied with the Department's response to his request, he has the right to pursue the matter through the Department's general hearing procedures.⁶² These procedures require the individual to petition for relief to the Department in writing.⁶³ Once the Department has received the client's petition, it will investigate the circumstances.⁶⁴ The Director of State Police may request additional information, including scheduling a fact-finding conference with the individual.⁶⁵ If the Director does not provide relief, the individual can petition for a hearing with an administrative law judge.⁶⁶

If your clients find errors in their federal (FBI) records, they should contact the agency that reported the information to the FBI, e.g. the local police department that reported an arrest in a case where no disposition is shown on the FBI record.

How to Get Criminal Records Expunged

Adult Criminal Records

If your client has arrests that did not result in a conviction, he might be eligible to have those records expunged. However, **if your client has even one**

conviction on his record, as John does, nothing on the record can be expunged.

A conviction is considered to have occurred if the client has served any time, if the court orders the client to pay a fine or court costs in a criminal matter (not including bond money), if probation is ordered (other than for drug offenses), or if conditional discharge is ordered.

The only cases that may be expunged are those that did not result in conviction, such as:

Dismissal or not guilty order, including arrests where charges were never brought. These cases can be expunged immediately.⁶⁷

Supervision order that can be given for most first-time misdemeanor offenses. Two years must pass before one is eligible for expungement.⁶⁸

Cases involving a sentence of supervision or probation for **special charges**. At least five years must elapse before one is eligible for expungement.⁶⁹

Drug-related cases where a sentence of probation was ordered for offenses such as treatment for drugs and alcohol, violations of Alcoholism and Other Drug Abuse and Dependency Act, first-time offenders of the Cannabis or Controlled Substances Acts (Probation 1410 and 710)

⁶¹ ILL. ADM. CODE tit. 20, § 1210.40(a).

⁶² ILL. ADM. CODE tit. 20, §§ 1200.30(a) and 1210.40(b).

⁶³ ILL. ADM. CODE tit. 20, § 1200.30(a).

⁶⁴ ILL. ADM. CODE tit. 20, § 1200.30(b).

⁶⁵ ILL. ADM. CODE tit. 20, § 1200.30(b).

⁶⁶ ILL. ADM. CODE tit. 20, § 1200.30(e) and (f).

⁶⁷ 20 ILL. COMP. STAT. 2630/5.

⁶⁸ 20 ILL. COMP. STAT. 2630/5.

⁶⁹ Examples of "special charges" include domestic battery, criminal sexual abuse, retail theft, child abuse, driving under the influence, reckless driving, and uninsured motor vehicle.

and violations of Section 10 of the Steroid Control Act. At least five years must pass after successful completion of probation before the individual is eligible for expungement.⁷⁰

The process for expungement is based on the rules in individual municipal districts and may differ according to the district in which the case was processed. It is important to first contact the relevant court in your district and confirm the proper procedures and expungement forms. Usually, you can obtain expungement forms from the Clerk of the Circuit Court. The Clerk's Office is prohibited from preparing the forms, advising the parties how to complete the forms, or advising the parties which form is required.

To apply for expungement, your client must obtain a certified copy of disposition of each case that he wishes to have expunged. These copies cost approximately \$6 and can be obtained from the court clerk where the case was prosecuted. In filing an expungement petition, your client must fill out a "Petition to Expunge and Seal." Your client must list all the case numbers he wants expunged on the petition and attach a copy of the disposition for each case. Once completed, the expungement form and the certified copy of the disposition must then be filed with the Clerk of the Circuit Court. The filing cost is approximately \$60. In some instances, this fee may be waived if the client can demonstrate indigence.

The petition and filing fee must be filed with the Clerk of the Circuit Court. In Chicago, these can be mailed or hand-delivered at the following address:

Clerk of the Circuit Court
First Municipal District
Criminal Department
Richard J. Daley Center – Room 1006
Chicago, IL 60602
(312) 443-5036

In addition to filing the petition with the court, your client may also be required to serve copies of the petition on other parties.

It takes six to eight months to process a petition for expungement. If the judge decides to grant the petition, the court will mail your client a copy of the decision. Expungement decisions are discretionary and can be denied. In some districts the applicant is expected to forward certified copies of the expungement order to the appropriate law enforcement agencies. These copies cost approximately \$4. In addition, this filing often requires an additional filing fee.

If records are expunged, they cannot be obtained without a court order. If the individual is arrested for a similar or identical case, the expunged record can still be used for sentencing purposes by the Department of Corrections, arresting authority, State's Attorney, or by the court. In addition, if a client has his record expunged, it will not appear on his rap sheet. The specific effect of the

⁷⁰ 20 ILL. COMP. STAT. 2630/5.

expungement order depends upon the type of case. Depending on whether the arrest resulted in an acquittal or discharge and dismissal, the criminal record will be sealed, impounded (removed and segregated from other files and restricted in public access), or expunged. (For further information, please consult [How to Review and Clean Up Your Illinois Rap Sheet](#), prepared by the Legal Action Center.)

To assist John, you and he should review his rap sheet to determine if, based on the

Unlike adult records, all records of arrest and delinquency adjudications involving juveniles can be expunged when a person reaches age seventeen or two years after the proceedings end, whichever is later.

dispositions, any charge on it can be expunged. For instance, John's recent conviction that led to his incarceration would not be eligible for expungement relief because he was convicted of a felony, which can never be expunged in Illinois.

Furthermore, because he has a conviction on his record, none of his previous arrests that were resolved in his favor would be eligible for expungement either.

Juvenile Records

Unlike adult records, all records of arrest and delinquency adjudications can be expunged when a person reaches age seventeen or two years after the proceedings end, whichever is later. If your client has more than one adjudication for delinquency, he must wait until he reaches age twenty-one or

until five years after the last proceeding ends, whichever is later. Juvenile adjudications for criminal activity that would constitute first degree murder or a sex offense are not permitted to be expunged.⁷¹ In addition, if the case was transferred to adult court, the client must follow the process for expungement of adult records as discussed above.

Petitions for expungement are available at the Juvenile Court. Unlike adult procedures, hearings are held for juvenile expungement requests. However, the juvenile does not have to be present for the hearing; a parent or attorney can appear in his place. An attorney is not required for these hearings. There is a filing fee of approximately \$64 for each petition, but this fee may be waived if the client demonstrates indigency.

There are other ways to clear a juvenile's record without a waiting period. The first option is to file a **Motion to Vacate** a finding of delinquency. It can be brought either before or after the disposition has been completed. It is recommended that a motion to vacate be filed for each case with the trial judge who heard the case. Your client should state and provide proof that he has followed orders of probation; has engaged in positive outside activities such as school clubs and employment or has an interest in clearing his record now for purposes of future education or employment. If possible, he should include letters from teachers, coaches, and others to affirm the positive changes he has made in his life.

⁷¹ 705 ILL. COMP. STAT. 405/5-915.

When a case is dismissed, the arrest and court referral still appear on the police records. These records can be cleared by filing a **Motion to Vacate Dismissed Case Records**. In order to file this motion, there must have been no findings of delinquency. The motion should be filed for each case with the trial judge who heard the case. If the court rules in your client's favor, he should forward a copy of the disposition to the local and state police departments with the required filing fees to ensure expungement.

It is also possible to file a **Motion to Vacate Supervision** in a situation in which the disposition was supervision, but no finding of delinquency was made. The same materials used to substantiate a Motion to Vacate a finding of delinquency should be used for a Motion to Vacate supervision. Similarly, a separate motion should be filed for each case with the trial judge who heard the case. If the court rules in your client's favor, he should forward a copy of the disposition and the required filing fees to the local and state police departments.

While many Juvenile Court judges do not think they have the authority to vacate or expunge juvenile record, a client should pursue this relief. There are at least two important reasons why expungement should be sought: (1) "court supervision" remains on a person's record and can be accessed by police and prosecutors; and (2) arrests, charges, and court referrals remain on local and state police department records indefinitely.

Whether your client is a juvenile or an adult, it is extremely difficult to get

records expunged without the assistance of an attorney. Clients should be encouraged to seek some sort of legal assistance for help in the process. In particular, Motions to Vacate should be filed by an attorney. Some organizations that assist clients seeking expungement are:

Cabrini Green Legal Aid Clinic

206 W. Division Street
Chicago, IL 60610
(312) 266-1345

Coordinated Advice and Referral Program for Legal Services

910 West Van Buren Street
Suite 700
Chicago, IL 60607
(312) 738-9494

Land of Lincoln Legal Assistance

(limited cases)
(618) 462-0036

Northwestern Children & Family Justice Center (for juveniles)

Northwestern University School of Law
357 E. Chicago Avenue
Chicago, IL 60611
(312) 503-0396

Self Help Legal Center

Southern Illinois University
School of Law
Carbondale, IL 62901
(618) 453-3217

Pardons (Executive Clemency)

If convictions cannot be expunged routinely in Illinois, can an ex-offender like John do anything to mitigate the effect of these convictions? A pardon can

show that an individual has been rehabilitated. However, even if granted a pardon, an individual is still required to list his convictions if asked about them.

Any individual who has a criminal record or is incarcerated in prison is eligible to apply for Executive Clemency. Although the ultimate decision of whether to grant an individual Executive Clemency rests with the Governor, the Illinois Prisoner Review Board reviews all petitions and makes recommendations to the Governor.⁷² There are no limits on who is entitled to petition for Executive Clemency, but, in most circumstances, an individual may file only one petition per year.⁷³ A petition will not be reviewed until a complete petition has been filed and all essential information from other sources has been received.

An individual seeking Executive Clemency must do the following:⁷⁴

- Prepare a typewritten narrative essay written in complete sentences. The essay should explain a brief history of the case and the reasons for seeking Executive Clemency.
- State the offenses for which clemency is being sought, the counties of conviction, case numbers, sentences imposed, dates sentenced, time served, and dates of discharge. Specify whether convictions were the result of jury verdicts, bench trials or guilty pleas. The status of any pending court appeals must be disclosed.

- State the name under which he was convicted, any aliases, social security number, and state prisoner number, if applicable.
- State whether he has previously requested Executive Clemency, and if so, the month and year in which he was considered.
- Provide a detailed statement of the facts of the offenses including dates, places, and all surrounding circumstances. This statement should include the individual's version of the offenses.

A copy of the petition must be delivered or mailed to the sentencing judge (or chief judge of the circuit if the sentencing judge is no longer on the bench) and the current State's Attorney of the county of conviction. The individual requesting Executive Clemency must provide the Board with proof (either an affidavit or registered or certified mail receipt) that the parties above received copies of the petition. This proof should be sent with the petition to the Board.

The individual petitioning for Executive Clemency may request a hearing by the Board when his petition is filed. The names and addresses of any witnesses who would like to testify must be provided to the Board with the written request. The Board will then schedule a public hearing. Petitioners, their supporters, and opponents may attend the hearing, but a personal appearance by the petitioner is not

⁷² 730 ILL. COMP. STAT. 5/3-3-13.

⁷³ 730 ILL. COMP. STAT. 5/3-3-13.

⁷⁴ 730 ILL. COMP. STAT. 5/3-3-13.

required. If the petitioner is incarcerated, a representative may request to speak at the hearing. Testimony at the hearing is informal. Personal presentations are limited to twenty minutes and up to four people may speak during any presentation.

Following review of the petition and/or the public hearing, the Board will make a confidential recommendation to the Governor. Once the Governor makes a decision, the Board will notify the petitioner of the decision.

John should be encouraged to apply for Executive Clemency. While it is not guaranteed he will be granted such relief, it can be an effective mechanism to demonstrate that the state considers him to be rehabilitated.

How to Upgrade a Less Than Honorable Military Discharge

Employers often request military records, especially when an applicant has little work experience. Frequently employers ask for copies of discharge papers (form DD-214) and ask about discharge status. Several types of discharges exist:

- Honorable
- General
 1. Under Honorable Conditions
 2. Administrative
- Undesirable
- Bad Conduct (determined by court martial)
- Dishonorable (determined by court martial)

Most veterans receive honorable discharges, so if your client has a less

than honorable discharge (General or Undesirable), it can pose a serious problem. Discharges are upgraded frequently, so encourage your client to apply.

Any person who leaves military service with less than an honorable discharge can file an application to have it upgraded with the appropriate branch of the service. To apply, your client will need copies of his military records, which can be obtained from:

Military Personnel Records Center
9700 Page Avenue
St. Louis, MO 63132
(314) 263-3901

To facilitate the request, clients should use a Department of Defense Form 180, “Request Pertaining to Military Records.” This form can be obtained by calling the Department of Defense at (703) 697-5737 or by picking one up at a veterans organization. Having all one’s military records is essential for success. Some veterans groups advise applicants who have not secured copies of their records to withdraw their application and resubmit it when they have obtained their records.

People who have a bad conduct or dishonorable discharge that resulted from a special court martial, or those who received less than honorable discharges because of disciplinary action short of court martial, should apply to the Discharge Review Board (DRB) of the appropriate branch of service for a review of discharge. Your client should use Department of Defense Form 293 (DD-293). These forms are available at local

Veterans Affairs regional offices or by calling the Department of Veterans Affairs at (800) 827-1000. Ordinarily, one must apply within fifteen years of the date of discharge from the service. However, anyone wanting to upgrade a discharge that occurred more than fifteen years ago may file a motion with the Board for Correction of Military Records (BCMR) of the appropriate branch of service (see address below). Department of Defense Form 149 (DD-149) should be used if the veteran was discharged more than fifteen years ago.

Board for Correction of Military Records
(C-60)
400 7th Street SW
Washington, DC 20590
(202) 366-9335

If your client's discharge was the result of a general court martial, then he must apply to the BCMR for upgrading. There is no time limit on this application. One also applies to the BCMR to correct any errors found in the discharge papers. After a client applies to upgrade a discharge, the appropriate panel will evaluate the case. If the DRB is handling the case, there will probably be a hearing on the application. Applicants should have representation from an attorney, legal services agency, or a lay advocate. If the BCMR is handling the case, there will probably not be a hearing. Rather, the matter is likely to be decided based upon the written materials submitted on the applicant's behalf. It is best to seek legal assistance in preparing these materials.

For further assistance, contact the following agencies:

American Red Cross of Greater Chicago
111 East Wacker Drive, Suite 200
Chicago, IL 60601
(312) 729-6100
(or check phone book for office nearest you)

Illinois State Division of Veterans Affairs
1010 Dixie Highway
Chicago Heights, IL 60411
(708) 754-6403

American Legion of Illinois
P.O. Box 2910
Bloomington, IL 61702
(309) 663-0361
<http://www.illegion.org>

Disabled American Veterans
Illinois Regional Office
536 South Clark St., Room 494
Chicago, IL 60605
(312) 353-3960

Under the **Illinois Human Rights Act**, an employer cannot discriminate on the basis of military status or an unfavorable discharge from military service.⁷⁵ An "unfavorable discharge" is defined as any discharge from any component of U.S. military service which is less than honorable, but not dishonorable.⁷⁶ However, a person who has received an unfavorable discharge may be excluded from a particular job as authorized by federal law or when a job involves the exercise of fiduciary responsibilities, such as a trustee, broker, or corporate officer.⁷⁷

⁷⁵ 775 ILL. COMP. STAT. 5/1-102(A).

⁷⁶ ILL. ADM. CODE tit. 56, § 2510.20.

⁷⁷ ILL. ADM. CODE tit. 56, § 2510.40.

III. Preparation to Prevent Discrimination

Once an employer has rejected an applicant, it is much harder to get the decision reversed than it would have been to prevent it initially. Preparing your client for the hiring process can often avert a rejection based on the client's alcoholism or addiction history or criminal record. So, before your client applies for employment, learn about the the applicant, his background, the prospective job, and the hiring process.

Learn About the Job and the Hiring Process

Exploring the requirements of the job in advance enables you to anticipate the employer's concerns and to help your client assemble the information and documentation that will address those concerns. The information you need to gather about prospective employers may be obtained by asking questions any good job developer would ask as a matter of course. Knowing about the hiring process can reduce the anxiety that everyone feels when applying for a job. In addition, knowing how the employer makes hiring decisions will enable you to ascertain whether an employer is treating your clients differently than other applicants. Some questions you should ask include:

- What kinds of jobs are available?
- How many positions are open?
- What duties does the job entail?
- Is there a standard application form? (The applicant should secure an extra copy whenever possible.)
- Is there an interview? Who conducts it?
- Who makes the final hiring decision?
- How long does the process usually take?
- How are applicants usually notified about hiring decisions?
- Is a medical examination required? Does it involve urine testing or other screening for drug use? What drugs will be identified?
- Are applicants fingerprinted?
- Does the employer run a routine check with law enforcement agencies for applicants' criminal records?
- Does the employer obtain reports on applicants from a consumer credit reporting agency?

Learn About the Client

The importance of having a thorough interview with your client before he applies for a job cannot be overstated. The goal is, of course, to anticipate potential difficulties and help applicants present themselves in the best possible

light. You should explore every aspect of a job seeker's past that an employer might want to know about. This may require

You should explore every aspect of a job seeker's past that an employer might want to know about.

digging into the person's background beyond the point dictated by considerations of privacy or tact. You should explore inconsistencies or improbabilities until you are convinced that you have the entire,

unvarnished story. It is important to realize that clients may be reluctant to reveal potential problems out of fear that you will somehow disapprove or not assist them. Recognize this concern and confront it in a straightforward way.

What Questions to Ask: The Pre-application Interview

History of Drug or Alcohol Problems

Find out the exact nature and duration of your client's past alcohol or drug use. Review with your client all the treatment services he has participated in. If he has undergone treatment, find out where and when, and then contact the treatment programs to discuss your client's record. You should confirm the client's treatment history and readiness for employment with the treatment program's medical and counseling staff. Determine his progress

and whether there is evidence of continued use. Remember that you must obtain your client's written consent before contacting a drug or alcohol treatment program.

Since John received substance abuse treatment while in prison, you should try to find out what kind of treatment he received and whether he has certification for completing the treatment program. Also, you may want to find out whether he has received or is currently receiving community-based treatment and other after-care services, and, if so, obtain any available progress reports.

Arrest and Conviction History

For each arrest you should determine the date, the exact charges, and the disposition of the charges. (See Chapter II, "Dealing with a Criminal Record.") If the arrest resulted in a conviction, obtain the name of the court in which the conviction was issued and the sentence imposed, and learn how and where the sentence was served. Determine whether your client is still on probation or parole, and, if so, identify his supervisor.

Like many clients, John is unclear about the date, disposition, and exact nature of his first arrest. Advise him to get a copy of his official criminal record to determine this information, including whether this charge occurred when he was a juvenile. The criminal record will also refresh John's memory about other criminal charges he may have forgotten.

Employment History

Find out about all of your client's former jobs. Determine where the client worked, length of employment, and the job responsibilities. Pay special attention to the client's reason for leaving a position – make sure it is specific and that you know all the circumstances surrounding it. For example, ask if your client resigned instead of being terminated. Determine if your client was ever subject to a disciplinary action. Find out if the client was ever denied unemployment compensation.

Military History

An employer may ask your client if he has served time in the military. Find out whether your client was subject to court martial or disciplinary action short of court martial. Ask whether any tours of duty were unexpectedly shortened. Determine the status of the discharge and, if possible, get a copy of the discharge papers (Form DD-214). Remember that “under honorable conditions” is

not the same as “honorable.” (See “How to Upgrade a Less Than Honorable Military Discharge,” pp. 21-22.)

Unexplained Time Gaps in History

If there are substantial periods of time not accounted for by employment, education, the military, incarceration, or treatment, investigate them thoroughly. These periods are often warning flags to an employer.

A pre-application interview should also explore positive traits and accomplishments that can be worked into an interview or can be highlighted on a job application form. The most important traits are those that counterbalance the applicant's weak spots. For example, while John was incarcerated, he participated in substance abuse treatment and obtained vocational training. When speaking about this period of his life, he should emphasize that he pursued opportunities to deal with his substance abuse problem and obtain marketable skills.

IV. Applying for the Job

The Job Application

After you have learned about your client's background, the job, and the hiring process, providing guidance on how to apply for the job is crucial. If possible, get a copy of the job application from the employer. If the employer will not release the application, ask your client to bring a copy so you can assist him in completing it. Be sure your client understands how to answer all questions to his advantage.

In general, job seekers should limit their responses to the scope of the inquiry. For example, if an application asks a person to list all "convictions," the applicant should list those convictions that resulted in any time served, costs, fines, probation, or conditional discharge, but should not list any arrests not followed by a conviction (for example, an arrest resulting in acquittal or dismissal). If an application asks only about "arrests," the applicant does not need to list any arrests or convictions since this is an illegal question. If an application asks only about a current drug problem, past dependence should not be mentioned. It is, therefore, important for you and John to be familiar with his criminal record and his drug history so that you can prepare him to answer these types of questions.

When in doubt, however, it is usually more prudent to reveal than to withhold;

an employer who discovers anything that the applicant has not disclosed may give it more attention than it deserves, and may even accuse your client of willful misrepresentation. Advise clients that they are under no obligation to volunteer information about their drug or alcohol histories or criminal records, or about any other troublesome aspect of the past. However, a job seeker should not attempt to evade an ambiguously worded inquiry when the questioner's intent is clear.

Many employers have access to your clients' criminal records. Because rap sheets may be incomplete or inaccurate, one of the most important things many of your clients can do to dramatically improve their job prospects is to clean up their criminal record. (See Chapter II.)

Disclosing Alcohol or Drug Dependence or Criminal History

Employers may ask questions concerning a person's history of alcohol or drug dependence after making a conditional offer of employment. Employers may ask pre-employment questions about arrests that have not been expunged and criminal convictions. When preparing to discuss their alcohol or drug use or criminal history, clients, like John, should bear in mind that employers have the following

prejudices and beliefs about people in recovery or ex-offenders:

- the job seeker continues to abuse alcohol or drugs or is still committing crimes;
- the job seeker will relapse or revert to crime;
- drug dependence, alcoholism, or a criminal record stems from a fundamental character flaw;
- alcoholism or drug dependence results in lasting physical and/or psychological impairment; and
- all persons with former alcohol or drug problems and ex-offenders are unreliable and irresponsible.

Your client can overcome these prejudices by minimizing the negative aspects of his record and emphasizing the positive. Your client can minimize an addiction or alcoholism history by describing it honestly and succinctly. He can put it into perspective by describing briefly any family problems or other circumstances that helped cause or foster the problem. If relevant, a client can also mention his relative youth at the time he was using, and stress the length of time he has been drug- or alcohol-free, or successfully participating in treatment.

If some of your clients have a criminal record, they should try to limit its negative aspects by placing it in context. Your clients **should not** try to rationalize

their behavior after the fact, or assert innocence of crimes for which they have been convicted, or dispute the seriousness of any conviction. Advise clients that these tactics are usually counter-productive. The average employer will assume that the job seeker either has difficulty facing reality or thinks the employer can be conned.

Your clients **should** inform the employer of any mitigating circumstances connected with a

criminal record. For example, a client can point out the relationship between his convictions for driving while intoxicated and his then-untreated alcoholism; this allows him then to argue persuasively that, having successfully conquered the underlying problem, he has conquered both. Another client might successfully emphasize that his last conviction was ten years ago. A third individual could note that he was only seventeen years old when he committed the only serious offense for which he was convicted.

Your client can overcome these prejudices by minimizing the negative aspects of his record and emphasizing the positive.

In John's case, he should emphasize the substance abuse treatment, vocational training, and educational courses he successfully completed while incarcerated. If he has continued to participate in community-based substance abuse treatment, he should obtain letters from those providers and inform the employer of that as well.

Demonstrating Rehabilitation

Your client can emphasize the positive by demonstrating his rehabilitation. Make sure your client meets an employer only when ready with a firm statement of his rehabilitation efforts. To help your client stress the positive parts of his background, look carefully at the following items:

- **Progress in Treatment Program**

If your client has decided to reveal his addiction or criminal history, he should consider mentioning his participation in treatment or counseling. If your client has a good record in the program, he will almost certainly want to inform a potential employer of this. For example, your client might well want to mention that he has participated voluntarily in drug treatment for three years, particularly if periodic testing at the program verifies that he has not reverted to drug or alcohol abuse during that period.

- **Previous Employment Record**

If your client had been consistently employed during any period, either before or after becoming involved with alcohol, drugs or crime, emphasize the fact. Highlight good performance at and low absenteeism in previous positions, especially if the jobs involved difficult working conditions such as irregular hours or compulsory overtime.

- **Educational Achievements**

What your client studied may not be nearly as important as the fact that he attended a school or training program.

For example, if a client's two-year residence in an alcoholism treatment program appears on his resume as a two-year gap between jobs, he can effectively stress his faithful attendance at a community college during those two years.

- **Social and Religious Activities**

Your client should stress any such activities, particularly those that demonstrate reliable performance tasks that would be related to the particular crime. For example, if he has a conviction for larceny or embezzlement, the fact that he is responsible for the cash at a neighborhood fund-raising event will be impressive.

- **Military Achievements**

A good military record, especially if it displays commendations, educational achievements, or other special accomplishments, can be helpful. It shows an ability to work well in a structured environment.

The job seeker should also include letters of recommendation from former employers if they are willing to provide them. Your client should send letters of recommendation from clergy, community leaders, or anyone else who might impress an employer. Employers tend to worry about whether applicants will make stable and reliable employees, so letters of recommendation should address that issue as favorably as possible.

You should also be aware of a federal program that encourages the employment of people in recovery and ex-offenders:

the **Work Opportunities Tax Credit Program**. Under the program, employers receive substantial tax credits over two years for each person hired from the target group before January 1, 2002.⁷⁸ Educating the employer about such tax advantages could make the difference in a job decision for a marginal client. To find the specific requirements for the tax credit in your area, contact the Illinois State Department of Employment Security at (312) 793-6805.

Another federal program helps ex-offenders and individuals in recovery obtain bonding. Employers often require bonding for employees in positions like messengers, cashiers, or stockbrokers, to name just a few. The **Federal Bonding Program (FBP)** may bond a person who has been offered a job conditioned upon his being bonded, even if he has been denied bonding by a private insurance company. The FBP will insure individuals for up to \$5,000 or \$10,000 (depending on the nature of the job) for a maximum of six months. The FBP is available at no charge to either employer or employee. After the six month period ends, the bond can be renewed through the FBP, but the employer or employee must pay for it. There are a limited number of bonds available each year. Contact the Illinois State Department of Employment Security at (312) 793-6811 for eligibility and availability information.

The **Illinois State Department of Employment Security** is responsible for

assisting an ex-offender in obtaining employment after release from prison. The Department is also charged with assisting ex-offenders in retaining suitable employment upon discharge until the individual is able to become self-reliant.⁷⁹

Some Special Problems

Felony Bars to Employment

Many types of employment require a person to undergo an intensive criminal background check process. In some positions, where employees are responsible for the direct care of another person, certain convictions can serve as an absolute bar to employment.

In Illinois, a license is required for any person, group of persons, or corporation that works with children or arranges for their care.⁸⁰ All applicants for licenses and employees of child care facilities must submit to a criminal background investigation by the Department of Children and Family Services.⁸¹ This investigation will include a review of both arrest and conviction history. No applicant will be granted a license or is allowed to be employed in a child care facility if they have ever been declared a “sexually dangerous person”⁸² or convicted of committing or attempting to commit any of the forty-two listed offenses in section 10/4.2 of the Child Care Act of 1969.⁸³ (See Appendix A for list of crimes.)

⁷⁸At the writing of this manual, the Work Opportunities Tax Credit Program had expired. However, it is anticipated that the program will be re-extended by Congress in the spring of 2002.

⁷⁹ 20 ILL. COMP. STAT. 1015/1d.

⁸⁰ 225 ILL. COMP. STAT. 10/4.

⁸¹ 225 ILL. COMP. STAT. 10/4.1.

⁸² 725 ILL. COMP. STAT. 205/0.01 *et seq.*

⁸³ 225 ILL. COMP. STAT. 10/4.2(b).

A license is also required in Illinois to operate a foster family home. The law prohibits any person who has been convicted of committing or attempting to commit any one of fifty-two listed offenses from operating or residing in a foster family home.⁸⁴ (See Appendix B for list of crimes.) However, these criminal bars can be lifted if all of the following requirements are met:⁸⁵

- the relevant offense occurred more than ten years before the date of application;
- the applicant disclosed the conviction(s) for purposes of the background check;
- during the background check, the conviction was assessed and waived in compliance with the law; the applicant meets all other requirements and qualifications to be licensed as a foster family home; after the disclosure, the child was placed in the home or a license was issued; and
- the applicant has a history of providing a safe, stable home environment and appears to be able to continue.

Individuals with certain kinds of criminal records are also prohibited from being employed as health care employees, including home health care aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel, and similar health-related occupations where employees provide direct care, unless the individual receives a waiver from the Department of Human Services

permitting such employment.⁸⁶ The following mitigating circumstances may justify the granting of a waiver:

- the age of the applicant when the crime was committed;
- the circumstances surrounding the crime;
- length of time elapsed since the conviction;
- criminal history since the conviction;
- current employment references;
- work history;
- character references; and
- other evidence that the applicant does not pose a threat to the health or safety of residents, patients, or clients.⁸⁷

A waiver, however, does not obligate a health care employer to offer employment to an applicant.⁸⁸ In addition, it is a misdemeanor for a person whose profession is job counseling to knowingly counsel a person who has been convicted of one of the prohibited offenses to apply for a position with a health care employer that involves direct care unless the applicant has been granted a waiver.⁸⁹

Correcting an Employer's Misinformation

Your client may still encounter difficulties even if he both discloses his alcohol, drug, or criminal history and presents evidence of rehabilitation to a potential employer. Frequently, an employer obtains criminal record information or information about a client's alcohol or

⁸⁴ 225 ILL. COMP. STAT. 10/4.2(c).

⁸⁵ 225 ILL. COMP. STAT. 10/4.2(d).

⁸⁶ 225 ILL. COMP. STAT. 46/15 and 46/25(a) and ILL. ADM. CODE tit. 59, § 119.261.

⁸⁷ 225 ILL. COMP. STAT. 46/40(b).

⁸⁸ 225 ILL. COMP. STAT. 46/40(f).

⁸⁹ 225 ILL. COMP. STAT. 46/60(a).

drug problem from an independent source. In these cases, the employer may know more about an applicant than the applicant has been asked to reveal.

As stated previously, the employer may obtain a rap sheet that contains errors, information that should have been expunged, information about commitments to alcohol or drug treatment programs, or data about alcohol- or drug-related charges that an employer may interpret as evidence of drug or alcohol dependence. This leaves the applicant in an awkward position, since he may not have an opportunity to comment on information – some of it incorrect – that may adversely affect the employer’s decision.

There is no single prescription for handling this problem. Usually, if the applicant knows that the employer has obtained damaging misinformation, it is prudent to correct it even if the explanation carries him beyond the scope of the initial inquiry. In less clear-cut situations, what an applicant should do depends upon such factors as:

- whether he can determine what information the employer has obtained;
- whether that information is accurate;
- whether it can be explained effectively; and
- whether the explanation is potentially more damaging than what the employer has already discovered.

Your client should certainly correct any errors that appear on his criminal history record before the employment process begins. If that is not possible, and your

client knows that the employer will obtain his rap sheet, it is advisable to provide the potential employer with copies of court records for the items in error even if the employer does not request them. Doing so at the outset will demonstrate to the employer that your client wishes to be candid about his record and should minimize the damaging effect of any erroneous information.

Polygraph Tests

The federal **Employee Polygraph Protection Act of 1988 (EPPA)** makes it illegal for virtually all private employers to use polygraph or “lie-detector” tests on job applicants, and it severely restricts their use on employees.

Employers are generally prohibited from requiring or requesting any employee or job applicant to take a polygraph test and from discharging, disciplining, or discriminating against an employee or prospective employee for refusing to take a polygraph test. However, federal, state, and local governments are **not** affected by the law. Government employers may, therefore, impose polygraph tests.

The EPPA permits polygraph tests to be administered in the private sector to

Employers are generally prohibited from requiring or requesting any employee or job applicant to take a polygraph test and from discharging, disciplining, or discriminating against an employee or prospective employee for refusing to take a polygraph test.

prospective employees of certain companies providing security services (armored cars, alarm systems, or guards), and to certain prospective employees of pharmaceutical manufacturers or distributors. The EPPA also permits private firms to ask an individual employee to take a polygraph test when the employee is reasonably suspected of involvement in a workplace theft that resulted in economic loss to the employer.

Where polygraph tests are permitted, they are subject to numerous strict standards concerning the conduct of the test. People being examined have a number of specific rights, including the right to written notice before testing, the right to review the questions before being hooked up to the polygraph machine, the right to refuse or discontinue the test, and the right not to have the results disclosed to unauthorized persons.

Employers who violate the EPPA are subject to civil penalties of not more than \$10,000 and injunctive actions by the Secretary of Labor. Individuals subjected to polygraph examinations in violation of the EPPA may also file civil lawsuits within three years of the violation.

Illinois law generally allows governmental employers to administer pre-employment polygraph tests. However, because the **Illinois Human Rights Act** prohibits these employers from asking job applicants about arrests that did not result in conviction, or about criminal history information that was

sealed or expunged, such inquiries would violate the law.⁹⁰ In addition, pre-employment inquiries about a history of or past treatment for alcohol or drug abuse may also violate the Illinois Human Rights Act's prohibition against employment discrimination based upon a disability that is unrelated to the applicant's present ability to perform the job.⁹¹

How to Respond to Illegal Questions

Now that you know how to recognize illegal questions (see pp. 6-8), you and your client must confront the real issue: how to respond. If you anticipate the problem far enough in advance, you may be able to get the employer to eliminate an illegal question. You or an attorney can, without revealing the identity of the client, advise the employer of the illegality of the inquiry and the employer's potential legal liability.

If that approach is unsuccessful, or if time is of the essence, what should an applicant do? He can assert the legal right to refuse to answer the question, but the employer's response may be to deny employment for failure to cooperate. You could then elect to challenge the denial by filing a complaint or lawsuit under the laws discussed in Chapter V, "Job Rejection." Or the applicant can simply answer the question, recognizing that doing so helps the employer defeat the very purpose of the law at issue. When deciding which approach to take, consider:

⁹⁰ 775 ILL. COMP. STAT. 5/2-103.

⁹¹ ILL. ADM. CODE tit. 56, § 2500.60.

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- how badly the applicant needs the job;
 - how damaging his answer would be;
 - how likely it is that the applicant would prevail in a legal challenge arising from a refusal to answer the question; and
 - how committed your program is to pursuing the matter to a hopefully-not-bitter end.

Lying

Everything we have said so far presupposes that the job seeker candidly and fully responds to questions concerning alcohol or drug problems or convictions. A question that frequently comes up is, “Should my client lie about his record?” The best advice is to tell the truth. Wholly apart from ethical considerations, a number of factors militate against lying. Where statements on an application or elsewhere are made under oath, knowingly making a material misstatement leaves one open to the risk of criminal prosecution. While it is unlikely that criminal charges would be brought against someone who lies on an employment application, the severity of the possible sanction suggests that it is a gamble not worth taking. The chances of successfully reversing such a rejection are almost non-existent.

Even if a client doesn’t actually make false statements on an application, failing to answer specific questions may cause an employer to reject the person for omitting material information. These decisions are also difficult to challenge.

If your client manages to obtain the job without the employer detecting his record, his problems may not be over. Some employers do not fingerprint people until after they have been hired. Others routinely encounter delays in securing criminal record information, scheduling physical examinations, and verifying statements on the application. If the criminal record or drug or alcohol history subsequently comes to light, the employer may fire your client for having lied or omitted material information on the application. Even if you suspect that your client’s history was the primary factor motivating the employer, the employer would likely win an administrative hearing or lawsuit challenging the dismissal if there was a misrepresentation of a material fact; nearly all administrative agencies and courts consider misrepresentation on an application a legitimate reason for terminating an employee.

V. Job Rejection

Informal Resolution

If a potential employer rejects your client when he applies for a job, try to determine if the client's alcohol, drug, or criminal history affected the decision. When making this determination, consider your client's qualifications for the job. For example, if your client has three years' experience as a grocery store cashier and was denied a job as a restaurant cashier after revealing a conviction for possession of drugs, you can be fairly sure that his conviction influenced the decision regardless of the reason given for rejection.

When you feel reasonably certain that your client's history contributed to his rejection, the next step is to get the employer to admit this. Without such an admission, your efforts to resolve the matter informally (without resorting to formal legal proceedings) will probably fail. Moreover, even when formal legal measures are available, pursuing such remedies requires time, energy, and money. Attempt an informal resolution first.

Sometimes, if your client asks politely why he was not hired, he will be told that it was because of his alcohol or drug use and/or criminal history. If asking does not work, it may help if you become directly involved. The circumstances surrounding your client's rejection will determine how you should approach the employer to

learn the reason for your client's rejection. In certain cases, it may be appropriate to refer your client to another employer. If you want to pursue the opportunity with the same employer, you may consider writing a nonthreatening letter — something on the order of “I'm anxious to do a better job preparing people for employment and would therefore like to know what it is about Mr. Doe that made you decide not to hire him.” You may want to use a less direct approach if you suspect the employer may have an absolute ban on hiring ex-offenders. In these cases, you may send a letter stating your interest in placing former offenders in meaningful jobs and inquiring about possible openings. Another option, to avoid alienating the employer, is to have someone unconnected with your agency (such as a legal services attorney) ask the employer about its policy toward your client groups.

If the employer is uncooperative or continues to claim that the applicant's history did not affect the decision, you may have to turn to the more formal measures discussed later. If, however, the employer admits (or the records show) that your client's record may have

If a potential employer rejects your client when he applies for a job, try to determine if the client's alcohol, drug, or criminal history affected the decision.

influenced the rejection, ask for an opportunity to discuss the matter. You are an excellent mediator for this task. You know your client well and have researched the duties of the job. Thus, you can explain to the employer that your client's abilities closely match the requirements of the job. Keep in mind the same employer prejudices and concerns that you had prepared the applicant to address.

Stress the qualifications and employability of the individual who has been rejected. Explain to the employer how your program operates. Help the employer understand that:

- the program is designed to get at the root of the alcoholism, addiction, or criminal problem;
- persons with former problems who are drug- or alcohol-free can remain that way;
- ex-offenders can stay out of trouble with the law;
- employees maintained on methadone are indistinguishable from their co-workers in every material respect; and
- other comparable employers have knowingly hired individuals in recovery and ex-offenders and have not regretted the decision.

In making a case for a particular client, assure the employer that the applicant is in fact sober, drug-free, or successfully participating in treatment. Explain what the person has done to become job-ready and demonstrate that he is responsible, stable, and respectful of others.

Demonstrating this will vary from case to case, but remember that simply asserting that the job seeker possesses these traits is usually insufficient. Highlight activities (consistently arriving on time for therapy), accomplishments (successfully completing a series of courses), and experiences (getting married) that support your assertions.

Sometimes it is appropriate to remind the employer of potential legal liability if he or she persists in denying your client a job. Approach this issue carefully. If you are too heavy-handed, the employer may take offense and refuse to try to work things out amicably. If, on the other hand, you soft-pedal the issue by mentioning potential liability as "a factor that everyone must be aware of," you may succeed in engaging the employer's full attention.

If the employer is recalcitrant or if your attempt to persuade him or her to reverse his or her initial decision proves unsuccessful, decide whether it is worth it to the job seeker and to the program to press the matter further. Among the factors you should consider are:

- Is the applicant able to do the job satisfactorily?
- How strong is the applicant's evidence of rehabilitation?
- How badly does the applicant want or need this particular job?

Stress the qualifications and employability of the individual who has been rejected.

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- What other jobs are available?
 - Are there other factors that might make this applicant attractive to an employer?
 - Have you sent other applicants to the same employer? If so, how have they fared?
 - How many potential jobs does this employer realistically represent?
 - How much time can you devote to resolving the problem?

In short, you should decide whether informal advocacy is more appropriate or whether you should pursue more formal means of resolution.

Administrative Appeals to Public Employers and Occupational Licensing Agencies

Sometime in the future, John may decide to apply for a barbering license to make use of the vocational training he received in prison. If he does, he may experience difficulties getting a license because of his criminal record. In Illinois, the Department of Professional Regulation is entitled to deny, suspend, or revoke the licenses of individuals with certain criminal records.⁹² John would, however, be entitled to a hearing in front of the occupational licensing board if any of these adverse actions were taken against him.

If John is denied a job with a governmental or quasi-governmental employer (for example, a public school, a public hospital, or a regional transportation authority), or is denied an occupational license, he may be entitled to challenge the decision in an administrative appeal to that agency or one designated to hear such appeals. An administrative appeal may include a hearing or it may simply be an opportunity to submit documents and written statements the applicant thinks are appropriate. A licensing agency almost always allows an unsuccessful applicant to appeal his license denial at a hearing before an impartial hearing examiner or panel.

As discussed in the next section, appeals to the Illinois Human Rights Commission are likely to be available both to those who have been denied a job because of their alcoholism or addiction history and because of past arrests that have been expunged.

If an administrative appeal is available, encourage John to pursue it; such appeals can be successful. Try to get a lawyer to represent him. If you are unable to do so, have him request the appeal anyway, making sure the request is on time. Frequently, an individual has as few as thirty days to request an appeal, and sometimes even less time. Once John has requested the appeal, you can return to the question of who should represent him. In most cases the answer is simple: **you** do it. You will already be familiar with the

⁹² 225 ILL. COMP. STAT. 410/4-7.

pertinent facts about John. You are already something of an expert on drug and alcohol treatment and ex-offender issues. You will probably already have a general understanding of the applicable law. In short, you fit the bill.

If there is a hearing, it will probably be informal, and legal technicalities (such as the rules of evidence) will not ordinarily apply. You should, of course, identify yourself as a lay advocate, not a lawyer. Hearing examiners are often not lawyers either, so don't be intimidated by them. Even if they are lawyers, they will probably be less interested in discussing the law than in hearing your client's version of the facts.

In general, you should address the hearing officer as you would a private employer whom you are trying to persuade to reverse an initial decision rejecting an applicant. Educate the officer about drug or alcohol treatment (if it is an issue in the appeal). Emphasize John's strengths and rehabilitation.

The hearing officer will probably allow you to choose how to present John's case. Begin by telling the officer what areas or topics you want to cover and in what order. This will make it easier for the examiner to follow your story and make him less inclined to interrupt your presentation with a line of questions that disturbs your train of thought. This introduction will also give you an opportunity to relax by covering material with which you are relatively familiar.

In presenting John's story, identify the general topics you want to cover and, taking each topic separately, decide what to emphasize. You and John can then prepare a statement covering all the relevant points, which he can read at the hearing. However, you should give serious consideration to drawing out John's story through questions and answers.

You and John should practice this question and answer technique in advance, so that you both feel comfortable with it. Don't worry about framing your questions elegantly. The more conversational your questions, the more relaxed both you and John will be.

Tell John not to try to memorize the answers; otherwise, he will be too nervous about "blowing a line" to concentrate on answering calmly and with assurance. The advantage of a question and answer form of presentation is that **you** can control what John says and the level of detail. If he responds to a question less completely than you had hoped, and you feel that the answer is important, you may simply reword the question and ask it again.

NOTE: You and John should remember two things about these administrative remedies. First, while John may ultimately get the job or license he wants,

In general, you should address the hearing officer as you would a private employer whom you are trying to persuade to reverse an initial decision rejecting an applicant.

the appeal process takes time — sometimes months — before it results in a decision. John should not bank on a good outcome in the meantime. This means that he should keep working or looking for work while the appeal is going forward. Also, keep in mind that the other remedies John may have the right to pursue — such as administrative complaints and/or lawsuits under the anti-discrimination laws discussed below — all have time limits of their own. Those time limits are likely to apply, and keep running, even if John has an administrative appeal pending. If he does not file a discrimination complaint or lawsuit within those time limits (see below), he may lose the right to challenge the employer’s decision under the anti-discrimination laws. So, stay mindful of those time limits even as your client pursues whatever state administrative appeal may be available.

Second, successful administrative appeals of this sort may get John the job or license he wants, but he may not be entitled to other remedies — like back pay or seniority retroactive to the date he was first denied the job or license. The anti-discrimination laws discussed below do offer this broader relief.

If the appeal is unsuccessful, John may be entitled to a further administrative appeal, or to challenge the administrative decision in court, under laws other than (or in addition to) the anti-discrimination laws discussed in this manual. In these circumstances, you should get advice from a lawyer on how best to proceed.

Legal Challenges to Discrimination Against Individuals in Recovery from Alcoholism or Drug Dependence

Formal Legal Challenge Under Anti-Discrimination Laws Against Public Employers

The federal and state laws that prohibit discrimination based on non-job-related “disabilities” may offer your client a variety of remedies to choose from in challenging a public employer’s discriminatory actions.

Federal Law

When a public employer discriminates on the basis of disability, one or both of the federal laws that ban such discrimination — the **Rehabilitation Act** of 1973 and the **Americans with Disabilities Act** of 1990 (ADA) — is likely to apply, and each of these laws gives your client a choice of remedies. If the public employer receives federal grants or other federal financial assistance (and a significant number do), or is a federal agency, your client may file a lawsuit or an administrative complaint against it under Section 504 of the Rehabilitation Act. If the employer is a state or local government or governmental unit, your client may file an administrative complaint and a lawsuit against it under the ADA, regardless of whether it receives any federal funds.

Some public employers are covered by only one of these federal laws, but many are covered by both. And, although each law has somewhat different rules for filing lawsuits and administrative complaints, the federal agencies charged with enforcing them are required to coordinate their efforts to ensure that complaints charging a violation of either or both laws are processed by the proper federal agency (or agencies), and that consistent standards are applied in enforcing both laws. So if an administrative complaint charges an employer with violating the Rehabilitation Act, and the ADA also applies to that employer, the complaint will be deemed dually and simultaneously filed under both laws and will be processed accordingly; and vice versa. What follows is an overview of the rules and procedures for pursuing the remedies available under each of these laws.

Under Section 504 of the Rehabilitation Act, clients who are subjected to discrimination based on their alcohol or drug history by a public employer that receives federal grants or aid have the right to file an administrative complaint or a lawsuit against the employer. You may be able to find out whether an employer receives federal grants or aid by calling its financial, administrative or public relations office.

The time limit for filing a lawsuit in Illinois under the Rehabilitation Act is two years from the date the discriminatory act occurred. Individuals do not have to pursue an administrative complaint before

resorting to a lawsuit under Section 504 of the Act (as is also the case with the ADA, if the lawsuit is against a public employer such as a government agency). Administrative complaints alleging violations of the Rehabilitation Act must be filed with the federal agency that provides the federal grants or other funds to the employer or agency within 180 days of the discriminatory act. To find out where and when to file such administrative complaints, call the federal funding agency's headquarters in Washington, DC, or its regional office in your area. The Federal Information Center at (800) 688-9889 will know where the various federal funding agencies' regional offices are located.

One advantage of filing an administrative complaint under the Rehabilitation Act is that a lawyer is not needed. The complaint can be submitted in the form of a simple letter to the head of the federal agency that gives grants or aid to the employer. The letter should include:

- a statement that the letter is intended to be a complaint under the Rehabilitation Act of 1973;
- the name, address, and telephone number of the person who has been discriminated against;
- a statement that the person has a history of or is in treatment for alcoholism or drug dependence;
- the name and address of the employer who is being charged with discrimination;

- a description of exactly how the discrimination occurred, including a description of the job being sought, the qualifications of the person who was discriminated against, and how that person was treated differently from other job candidates;
- a statement of the date(s) the discriminatory act(s) occurred;
- a list of any questions about past or current alcohol or drug use, dependence or treatment, or other health conditions that appeared on the employment application or medical questionnaire;
- a description of what happened at any pre-employment medical examinations that may have taken place;
- the name, address, and telephone number of the job developer or counselor who may be helping with the complaint;
- the signature of the person who has been discriminated against.

At the top of this letter write “Complaint under Rehabilitation Act of 1973,” and write the same thing on the mailing envelope. Once the complaint has been filed, the government may ask for additional information or may request that the complainant fill out some simple forms.

If a federal agency is the discriminating employer, your client can file a complaint under the Rehabilitation Act with the equal employment opportunity (EEO) office of that agency. This must be done within thirty days of the discriminatory

act being challenged. The Federal Information Center at (800) 688-9889 can direct you to the proper official. Some agencies may require written complaints; with others, you may be able to state your complaint verbally. Check with the agency involved to be sure.

The Americans with Disabilities Act (ADA) does not apply to the federal government, but does apply to all other public employers and agencies, including all state and local governments and governmental units, regardless of the size of the employer. Clients claiming disability-based employment discrimination by one of these public agencies or employers can file an administrative complaint against it under Title I of the ADA with the federal Equal Employment Opportunity Commission (EEOC). They can also file a lawsuit against a public agency in court under Title II of the ADA without first filing an administrative complaint. The time limit for filing a Title II lawsuit in Illinois is two years from the date the discriminatory act occurred. However, please be advised that your client cannot recover monetary damages against a state employer in a Title I (and, most likely, a Title II) lawsuit because of a Supreme Court decision issued in 2001.

The Americans with Disabilities Act (ADA) does not apply to the federal government, but does apply to all other public employers and agencies, including all state and local governments and governmental units, regardless of the size of the employer.

Your clients do not need a lawyer to file an administrative complaint under the ADA. The time limit for filing an ADA complaint with the EEOC is 180 days after the discriminatory act occurred. Clients can file complaints with the EEOC in person, by phone or by mail. The EEOC will request the same kind of information that is set out above for Rehabilitation Act complaints, so your client should have that information at hand when he writes, calls, or goes to the EEOC to file a complaint.

ADA complaints should be filed at the nearest EEOC office. In Northern Illinois, the address of the EEOC regional office is:

U.S. Equal Employment Opportunity
Commission
500 West Madison St., Suite 2800
Chicago, IL 60661
(312) 353-2713

In Southern Illinois, clients should contact the St. Louis District office:

U.S. Equal Employment Opportunity
Commission
Robert A. Young Building
1222 Spruce Street, Room 8.100
St. Louis, MO 63103
(314) 539-7800

The U.S. Department of Justice will also accept complaints charging state and local government employers and agencies with violating the ADA, and will refer them to

the EEOC. ADA complaints filed with the Department of Justice may be sent to:

Coordination and Review Section
P.O. Box 6118
Civil Rights Division
U.S. Department of Justice
Washington, DC 20035-6118

Clients with questions about the ADA and its remedies and enforcement procedures can also call the Department of Justice's ADA Information Line at (202) 514-0301.

State Law

The **Illinois Human Rights Act** which applies to all private employers with more than one employee and all public employers,⁹³ may provide another avenue of relief. Since the Act's prohibition of employment discrimination against a person with a disability includes a past history of substance abuse, John should consider filing a complaint with the Illinois Department of Human Rights.

To initiate a discrimination claim under the Illinois Human Rights Act, an individual must file a charge with the Illinois Department of Human Rights within 180 days of the date on which the discrimination took place. Representation by an attorney is not required, but, if a public hearing is conducted, an attorney is recommended. To find out how and where to file a charge of discrimination, your client should contact the Illinois

⁹³ 775 ILL. COMP. STAT. 5/2-101(B) and 102(A).

Department of Human Rights at one of the offices listed below:

Chicago Office

32 West Randolph Street
Suite 890
Chicago, IL 60601
(312) 793-6200

Springfield Office

623 Stratton Building
Springfield, IL 62706
(217) 785-5100

When filing a charge, your client should include the following information:

- full name, mailing address, and phone number;
- as much information as possible on all parties who were involved in the act of discrimination, especially the correct name and address of the person who discriminated against your client;
- whether there is a charge filed with any other agency;
- the day, month, year, and most recent date the discrimination took place;
- any documents that may be relevant to the charge of discrimination; and
- as much information as you can provide with respect to the discriminatory act including a description of the discrimination, description of the place of employment, status of any witnesses, any reasons provided to you, etc.

Once a charge is filed, notice of the investigation is given to the employer. The Department of Human Rights then conducts a full investigation. At the conclusion of the investigation (which can take up to six months), the Department issues a report documenting its evidence and findings. The Department will either release a notice of dismissal or file a complaint with the Illinois Human Rights Commission. If the Department does not issue a notice of dismissal or a complaint within one year after the date the charge was filed, your client has thirty days past the one year mark to request a public hearing on the charge by filing a complaint at the Commission's Office.

Once a charge is filed, notice of the investigation is given to the employer. The Department of Human Rights then conducts a full investigation.

If the Department issues a notice of dismissal for lack of substantial evidence, your client may appeal the dismissal to the Department's chief counsel within thirty days of the date of dismissal.

If the Department of Human Rights finds evidence of a violation of the Act, the Department will try to settle the charge, often through a mediation process. If a settlement is not reached, a complaint will be filed with the Human Rights Commission. Once a complaint is filed, it is assigned a date for a public hearing in front of an Administrative Law Judge (ALJ). Following the hearing, the ALJ

will recommend a finding to a panel of commissioners who make the final decision. The Commission may order the employer to pay damages, hire, reinstate, or promote the individual, or offer back pay, to remedy the discriminatory action. This order may be appealed by either party. Appeals must be made within thirty-five days of the order to the Illinois Appellate Court located in the district where the discrimination took place.

Formal Legal Challenges Under Anti-Discrimination Laws Against Private Employers

Federal Law

As with public employers, the federal **Rehabilitation Act** reaches some, and the **Americans with Disabilities Act** reaches many more (but not all) private employers. Again, because some private employers are covered by both federal laws, your client may have the option of filing a formal administrative complaint against the employer under either or both the Rehabilitation Act and the ADA. The federal agencies charged with enforcing these two laws (see below) are coordinating their enforcement efforts so that complaints will be referred to the proper agency for processing.

If the employer is a private company that holds a federal contract or receives federal funds, like the employer John applied to, your client can file a formal administrative complaint against it under the Rehabilitation Act. In the case of a federal contractor (Section 503 of the

Rehabilitation Act applies to those who hold federal contracts of \$2,500 or more), the client should file a complaint with the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) at the address below, or call (202) 693-0101 to locate an office in your region. Complaints must be filed within 300 days of the discriminatory act.

To determine whether an employer is a federal contractor, contact the OFCCP at the following address or phone number.

U.S. Department of Labor
OFCCP/ESA
230 South Dearborn Street
Chicago, IL 60604
(312) 353-0806

Individuals claiming discrimination by federal contractors in violation of Section 503 of the Rehabilitation Act do not have the right to bring a lawsuit against the employer under that provision. But if the ADA also applies to that employer — and it will if the company employs fifteen or more permanent employees — a lawsuit is permitted (see below).

If the private employer receives federal grants or aid, Section 504 of the Rehabilitation Act applies just as it would to a public employer. Your client should file a complaint within 180 days of the discriminatory act with the regional office of the federal agency that provides the funds to the employer. As noted above, your client can identify the regional office of the various federal agencies by calling the Federal Information Center at (800) 688-9889.

If the funding agency does not have a regional office, file the complaint with the agency's national headquarters in Washington, DC.

Regardless of whether a private employer is covered by the Rehabilitation Act (because it receives federal contracts or funds), your client may file an administrative complaint against that employer under Title I of the Americans with Disabilities Act if it employs at least fifteen people. The administrative procedures and time limits identified on pp. 41-42 also apply to complaints against private employers. ADA complaints against private employers must be filed with the EEOC (see p. 42 for contact information). Individuals charging a private employer with violating the ADA can also file a lawsuit, but only after completing the EEOC administrative process. The EEOC will issue a "right-to-sue" letter to the complainant after a certain period of time, which authorizes the filing of a lawsuit.

Thus, in John's case, if he believes the employer rejected him for a job he is qualified to perform because of his past drug dependence, he could challenge that decision by filing a complaint with the EEOC alleging a violation of the ADA.

State Law

The **Illinois State Human Rights Act** applies to all private employers with more than one employee, as well as all public employers in Illinois.⁹⁴ As mentioned

earlier, the Act applies to persons with a past history of alcohol or drug abuse (see p. 3). For information on how and where to file a charge of discrimination, see pp. 42-44.

Local Remedies

Individuals who are employed in Cook County or are discriminated against in Cook County may file a complaint with the Cook County Commission on Human Rights claiming a violation of the **Cook County Human Rights Ordinance**.⁹⁵ A written complaint must be filed with the Cook County Commission within 180 days of the last date of the violation. The complaint should provide enough detail including time, place, and facts surrounding the alleged discrimination to set forth a case of discrimination under the Ordinance. Once a complaint has been filed, the employer will be notified by the Cook County Commission.

The Cook County Commission will investigate the complaint to determine whether there is substantial evidence that a violation of the Ordinance has occurred. The Commission may defer its investigation if the complaint has also been filed with another agency, such as the Illinois State Department of Human Rights. If the Commission determines that there is not substantial evidence that a violation occurred, it will notify both parties in writing. An individual has thirty days from receipt of this notice to file a request for reconsideration with the Commission.

⁹⁴ 775 ILL. COMP. STAT. 5/2-101(B).

⁹⁵ Cook County Human Rights Ordinance No. 93-0-13(X)(B).

FEDERAL AND STATE REMEDIES FOR EMPLOYMENT DISCRIMINATION BASED ON DISABILITY

| Statute | Type of Employer | | Where to File Complaint | | Deadline for Filing | |
|---------------------------------------|--------------------------------------|----------------------|-------------------------|--|---------------------|--|
| | Private | Public (state/local) | Administrative Agency | Court | Agency | Court |
| FEDERAL ADA | | | | | | |
| Title I | Yes (15 or more permanent employees) | Yes | EEOC | Following Right to Sue Letter | 180 days | 90 days after Right to Sue Letter |
| Title II | No | Yes | EEOC | No exhaustion requirement | 180 days | 2 years |
| Rehabilitation Act | | | | | | |
| Sections 501 & 504 (Federal Employer) | Federal Gov't only | Federal Gov't only | Federal Agency | Exhaustion required | Generally 180 days | 90 days — if final agency action 180 days — if no final agency action |
| Section 503 | Federal contract | Federal contract | Dept. of Labor OFCCP | No private action | 300 days | N/A |
| Section 504 (Non-federal Employer) | Federal assistance | Federal assistance | DOJ or funding agency | No exhaustion requirement | 180 days | 2 years |
| ILLINOIS | | | | | | |
| IL Human Rights Act | Yes (1 or more employees) | Yes | Dept. of Human Rights | Following final order from Human Rights Commission | 180 days | 35 days after final order from Human Rights Commission |

If the Cook County Commission determines that there is substantial evidence that a violation of the Ordinance occurred, it may seek a settlement between the parties or conduct a hearing on the complaint. Once the hearing officer makes his findings of fact, each party is given an opportunity to file with the Cook County Commission a brief on exceptions to the hearing officer's findings of fact and recommendations. The Commission reviews both the hearing officer's findings and the briefs and then issues a final decision. Either party may file a request for reconsideration within thirty days of the final decision. In addition, any party may appeal a final order or decision of the Commission through the Chancery Division of the Circuit Court of Cook County.

If a discriminatory act occurs in the city of Chicago, an individual may file a complaint with the City of Chicago Commission on Human Relations ("Chicago Commission") alleging a violation of the **Chicago Human Rights Ordinance**.⁹⁶ A complaint must be filed within 180 days from the date of the Ordinance violation. Complaints must be filed in person and in writing with the Chicago Commission and signed before a Notary Public. Complaints must contain the following information in addition to any other relevant information necessary to apprise the Commission of the date, place, and facts of the violation:

- name, address, and phone number of the individual filing the complaint;

- name, address, and phone number of the employer (if known); and
- a statement of the facts which make up the discriminatory act including the date(s), locations, and basis of discrimination.

Filing a complaint with the Chicago Commission does not bar the individual from seeking any other remedy provided by law.

Once a complaint has been filed, the employer is notified by the Chicago Commission. Upon receiving notification, the employer has ten days to file a short written response to the complaint. The

Chicago Commission conducts the investigation of the complaint. If necessary, the Chicago Commission may require both parties to attend a fact-finding conference. The Chicago Commission will then decide whether there is substantial evidence of an Ordinance violation. If it determines there is not sufficient evidence of discrimination, it will dismiss the complaint. The individual has thirty days from the dismissal to request a review of the decision.

If a discriminatory act occurs in the city of Chicago, an individual may file a complaint with the City of Chicago Commission on Human Relations.

⁹⁶ Chicago Muni. Code § 2-160-090 and Reg. § 210.110.

If the Chicago Commission determines that sufficient evidence of discrimination does exist, then settlement efforts will begin. If a mediator is unable to mediate a settlement, there will be an Administrative hearing before a hearing officer. The rules and procedures of the Administrative Hearing are complicated and it is highly recommended that an individual be represented by counsel. Sixty days after the administrative hearing, the hearing officer will file his recommended decision with the Chicago Commission. Once this initial recommendation has been filed, both parties have thirty days to file any objections or requests for review to the hearing officer. The hearing officer will then file his final recommendations with the Chicago Commission which is responsible for making the final decision. Either party may appeal the final order through the Chancery Division of the Circuit Court of Cook County.

Legal Challenges to Discrimination Against Ex-Offenders

As discussed earlier in this manual, there is no federal law that specifically prohibits employment discrimination against ex-offenders, but discrimination based on an arrest or conviction record may in some cases constitute illegal race discrimination. If your client is African-American or Hispanic and has been rejected by a private or public employer

because of a criminal record, he may be able to bring a race discrimination claim under **Title VII of the 1964 Civil Rights Act**.

Title VII prohibits private employers and state and local governments from discriminating in employment based upon race, color, gender, national origin, or religion. The EEOC has ruled that employment policies that exclude individuals based upon their criminal history may violate the Civil Rights Act because such policies disproportionately impact minorities, who are arrested and convicted at a significantly higher rate than their percentage in the population.

According to the EEOC, exclusion based upon a criminal conviction must be justified by a business necessity. To establish business necessity, the employer must show that three factors were taken into consideration in the hiring decision: (1) the nature and gravity of the offense(s); (2) the time that has elapsed since the conviction and/or completion of the sentence; and (3) the nature of the job held or sought. For example, business necessity exists where the applicant has a fairly recent conviction for a serious offense that is job-related.

Employers are also prohibited from excluding individuals based upon their arrest records absent a business justification. A “business justification” is demonstrated by showing the applicant engaged in the conduct for which he was

arrested, and that the conduct is both job-related and fairly recent. The EEOC guidance requires employers to provide applicants a chance to explain their arrest records before they are disqualified from employment.

For further details, you may contact a lawyer or the EEOC at (800) 669-4000.

Ex-offenders can also file a discrimination complaint under the **Illinois Human Rights Act** which prohibits a prospective employer from inquiring about or making employment decisions based on an applicant's expunged records. To learn how and where to file a complaint with the Illinois State Department of Human Rights, see pp. 42-44.

When to Consult an Attorney

It is important to consult an attorney if clients like John intend to pursue any kind of formal legal action, including filing an administrative complaint and/or a lawsuit. A lawyer can advise your client on the appropriate place to file a claim. Also, since legal standards can change, it is important to have the most current information. Because there is a growing national trend toward expanding access to criminal records, procedures and rules governing this area, in particular, are subject to change.

If John, on the other hand, wants to act as his own counsel in a suit, he may proceed pro se. Some courts have a pro se clerk who provides limited legal assistance. Otherwise, contact the clerk of the court in which the suit is to be filed for information about how to do so. Given the importance and complexity of these actions, a client who proceeds pro se should still consult with an attorney for advice.

If lawyers are not easily available, contact a local law school, a legal services office, or Bar Association office. You may be able to find a law student, paralegal, or attorney willing to help for little or no charge. Sometimes larger law firms will make limited resources available to help agencies as part of their pro bono contribution to the community. At the very least, you should be able to enlist the assistance of a local law library (in a law firm, Bar Association, or law school) to help you look up laws and regulations.

Conclusion

This manual provides guidance in dealing with clients who want to obtain employment. You are now equipped to advise your clients about the kinds of questions employers are permitted to ask about drug and alcohol history, criminal records, and the kind of information they are obligated to divulge. You are also prepared to help your clients become familiar with the contents of their rap sheets so that they know how to correct information and answer pre-employment inquiries directly and completely. This information also helps you make appropriate job referrals. Finally, we hope this manual gives you and all your clients a better understanding of employment rights and the state and federal laws that may protect them against discrimination.

Appendix A

List of Crimes that Make an Applicant Ineligible for a Child Care License or Employment

| | |
|--|--|
| Murder | Predatory criminal sexual assault of a child |
| Solicitation of murder | Criminal sexual abuse |
| Solicitation of murder for hire | Aggravated sexual abuse |
| Intentional homicide of an unborn child | Heinous battery |
| Voluntary manslaughter of an unborn child | Aggravated battery with a firearm |
| Involuntary manslaughter | Tampering with food, drugs, or cosmetics |
| Reckless homicide | Drug induced infliction of great bodily harm |
| Concealment of a homicidal death | Hate crime |
| Involuntary manslaughter of an unborn child | Stalking |
| Reckless homicide of an unborn child | Aggravated stalking |
| Drug-induced homicide | Threatening public officials |
| A sex offense under Article 11, except offenses described in Sections 11-7, 11-8, 11-12, and 11-13 | Home invasion |
| Kidnapping | Vehicular invasion |
| Aggravated unlawful restraint | Criminal transmission of HIV |
| Forcible detention | Criminal neglect of an elderly or disabled person |
| Harboring a runaway | Child abandonment |
| Aiding and abetting child abduction | Endangering the life or health of a child |
| Aggravated kidnapping | Ritual mutilation |
| Child abduction | Ritualized abuse of a child |
| Aggravated battery of a child | An offense in any other state the elements of which are similar and bear a substantial relationship to any of the above offenses |
| Criminal sexual assault | |
| Aggravated criminal sexual assault | |

Appendix B

List of Crimes that Make an Applicant Ineligible to Operate or Reside in a Family Foster Home

Offenses directed against the person

Kidnapping and related offenses
Unlawful restraint
Bodily harm
Felony aggravated assault
Vehicular endangerment
Felony domestic battery
Aggravated battery
Heinous battery
Aggravated battery with a firearm
Aggravated battery of an unborn child
Aggravated battery of a senior citizen
Intimidation
Compelling organization membership of persons
Abuse and gross neglect of a long term care facility resident
Felony violation of an order of protection

Offenses directed against property

Felony theft
Robbery
Armed robbery
Aggravated robbery
Vehicular hijacking
Aggravated vehicular hijacking
Burglary
Possession of burglary tools
Residential burglary

Criminal fortification of a residence or building

Arson
Aggravated arson
Possession of explosive or explosive incendiary devices

Offenses affecting public health, safety, and decency

Felony unlawful use of weapons
Aggravated discharge of a firearm
Reckless discharge of a firearm
Unlawful use of metal piercing bullets
Unlawful sale or delivery of firearms on the premises of any school
Disarming a police officer
Obstructing justice
Concealing or aiding a fugitive
Armed violence
Felony contributing to the criminal delinquency of a juvenile
Drug offenses
Possession of more than 30 grams of cannabis
Manufacture of more than 10 grams of cannabis
Cannabis trafficking
Delivery of cannabis on school grounds
Unauthorized production of more than 5 cannabis sativa plants
Calculated criminal cannabis conspiracy

Unauthorized manufacture or delivery of controlled substances
Controlled substance trafficking
Manufacture, distribution, or advertisement of look-alike substances
Calculated criminal drug conspiracy
Streetgang criminal drug conspiracy
Permitting unlawful use of a building
Delivery of controlled, counterfeit, or look-alike substances to persons under age 18, or at truck stops, rest stops, or safety rest areas, or on school property

Using, engaging, or employing persons under 18 to deliver controlled, counterfeit, or look-alike substances
Delivery of controlled substances
Sale or delivery of drug paraphernalia
Felony possession, sale, or exchange of instruments adapted for use of a controlled substance or cannabis by subcutaneous injection

Employment Discrimination

and

What to Do About It

A Guide for Illinois Counselors of Individuals
with Criminal Records or in Recovery from
Alcohol and Drug Dependence

**LEGAL
ACTION
CENTER**



This booklet was made possible through the generous support of the **Charles Stewart Mott Foundation**.

The Legal Action Center would also like to thank **Public/Private Ventures** for its advice and assistance in preparing this manual.

The **Legal Action Center** is the only nonprofit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of alcohol and drug dependence, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas.

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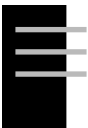


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Foreword

This manual was prepared by the Legal Action Center, a nonprofit law and policy office whose mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. It is based on the Center's experience advocating for policies that help people in recovery from alcohol and drug dependence and ex-offenders get and retain jobs, and assisting those who face employment discrimination because of their background. Over the years, our efforts have gone a long way toward helping employees and job applicants become aware of their rights and responsibilities, while increasing employers' awareness of theirs.

Discrimination in employment remains a problem. This manual describes what can be done to maximize an individual's ability to get employment and challenge discriminatory employment decisions. Many public and private job opportunities which appear, at first, to be closed to people in recovery or those with criminal histories can be opened with the right preparation. This assistance need not come from lawyers. People like you can make the difference between an individual getting the job instead of the cold shoulder. This manual serves as a guide for people who want to help individuals with criminal records and histories of alcoholism and drug dependence find and retain jobs in Illinois.

This manual was made possible through a generous grant from the Charles Stewart Mott Foundation. The Legal Action Center would also like to thank Public/Private Ventures for its advice and assistance in preparing this manual.



Introduction

Those who work with individuals with criminal records and histories of substance abuse know the challenge of helping them find appropriate employment. Often this challenge begins with identifying and understanding the legal standards that apply to the hiring of individuals with criminal records and histories of substance abuse. The following typical scenario will guide you through the applicable legal standards discussed in this manual.

Scenario:

John Doe comes to your office looking for a job. He tells you that he has been turned down for several jobs and he is convinced that it is because he has a drug-related criminal record. You ask him about his criminal history and he tells you that he was arrested four or five years ago but he cannot remember the charge. He also tells you that he was incarcerated for two years for a drug possession conviction and was released four months ago. While in prison, he received substance abuse treatment for heroin dependence. His work history is sporadic and mostly includes food services jobs, although he did get some vocational training in barbering while he was in prison. He is frustrated and thinks it is unfair that he is being discriminated against based on his criminal record and his past drug dependence. You are familiar with the employer, which is a large government contractor, and you know that the company regularly has positions available that include a generous benefit package.

What should you do?

The starting point for assisting clients like John is to understand the federal and state laws that prohibit discrimination on the basis of disability and criminal justice status.

