

HB 64* – ACT relating to employment of ex-felons who have reestablished themselves as law-abiding citizens

A felony sentence is an economic death sentence. Persons convicted of a felony have lifelong problems in finding employment *even if they do not re-offend for years*. They face many other significant collateral consequences. Expungement of felony convictions, once certain conditions are met, enables former offenders to be more productive citizens, pay taxes and meet family obligations as it helps them obtain and maintain employment.

Limited employment opportunities are formidable obstacles that convicted felons must face. See Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, 112, 2003. Most experts know and ex-offenders experience that finding a job is critical to successful reintegration and reduction of recidivism.

The provisions are straightforward

- HB 64 allows a person to ask a court to expunge a felony conviction 5 years *after completion of the entire sentence*.
- This means it will be longer than 5 years because the sentence has to be fully completed which includes the serving the length of the sentence, payment of all fines and fees and completion of the entire time on probation or parole.
- The bill only applies to persons who do not have other felony or misdemeanor convictions.
- It does not apply to a sex offense or an offense committed against a child.
- The bill helps people obtain a fair chance at employment as it limits the ability of criminal records companies to report criminal history information and prospective employers from inquiring about sealed criminal records.
- The legislation authorizes the Attorney General to sanction criminal records providers and employers who inquire about sealed criminal histories.
- Criminal history providers who do not update their records or fail to remove any information that is inaccurate, expunged, or restricted can be assessed a civil penalty of \$1,000 for a first violation and \$5,000 for any subsequent violation.
- It provides protections to employers from claims of negligent hiring.
- Prospective employers can also be sanctioned with a violation and contempt of court if an employer asks whether an employee, contract employee, or applicant has a criminal record that has either been sealed or restricted.
- The prosecutor and any victim have the right to present evidence to the judge considering expungement.

Length of time correlates to empirical evidence

Alfred Blumstein and Kiminori Nakamura did an empirical study on the issue of when the risk of reoffending is no longer relevant to employment decisions. *Redemption in an Era of Widespread Criminal Background Checks*, NIJ Journal, Issue No. 263. They found that after 3.8 – 7.7 years the risk of recidivism was no greater than the risk of the general population, depending on the age of the offender and the type of crime committed. (Continued on page 2.)

**This document describes the provisions of the bill as originally introduced. If there are subsequent amendments, please visit the Legislative Research Commission website for a description of the amendment – www.lrc.ky.gov. Further explanation of the bill's content and changes may be found at the Catholic Conference of Kentucky website: ccky.org.*

Blumstein and Nakamura also observed that “Most people would probably agree that there should be some point in time after which ex-offenders should not be handicapped in finding employment. ...It is well known — and widely accepted by criminologists and practitioners alike — that recidivism declines steadily with time clean. Most detected recidivism occurs within three years of an arrest and almost certainly within five years. ”

Incentive for good behavior

The possibility of expungement is significant incentive for offenders to not reoffend.

Many Kentuckians would be helped

According to AOC and KSP, 94,645 Kentuckians are eligible for class D felony expungement. Under KRS 431.078(5) there is a \$100 fee for a person having their felony expunged with \$50 going to the general fund and \$50 to the clerk. If all eligible persons had their felony expunged it would mean \$4.7 million to the general fund and \$4.7 million to a trust and agency account for deputy clerks.

The Governor’s Reentry Task Force

In view of the fact that employment has a significant positive effect on reducing recidivism, the Kentucky Governor’s Reentry Task Force has recommended that the General Assembly create a simplified process with reduced cost for expungement of felony and misdemeanor offenses.

Consequences of felony conviction are many and significant

Collateral consequences influence employment, occupational certification and licensing; business licensing; govern program participation, loans, grants, and benefits; education; housing; domestic rights; civic participation; registration and notification requirements; residency restrictions and motor vehicle licensing. The collateral consequences of being a felon make getting a good job harder, bar the way to higher education, to working in a profession, to beginning your own business, and to qualifying for government aid to those who might be starting their life over again. Most collateral consequences operate in a way that makes it more difficult to be a productive member of society.

A study done by law students at Chase Law School identified over 250 collateral consequences of a felony conviction in the Kentucky Administrative Regulations alone. Many more exist in statute and many more cover even misdemeanor convictions. Of 130 provisions in the Kentucky Administrative Regulations specifically imposing collateral consequences on former felons, 119 involve bars to employment. See Sara M. Caudiil and Ashley England-Huff, *Collateral Consequences of Felony Convictions Established in the Kentucky Administrative Regulations*, Northern Kentucky Law Review, Vol. 35, No. 4 (2008).

Felons are barred from employment unrelated to the felony

In Kentucky, many collateral consequences bear no coherent relation to the crimes of which the person was convicted. For example, many of the felony crimes in Kentucky are victimless and non-violent, and many first time felons are probated. Regardless, the collateral consequences blindly kick in, lasting longer than the sentence imposed by the court. Convicted persons who have paid their debt to society still face the collateral consequences, often for life.

National recommendations

The American Bar Association suggests that jurisdictions “should encourage the employment of convicted persons by legislative and executive mandate, through financial incentives and otherwise.” *ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, Standard 19-3.3, 2004) The ABA suggests that “[Jurisdictions] should enact legislation prohibiting the denial of insurance, or a private professional or occupation license, permit or certification, to a convicted person on grounds related to the conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for denial even if the person had not been convicted.” (Standard 19-3.3).