

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Employer Liability

An Extension to the Justice Reinvestment Act

What's the problem?

In 2016 Maryland passed the Justice Reinvestment Act (JRA) which stipulated that effective October 1, 2017, returning citizens can earn a Certificate of Rehabilitation (COR). Such a certificate would ensure that licensing boards do not deny an occupational license to the returning citizen only on the basis of prior convictions.

Although it is state policy to encourage employment and remove barriers to employment, this provision of the JRA did not address the potential liability of employers who offer jobs to returning citizens.

What's one solution?

This imbalance can easily be rectified by a small change in the JRA which protects employers from legal actions stemming from this hiring decision. Employers would be held to have acted with due diligence, and without negligence, in hiring a returning citizen who has obtained a Certificate of Rehabilitation.

Will this work?

To encourage hiring, licensing, and admission to schools and other programs Maryland should offer protections for those who hire certificate holders. Such a provision is already in place in several states. In Tennessee, Georgia, and Ohio the presence of a certificate protects employers from liability in hiring returning citizens.

A new empirical study provides important evidence that "certificates of recovery/relief" can be effective in facilitating employment opportunities for people with a criminal record. Two University of South Carolina criminologists have concluded that employers in Ohio are willing to look beyond the criminal histories of job applicants who have been issued a Certificate of Qualification for Employment (CQE) from a state court. The study found that individuals with a felony drug conviction were more than three times as likely to receive a job interview or offer if they had received a CQE. See:

<http://ccresourcecenter.org/2016/05/25/new-study-suggests-certificates-of-relief-are-working-to-create-jobs/>

Status of the Legislation

At least twelve states, including Maryland in its recent Justice Reinvestment Act, have authorized Certificates of Rehabilitation or equivalent credentials. For details see the "Chart of States" compiled by the Maryland Alliance for Justice Reform. See: <https://www.ma4jr.org/wp-content/uploads/2014/10/certificates-chart.pdf>

The 2016 Justice Reinvestment Act (Maryland Code section 7-104 (a)) authorizes the Certificate of Rehabilitation. What is required is the addition of one subsection specifying that "an employer, who hires an individual with knowledge that the individual has received a certificate of rehabilitation, shall be presumed to have acted with due diligence and without negligence in relation to consideration of the individual's prior record."

Learn More!

"State-Specific Guides to Restoration of Rights, Pardon, Sealing & Expungement," prepared by Margaret Love for the National Association of Criminal Defense Lawyers (NACDL) Restoration of Rights Project, (copyright 2014-2016, Collateral Consequences Resource Center). See: <http://ccresourcecenter.org/resources-2/restoration-of-rights/>

"Study Shows Certificates Work to Create Job Opportunities," May 25, 2016, by Joshua Gaines.
<http://ccresourcecenter.org/2016/05/25/new-study-suggests-certificates-of-relief-are-working-to-create-jobs/>

There are a number of organizations listed on the CCRC website which address re-entry problems. Particularly helpful are the following sites:

- See, for example, Reentry.net, Serving people from arrest to reintegration: <https://www.reentry.net/>
- The Council of State Governments Justice Center: <https://csgjusticecenter.org/reentry/the-reentry-and-employment-project/>
- The Sentencing Project's web section on collateral consequences: <http://www.sentencingproject.org/issues/collateral-consequences/>
- The website for the New Southern Strategy Coalition: <http://newsouthernstrategy.org/>
- The ABA Criminal Justice Section and its materials on collateral consequences: <http://www.abacollateralconsequences.org/>
- Also see the Legal Action Center website, <http://lac.org>. It offers resources pertinent to certificates of rehabilitation such as <http://lac.org/what-we-do/criminal-justice/reducing-criminal-record-barriers-to-employment/>

Many other resources can be found at: <http://www.ma4jr.org/returning-citizens/>

Note: This document contains hyperlinks. To use them, access the online version at: <http://www.ma4jr.org/liability/>

The Maryland Alliance for Justice Reform (MAJR) is a nonpartisan association of over forty community organizations and churches with members in every part of the state, formed to support justice reinvestment. Individual supporters include judges, attorneys, corrections professionals, as well as returning citizens, victims, and service providers.