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Using Criminal History Records to Conduct Redemption Research

Prepared for Justice Research and Statistics Association

Kiminori Nakamura
University of Maryland

March 11, 2015

Partially supported by NIJ Grant No. 2007-IJ-CX-0041 and No. 2009-IJ-CX-0008. Opinions or points of view expressed are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.
Widespread criminal background checking
- Most large companies conduct background checks
- Laws require background checks for many jobs and occupational licenses

High prevalence of prison and criminal records
- 92 million criminal records in state repositories
- 1 in 100 adults behind bars

Many people can’t get a job – because of a crime that happened long ago

Need to explore when relief from that prior mark of crime – “redemption” – is warranted
Out of Tr

April 28, 2011

Internet Lets a Criminal Past Catch Up Quicker

By BINYAMIN APPELBAU

Convicted of robbing a video store in California in 1997, Ayanna Spikes decided to change the trajectory of her life. In 14 years, she has had no further brushes with the law.

The eight months she spent in prison, she said, were “the best thing that ever happened to me,” persuading her to pursue training in medical administration and complete coursework for a degree in psychology at the University of California, Berkeley. At 38, she is a far different person from the confused young woman who strayed into crime, she says.

But employers, initially impressed by her credentials, grow leery when they learn her history through criminal background checks. She has been turned down for more than a dozen jobs since finishing college in 2010.
65 MILLION
“NEED NOT APPLY”

The Case for Reforming Criminal Background Checks for Employment

Michelle Natividad Rodriguez | Maurice Emsellem
The National Employment Law Project
March 2011
The collateral consequences of a criminal conviction—legal sanctions and restrictions imposed upon people because of their criminal record—are hard to find and harder to understand. Now it will be easier to do both. Congress directed the National Institute of Justice to collect and study collateral consequences in all U.S. jurisdictions, and NIJ selected the ABA Criminal Justice Section to perform the necessary research and analysis. The results are now being made available through this interactive tool.
# Consequence List

**Jurisdictions:** Maryland  
**Code Lists:** Employment

<table>
<thead>
<tr>
<th>Citation</th>
<th>Title</th>
<th>Triggering Offense Category</th>
<th>Consequence Category</th>
<th>Consequence Type</th>
<th>Duration Category</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Md. CORPORATIONS AND ASSOCIATIONS Code Ann. § 11-412</strong></td>
<td>Deny/suspend /revoke registration as broker-dealer/agent /investment adviser (permanent for violation of securities law)</td>
<td>Crimes involving fraud, dishonesty, misrepresentation or money-laundering; Other</td>
<td>Employment; #Occupational and professional license and certification</td>
<td>Discretionary</td>
<td>Permanent/Unspecified</td>
</tr>
<tr>
<td><strong>Md. CORPORATIONS AND ASSOCIATIONS</strong></td>
<td>Deny/suspend /revoke registration as broker-dealer/agent</td>
<td>Any felony; #Crimes involving fraud, dishonesty, misrepresentation or</td>
<td>Employment; #Occupational and professional license and certification; #Business license and other property</td>
<td>Discretionary</td>
<td>Specific Term</td>
</tr>
<tr>
<td>Md. CRIMINAL PROCEDURE Code Ann. § 10-234.1</td>
<td>Ineligible for county employment (Prince George’s County) (background check)</td>
<td>N/A (background check, general relief)</td>
<td>Employment</td>
<td>Background Check</td>
<td>N/A (background check, general relief)</td>
</tr>
<tr>
<td>Md. CRIMINAL PROCEDURE Code Ann. § 10-234.2</td>
<td>Ineligible for position as county employee/volunteer (Talbot County) (background check)</td>
<td>N/A (background check, general relief)</td>
<td>Employment; #Political and civic participation</td>
<td>Background Check</td>
<td>N/A (background check, general relief)</td>
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<tr>
<td>Md. CRIMINAL PROCEDURE Code Ann. § 10-235</td>
<td>Ineligible for county employment (Washington County) (background check)</td>
<td>N/A (background check, general relief)</td>
<td>Employment</td>
<td>Background Check</td>
<td>N/A (background check, general relief)</td>
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<tr>
<td>Md. CRIMINAL PROCEDURE Code Ann. § 10-236.1</td>
<td>Ineligible for county employment (Wicomico County) (background check)</td>
<td>N/A (background check, general relief)</td>
<td>Employment</td>
<td>Background Check</td>
<td>N/A (background check, general relief)</td>
</tr>
</tbody>
</table>
Recidivism

- Employers’ unwillingness to hire people with criminal records stems from the concern about recidivism
  - Workplace violence, theft
  - Liability for negligent hiring
- Studies have consistently demonstrated that recidivism occurs relatively quickly
  - BJS studies (1997, 2002) on recidivism of prison releasees
- Little attention has been paid to the smaller population who stays recidivism-free for a longer time
  - Recidivism studies usually involve short observation periods
Redemption

- Recidivism risk declines with “time clean” after contact with the criminal justice system
- If a person with a criminal record remains recidivism free sufficiently long, his or her risk of recidivism becomes less than some appropriate comparison groups
- Now have some strong empirical estimates of when redemption is appropriate - “redemption time”
Our New York Analysis

- Data: Arrest history records (“rap sheets”) from NY state criminal-history repository
  - First-time arrestees in NY as adults in 1980
  - Follow-up time > 25 years
  - Focus on a subset of arrestees who were convicted

- Measure of recidivism risk: hazard
  - Probability of a new arrest at time $t$ given no arrest until $t$

- Two comparison criteria (benchmarks) for redemption
  1) Risk of arrest for the general population of the same age
  2) Risk of arrest for those with no prior arrest
Redemption Time: In comparison with the general population.

After 4 years recidivism risk falls below general population’s risk of arrest.
Redemption Time: In comparison with those with no prior record

- Introduce a risk tolerance ("close enough")
  - How much extra risk an employer is willing to tolerate – perhaps to get a better employee
Probability of Arrest

Years since First Arrest

Risk tolerance

Margin of error

After 12 years, recidivism risk close enough to non-offenders

The never arrested
Age 19-20 Violent
Lower CI
Upper CI
Risk tolerance
Why Different Benchmarks?

- Applicant pool
  - Many with a criminal history vs. Primarily people with clean record
- Nature of the job and its risk sensitivity
  - Concern about minor theft from cash register vs. assault of vulnerable populations
Concern for Arrests outside NY

- Those who appear clean in NY might have been arrested elsewhere
- Obtained from the FBI national criminal records for a sample of 1980 NY arrestees with no re-arrest in NY
  - About 23% of them were found to have arrests elsewhere
- Adjusted hazard for out-of-state arrests based on
  - The proportion of the FBI sample with out-of-state arrests
  - The distribution of time to the out-of-state arrest
Consideration of Adjustment to Recidivism Risk for Incarceration (Age: 19-20, Crime: Violent)

No need for adjustment for first-time offenders
Concern about Robustness

- Estimates of redemption times are based on 1980 first-time arrestees in NY
- How reliable are our estimates for use at different times or in different places?
- We test the robustness of estimates to:
  - Different Sampling years (‘85, ‘90 from NY)
  - Different States (Florida, Illinois in 1980)
Recidivism Risk Across Sampling Years

Age: 19-20
Crime: Violent

Age: 19-20
Crime: Property
Recidivism Risk Across States

Age: 19-20
Crime: Violent

Age: 19-20
Crime: Property
Robustness of Redemption Times

- Robustness of recidivism risk
  - Less so for the first several years, but that period is less relevant for consideration of redemption
  - More similar in later years

<table>
<thead>
<tr>
<th>Original Crime</th>
<th>General Pop</th>
<th>No Prior Record</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent</td>
<td>4-7</td>
<td>11-15</td>
</tr>
<tr>
<td>Drugs</td>
<td>4</td>
<td>10-14</td>
</tr>
<tr>
<td>Property</td>
<td>3-4</td>
<td>8-11</td>
</tr>
</tbody>
</table>
What We Know

- Recidivism risk declines with time clean
  - Important consideration to many employers
- Redemption times identify key time points when the criminal record loses its value in predicting risk
  - Strong empirical estimates of redemption times
    - Based on a large set of official data
    - Tested for robustness over time and across states
    - Other researchers have produced similar estimates (Bushway et al., 2011; Kurlychek et al., 2006, 2007)
- Provides a basis for responsiveness to user criteria in assessing redemption
  - Redemption times can be generated based on the specifications (Age, Crime type, Risk tolerance) set by the users
Ongoing Projects

- Redemption times for released prisoners
  - Preliminary: Longer than arrestees or convictees
  - Typically more complex prior criminal history
- People with extensive criminal history may not converge to non-offenders
  - But subsets may? (e.g., those who complete educational and employment programs, those who can maintain a job after prison, those with rehabilitation certificates)
- “Signaling” (Bushway & Apel, 2012)
Redemption Policies

- Employers
  - Inform employers of the low relevance of stale records
  - Enact statutes to protect employers from “due-diligence liability” claims
  - Redemption time should not interfere with reentry support – Employment should be facilitated as soon as possible
    - Especially with employment situations that are risk tolerant (e.g., construction)
  - Other information should be used to encourage employment (e.g., positive work history)

- Repositories & commercial vendors
  - State repositories could withhold stale records
  - Could seal (or perhaps expunge) sufficiently stale records
Redemption Policies (cont.)

- “Ban the Box”
  - Removes the question about criminal history from the initial job application
  - Job applicants’ qualifications and experience evaluated before criminal records
  - Applicants’ employment prospect could improve because they have a chance to interact and build rapport with employers (Pager et al., 2009)
  - Employers could select the most qualified individuals without risking discrimination lawsuits
  - Employers can conduct background checks later in light of redemption times
- Reconsider corporate and statutory “forever rules”
EEOC Enforcement Guidance


2. PURPOSE: The purpose of this Enforcement Guidance is to consolidate and update the U.S. Equal Employment Opportunity Commission's guidance documents regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

3. EFFECTIVE DATE: Upon receipt

4. EXPIRATION DATE: This Notice will remain in effect until rescinded or superseded.

5. ORIGINATOR: Office of Legal Counsel.

Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense, conduct and/or completion of the sentence; and
- The nature of the job held or sought.
Questions?