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'Redemption' in an Era of Widespread Criminal Background Checks

by *Alfred Blumstein and Kiminori Nakamura*

One of the stated goals in President Barack Obama's crime and law enforcement agenda is to break down employment barriers for people who have a prior criminal record, but who have stayed clean of further involvement with the criminal justice system. To understand how many people are affected by some of these barriers, we only need look at the widespread computerization of criminal history records in the United States.

According to the Society for Human Resource Management, more than 80 percent of U.S. employers perform criminal background checks on prospective employees.[1] Add two additional factors to that equation — advances in information technology and growing concerns about employer liability — and we can begin to understand how complicated the issue of employing ex-offenders has become.

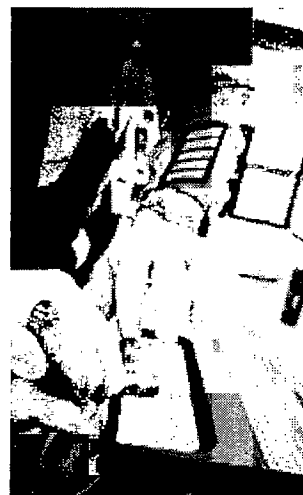
The numbers leave no doubt that we have reached a broad penetration of criminal history records into the fabric of our society:

- In 2006, nearly 81 million criminal records were on file in the states, 74 million of which were in automated databases.[2]
- Another 14 million arrests are recorded every year.[3]

What does this mean for employers? And what does it mean for ex-offenders who need a job?

Consider a 40-year-old male who was convicted of burglary when he was 18 years old and has committed no further crimes. Every time he applies for a new job, he tells the potential employer that he was convicted of a felony; even if he does not state this up-front, the employer is likely to do a criminal background check. In either case, he probably will not get the job because many employers are unwilling to hire an ex-offender.[4]

This situation prompted us to ask the question: Is it possible to determine empirically when it is no longer necessary for an employer to be concerned about a criminal offense in a prospective employee's past?



1. People in the general population who were the same age.^[10]
2. People of the same age who had never been arrested.

Our goal was to determine empirically at what point in time the risk of recidivism for people in our study group was no greater than the risk for our two comparison populations.^[11] To do this, we plotted data curves to determine when the risk of re-arrest for individuals in our study group:

- Dropped below the risk of arrest for same-aged people in the general population.
- Approached the risk of arrest for people who had never been arrested.

We believe that our analysis provides the criminal justice community with the first scientific method for estimating how long is "long enough" for someone with a prior record to remain arrest-free before he or she should be considered "redeemed" by a prospective employer.

Determining the Hazard Rate

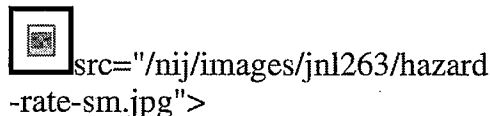
Our analysis was based on a statistical concept called the "hazard rate." The hazard rate is the probability, over time, that someone who has stayed clean will be arrested. For a person who has been arrested in the past, the hazard rate declines the longer he stays clean.

To determine the hazard rate for our study group, we looked at two factors:

- Age at the time of the 1980 (first) arrest.
- Type of crime.

We then compared these hazard rates, as they declined over time, to people of the same age in the general population. For these data, we used the arrest rate (the age-crime curve) from the Uniform Crime Reports, maintained by the Federal Bureau of Investigation.

In the above figure, we show the hazard rate for 18-year-olds when they were arrested for a first offense of one of three crimes: robbery, burglary and aggravated assault. The figure shows that for robbery, the hazard rate declined to the same arrest rate for the general population of sameaged individuals at age 25.7, or 7.7 years after the 1980 robbery arrest. After that point, the probability that individuals would commit another crime was less than the probability of other 26-year-olds in the general population.



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Hazard Rate for 18-Year-Olds: First-Time Offenders Compared to General Population
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arrested for the first time in 1985 and in 1990 because these years were quite different from 1980 in a number of important ways:

- 1980 was a peak crime year due to demographic shifts of baby boomers aging out of the high-crime ages.
- 1985 saw a "trough in crime rates" before young people were recruited to sell crack as older crack sellers were sent to prison.
- 1990 was near a peak before the beginning of the crime drop in the 1990s.[12]

If we find that the hazard rates for exoffenders in these years are similar to what we have found in our preliminary analysis, the usefulness of our hazard-rate analysis method would be strengthened.

Note that our analysis looked at any crime as the marker for when a second arrest occurs; we would also like to examine the relative risk of a specific second crime because, as we stated earlier, different types of employers have different risk tolerances for particular crimes.

We also want to test our risk-analysis model with data from different states. Although it is possible that variations in local populations and arrest practices may affect the results, we anticipate that they would be reasonably close.

Another aspect of future research will explore the possibility that some of the individuals in our study group who looked clean in New York state might have been arrested in another state. We will access FBI records to determine if an individual with no further arrests in New York may have been arrested in New Jersey or Florida, for example.

Public Policy Implications

We believe that our preliminary findings and ongoing research offer an opportunity to think about when an ex-offender might be "redeemed" for employment purposes — that is, when his or her criminal record empirically may be shown to be irrelevant as a factor in a hiring decision.

People performing criminal background checks would find it valuable to know when an ex-offender has been clean long enough that he presents the same risk as other people in the general population. Employers also might be more likely to use this type of analysis if there were state statutes protecting them against due diligence liability claims when they adhered to reasonable risk-analysis findings.

We also believe that our findings could play an important role in policy discussions about the maintenance of and access to criminal record databases. Considerable policy control rests with those who oversee state criminal history repositories. These decision-makers could establish

violence, and drug-enforcement policy.

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Next Article: Standardizing Parole Violation Sanctions.

Notes

[1] Burke, M.E., *2004 Reference and Background Checking Survey Report: A Study by the Society for Human Resource Management*, Alexandria, VA: Society for Human Resource Management, 2006.

[2] Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2003*, Criminal Justice Information Policy Report, Washington, DC: Bureau of Justice Statistics, February 2006 (NCJ 210297).

[3] Federal Bureau of Investigation, *Crime in the United States, 2007*, Washington, DC: Federal Bureau of Investigation, September 2008.

[4] Holzer, H.J., S. Raphael, and M.A. Stoll, "Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers," *Journal of Law and Economics* 49 (2) (October 2006): 451-480.

[5] Research has shown that the risk of offending for those with criminal records converges toward the risk for those without a record as substantial time passes. See Kurlychek, M.C., R. Brame, and S.D. Bushway, "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" *Criminology & Public Policy* 5 (3) (September 2006): 483-504; and Kurlychek, M.C., R. Brame, and S.D. Bushway, "Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement," *Crime & Delinquency* 53 (1) (2007): 64-83.

[6] See Blumstein, A., and K. Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47 (2) (May 2009).

[7] Maltz, M.D., *Recidivism*, Orlando, FL: Academic Press, August 1984.

[8] Beck, A.J., and B.E. Shipley, *Recidivism of Prisoners Released in 1983*, Special Report, Washington, DC: Bureau of Justice Statistics, April 1989 (NCJ 116261); and Langan, P.A., and D.J. Levin, *Recidivism of Prisoners Released in 1994*, Special Report, Washington, DC: