How to Deal with Stale Criminal-History Records

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Criminal-History (CH) Records Are Ubiquitous

- Criminal Records Exist on ~100 Million Individuals
- 10 Million Criminal Records per Year
  - Arrest, Conviction, Probation, Parole, Incarceration
- Probability of a Male Being Arrested Some Time in His Life for a Non-Traffic Offense ~ 60%
  - Christensen – estimated 50% in 1967
- Criminal Records Are Now Long-Lasting and Computerized, Readily Available

CH Records Used for Employment Decisions

- Employers often seek criminal-record information on job candidates
  - Effort at Risk Aversion
    - Liability risk from clients, customers
    - Risk of theft of employer's assets

Record May Be "Stale" with Information No Longer Relevant

  - Some statutes or job requirements apply "Forever"
  - Recidivism declines with time clean
  - Criminal activity peaks at age 17-21 and declines after that

- Employers rarely understand the true risks in a CH Record
  - Mostly tend to exaggerate the risks

Many Efforts to Counter Inappropriate Punitive Uses of Criminal Records

- EEOC challenges inappropriate and discriminatory uses
  - Particularly Stale Records
  - Job necessity
- “Ban the Box” Rule
  - Prohibit “Have You Ever Been Arrested/Convicted” query on job applications
  - Government uses, encourage others, especially government contractors
- Civic Organizations
  - Safer Foundation in Chicago
  - Legal services organizations
- Clear need for methods to address the trade-off between employer risk and employee opportunity

Need empirical approach and estimates

- Lack of empirical evidence leaves employers to set their own arbitrary cut-off points
  - 5 or 10 or 15 years (nice round numbers)
  - 7 years (Biblical origins?)
  - 15 years (conservative)
  - Forever (usually unreasonable)
- Employers vary in level of concern
  - Dealing with vulnerable populations (elderly, children)
  - Bank teller
  - National security
  - Construction worker

Possible Research Approaches

- Recidivism studies (e.g., BJS, 1997, 2002)
  - Usually involve short observation period -
  - Most recidivism studies wait only 3-5 years
- Birth Cohort studies (e.g., Kurlychek, Brame, & Bushway, 2006, 2007)
  - Limited sample size and short follow-up
- Need long-term follow-up
- All based on CH records from state repositories
  - Can provide rich samples with rich demographic and crime-type disaggregation and long-term follow-up
  - Provide no information about the never-arrested, out-of-state arrests, period effects

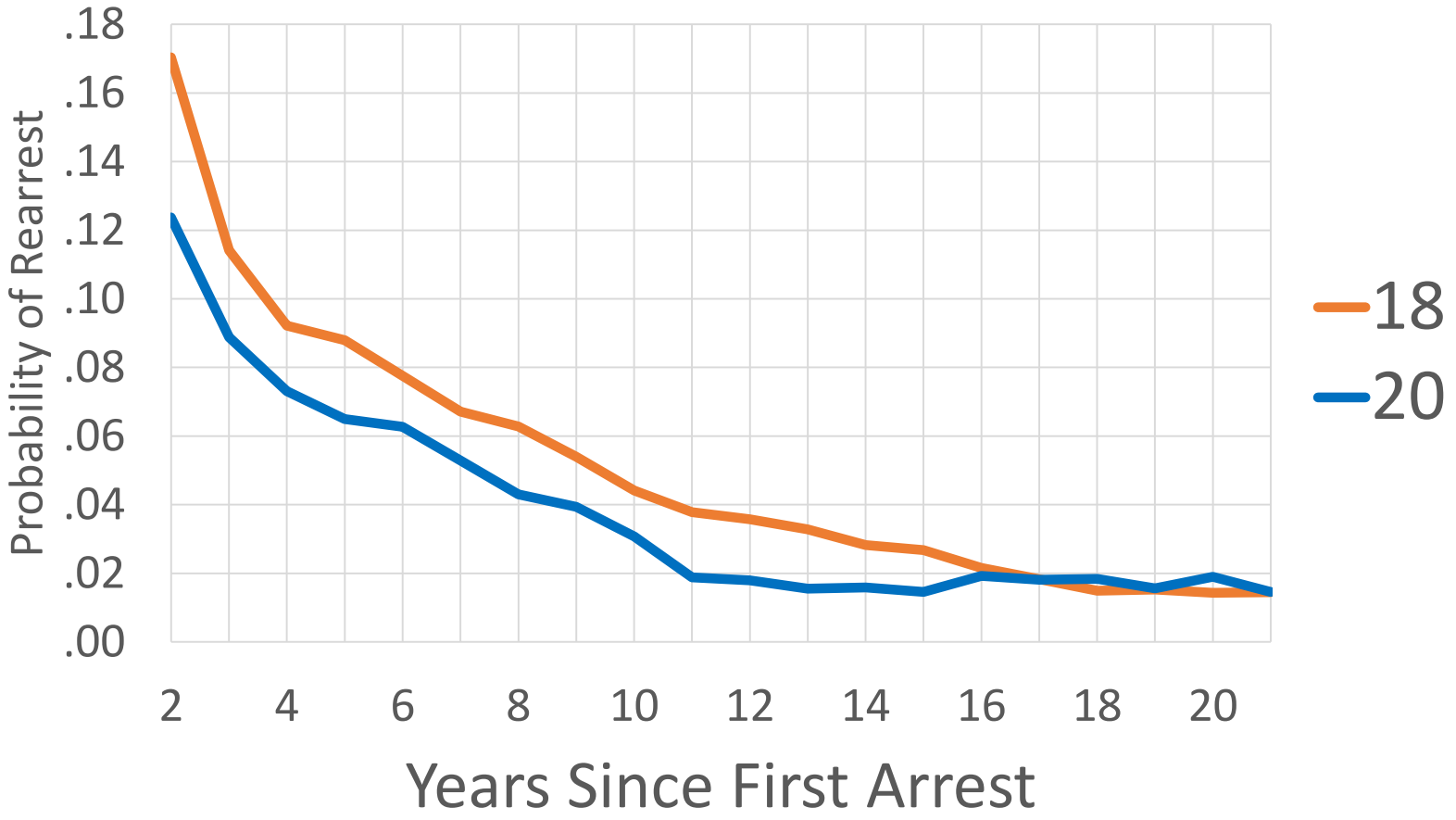
Approaches to Redemption Balancing the Risks

- Redemption from Negative Effects of Stale CH Record
  - Must accommodate reasonable concern re employer risks
    - Risk declines with “time clean”
  - Estimate when recidivism risk has dropped low enough for “redemption”
    - When risk Is comparable to that of the general population
    - When risk is within a tolerance level of the never-arrested
    - That is the “Redemption Time”

Review of Some Research Results

- Redemption Research to estimate “redemption times”
  - Blumstein and Nakamura in *Criminology* 2009 and later
  - Sample of 88,000 First-Time Arrestees in 19809 in NY State
  - Used “Hazard Function” to Track Recidivism
    - Track over time the Probability of a **First** Recidivist Arrest
    - High initially and declines steadily

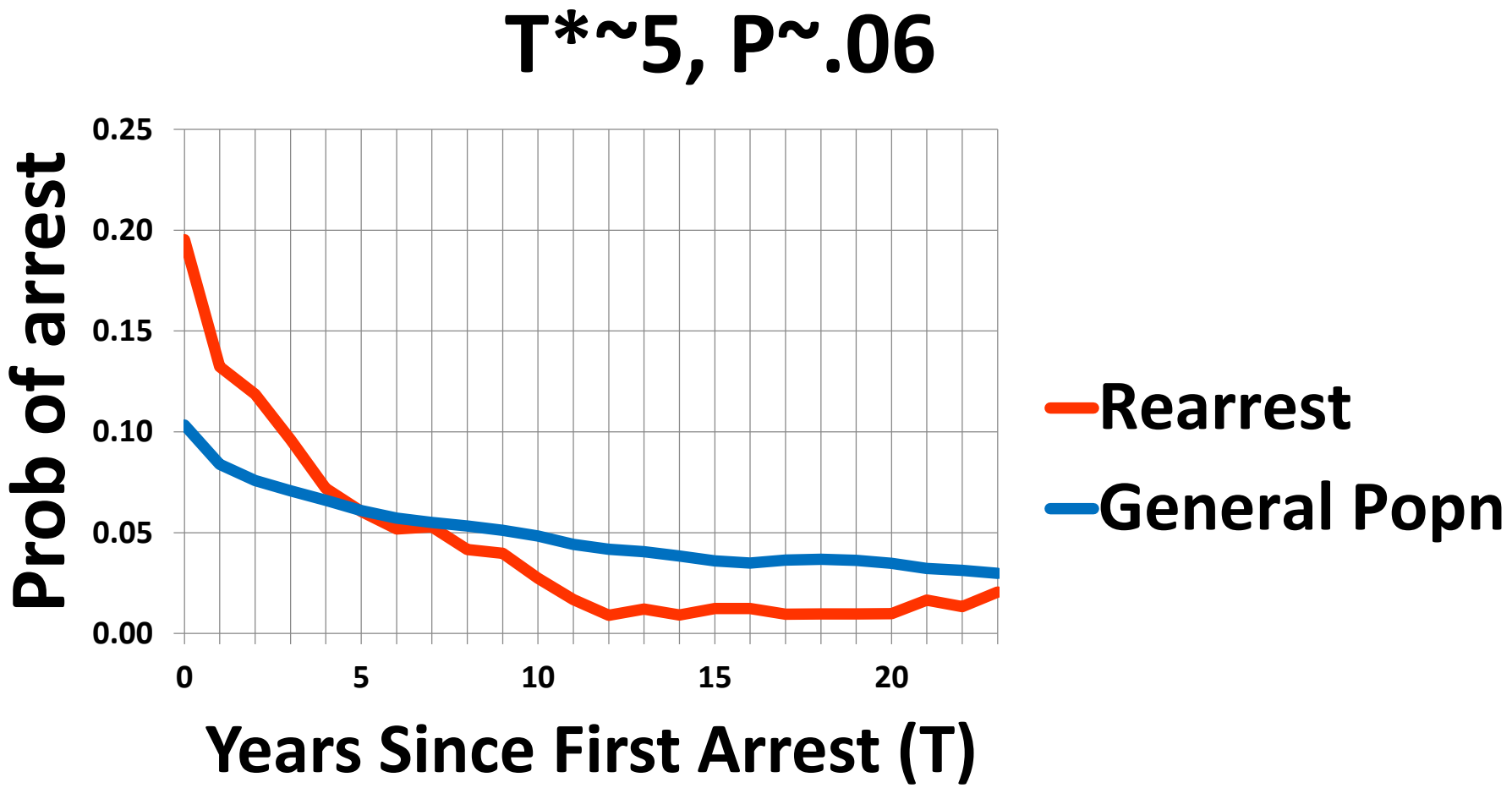
Probability(t) of a *First* New Arrest = Hazard (C_1=Burglary; A_1=18,20)



Choice of Redemption Time

- Compare Hazard to Arrest Rate of General Population
  - Age-Crime Curve = Arrests of Age a/Population of Age a
  - Hazard declines faster than Age-Crime Curve
  - Redemption time is when hazard crosses the Age-Crime Curve
- Redemption should occur when recidivism hazard drops below arrest rate of the general population of same age (i.e., the A-C Curve)
- Greater challenge if arrestees compared to the never-arrested
  - Choose a reasonable tolerable risk level (.05, .01, etc.)

Hazard vs. Age-Crime Curve
(A1=20 and C1=Agg Assault)



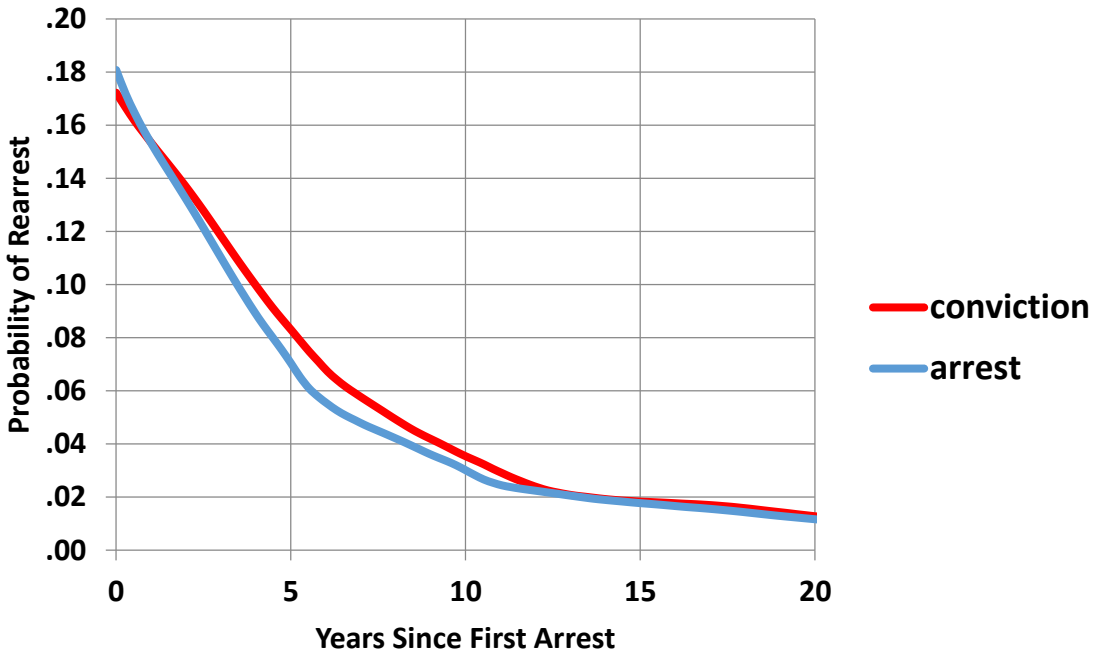
Additional Concerns to Be Addressed

- Concern that hazard is based on arrest records, not conviction
  - Arrest records vs conviction records
  - Analyzed a sub-sample of those reported to be convicted
- Concern re C2 – crime type of recidivism
  - Different employers will have different concerns re recidivist crime type
    - One-on-one home counselor vs bank teller vs construction worker
- Concern over arrests outside NY State
- Concern that applicant pool is largely “never-arrested”
  - Age-crime curve not indicative of their risk profiles
- Concern about robustness of findings: 1980!, just NY!

Conviction vs. Arrest

- In many hiring situations, employers are prohibited from asking about an arrest record without a following conviction
  - Those convicted are a subset of those merely arrested

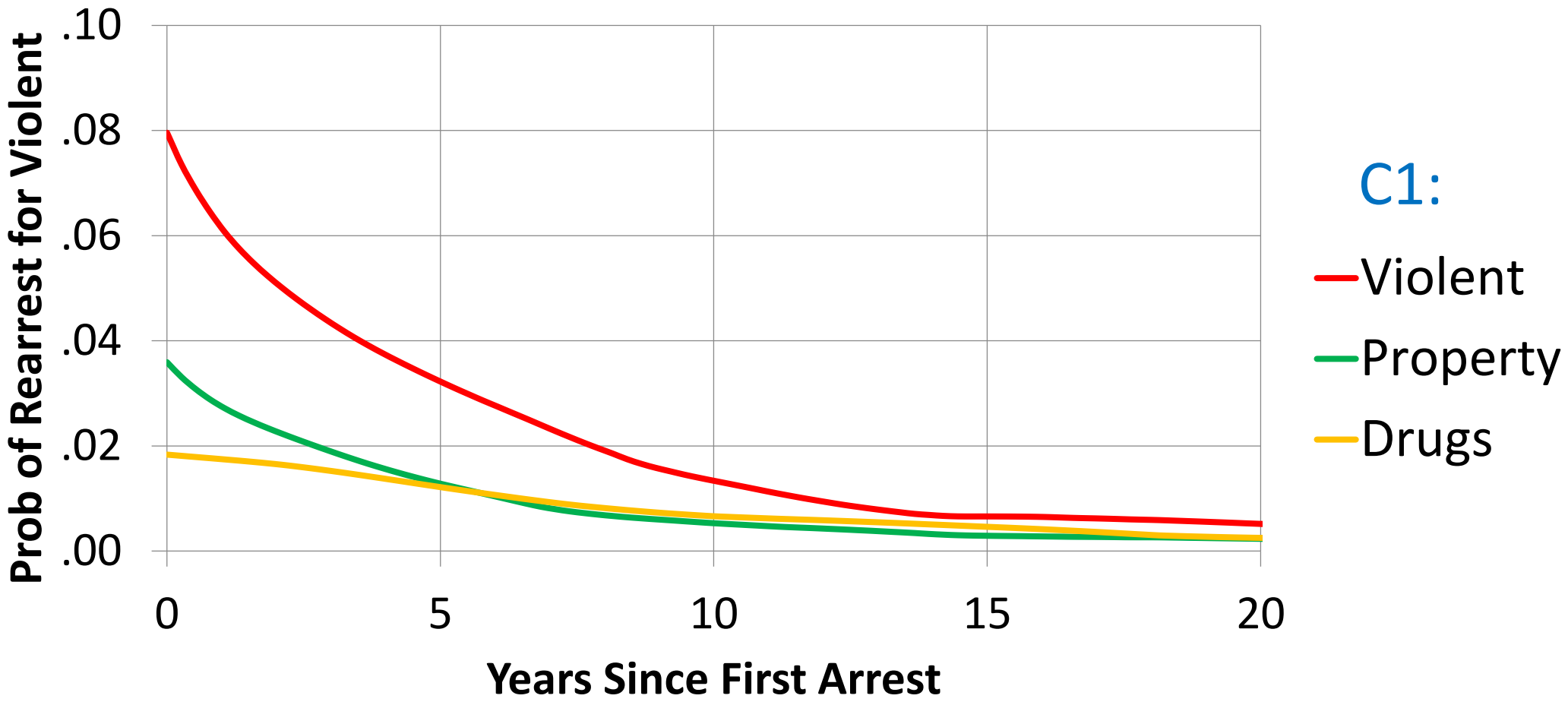
A_1 = 19-20
C_1 = Violent



Concern over C_2 – The Next Crime

- Employers differ in the crime types they care about
  - Shop owners or banks care about property crimes
  - Those dealing with vulnerable populations care about violence
- EEOC requires employers to demonstrate "*business necessity*" to justify the use of criminal records
  - Invoking the prior record should be for job-related reasons
- Develop a "crime-switch matrix"
  - Probability of going from a first crime-type *i* to a second crime-type *j*
- Analyze crime-type-specific hazards
  - Risk of re-arrest for a particular second crime

C_2 -Specific Hazard (A_1 = 19-20, C_2 = Violent)



Crime-Type Redemption Times for C2 (P=.01)

- Initial crime type is an indication of recidivism crime type
  - This is especially true for violence
    - Prior violence indicates higher risk of violence in C2

		A_1	
C_2	C_1	19-20	25-30
Violent	Violent	14.7	13.9
	Property	7.3	4.3
	Drugs	8.8	4.7
Property	Violent	11.1	9.1
	Property	9.2	12.5
	Drugs	11.6	8.8

For low risk tolerance – compare to the never-arrested

- Employers differ in their risk tolerance
  - Depends on the risk vulnerability of the position
  - Much depends on the applicant pool and their history
- Fore t he Never-Arrested, their Hazard not expected to cross the ACC
  - The large initial difference diminishes over time
  - Difference likely to be very small after hazard drops to ~1.5-2.0
- Could examine confidence interval around hazard
  - Sensitive to small sample size remaining at large time
    - Confidence interval gets wider as N declines over T
- Could establish a reasonable risk tolerance level (.01?)
  - Redemption when the hazard crosses that level – or if

Concern for Arrests Outside NY

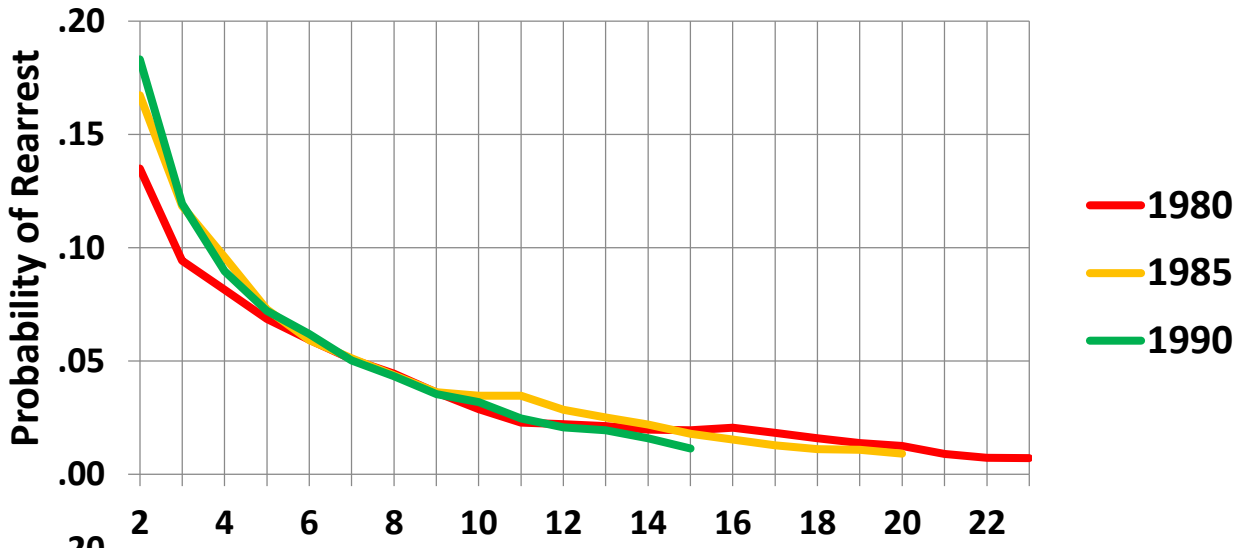
- Those who appear clean in NY might have been arrested elsewhere
- We obtained FBI national criminal records for our sample of 1980 NY arrestees **with no re-arrest in NY (40%)**
  - About 23% of them were found to have arrests elsewhere
- Adjustment of recidivism risk for out-of-state arrests is appropriate

Concerns about Robustness

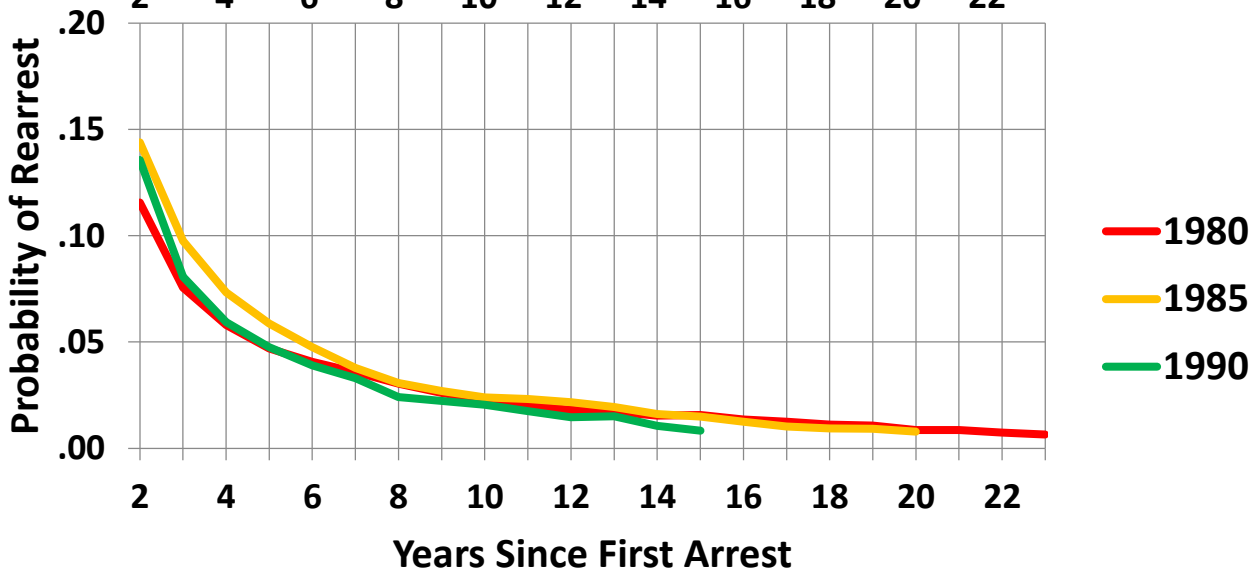
- Estimates of redemption times are based on 1980 first-time arrestees in NY
- How reliable are our estimates for use at different times or in different places?
- We test the robustness of estimates to:
  - Different States (Florida, Illinois in 1980)
  - Different Sampling years (‘85, ‘90 from NY)
- State results are different in about the first 5-10 years
  - But very close after 5-10 years

Robustness to Sampling Years

C_1 = Violent



C_1 = Property



Conclusions

- Recidivism risk declines with time clean
  - Important consideration to employers and government regulators
- Redemption times identify key time points when the criminal record loses its value in predicting risk
  - We have reasonable 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
- Prior crime type provides an indication of future crime type, especially for violence
- Our analyses provide a basis for responding to user needs
  - Redemption times can be estimated based on user specs for A_1, C_1, C_2, risk tolerance, etc.
  - Can avoid wrongly denying jobs to people with stale records
- Redemption times are consistently less than 20 years
  - Heavy burden on using CH older than 20 years

Balancing the Risks

- Time clean is important in assessing risk of future offending
  - Risk declines with time clean
- Not intended for people to be held in limbo until they reach what we call redemption times
  - Employment should be facilitated as soon as possible, especially with employment situations that are risk tolerant
- Other information should be used to encourage employment
  - Positive work history
  - Family structure – especially marriage
  - Experience with training and placement agencies

Potential Policy Approaches

- Inform appeals boards considering pardons
- Inform employers of the low relevance of events older than T* if clean since then
- Protect employers from “due-diligence liability” claims if last arrest is older than T*
- Seal recorded events if last is older than T*
  - Can re-open with sufficient provocation
  - Consider if purging is appropriate
- Data availability from commercial sources?

Source Document

- Available from NCJRS (National Criminal Justice Reference Service)
- Document No. 240100 (Nov. 2012)
- Extension of Current Estimates of Redemption Times: Robustness Testing , Out-of-State Arrests, and Racial Differences
- https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf

Thank you!

Questions & Suggestions?

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