



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.<sup>1</sup> 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.<sup>2</sup>
- Another 14 million arrests are recorded every year.<sup>3</sup>

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.<sup>4</sup>

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?

Most people would probably agree that there should be some point in time after which ex-offenders should not be handicapped in finding employment. The question is when, precisely, should this occur? In the case of our hypothetical 40-year-old, when should a prospective employer no longer consider a burglary that was committed more than two decades earlier if the job applicant has stayed clean since then?

Currently, employers have no empirical guidance on when it might be considered safe to overlook a past criminal record when hiring an ex-offender for a particular job. Employers generally pick an arbitrary number of years for when the relevance of a criminal record should expire: five or 10 years, for example. It goes without saying that different types of employers will have different sensitivities about the potential employee's criminal record. Those serving vulnerable populations like children and the elderly would be particularly sensitive to a prior record involving violence, while a bank hiring a teller would be particularly sensitive to property crimes. A hiring crew for a construction company might be far less sensitive to most prior records.

The point is that determining when a potential employee's criminal record may no longer be relevant has, to date, been an arbitrary exercise. Although considerable research has been done on how to forecast possible criminal behavior, no empirical basis has been found for deciding when a person's record is stale enough for an employer to consider it no longer useful or relevant.<sup>5</sup>

Until now.

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The National Institute of Justice funded our study to "actuarially" estimate a point in time when an individual with a criminal record is at no greater risk of committing another crime than other individuals of the same age. Although our research is ongoing — and our findings, discussed in this article, are preliminary — we have created a model for providing empirical evidence on when an ex-offender has been clean long enough to be considered, for employment purposes, "redeemed." An in-depth discussion of our findings and research methods appears in the May 2009 issue of *Criminology*.<sup>6</sup>

## What We Have Known for Years

It is well known — and widely accepted by criminologists and practitioners alike — that recidivism declines steadily with time clean.<sup>7</sup> Most detected recidivism occurs within three years of an arrest and almost certainly within five years.<sup>8</sup> But is it possible to identify when the risk of recidivism has declined sufficiently to be considered irrelevant in hiring decisions?

In our study, we obtained the criminal history records of 88,000 individuals who were arrested for the first time in New York state in 1980.<sup>9</sup> First, we determined whether they had committed any other crime(s) during the ensuing 25 years or if they had stayed clean. Then we compared this data against two populations:

- (1) People in the general population who were the same age.<sup>10</sup>
- (2) People of the same age who had never been arrested.











