REACTION ESSAY

EVIDENCE-BASED POLICY FOR SUCCESSFUL PRISONER REENTRY

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The problems of prisoner reentry are by now well known to academics and policymakers. With over two million individuals currently incarcerated, and over 12 million individuals with prior felony convictions, the challenge of integrating this large and growing population has become an urgent priority. Employment is widely considered a centerpiece of the reentry process, with evidence that steady work can reduce the incentives that lead to crime (Bushway and Reuter, 1997; Travis, 2005). And yet, hindering this goal, we know that ex-offenders face bleak prospects in the labor market, with the mark of a criminal record representing an important barrier to finding work (Pager, 2003). Indeed, more than 60% of employers claim that they would not knowingly hire an applicant with a criminal background (Holzer, 1996). Overcoming the barriers to employment facing ex-offenders, then, represents an important challenge for policies aimed at effective prisoner reentry.

At the same time, it is important to keep in mind that the employment of ex-offenders is not necessarily without cost. Employers bear the burden of theft and violence in the workplace, as well as the more mundane problems of unreliable staff and employee turnover. With respect to each of these concerns, a criminal record is arguably a relevant signal. Indeed, to the extent that the past is a strong predictor of the future, a conviction conveys some information about the likelihood of future illegal, dangerous, or debilitating forms of behavior. Employers thus have good reason to be cautious about hiring individuals with known criminal pasts. Any policy designed to promote the employment of ex-offenders will have to address the real and perceived risks facing employers who hire individuals with criminal records.

How then can we balance our interests in promoting the employment of ex-offenders with the desire to safeguard those employers who stand at the front lines of reentry initiatives? To date, most policies focusing on ex-offenders have emphasized *either* "promoting reentry" or "reducing risk." The first of these approaches seeks to facilitate employment for ex-offenders through various strategies, such as establishing antidiscrimination legislation, removing legal barriers, providing job training and placement services and the like. By contrast, those focused on

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risk reduction emphasize more the need to protect employers and the public from known offenders by providing greater access to criminal record information, by establishing occupational restrictions, and imposing other relevant safeguards. For reentry policy to achieve more than piecemeal success, however, a more comprehensive perspective is needed to simultaneously address the interests of each of these (at times opposing) constituents. For reentry policy to be successful, the concerns of ex-offenders, employers, and the public must be simultaneously taken into account.

Kurlychek, Brame, and Bushway take one admirable step in this direction with their article, "Scarlet Letters and Recidivism" (2006). Focusing on the trajectories of ex-offenders several years after an arrest, their article examines the tradeoff between providing or removing discrediting criminal record information, given the interests of employers in identifying and avoiding workers at risk of committing crime. By empirically modeling patterns of offending among a cohort of men with and without prior arrest records, they show that, although prior records do predict future offending, this relationship declines precipitously with time. In fact, after six or seven years from an arrest, the likelihood of offending for young men with records looks quite similar to those with no criminal history. For employers concerned about reoffending, then, a criminal record offers vanishingly little relevant information once a critical period of time has passed.

The Kurlychek et al. article provides a thoughtful discussion of the direct policy relevance of their work, as it relates to the use of criminal histories as a screening device by employers. In this brief reaction essay, I would like to situate their contribution within a broader discussion of reentry policy. Indeed, Kurlychek et al.'s analysis points us toward one of several approaches that could be simultaneously pursued as part of an integrated strategy for promoting employment among ex-offenders. In the following discussion, I consider several policy strategies that could further the goals of successful prisoner reentry, while remaining attentive to the interests and concerns of employers.

THE DISSEMINATION OF CRIMINAL RECORDS

One of the most direct policy implications of the Kurlychek et al. article (2006) relates to the dissemination of criminal records. Currently, for each individual processed through the criminal justice system, police records, court documents, and corrections databases detail dates of arrest, charges, conviction, and terms of incarceration. Most states make these records publicly available, often through on-line repositories, accessible to

employers, landlords, creditors, and other interested parties.[1] The widespread dissemination of criminal record information produces a public marker of contact with the criminal justice system, and a marker that, in many contexts, does not fade with time. With no mechanism for removal, the information remains prominently displayed in background checks, coloring the reception of even those most indisputably rehabilitated.

Trends in the dissemination of criminal records have been characterized by a uniform move toward greater access and wider distribution. It is implicit in this orientation that more information is always good, and that private citizens are equipped to make sense of a multitude of information available about the intimate details of each other's lives. Particularly for employers, who face risks of both property and person, the availability of complete criminal history information is considered an essential resource.

The findings of Kurlychek et al. challenge this assumption. Given that the risk of reoffending declines sharply in the six or seven years after an arrest, the public safety rationale for identifying an individual's criminal history beyond this point thus becomes steadily less compelling. Although public safety concerns mandate that employers and other members of the public retain the ability to identify those engaged in criminal activity, for individuals who have left their criminal past behind them (as most young offenders eventually do), a criminal record becomes little more than a lingering source of stigma. By contrast, time-limits on the dissemination of criminal records would provide the opportunity for offenders who have demonstrated a commitment to remaining crime free for a specified duration (and thus, statistically, begin to look very similar to those with no history of arrest) a second chance at a fresh start.[2]

The argument for the sealing or expungement of criminal records is not at all new. Idealistic reformers in the 1960s and 1970s argued for the restoration of civil rights and removal of the impugning markers of criminal conviction (Gough, 1966; Love, 2003). As recently as 1981, the American Bar Association (ABA) and the American Correctional Association (ACA) jointly issued their Standards on the Legal Status of Prisoners,

1. Over 64 million criminal history records were maintained in state criminal history repositories by the end of 2001 (Bureau of Justice Statistics, 2003, NCJ 200343). As of 2005, 38 states provide public access to their criminal record repositories, and 28 make some or all of this information available on-line (Legal Action Center, 2004).

2. The case for imposing time limits on the distribution of incriminating information has direct precedence in the case of credit checks. According to the Fair Credit Reporting Act of 2002, breaches of credit worthiness must be wiped clean after a period of seven years. The law implicitly acknowledges that although lenders and financial agents must be aware of the credit risks of prospective clients, individuals must be granted an opportunity for a "second chance" at financial solvency. Time limits on credit blemishes allow individuals to move beyond past mistakes.

which called for the adoption of "a judicial procedure for expunging criminal convictions, the effect of which would be to mitigate or avoid collateral disabilities" (ABA, 1981, part VIII, as cited in Love, 2003). In the midst of the "tough on crime" movement of the 1980s and 1990s, however, many states restricted or repealed their expungement provisions, limiting the circumstances under which records could be sealed or eliminated (Love, 2003).[3] At the time of this writing, 17 states allow certain convictions to be expunged or sealed (Legal Action Center, 2004). Many of these laws limit expungements (or sealing) to first-time offenses or after an individual remains crime free for a specified amount of time. As recently as 2004, Illinois passed legislation that allows ex-offenders with certain minor felonies, such as drug possession or prostitution convictions, to seal their records after a drug test and three years from the date of their last conviction. Other states limit expungements to misdemeanors only, impose longer waiting periods, or require specific efforts toward rehabilitation.[4] At least for the lower level offenders, then, there are signs of renewed interest in the potential of expungements to assist ex-offenders in the process of starting over.

To date, efforts guiding expungement policy have been largely idiosyncratic or political in nature. Kurlychek et al. (2006), by contrast, provide a model for *evidence-based* public policy, where time limits could be established on the basis of empirically tested risks of reoffending. This research is a first step in an important research program. As the authors point out, their sample represents a single cohort of men born in Philadelphia, and they have access to arrest records but not to information about conviction or incarceration. Future research should take the next critical steps to determine whether a similar pattern is obtained for other types of sanctions (e.g., conviction and incarceration), across specific categories of offenses (e.g., property, drug, or violent crime), and among multicity or national samples. With empirically valid results of this kind, we can begin to develop public policy that facilitates the employment of ex-offenders, while working to protect those employers who hire them.

Time limits on the use of criminal records are relevant not only to the

3. Sealed records are not made available to the public (or to employers, landlords, etc.), but they can typically be viewed by criminal justice agents and employers required by law to conduct criminal background checks (such as school districts).

4. Several states have also introduced "certificates of rehabilitation" or "certificates of relief from disabilities," which indicate that an individual has remained crime free for a specified amount of time. Although these certificates have tangible benefits in terms of renewed access to licensed occupations and remove certain other bars on employment, it is unclear whether private employers will be influenced by these certificates in considering an applicant's suitability (see Legal Action Center, 2004).

direct consideration of employers, but also to the wide range of occupations currently off-limits to ex-offenders. Fully 34 states (including the District of Columbia) impose some kind of legal restriction on public employment after a felony conviction.[5] All states place at least certain restrictions on occupational licenses for individuals with criminal records, with the number of barred occupations increasing substantially over time (Dale, 1976; May, 1995; Petersilia, 2003). Again, results such as those of Kurlychek et al. provide a model for revising occupational restrictions that privilege concerns over public safety, while expanding the range of occupations available to ex-offenders after remaining crime free for a specified duration.

An added advantage to a policy of time-limited criminal records is that it offers a tangible incentive for ex-offenders to stay out of crime. If an offender feels he will be relegated to dead-end jobs for the rest of his life as the result of a prior conviction, the lure of the illegal economy becomes all the more powerful. If, on the other hand, this individual knows that if he buckles down for just a few years he will eventually have the opportunity to escape his past and to try to build a better future, the incentives to stay clean increase.

As a final note on this issue, one must acknowledge the problems of information dissemination. To make the sealing or expungement of records effective, some oversight of the public and private providers of criminal justice information is needed. Currently, even when state records have been officially sealed or expunged, credit reporting agencies and criminal background services often continue to distribute incriminating information. Indeed, the regulation of information—provided by both public and private entities—should be a priority if rehabilitated ex-offenders are to be given a serious shot at a second chance.

PROMOTING DESISTANCE

The discussion thus far has focused on policies shaping opportunities to ex-offenders long after they have put their criminal lives behind them. But for returning inmates, this pathway to desistance is not an easy one. In recent years, more than 40 percent of returning prisoners were rearrested within one year of release, and roughly two thirds were rearrested within three years (Bureau of Justice Statistics, 2002). Many will fail long before they have the opportunity to make a fresh start.

5. Public employment is categorically denied to felons in 6 states, with the remainder imposing varying degrees of legal restrictiveness on hiring decisions for government jobs. Only 17 states impose no legal restrictions on public employment after a felony conviction (see Olivares et al., 1996).

This pattern of recidivism, however, should not be thought of as a "natural law" of crime. In fact, the particular slope of the recidivism trajectory is shaped in part by the prevailing policy climate of the time, including the availability of reentry services, the extent of legal barriers, and the relative distribution of legitimate versus criminal opportunities. Rather than waiting for recidivism to run its course, then, it is incumbent upon us to promote conditions that will speed the process of desistance. Kurlychek et al. (2006) estimate that after roughly seven years, offenders begin to look very much like non-offenders. Given the right reentry policies, the time to convergence could conceivably be cut in half or better.

How can we facilitate the reentry of offenders from the time of their release?

Over the past 30 years, we have seen a weakening of parole and the retreat of government services in support of prisoner reentry. It is unlikely that we can count on a revival of public services to buffer the reintegration of offenders. By contrast, several new models of service provision have developed as private non-profit ventures, offering promising prospective alternatives. One particular approach that has received growing attention focuses on the role of intermediaries in facilitating employment among returning inmates. Intermediaries function as liaisons between employers and ex-offenders, often making first contact with employers, discussing the employer's staffing needs, and evaluating the possible fit between the employer and the particular ex-offender job seeker. Intermediaries can help to reduce employers' concerns about hiring ex-offenders by vouching for the individual in question and by providing additional supervision capabilities to ensure the new employee follows through. In this process, intermediaries also serve as staffing agents for employers, particularly those not large enough to have a human resources division, and without the time to effectively screen the large number of applicants from the open market. Furthermore, intermediaries can address the job-readiness needs of ex-offenders, including straightforward issues such as attire and interview skills and larger concerns related to job skills and substance abuse. Several model programs in New York, Chicago, and Texas have been recognized for their success, each showing strong improvements in the employment outcomes of ex-offenders and significant reductions in recidivism (see Petersilia, 1999; Travis et al., 2001). For example, an independent evaluation of the Texas-based project RIO found that participants were nearly twice as likely to have found employment relative to a matched group of non-RIO parolees (60% vs. 36%), and rates of rearrest and reimprisonment were likewise significantly reduced (Petersilia, 1999).[6] These

6. One year after release, 48% of RIO's high-risk clients had been rearrested

and other studies point to promising developments in the field of prisoner reentry and, specifically, to the role that active interventions can play in promoting the employment ex-offenders (see also Wilson et al., 2000). Like the Kurlychek et al. article (2006), we need careful evaluations of the conditions under which ex-offenders become more likely to desist. Rather than waiting passively for offenders to converge with non-offenders, well-chosen interventions may be able to substantially accelerate this process.

SUPPORTING EMPLOYMENT BY SUPPORTING EMPLOYERS

Intermediaries can ease employers' anxieties about hiring ex-offenders by thoroughly screening and evaluating prospective employees. But no amount of screening offers an infallible protection against risk. In the event that an ex-offender employee does commit a crime in the workplace, it is the employer, not the intermediary, who may be held liable. Indeed, the legal precedent established under "negligent hiring law" explicitly states that employers must demonstrate "reasonable care" in the selection of employees or the employer may be held liable for acts of violence or loss of property caused by an employee against a customer or fellow employee.[7] Given these risks, many employers will prefer to avoid individuals with criminal backgrounds altogether. Although reentry policy has emphasized the critical importance of employment for keeping ex-offenders out of crime, little has been done to safeguard those employers who stand at the front lines of our reentry initiatives. Currently, only one resource, the Federal Bonding Program, provides some relief for employers who suffer loss or damages caused by an employee. The bonding program will insure ex-offender employees for between $5000- $25,000 for a

compared with 57% of otherwise similar non-participants; 23% had returned to prison compared with 38% of the control group.

7. Unfortunately, the law does not provide explicit or consistent guidelines as to how an employer can demonstrate "reasonable care." Particularly in states like Wisconsin, where Fair Employment Law prohibits discrimination against individuals on the basis of a criminal record, employers face a difficult challenge in demonstrating compliance when existing laws impose confusing—and even contradictory—expectations. Several rulings, for example, have made clear that employers are not required to conduct background checks on employees, because of the undue burden this requirement would place on employers. Other cases, on the other hand, assert that employers can be held liable for the employment of individuals with "known propensities or propensities which could have been discovered through a reasonable investigation." Again, the "reasonableness" of the investigation is a vague condition, clarified on a case-by-case basis only after the fact (Leavitt, 2001:1301-1302; see also Gregory, 1988).

six-month period.[8] This sum, however, is woefully inadequate relative to the size of negligent hiring lawsuits that can reach 100 times that amount. We need to think more carefully about how to put into place the necessary incentives to encourage employers to hire ex-offenders. At a minimum, an effective policy would impose limits on liability or assume federal responsibility for a larger share of damages.[9] If we believe that the employment of ex-offenders is an important step toward criminal desistance (and therefore relevant to public safety overall), then employers should be encouraged, not punished, for providing this population with a much-needed second chance.

CONCLUSIONS

Kurlychek et al.'s article (2006) points to an evidence-based strategy through which we can shape policy concerning the dissemination of criminal record information. The article takes seriously the risks faced by employers and the reasons access to criminal histories are made available. But the article also challenges the notion that a criminal record should impose a lifelong stigma. Indeed, in balancing the concerns of employers with a belief in "second chances," we can move toward a middle ground that maximizes both sets of interests.

And, yet, the time limits on criminal records represent only one piece of the reentry puzzle. For those offenders being released from prison this year, the possibility of an expungement 7 years down the line may be as good as an expungement 70 years down the line. We know from other research that the first year of release, indeed, the first moments of release, can be critical for shaping an ex-offender's pathway toward desistance or recidivism (Travis et al., 2001). Supporting ex-offenders through this initial transition remains an important goal, so that they may ultimately reach a point where they look little different from those who have remained arrest free.

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8. Employers are also eligible to receive a Work Opportunity Tax Credit for hiring ex-offenders, compensating up to 35% of the first $6,000 of an individual's wages for those who remain employed for at least 180 days (Travis, 2005).

9. There is precedent for establishing caps on punitive damages, as in the cases of environmental pollution, aircraft disasters, medical malpractice, and others (see Sullivan, 1989).

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