



RESEARCH REPORT

Criminal Background Checks

Impact on Employment and Recidivism

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ABOUT THE URBAN INSTITUTE

The nonprofit Urban Institute is dedicated to elevating the debate on social and economic policy. For nearly five decades, Urban scholars have conducted research and offered evidence-based solutions that improve lives and strengthen communities across a rapidly urbanizing world. Their objective research helps expand opportunities for all, reduce hardship among the most vulnerable, and strengthen the effectiveness of the public sector.

Authors' Note

Since publishing this report in March, we (the authors) have had several conversations with researchers in the field that have enhanced our understanding of laws and regulations surrounding criminal background checks. After carefully considering this feedback, we have decided to clarify two places in the report that reference data obtained from the [National Inventory of Collateral Consequences of Conviction](#) (NICCC). The report text remains the same, apart from a box referring readers to this note.

The NICCC repository is a comprehensive collection of information about state laws and regulations. In light of what we now know about how NICCC data are categorized and how the repository's online search capabilities function, we think two portions of the report merit more context.

Page 10, paragraph 3

On page 10, we reference NICCC and make the following observation:

A national repository of state-level data lists 45,142 local regulations that present different collateral consequences for justice-involved people.[Endnote citing NICCC as source.]... Interestingly, only 12 percent explicitly mention background checks as a requirement.

A more accurate representation of the regulations tracked by NICCC is the following (*new text in italics*):

A national repository of state-level data lists 45,142 local regulations that present different collateral consequences for justice-involved people.[Endnote citing NICCC as source.]... *Background checks are authorized or required in 43 percent of the entries. Twenty-eight percent of those entries include no instructions for how an employer may or must act on the information returned by the check. More research is needed to better understand how employers use background checks.*

We arrive at the 43 percent share by selecting both “background checks” under “types” and “supplemental record check” under “advanced search” in the NICCC. The first time we searched the database, we only selected “background checks” under “types” and found only 12 percent of the relevant entries.

Page 10, paragraph 4

In the next paragraph on page 10, we make the following statement:

For example, 47 percent of local employment regulations restrict people convicted of any felony from being hired, yet felonies run the gamut from low-level offenses to serious crimes.[Endnote citing the NICCC as source.]

Though the percentage is correct, the finding could use some additional context, as seen below (*new text in italics*):

For example, 47 percent of the employment entries in the NICCC require or authorize restrictions for people convicted of any felony, yet felonies run the gamut from low-level offenses to serious crimes.[Endnote citing the NICCC as source.] Some entries in the “any felony” category are for restrictions that apply only to people convicted of certain serious felonies, while others apply to people convicted of any felony. However, it is unclear what share of regulations requires employers to deny employment to people convicted of certain felonies and what share gives employers discretion to hire people convicted of other felonies. Because only some felony charges make people unfit for jobs, a closer look at how felonies are regulated in each state is required.

The important distinction here is that selecting the “any felony” category under “offenses” in the NICCC returns a wide variety of laws and regulations that mention felonies or crime generally. For example, any time a restriction refers to “crimes” in broad terms, it is entered in the NICCC both as “any misdemeanor” and as “any felony.” Some laws allow employers to have discretion about hiring people with criminal records while others include mandatory restrictions.

We hope that readers and fellow researchers examining national trends may benefit from these clarifications.

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Executive Summary

Employers across the United States rely on background checks as an integral part of hiring. According to a recent study, 72 percent of companies perform background checks, and 82 percent of those companies screen potential employees for their criminal histories.¹ Such checks allow employers to reduce their legal liability for negligent hiring, reduce the risk of theft, and minimize other threats to workplace and public safety.² However, flaws in the criminal background check process may undermine the value of these screenings and prevent suitable job candidates from securing jobs.

Criminal background checks often yield inaccurate and incomplete data. For instance, some background check reports do not distinguish between arrests that resulted in conviction and those that did not.³ Other reports include criminal records that have been legally expunged.⁴ As a result, employers may unnecessarily limit their candidate pool, and people who pose no risk to the public may be unnecessarily barred from employment.

BOX 1

People with Criminal Records

Anyone who has come into documented contact with the criminal justice system has a criminal record. A criminal record does not necessarily imply criminal conduct; for example, someone with a criminal record may have been arrested but never charged or convicted. Throughout this report, we use “people with criminal records” broadly and clarify when referring to specific touch points, such as incarceration or recent return from prison.

This report explores the two main types of criminal background checks used by employers in the United States: those requiring job candidates to submit fingerprints that are then compared to an FBI database, and those conducted by commercial vendors that compare information about the job candidate to public records. Specifically, this research report:

1. examines the differences and limitations in the types of criminal background checks employers conduct,
2. analyzes how criminal background checks restrict access to the already limited number of jobs available to people with criminal records,

3. describes the literature on the job performance of people with and without criminal records, and
4. explores the impact of employment on recidivism.

FBI and commercial background checks under- and overestimate criminal histories and the risks they may pose, leaving ample room for improvement. Policies that enhance the accuracy of background checks and ensure the application of regulations limiting the number of years examined in a criminal history inquiry would improve outcomes for both employers and prospective employees. In addition, background checks could align more closely with the types of jobs sought in the nature and recency of prospective employees' criminal histories. Doing so will provide the necessary assurances for employers while mitigating the employment challenges of people with criminal records, and both outcomes could enhance public safety.

Errata

This report was updated on May 2, 2017. On page 1, “the use of criminal history records for non-criminal justice purposes increased 22 percent” was changed to “the use of criminal history records for non-criminal justice purposes increased 29 percent.”

Criminal Background Checks: Impact on Employment and Recidivism

Criminal background checks are a routine component of most hiring processes.⁵ According to a recent survey, 72 percent of US employers use background checks. Of those employers, 82 percent conduct criminal background checks. These numbers reflect employers' increasing use of background checks to satisfy requirements to be bonded and insured.⁶ Meanwhile, state and federal laws mandate background checks for certain types of jobs, such as those that entail carrying a weapon, driving a vehicle, or interacting with vulnerable populations such as children, the elderly, and the chronically ill.⁷

Employers are increasingly relying on background checks to inform hiring decisions. Between 2010 and 2014, the use of criminal history records for non-criminal justice purposes increased 29 percent, with 30 million records provided, according to data from the Federal Bureau of Investigation (FBI).⁸ Further, these data underestimate how often employers rely on criminal background checks because they do not include checks performed by commercial vendors, which make up a \$2 billion industry.⁹

BOX 2

Criminal Background Checks

This report examines two types of criminal background checks: one conducted through the FBI's database that is linked to fingerprints, and another conducted by commercial vendors. The report focuses on background checks that employers request to inform their hiring decisions.

Despite their prevalence and their promise to mitigate employer risk, criminal background checks often generate flawed or incomplete criminal history reports or inaccurately pair identification data. Criminal history reports can include convictions that occurred in the distant past (potentially violating federal statutes that limit records checks to the previous seven years),¹⁰ records that have since been expunged, or offenses that are not germane to the job for which candidates are under consideration. As a result of those potentially misrepresentative reports, employers may unintentionally exclude qualified candidates.

The inconsistent results of criminal background checks create additional concerns for employers, particularly those seeking to fill low-skilled jobs for which people with records are most likely eligible. By inappropriately disqualifying certain people with convictions, criminal background reports can restrict the pool of qualified applicants for such jobs, a challenge for employers even when labor markets are slack.¹¹

Because of significant gaps in criminal records reports, an important share of job candidates faces unnecessary additional challenges in gaining employment. Already burdened by the long-term consequences that continue after serving a sentence, people with criminal records also experience even greater challenges than the general population when attempting to enter the job market.¹² People with records often have less formal education¹³ and limited work histories than their peers, in many cases because of lost years spent in correctional facilities—and these deficiencies make them unattractive candidates during the hiring process.

Limitations in the criminal background check processes create a scenario in which employers are not considering all potential employees. At the same time, people most in need of a job and most suited for available positions are less likely to get them because of their criminal records. Given that one in three Americans has a criminal record,¹⁴ problems with background checks likely have tremendous implications for the labor market, local economies, and public safety. These factors also have a disparate impact on racial and ethnic minorities, particularly African American men, who are more likely to come into contact with the criminal justice system.¹⁵ Despite these potential ramifications, a full assessment of the accuracy of different types of background checks and their impact on employment opportunities for people with criminal records is not possible because of insufficient research to date.

Types of Background Checks

Employers have two main sources for background checks: the FBI, which draws from data tied to fingerprint records and collected by federal, state, and local law enforcement agencies; or one of the thousands of commercial background check vendors that collect data through various methods, often relying on matching individuals' information against state and local court or police records. The two methods differ in convenience, speed, cost, and accuracy, and each has implications for employers and prospective employees. Table 1 summarizes the strengths and limitations of each method.

TABLE 1

Strengths and Limitations of FBI and Commercial Background Checks

Strengths	Limitations
FBI: Based on comparing fingerprints against its data system	
<p>Precise identification—Biometric information produces unique reports for <i>job seekers</i> and cannot be falsified:</p> <ul style="list-style-type: none"> ■ Mostly eliminates the risk of <i>false positives</i> (attaching a criminal record to the wrong person). ■ Mostly eliminates the risk of <i>false negatives</i> (overlooking a criminal record when one exists). <p>Arrests reported from local jurisdictions are mostly accurate:</p> <ul style="list-style-type: none"> ■ Still, Equal Employment Opportunity Commission guidance restricts <i>employers</i> from making hiring decisions based solely on arrest records when court disposition information is missing. 	<p>Incomplete records with missing case dispositions—Local courts and law enforcement agencies report their data inconsistently:</p> <ul style="list-style-type: none"> ■ Arrests with <i>no adjudication or conviction</i> may remain on a job seeker’s record. ■ State and local agencies may not screen out <i>nonserious</i> charges.^a <p>Variations in update frequency—State and local law enforcement agency policies vary significantly on how often to report information to the FBI:</p> <ul style="list-style-type: none"> ■ <i>Job seekers’</i> sealed or expunged records may be wrongfully revealed to employers. ■ Case outcomes may remain in the FBI database beyond a state’s legal requirements. <p>Speed—Reports for people with no criminal background can take 24–48 hours, but others can take 4–6 weeks (or, in some cases, 12–14 weeks).</p>
Commercial vendors: Based on matching demographic information	
<p>Reduced burdens for <i>job seekers</i> and <i>employers</i>:</p> <ul style="list-style-type: none"> ■ <i>Job seekers</i> do not have to go to an approved location to get fingerprinted or navigate the online submission system. ■ Reports can be returned to employers faster than FBI reports, making employer decisions timelier. ■ Fees vary significantly by vendor but usually come at no cost to the job seeker. 	<p>Non-unique identifying information—Accidental or intentional submission of false or misleading identifiers could produce incorrect record matching:</p> <ul style="list-style-type: none"> ■ Increases the possibility of <i>false positives</i>. ■ Increases the possibility of <i>false negatives</i>. <p>Variation in accuracy of information—Accuracy depends on the selected vendor among thousands available. Commercial databases may be updated infrequently and may wrongfully reveal sealed or expunged records, making <i>employer</i> decisions difficult:</p> <ul style="list-style-type: none"> ■ Depend on online public records and the purchase of court and state repository data, which are inconsistent and not always available. ■ Restrictions requiring commercial companies to update databases are not strictly enforced. <p>Incongruence of records protected by the Fair Credit Reporting Act with research on which candidates pose risks to the job or the public.</p>

Strengths	Limitations
Both types of background checks	
<p>Increased workplace and public safety:</p> <ul style="list-style-type: none"> ■ Example 1: Barring people convicted of predatory offenses from working in day care centers, schools, nursing homes, and hospital. ■ Example 2: Barring people convicted of fraud or money laundering from working for financial institutions. <p>When reported accurately, <i>employers</i> can make better informed decisions that support employment and ensure the safety of employees and the public.</p>	<p>Missing disposition data— <i>Job seekers</i> may be penalized for an arrest that never resulted in charges or conviction:</p> <ul style="list-style-type: none"> ■ <i>Employers</i> may make uninformed decisions about a job seeker’s record, unnecessarily limiting their hiring pool. <p>Mismatch between reported criminal offenses and the type of job the applicant is applying for.</p> <p>Additional barrier to employment for <i>job seekers</i> that does not necessarily make workplaces safer.</p> <p>Release of arrest records may be allowed beyond seven years or when the state’s statute of limitation expired placing additional burdens on prospective employees.</p> <p>Potential jeopardizing of public safety— Prohibits people who otherwise pose no risk to the job from accessing jobs when employment could prevent recidivism.</p> <p>Burdens to correct incomplete records fall <i>on job seekers</i> who might not have enough time within the short hiring time frame.</p>

^a See Joe Palazzolo, “FBI No Longer Checks Its Records for ‘Nonserious’ Crimes,” Law Blog, *Wall Street Journal*, October 12, 2015, <http://blogs.wsj.com/law/2015/10/12/fbi-no-longer-checks-its-records-for-nonserious-crimes/>.

FBI Records Checks

Public Law 92-544 authorizes the FBI to share information for purposes of employment, licensing, and other noncriminal justice purposes, provided the FBI is authorized to do so by a state statute approved by the US attorney general.¹⁶ Identification information is retained in the Interstate Identification Index (III), which includes the National Fingerprint File. Criminal justice agencies nationwide maintain repositories that can interact with the III system via automated requests to provide information about a person from every agency that has had contact with them. The information in the III and the National Fingerprint File is submitted by federal, state, and local law enforcement agencies. The FBI is a repository.¹⁷

BOX 3

How the FBI Conducts Background Checks

An applicant's fingerprints are recorded by a technician, often at a state or local law enforcement office. These fingerprints are submitted to the FBI, where they are checked against databases. If the fingerprints are matched to an arrest, the FBI produces an Identity History Summary including the reporting agency, date of arrest, nature of any charges filed, and the disposition of the arrest, if the latter is available.^a The agency that has the last contact with the person can transmit case disposition information electronically through III, on CD in a machine-readable data format, or by paper.^b Only 31 states submit records electronically through III^c, and half of all dispositions are submitted by CD, causing delays in transferring that data to III. Both issues contribute to missing dispositions.

^a"Identity History Summary Checks," FBI, accessed February 21, 2017, <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

^b"Arrest Disposition Submission," Federal Bureau of Investigation, accessed February 21, 2017, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission>.

^c"Interstate Identification Index (III) National Fingerprint File (NFF)," Federal Bureau of Investigation, accessed February 22, 2017, <https://www.fbi.gov/services/cjis/compact-council/interstate-identification-index-iii-national-fingerprint-file-nff>.

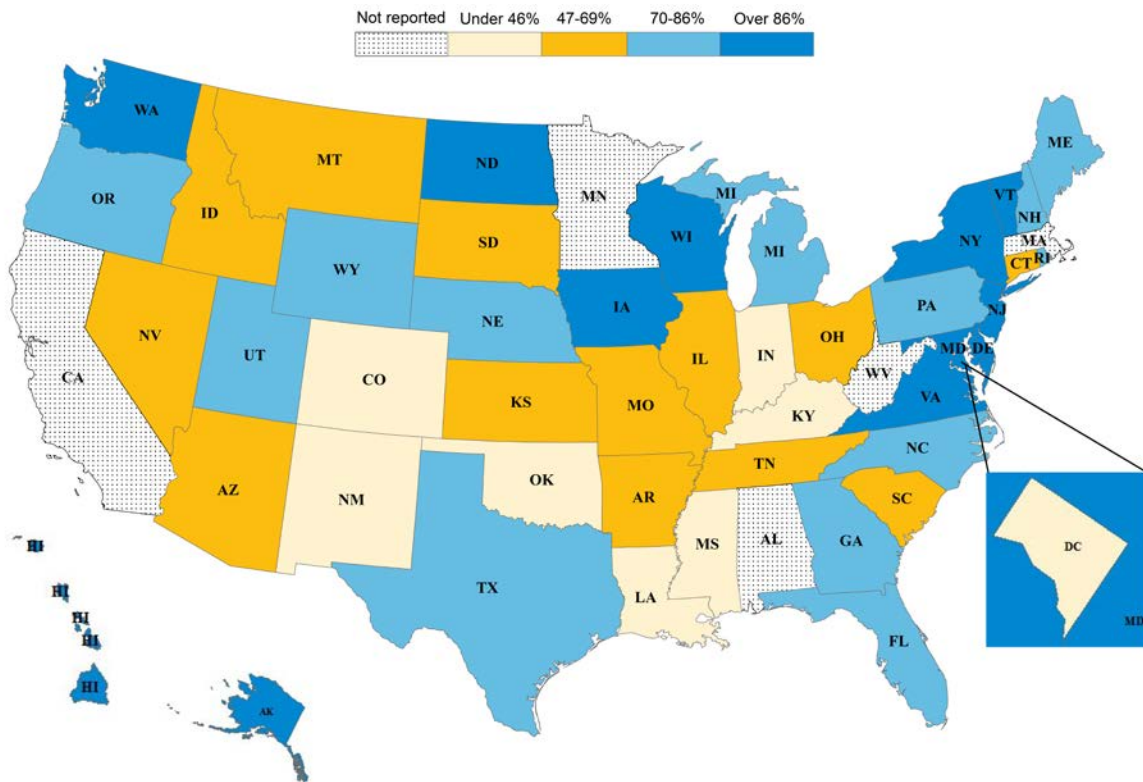
The FBI's use of fingerprints for identify verification has a notable advantage, as fingerprints are a unique source of biometric data that cannot be falsified. But the information associated with that identity may be inaccurate or incomplete. Indeed, one of the most significant limitations of fingerprint-based checks is that many records submitted to the FBI do not report a court's final ruling on the case, also known as the case disposition. This happens partly because local regulations vary significantly in what local law enforcement agencies and courts report to the FBI and when these reports are made. The same inconsistency is true for legally expunged records, since it is incumbent on states to report that information back to the FBI.¹⁸

Such inconsistencies in information sharing can create situations in which an arrest that did not result in conviction remains in someone's Identity History Summary report, potentially leading to denial of employment. This issue can be particularly significant when people are charged with several crimes at the point of arrest, but many of these charges, often including serious allegations, are eventually dropped during case disposition.¹⁹ Incomplete records with only arrest information can lead an employer to deny an offer to a job applicant based on a charge for which he or she was never convicted.

In many instances, significant amounts of court disposition data are missing from the FBI database. According to the Bureau of Justice Statistics' Survey of State Criminal History Information Systems, only 68 percent of arrests have a matching court disposition, based on reports from 46 states in 2014.²⁰

This means that the remaining 32 percent of arrests in the FBI database have no information about the court's final ruling. According to more recent sources citing 2016 FBI data, only 49 percent of arrests have matching dispositions;²¹ but, because state-level FBI information has not been publicly released, the accuracy of such data cannot be verified. A closer look at the 2014 survey data reveals that states vary widely in the share of arrests with matching case dispositions (figure 1). For example, Mississippi reported case dispositions on only 14 percent of its arrests, while Maryland reported case dispositions on 98 percent of its arrests. Such reporting gaps significantly burden people seeking employment.

FIGURE 1
State Variation in Reporting Court Case Disposition to the FBI
Percentage of arrests with matching court disposition records, 2014



Source: Bureau of Justice Statistics Survey of State Information Systems, 2014.

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It is difficult to know the true scope of this underreporting problem in the United States because of challenges in estimating how many arrests result in a matching conviction, but one study that examined 75 major counties across the country found that as many as one-third of all arrests with felony charges did not result in convictions.²² By law, employers are not supposed to take into account criminal background reports with missing disposition data,²³ and the FBI's Criminal Justice Information Services

Division is responsible for processing the requests challenging arrest information contained within the FBI criminal file.²⁴ In practice, the burden often falls on prospective applicants to correct errors in their records,²⁵ file grievances, or pursue legal actions against employers, which is not always a feasible solution within a short hiring time frame.

In 2009, the FBI formed a Disposition Task Force to identify and address the causes of missing disposition data. The task force has yet to issue formal recommendations, but the FBI has acknowledged that “the length of time to identify and provide solutions is a direct result of the scope and complexity of the problem being addressed.”²⁶ Though the challenges have been acknowledged, the most recent publicly available data, which continue to show significant gaps in matched case disposition across states, present employment burdens for the people with criminal records.

There is also concern that the FBI disseminates too much information to employers, in both the type of crime reported and the age of the reported incident. A federal regulation limits the FBI’s ability to collect and disseminate information related to nonserious offenses,²⁷ but the sheer volume of submissions and the significant variation in state definitions of nonserious offenses make it impractical for the FBI to review and screen out ineligible cases. Instead, the FBI requests that nonserious offenses should be screened out by reporting agencies before they are forwarded to the Bureau.²⁸ However, states are not always equipped to comply efficiently and accurately.

Individual states have their own laws and regulations on criminal record statutes and limitations,²⁹ creating variation in how far back incidents are recorded in the system. Certain serious offenses reported to the FBI may remain active on Identity History Summary reports for more than 10 years,³⁰ a timespan that may contradict state regulations on how far back criminal background reports can go. Generally, much of what is included in FBI records depends on what state and local agencies originally report. As a result, the burden of such inconsistencies is often borne by people with criminal records seeking employment, who may pose no more risk to the public than their counterparts among the general population.³¹

Commercial Background Checks

As an alternative to FBI background checks, many commercial vendors offer various background check services. Rather than using fingerprints to determine an individual’s identity, commercial background check vendors typically use a person’s name, date of birth, and Social Security number to gather information. Most commercial background checks are conducted by cross-referencing an individual’s

self-reported information with online public records as well as data purchased from courts and state repositories. Some companies check local court records manually, though this practice is declining as capabilities for electronic recordkeeping improve.³²

In certain instances, employers may prefer to work with private companies that can offer services to find or verify additional information about potential employees, such as their credit history, real estate records, and previous employment and education. Some commercial background check vendors can also produce reports faster than the FBI does. Fees for such commercial checks vary significantly by vendor and jurisdiction.³³

Background checks conducted by commercial vendors are legally considered consumer reports³⁴ and are regulated federally by the Fair Credit Reporting Act (FCRA); in many instances, local laws (often known as fair credit statutes) apply as well. Enforced by the Federal Trade Commission and the Consumer Financial Protection Bureau, the FCRA forbids the release of individual arrest records that are seven years past the date of original entry, or when the governing statute of limitations has expired, whichever occurs first.³⁵ Thus local statutes of limitations also govern the release of information about certain criminal convictions.³⁶ The federal regulations, however, do not apply to employees who will have salaries of \$75,000 or more.³⁷

The biggest limitation of commercial checks is that the accuracy of the information they produce varies greatly by vendor. Commercial databases have significant gaps because some companies do not update their databases regularly. The FCRA requires that background check companies “maintain strict procedures” to ensure the accuracy and completeness of any public information that could be used to deny employment.³⁸ But because of the impracticality of such maintenance and lack of local enforcement mechanisms, background check companies do not update their databases in a timely fashion. As a result, commercial databases have similar issues as the FBI database:

1. updated case dispositions are not included in consumer reports,³⁹ and
2. expunged or sealed records incorrectly included on reports.⁴⁰

These incomplete records are reported back to employers, forcing them to make hiring decisions based on incomplete data. Thus, job applicants whose records are outdated have a short window of time to correct the record before losing a conditional job offer; even if they successfully correct the record, applicants may still be denied final offers.⁴¹

Additionally, commercial companies work with a limited number of local government agencies that own data. Some local governments refuse to sell or share their records in bulk to commercial

companies.⁴² In these jurisdictions, background check companies have to request and gather records case by case. It is also not always practical or possible for companies to check court records in every jurisdiction where an applicant may have committed a crime. These difficulties can lead to increased false negatives, when a person is marked as clear but in reality committed crimes in other states or in jurisdictions that do not sell their records to commercial companies.

The reliability of commercial checks also depends on how thoroughly companies verify an applicant's identity. Commercial background checks can be undermined by accidental or intentional submission of false or misleading identifiers; for example, applicants might use nicknames or incorrectly list one digit of their Social Security numbers. Many courts and most state repositories will not release the Social Security numbers associated with their records because of privacy concerns,⁴³ further limiting the ability of commercial background companies to verify that records are matched to the correct person. The Federal Trade Commission, Consumer Financial Protection Bureau, and several private parties have brought lawsuits against background screening companies that detail examples of many such errors.⁴⁴ Several background check companies, including the three largest, have settled these suits by paying millions in civil penalties and compensation to the injured parties.⁴⁵

In summary, both types of criminal background checks yield incomplete and often inaccurate data leading to adverse outcomes for prospective employees and limiting options for employers. To alleviate these hardships, 34 states and Washington, DC, as well as 150 larger metropolitan areas, have increasingly taken to adopting "ban the box" regulations,⁴⁶ which require employers to request a criminal background check only *after* a conditional offer is made.⁴⁷ Some localities task government agencies to collect and process employment discrimination claims from prospective employees. Yet evidence on the impact of these new policies is limited. The scarce empirical research on the effectiveness of ban-the-box legislation is mixed: some studies show unintended consequences that disproportionately affect black applicants, while others indicate the policy is achieving its goals.⁴⁸ Regardless of when employers choose to inquire about a criminal record, the option of running a criminal background check still exists. And when employers resort to requesting a criminal background check through the FBI or a commercial vendor, they face the possibility of making their hiring decision based on incomplete information.

Impact on Employment and Recidivism

Reducing the Number of Available Jobs

Criminal convictions have after-effects that extend far beyond the direct punishment imposed in the courtroom. These effects, commonly known as collateral consequences, disproportionately affect people who are low income and black or Hispanic, who are also more likely to come into contact with the justice system. These collateral consequences touch many facets of life, including voting, housing, education, health, and—most relevant to this discussion—employment.

Finding a job is a tall order for many, but people with criminal records face unique challenges. People who have been involved in the justice system struggle to obtain a driver's license, own a reliable means of transportation, acquire relatively stable housing, and maintain proper identification documents. These significant obstacles prevent them from successfully re-entering the job market. The issue is compounded when the number of available jobs becomes more limited because of the proliferation of criminal background checks.

Local regulations and statutes play an important role in reducing the number of employment opportunities for people with criminal records. State and municipal regulations imposing restrictions on employment vary widely. A national repository of state-level data lists 45,142 local regulations that present different collateral consequences for justice-involved people.⁴⁹ Notably, 62 percent of the regulations restrict employment or limit eligibility for occupational licenses.⁵⁰ Interestingly, only 12 percent explicitly mention background checks as a requirement.

Background checks and licensing requirements that do not take crime types into account further reduce employment opportunities. For example, 47 percent of local employment regulations restrict people convicted of any felony from being hired, yet felonies run the gamut from low-level offenses to serious crimes.⁵¹ Reexamining whether all felony charges make people with criminal records unfit could alleviate some employment burdens. Notably, regulations could focus on crimes of violence, including “person offenses”—a type of crime considered to pose the highest risk to public safety. But only 16 percent of local exclusionary regulations specify “crimes of violence” instead of all felonies.⁵²

While drawing conclusions based upon this repository alone would be premature, a preliminary review reveals discrepancies between the crimes committed and the type of job or license for which a person can qualify. These regulations and discrepancies limit the number of jobs that would be

accessible to people with criminal records, jobs that such people otherwise could qualify for and be able to perform comparably to people without records.

Lack of Evidence behind Regulations

Local regulations that restrict employment are often inconsistent with the limited empirical evidence that suggests people with criminal records pose no greater risk to the public or perform worse on the job than the general population. One study finds that at a certain point, people with criminal records are rearrested at the same rate as comparable people in the general population, depending on the type of crime committed and the time elapsed since the first arrest.⁵³ Namely, people previously arrested for aggravated assault, one of the most serious arrests in this study sample, are no more likely to commit a crime as other community members of the same age 4.3 years following the arrest.

Although few studies examine this issue, their findings suggest that current regulations allow employers to inquire about applicants' criminal records further back in time than is useful from a public safety perspective. For instance, the FCRA mandates that arrest records going back as far as seven years can be revealed to commercial background companies, and that certain convictions can be revealed no matter how old they are.⁵⁴

In addition, there is a dearth of empirical evidence exploring whether people with criminal records are less productive or perform worse on the job than people with similar skill sets but without criminal records. One study that compared on-the-job performance of military enlistees with felony records to other enlistees found that those with felonies were just as likely to execute their contracts and were no more likely to be terminated.⁵⁵ Though the unique, heavily structured military environment and the small pool of employers represented limit the scope of this study, it is one of the few available that examines whether people with criminal records, particularly those with charges for violent offenses, perform worse on the job or pose a greater risk to the safety of coworkers or the public.

Employers' hesitation to hire people with a record is not necessarily grounded in current empirical evidence. More rigorous studies are needed to understand whether people with criminal records perform worse on the job or pose more risk to safety than people without records. These studies will provide useful information to employers about when it is risky to hire someone with a criminal record and when it is safe to overlook someone's prior criminal history. Absent such evidence, employers will likely continue to conduct criminal background checks and rescind offers from candidates who have

felony convictions. Such outcomes are also not beneficial to employers who are operating in a competitive market where the demand for low-skilled labor exceeds the supply.

Employment and Recidivism

Involvement in the criminal justice system and unemployment form a vicious cycle. Research indicates that employment after incarceration is a key factor in reducing an individual's risk of recidivism.⁵⁶ At the most basic level, employment provides secure income and allows people to become self-reliant, enabling them to provide for themselves and their families. Job stability provides informal social control⁵⁷ and creates new and positive social networks that can protect against re-engaging in criminal activity.⁵⁸ Importantly, these findings are echoed by people returning from incarceration themselves; many studies show that people feel that employment would help them stay out of the justice system.⁵⁹

Research reveals several variables that determine the value of employment in contributing to a person's ability to refrain from criminal activity (known as desistance from crime). Notable factors include age, how quickly after release employment is obtained, and wages. A study examining the interaction between employment and age reveals that work can be particularly critical in explaining desistance from criminal activity for those ages 27 and older.⁶⁰ Those who find employment shortly after release from prison are less likely to be re-incarcerated, and the odds of returning further decrease as pay and job stability increase.⁶¹ Particularly, one study finds that people recently released from prison who earned 10 dollars or more per hour are less likely to be incarcerated again than their counterparts earning lower wages.⁶² In this regard, the recent state campaigns to increase minimum wages above 10 dollars an hour⁶³ may help reduce recidivism. It bears noting, however, that opponents of increasing minimum wages speculate that such policies could yield unintended results, such as employers hiring fewer people because of the increased price of labor.

A body of evidence is also emerging on the impact of criminal background checks on recidivism. In a recently published empirical study, researchers analyzed recidivism among "provisionally cleared" health care workers in New York State, who had been cleared to work despite their criminal records.⁶⁴ The study found that the likelihood of provisionally cleared employees being rearrested within three years fell 4.2 percent, with significant and differentiated impact by gender: men's risk fell 8.4 percent while women's risk dropped only 2.2 percent.⁶⁵

The relationship between employment and recidivism indicates that accessible employment for people with criminal records, including the formerly incarcerated, is vital to public safety. Two of the

biggest barriers to entry are burdensome hiring practices and criminal background checks that might preclude otherwise suitable candidates from employment.

Conclusion

Criminal background checks are a reasonable mechanism for employers to minimize their liability and ensure the safety of their employees and the public. They are particularly important in industries where employees come into contact with the most vulnerable (children, the elderly, or the chronically ill), have access to money, carry weapons, or drive vehicles. Screening out employees who may pose safety risks is important and should be a priority for employers. However, it is also important to recognize that many prospective employees who have come into contact with the justice system may not pose such risks.

The two main types of criminal background checks available on the market have functional flaws that prevent employers from effectively identifying relevant criminal histories among job candidates. Fingerprint checks, relying on criminal record data in the FBI's database, often return records without court dispositions, and may take longer to process. Background checks conducted by private vendors also produce inaccurate reports owing to incomplete records from other jurisdictions, missing court dispositions, and incorrectly matched identities of prospective employees. These inaccuracies can vary by the quality and availability of state and local records and by the diligence of the commercial background check vendor.

Improving background checks would benefit employers and prospective employees. Employers could make better hiring decisions by relying on more accurate data, and prospective employees could face fewer unnecessary employment barriers. Policies should enhance the accuracy of background checks and establish and assure adherence to regulations that restrict record checks to the most recent and relevant of offense types in the context of the job being filled.

Given the well-documented link between job acquisition and recidivism, reducing barriers to employment for those with criminal records may also improve public safety. When people with criminal records have greater access to jobs, with lower barriers to entry, they have fewer incentives to engage in criminal activity, and less criminal activity in turn enhances public safety.

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