
POLICY ESSAY

CRIMINAL BACKGROUND CHECKS AND EMPLOYMENT AMONG WORKERS WITH CRIMINAL RECORDS*

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Do our policies that regulate criminal background checks influence the employment opportunities of job seekers with criminal records? Certainly workers with criminal records do poorly in the labor market. Strong evidence from survey data shows that men who have served time in prison have very low earnings and high rates of unemployment (Western, 2006). Recent studies of administrative data indicate that ex-prisoners earn around \$6,000 to \$10,000 on average in the first few years after incarceration (Pettit and Lyons, 2007; Sabol, 2007; Tyler and Kling, 2007). Michael Stoll and Shawn Bushway (2008, this issue) add valuable empirical detail to this broad picture of economic disadvantage in their study of employers' use of criminal background checks in hiring. Stoll and Bushway argue that criminal background checks only reduce employment in industries that require such checks. Otherwise, background checks have no significant effect. Stoll and Bushway suggest that policy efforts to improve employment among people with criminal records should focus specifically on state laws that require background checks. Seeking to limit background checks broadly will do little to improve economic opportunity.

The authors take on a very hard problem. As they note, significant obstacles impede efforts to estimate a causal effect of criminal background checks on the hiring of individuals with prior convictions. The kinds of firms that conduct background checks may be less likely to hire workers with criminal records even without a background check. Only highly qualified workers with criminal records may apply to employers who are known to check, as the less qualified take themselves out of the running. Measurement error also creates problems. Employers who do not conduct background checks may underreport how many of their employees have criminal records because they are less likely to know. All of these threats

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to causal inference lead to an underestimate of the effect of a background check on hiring a worker with a criminal record. Moreover, it may be difficult to estimate precisely the effects of covariates on a proportion hovering around 1% to 4%.

Although I am unconvinced that the authors present a strong design for estimating the effect of criminal background checks, I do believe that they bring a lot of important information to the table. We learn from their article that checking criminal backgrounds is a widespread practice among Californian employers. About 45% of Californian employers will always seek the job applicants' criminal histories, and a third of employers will pay for background checks from the state or a private vendor. The firms that check criminal backgrounds tend to be large service-sector enterprises with large unskilled workforces. Also, evidence suggests that employers have become more vigilant; the incidence of background checks grew 30% through the 1990s. Clearly background checks have become an established part of the normal hiring process, especially for the kinds of unskilled service jobs for which workers with criminal records will likely apply.

Added to employers' growing interest in their workers' criminal histories is the growing prevalence of those criminal histories themselves. Uggen, Manza, and Thompson (2006:290) estimate that about 5.5% of American adult males had felony records in 1968 compared with 12.8% in 2004. Among African-American men, 1 in 3 had felony records by 2004. In parallel work on imprisonment (Western and Wildeman, 2008), Christopher Wildeman and I estimated that among men born in the late 1970s, 20% of blacks compared with 3% of whites would serve time in prison by their mid-30s. Among men with less than a college education, 36% of blacks compared with 6% of whites would serve time in prison (Western and Wildeman, 2008). If employers are screening out job seekers with felony records, then they are excluding around 40% or more of noncollege-educated African-American men under the age of 40 years. These numbers look relatively small in relation to the whole workforce, but the share of the population with criminal records will grow as the population ages. These statistics indicate that screening out job seekers with felony records will have a massive disparate effect on noncollege-educated African-American men.

Are, in fact, employers screening out job seekers with criminal records? We know remarkably little about this. Experimental audit studies show that employers clearly prefer job applicants with clean records over those with criminal convictions. The audit study sends phony job applications to employers and varies them only in their signal of a criminal conviction. These studies have the twin virtues of controlling characteristics of job applicants by experimental design and observing employer behavior

directly. Audit studies based on application by letter and in-person interviews show that employers prefer noncriminal applicants by two to one over those with criminal records (Boshier and Johnson, 1974; Buikhuisen and Dijksterhuis, 1971; Pager, 2003). The effects of a criminal record on hiring are similar in magnitude to the effects of racial discrimination.

Although the audit study provides a compelling design for studying how employers treat job seekers with criminal records compared with similar job seekers without criminal records, it is uninformative about the prevalence of differential treatment in the labor market as a whole. Audit studies are typically based on a random sample of employers, not on the employers that applicants with criminal records are likely to visit in real job searches. Indeed, very little research had been performed on how people with criminal records look for work. How do people with criminal records look for work? Do they use personal contacts, employment services, or what? Do they know which employers screen out applicants with criminal records? Do workers tend to disclose their criminal records on job applications? We have no systematic information about any of these questions, and yet this kind of information is what we need to understand the prevalence of differential treatment on the basis of a criminal record.

Skeptics will say that a criminal record carries important information about a worker's honesty and reliability, and an employer has a right to know. This argument has merit, but various competing interests should be considered. The quality of the signal probably declines with time, so a youthful offense is less informative than a recent crime. The growing rates of incarceration and felony conviction also suggest that the criminal justice system has tagged a larger low-risk population than in the past. So, a felony record today may be less an indicator of personal deficiency now than when the criminal justice system was more selective. Also, we should not assume that the employer's interest is preeminent. A job applicant's medical records may be relevant for calculating his productivity, but we recognize that the employer's economic interest must be balanced by the applicant's right to privacy. Finally, society also has an interest in the social reintegration of individuals convicted of crimes. Steady work provides a key to criminal desistance, so expanding the employment opportunities of individuals coming out of prison, for example, will contribute to public safety in the aggregate. Even if many employers are not screening out ex-felons, as the authors suggest, new arguments for restricting the availability of criminal records may be found in a context of historically high incarceration rates. Such a restriction would aim to balance more finely interests in public safety, privacy, and fairness.

These issues finally raise the broader question of our priorities in thinking about the employment prospects of people with criminal records. The

state prison population, a disadvantaged subset of individuals with felony records, averages just a tenth-grade education and tests well below grade level. Most individuals coming out of prison have very little work experience. Surveys of prison inmates show that around 70% have a history of heavy drug use. Many struggle with chronic disease or mental illness. The experience of incarceration itself, not just the stigma of a criminal record, may diminish earnings and employment by stripping away the prisoner's meager stock of human capital. In short, individuals coming out of prison are among the most socially marginal in American society. Under these conditions, employer discrimination may add only slightly to their disadvantage. In some ways, this observation is not so far removed from Stoll and Bushway's (2008) central finding that criminal background checks are unassociated with reduced employment. The employers may be joining in only at the tail end of a sequential process of mounting disadvantage. Limiting background checks, thus, may have only modest effects on improving employment among individuals with criminal records. Instead, real social investments that build skills and improve health and well-being more directly redress the greatest obstacles to employment among individuals with criminal records.

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