

# Criminal Record Policies and Private Employers

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## **Abstract**

*The State of Massachusetts has more amenable policies toward the hiring of ex-offenders than most other US states. Boston also was among the first to 'ban the box' asking about conviction on city and private city contractor applications. Whether or not such policies and practices have permeated into the private sector has yet to be investigated. Through the use of mail and telephone surveys, employer's compliance with those state policies as well as employer preferences about hiring ex-offenders is explored. Results show Boston employers are not different from employers in other areas of the country. They voiced concerns about the liability of hiring ex-offenders, though they discuss needing to make case-by-case decisions. Findings show, however, that hiring procedures are counter to such an individualized decision process and to the state law requiring these actions, which are consistent with bureaucratic rationality wherein benefits do not outweigh costs and actual business processes do not allow for individualized assessments.*

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## **Criminal Record Policies and Private Employers**

### **Introduction**

Unemployment has been linked to crime at both the aggregate and individual levels. Generally speaking, high unemployment rates are positively correlated with increases in crime rates, particularly property crime (Edmark 2005; Gould, Weinberg, & Mustard 2002; Raphael & Winter-Ebmer 2001). At the individual level, unemployment is a risk factor for criminal activity (Fagan & Freeman 1999; Sampson & Laub 1993) and has positively been identified as a link to a sense of individual identity and self-worth (Jones 1997; Rossi, Berk, & Lenihan 1980; Wilson 1996). This may explain the association between employment and positive outcomes in other aspects of individual lives, such as success in drug treatment programs (Leukefeld, et al. 2003; Wolkstein & Spiller 1998). Further, employment is important for the immediate needs of offenders and their families and has generational repercussions. Wilson (1996) states that frequent joblessness in one generation reinforces the lack of attachment to work in the next generation. This in turn may perpetuate the cycle of poverty.

Unfortunately, for those who have criminal records, gaining and maintaining employment is a serious problem (Fagan & Freeman 1999; Holzer, Offner, & Sorenson 2005; Western 2002). A criminal record limits employment opportunities of ex-offenders as certain jobs are denied to those with a criminal record by law and other jobs are often denied to offenders based on employer discretion. While public safety must be a priority, systematic exclusion of ex-offenders from the workplace is particularly troubling given what is known about the positive effects of employment and given the increasing number of individuals who have criminal records. For example, almost 700,000 inmates were released from state and federal prisons in 2005

(Department of Justice 2008). Without access to jobs in the legitimate economy, the road to recovery and reintegration is problematic for these individuals.

While some jobs have always required criminal background checks, states are expanding their lists of employers who are mandated to conduct pre-employment investigations (Bushway 2004; Department of Justice 1999). Even employers not obliged to conduct criminal background checks are increasingly doing so. In his early 1990's study of a representative sample of employers in four major metropolitan cities, Holzer (1996) found that just 32% of employers always checked criminal records, but Pager (2003, 2006) notes that such checks have increased since September 11<sup>th</sup>. This is confirmed in a more recent study in the Los Angeles area that showed that over 50% of employers conducted criminal record checks (Stoll, Raphael, & Holzer 2006).

In contrast, the State of Massachusetts and the City of Boston have taken steps to increase ex-offender employment opportunities, particularly in light of the recent public attention to the collateral consequences of imprisonment (Henry & Jacobs 2007; Travis 2005). Under state law, Massachusetts permits background checks to be conducted only at the final hiring stages, when an applicant is about to be given an offer of employment. The applicant must be given an opportunity to explain his/her criminal record to the potential employer; and the employer has the obligation to discuss any denial of an offer based on the criminal record with the applicant.

Boston, the capitol city, has a history of being on the forefront of concern for ex-offender employment. For example, Holzer (1996) found that employers in Boston were significantly *less* likely to check criminal records than their counterparts in Atlanta, Los Angeles, or Detroit, though at the time of his study, Massachusetts had tighter restrictions on access to criminal records (Bushway 1996). Boston has continued to implement policies designed to protect the

employment rights of ex-offenders. The city has ‘banned the box’ that asks about criminal records on initial city employment applications and has even prohibited their private contractors from asking such questions. The city has taken further steps to minimize the employment consequences of criminal records by only checking criminal backgrounds for positions that exclude ex-offenders by law (i.e. those dealing with youth and the elderly). As Henry and Jacobs (2007) note, “To date, no city has gone as far as Boston, though cities are moving in the same direction” (p. 758).

Though the government has taken groundbreaking steps to promote ex-offender employment, one cannot assume that private companies have followed their lead. The goal of this research was to explore if these policies have translated into changes in the practices of private employers in the city of Boston. Specifically, researchers wanted to know if employers were complying with law that required criminal record background checks to be made only at formal hiring stages and if their employment practices and preferences are more ex-offender friendly, like those of the city.

This study examines private employer preferences in a city and state whose policies are more amenable toward ex-offender employment. The article explores which type of employers are most likely to utilize criminal record checks, how different types of criminal records are used in the employment screening process, and what employer experiences have been with hiring those with criminal backgrounds. Answers to these questions can best inform policy on appropriate use of criminal histories. While the focus here is on Boston, research results have policy implications for other locations throughout the country that are grappling with ex-offender employment.

## **Employer Preferences**

Understanding employer preferences in cities is crucial because most ex-offenders are likely to return to the center cities from which they came (Travis 2005). Ex-offenders may have a particularly difficult time obtaining employment in urban areas because employers located in center cities may have more rigorous screening processes than those in the suburbs (Holzer 1996). As discussed below, most research on criminal records and employment focuses on the negative impact of a criminal record on employment opportunities (Erickson & Goodstat 1979; Freeman 1996; Holzer 1996; Needles 1996; Pager 2003; Sampson & Laub 1997).

The lack of willingness to hire those with criminal backgrounds is most clearly seen in Holzer's (1996) research. He found that 65% of employers surveyed would not knowingly hire an ex-offender in his four city study (Atlanta, Boston, Detroit, and Los Angeles). In fact, in a list of stigmatizing characteristics, such as welfare recipients, those with GEDs, and those with spotty work histories, ex-offenders were the least desirable. Follow-up research with employers in the Los Angeles area in 2001 showed that reluctance to hire ex-offenders had not subsided (Holzer, Raphael, & Stoll 2007).

The 2001 study showed that some employers were willing to hire ex-offenders if the crime was non-violent. Approximately 46% of employers said they were willing to hire someone charged with a drug offense and 40% were willing to hire someone charged with a property offense compared to only 9% who were willing to hire someone charged with a violent offense. Unfortunately, this was the extent of the detail asked in these questions. There may be some differences in how employers view someone who is 'charged' versus who is 'convicted' of these offenses. Furthermore, employers may make distinctions among severity of offense, extent of prior criminal record, and incarceration.

An earlier study explored employer preferences in Houston and Dallas with regard to offense type (Albright & Denq 1996). Although no vignettes were presented in this study, employers indicated that they were most likely to hire DWI offenders, followed by drug offenders, but the majority of employers indicated that the circumstances surrounding their offenses would be factored into the employment decision. How employer preferences change with the severity of the offense and incarceration time, however, was not explored in either of the above studies. Vignettes are likely to provide a better, more accurate, way to assess employers' preferences in a concrete context (Nagin, Piquero, Scott, & Steinberg 2006).

Employers appear to believe that the existence of a criminal record indicates a lack of trustworthiness and that applicants with criminal records represent a liability because of their possible future actions (Bushway 2004; Holzer, et al. 2007). In fact, it has been posited that liability issues are a major contributor to the growth of private criminal record checking agencies (Bushway, Briggs, Taxman, Thanner, & Van Bakle 2007). Under the negligent hiring doctrine, employers can be held liable for the actions of their employees if they knew, or should have known, that that employee posed a significant risk. A criminal record check is generally considered a safeguard against any negligent hiring lawsuit. Holzer and colleagues (2007) could not get at that information directly from their 2001 survey, but point to this as an important factor in understanding employer decisions.

When employers do hire those with criminal records, not surprisingly, they are more likely to employ those with shorter criminal records, more education, and more experience (Needles 1996; Sabol 2007; Uggen 1999). When a criminal record is coupled with low educational attainment, poor work history, and minority status, quality employment opportunities are bleak. Given that numerous ex-offenders have many of these characteristics it is imperative



to understand more about the hiring decision making process in order to ensure better outcomes for ex-offenders.

Racial and ethnic effects cannot be disentangled from the employment screening process, either. Research has shown discrimination in hiring and in compensation. In a study of Georgia ex-offenders, Needles (1996) found that while black ex-offenders were as likely to be employed as whites, they earned less although other research has found that blacks with criminal histories were less likely to be employed than whites (Holzer, Offner, & Sorensen 2005; Uggen 1999; Western & Petit 2000). In a summary of their findings, Holzer and his colleagues (2005) conclude that, “employers seem to feel particularly threatened by black men with criminal records” (p. 45). This is confirmed in Pager’s (2003) audit survey of employers where she found that of black and white men with and without records, white men with criminal records were more likely to receive call backs by employers than black men without criminal records.

The inter-relationship of ex-offender status, race, and employment is even less clear when employer-related characteristics are taken into account. Seemingly contrary to the above, research has found that firms who check backgrounds are more likely to hire blacks (Stoll, et al. 2006). This may be because absent a criminal record check, employers engage in statistical discrimination, or making negative assumptions about people of color when no empirical evidence is available.

Research has found that larger companies and those with limited customer contact (i.e. manufacturing) are more willing to hire ex-offenders (Stoll, et al. 2006). This can be seen in the types of jobs obtained by ex-offenders. Typically, male ex-offenders are most likely to be employed in construction, manufacturing, food service, maintenance, and sanitation (Buck 2000; Holzer 1996; Uggen 1999). Unfortunately, these jobs often fall below the ex-offender’s skill and

experience level (Cooke 2004), and the quality of jobs matter. Studies of employment programs for ex-offenders show that short-term, low-wage jobs do not generally deter criminal behavior (Elder 2002; Horney, Osgood & Marshall 1995; Kruttschnitt, Uggen, & Shelton 2000). Uggen (1999) extends job quality from economic considerations, such as pay and benefits, to non-economic factors, such as prestige, personal achievement, and social assent. Among those over age 26, he found support for the hypothesis that high quality employment reduces the likelihood of criminal behavior. Skilled workers and professionals were much less likely to recidivate than low-skilled, low job satisfaction workers in his analysis of offender data. In order to find such quality jobs, however, ex-offenders often need extra help.

While numerous state and federal programs provide job skills and resource centers to ex-offenders (for review, see Buck 2000), these programs are bound to be unsuccessful unless employers are willing to hire ex-offenders into quality positions. In a meta-analysis of experimental ex-offender job programs, Visher and colleagues (2005) found that with the exception of Uggen's (1999) finding about the deterrent effects for those over 26 years of age, ex-offender programs do not show success. This is why many ex-offender placement programs also now focus on building relationships with and educating employers on ex-offenders (Visher, Winterfield, & Coggeshall 2005). More systematic information on how employers view criminal histories, however, must be obtained so that employment programs can better educate employers. This study provides preliminary data for that purpose.

Data on employer preferences should extend beyond the types of individuals most likely to be hired. For example, a recent study that found that those with criminal records older than six or seven years had almost the same rates of re-offending as those who never had a criminal record (Kurlycheck, Brame, & Bushway 2006). The authors argued that criminal records beyond

seven years for most offenders should not be included in criminal record histories. Pager (2006) supports this time limited view and states that limited criminal record access may increase the probability of successful rehabilitation of ex-offenders given that widespread criminal record access would be detrimental to the prospects of employment.

Others disagree. Bushway (1996) believes that access to criminal records in an open-record system could actually improve wages of non-offenders, particularly those from stigmatized groups, such as black males. Bushway states that without access to criminal records, employers make assumptions about workers and their productivity based on stereotypical beliefs, or statistical discrimination. Similarly, Raphael (2006) points out that employers barred from criminal record access may use alternative methods to identify ex-offenders, including race and gaps in work history (also see Stoll, et al. 2006). Because of the multiple and interconnected barriers that ex-offenders face, exploring more detail about how criminal records are obtained and used is necessary.

## **Methods**

To investigate policy compliance and the issue of employer hiring practices, a two stage mail and telephone survey method was used. First, a mail survey was sent to a random sample of employers in Boston from the *Reference USA* database, which lists employers by industry and size. Using findings from Holzer (1996), four industries most likely to encounter applicants with criminal records were chosen for inclusion in the study. Those industries were retail trade, business and personal services, wholesale trade, and manufacturing. Financial services also was included as it is a large sector employer in the city. Because employee size may also have an effect on hiring practices, companies were disaggregated on the basis of number of employees (5-19, 20-49, 50-99, and 100-499). Companies then were selected via systematic sampling

procedure. Due to monetary resource constraints, a total of 192 companies were chosen for study inclusion.

Selected companies were then contacted in order to verify the mailing address and to determine who was in charge of making hiring decisions. Using the Total Design Method (Dillman 1978), a letter describing the study was mailed to the companies whose information had been obtained. One week later the survey, along with instructions, an addressed, stamped envelope, and ten dollars cash were mailed. Researchers decided to use an up-front cash incentive based on research that showed higher response rates with cash incentives (Ryu, Couper, & Marans 2006; Singer, Groves, and Corning 1999; Singer, Van Hoewyk, Gebler, Raghunathan, & McGonagle 1999; Yu & Cooper 1983). A second survey was mailed two weeks later as a reminder to those who had not yet returned the survey.

There are some inherent problems with the use of employer surveys to address how employers make decisions about ex-offenders and if they are truly complying with policies. One cannot assume that the attitudes of employers measured by the survey are equivalent to the behavior of employers (but see Holzer, et al. 2007). Behavior can only be measured by an audit/experiment as Pager and Quillian (2005) discovered. At the same time, such employer surveys do provide general information about employer preferences (Holzer 1996; Pager and Quillian 2005), and that was part of the purpose of this study.

A short two-page mail survey was used to gather basic information including number of employees, branch locations, turnover rate, age, sex, education and other demographic characteristics of employees. Information was also requested on a list of factors employed in making hiring decisions. To ascertain if employers were complying with state law in conducting criminal record checks at final hiring stages, respondents were asked whether their company

conducted criminal background checks before hiring and at what point in the process. At the close of the survey the respondents were asked if they would be willing to complete a phone interview.

Mail and telephone survey construction was guided by a number of different factors. Most importantly, the researchers did not want to unintentionally impact the use of criminal background checks in respondents' hiring decisions. Thus, in the mail survey stage, the question of utilizing criminal checks was included in a larger list of factors that might impact the decision to hire an individual, including education, work experience, and social skills. Some studies have treated criminal backgrounds as a single category (i.e. record/not; incarceration/not), yet the substantive nature of crime may in fact make a difference. For instance, studies have found that employers generally were more likely to hire drug offenders than property offenders (Albright & Denq 1996; Holzer, et al. 2007, Pager 2003). For these reasons, the researchers disaggregated offense type into person, property, and drug offenses and provided vignettes to better understand which factors matter most to employers in the hiring decision.

Respondents who conducted criminal background checks and who were willing to be contacted by telephone were given a more comprehensive, oral interview. Respondents were queried about their policies toward the hiring of ex-offenders and their sources of information about the criminal records of current and potential employees. In-depth information was collected on the companies' experiences with state-provided criminal records, their use of private companies to gather criminal background information, which criminal offenders they have hired or would consider hiring, and what changes might make state criminal background checks more useful in guiding hiring decisions.

Employers wanting to show themselves in the best light may not have been as forthcoming about their true hiring practices (Pager 2003). They also may be truly unaware of any implicit discriminatory perspectives they may hold (Pager & Quillian 2005). Although we could not test such assumptions, prior research has found a correlation between employers willingness to hire based on survey information and their actual hiring practices (Holzer, et al. 2007). To reduce potential social desirability issues, researchers minimized the focus on criminal records in the mail survey and asked vignette information about the demographically ‘typical’ employee in the telephone interview. For example, if employers were most likely to hire white males in their early 30’s, researchers asked them how willing they would be to hire a 32 year old white male who had a criminal record. The type of crime (person, property, drug) and the length of time since last offense was varied in these vignettes.

## **Results**

The mail survey response rate was 52% (n=100). This is better or on par with other studies that have examined employer preferences (Albright & Denq 1996; Holzer 1996; Holzer, et al. 2007). Table 1 displays sample characteristics. Respondents were most likely to be in retail, business and personal services (32%), followed by manufacturing and wholesale trade (29%), financial (25%), and contractor and transportation (13%). Approximately two thirds of respondents (63%) had less than 50 employees and the other third (36%) had between 50-499 employees. Almost one half of the employers rated their company’s turnover rate as average for their industry. Most employers had a majority of male employees and employed mostly white workers. The average employee age was 35.

Table 1: Sample Descriptives (N=100)

Industry	Retail, Business, Personal Services 32% Manufacturing & Wholesale Trade 29% Financial 25% Contractor & Transportation 13%
Business Size	5-19 employees 40% 20-49 employees 23% 50-99 employees 21% 100-499 employees 15%
Turnover Rate	48% rate average for their industry
Gender of Employees	69% male dominated (51%+)
Ethnicity of Employees	67% white dominated (51%+)
Age of Employees	35 years average

Respondents were asked what type of information they confirm about applicants. Table 2 displays this information. Businesses were most likely to confirm job-related experience (76.8%) and stable work history (63.3%). This was true of employers across each of the four sectors surveyed. Over half (52.4%) of respondents confirm criminal histories of applicants. This is commensurate with what Holzer, et al. (2007) found in a survey of Los Angeles employers. While Boston may differ in their public hiring practices, these findings support the notion that in the private sector, Boston employers' use of criminal record checks does not necessarily differ from that of another major metropolitan city.

Table 2: Confirmation of Applicant Characteristics

Characteristics	Percent Confirming (N)
Education	48.0% (39)
Job-Related Experience	76.8% (63)
Stable Work History	63.3% (50)
Credit History	18.7% (14)
Health Status	2.7% (2)
Criminal History	52.4% (43)
Drug Use	16.9% (13)

Not surprisingly, criminal history is most likely to be confirmed by those in the financial industry (65.0%), and least likely to be confirmed by those in the contractor & transportation industries (41.7%), though there were no statistically significant differences in criminal record confirmation by industry. Criminal record checks also did not vary significantly by business size. Businesses who utilized an application process, however, were significantly more likely to check criminal records than those who did not (59.0% vs. 33.3%,  $p < .05$ ), regardless of industry. Similar to Holzer, et al.'s (2007) finding, this suggests that criminal record checks are generally more likely to occur in business that have more formal hiring processes. In addition to criminal record checks, those same businesses were more likely to check other applicant information listed in Table 2. While the majority of employees in the businesses surveyed were white, there were no significant differences in criminal record confirmation by dominant ethnic background of employees or of dominant gender of employees.



Table 3: Confirmation of Criminal History by Industry

Retail, Business, & Personal Services	48.0% (12)
Manufacturing & Wholesale Trade	48.0% (12)
Financial	65.0% (13)
Contractor & Transportation	41.7% (5)

At the end of the questionnaire, respondents were asked to identify the best predictor of a good employee. The top four responses to the question are listed in Table 4. Interestingly, not one respondent mentioned a clean criminal record. The fact that a stable work history was identified as the best predictor, however, is problematic for those reentering society from incarceration, where there is an inevitable break in employment. Incarceration further erodes jobs skills and social networks that are often needed to find and obtain employment (Cooke 2004; Holzer 1996; Western 2002). Thus, at least indirectly, criminal records affect employer decision-making.

Table 4: Best Predictor of Good Employee

Stable Work History	23.7% (22)
Presentation of Self	20.4% (19)
Job-Related Experience	19.4% (18)
Social Skills	8.6% (8)

A telephone interview was used to gather more information about criminal record policies and to illuminate mail survey findings. Fifty-eight percent (58) of mail survey respondents indicated that researchers could follow up with them via telephone for a short (10-15

minute) interview. Researchers selected only those respondents who indicated that they checked criminal records for follow up telephone interviews as those interviews asked more in-depth questions almost exclusively about that process. This reduced the number of potential interviews to 42.

When researchers attempted to follow up with these respondents, however, several problems arose. First, it was extremely difficult to reach the identified respondents on the telephone. Few telephone calls were returned when researchers left messages. In addition, many respondents were involved in fast-paced businesses, were unable to set aside time to talk, and were unwilling to participate in an in-depth interview, even with a nominal cash incentive of \$10. As a result, researchers were only able to interview 14 respondents, which corresponded to a 33% response rate, though this is similar to what others have achieved, as noted earlier. These respondents' mail survey results were compared to mail survey results of employers who were not telephoned. No significant differences were found. Thus, their responses can shed light on the mail survey results.

Eight of the 14 respondents check criminal records for all positions. The other respondents discussed checking criminal histories for particular positions that could carry liability, such as for drivers and for those who handle cash. Almost all respondents used actuarial language in stating that they needed to check to make sure a potential applicant would not be a 'liability' for the company. Interestingly, only three respondents stated that their companies had formal guidelines dealing with hiring those with criminal records, indicating that though a hiring process may be more formalized, handling those with criminal records is not.

Most companies (10) went through private agencies for criminal record information rather than directly contacting the state's Criminal History Systems Board (CHSB).

Respondents, even those who used the CHSB, were confused about what the CHSB did, what a Criminal Offender Record Information (the state's official name for criminal record checks) was, and thought that private agencies had access to that information. This could very well be due to the fact that, though researchers interviewed the person responsible for hiring, that individual was often not the one who received criminal record information. In other words, there was a bifurcated process, where the person who received criminal record information passed on conclusions to the hiring person. Thus, when researchers asked questions about how the criminal record checking process was done to determine policy compliance with state law, most respondents (12) could not answer questions about what private agency was used to check records, how the process worked, or what they would change about the system.

When asked if the respondents were aware of tax credits for hiring those with criminal records, five indicated that they were aware of such credits. When asked about being aware of federal bonding for hiring those with criminal records, only one individual was aware of this. In either case, all respondents indicated that the existence of such incentives did *not* influence their decisions to hire potential employees. Incentives did not overcome the respondents' concern about social costs to their companies if ex-offenders were to be hired, as discussed below.

To obtain more detailed information on who employers would hire, the phone interview consisted of vignettes detailing certain types of offenders, their criminal histories, and their current criminal status. These included applicants who were convicted solely of drug crimes, a combination of drug and crimes against the person, and drug and property crimes. Length of time since system involvement also was asked as a result of recent research indicated time since last offense is an important consideration in making criminal records available (Kurlycheck et al. 2006). Again, while there were few respondents overall, the general theme that arose from all

respondents was that they would hire on a case-by-case basis depending on the other qualities of the applicant, but would be most likely to hire a drug offender who had a clean record for several years and least likely to hire an applicant convicted of a felony crime against a person. Interestingly, the duration of time since last offense did not matter for crimes against the person, which suggests that a state imposition of time limited criminal record access may be important.

Vignette information, coupled with the bifurcated criminal record checking process, raises the question of whether or not the hiring process really allows for an examination of the whole person and making judgments about who would be a good employee. Because of the way employers go about the hiring process, it is almost impossible to get a full picture of the individual. One person interviews the candidate, while another checks the criminal record and makes the final hiring decision. By law, applicants are to be given the opportunity to explain their criminal records, yet those explanations may very well not be given to the individual who makes the final hiring decision based on criminal records. Such business practices run counter to the statewide policy, and their own statements, aimed at making case-by-case decisions.

### **Conclusion**

This study has revealed several important findings. First, the bifurcated process of hiring and criminal record checking is contradictory to the state's policy of checking criminal records at final hiring stages and allowing the ex-offender an opportunity to explain a criminal record to the employer for individualized decisions about hiring to be made. The person who interviews candidates is not the individual who checks criminal records and makes the ultimate hiring decision based on record results. Concomitantly, employers are interested in a candidate's 'total package', though stable work history and work experience were the top hiring factors. A bifurcated hiring process runs counter to such statements. Both employers and state

policymakers should be made aware of how companies' hiring process may inadvertently stymie the goal of individualized decision-making.

Second, though prior research has shown Boston employers may be less concerned with criminal records (Holzer 1996), from the current research, it appears that this is not the case. While the City of Boston as an employer has 'banned the box' in the application process, private employers in the city check criminal histories of applicants at a rate consistent with employers in other areas. This may be a function of changes in safety and security in business practices as a result of 9/11, as others have suggested (i.e. Pager 2003). Private employers are not, at least at this point, taking their lead from what is happening in the public sector.

A recent cultural shift may be a partial explanation for such findings. A fear of lawsuits arising from negligent hiring may have taken hold, similar to what has been found in other locations (i.e. Stoll et al. 2006). In this research, the risk aversion language respondents used to justify non-hiring followed the negligent liability clause. Possible legal action was a cause for not hiring, but employers were unaware of incentives to hire an ex-offender that could address those liability concerns. Clearly, there is a need for heightened awareness about tax credits and federal bonding, though they stated such incentives may not influence their hiring decisions.

Theoretical work on law demonstrates that employers doing "business as usual" despite policy changes, is typical (i.e. Lipsky 1980). Although the state and city are attempting to use the law as an instrument of change (Visher & Weisburd 1998), increasing amounts of law may actually decrease the chances that ex-offenders will be hired. The result of more law is increased rationality (Black 1976). In increasingly rational systems, an accounting of individual differences and case-by-case decision-making are nearly impossible due to, among other things, a specialized division of labor (For example, see Aday 1986; Gebo 2002; Weber 1942). The

bifurcated hiring process is a by-product of a more rational system. This ironically leads to less ability by companies to make individualized decisions, which is required by law and espoused by employers in this study. Further, companies are making a rational choice not to hire these individuals because they logically want to protect their interests. The incentives for doing so (tax credits/bonding) do not outweigh the potential damages to their reputations. This is all typical of rational systems (Elster 1989; Homans 1961).

On a pragmatic level, the finding that most respondents in this research utilized private companies to check criminal records is an area in need of research. Future research should investigate public versus private criminal record checks. Private criminal record checking agencies remain largely unregulated (Bushway, et al. 2007), but knowing where they receive their information, how that is obtained and the differences between them and the CHSB is important. Because employers are more likely to conduct criminal background checks today and because more individuals with criminal records face employment barriers, it is essential that criminal records data be accurate. Unfortunately, a national review of state criminal record histories by Legal Action Center (2004) questioned the integrity of many state systems. Adding to the problem of inaccurate public records, employers sometimes rely on private companies who develop their own criminal record databases based primarily on court information (Bushway 2004). The accuracy of such databases, and the extent to which employers use these companies, however, have only recently been examined in one limited study.

In that study, Bushway and his colleagues (2007) compared FBI offense rap sheets in Virginia to information provided by a private agency. As expected, the information compiled by the private agency was inaccurate and incomplete. Perhaps not surprisingly (see Geerken 1994), the researchers found that the FBI records were also inaccurate. These findings underscore the

need for states to address issues of accuracy in their criminal history systems, and for a more conscious dispensing process to take place. Hiring employers in Boston were unaware of differences or possible inaccuracies.

The largest limitation to this research was that the response rate was lower than desired, yet it is on par with other studies that examine employers' preferences on criminal records. Given the modest overall sample size, it was impossible to conduct multivariate models that had stable results. Thus, the study focused on descriptive measures of preferences. In addition, when employers want workers, situational factors, such as the need for employees, may take precedence over other factors, such as the existence of a criminal record (Pager & Quillian 2005). Because this was a cross-sectional survey, researchers were unable to fully measure the extent to which employers took these factors into account when hiring, though some questions were included to measure such variables. Regardless of economic cycles, however, research shows that the hiring of ex-offenders is low despite the supply of workers (Holzer, et al. 2007).

This research showed that Boston employers may not be aware of state or federal policies to facilitate ex-offender employment. When presented with this information, however, employers are unwilling to hire these individuals. This is concerning because over three thousand individuals were released from Massachusetts state prisons in 2006 (MA Department of Correction 2008). Twenty-two percent (663) of these ex-convicts returned to the city of Boston and a large percentage of the others are living in the greater Boston region. It appears the law has thus far fallen short of changing how employers hire employees. The state needs to do a better job in disseminating information on laws, and perhaps, enforcing them. Even so, more extensive, in-depth qualitative research that probes employer decision-making and enticing incentives that would facilitate hiring ex-offenders is needed. Not resolving the issue of job opportunities for ex-

offenders will continue to undermine attempts to reintegrate ex-offenders into society, increase the already overburdened prison system and create an ever expanding underclass of citizens.



## References

- Aday, Stapleton. (1986). Court structure, defense attorney use, and juvenile court decisions. *Sociological Quarterly*, 27, 107-119.
- Albright, Shelley, & Denq, Furjen. (1996). Employer attitude toward hiring ex-offenders. *The Prison Journal*, 76, 118-137.
- Black, Donald. (1976). *The behavior of law*. New York: Academic.
- Buck, Maria L. (2000). *Getting back to work: Employment programs for ex-offenders*. Philadelphia, PA: Public/Private Ventures.
- Bushway, Shawn D. (1996). *The impact of a criminal history record on access to legitimate employment*. Unpublished Ph.D. dissertation. Pittsburgh, PA: Carnegie Mellon University.
- Bushway, Shawn D. (2004). Labor market effects of permitting employers access to criminal history records. *Journal of Contemporary Criminal Justice*, 20, 276-291.
- Bushway, Shawn D., Briggs, Shauna, Taxman, Faye, Thanner, Meridith, & Van Bakle, Mischelle. (2007). Private provider of criminal history records: Do you get what you pay for? In S.D. Bushway, M.A. Stoll, & D.F. Weiman (Eds.) *Barriers to reentry? The labor market for released prisoners in post industrial America* (pp. 174-200). NY: Russell Sage.
- Cooke, Cheryl L. (2004). Joblessness and homelessness as precursors of health problems in formerly incarcerated African American men. *Journal of Nursing Scholarship*, 36, 155-160. doi:10.1111/j.1547-5069.2004.04013.x
- Dillman, Don A. (1978). *Mail and telephone surveys: The Total Design Method*. NY: Wiley.
- Edmark, Karin. (2005). Unemployment and crime: Is there a connection? *Scandinavian Journal of Economics*, 107, 353-373. doi:10.1111/j.1467-9442.2005.00412.x
- Elder, Glen H. Jr. (2002). A test of life-course explanations for stability and change in antisocial behavior from adolescence to young adulthood. *Criminology*, 25, 863-891.
- Elster, Jon. (1989). *The Cement of Society*. Cambridge: Cambridge University Press.
- Erikson, Patricia G., & Goodstat, M.S. (1979). Legal stigma for marijuana possession. *Criminology*, 17, 208-216. doi:10.1111/j.1745-9125.1979.tb01287.x
- Fagan, Jeffery & Freeman, R.B. (1999). Crime and work. *Crime and Justice*, 25, 225-290. doi:10.1086/449290
- Freeman, R.B. (1996). Why so many young men commit crimes and what we might do about it. *The Journal of Economic Perspectives*, 10, 25-42.

- Gebo, Erika. (2002). *Juvenile Justice Reform: A Tale of Two Systems*. Unpublished Doctoral Dissertation. University of New Hampshire, Department of Sociology: Durham, NH.
- Geerken, Michael. (1994). Rap sheets in criminological research: Considerations and caveats. *Journal of Quantitative Criminology*, 10, 3-20. doi:10.1007/BF02221006
- Gould, Eric D., Weinberg, Bruce A., & Mustard, David B. (2002). Crime rates and local labor opportunities in the United States: 1979-1995. *Review of Economics and Statistics*, 84, 45-61. doi:10.1162/003465302317331919
- Henry, Jessica S., & Jacobs, James B. (2007). Ban the box to promote ex-offender employment. *Criminology & Public Policy*, 6, 755-762.
- Holzer, Harry J. (1996). *What employers want: Job prospects for less-educated workers*. NY: Russell Sage.
- Holzer, Harry J., Raphael, Steven, & Stoll, Michael A. (2007). The effect of an applicant's criminal history on employer hiring decisions and screening practices: Evidence from Los Angeles. In S.D. Bushway, M.A. Stoll, & D.F. Weiman (Eds.), *Barriers to reentry? The labor market for released prisoners in post-industrial America* (pp. 117-150). NY: Russell Sage.
- Holzer, Harry J., Offner, Paul, & Sorensen, Elaine. (2005). What explains the continuing decline in labor force activity among young black men? *Labor History*, 46, 37-55. doi:10.1080/0023656042000329864
- Homans, George. (1961). *Social Behavior: Its Elementary Forms*. London: Routledge & Kegan Paul.
- Horney, Julie, Osgood, D.Wayne, & Marshall, Ineke Haen (1995). Criminal careers in the short-term. *American Sociological Review*, 60, 655-673.
- Jones, Ricky L. (1997). Violence and the politics of black male identity in post-modern America. *Journal of African American Men*, 3, 81-107.
- Kruttschnitt, Candice, Uggen, Christopher, & Shelton, Kelly. (2000). Predictors of desistance among sex offenders. *Justice Quarterly*, 17, 61-88. doi:10.1080/07418820000094481
- Kurlycheck, Megan C., Brame, Robert, & Bushway, Shawn D. (2006). Scarlett letters and recidivism: Does an old criminal record predict future offending? *Criminology and Public Policy*, 5, 483-504. doi:10.1111/j.1745-9133.2006.00397.x
- Legal Action Center. (2004). *After prison: Roadblocks to reentry: A report on state legal barriers facing people with criminal records*. Washington, DC: Author.

- Leukefeld, Carl, McDonald, Hope Smiley, Staton, Michele, Mateyoke-Scrivner, Allison, Webster, Matthew, Logan, T.K., & Garrity, Tom. (2003). An employment intervention for drug abusing offenders. *Federal Probation*, 67, 27-32.
- Lipsky, Michael (1980). *Street-level bureaucracy: Dilemmas of the individual in public service*. New York: Russell Sage.
- Massachusetts Department of Correction. (2008). *Releases from the Massachusetts Department of Correction during 20007*. Boston, MA: Commonwealth of MA, Department of Correction, Research and Planning Division.
- Nagin, Daniel S., Piquero, Alex R., Scott, Elizabeth S., & Steinberg, Laurence (2006). Public preferences for rehabilitation versus incarceration of juvenile offenders: Evidence from a contingent valuation survey. *Criminology & Public Policy*, 5, 627-652. doi:10.1111/j.1745-9133.2006.00406.x
- Needles, Karen E. (1996). Go directly to jail and do not collect? A long-term study of recidivism, employment, and earnings patterns among prison releases. *Journal of Research in Crime and Delinquency*, 33, 471-496. doi:10.1177/0022427896033004005
- Pager, Devah. (2006). Evidence-based policy for successful prisoner reentry. *Criminology and Public Policy*, 5, 505-514. doi:10.1111/j.1745-9133.2006.00391.x
- Pager, Devah. (2003). The mark of a criminal record. *American Journal of Sociology*, 108, 937-975. doi:10.1086/374403
- Pager, Devah., & Quillian, Lincoln. (2005). Walking the talk? What employers say versus what they do. *American Sociological Review*, 70, 355-380.
- Raphael, Steven. (2006). Should criminal history records be universally available? *Criminology & Public Policy*, 5, 515-522. doi:10.1111/j.1745-9133.2006.00392.x
- Raphael, Steven., & Winter-Ebmer, Rudolf. (2001). Identifying the effects of unemployment on crime. *Journal of Law and Economics*, 44, 259-283. doi:10.1086/320275
- Rossi, Peter H., Berk, Richard A., & Lenihan, Kenneth J. (1980). *Money, work, and crime: Experimental evidence*. NY: Academic Press.
- Ryu, Erica, Couper, Mick P., & Marans, Robert W. (2006). Survey incentives: Cash vs. in-kind; face-to-face vs. mail; response rate vs. non-response error. *International Journal of Public Opinion Research*, 18, 89-106. doi:10.1093/ijpor/edh089
- Sabol, William J. (2007). Local labor-market conditions and post-prison employment experiences of offenders released from Ohio state prisons. In S.D. Bushway, M.A. Stoll, & D.F. Weiman, (Eds.), *Barriers to reentry? The labor market for released prisoners in post-industrial America* (pp. 257-303). NY: Russell Sage.

- Sampson, Robert J., & Laub, John H. (1997). A life-course theory of cumulative disadvantage and the stability of delinquency. *Advances in Criminological Theory*, 7, 133-161.
- Sampson, Robert J., & Laub, John H. (1993). *Crime in the making*. Cambridge, MA: Harvard University.
- Singer, Eleanor, Groves, Robert M., & Corning, Amy D. (1999). Differential incentives: Beliefs about practices, perceptions of equity, and effects on survey participation. *Public Opinion Quarterly*, 63, 251-260. doi:10.1086/297714
- Singer, Eleanor, Van Hoewyk, John, Gebler, Nancy, Raghunathan, Trivellore, & McGonagle, Katherine. (1999). The effects of incentives on response rates in interviewer-mediated surveys. *Journal of Official Statistics*, 15, 217-230.
- Stoll, Michael., Raphael, Steven., & Holzer, Harry. (2006). Will employers hire ex-offenders? Employer background checks and their determinants. In M. Patillo-McCoy, D. Weiman, & B. Western (Eds.), *The consequences of mass incarceration on families and communities* (pp. 205-246). NY: Russell Sage.
- Travis, Jeremy. (2005). *But they all come back: Facing the challenges of prisoner reentry*. Washington, D.C: Urban Institute Press.
- Uggen, Christopher. (1999). Ex-offenders and the conformist alternative: A job quality model of work and crime. *Social Problems*, 46, 127-151. doi:10.1525/sp.1999.46.1.03x0245k
- US Department of Justice. (2008). *Prison Inmates Midyear 2007*. NCJ 221944. Washington, DC: Author.
- US Department of Justice. (1999). *Compendium of state privacy and security legislation: 1999 overview*. Washington, DC: Author.
- Visher, Christy A., Winterfield, Laura, & Coggeshall, Mark B. (2005). Ex-offender employment programs and recidivism: A meta-analysis. *Journal of Experimental Criminology*, 1, 295-315. doi:11292-005-8127-x
- Visher, Christy A., & Weisburd, David. (1998). Identification of what works: recent trends in crime prevention strategies. *Crime, Law, and Social Change*, 28, 223-242.
- Weber, Max. (1942). *The Theory of Social of Social and Economic Organization*. Translated and edited by T. Parsons. London: Collier Macmillan.
- Western, Bruce. (2002). The impact of incarceration on wage mobility and inequality. *American Sociological Review*, 67, 526-546. doi:10.2307/3088944

Western, Bruce., & Petit, Becky. (2000). Incarceration and racial inequality in men's employment. *Industrial and Labor Relations Review*, 54, 3-16. doi:10.2307/2696029

Wilson, William J. (1996). *When work disappears*. Chicago: University of Chicago Press.

Wolkstein, Eileen, & Spiller, Haike. (1998). Providing vocational services to clients in substance abuse rehabilitation. *Directions in Rehabilitation Counseling*, 9, 65-97.

Yu, Julie, & Cooper, Harris. (1983). A quantitative review of research design effects on response rates to questionnaires. *Journal of Marketing Research*, 20, 36-44. doi:10.2307/3151410