

**THE CRUX OF CONTEXT:
AN EXAMINATION OF HOW COLLATERAL CONSEQUENCES
LEGISLATION IMPACTS THE DESISTANCE PROCESS**

by

Erin M. Kerrison

A dissertation submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Criminology

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Well, if one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected — those, precisely, who need the law's protection most! — and listens to their testimony.

Ask any Mexican, any Puerto Rican, any black man, any poor person — ask the wretched how they fare in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it. It is certain, in any case, that ignorance, allied with power, is the most ferocious enemy justice can have."

~ No Name on the Street by James Baldwin

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ABSTRACT

This study makes use of quantitative and qualitative data collected in the NIJ-funded *Roads Diverge: Long-Term Patterns of Relapse, Recidivism and Desistance for a Re-Entry Cohort* project. This research seeks to reveal the relationship between collateral consequences legislation and continued patterns of substance abuse and offending among a contemporary drug-involved prisoner reentry cohort. Guided by age-graded social control, critical race, and intersectional theoretical frameworks, this study explores the extent to which employment status shapes reoffending outcomes and the degree to which that relationship is conditioned by law and legal institutional practices. In addition, this study investigates whether individuals' perception of and engagement with this body of law also steers reoffending and substance use relapse. Quantitative offending trajectory records and qualitative life-history analyses are disaggregated by race and gender. Theoretical contributions and policy implications are also discussed.

INTRODUCTION

Currently, over 7.2 million people are under some form of correctional supervision in the United States (Glaze and Herberman, 2013), including nearly 4,900,000 adults under community supervision (Bonczar and Maruschak, 2013). In 2012, approximately 700,000 individuals were released from state and federal prisons (Carson and Golinelli, 2013), 95% will be released at some point (Hughes and Wilson, 2014), and it is estimated that three out of four former prisoners are rearrested within five years of their release (Cooper, Dursoe, and Snyder, 2014). Carson and Golinelli (2013) also report that approximately one third of prison admissions in 2012 were parole violators. Additionally, despite many individuals' successfully completed supervised release, a sizable proportion of other prison admissions are attributed to severe sentencing guidelines mandating an offender's incarceration because of the existence of his or her prior criminal record (Clear and Austin, 2009; Russell, 2009). Lastly, research indicates that the drug-addicted former prisoner appears to be particularly vulnerable to long-term patterns of relapse and reoffending (Anglin et al., 2009; Sered and Norton-Hawk, 2011).

Upon their release from prison, exoffenders must reconcile a multitude of significant reentry barriers, many of which are established and sustained by law. Former prisoners must confront legally based restrictions on resources such as access to public housing, welfare assistance, voting rights, and employment opportunities. This sort of "invisible punishment" as Jeremy Travis (2003:16) refers to it, can also be

referred to as *collateral consequence legislation*. These laws are embedded within the unseen costs of incarceration and felony status and produce the *other* sentence exoffenders are required to serve upon release from prison.

A potential unintended consequence of these laws is that they may prevent convicted felons from effectively reintegrating into society, making it *more* likely that they will return to criminal activities (Alexander, 2010; Feeley and Simon, 1992; Hill, Grand, and Piachaud, 2002; Petersilia, 2003). These laws may interfere with an offender's ability to meet conditions of release, such as maintaining stable employment and housing, or paying child support, thus resulting in higher rates of technical violations of parole and probation. Ultimately, these laws act as a second punishment and may further embed released offenders in a criminal lifestyle. Conversely, there is also the chance that collateral consequence laws could have a deterrent, or preventive effect on future offending. For instance, by preventing drug offenders from returning to public housing, they may reduce their access to criminal networks, therein denying them the opportunity to offend. While scholars and policy makers have speculated whether collateral consequence laws increase the likelihood of returns to prison, the empirical evidence in support of that thesis is limited.

This study seeks to fill that gulf in the empirical literature. Guided by age-graded social control, critical race, and intersectionality theories that shed light on the nature of the reentry experience, this study explores the reality of the desistance process for a contemporary drug-involved reentry cohort and the extent to which those theoretical assumptions appropriately describe and predict modern offending patterns.

In addition, the following chapters will underscore the significance of law in the everyday lives of citizens marked by a criminal record, and both quantitative and qualitative analyses will measure the influence of these laws on modern desistance efforts.

Chapter 1

LEGAL CONSCIOUSNESS AND DESISTANCE

In examining not just law's outcomes, but also the processes by which it unfolds and governs our lives, scholars and practitioners alike may gain insight into how and why collateral consequences legislation may impact macro recidivist patterns. It is argued that law is a socially constructed, durable, and stable human invention (Hart, 1961) and that legality is invisibly infused in everyday life. The question of how contemporary prisoner reentry related legislation is experienced and interpreted across groups remains to be answered. Both classical and contemporary sociolegal theories provide the discourse with a multi-lensed framework through which scholars can begin to understand how the significance of collateral consequence laws on subsequent offending may manifest itself at both the macro and micro levels. Law is characterized as both the catalyst for change as well as an outcome of social change, always operating for, because, and within a social context.

1.1 Law and the Collective Consciousness

Within his analysis of social differentiation, complexity, and solidarity, Durkheim's (1997) discussion of law encapsulates a theory of collective thinking and organization and is conceptualized as the embodiment of society's moral compass.

Social solidarity, *sui generis*, is a social fact but also an entirely moral phenomenon that is experienced as an objective reality but impossible to measure and observe empirically. The only means through which we can access solidarity scientifically is through law. He writes,

“Social solidarity is a wholly moral phenomenon which by itself is not amenable to exact observation and especially not to measurement. To arrive at this classification, as well as this comparison, we must therefore substitute for this internal datum, which escapes us, an external one which symbolizes it, and then study the former through the latter. That visible symbol is law” (Durkheim, 1997: 24).

The justification for punishment, as is written in our laws, emerges from our collective outrage by the presence of threatening neighbors. David Garland (2013) highlights the theoretical explanation for our collective response:

“The essence of punishment, [Durkheim] claims, is irrational, unthinking emotion driven by outrage at the violation of sacred values or else by sympathy for fellow individuals and their sufferings” (2013: 25).

Focusing specifically on reentry and the function of probation, McNeill and Dawson (2014) point out that there is a symbolic aspect of punishment that mandates the continued use of restitutive law. Restitutive law and the repressive sanctions it gives birth to, illustrate society’s public outrage toward an offender who violates a greater collective trust and moral consensus. Citizenship is a privilege that is taken from those who do not honor their responsibility to uphold these pacts, and those traitors may be permanently relegated to a lower caste of citizenship (Mawby and Worrall, 2013). Correctional supervision that leads to net widening and advances this

“strike and you’re out” exclusionary platform, neither allows for rehabilitation nor does it foster reintegration (Phelps, 2013).

1.2 Law as Diffuse, Impersonal, and Impenetrable

Late modernity has seen continued structural shifts in the power dynamics employed by the state as well as the public sentiment regarding the state use of power (Simon, 2009). Max Weber (1978) highlights the significance of *herrschaft*, or political authority, in which power is institutionalized and materialized in the form of rule or domination. Domination in this context is defined as the likelihood that commands will be obeyed. The best way to achieve submission and obedience is to convince populations that they are acting in their own interest and still have free will. There must be a shared belief that government’s course of action is legitimate and the best of all avenues and outcomes in our social and economic lives. Therefore, if law is to serve as the basis of modern political authority, law must be viewed as *rational*. More importantly, the most stable forms of authority and power dynamics are ones in which both the subordinate and superordinate participants engage in the exchange with some perceived measure of legitimate order.

Empirical research findings suggest that the bureaucratic, sometime unnavigable nature of law and collateral consequences legislation in particular, is quite purposeful (Hartley, 2000) in its hindrance of society’s most marginalized. Critical criminologists who give prominence to the voices of those who have experienced life

behind bars (Ross and Richards, 2003) cite that the literacy and resources required to master a full recognition and understanding of the law is often unavailable to underprivileged populations that are most closely policed and punished. For example, Persaud (2008, 2012) as well as La Vigne and Van Rybroek (2011) call attention to the widespread language deficits among offenders, and how those deficiencies impede offenders' understanding of the laws that preside over their lives. In his theory of practice, Bourdieu (1972, 1990) asserts that the persistent presence and power of law is reproduced by everyday choices and subsequent individual action and inaction. A lack of engagement with, and/or understanding of the law is equally significant in the production of individual choice, action, and inaction. The *process* of law and our engagement with it, comes to be such a powerful classifying force in our everyday lives. Bourdieu writes,

“Law is the quintessential form of the symbolic power of naming that creates the things named, and creates social groups in particular. It confers upon the reality which arises from its classificatory operations the maximum permanence that any social entity has the power to confer upon another, the permanence which we attribute to objects. The law is the quintessential form of "active" discourse, able by its own operation to produce its effects. It would not be excessive to say that it *creates* [emphasis original] the social world, but only if we remember that it is this world which first creates the law” (1987: 838).

Law confers as well as denies society members' rank, status, and access.

Participation in the process by which those assignments and declarations are created is critical to an individual's sociopolitical standing. If excluded from the productive

process of lawmaking, one is involuntarily subjected to outcomes that may not serve them. Such could be the case for former prisoners subjected to the restrictions and hardships emergent from collateral consequence legislation. Insofar as one's belief in the legitimacy of law may be compromised, so too is their willingness to comply with it.

1.3 Law and Democracy; Law and Surveillance

Habermas (1996) provides a philosophy of discourse, debate, and validity to analyze and articulate the development of our sociality under the rubric of complex modern society. In drafting an ideal theory of justice that negotiates rationality, legitimacy and legal design that reflects collective norms, Habermas provides thinkers with a template for comprehensive collective political participation and meaningful social inclusion and coidentification. He identifies a dual nature to law – *validity* (justice) and *facticity* (power) – and he asserts that the fusion of these two domains is modernity's single most important accomplishment. In other words, law possesses its normative value by which ethics and 'ought to' questions are resolved and a factual element of law is embodied in the established rules and order that must be followed. Habermas challenges thinkers to see law as cyclical and self-generating, and invites us to think of law as something that we *make* and at which we continue to arrive together. The basis for this accomplishment is rooted in communication as a source of legitimacy and envisioning democracy embodied in the process of debate. Democracy is the means through which we make legitimate laws and enter into productive debate.

Individual rights are required for people to enter a democratic debate and through constructive debate, individual rights emerge and congeal - each is a necessary condition of the other. Rights, democracy, and legitimacy come not as outcomes of the debate, but through the process of debate. Ideally, in order for law to be legitimate, it must emerge from the *assent* of all citizens who voluntarily enter the debate and reach an agreement therein. This undertaking is sorely compromised when so large a proportionate of the community, is excluded or made to feel less than equal. Moreover, marginalized citizens may exhibit deviant behavioral patterns motivated by a strong measure of cynicism surrounding the law (Sampson and Bartusch, 1998).

Clearly there is a need to focus on how legal consciousness and legitimacy shape recidivism patterns for a contemporary drug-involved cohort of offenders. Many contemporary sociolegal theorists have endeavored to test these theories and determine what law actually *means* for disparate social groups. However, less attention has been devoted to the relationship between collateral consequences legislation related exclusion, surveillance, and desistance. Drawing from a more recent correctional context, Ben Crewe's (2009, 2011) exploration of the organizational shifts in corrections in the United Kingdom points to a "tight" and "smothering" (2011:522) exercise of state power and authority that is not conducive to a rehabilitative ideal. Similarly, Kruttschnitt and Gartner (2004) also highlight how the lived experiences of increasingly severe punishment – operationalized at both the macro-ideological level and micro-institutional policy level – impact how female prisoners in their study conceptualized their own ideas of just punishment, isolation,

and subsequent capacity to prosocial membership upon returning to society. The implications for beliefs about equality, protection, and citizenship are vast as these sorts of practices come to shape what we will collectively believe, accept, and condone.

It is critical that researchers and practitioners consider the impacts of systematic exclusion from the legal world, legal process, and access to full citizenship. When the law determines a set of meanings that is marginalizing and victimizing in its own right, what can be said for the inevitability of (IN)justice and the expectations for conformity? Contemporary studies of what Pound (1910) referred to as the “law in action” provide significant insights into how and why deviant social behavior unfolds as it does. Research demonstrates that direct police contact affects individual’s perception of legitimacy and compliance with authority (Skogan, 2006), and that direct, tangible criminal sanctions also impact deterrence and patterns of offending (Sherman 1993). Propagated from this work, it may be that for former prisoners re-entering society, an awareness of and engagement with abstract, diffuse modes of authority temper one’s perception of agency, autonomy, and capacity to lead conventional lives. Tyler’s (2006, 2011) research suggests that legal authority, legal consciousness, and human agency are relational and inextricable elements in the desistance effort. The very *perception* of fairness and legitimacy, he argues, will bring about compliance. More specifically, compliance stemming from shared moral values between the individual and the larger institution under which they are governed, rather than deterrence-based obligation, is lasting (Jackson et al. 2012). If legal institutions

undermine efforts toward reintegration and reentry success, compliance is simply unlikely (Davis, 1989; Manza and Uggen, 2006) and reoffending amongst this population may ultimately continue.

There is a gap in the empirical literature regarding the relationship between collateral consequences legislation and desistance efforts. This research study will be the first to address this gap in the knowledge base by providing an analysis not only of how collateral consequence laws impact collective desistance trends, but also of how individual exoffenders perceive the influence of these laws on their quotidian choices and unique experiences within their desistance efforts. The research question for this project is actually twofold: 1) Do law and legal institutions structurally impact desistance patterns? and 2) Is there a relationship between legal consciousness and desistance potential? The mixed-method research to follow interrogates the mechanisms by which a reentry cohort attempts to desist from crime and substance abuse, and the role that law plays in that journey.

Chapter 2

THEORETICAL FRAMEWORKS ADDRESSING A CONTEMPORARY DESISTANCE EFFORT

The prisoner reentry experience is far from standardized and should be understood as unique for different individuals who are returning home to varied socioeconomic, political, and historical contexts. Moreover, it is critical that researchers and practitioners consider how reentry experiences differ for different racial and ethnic groups as well as how those experiences differ for males and females. In this study, a consideration of those varied experiences and the laws that engender those social frameworks will be investigated. This study applies age-graded social control, critical race, and intersectional theoretical frameworks to understandings of legal authority, legal consciousness, and explanations for recidivism and desistance.

2.1 Age-Graded Social Bond/Social Control Theory

Social Control Theory is based on several assumptions about conformity. First, theorists assume that we all share a common morality and consensus that crime is not good and is a deviation from the norm. Secondly, we are all born inherently self-interested and antisocial behavior is quite normal and natural. Lastly, deviance and conformity are functions of the ability to control crime. Therefore, we must resist the

tendency toward antisocial behavior and variation in individual levels of crime is due to variation in individual levels of control. The theory has a lengthy history of development dating back to Toby's (1957) suggestions that it is one's stake in conformity that controls individuals. The greater one's stake in conformity, the more likely they are to resist criminal behavior. Containment Theory underscores that the ever-present impulse to commit crime is simply impeded by internal and external controls against it (Reckless, 1961). Pushes - family background or psychiatric traits - and pulls - incentives pulling one toward crime (money, status, reputation, etc.) are stymied by outer controls (discipline, supervision, formal sanctions) and inner controls (goal orientation, guilt, morality). Reckless tested this theory on 6th grade boys in Ohio and found that boys insulated or *contained* from crime (exposed to increased levels of control) exhibited a lower propensity towards crime.

As is mentioned earlier, because Social Control theorists explain individuals' conformity, there is no measurable "onset" of criminal behavior, as such. However, much work has been done to identify which social elements must be established in order for control to effectively ensure conformity. Most notably, the work of Travis Hirschi lays the foundation for modern Social Bond/Control Theory with the findings emergent from the Richmond boys' data. One of Hirschi's principal theses in *The Causes of Delinquency* (2002) asserts that individuals give into crime when bonds or ties to society are weak or broken. Social Bond/Control Theory later evolved in Gottfredson and Hirschi's *A General Theory of Crime* (1990) in which Self-Control theory was introduced. In this theory, the authors claimed that criminal acts require no

special capabilities, needs, or motivations. Rather, self-control is a time-stable trait that will influence one's likelihood to offend or conform. Once self-control is developed it is consistent. Low self-control, they assert is set by the age of 8 or 9 and is mainly a product of poor parenting. Poor socialization a lack of supervision, failure to recognize bad behavior as inappropriate, and a lack of general discipline will all cement children's low self-control trait.

It is important to underscore that a lack of self-control does not mean that crime will ensue and in fact, the impact of the absence of self-control can be countered by situational conditions or other pro-social individual personality traits (Piquero, Jennings and Farrington, 2010; Unnever and Cornell, 2003). Low self-control is only a trait that increases the *likelihood* of engaging in crime and other analogous behavior (Simons and Burt, 2011). Elements of low self-control include the need for immediate gratification; an attraction to exciting, risky or thrilling behavior, reconciling few or meager long-term benefits (unstable marriages, friendships and job profiles); little skill or planning practices; and a general inability to recognize harm done (self-centered, indifferent, insensitive to the needs of others). Gottfredson and Hirschi's arguments suggest that a criminal is a criminal is a criminal and offer a theory that differs from social bond arguments in that social control is static and deterministic. Since the authors provide the distinction between crime and criminality, it is important to note that they also imagine desistance is a process that is more likely for non-criminal individuals whose offenses are motivated by exceptional circumstances than it is for those marked by time-invariant criminal trait.

Using a random sample of 395 adults, Grasmick and colleagues (1993) sought to test Gottfredson and Hirschi's low self-control theory. They found that the original six elements of low self-control loaded onto a 24-point scale and form a generally unidimensional trait. Methodological flaws of the study included a lack of controls, so arguably their findings just proved an association between self-control and crime and their model left a consideration of causality and time ordering relatively untouched. Unfortunately, this study did not test Gottfredson and Hirschi's full model. "Self Control" should be an intervening variable caused by poor parenting/socialization and opportunity should be included as a necessary requirement. Pratt and Cullen found support for Grasmick et al.'s (2000) 24-point scale in their meta-analysis of extant self-control studies. They argued that there may be some tautology, but the only slightly weaker strength of attitudinal measures indicates that tautology is minor at worst. They did find that effect of self-control was weaker in longitudinal studies and that other theories' variables are significant. Although low self-control may be one of the strongest correlates of crime, they argue that naming it the sole cause of delinquency overstates its influence.

The evolution of desistance literature is marked by the change from emphasis on self-control and time-stable, individual-level traits to a discussion of the salience of external forces. Not until *Crime in the Making* (Sampson and Laub, 1993) did criminologists entertain a new dynamic general theory in which continuity and change are seen as equally influential over the life course. This book was based on the Glueck data, which examines the development of 500 delinquent and 500 non-delinquent boys

growing up in late 1930s Boston, Massachusetts. The Gluecks identified factors linked to delinquency (biological, psychological, and sociological) onset and persistence. Laub and Sampson (2003) uncovered and extended the data to follow respondents out to age 32 and then in the 1980s, interviewed a subset of existing respondents aged in their 70s. The life-course perspective recognizes the shifting importance and influence of ties and bonds and identifies that many are age-graded and affect the likelihood of offending as they change over time (Laub, Nagin, and Sampson, 1998; Sampson and Laub, 2003, 2005).

The age-graded theory of social control explains criminal persistence and desistance through the age-crime curve. This theory suggests that there are long-term pathways or stable patterns of behavior throughout the life course called *trajectories*. A *transition* is marked by an external life event and *turning points* may be generated by the interlocking nature of trajectories and transitions. Structural, external change is absolutely central to this theory. Changes in social investment or social capital in institutional relationships (work, marriage, community), affects the salience of informal social control at the individual level. These assertions challenge Gottfredson and Hirschi's (1990) aforementioned time-stable, rank-stable, low self-control thesis. Age-graded social control theory posits instead that in order to explain criminality holistically, research must include data on childhood, adolescence, *and* adulthood experiences.

In *Shared Beginnings* (Laub and Sampson, 2003) the organizing principles remain the same in that the authors put forth that crime occurs when an individual's

bond to society is weak or broken. This text, however, features three enhanced building blocks: (1) the mediating role of informal family and school social bonds, (2) the role of continuity in delinquency that extends into adult crimes, and (3) the possibility of within-person change in antisocial behavior over time. The Glueck data offer strong support for invested job stability and enduring, quality marital attachment as being inversely related to crime.

Finally, Sampson and Laub question whether persistence and desistance are meaningful terms. Criminality is an ongoing energy that rarely subsides one day. They distinguish between *termination* (the last offense) and *desistance* (a process of decelerated offending). Concerning Gottfredson and Hirschi's arguments, Sampson and Laub disagree that criminality is stable over the life-course and that only opportunity explains desistance. Opportunity is not a sufficiently encompassing variable. In fact they specifically dispute the claim by stating that offending propensity varies based on age, informal social control, increasing deterrent effects, and a host of other external influences. Age-graded social control theory puts forth that persistence in crime is explained by an absence of social controls (work, family, military, community, police, prison, parole, etc.) and structured routine activities (work, non-chaotic lives). Major life experiences are not always turning points because they do not always result in behavioral change.

Social Control theorists have long debated the explanation of the age-crime curve in which there is a steep offending incline between 7 and 17 followed by a steep decline between the ages of 17 and 30. Sampson and Laub (1993) and Laub and

Sampson (2001, 2003) identify invested job commitment/stability and meaningful marital attachment as having significant deterrent effects of recidivist behavior.

Propensity score matching analyses (Sampson, Laub, and Wimer, 2005) illustrate that being married is associated with a 35 percent average reduction in the probability of crime.

Sampson and Laub's revised and enhanced findings are still challenged, however. Terrie Moffitt (1993) identifies both "Life-Course-Persistent" (individuals whose offending patterns begin during childhood/adolescence and continue through adulthood) and "Adolescence Limited" offenders (early onset but criminal involvement significantly tapers off, if not ceases in adulthood). Instead of turning points, Moffitt argues that a more severe, criminally entrenched background indicates decreased chance of desisting. Life course persisters carry harmful biological/psychological antisocial traits into adulthood and see snowballing consequences that continue to narrow their options for prosocial behavior. Moffitt's findings suggest that seeing within-person change as unlikely for some and is consistent with Gottfredson and Hirschi's arguments concerning time-stable low self-control. Moffitt (1993, 1997) adds that the age-crime curve is made up of two different offending groups. The first group, the Life-course persistent type begins with poor parenting of problem children. These children suffer from neuropsychological deficits that make learning conventional prosocial alternatives to antisocial behavior very difficult and ensnared them in a continuing spiral that is an ongoing deviant lifestyle. The second and larger group, the Adolescent-limited type,

struggle with a “Five-to-ten year role vacuum” or maturity gap. Their deviance is sprung from jealousy of the perceived freedom enjoyed by life course persisters and they then pursue the same behavioral patterns to achieve similar comforts and luxuries. Desistance, however, comes about as a result of shifting reinforcement contingencies where through negative reinforcements adolescent-limited offenders realize that continued criminality will result in punishment. Drawing from inmate survey data, recent research reveals that recidivism is assessed as a function of change in social bonds (attachments and beliefs) from entrance to exit from prison, as well as levels of bonds at release (Rocque et al., 2013). These findings indicate that changes in social relationships predict recidivism, whereas improvements in prosocial beliefs do not. The data also suggest that the level of prosocial belief at release is significantly related to recidivism, whereas the level of attachment is not.

Still Sampson & Laub (2005) disagree with Moffitt that desistance does not occur for some. Sampson and Laub argue that it simply occurs later for the so-called Life Course Persisters. Once again stressing the importance of examining continuity AND change, they call for a consideration of (1) new situations that “knife off” the past from the present, (2) new situations that provide both supervision and monitoring as well as new opportunities of social support and growth, (3) new situations that change and structure routine activities, and (4) new situations that provide the opportunity for identity transformation. The Glueck data highlights for some, the power of human agency and its impact on desistance.

Paternoster and Bushway (2004) introduce a rational choice perspective to the

life course/social controls debates concerning desistance. Their argument asserts that we construct our preferences and when chosen in conjunction with ongoing action, we construct new preferences that are otherwise unknown to us before. In other words, people can and *do* change. Through the analysis of growth curve models, Rocque, Posick, and Paternoster (2014) share more recent quantitative findings that highlight how the development of conventional identities appears to be a strong predictor of decreased subsequent offending, irrespective of external and structural changes.

Today, Sampson and Laub's (1993) age-graded social bond theory is the dominant assertion for the discipline's contemporary life course criminological paradigm but its applicability does not satisfy the criteria reconciled by contemporary reentry cohorts. The theory is based on the experiences of 500 delinquent young white men growing up in mid-twentieth century, Boston, Massachusetts. Those young men lived in a world replete with life course turning point opportunities such as military service enlistment, marriage, and securing gainful employment. In a reentry context marked by veterans benefits that do very little to improve the lives of former servicemen, a decreased availability of marriage partners, and a shrinking labor market, how do contemporary drug-involved former prisoners accomplish desistance? The historical context that conditioned the reentry experience for young men mentioned above, is not only vastly different from the reality of our contemporary political economy marked by deindustrialization, concentrated poverty, urbanization and punitive penology (Petersilia, 2003; Sampson, 2011; Visher, 2007) but that reentry group itself is qualitatively different from the sample of exoffenders studied in

this research.

The evidence convincingly argues that former inmates who are released into the community today and who also happen to be racial minorities and heavily involved with drug use, are not good candidates for the “get a good job and spouse” route to desistance, or what Giordano and colleagues (2002) coined, “the full respectability package.” Criminal offenders who are also addicted to drugs would seem to be heavily embedded in what Hagan (1993) calls a “criminal context.” Persons who are embedded in criminal contexts are isolated from the kinds of social connections and personal relationships necessary to create a legitimate life. This is further supported by Granovetter (2000) who has argued that jobs are obtained by loose personal connections with persons who themselves are involved in the labor market – that is, by the “strength of loose ties.” Most poor drug-involved exoffenders of color simply lack access to those sorts of mainstream professional networks. The longer the separation from conventional society (via lengthy and/or repeated incarceration stints) the harder it is to foster even the most informal professional relationships (Ramakers et al., 2014)

Former prisoners, particularly those with an extensive history of drug use, are likely to have isolated themselves from the very social relationships necessary to secure employment that would get them out of a life of crime and addiction. The movement out of both criminal behavior and drug addiction, particularly for racial minorities in economically depressed economic urban areas, is extremely difficult. Because drug abusing minority exoffenders have an exceedingly difficult time finding employment in the first place, and make unappealing marriage partners, their route out

of drug abuse and crime must involve a different experience than that of the Glueck boys. Research studies offer a rich discussion concerning the experience of incarceration as a turning point (Crow 2008; Kurlychek, Brame, and Bushway, 2006; Schnittker and Bacak, 2013; Western, 2002, 2006) but far less is said about destabilizing prison release and reentry (and the legislation that shapes those processes) as a deleterious turning point (for exceptions, see Cid and Martí, 2012; Harding et al., 2011; LeBel et al., 2008). And even less is said about what that turning point may mean when unfolding in different contexts. These findings do not suggest that employment is insignificant to the desistance process. The quality of employment that is available to and the law that restrict access to those limited labor market options could explain why employment did not have a significant impact of offending trajectory group membership. These excerpts reveal that many legally sanctioned practices may be in part responsible for the nonsignificance employment bears on offending behaviors. If contemporary legislation that modifies the reentry experience is in and of itself disadvantaging, how do modern reentry cohorts achieve desistance? This research acknowledges that the availability and influence of turning points varies with historical context and may impose significant impacts on the modern desistance process. Additionally, the impact of collateral consequences legislation could spell very different outcomes for race- and gender-specific contexts.

2.2 Critical Race Theory

There exists an extensive discourse tracing the ubiquity and significance of racial

disparity in education (Bonilla-Silva, 2003; Ferguson, 2003; Mincy, 2006; Rothstein & Levine, 2004), labor market (Johnson & Johnson, 2005; Leigh & Simms, 1998; Pager, 2007; Royster, 2003; Shapiro, 2004; Western & Pettit, 2005), and criminal justice institutions (Reiman & Leighton, 2012; Rios 2011; Western, 2006). Du Bois began his seminal work, *The Souls of Black Folk* (1903) by stating, “[T]he problem of the twentieth century is the problem of the color line” (1903:1). It was not until decades later that race and ethnic studies legal scholars responded to this problem and worked to challenge a racially oppressive status quo by developing Critical Race theory or CRT. CRT advances a constellation of anti-racist/anti-discrimination scholarship and activism.

The principal assumption propelled by this theoretical framework is that the social construction of race (Haney-López, 2006; Omi and Winant, 1994; Winant, 2000) is central to the ways in which people of color are regarded, organized, and constrained (Delgado, 1995; Delgado and Stefanic, 2001; Guinier and Torres, 2002; Williams, 1997). CRT brings to legal scholarship, a critique of formal legal equality as well as new ways of measuring and examining discrimination. This paradigm emerged in the 1970s and 1980s, rooted primarily in legal studies and sought to describe and explain experiential racial disparity within the education, employment, justice, and power domains. Founding scholars introduced the idea that the legislation sprung from the Civil Rights Movement simply did not affect the broad sweeping advancements for social justice that liberal discourses would lead thinkers to believe, most specifically, that the movement did not alleviate systemic racialized

misdistribution of wealth (Bell, 2005, 2008). Instead, CRT scholars retain their commitment to treating law and legal institutions as a profoundly, persistently, and pervasively disadvantaging, destabilizing, and oppressive force in the lives of (increasingly poor) nonwhite Americans (Alexander 2010; Davis 2009; Ogeltree 1994; Tonry 1996, 2010; Wacquant 2009). For the purposes of this study it is critical that the legacy of this oppression be traced out in detail.

Critical Race theorists offer scathing critiques of liberalist, meritocratic assumptions about social loci. They argue that there is in fact nothing natural about the generational power dynamic and gulf that exists between those who have and those who exist without – particularly when those groups are perpetually delineated along racial lines (Bonilla-Silva, 2013; Wise, 2010). A tendency of politicians and policy-makers is to perpetuate class discourse within a paradigm of meritocracy rather than illuminate the continuance of racial disparity in quality of life outcomes (Hayes, 2013). The argument that individuals are poor (or criminal) because they are lazy, unmotivated, and fail to take advantage of what life/democracy/America has to offer is more compelling than the admission that whole social groups are alienated from access to prosocial networks, civil liberties, and social mobility, in large part because our laws mirror the structural and cultural agenda that still send the vestiges of slavery catapulting forward (Alexander, 2010; Bales, 2012; Blackmon, 2009). Michael Katz's (1986) research provides an in-depth historical tracing of governmental attitudes toward state aid for poor citizens. Poverty has become a matter of personal responsibility wherein alleviation from the poorer ranks of society requires personal

transformation – accomplished through education, the adoption of sustaining work ethic, and/or the practice of chastity. Most importantly, regardless of whether downtrodden people take action to improve their own lives, the government has and continues to place limits on its social obligation to the poor (Ignatieff, 1984).

Poverty and the absence of social capital are not products of individual deficiency, but rather emergent from political economy (Delpit, 2012; hooks, 2000; Marable, 1999; Yosso, 2005). Contemporary western culture of capitalism measures individuals by their capacity to produce. Those who fail to prove themselves are regarded as inherently deficient, indolent, and subsequently undeserving. This delegation confers upon those who are labeled, a morally tainted status. Furthermore, because the poor are not adequately integrated in all major social institutions, they are necessarily marginalized, which leads to their exclusion, the majority's tendency to cast suspicion, and finally to outcaste. In 1965, Assistant Secretary of Labor, Daniel Patrick Moynihan, presented *The Negro Family: A Case for National Action* (Department of Labor, 1965). It was in this report, published by the United States Department of Labor, that government introduced the self-perpetuating “cycle of poverty” as a product of black pathology. This position asserts that the problems of the lower class, blacks in particular, stem from an outlook and lifestyle that is radically present-oriented, attaches no value to work, family, service, sacrifice, self-improvement, or community (Banfield, 1974). Because the government cannot redress the root of such a problem (individual apathy), the resulting policy adoption was one of benign neglect.

Although the government is less likely to overtly undermine the advancement of nonwhite and other minority groups, the proxy for that disregard has been redirected at poor groups – an all too familiar synonym for “black” (Tonry 1996, 2010). The Southern Strategy was a political agenda whose roots date back to the 1940s when Democratic (what we would now call Republican) presidents FDR and Truman were far too liberal for South Carolina governor, Strom Thurmond to tolerate (Phillips, 1969, 1991). This strategy shaped and reinforced prevailing negative white attitudes towards black people where the evolving Democratic constituency grew increasingly influenced by subconscious negative associations of the poor, and poor blacks with crime and criminality (Greenwald and Kreiger, 2006; Rachlinski et al., 2009). In looking at racial discrimination in hiring practices, we can see that the residuals of those assumptions are ever-present to this day in labor market outcomes (Wilson 1987; Pager 2007) as well in patterns of law enforcement (Eberhardt et al., 2004) and judicial discretion (Pizzi et al., 2005).

Wacquant (2009) argues that the neoliberal eradication of welfare and social stability experienced by poor blacks is entirely the responsibility of disequilibrating state agendas. The replacement of Aid for Families with Dependent Children (AFDC) with Temporary Aid for Needy Families (TANF) imposes upon poor families, many of whom are black, a lifetime quota of five years of financial support. Additionally, those individuals who work for one hour per week are counted as “employed” by current US Department of Labor standards, effectively deflating statistics that would otherwise more accurately portray the reality of this country’s job-seeking population.

Furthermore, in order to manage this population the state has adopted a different solution whereby, “to the deliberate atrophy of the welfare state corresponds the dystopic hypertrophy of the penal state” (2009: 58). Society’s most economically vulnerable citizens are being punished rather than aided.

The law-and-order revolution of the last four decades had less to do with fighting crime than it did with bolstering economic, racial, and moral order. The leading mechanism of social control is located in the punitive regulation of the behaviors of social groups deemed threatening or prone to delinquency, and also trapped at the bottom of a dualizing race and class structure. The United States’ carceral expansion is not fed by crime rates, only criminal admissions (Alexander, 2010). Prisons today are filled with low-level petty offenders, the vast majority of whom hail from the most precarious fractions of the working class, especially poor families devastated by deindustrialization, urbanization, and joblessness (Wilson, 1987; Western, 2006). Convicts are recruited overwhelmingly from the unskilled, un(der)employed strata of the working class and pose no real menacing threat to society (Irwin and Austin, 1997). In addition, criminal filing and profiling has swelled to levels of massive bureaucratic enterprise and information on ex-convicts (often inaccurate and outdated) is sold to private companies for millions every year. Parole has evolved from a program aimed at supporting reentry to a surveillance device designed to maximize the detection and sanction of slip-ups and violations of release conditions. This abandonment of the rehabilitation models of yesteryear has been coined, “new penology” (Simon, 2009) and the ripple effect for other state institutions

(that would contribute to the advancement of these poor groups increasingly swept under the current of criminal justice supervision) are devastating. As the state continues to lessen tax burdens for corporations, funds needed to support this country's incarceration boom is extracted from schools, hospitals, and infrastructure. Every year since 1985, correctional budgets have outstripped money allocated for social welfare (Henrichson and Delaney, 2012; Simon, 2009). Many black Americans carry the brunt of this strain.

In fact, penal confinement is a public service for which blacks are enjoying preferential access as they are less likely than other social groups to be tied to prosocial economic production. Prison serves several functions with respect to the America's black labor market. First, it provides a management scheme for this country's current deskilled labor market constituency. Contingent laborers fear the fate reconciled by those involved in illegal commerce so they surrender to insecure employment. Second, prison populations artificially depress the unemployment rate by shrinking numbers of unemployed citizens.

Incarceration also perpetuates our existing racial order and the subordination of black Americans. The practice of imprisonment confines a population who has already been deemed dangerous and superfluous on both economic and political planes. And those bodies that cannot be locked up in prisons are regulated by the state through other avenues. Through the implementation of the Temporary Assistance for Needy Families (TANF) and Person Responsibility and Work Opportunity Reconciliation Act (PWORA), contemporary welfare reform brought about a

legislative body infused with an intrusive practice of surveillance, record-keeping, and monitoring all the while increasing the likelihood of sanctioning, both administrative and criminal (Gustafsson, 2012). In sum, we now see the commodification of government and welfare administration in that the management of these services is increasingly contracted out to specialized firms mirroring prison privatization trends of the last two decades. Government has simply abandoned the disadvantaged social groups that were created as a product of racially disadvantaging policy agendas and political economy. The state has begun to impose a new brand of neoliberal paternalism (Neubeck and Cazenave, 2013; Soss, Fording, and Schram, 2011) whereby poor black men are locked up and their women and children are closely monitored (but only with so much leash). Finally, the outcome of imprisonment is exacerbated poverty. Sociologist, Anne-Marie Marchetti, put it best when she wrote,

“[T]he carceral trajectory of the inmate may be described as a succession of shocks and ruptures governed, on the one hand, by the demands and edicts of the judicial apparatus, which combine to propel a programmed descent on the ladder of destitution – a descent that is all the more steep, the more dispossessed the inmate is at the outset... As a closed institution that too often considers the inmate’s outside investments as secondary, as a place where the security imperative prevails and that systematically gives priority to the interests of the social body... before the inmate’s, the prison actively contributes to rendering precarious the meager assets of a good part of the carceral population and to consolidating temporary

situations of poverty” (Marchetti, 1997: 197).

We have seen the demise of rehabilitation as the operant correctional philosophy, which has created a reentry terrain that is treacherous, if not impossible for so many exoffenders coming home. Moreover, due to the acceleration of the politicization and media exploitation of crime and black criminality (Garland, 2001), many are coming home to unwelcoming contexts.

In *Punishing Race* (2010) Michael Tonry presents a collection of critical race scholarship, all of which illustrates that the United States’ crime policies operate with a general and widespread insensitivity to the needs and interests of black people. Moreover, some critical scholars contend that white Americans have actually rationalized a criminal justice system that is disparately severe toward black Americans (Johnson 2008; Peffley and Hurwitz, 2010; Unnever, Cullen, and Jonson, 2008).¹ Arguments go on to suggest that contemporary crime and drug control policies are products of unconscious efforts by a white majority to maintain political, social, and economic dominance over blacks (Massey, 2007) and the racial subtext of law and order and political discourses is all too palpable to be denied (Loury, 2007). For example, this historical practice is evidence of the criminalization of substance use whereby the Harrison Act of 1914 targeted Chinese immigrants and sanctioning associated with the Marijuana Tax Act of 1937 disproportionately targeted Mexican laborers. Rather than target the actor, these sorts of colorblind legislative moves

¹ *Furman v. Georgia*, 408 U.S. 228 (1972) – suspended capital punishment; *Gregg v. Georgia*, 428 U.S. 153 (1976) reinstated it with and imposed a bifurcated ruling system.

sanction the act – it is only a coincidence that the criminalized behavior is most likely committed by distinct subpopulations of the American public. These examples also further the arguments made earlier where crime policies are drafted to control powerless populations. Shelby (2008) adds that this rationalization of inequality allows the privileged to believe that they merit their advantages and that those in peril are individually responsible for their own demise. In this way, system justification theory posits a general human tendency to support and defend the status quo (Blasi and Jost, 2006).

Much can be said about the history of race relations and the legacy of legally sanctioned systematic oppression experienced by black Americans. Critical to this thesis, however, is an explanation of why these patterns persist and why they are so severe. United States' formal social control policies have always exhibited a tendency towards moralistic excess predicated on religious certainties (Weber, 2009). Subsequently, policies sprung from legal frameworks lack moderation and balance because they are catalyzed by moral sensitivities. Dworkin (1977) argues that the fundamental and irreducible requirement of equality before the law is that legal institutions and practices accord respect and concern to all. Satisfying that fundamental charge appears to have grown increasingly unachievable – or at least unappealing – within our social and political discourses. Garland (2001) notes that the social climate brought about by this period of late modernity, is characterized by heightened anxiety typified by globalization and economic restructuring, political terrorism, increased population diversity, and social movements. The combination of

rapid social change, economic uncertainty, and moral skepticism breeds conflict and this paranoia is exacerbated by Protestant fundamentalism. As a result, we see the proliferation of severe and expressive policies meant to reassure the public and demonstrate state efficacy (Simon 2009).

The methods implemented by a community to control the deviance that it produces, speaks volumes about the strength of its members' ties and its willingness to preserve them (Braithwaite 1989; Durkheim, 1997; Engel 1984). Furthermore, if those manifestations echo predominant social values, what does it mean if in the United States, those policy choices yield bleak outcomes for black Americans? Public anxiety about crime is propagated by politicians' and media's preoccupations with crime (Alexander, 2010; Glassner, 2010) yet statistics illustrate that those concerns are largely unfounded and unnecessary. Not only is our penal approach excessive, research also illustrates that harsh punishments have little deterrent effect, as the impact of incapacitation on offenders' subsequent criminality is not at all evidenced by existing data (Nagin, Cullen, Jonson 2009). Critical scholarship indicates that law and formal social control are no more than the products of policy decisions drafted to advance the agendas of the privileged. An example of this notion is evidenced in the move to stop arresting marijuana-smoking white adolescents in the late 1970s and 1980s (Blumstein 1993). Lawmakers tend to shy away from imprisoning those who are close to home, figuratively and literally. However, "Other people's children" are left to fend for themselves (Lareau, 2003; Zimring, 2005).

Given the history of racial oppression and black disadvantage at the hands of

legal institutional officers, the notion that the reentry experience for black exoffenders may differ widely from those of their white (and arguably all nonblack) counterparts is quite sound. Studies illustrate that race effects on authoritative discretion persist at every point in the criminal justice system (Butler, 2013; DeJesus-Torres, 2000; Walker, Spohn, and DeLone, 2011). Many blacks subject to community correctional supervision report continued experiences of racial harassment (Russell-Brown, 2008) and microaggression far beyond the prison walls (Davis, 1989). At the community level, residents do not control the technologies that monitor their moves (Capers, 2012), and the unrelenting hyper-surveillance of legal authority is reportedly menacing and detrimental to black Americans' feeling of citizenship and agency (Goffman, 2009). This punitive society is linked to racial oppression (Loury, 2007) and law is therein perceived as hostile towards black Americans navigating a sociopolitical context wrecked by conflicts characteristic of late modernity.

Skeptics may gainsay the claims of Critical Race theorists and argue that every man and woman who bears the mark of a criminal record is equally disadvantaged, regardless of their race. Theory and empiricism, however, illustrate otherwise. Cheryl Harris (1993) has written extensively about the ways in which law codifies white privilege. In conventional economic, political, and professional networks allocated any measure of status, the social capital gleaned from those arrangements, are often exclusively reserved for white individuals. Whiteness, Harris asserts, has historically ensured higher economic, political, and social security returns to its possessors. Rights to property are contingent upon and conflated with race, and the right to access

is denied to those who lack property privileges. Property amounts to all of a person's legal rights, which are granted only through the possession of whiteness and white status. Since law recognizes the expectation of rights as actual legal property and decides which expectations are "reasonable," racial hierarchies were reified in legal doctrine because the law recognized and upheld the *expectations* of whites and their desire to naturalize their freedom and superiority (Haney-Lopez, 2006). Carbado and Harris (2010) point out that scholarship on race and policing overlooks the fact that the U.S. Supreme Court has sanctioned racial profiling to expand state power and discretion in a way that disadvantages people of color. Wildman (1996, 2013) and Walker (2013) also underscore the importance of disavowing the colorblind agenda, and confronting legally codified white privilege instead.

To reiterate, every *Roads Diverge* study participant was subject to this body of collateral consequences legislation and the limits it places on employment. However, the fallout from those legal imposition, as reported by this sample's respondents, differed with race. Legal consciousness did not differ between the two racial groups, as both whites and blacks are aware of the laws, the limits they impose, and the sanctions to come should they fail to comply with those laws. White respondents, however, repeatedly shared that they were less burdened by those laws and legal institutions, either because they belonged to social and professional networks willing to overlook or never suspect their criminal pasts, and/or they lived in community where they could move freely and undisturbed. Blacks in this sample instead reported

frequent disruptions that complicated their employment stability as well as an intense isolation from informal networks that they could tap into to find work.

If one holds the property of “whiteness” and white status then they can use, transfer, and leverage that resource however it best suits them. Whiteness ownership and white privilege are inalienable even if you have a criminal record. Subsequently, reentry and desistance may unfold differently for those with legally dispensed privilege and protections. This reality is even more precarious for black women. Intersectionality theory serves to incorporate the role of gender within the reentry process.

2.3 Intersectionality Perspective

As poor women of color increasingly find themselves caught up in the rungs of criminal justice supervision, desistance scholars must incorporate a better understanding of how compounded disadvantage effects the reentry process. Contemporary feminist scholars focus on structures of power, social relativity, and how these forces organize our social positions (Brewer, 2007; Baca Zinn and Dill, 1996). The intersectional paradigm purports not only that race, class, and gender dynamics shape institutions and dictate our choices and capacities within those spheres, but also that those social statuses once overlapped, emphasize collective systems of structured inequality and produce “matrixes of domination” (Collins, 2008). For instance, globally and throughout history, data indicate that across varied social indicators, impoverished women of color occupy the lowest rungs of the social

ladder (DeNavas-Walt et al., 2012; United Nations, 2010). Feminization of poverty discourses began in the late 1960s as it was decades before Social Security eligibility and benefits were extended to agricultural and domestic workers, many of whom were poor women of color. National research continues to echo these global and historical trends, indicating that this group's overall reentry experiences may be qualitatively different from their male, white, or more affluent counterparts (Cobbina, 2010; Giordano et al. 2002; Richie, 2001).

It was Kimberlé Crenshaw's (1991) articulation of "intersectionality" that brought to sociolegal theory a key set of insights from women-of-color feminism and added these understandings to the conceptualization of legal discrimination and oppression taken up in critical race theory. Understanding intersectional harm requires a consideration of multi-axis structural violence and inequality, which the proposed study endeavors to reveal. Although related to CRT frameworks, this perspective seeks to redress the damage done to a wider set of disenfranchised groups, more profoundly lodged in a varied nexus of disadvantage and sociopolitical impotence. Spade (2013) highlights the intersectional agenda and resistance methodology here:

"...bring[ing] attention to the violences of legal and administrative systems that articulate themselves as race and gender neutral but are actually sites of the gendered racialization processes that produce the nation-state. Intersectional resistance practices aimed at dismantling population control take as their targets systems of legal and administrative

governance such as criminal punishment, immigration enforcement, environmental regulation, child welfare, and public benefits. This resistance seeks out the root causes of despair and violence facing intersectionally targeted populations and in doing so engages with the law differently than rights-seeking projects do. Critically analyzing the promises of legal recognition and inclusion from systems that they understand as sources of state violence and technologies of population control, intersectional resisters are demanding the abolition of criminal punishment, immigration enforcement, and other functions and institutions that are central to the nation state form (2013: 1,031).

The normalized, rationalized, and largely ignored totalizing effects of state-sanctioned oppression experienced by society's most marginalized are identified and explained within this theoretical perspective, and therein challenged. Intersectionality scholars maintain that resistance to multi-axis structural violence requires an abandonment of scholarship and activism that mobilizes narratives animated by the same language used by those oppressive structures. For instance, talk of imprisoning batterers of poor women of color, although well intentioned, only perpetuates racist, colonial, heteronormative, patriarchal agendas. Intersectional resistance calls for a new discourse.

The discrimination principle upon which CRT proponents rely, produces very troubling results. It is exceedingly difficult for plaintiffs to substantively prove discriminatory intent on the part of their oppressors, improbable that they have the

resources to even pursue the effort through formal means, and also unlikely that they will articulate the sort of intellectually accessible single-axis discrimination case that courts are likely to understand (Ruckelshaus and Goldstein, 2002). This too is another form of population control.

Poor women of color are more likely to find themselves caught up in a web of criminal and administrative management and supervision than any other social group (Grebham et al., 2008). Welfare policy and criminal justice institutions are the sites in which this group experiences the most pervasive race- and gender-targeted harm, produced under the guise of neutrality. Ossei-Owusu's (2010) research suggests that institutional decision-makers' expectations about criminal defendants affect criminal justice outcomes because discretionary stages in the criminal justice system serve as key sites of race, class, and gender subordination. They are developed through patterned social interactions and result in at least two socially constructed sets of assumptions about gender and race (Gustafsson, 2012; Maggard and Higgins, 2013).

Stereotypical normative feminine behavior includes passivity, dependence and submissiveness while masculine stereotypes emphasize dominance, assertiveness, and independence. Individual criminality is interpreted in light of these normative gender expectations. Because gender expectations of docility preclude female deviance, those who violate those gender norms are more likely to be regarded as mentally ill therein lays the emergence of what scholars refer to as the "medicalization of female deviance" (Renzetti, 1998; Thompson, 2010). Women are medicated at least 2 to 10 times the rate of their male counterparts (Auerhahn and Leonard, 2000; McCorkel,

2003). These practices, and the assumptions about female passivity and hysteria are also racialized. For example, if a young black woman commits a crime she may be regarded as a product of her environment whereas if a middle-aged white woman commits the same crime she's statistically more likely to be psychologically evaluated before facing a criminal sanction (Kutchins and Kirk, 1997; Miller and Prosek, 2013). For those women who lack the requisite white privilege that keeps them out of prison, they do have access to mental healthcare, but the aid is not promised to be effective or useful for reentry. Prison rehabilitation programming focuses on less effective therapeutic agendas and far more often than educational and vocational programming (Kendall and Pollack, 2003; McCorkel, 2013).

Women are also subjected to double sanctioning – once for the crime and then a second time for having violated gender expectations. Chivalrous and paternalist approaches to female criminality refers to a protective attitude toward women linked to stereotypes classifying women as (1) weaker and more passive than men, and (2) more submissive and dependent than men, therefore less responsible for their crimes (Daly 1989, 1994; Nagal and Johnson, 1994). The “evil woman” corollary asserts instead that women are more harshly subjected to social control for having violated ladylike expectations and failing to fulfill prescribed gender expectations (Schur, 1984; Horwitz, 1990). Both outcomes are discriminatory but exceedingly different to combat as the practice is normalized and embedded in our cultural milieux.

While contemporary legislation has sought to eradicate discrimination in sentencing, the effects have been anything but benign. For example, the Sentencing

Reform Act of 1984 created the US Sentencing Commission, the entity charged with implementing facially neutral sentencing guidelines, in order to reduce unwarranted sentencing disparity and eliminate sentencing impact of extralegal factors such as offender's race, gender and socioeconomic status (Nagel and Johnson 1994: 183). While advancing an intersectionalist perspective, researchers including Koons-witt (2002), Doerner and Demuth (2010), as well as Harmon and O'Brien (2011) demonstrate that determinate sentencing, although intended to reduce disparities based on extralegal factors, fails to do so for several reasons. First, this mandate heightens the discretionary impact of decisions made at other points in the system – police discretion to arrest or not affects sentencing yet is never addressed in this sentencing reformation. Second, there is room for some limited judicial discretion and women are more often granted downward departures than men, but they are also more often confined in mental health facilities for longer sentences. Third, legislative determination of appropriate sentence lengths only conceals discrimination against the social constructions of criminality and I would also argue that “seriousness in offending” concerns are simply proxies for beliefs about race and gender.

Increasingly, in the management of this troublesome population, the inverse relationship between prison and mental health facility admission has grown more and more pronounced and as prison populations swell, state-funded access to mental health treatment has declined (National Center for Health Statistics, 2008). Widespread use of outpatient psychoactive drugs also contributes to decline in mental health institutional admissions. Intersectional activists propose that rather than accept that

race- and gender-neutral deinstitutionalization explains why poor women of color are being ushered into prison cells instead of psychotic wards, consider instead the state's motivations for TRANS-institutionalization or the shifting from one, less expensive confinement practice to another (Lurigio, 2011; Thompson, 2010).

Modern inmate management in women's facilities adheres to one of two models. The first embodies a gender-neutral framework where contemporary facilities look nothing like the reformatory cottages of yesteryear, but rather prioritize security, segregation and social control (Bloom et al. 2003). This "vengeful equity" (Owen 1999: 83) approach to female inmate management places little emphasis on educational and vocational programming and meaningful substance abuse or mental health treatment. Increasingly nonwhite women find themselves confined in these sorts of institutions. An alternative model is "women-centered" (Hannah-Moffat, 1995: 135) and emphasizes an ethic of care that does not prove effective for meaningful rehabilitation and preparation for reentry. Under this template, corrections imposes a heavy emphasis on mental health governance and devotes an earnest effort toward treatment modalities that unfortunately, inadequately redress female offenders' experiences with poverty, victimization and racism. Pollack (2005) argues that these "correctional mental health practices privileges a psychological discourse which serves to regulate women prisoners as opposed to empowering or supporting them" (p. 71). Furthermore when these prisons do offer educational or vocational programming, their scope is limited to cosmetology and clerical work (Bloom, 2003). Both white and nonwhite female offenders are subjected to rehabilitative paradigms that prove

largely ineffectual, but one is less damaging than the other.

Although female defendants are generally sanctioned less severely than their male counterparts (judges taking motherhood obligations into account) this benefit is generally enjoyed by white women (Thompson, 2010). Race and gender may interact so that the “mother” role of staying home is appropriate for white women but viewed as laziness and “welfare queening” for black women (Collins, 2005). The criminal legal system’s institutional responses are not based solely on gender, but particularly on cultural and social differences within groups of women. All women are not white and all minority women are not black and these essentialist traps have been identified as problematic (Collins, 2005; Goodkind, 2005). Daly (1989) argues that gender differences in criminal justice system processing are attributed to differences in the social location of women compared to men. Meaning, when women are imprisoned their children suffer, too (Huebner and Gustafson, 2007; Murray and Farrington, 2008; Wildeman, 2010). Even if male defendants have families, the impact of their lost earnings upon incarceration is easier to alleviate through state aid than it is to compensate for women’s care-taking labor, which would be replaced by foster or institutional care. The difference is that the most deleterious circumstances are playing out for poor women of color, and in ways that cannot be identified using existent legal rhetoric. As the salience of law varies with social context and loci (Levine and Mellema, 2001) the same could be said for this group’s interaction with the law once released from prison as well.

The marginalizing socioeconomic and sociopolitical experience of female

gender status is exacerbated for criminally involved women whose access to economically mobilizing resources and support are limited, if not entirely slashed. Twine (2008) urges all thinkers to consider intersectional feminist research that recognizes how “[p]enal institutions are being used by local governments and states to systematically punish indigenous women, women of color, immigrants, poor women, and unruly girls and women who challenge gender conventions” (p. 95). For both deviant and conventional women, their accomplishments are largely influenced by gender inequality. Institutional gender inequality is exacerbated when compounded with racism, concentrated poverty, and the mark of a criminal record.

Given these guiding theoretical contexts, within this research study, the influence of legal authority, the presence of legal consciousness, and the potential for reintegration are inextricable in the desistance effort. Individuals who perceive legal institutions as just, legitimate, representative of the citizenry, and aligned with their own moral values are more likely to voluntarily comply with those laws (Tyler, 2006, 2011). Compliance stemming from shared moral values between individual and institution, rather than deterrence-based obligation is far more likely and more stable when laws match the needs and values of the governed (Jackson et al., 2012; Tyler and Jackson, 2014). On the other hand, if the perception is that legal institutions undermine efforts toward reintegration and reentry success because they exacerbate the realities of some of the most vulnerable populations, compliance is less likely. Collateral consequence legislation may affect attitudes about law and one’s sense of obligation and capacity to *follow* those laws and desist from crime.

Chapter 3

EMPIRICAL REVIEW OF COLLATERAL CONSEQUENCES

LEGISLATION AND RECIDIVISM LITERATURE

Currently the bulk of research on recidivism has focused on individual variation and predictors (such as race, gender, offending record, etc.) and has neglected the impact of larger factors, such as historical context or public policy. However, there is strong evidence that context, such as neighborhood characteristics, can indeed affect whether a released offender successfully abstains from crime (Clear, 2007; Hipp and Yates, 2009; Kubrin and Stewart, 2006; Morenoff and Harding, 2011), providing support that macro-level processes can significantly impact desistance efforts. This logic is applicable to the potentially significant impact that collateral consequences legislation could impose upon former prisoners' reentry journeys.

Collateral consequences law constitutes the aggregation of "invisible punishments,"² (Travis, 2002) or legal burdens carried by exoffenders far beyond the court-imposed limits of any conviction, sentence, probationary term, or material fine. For many exoffenders, the costs associated with these consequences include the

² These sanctions are deemed "invisible" because they are the indirect civil actions imposed by operation of allegedly neutral and unbiased laws rather than sentenced by a visible judge, relying upon his or her discretion and capable of human error. Sanctions by which individuals feel slighted are more "visible" if imposed by human agents rather than diffuse legal proceedings.

dissolution of federal funding for education, increasingly exclusive barriers to gainful employment, and the revocation of eligibility for public housing. The effects of these hurdles on social outcomes, offending and desistance patterns in particular, will be discussed in this chapter. Further, for each element of collateral consequence law discussed hereafter, the examination will include an explanation of the law, implications for reentry and recidivism, and implications for legal consciousness.

3.1 Education

Governmental reports and academic studies show that even though prisoners began taking correspondence courses for college credit as early as the 1920s, Post-Secondary Correctional Education (PSCE) did not have a significant presence in the USA's penitentiaries until the mid-1970s (Mercer, 2009; Page, 2004). In 1965, for example, only 12 institutions offered degree programs to inmates (Wolford and Littlefield, 1985: 258). That number increased to 237 in 1976 (Emmert, 1976), 350 in 1982 (Wolford and Littlefield, 1985), and 772 in 1990 (Stephan, 1992). The percentages of correctional systems offering PSCE programs to convicts were 71 in 1973 (Heron et al., 1973), 91 in 1983 (Woodard and Ryan, 1987), and 82.6 in 1995, the final year that prisoners received Pell Grants (Tewskbury et al., 2000).

Correctional education is comprised of four general categories of educational programs that are found in correctional institutions: adult basic education (ABE), secondary/General Educational Development (GED), vocational training, and postsecondary programs (Bell, et al., 1979). Adult basic education includes

instruction designed to improve literacy, linguistic, and mathematical skills of those who are functionally illiterate and unprepared for implementing the responsibilities of adults while incarcerated or once released into the free society. Secondary education is designed for those who are functioning at the secondary level of achievement.

These

programs may be provided through regular high school diploma courses, but more commonly they are provided in correctional institutions through GED (General Education Development) preparatory programs designed to prepare individuals for taking and successfully passing the General Educational Development Equivalency Examination. Vocational education is designed to provide learning experiences to develop occupational awareness, give exploratory job experiences, and develop job skills and work habits in preparation for gainful employment. Vocational training is provided through on- the-job training and related classroom experience.

Postsecondary education includes any college-level curricula, and may be offered through two-year or four-year institutions of higher education. Inmates may gain college credit or may complete requirements for an associate or bachelor's degree.

McCollum (1978) observed that practitioners who make arbitrary ill-informed distinctions between academic and vocational education are grossly inaccurate in their assumptions. Instead, she argues for the a reconsideration of a multidimensional educational experience that will better ready inmates for life on the outside. Data clearly indicate that a high school diploma and an associate's or bachelor's degree significantly improves and enhances an individual's lifetime occupational earning

power (Tyler and Kling, 2007; Western and Petit, 2010).

Correctional educational programming for adult offenders has been the focus of considerable attention since the mid-1970s. During the era when a rehabilitative model dominated then contemporary penal ideologies, there was a flurry of efforts to develop and implement educational and vocational programming for adult offenders. Former Chief Justice Warren Burger stood out as a staunch ally, as indicated by his statement that we must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short term benefits – essentially a winning of battles while losing the war.

The sharp rise in correctional education in the 1970s was due, in large part, to a shift in penal philosophy and the implementation of the Pell Grant program. In the 1960s critics challenged the fundamental assumption of the ‘treatment model’, arguing that people committed crime because they did not have access to legitimate avenues of accumulating wealth, status and power – not because they were socially or psychologically ‘sick’. The critics contended that prisoners should have the opportunity to partake in programs, including higher education, which provided convicts with necessary social resources. During the late 1960s, proponents of this ‘opportunities model’ encouraged local and national governments to support PSCE programming, and many of them went into prisons to teach college courses themselves (Seashore and Haberfeld, 1976).

In 1965, Congress passed Title IV of the Higher Education Act, which instituted the Basic Educational Opportunity Grant Program (named the Pell Grant in

1980 after

Senator Claiborne Pell (D-RI), a federally funded loan and work program designed to help low- and middle-income students afford a college education. To be eligible for a Pell Grant, a student must demonstrate financial need, be enrolled in an undergraduate program and be making satisfactory progress towards a timely graduation. Congress determines the size of the Pell Grant pool that gets divided among eligible students each year and the Pell Grant program is the largest student aid program managed by the US Department of Education, providing billions of dollars to millions of students each year (Peramba, 1994: 165). Shortly after Congress released funds for the program in 1972, Pell Grants became the major source of funding for PSCE for two reasons: on the one hand, nearly all prisoners were eligible for the grants because of their lack of income, and, on the other hand, states historically refused to put their own resources toward higher education (Lawrence, 1994: 34). By 1982, 72 percent of correctional systems utilized Pell funding for PSCE, and by 1993–4, roughly 73 percent of the total 38,000 prisoner-students used the grants to pay for college (Lillis, 1994).

In the waning years of the 1970s, however, the interest in adult correctional education was often from the standpoint of questioning the worth of that programing. Prison institutions have experienced a number of changes in the last few decades. Factors that may have impacted correctional education include court intervention in corrections, budgetary cutbacks and diminishing resources, prison overcrowding, and the change away from a philosophy of rehabilitation to one of deterrence and

incapacitation.

Apart from the direct causal relationship between educational attainment and desistance (Ford and Schroeder, 2010; Kim and Clark, 2013; Lockwood et al., 2012), PSCE affects strong positive impacts for correctional institutional management and on inmate disposition and outlook (Davis, 1988; DiIulio, 1991). With respect to population management, Blumstein's (1987) research revealed that correctional education improved the institutional climate, particularly within the newer incapacitative regimes. Inmates are kept occupied doing work that they are interested in; course enrollment serves as a prize or incentive that can be revoked; and education allows inmates to construct and develop pro-social, critically thinking personas – the effects of which lead largely to pacifism and non-violent confrontation between individuals (Anklesaria and Lary, 1992; Harer, 1995; Taylor, 1993). Second, participating in an educational program helps all individuals – regardless of offender status – to gain self-esteem and cultivate a pro-social worldview (Parker, 1990). Not only will their earned credentials facilitate their job search and bolster their employability, studies demonstrate that armed with an education, offenders feel more *ready* for life on the outside and are motivated to pursue long-term reintegration (Chappell, 2004; Roundtree et al., 1982; Stevens and Ward, 1997).

The revocation of Pell Grant eligibility for inmate students precludes all of that potential and progress. Page (2004) identifies five justifications leveraged by

Congress

for the revocation of inmate education financial aid.

- (1) Federal financing of PSCE takes money from students that the grant program was designed to serve.³
- (2) Offenders are incapable of rehabilitation anyway.⁴
- (3) Government had funded more than its fair share of rehabilitation programing,⁵
- (4) Providing free education to inmates incentivized nonoffenders to commit crime in order to gain a seat in a prison classroom.⁶
- (5) Providing inmates with free education implies a rewarding of sorts which is unfair to crime victims and their families,⁷

These rationalizations gained traction because of several related developments converging at this particular historical moment. First, the ideological foundation of the predominant rehabilitative ideal was under heavy scrutiny and effectively abandoned by the early to mid-1990s (Garland, 2001). In the effort to assuage media-propagated moral panic about inflated crime rates (Beckett and Sassoon, 2000) practitioners and politicians increasingly moved towards a more punitive ideological framework that espoused deterrence, incapacitation, and retribution (Feeley and Simon, 1992). Second the ascent of penal populism, ‘Get Tough’ sentencing agendas, and the onset of mass incarceration were products of government’s clawing at some semblance of efficacy, and the need to demonstrate that it was doing *something* about crime and law-breaking populations (Simon, 2009; Zimring, Hawkins, and Kamin,

³ US Congress 1993: S15587

⁴ US Congress, 1992: H1895

⁵ US Congress, 1991: S1330

⁶ US Congress, 1993: S15587

⁷ US Congress, 1993: S15747

2001), implementing increasingly punitive policies without consideration of their likely effects (Windlesham, 1998). This penal populism and the discrediting of welfarist penology (Wacquant, 2009) perpetuated a general assault on the underserving poor that had begun in the 1960s⁸ and become common rhetoric by the mid-1990s (Ganz, 1995; Tonry, 2010).

Today, funding limitations severely restrict eligible inmates from participating in PSCE programming (Tewksbury et al., 2008). Despite counterarguments from congressmen who put forth that inmates constituted some of the neediest indigent American students⁹; that the percentage of money drawn from the Pell Grant pool for PSCE was relatively minimal¹⁰; the availability of Pell Grant funds for inmates did not spell the appropriation of funding for law-abiding citizens¹¹; Pell Grant financing of inmate education affects reductions in recidivism¹² and helped to keep communities safe from the criminogenic disorder that emerges alongside the presence of unemployable returning exoffenders¹³; and that PSCE helped maintain institutional order among inmate populations¹⁴, the Violent Crime Control Act of 1994 was passed, and Pell grant eligibility for inmates was revoked in 1995.

Chappell's (2004) meta-analysis of fifteen studies conducted during the 1990s suggests that a positive correlation (+0.31) exists between post-secondary education

⁸ See Moynihan (1965).

⁹ US Congress, 1992: H1895

¹⁰ US Congress, 1991: S12879

¹¹ US Congress, 1994: H2546

¹² US Congress, 1991: S11332

¹³ US Congress, 1992: H18292

¹⁴ US Congress, 1991: S12879

and reduced recidivism rates. Some research attributed the weaknesses of correctional educational programming to misuse and poor institutional implementation of programming (Chin, 2000). Opponents of PSCE programming argue that rehabilitative measures are generally unsuccessful (Sullivan, 1990), or that selection bias of less criminally entrenched inmate students inflates the relationship between correctional education and offending upon release (Ross and McKay, 1978). Still, there is a wide range of methodologically sound research studies whose findings consistently illustrate the positive impact of PSCE on inmate attitudes and institutional safety (Alfred, Harrison, and O'Connell, 2013; Bakhru et al., 2011; Lahm, 2009) as well as post-release recidivism rates (Batiuk, Moke, and Rountree, 1997; Janic, 1998; Jensen and Reed, 2006; Kim and Clark, 2012; Tewksbury, Erikson, and Taylor, 2000). Ford and Schroeder (2010) reveal that higher education is negatively associated with criminal offending and that the protective effect of higher education is stronger for individuals who were more delinquent as adolescents. Lockwood and colleagues (2012) conducted a longitudinal 5-year follow-up study, measuring the rearrest rates of 6,561 offenders who were released from the Indiana Department of Correction in 2005. They measured the effect of correctional education and post-release employment on recidivism among released offenders and their findings suggest that education and employment were the most important predictors of post-release recidivism. Batiuk and colleagues (2005) report that college education in particular, exhibits a significantly stronger negative impact on recidivism hazard rates than any other forms of PSCE.

With the passing of the Second Chance Act and the reinvestment of federal financing in PSCE, financial aid eligibility for inmate education may resume and reinvigorate those positive trends. The Department of Education reports,

“The Incarcerated Individuals Program¹⁵ is authorized by the Higher Education Act and supports post secondary education in prisons, so we have been particularly attuned to recent high profile discussions of higher education reform. President Obama has personally brought an unprecedented focus to the challenges of bolstering post secondary education in the United States. He set a goal of 8 million additional U.S. college graduates by the year 2020, a number described as necessary to move our country back to the top ranks among nations based on the proportion of college graduates in the general population. He has also made direct appeals to U.S. citizens to engage in higher education. In recent remarks, the President stressed that post secondary education is an economic issue, tightly linked to issues of competitiveness, job creation and employment” (Linton, 2010: 186-7).

The Second Chance Act of 2008 guarantees *transitional* educational programming for individuals upon release but the extent to which the charge outlined by the Department of Education will include prison education is still unknown.

The dissolution of access to inmate education could have profound

¹⁵ Also known as the *Workplace and Community Transition Training Program for Incarcerated Individuals*

implications for legal consciousness of exoffenders returning home, and the communities unwilling to welcome them. Lawmakers and constituents who initiated this charge repeatedly portrayed inmates as untrustworthy, opportunistic, unredeemable, and “fundamentally different from citizens self-evidently portrayed as law-abiding” (Page, 2004: 368). The prototypical black or brown, young, urban, male street criminal was the depiction cast for underserving citizens who deserved their dismal fates. By constructing the Pell Grant debate as an either/or and *us vs. them* contest between inmates on one side and presumably law-abiding student and crime victims on the other, the choice for legislators and the citizens who elect them was very straightforward. Lawbreakers relinquish their right to the benefits of citizenships and are no longer part of the community with which we identify or work to support. This legally-sanctioned collective stigmatization and exclusion from a right as fundamental as public education leaves former inmates returning home, not only at a labor market disadvantage, but branded as inferior, disloyal, and unprincipled in the public eye – all initiated by the collective mainstream will.

3.2 Employment

United States legislation displays an historically tenuous and punitive legacy of population management vis-à-vis labor markets and punishment and as it stands, employment law does not and has never favored the rights or needs of job candidates (King, Massoglia, and Uggen, 2012; Olzak and Shanahan, 2014). The central principle of employment law is known as “employment at will” which means that an

employer may dismiss an at-will employee at any time for a good reason, a bad reason, or for no reason at all (Muhl, 2001; Summers, 2000). This legal protection engenders broad implications for hiring practices as well, allowing most terms and conditions of employment (including whether a job applicant will even be hired) to be dictated by the employer. Subsequently, it is true that regardless of offender status, there is evidence that even in the absence of the availability of criminal records, some employers are still likely to engage in statistical discrimination against particular groups (Bushway, Nieuwbeerta, and Blockland, 2011; Murphy et al., 2011; Holzer, Steven, and Stoll, 2006; Stoll and Bushway, 2008). However, offender status exacerbates this trend and arguably fuels it, too. Employer assumptions that black job candidates, for example, are criminally prone and generally untrustworthy, and are a product of the disproportionate minority presence among the ranks of those citizens under correctional supervision. Unless employers have had previous social contact with former prisoners in the past and exhibit fewer reservations (Giguere and Dundes, 2002), individuals charged with choosing between equally qualified candidates will hire the one who does not remind them of a criminal (Atkin and Armstrong, 2011; Hirschfield and Piquero, 2010). Additionally, candidates with criminal justice records are already disadvantaged to the extent that they lack marketable skills and social networks. For example, roughly 70% of convicted offenders have not completed high school (Freeman, 1992; Harlow, 2003; Travis, Solomon, and Waul, 2001) and Shutay and colleagues (2010) reported that of their research sample of 159 jail inmates, nearly 80 percent of those surveyed were functionally illiterate. For the demands of a

contracting and highly technical service-sector employment labor market, even without the threat of a criminal background check or legislation barring them from gainful employment, many men and women coming out of jail and prison simply do not make for very strong job candidates.

The introduction of invisible punishment schemes that further undermine offenders' employment candidacy, is another story altogether. There are several federal statutes that prohibit exoffenders with certain convictions, from seeking certain employment positions. For example, exoffenders with weapons convictions and/or those convicted of distribution of or the intent to distribute a controlled substance, cannot work as airport security screeners or in any positions where they would have direct access to airplanes or secured airport areas.¹⁶ Other statutes prohibit employment (armored car crew members) for exoffenders whose convictions preclude their eligibility for a firearm license¹⁷ or for those whose offenses include robbery, perjury, and controlled substances¹⁸ (13-year disqualification following conviction or the end of imprisonment for jobs with employee benefit plans). State statutes also impose restrictions on exoffender employment for a wider array of positions. In many states, exoffender employment is prohibited for positions that involve the health and safety of children or vulnerable adults – ruling out jobs in nursing homes, home health care, childcare facilities, and in public schools. In these instances an former prisoner's employment prospects are regulated by state law and are unequivocally prohibited

¹⁶ 49 U.S.C. §§ 44935(e)(2)(B) and 44936

¹⁷ 15 U.S.C. § 5902

¹⁸ 29 U.S.C. § 1111

irrespective of whether or not an employer would be willing to hire that individual.¹⁹

More often, however, the restrictions placed on hiring exoffenders are self-imposed by the employer, animated by their own biases, and perpetuated due to the absence of legal accountability. Jobs in which employers are legally prohibited from hiring applicants with criminal records are the exception rather than the rule.

Employer discretion remains largely unchallenged in the courts.²⁰ Concomitantly, labor markets have seen the proliferation of background checking of applicants, and access to their pasts are increasingly more accessible – where many screening and search services make record readily available online (Freeman, 2008; Gebo and Norton-Hawk, 2009; Stoll and Bushway, 2008; Uggen, 2008). In addition, one study indicates the very existence and availability of a criminal record that sheds light on the past but inaccurately depicts the applicant of the present, undermines an individual's new identity construction and feeling of readiness and belonging in the world beyond prison (Myrick, 2013). Given this reality, the implications for reentry success are quite profound.

In just the last two decades, legislative changes in the regulation of employer discrimination reflect a largely hands-off approach to the protection of job applicants

¹⁹ For instance, in both New Jersey and Delaware, where a number of sample respondents from this study have sought employment, employers are prohibited from hiring some convicted applicants for jobs as bartenders or servers in establishments with liquor licenses, bank employees, paid firefighters, real estate salespeople, social workers, casino employees, liquor manufacturers or distributors, school crossing guards, civil service housing guards, auto repairmen, and employees in business operating legalized games of chance. Similarly, Pennsylvania's Older Adult Protective Services Act (OAPSA) was passed in 1996 (P.L. 1125, No. 169) and 1997 (P.L. 160, No. 13) and for exoffenders, imposes a lifetime ban on employment in an array of health-providing facilities.

²⁰ For exception see, *Cronin v. O'Leary* and *Nixon v. Commonwealth of Pennsylvania*

with criminal records. Formerly, the fair Credit Reporting Act prohibited the reporting of minor and “obsolete” convictions greater than seven years old²¹ but the Consumer Reporting Employment Clarification Act of 1998 negated that provision and convictions now remain on credit reports in perpetuity. There are indeed anti-discrimination laws, both federal and state, that preclude discriminatory hiring practices, but the standard they endeavor to uphold are seldom met (Saxonhouse, 2004; Nichols, 2014; Smith, 2014). For example, despite the enactment of the Pennsylvania statute mandating that an applicant’s conviction may only be considered to the extent that it relates to the applicant’s employment suitability for the position to which they are applying, laws such as this one are rarely enforced, and fundamentally unenforceable due to employers’ “at-will” employment liberties. Notwithstanding, legal policy that protects employers’ right to dismiss and reject applications based on criminal records disproportionately impacts minority groups, and operates in de facto violation of Title VII of the Civil Rights Act of 1964. This legal allowance imposes upon these applicants an impenetrable barrier to employment and meaningfully prosocial (re)integration.

There has been recent pushback from formerly convicted claimants of color who were allegedly unlawfully fired as a result of their employers conducting criminal background checks and automatically barring them from employment without regard for the conviction type or the time that had passed since the offense. The EEOC's Charlotte district office filed suit in U.S. District Court of South Carolina, Spartanburg

²¹ 15 U.S.C. § 1681c(a)(5)

Division against BMW Manufacturing Co., LLC.²² Pursuant to the mandate set forth in the Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964,²³ the United States Equal Employment Opportunity Commission (EEOC) (2013) alleged that “BMW disproportionately screened out African Americans from jobs, and that the policy is not job related and consistent with business necessity. The claimants were employees of UTi Integrated Logistics, Inc. ("UTi"), which provided logistic services to BMW at the South Carolina facility. The logistics services included warehouse and distribution assistance, transportation services and manufacturing support.” A second EEOC nationwide lawsuit was filed in Chicago, Illinois against Dollar General.²⁴ The suit alleges that Dollar General maintains a practice of conditioning all of its employment offers on criminal background checks, which results in a disparate impact against black applicants. Title VII of the Civil Rights Act of 1964 prohibits intentional and disparate-impact discrimination on the basis of race and national origin. The EEOC sought back pay for their plaintiffs as well as an injunctive relief to prevent future discrimination of current employees and potential applicants. The courts ruled in favor of the defendants, citing that (1) employers’ engagement in criminal background checks is legal and rationale given their concerns about risk and liability²⁵; and (2) the plaintiffs’ claims lacked the evidence needed to assert that the

²² *EEOC v. Freeman; EEOC v. BMW Manufacturing Co. LLC*

²³ http://www1.eeoc.gov/laws/guidance/arrest_conviction.cfm

²⁴ *EEOC v. DolGenCorp LLC*

²⁵ In many states, tort law dictates that an employer's failure to perform criminal-background checks is negligence. On Sept. 1, 2013, a new law in Texas was instated to protect employers willing to give

employers had participated in discriminatory practices. It is important to note that these rulings unfolded at the federal level and may set a precedent for state legislation to come.

Still there are some options for job-seeking former prisoners who have the wherewithal and resources to navigate these disenfranchising laws. The most productive and protective strategy is for individuals to expunge arrests that did not lead to convictions and/or seal criminal records, rendering them unavailable for public retrieval (Myrick, 2013; Wayne, 2012). The grounds for these record clearances are often quite narrow and require a deeply committed bureaucratic effort.²⁶ In New York, record expungement is an exceedingly difficult undertaking, so many individuals apply for certificates of rehabilitation – many of which instill some measure of confidence in employers (Scheider, 2010).

It is also critical that individuals verify the accuracy of their criminal records (Legal Action Center, 2011). A study conducted by the Legal Action Center revealed that 41 percent of all rap sheets collected contained two or more factual errors, including missing disposition information, unsealed cases, unrecorded warrants that had been vacated, and split arrest events (Legal Action Center, 1995). Applicants can

applicants with a criminal record a second chance and limits the liability of employers who hire applicants with a criminal record. The law provides that a "cause of action may not be brought against an employer, general contractor, premises owner, or other third party solely for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has been convicted of an offense."

²⁶ In most states, requests for the expungement of ordinary convictions are satisfied for individuals who are at least 70 years old and have not been arrested or prosecuted in the last ten years. In Pennsylvania, expungement requests are granted once the person has been dead for three years (18 Pa. Cons. Stat. Ann. § 9122(a)(1)).

also advocate for themselves and seek bonded status whereby employers are insured against employee theft committed by at-risk employees (Lindgren, 1999). Employers are also incentivized and should be reminded of the tax credits that accompany more inclusive hiring practices. Under the Work Opportunity Tax Credit Program, an employer may receive a federal tax credit of 40 percent of the first \$6,000 in wages paid to a employee who has been convicted of a felony, was hired within a year of conviction or release from prison, and/or is a member of a low-income family (Ajilore, 2012). Lastly, many exoffenders do have legal grounds to challenge negative employment decisions but are either unaware of their rights, cannot afford the counsel they would need to represent them in court, or simply cannot prove that a discriminatory agenda explains the rejection of their candidacy. The best suggestion is that they draw upon the resources that their local employment center may offer, and do what they can to seek help from the Equal Employment Opportunity Commission, the agency charged with enforcing Title VII legislation. Unfortunately, every day devoted to that cause is one taken from the pursuit of other employment prospects and long-term stability.

3.3 Public Housing

The acquisition of stable and affordable housing is a significant component of a successful reentry equation. One study revealed that two thirds of homeless exoffenders recommitted crimes in the first 12 months following their release, compared to the reoffending rate of 25 percent for those exoffenders who had secured

housing post-release (Center for Housing Policy, 1996). Families that include individuals with a criminal record are among those with the greatest need for housing assistance (Burke, 2008; Roman and Travis, 2006; Harding, Morenoff, and Herbert, 2013). The mission of the United States Department of Housing and Urban Development (HUD) and the local housing agencies that administer public and Section 8 housing programs is to “ensure safe, decent, and affordable housing; create opportunities for residents' self-sufficiency and economic independence; and assure fiscal integrity by all program participants” (Department of Housing and Urban Development, 2013). Additionally, HUD assumes the objective of driving economic growth in distressed neighborhoods. By providing a safe and stable place to live for individuals who could not secure such settings on their own, these residents have a better chance of securing gainful employment, supporting themselves and their families, and contributing to the larger community. Among exoffenders who are HUD-aid recipients, substance abuse and mental health treatment attendance is more consistent and residents can better establish and maintain relationships with their children.

Furthermore, public safety is enhanced by virtue of the alleviation of homelessness and criminogenic economic strain. Public Housing Authority (PHA) policies affect implications for the private housing market, too. If PHAs were to establish fair and more inclusive policies for considering applicants with criminal records, they could set a new, prosocial precedent for private housing markets. Once local agencies demonstrate that families whose members have criminal records can

and should be evaluated individually and on the basis of their eligibility, merits, and need, private landlords might be more willing to rent units to those applicants as well. Laws that restrict housing agencies' ability to consider applicants with criminal records and/or require the eviction of families that include tenants with criminal records negatively impact the reentry process and constrict the availability of housing to low-income populations in general (Oyama, 2009).

The onset of federal housing legislation that targeted applicants and tenants with criminal records began with the Anti-Drug Abuse Act of 1988.²⁷ The laws associated with this act required housing agencies to draft leases that included a clause prohibiting tenants, and members of a household or family, guest, or other individual under the tenant's control and supervision from engaging in criminal activity, including drug-related criminal activity, on or near public housing premises. Should this activity transpire, the registered tenant charged with responsibility for that criminal context could face eviction. Since then the Housing Opportunity Program Extension Act of 1996 and the Quality Housing and Work Responsibility Act of 1998 were enacted and focused on providing safer environments for subsidized housing residents. This revised legislation allow PHAs fairly broad discretion in crafting their public safety policies, many of which operate to create harsh outcomes for many families of color, with a disproportionate likelihood of having a household member marked by a criminal record (Saghir, 2003). More recently, the Supreme Court ruling

²⁷ P.L. 100-690 § 5101 (5)

in the *Department of Housing and Urban Development v. Rucker* (2002)²⁸ clarified that under the Anti-Drug Abuse Act of 1988, public housing authorities maintain the discretion to terminate the lease of a tenant for whom either a member of the household or a guest engaged in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity. The onus is on tenants to keep drugs (and other criminal behavior) off and out of public housing premises.

Legislation governs both admission and eviction standards for housing, but again, these housing agencies wield a wide measure of institutional discretion (Blanks, 2003; Clinton, 2005; Heinle, 2009). Federal law requires a criminal background check for all applicants and because many records contain errors (see aforementioned discussion), PHAs are also required to hear disputes from applicants whose eligibility is denied. There are three mandated blanket residency exclusions enforced by law:

- (1) Any household with a member who has been convicted of methamphetamine production on the premises of federally funded housing;²⁹
- (2) Any household with a member who is subject to a lifetime registration requirement under a state sex offender registration program;³⁰ and
- (3) Any household that was previously evicted due to a drug related offense.³¹

The real damage emerges in the lack of regulation imposed by federal and state legislation. There remains a nontrivial degree of discretion at the disposal of PHA

²⁸ *Department of Housing and Urban Development v. Rucker*, 122 Supreme Court 1230, 1238 (2002).

²⁹ 42 U.S.C. § 13663(a).

³⁰ 24 C.F.R. § 960.204(a)(3).

³¹ 42 U.S.C.A. § 13661; 24 C.F.R. § 5.854(a).

agencies and related legislation does not require, but they certainly do *not* prohibit housing authorities from denying admission to the following applicants:

- (1) Any household who has been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity in the past, may be deemed ineligible for housing for the next three years. The housing provider maintains the discretion to waive or shorten that exclusionary period if the person engaged in that drug-related activity has successfully completed a rehabilitation program approved by the housing provider, or the circumstance leading to that household's eviction no longer exists (the offender dies or is imprisoned at the time of application renewal).³²
- (2) Any household with a member who is abusing alcohol or another illicit substance, and their pattern of use threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.³³
- (3) Individuals who have engaged in (a) any drug-related criminal activity; (b) any violent criminal activity; or (c) any other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises if the criminal activity occurred a "reasonable" time before the person seeks admission.³⁴ The statute does not indicate how recent a conviction must be to qualify as a "reasonable" basis for the denial of an applicant's eligibility. The

³² 42 U.S.C. § 13661(a). See Scheider (2010) for a discussion of the rehabilitation certification process and its impacts on securing housing and employment.

³³ 42 U.S.C. § 13661(b).

³⁴ 42 U.S.C. §13661(c).

discretion of the PHA panel or a single reviewing officer presides.

Despite the fact that housing agencies should not unfairly disadvantage family members by imposing blanket bans against all applicants with justice involved kin, they often do (Cho, 2003; Zmora, 2009). For the purposes of successful reentry, it would be ideal if PHAs made individual determinations about applicant eligibility for housing, and took into consideration the relevance of the person's criminal history, evidence of rehabilitation, and whether they did in fact pose a significant threat to the larger housing community. Absent a certificate of rehabilitation and/or a probation or parole officer willing to advocate on their behalf, many exoffenders returning home to their families situated in these housing contexts, (akin to the discussion of employer discretion and discrimination outlined above) are automatically barred from acquiring residency status and never given the benefit of the doubt (Desmond, 2012; Thacher, 2008). Arguably, these systemic agency practices operate in violation of Title VII of the Civil Rights Act of 1964, but because the law does not require PHAs to fully consider the merits of an exoffender's application and eligibility, former inmates coming home, or at least making every effort to do so, are left largely unprotected by the purview of civil rights legislation.

For many exoffenders, exclusion from federally subsidized housing ultimately results in homelessness – with relapse and mental health declines bound to accompany that status. Metraux and Culhane (2006) examined the incarceration and shelter use patterns of 7,022 living in New York City public shelters and established that nearly 25 percent of those surveyed had been released from jail or prison within the previous

2-year period. In investigating the experiences of 43 formerly incarcerated veterans, Schaffer (2011) found that 59.4 percent of found themselves without a place to live between 2004 and 2008, and at least 56.7 percent were similarly abandoned at least two or more times during that same time period. Further, 81 percent of that sample was unemployed and cited that a lack of housing was a significant barrier to acquiring rehabilitation documentation (2011: 267). In a 2003 survey of over 30,000 arrestees from 30 different American counties, Myr Stol and Fitzpatrick (2011) examined the risk factors associated with homelessness and drug-use. Their multinomial logistic regression analyses illustrate that offenders' systematic exclusion from housing opportunities results in their exhibiting particularly low social and human capital deficits. This stigma and risk that comes with their criminal status prompts a trend in homelessness that often lasts through the entirety of the life course. Lastly, because the Anti-Drug Abuse Act provisions allow for the eviction of an entire household, whole families are left stranded when agencies terminate their leases or deny them admission to subsidized housing. The consequences of these effects are far-reaching for young children, women, and victims of abuse (Culhane, Metraux, and Park, 2005; Fantuzzo, Perlman, and Dobbins, 2011; Huey, 2012; Kennedy et al., 2010)

Homelessness is a criminogenic risk factor for offending and recidivism (Crawford, Whitbeck, and Hoyt, 2011; Greenberg and Rosenheck, 2008; Tsai and Rosenheck, 2012). The implications for social capital, employability, and mental health are chilling and moreover, this status affects within homeless individuals an internalized feeling of civil rejection and abandonment (Cleverley and Kidd, 2011).

Karen Bancroft's (2012) research focuses the limited movements of homeless populations in Washington specifically, but her discussion of national trends includes an investigation of how the creation of spatial exclusion zones that deny stigmatized groups the right to inhabit or traverse large areas of their cities - particularly in the downtown cores, where treatment centers, shelters, food banks, soup kitchens, government services, and other social services are typically concentrated – imposes on these people a deep sense of alienation and disaffection with legal policy. If homelessness is an inevitable outcome for exoffenders denied access to public housing, then an investigation of the implications for legal consciousness and compliance merits further scrutiny.

Currently, there is scant evidence of the effect of collateral consequence laws on the outcome of returns to prison, and even less has been published about individual-level reconciliation of this body of law. New research provides some evidence that the availability of criminal records online results in a marked increase of recidivism among criminal justice involved citizens (Lee, 2011). The bulk of available research, however, focuses not on the experiences of drug-involved offenders but rather the effect of sex offender registration and notification laws. Studies indicate mixed results, with some reporting reductions in offending (Duwe and Donnay, 2008), some reporting higher recidivism rates (Freeman, 2009), some reporting no differences (Letourneau et al., 2010; Sandler, Freeman, and Socia, 2008; Tewksbury and Jennings, 2010) and some reporting mixed findings (Leon, 2011; Prescott & Rockoff, 2008). In

addition, research indicates that sex offenders fear and experience negative outcomes as a result of registration and community notification laws – such as social stigmatization, employment, housing, and verbal and physical assaults (Levensen and Cotter, 2005; Mercado, Alvarez, and Levenson, 2008; Zgoba et al., 2009).

This mixed-method research study will redress these gaps in the desistance and recidivism literature by providing insight into how legislation may play a critical role in substance abuse and offending trends. Further, this study examines individual-level legal consciousness and how formerly convicted people navigate the reentry experience amidst the imposition of collateral consequences legislation. Analyses will focus specifically on the relationship between employment and desistance and how law conditions that association.

Chapter 4

METHODS

This multi-method research makes use of the NIJ-funded *Roads Diverge: Long-term Patterns of Relapse, Recidivism, and Desistance for a Re-Entry Cohort* dataset (Bachman et al., 2014). While there are many definitions of mixed-methods research, I utilize the operationalization provided by NIH's Office of Behavioral and Social Sciences Research, which emphasizes, "focusing on research questions that call for real-life contextual understandings....employing rigorous quantitative research assessing the magnitude and frequency of constructs and rigorous qualitative research exploring the meaning and understanding of constructs....intentionally integrating or combining these methods to draw on the strengths of each" (Creswell et al., 2011: 4). The use of mixed methods research for this study was a conscious decision to combine the inherent strengths of both qualitative and quantitative methodologies to maximize our understanding of the life-course trajectories of substance abuse and crime for a contemporary cohort of drug using offenders.

This study was built upon earlier work funded by NIDA and awarded to James A. Inciardi in collaboration with Co-Investigator Steven S. Martin, later joined by Co-PI Daniel O'Connell. This research originated as two companion R18 Research Demonstration grants to implement and evaluate innovative treatment alternatives for

prison releasees with histories of serious substance abuse. The studies began one year apart, with a project called ACT beginning in September, 1989 and the Therapeutic Community (TC) in September, 1990. The ACT study examined the relative effectiveness of three models of drug abuse treatment 1) a 12-month in-prison therapeutic community (KEY) for males only, followed by conventional work release; 2) an intensive outpatient approach for males and females which combined treatment and case management functions (ACT); and, 3) conventional community supervision for male and female releasees (COMPARISON). The TC study examined the effectiveness of a 6-month residential work release TC treatment program--CREST Outreach Center--for male and female prison releasees with histories of drug abuse. A work release COMPARISON group of drug-involved offenders was also followed over time. "Work release" is transitional incarceration where inmates go out to work but return to the work release center to sleep when not working (Inciardi et al., 1997). CREST was the first work release TC in the nation, and it has been a model for a number of new transitional criminal justice treatment facilities in the decade since its inception (Inciardi, Martin, and Butzin, 2004).

It is important to note that both of these large demonstration projects were "quasi-experimental" in making comparisons with a randomly selected group of inmates who were not assigned to treatment (ACT or CREST); both studies also had a non-random comparison with a group already assigned to the in-prison KEY TC. The samples from the two studies were merged and continued to be followed in a competing continuation R01 Grant, "Ongoing Studies of Treatment for High Risk

Drug Users." Subsequently, the "Ongoing" R01 award was changed to R37 "Merit" status, and ended in July, 2006.

The baseline sample for the Merit study was 1,250 offenders. The descriptive characteristics of the sample by gender and race and the univariate characteristics of age respondents should have been in 2010 are displayed in Table 4.1. Other factors of interest from the original sample at the first baseline include a mean age of the cohort of 29.6, 44% of the cohort had prior incarcerations, they had an average of 11.2 years of education prior to baseline incarceration, and 73% were in some form of treatment (Butzin, O'Connell, Martin, and Inciardi 2007).

Tracking respondents for reassessment in the original study yielded a response rate of 80% at the 6-month and 18-month follow-ups, and in the 75% range for subsequent follow-ups. The distributions of the sample by gender and race closely match the gender and ethnicity percentages in the Delaware prison population. All respondents in the Ongoing Project were assessed with comprehensive questionnaires and asked to provide blood and urine samples for testing at each interview (the overwhelming majority did provide samples). Respondents were interviewed immediately prior to their release from prison and again 6 months, 18 months, 42 months, and 60 months subsequent to release. Tracking information was retained on the sample, and subject consent forms left open the possibility that respondents would be re-contacted in the future.

Table 4.1	
<i>Sample Characteristics of Original Cohort by Gender, Race, and Age (N=1,247)</i>	
Race	
White	28.0%
Nonwhite	72.0%
Gender	
Male	80.4%
Female	19.6%
Race/Gender	
White Male	22.6%
Black Male	57.8%
White Female	5.5%
Black Female	14.2%
Age in 2010	
Range	29-73
Mean	45.5
Median	45.0
Standard Deviation	7.4
**Adapted from: Bachman et al. (2014), Reprinted with permission of authors.	

The analyses and outcome studies that were published from these evaluations consistently demonstrated that through five years post-release, those having participated in CREST exhibited significant reductions in drug use and arrests, even net of the expected effects of age, criminal and drug histories, and either differential selection or differential attrition (Butzin, O’Connell, Martin, and Inciardi 2007; Inciardi, Martin, and Butzin, 2004). However, the bulk of the sample remained under probationary supervision for multiple years after release. Although these studies to date are among the longest outcome studies of relapse and recidivism among offenders, the potential for truly long term effects ten years or more post release, which the present study provides, has remained an unexplored area and one of the primary goals of this project.

4.1 PHASE I – Offending Trajectory Analysis

Phase I of this original *Roads Diverge* study used the entire cohort of 1,250 offenders for quantitative analyses modeling trajectories of offending. Arrest and incarceration data through 2008 (the most recent data available at the time) were collected from the Delaware Statistical Analysis Center. However, a random records check of states bordering Delaware revealed that a nontrivial number of offenders in this cohort had been convicted in other states. As such, National Crime Information Center data were obtained and provided an adequate validity check on the official data provided by the Delaware Department of Corrections. Table 4.2 shows the mean number of arrests for the entire time period in Delaware by type of arrest, gender, and race. As shown, the sample was highly criminally active over the time period; while the mean number of arrests was 33, the actual range of arrests was 1 to 149 with a standard deviation of 19. The major categories of arrests with the highest numbers were Property and Public Order offences.

Table 4.2				
<i>Mean Number of Arrests Through 2008 by Type of Crime, Gender, and Race</i>				
	Male	Female	White	Black
	(n=1006)	(n=244)	(n=351)	(n=899)
Total Arrests	33.6	29.9*	34.4	32.3
Violent Crime	5.4	2.8*	5.1	4.9
Property Crime	9.3	10.8	9.7	9.5
Drug Offenses	3.8	3.4	2.8	4.1
Weapons Offenses	1.1	0.6*	0.9	1.1
DUI	0.7	0.5*	1.4	0.4*
Public Order	9.6	8.3*	10.7	8.8
Probation Violations	3.5	3.7	3.6	3.5
* Indicates gender or race group comparison is significant at the p.<.05 level.				
**Adapted from: Bachman et al. (2014), Reprinted with permission of authors.				

In addition to the high frequency of arrests, the overall criminal propensity of the sample is reflected in the amount of time spent incarcerated. Through 2008, males spent an average of 7.6 years in Delaware prisons compared to only 3.6 years for the females. Blacks, on average, spent longer in prison (7.2 years) compared to whites (5.8 years) and both gender and race differences were significant at the $p > 0.01$ level.

The cohort was characterized into subgroups based on their offending and desistance patterns over time. Bachman and colleagues (2014) estimated trajectories using PROC TRAJ, the group based semi-parametric trajectory modeling procedure (GBTM) developed by Nagin and colleagues (Jones and Nagin, 2007; Jones, Nagin, and Roeder, 2001; Nagin, 2005). The GBTM estimates trajectories of the course of behavior over age or some time period. Rather than assume the existence of groups that share the same developmental trajectory, the method identifies distinct groups in the data. Group-based trajectory modeling is a statistical procedure that allows the

identification of distinctive trajectories of some event (in this case, criminal behavior) over time. The groups are labeled as follows:

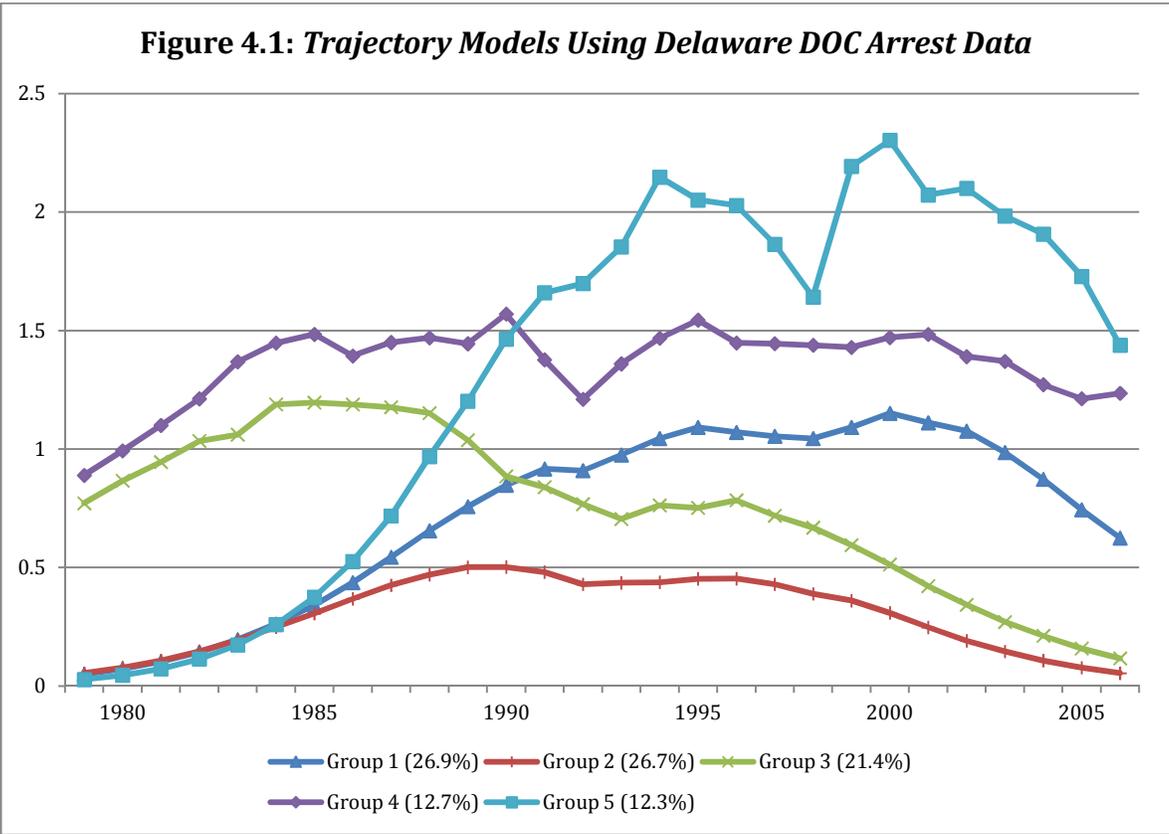
Trajectory Group³⁵

- Group 1: Late Starting Desisters
- Group 2: Low Offending Desisters
- Group 3: Early Starting Desisters
- Group 4: Early Starting Persisters
- Group 5: High Persisters

Figure 4.1 shows the results of the five-group model using only arrests from the state of Delaware. Three of the groups start off at a very low (zero or near zero) rate of offending but then diverge after approximately seven years. One of these groups continues to increase in arrests becoming the highest offending group (Group 5) throughout the time period. This group comprised about 12% of the total sample. The second of these three groups (Group 1) increases their offending over a ten-year period but then flattens until it begins to decline. This group comprised about 27% of the total sample. The third of these groups (Group 2) slightly increased its offending, but remained the least offending group throughout the entire time period, declining to near zero offending by the end. This group also contained about 27% of the full sample. Two other groups (Group 3 and Group 4) started out at a much higher rate than the other three, but they followed distinctive trajectories subsequently. Group 3, about 21% of the total, slightly increased its offending but then gradually declined over time until its rate was near zero at the end of the time period. Group 4, about

³⁵ The names for the various trajectory groups were given to best describe the individuals within each trajectory, even though the name may not validly describe every individual in the group. For example, not everyone in each of the groups labeled “desisters” had actually desisted from crime and substance use, but many had, and all exhibited an arrest rate nearing zero.

13% of the total, increased its offending by about 50% in the first five years and stayed very stable until the end of the time period.



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Table 4.3 provides the descriptive characteristics for each trajectory group by gender and race, and Table 4.4 shows the distribution of each racial/gender group within each of the five trajectory groups.

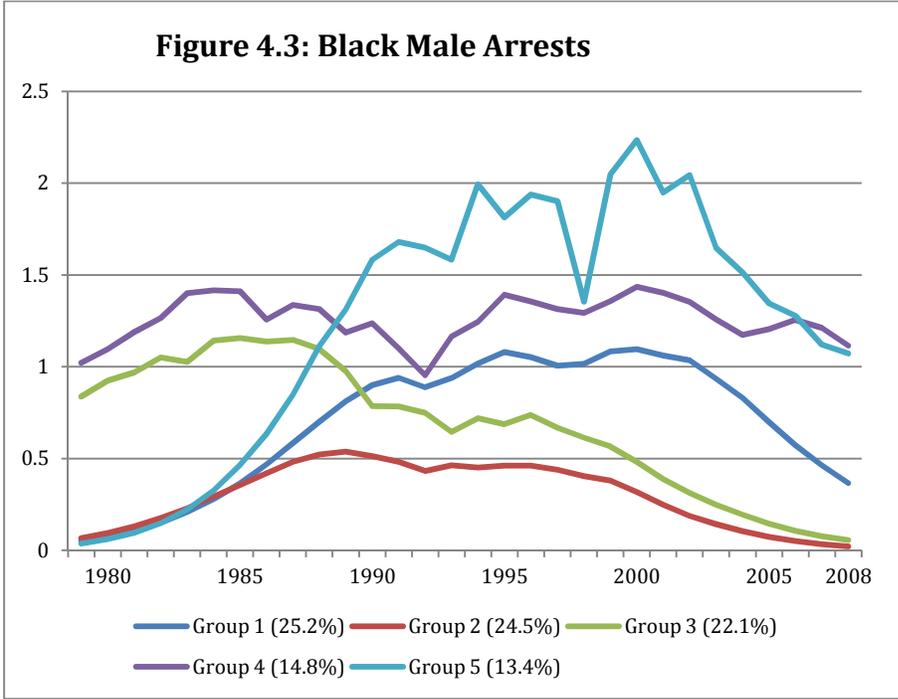
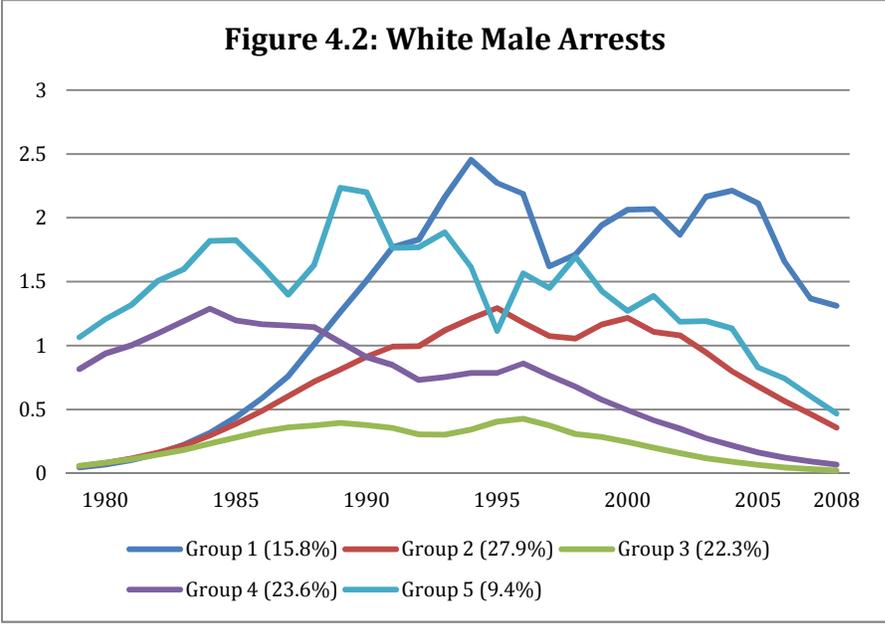
³⁶ All exhibits were adapted from: Bachman et al. (2014), Reprinted with permission of authors.

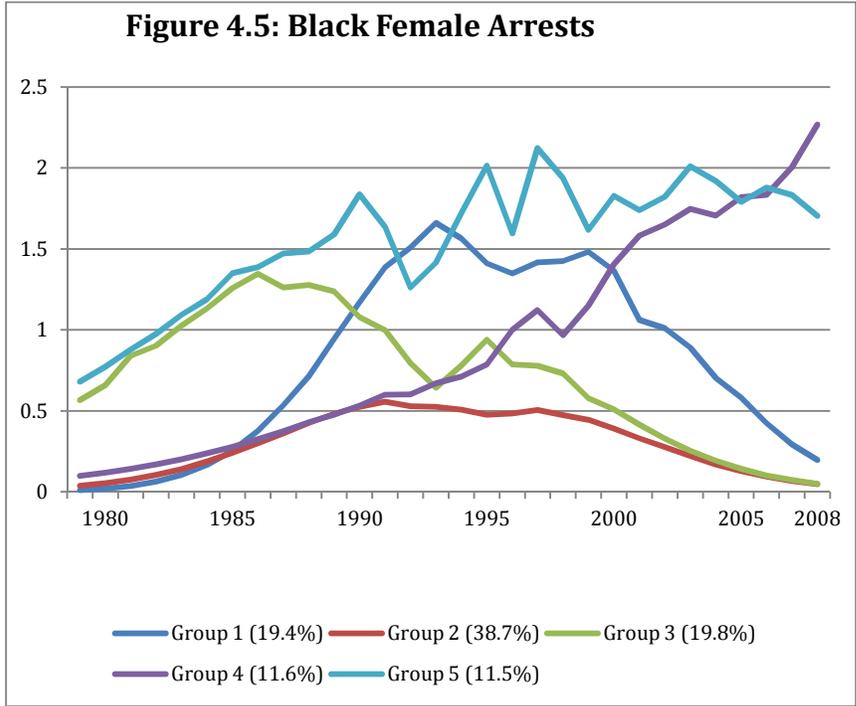
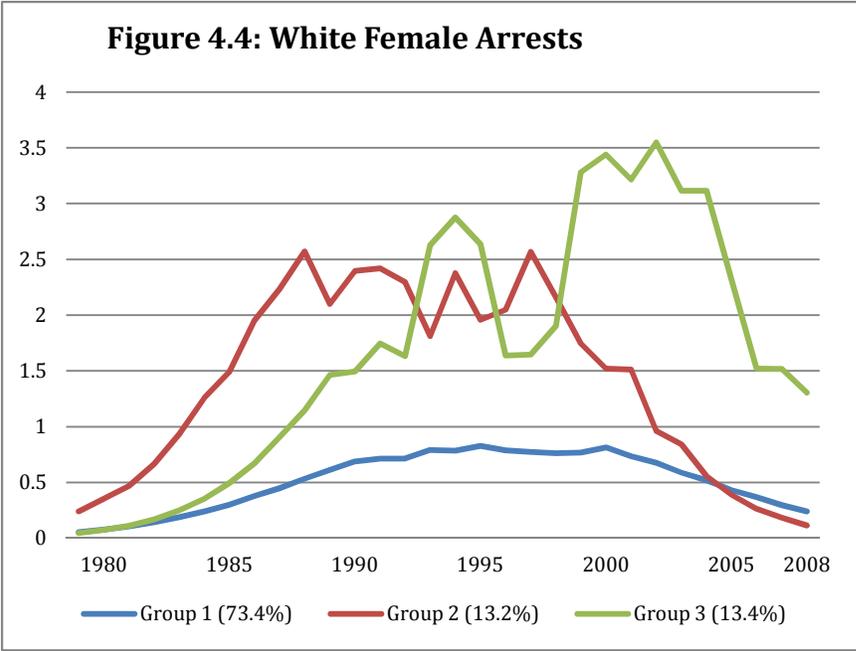
Table 4.3				
<i>Gender and Race Characteristics of Trajectory Groups for Full Sample</i>				
Group	% White Male	% White Female	% Black Male	% Black Female
1	23.7	7.4	52.8	16.0
2	20.8	7.1	51.2	20.8
3	25.7	2.2	62.3	9.7
4	19.2	2.45	69.5	8.9
5	22.1	6.0	62.4	9.4
**Adapted from: Bachman et al. (2014), Reprinted with permission of authors.				

Table 4.4					
<i>Race/Gender Distribution Percentages by Trajectory Group for Full Sample</i>					
Trajectory Group					
	1	2	3	4	5
White Male	29.2	23.6	24.3	11.3	11.6
White Female	38.2	33.8	8.8	5.9	13.2
Black Male	25.5	22.7	23.0	20.0	12.8
Black Female	31.5	37.6	14.6	8.4	7.9
**Adapted from: Bachman et al. (2014), Reprinted with permission of authors.					

Figures 4.2 and 4.3 display the trajectory models for White and Black males using the Delaware DOC arrest data. Both subgroups resulted in a five-group trajectory model as the best fit, but there are slight differences in group characteristics. Whites had a slightly higher arrest rate of offending (see y axis) for the two highest offending groups, however, only one group, Group 5, continued offending over time at a relatively high rate compared to the other groups; this group represented 9.4% of the total white male sample. For African Americans, Groups 4 and 5 both continued offending at a relatively high rate, and combined, these two groups accounted for about 28% of the total African American male sample.

Figures 4.4 and 4.5 compare the trajectory models for females using the Delaware arrests data. The best fitting trajectory model for white females resulted in only three distinct groups compared to a 5 group model for all other subgroups including Black women. Similar to white men, white women in the highest offending groups had a higher rate of offending compared to their black counterparts. Group 1 remained at a relatively low rate of offending throughout the time period, compared to Groups 2 and 3, which differentially increased their offending rate over time. Only Group 3 remained actively engaged in offending. Black women also demonstrated a distinct trajectory group that started out at a low offending rate and remained there until they it leveled off to a near zero rate (Group 2). The other 4 groups all differentially increased their rate of offending over time, with two groups decreasing to near zero levels (Groups 1 and 3) and the other two groups remaining at relatively high rates of offending (Groups 4 and 5).





There are clearly differential patterns of offending across race and gender. However, while there are those who have differential rates of increasing and decreasing their offending across the life course, all models essentially make a distinction between those group members who appear to have dropped out of crime and others who persist. In this study, the relationship between employment and trajectory group membership will be analyzed (describe below). Tables describing the variables used in those analyses are provided below.

Table 4.5	
<i>Description of Quantitative Measures</i>	
<i>Age at Release</i>	Age at which respondent was released from their baseline incarceration
<i>White</i>	Respondent's race, coded 1 for whites.
<i>Male</i>	Respondent's gender, coded 1 for males.
<i>Grew Up in City</i>	If respondent lived in a medium or large city between the ages of 10 and 15.
<i>Raised by Parents</i>	If respondent lived with their family between the ages of 10 and 15.
<i>Arrests Before 1990</i>	The number of times subject was arrested before 1979.
<i>Treatment Group</i>	If subject was in the drug treatment group in the baseline incarceration.
<i>Risk Taking</i>	A summated scale comprised of seven items asking respondent if they would like to dive off high diving boards, try sky diving, learn how to scuba dive, to climb steep mountains, try to water ski, do dangerous things, try new things even if they are scary. In a one-factor model (37% of the variance) all factor loadings were .50 or higher and Cronbach's reliability alpha was .73.
<i>Low Self Esteem</i>	A summated scale comprised of six items: I feel like a failure, I do not have much to be proud of, I am satisfied with myself, I wish I could have more self-respect, I feel useless at times, I think I am no good at all. In a one-factor model (43% of the variance) all factor loadings were .58 or higher, and Cronbach's reliability alpha was .72.
<i>Prior Prison</i>	Whether respondent had been in prison as an adult before.
<i># Disciplinary Reports</i>	Number of disciplinary reports subject had in baseline incarceration.
<i># Prior Incarcerations</i>	Number of prior incarcerations/detentions as an adult or juvenile.
<i>Years Education</i>	Number of years of education.
<i>Drug Involvement</i>	Variety scale based on four binary items: if respondent considered themselves to be a drug addict, if thought that they would get into trouble with drugs or alcohol when released from the baseline incarceration, if they had family members or friends who used drugs, and if they used needles for drug use.
<i>Worked</i>	Ordinal employment scale that ranged from 1 for those who were unemployed since release to 5 for those who worked full time.

<i>Married</i>	If respondent was married.
<i>Children</i>	If respondent had any children.

Table 4.6				
<i>Descriptive Statistics of Independent Variables at Baseline and 6 Months Post Release</i>				
Variable	Mean	S.D.	Min	Max
BASELINE				
White	.27	.44	0	1
Male	.79	.41	0	1
Grew Up in City	.59	.49	0	1
Raised by Parents	.16	.36	0	1
Arrests Before 1990	8.51	7.63	0	51
Treatment Group	.73	.44	0	1
Risk Taking	3.03	2.06	0	7
Low Self Esteem	12.04	1.72	8	14
Prior Prison	.44	.50	0	1
Prison Disciplinary Reports	3.77	12.02	0	99
Years Education	11.19	1.54	3	16
Drug Involvement	0.00	1.00	-4.91	4.93
SIX MONTHS POST-RELEASE				
Worked	3.47	1.33	1	5
Marriage	.08	.27	0	1
Live with Minor Children	.39	.49	0	1
Change in Relationship	-.07	.53	-1	1
Anger	0.00	1.00	-2.63	.48
Depression	0.00	1.00	-1.01	3.63

4.2 PHASE II – Narratives of Legal Consciousness and Desistance

The sample for the in-depth interviews was randomly selected from the offending trajectories identified for the total *Roads Diverge* sample. Within each of the five trajectory groups, a random sample of white males and females, and black males and females was selected for in-depth interviews using a random numbers table. Of those successfully contacted and not incarcerated, 305 agreed to be interviewed and

only 5 declined.³⁷ The purpose of the interviews was to more fully understand the mechanisms and processes by which respondents either desisted from or persisted in substance abuse and criminal offending.³⁸ The sample characteristics of the final sample are displayed in Table 4.7.

Table 4.7	
<i>Descriptive Characteristics of Interviewed Study Participants (n=305)</i>	
	N (%)
Trajectory Group	
1) Late Starting Desisters	87 (28.5%)
2) Low Offending Desisters	81 (26.6%)
3) Early Starting Desisters	56 (18.4%)
4) Early Starting Persisters	39 (12.8%)
5) High Persisters	42 (13.8%)
Gender	
Male	187 (61.3%)
Female	118 (38.6%)
Race	
White	120 (39.3%)
Black	185 (60.7%)
Age	
Range	30-65
Median	45.1
Mean	45.0
**Adapted from: Bachman et al. (2014), Reprinted with permission of authors.	

All interviews were face-to-face interviews conducted by trained, experienced interviewers. Conversations took place in private offices, were semi-structured, tape-recorded, and lasted an average of 90 minutes per interview. The goal of these interviews was to uncover what Agnew (2006) refers to as “storylines” in understanding criminal offending. A storyline is a “temporally limited, interrelated set

³⁷ Three interviews of women in the “High Persisters” category were interviewed in prison to increase the sample size of the women in this trajectory group.

³⁸ The *Roads Diverge* study data were originally collected to test Paternoster and Bushway’s (2009) Identity Theory of Criminal Desistance. These data are remarkably rich, however, and can be used to test a number of social, psychological, and economic hypotheses.

of events and conditions that increase the likelihood that individuals will engage in crime” (p. 121). For each criminal and drug relapse event self-reported or obtained from official records, respondents were asked to recreate the event both perceptually and structurally, including information about what his/her life conditions were at the time (e.g. employment, intimate relationships, education, children), how the event transpired, and his/her perceptions of the circumstances (e.g. what they were thinking about themselves, the risks and benefits associated with engaging in crime).

Interviewers probed for the cognitive processes that may have been related to a crystallization of discontent as articulated by Paternoster and Bushway (2009).

However, these storylines also illuminated the events and processes related to respondents’ navigation of the body of collateral consequences legislation that guided their reentry efforts. I was one of the six trained field researchers who collected these qualitative data and probed respondents on a number different life course domains, including their experiences with law and legal institutions.

All interviews were transcribed verbatim into Word and then imported into NVivo for coding. A code is an abstract representation of a concept (Strauss & Corbin, 1998). Codes in this scheme ranged from purely descriptive (e.g. narrative describing first arrest or first incarceration) to more interpretive concepts such as reflections on legally codified employment restrictions. To facilitate future analyses, all emergent themes were coded; this resulted in over 20 main categories (e.g. Legal Consciousness, Turning Points, Parenting, Incarceration) with over 100 subcategories

used in the coding scheme.³⁹ These codes allowed for the organization of the transcripts into meaningful segments, but ultimately, my conclusions are based on a holistic reading of the interviews in their entirety, looking for trends in those interviews that involved reflections on law and legal institutions. Moreover, this analysis strategy is consistent with the philosophy of qualitative and constructivist/interpretivist research (Bachman and Schutt, 2013), compared to the positivist philosophy. For the protection of the respondents, the qualitative analyses that follow utilize pseudonyms.⁴⁰

The NVivo software package allows for modeling matrix queries by trajectory, cohort, or any other distinguishing feature loaded into the dataset, allowing for remarkably powerful analyses of which types of respondents exhibit which patterns of responses (Bazeley, 2010). Using this software, this research study queried the matrix patterns that exist between respondents' ideas and behaviors around desistance (DESISTANCE= no self-reported crime or drug use in the last 12 months) and attitudes about collateral consequences legislation. Qualitative data were coded into Tree Nodes, demarcating a broad parent node concept like "NEIGHBORHOOD" followed by branches, "DRUGS- child" or "DRUGS- adult," signifying the respondent's perception of the presence of drugs in his or her neighborhood while growing up, and then as an adult. For the purposes of identifying the relationship between collateral consequences law and desistance process, the nodes that will be

³⁹ See Appendix for list of all main and sub-nodes.

⁴⁰ *Any resemblance to real places or persons, living or dead, is purely coincidental.*

consulted most often are listed below.

Table 4.8		
<i>Tree Node Constructs Included in Qualitative Analyses</i>		
Legal Consciousness	Blame for Drugs and Crime	Employment
Adjudication & Punishment	Stigma or Exclusion	Lack of
Education	Un(der)employment	Upon Release
Employment	Desistance	While Offending
Housing	Employment	While Using
Law Enforcement	Risk	Prison
Post-Prison Supervision	Education	Impact on Employment
Restitution	Adult	Impact on Reality
War on Drugs	Incomplete or Dropout	Impact on Substance Abuse
Welfare	No Access to	Stigma
Recent Involvement	Reentry	Offender or User
Alcohol	Employment	Turning Points
Crime	Fear	Employment
Drugs	Housing	Incarceration
None	Probation or Parole	Relapse

Finally, the table below indicates the self-reported addiction and offending behaviors of the 305 respondents who were interviewed. The columns illustrate the percentages of respondents for each category that desisted from substance use, desisted from crime, desisted immediately following their first conviction, and the subsample size, respectively. Desistance was captured as a self-reported measure indicating that a respondent had neither been under correctional supervision, engaged in substance abuse, nor committed a crime in the past 12 months.

Table 4.9				
<i>Self-Reported Addiction and Offending</i>⁴¹				
	% Not Used	% No Crime	% IMD Desist	N
White	42	80	3	118
Black	44	75	2	175
Male	42	78	3	182
Female	46	75	3	111
LS Desisters	30	70	0	77
LO Desisters	58	89	9	84
ES Desisters	63	91	0	54
ES Persisters	34	68	0	38
High Persisters	23	54	0	39
**Adapted from: Bachman et al. (2014), Reprinted with permission of authors.				

⁴¹ As some interviews took place in prison and could not be recorded and other audio files were missing, self-reported desistance measures are available for 293 of the total 305 respondents.

Chapter 5

QUANTITATIVE RESULTS

For this study, multinomial logistic regression analyses were performed in order to determine the relationship between employment and desistance at six months post-release. In addition, these analyses seek to address the first of the study's original research questions: Do law and legal institutions structurally impact desistance patterns? Every *Roads Diverge* study participant was released from prison in the early to mid-1990s and necessarily subjected to collateral consequences legislation. In order to explore the extent to which employment related collateral consequences legislation shapes employment prospects and subsequent rearrest outcomes, I conducted several analyses determining the relationship between employment and arrest trajectory membership. Net of the influence of several control variables, these models provide some indication of how reported employment status impacts the likelihood that an individual would be a member of one of the lesser offending groups (Groups 1, 2, 3, and 4), rather than the most divergent "Late Starting Persisters" (Group 5).

Multinomial logistic regression is the appropriate model used to determine these social relationships because it allows for an analysis of the link between a non-metric dependent variable (dichotomous variable of group membership) and

quantitatively measurable independent variables (age, education, risk assessment scores, etc.) Multinomial logistic regression compares multiple groups through a combination of binary logistic regressions, where group comparisons are equivalent to the comparisons for a dummy-coded dependent variable, with the group with the highest numeric score used as the reference group. From these analyses, the findings reveal differences in how for a reentry cohort – disaggregated by race and gender – employment affects the probability of being in lower offending trajectories compared to the high-offending persister group membership. Separate analyses for women, white men, and black men are discussed.

5.1 Parameter Estimates

Recall that there are five offending trajectory groups, derived from a Group Based Trajectory model that makes use of official Delaware arrest data for the total *Roads Diverge* sample. These trajectories are estimated as a function of time, where the number of documented arrests per year, while “out on the street” steer classification in a given offending trajectory group. Approximately 73.5% of the sample belongs to a desisting trajectory group. The remaining quarter maintains an offending rate of at least one arrest per year. It is worth noting that both the official and self-reported qualitative data discussed in the next section, indicate that not all cases in the desistance groups actually reached a non-offending rate of “zero,” per se.

Desistance Groups		Percentage of Total Population
1	Late Starting Desisters	28.5
2	Low Offending Desisters	26.6
3	Early Starting Desisters	18.4
Persister Groups		
4	Early Starting Persisters	12.8
5	High Persisters	13.8

The following highlights the relationship between several individual-level characteristics about sample participants and the likelihood of trajectory group membership. The independent variable of most interest for the purposes of this study is “Working Full or Part Time After Release.” This ordinal employment scale ranged from 1 for those who were unemployed since release to 5 for those who worked full time.

Table 5.1				
Multinomial Regression Coefficients Predicting Trajectory Membership 6 months Post-Release, <i>Female Offenders</i> (N=163).				
	Group 1	Group 2	Group 3	Group 4
Intercept	-.726	-2.470	-9.822	2.423
Working Full or Part Time After Release	-.493	.459	1.058	-1.329
Age at Release	.113	.255*	.419*	.329*
Had Children at Release	-.494	-.489	.179	-2.193
Age at First Arrest	-.042	-.124	-.221	-.289*
Had Been in Prison Before	.221	-.569	1.594	2.405
Was in Treatment Group	.978	.925	3.260*	.895
Was Married Before or After Release	-.879	-1.491	-1.914	1.448
Self Esteem Score	.043	.044	-.114	-.481
Risk Taking Score	-.019	-.108	.438	-.038
White	-.516	-1.161	-1.911	-.905
* p.<.05				

Table 5.1 presents the results of the multinomial regression predicting group membership for females. The proportional by chance accuracy criteria for this model is 39.5% indicating that the variance in the dependent variable (likelihood of desistance group membership for women, compared to membership in the highest offending trajectory group) can be reliably explained by the variance in the independent variables. Results indicate that for women in the sample, there is a significant relationship between the likelihood of offending trajectory group membership and “Age at Release,” “Age at First Arrest,” and treatment programming participation, six months following their release from prison. The older women were when released from prison the more likely they were to belong to Groups 2, 3, and 4 rather than Group 5. Women who were enrolled in drug treatment programming at the time of their baseline survey were also more likely to exhibit the offending patterns of Group 3, Early Starting Desisters, compared to Group 5. Also, women who had been arrested later in life were less likely to exhibit Group 4 offending patterns than the arrest patterns of individuals in Group 5. The relationship between employment at six months post-release and offending trajectory group membership was nonsignificant for this female sample.

Table 5.2				
Multinomial Regression Coefficients Predicting Trajectory Membership 6 months Post-Release, <i>White Male Offenders</i> (N=160).				
	Group 1	Group 2	Group 3	Group 4
Working Full or Part Time After Release	.005	.874	.501	-.378
Intercept	-1.421	-3.870	-9.853	-7.636
Age at Release	.337*	.419*	.481*	.329*
Had Children at Release	-.476	-.932	.615	-.151
Age at First Arrest	-.203*	-.193*	-.346*	-.125
Had Been in Prison Before	.550	-.568	1.451	3.337*
Was in Treatment Group	2.091	.006	2.797*	3.894*
Was Married Before or After Release	.238	-.790	-.041	.635
Self Esteem Score	-.293	-.161	.053	-.201
Risk Taking Score	.015	-.177	.179	-.003
*coefficient significant at p<.05 level				

Table 5.2 presents the multinomial model for white males. The proportional by chance accuracy criteria for the second model is 27.8% indicating that the variance in the dependent variable (likelihood of desistance group membership for white men, compared to membership in the highest offending trajectory group) can be reliably explained by the variance in the independent variables. Results indicate that similar to the experiences of women, for white men in the sample, there is a significant positive relationship between the likelihood of offending trajectory group membership and “Age at Release,” and treatment programming participation, six months following their release from prison. The older these men were when released from prison the more likely they were to belong to Groups 1, 2, 3, and 4 rather than Group 5. White

men who were enrolled in drug treatment programming at the time of their baseline survey were also more likely to exhibit the offending patterns of Group 3, Early Starting Desisters, and Group 4, Early Starting Persisters, compared to Group 5. Also, white men who had been arrested later in life were less likely to exhibit desisting offending patterns (Groups 1, 2, and 3) than the arrest patterns of individuals in Group 5 and for those who had been in prison before there was a greater likelihood that their arrest patterns would fall in line with those belonging to Group 4. Once again the relationship between employment status after release and offending trajectory group membership appeared nonsignificant for white males.

Table 5.3				
Multinomial Regression Coefficients Predicting Trajectory Membership 6 months Post-Release, <i>Black Male Offenders</i> (N=430).				
	Group 1	Group 2	Group 3	Group 4
Intercept	.650	-4.061	-5.596	-3.085
Working Full or Part Time After Release	.231	1.065*	.042	-.395
Age at Release	.221*	.336*	.351*	.302*
Had Children at Release	-.784*	-.441	-.544	-.252
Age at First Arrest	-.123	-.170*	-.136*	-.128*
Had Been in Prison Before	-2.246*	-2.631*	-.047	-.487
Was in Treatment Group	-.796	-.906	.314	-.040
Was Married Before or After Release	.092	.439	-.498	-.188
Self Esteem Score	-.077	.037	-.034	-.088
Risk Taking Score	-.055	-.009	-.110	-.176
*coefficient significant at p<.05 level				

Table 5.3 displays the multinomial regression results for Black males. For this model, the proportional by chance accuracy criteria is 27.0%, indicating that this model is a good fit for the data. The coefficients listed in Table 5.3 reveal experiences that differ slightly from the results observed for women and white men in the *Roads Diverge* study. For black men it appears that there is a significant positive relationship between the extent to which study participants worked six months post-release and low offending desister group membership (Group 2). Also, for this subsample, living with a child presents a negative effect on the likelihood of Group 1 membership. Further, for those black men who had been incarcerated before, for every stint, they were increasingly less likely to belong the lowest offending groups (Groups 1 and 2) than they were likely to belong to the most deviant offending group (Group 5). Similar to the other models discussed, for black men in the sample, there is a significant positive relationship between the likelihood of lower offending group membership and “Age at Release” and a negative relationship between lower offending group membership and “Age at First Arrest.” Treatment programming, for this group of black men, did not appear to impose a significant effect on the likelihood of group membership.

To compare the effects of employment and group membership for all subgroups, Table 5.4 summarizes the multinomial regression coefficients for employment. As shown, the only significant effect employment had in distinguishing group membership was that it increased the likelihood that black men would be in Group 2 compared to Group 5.

Table 5.4				
Multinomial Logistic Regression Coefficients Predicting Trajectory Membership Six Months Post-Release, by Race/Gender Subsamples				
	GROUP 1	GROUP 2	GROUP 3	GROUP 4
WOMEN'S Employment	-4.93	-.459	1.058	-1.329
WHITE MEN'S Employment	.005	.874	.501	-.378
BLACK MEN'S Employment	.231	1.065*	.042	-.395
*coefficient significant at p<.05 level				

5.2 Explanations for Nonsignificance of Employment

Why is employment significant only for black men in the lowest offending trajectory group, the Low-Level Desisters. One quantitative explanation for the lack of significance could stem from the measurement error associated with the employment variable itself. For every unit increase in employment status – from “no employment” (1) to “full time” (5) – one could anticipate a significant impact on the likelihood of desistance group membership. However, “full time” employment does not necessarily mean that study participants surveyed six months post-release were employed in one position that paid well and offered benefits. The variable used here did not measure the quality of employment at all. In fact, we know that the former prisoners in this sample had trouble securing work and often worked several low-paying, unstable, stress-inducing jobs. The consequences of this juggling act can actually impede the desistance process rather than facilitating it. It is also important to remark that for a drug-involved and drug-addicted cohort, the anxiety that is linked to inadequate income and impractical employment scenarios, may only trigger relapse.

These contentions, along with an analysis of how collateral consequences legislation instigates these scenarios, are explored in the next section.

Chapter 6

QUALITATIVE RESULTS

This chapter features qualitative data analyses that help to illuminate the nature of achievable employment for this cohort as well as how laws and legal institutions steer access to employment domains. In addition, this chapter reveals findings that endeavor to answer this study's second research question: Is there a relationship between legal consciousness and desistance potential?

Stable employment is repeatedly cited as one the most significant correlates to successful desistance (Benda, Harm, and Toombs, 2005; Laub & Sampson 2003; Sampson & Laub 1993; Tripodi, Kim, and Bender, 2010; Warr 1998) yet barriers to employment remain one of the most persistent and pervasive elements of collateral consequences legislation (Freeman 2008; Henry & Jacobs 2007; Visher, Debus-Sherrill, and Yahner, 2011). The legal protection embodied in "employment at will" legislation engenders broad implications for hiring practices, and perpetuates discrimination against former prisoners. In the *Roads Diverge* dataset, narratives describing the precariousness of employment were common. For example, Stanley (656) expresses an intense fear and anxiety about his employment status. He revealed:

I think the hardest thing for me to do, the scariest thing for me right now is... with all the budget crunches... I don't know what I would

do without a job... I always got this hanging over my head, I'm gonna come in the office and they're gonna say 'Yo, we don't have any more money...' But I just work hard and try to work hard and try to be on everything because I don't know what I would do, man. And it haunts me every day.

Despite the fact that these data were collected to test Paternoster and Bushway's (2009) *Identity Theory of Desistance*, much was shared about the impact of law and respondents' persistent legal consciousness. Consistent with Austin Sarat's (1990) thesis, "the law is all over," it appears that in conducting in depth interviews that cover the life course experience for a marginalized and criminalized population, researchers cannot help but amass information about how collateral consequences legislation has shaped these individuals' choices and trajectories. Respondents talked at length about reentry legislation that directly impacts their employability. This chapter highlights why employment status for the most part, proved nonsignificant as a precursor of desister trajectory group membership. Analyses of how these narratives contribute to age-graded social control, critical race, and intersectionality theories are also discussed.

Roads Diverge study participants who were released as repeat offenders in the mid 1990s, were returning home to an increasingly constricted and hostile labor market, rendering their job market prospects that much bleaker. This section will highlight the narratives offered by respondents who shared their frustrations with securing employment and how collateral consequences legislation was at times to

blame for their thwarted reintegration efforts. For those who were able to desist from offending and substance abuse, few cited positive employment status as their dominant precursor for success. Furthermore, a nontrivial proportion of respondents lamented over their dispirited experiences of trying to secure work while reconciling legislation that made that effort virtually impossible. When accounting for the racialized and gendered experiences of a contemporary reentry cohort, returning home to an unwelcoming labor market, this chapter reveals that securing employment (both the process and the outcome) may not be the panacea that some criminological literature would suggest.

6.1 Sociopolitical Context of Employment

Wilmington, Delaware is the city to which much of the sample returned. What had historically been known as one the largest bedrocks of American automobile manufacturing, is now part of America's often criminogenic 'Rust Belt' (Matthews, Maume, and Miller, 2001), replete with joblessness, racialized poverty (Sugrue, 2014) and an unemployment rate of 8.8% in May 2014 (Delaware Department of Labor). In an increasingly service-sector economy, there are very few employment opportunities for applicants who are low-skilled or unskilled. In fact, of those respondents who were able to secure full-time stable employment upon their multiple releases from prison, by and large they were male and had already established themselves in a trade prior to their incarceration. For example, 42 year-old black male, Leon (6021) shared that the despite his lack of education, he never had trouble finding a job because he

had mastered a marketable trade.

Now with all this going on did you complete school?

Uh-uh, no.

What grade did you get to?

Last grade I got to was ninth grade.

What about any trades?

I graduated job corp.

What did you take there?

Cement mason.

Oh and you still do that?

Yeah, 25 years, 26 years.

And did your record ever stop you from getting a job?

No.

Is that because of the skill?

Yeah, exactly.

Now where were you working when you were at the {DRUG
REHABILITATION PROGRAM}?

_____ {EMPLOYER NAME} *Services.*

And how long did you work there? Up until your VOP?

*Well I always had a job with them. All of them hired me as soon as I
got right back out.*

So you've been with them ever since?

'95 to 2000, every one of them. They would send a letter as soon as I get the work release.

So it was full time.

Mhm.

Unfortunately, Leon's experience was the exception rather than the rule. The women in the sample sometimes had the ability to find a job, but their skills more often provided service sector employment. For example, Brenda (2456), a 30 year old black female who had never worked in any setting other than in a restaurant as a waitress, reported that she knew she lacked the skills needed to thrive in today's job market. When asked about the prospect of working elsewhere she added that it was safer for her to stay where she had been able to secure work despite her criminal record.

Did you like that type of work?

Oh yea, I've been waitressing since I was 16, they had me training people and everything so every time, all the time, every time I've been good at waitressing, all my times I was like busting my ass and doing what I had to do and was a good worker, yanno what I mean?

Did you ever find that your record maybe hindered you from getting a good job?

Definitely, definitely.

How were you still able to get your jobs?

I was waitressing so a lot of waitressing they don't really care, and

I'm really scared to try something else because in the back of my mind I'm scared because I know that I'm gonna be turned away because of my record. Shopliftings, thefts, and I've got a trafficking heroin charge. It's a lot.

For many of this sample's unemployable low-skilled or unskilled former prisoners, the wisest bet was to secure any job or jobs they could and make the best of the odds with which they were faced. The prospect of securing stable and gainful employment was a goal that so many had set for themselves, and saw as the means to establishing a crime and drug-free life. Many expressed frustration concerning their desistance efforts as the principal key to their rebirth was locked in a space to which they believed they lacked access. Teresa's (2437) reality is representative and utterly dismal:

So are you happy with the person you've become? Cause your story is very intriguing. Are you satisfied?

No, I'm not. I need a full time job, I need responsibilities - something I've been running away from. I mean I'll pay where I stay at... but to actually have a bill in my name besides my cell phone bill... yeah, I'm ready for that part of life. I'm 50 now, moving to retirement age. So if I could find a job, you know what I'm saying, I want to be able to have something.

6.2 Challenges to Age-Graded Social Control

To reiterate, the original research question in this project was largely guided by the assumptions of age-graded social control theory. Scholars whose research points to support for age-graded social control emphasize the importance and requirement of external, prosocial structural change (marriage and employment, specifically) to unfold prior to one's shifting from a deviant lifestyle to one of conformity. The age-crime decline, they argue, is attributed to the life course turning points that one achieves and comes to hold more value than the thrill or returns that that individual could ever net from criminal exploits. There is a substantial body of research that supports this thesis (some of the most notable examples include: Sampson and Laub, 1993; Sampson, Laub, and Wimer, 2006; Uggen, 1999, 2000; Warr, 1998).

However, this does not appear to be the case for this reentry cohort. So why isn't employment a significant indicator of desistance group membership as age-graded social control theorists suggest? A nontrivial proportion of respondents in this sample reported that they had desisted from crimes and substance abuse but few, however, attributed that success to having secured gainful, steady employment. As the last few decades has been marked by an absence of job opportunities, Wilmington's utter lack of employment outlets was repeatedly cited as a principal reason for which many could not find jobs that aided in their desistance efforts. So many doors had been closed to respondents in this sample, and one 32-year old white male (2244) exclaimed that he had submitted a combination of over 400 resumes and application in one calendar year. The continued time and energy required of a full-fledged job

search was more than many were willing to devote given the exceptionally slim likelihood of securing a job, let alone a full-time position that paid a living wage and offered health or retirement benefits. For many, working in an illicit labor market proved more lucrative, cost-effective, and stable than what failed attempts in the mainstream workforce had to offer. Ultimately, desistance was not achieved by securing stable employment as other life course criminologists have emphasized. In a historical context marked by joblessness and restrictive collateral consequences legislation, other avenues were pursued to survive. For years, Molly (6066) worked in the legitimate labor market but was compelled to resume drug dealing when she was unexpectedly fired and was left with insufficient unemployment insurance compensation. She shares:

So what happened {YEAR}? Why did you leave there?

The bosses, no they fired, got rid of everybody... the bosses was messing with the employees, and it was just so much stuff going on. They just fired all of us. We was all down at the unemployment office...

All together.

Yeah! Yeah! (laughs).

Did they give y'all some notice or they just said

“look...”

No! They just told us we was fired. I knew they were gonna fire me because I knew too much! I had been

there so long, I knew everything that was going on in there. I don't know if they thought I was going to tell or not. But then they told me I was fired and the Department of Labor said they can fire you without...

Yeah it's a at-will state, Delaware is.

Yeah! I said "WOW," after all this time!

Five years is a lot. Did you get some kind of unemployment compensation or anything?

A little bit, wasn't anything nowhere near them checks.

No other crimes, you didn't have to resort to selling again after you lost your job? You selling drugs?

Oh, well I always did that in and out, off and on, so...yeah, I didn't have no money.

So it didn't matter if you was working or not?

Yeah, that's right, I needed the extra money, that's right!

Lawrence (659) plainly stated that looking for legitimate low-wage, unskilled service-sector jobs failed to net the income that he needed, in spite of his daily efforts. He shared, "...I'm gonna be honest with you. A couple times when I couldn't get anything, I was working and it was like 'Yo this ain't enough. I can't even put clothes on my son's back the way I used to.' So then I'd go dabble a little bit..." Ultimately, Lawrence resorted to illicit labor market ventures to support himself and

his family. Many in the sample underscored the inadequacy of the wages that they earned through various part-time employment positions, and felt wholly justified in supplementing their legitimate income with illegally earned income. Tony (2290), a 36 year-old black male “persister” from Trajectory-5, had no intention of abandoning his side hustle of drug dealing. The consistent \$10,000 weekly income netted from drug sales far surpassed the meager and scattered earnings he amassed as a non-unionized seasonal worker at the docks. Furthermore, he lamented that he could never have joined the union and acquired job security because of his frequent drug-related arrests and incarcerations. Although a low-offending desister, Cheryl (6048), too, a 37 year-old black female asserts that she had no choice but to return to crime when she struggled making ends meet. Moreover, she was compelled by the additional strain of trying to ensure that her children enjoyed the holiday season.

How did you keep from doing what you were doing like if you ran into the girls who used to do your forgery and stuff?

That worked out for a minute until I got into a bind and as soon as I couldn't pay my bills I went right back.

So was it because you were working that it wasn't a problem for you because you were working?

No because even when I was working it wasn't enough. It still wasn't enough.

So how long from that year in '96 that you got into a bind?

Just before Christmas. I reacted on all of my behaviors. I did

everything but pick up the actual drug, but I couldn't see it no other way... [M]y mind frame began to change again and sometimes you can actually sit there and feel when your inner self is like fighting, fighting but, it didn't fight hard enough.

You gave in?

Yes. Because I didn't want to have my kids without.

Is it because it was the holiday time coming up and bills and bills?

... Everything that was occurring in my life right then and there.

In this case despite her prosocial commitment to her family and her efforts to participate in the legitimate labor market, Cheryl was still offending because employment was not enough.

Due to the late 20th century's outsourcing, deindustrialization, and globalization of markets, the mid-Atlantic region, which was at once home to a thriving industrial economic base, soon became a barren shell of economic viability. From the mid 1990s onward, the area suffered a massive restructuring of its employment base from a low-skilled industrial outlet, to one marked exclusively by highly-skilled and specialized service-sector opportunities, many of which were quite narrow and limited in their availability (Crutchfield, 1989; Clear, 2007). Marked by an absence of informal social control, these environments have proven particularly criminogenic for former prisoners returning home (Bellair and Kowalski, 2011; Drakulich et al., 2012; Krivo and Peterson, 1996). In addition, when the crunch came down in so many downsizing companies and organizations, socially marginalized

employees, including former prisoners were typically the first to be let go (Couch and Fairlie, 2010; Kalev, 2014; Lageson, Vuolo, and Uggen, 2014). One employer was forced to lay off 44 year-old white male, Isaac (6143) whose arms-related felony status made him a liability for the organization. Isaac shared:

They charged me with possession of a deadly weapon... and I got six months at {CORRECTIONAL FACILITY}. But I lost my job, and that was something right there that hurt me because my boss understood and knew, and he said that because of insurance reasons, he would lose his contract... so he had to let me go. He hated to do it but I lost my job.

Sheldon (6019), another low-offending desister who had been laid off as a victim of an unforgiving market, expressed his frustration with navigating the bureaucracies of unemployment insurance and the injustices suffered at the hands of his colleagues:

(Scoffs/sighs). But you know what, I was like, I was getting frustrated with the job. I mean, I really, I was really getting frustrated. Because, for one thing, they told us, if we ever get laid off, if something ever happened, we wouldn't be able to get unemployment... I went to the unemployment office and all that, they said they do not have to do it because it's a self, it's like a self-business or something... I had gotten to a point where I was like, I can't work here. I'm fifty, I'll be fifty-three, and I said I might have another good fifteen years, maybe twenty, and after that, ...what do

I got? Can't get unemployment, you know? [T]hen some of the workers, they started like, like playing a lot. Doing things that they weren't supposed to do. But they would always blame me and another guy. And I didn't like that. And if things was missing, they would blame me and another guy. And I didn't like that. So, I knew it was me, then it was like, then they would tell us like, budget cuts coming, we got to get rid of one of you, we're going to get rid of both of you. I'm like, I can't, I used to tell my friend, I said I can't work there like that no more. I'm getting frustrated. I go to work, I was starting to hate to go to work. I was getting to that point, I was hating going to work. And then I went back to my old ways again.

Now you say back to your old ways, so you started using. You said the last time you used was about a month ago?

Yea, about a month ago.

Sheldon knew that in a contracting labor market where competitive stakes were high, he would be the first to go, and he was in fact the first sacrificed among his coworkers. He was fired and subsequently relapsed. Marc (2399) who is also a member of the desisting group, was sure that he was secure in his newly acquired position at an international large retail outlet until his offer was rescinded on the second day of his employment. He describes the upset here:

[D]id your record ever interfere with you getting a job that you know of?

Oh yeah, yeah I've been embarrassed... [M]aybe a couple years ago and they called me to the front of the class and said 'we just ran your record and you're not...' It was the second day I was there. You know I thought I had the job... and they let me go. You know people act a certain way with me and then I get a call in a couple days and it's like a completely different person on the phone.

Wow

'Cause they found out.

It is important to note that the War on Drugs resulted in a revolving door of prison admittances for this drug-involved sample, the effects of which significantly derailed employment longevity and stability. Still, many study respondents reported that they had desisted from crime and substance use, despite some claims that structural change such as employment, must precede internal change (Sampson and Laub, 1993). These data suggest that securing employment, as an element of prosocial structural change, was simply inadequate as a life course achievement that could shift one from an offending lifestyle to a desisting trajectory. Moreover, many respondents identified their employment outcomes as the very trigger of their continued substance abuse and criminal offending. The stress and fear attributed to participating in a substandard labor market, and the laws that kept them relegated to the lowest ranks of the employability pool, only exacerbated their reentry experiences. For most, securing employment was not as automatically helpful or useful an accomplishment as some scholars would suggest.

Within this sample, however, there was one group for whom employment was a significant indicator of desisting group membership. For this sample, it appears that employment status increased the likelihood that an individual could claim desistance group membership, but only for black men. There are several simultaneous storylines that might explain why employment status is a significant condition in the lives of black male former prisoners, but not as meaningful for other social groups. First, employment discrimination of the most invasive and restrictive type is more often imposed upon black male candidates than any other demographic. Findings from Pager, Western, and Bonikowski's (2009) New York City field experiment revealed that black male job applicants without criminal records were half as likely to receive an invitation to interview than equally qualified white male applicants who had been recently released from prison. Stoll and Bushway (2008) assert that offender status only exacerbates racial discrimination. More recently, a spate of civil litigation has been brought to the lower courts' attention about this very matter (Loafman and Little, 2014). For this sample, it may be the case that black men are highly aware of their relative unemployability, and so securing a job is a milestone gem that they were not quick to forfeit. There could be an enormous value attached to this coveted accomplishment, one large enough to impose an inherently deterrent aspect that precludes relapse and reoffending. Jefferson (2393) struggled with his job search for quite some time and cites that his finally securing an enjoyable and well paying job as a commercial driver, is the key to his staying clean.

So at this point, have you figured out any better coping skills when

you don't feel better or where you don't feel good?

Well I exercise and meditate all the time but you know what, I just deal with it and go through it. I'm not going to get high again. It's not an option.

Well its dangerous where you are right now.

Yeah well, I'd lose my job. That's my big motivation right now so if I take a random urine, I'm done. You're right, that's my big motivation right now. If it crosses my mind I don't even entertain the thought anymore. If the thought comes in I just let it go out but if it did rally up in there for a little it would be you know what, "you're going to lose your job," and that's all I have right now. The wife is gone and I have my job so that is going to be my big motivation and it's because of urines. If I didn't have to take urines for the DOT, I'm not so sure.

Does that scare you that you don't know if you would quit otherwise?

Oh I would quit.

But you don't know if you could maintain it otherwise, does that worry you?

Not really worry me because I don't do it. I have to pick it up first.

Though he confesses that he has very little besides his employment, it turns out that Jefferson has far too much to lose to risk a relapse.

Second, because Black male former prisoners are stigmatized even more than black men with clean backgrounds, securing employment could be seen as the second chance that former prisoners so desperately desire. Qualitative data collected from various studies illustrate that exoffenders seek acceptance and a decline in public fear and ostracization in order to reestablish themselves in the prosocial world (Maruna 2001, 2004; Uggen, Manza, and Behrens, 2009). Yet, within the criminological and criminal justice discourses, relatively scant attention has been paid to the significance of forgiveness within the contemporary desistance effort (for some exceptions, see: Bazemore, 1998; Braithwaite, 1989; Cullen, 2007; Maruna, 2009). To this point, Maruna (2009) asserts that the significance of community forgiveness must be seriously considered as something separate from and also meaningful for the desistance processes. For the low offending black males in this sample, it would appear that an employer giving them a chance despite their record was a significant gesture. Sean is a 43-year old black male desister whose narrative exemplifies the importance of this very dynamic:

Yeah. I been home for like 12 years.... Never missed a day.

Never been late.

You said “My boss loves me.” What’s that all about?

It’s just a guy who took a chance on me. He gave me a chance. I went in there for an interview and I told him what my situation was. I told him if he gives me an opportunity I’ll never let him down.

As these data suggest, there are many who desist from crime but still do not secure stable employment because they bear the mark of a criminal past. Generally employers conduct background checks in order to assess job candidates' risk of committing a crime that could damage the organization, and/or to establish the moral character of applicants (Bushway, Nieuwbeerta, and Blockland, 2011; Kurlychek, Brame, and Bushway, 2006; Uggen, 2008). In the age of easily accessible background checks and the certain risk of having one's past exposed, it becomes increasingly important that employers pardon those stains from the past and invest in the reintegration of qualified exoffender applicants (Blumstein and Nakamura, 2009; Nakamura and Bucklen, 2014). For low offending black male exoffenders who are the most outcaste in the legitimate labor market, the consequence of this sort of forgiveness could explain why employment status is a significant indicator of desistance group membership for this group. Unfortunately only a few black men in the sample were able to gain such meaningful employment, which could explain why so many did not desist from crime and substance use.

6.3 Critical Race Theoretical Explanations

The question remains, "Why isn't employment a significant indicator of desistance group membership for the majority of the sample?" It may be that contemporary reentry cohorts are increasingly marked by black and brown populations, and colorblind legislation and law enforcement practices precludes their employability. Critical Race Theory is a movement embodied in scholarship that

attempts to highlight and acknowledge that privilege is connected to racial assignation. Critical race theorists posit that the United States is a country founded in and shaped by race, and that racialized frameworks are seeded in the American project (Omi and Winant, 2004). By taking up race-based understanding of legally grounded power and privilege, CRT thinkers such as Bell (2008) and Delgado (2009) examine the way law's distribution of power is differentiated among different racial groups. The contemporary labor market is rife with race-based employment discrimination (Stainback and Tomaskovic-Devey, 2012) and black and brown communities certainly exist under siege in the fallout from the War on Drugs (Alexander, 2010; Tonry, 1996, 2010).

With respect to the prisoner reentry experience, much can be said about the new and subtle forms of employment discrimination reconciled by black former prisoners, few of which are ever negotiated by their white counterparts. Namely, there are a slew of discriminatory and disadvantaging practices embedded in (1) union membership and employment; (2) proactive race-based drug law enforcement; and (3) community correctional supervision marked by hyper-surveillance. Many of the racist institutional agendas played out in these spaces are all codified in law and impede the desistance effort for black former prisoners seeking stable, gainful employment.

Barriers to black employment are structural and longstanding. The Bureau of Labor Statistics (BLS) (2014) reports that the unemployment rate for black males over the age of 20 (10.9%) is more than double the unemployment rate of their white counterparts (4.9%). This disparity has held constant for as long as the BLS has

collected data on unemployment rates, disaggregated by race, which means that blacks' lack of social capital and access to power-granting networks is a generational problem. Extensive empirical recidivism and desistance research has demonstrated that social capital is a critical element of the desistance process (Bottoms, et al., 2004; Maruna, 2001; McNeill, 2006; Mills and Codd, 2008; Rose and Clear, 1998). Due to a lack of qualifications needed and for the few available service-sector jobs that dominate the market, increasingly, legitimate employment become a less frequent option for this reentry cohort. Though it is certainly the exception rather than the rule, Jacob (2065) is an educated white attorney, who even after three DUI convictions and disbarment, was still able to secure a job at a law firm through the connections he had maintained with colleagues from the past. In contrast to Jacob, most of the men in this sample sought scarce manufacturing blue-collar positions, as manufacturing that was the industry that they had worked in prior to their incarceration. Regrettably, returning to what few manufacturing jobs remained was harder than what former prisoners had imagined. Breon (2041) is a 46-year-old black male desister who shared that despite his professional and credentialed past, he was limited to part-time, substandard employment options because of his record:

I worked there and that was a crappy job basically chemical cleaning. I was like the grunt worker. You know the mechanic equipment, hoses, in and out of confined spaces, working with ultra high pressure...

So that was full time benefits and all that?

*No ... the lady...said 'Well you can't be here on full time but
I'll start you off as a casual but you can't be in the union
having the record like that...' so I was a casual for 3 years.*

In addition to a competitive market, many black male respondents seeking work in the what is left of the local manufacturing industry identified racialized hiring practices conducted by union members serving as gatekeepers to some of Wilmington's more stable and lucrative manufacturing positions. Within this sample of former prisoners seeking jobs that are union-governed, several study participants reported that colorblind restrictions were placed on black applicants' entry into these white-controlled spaces. These discriminatory practices unfold well within the purview of the law (Bernstein, 1994).

The United States Department of Labor (2013) maintains that Section 504 of the Labor-Management Reporting and Disclosure Act⁴² prohibits formerly convicted individuals from holding any labor union office, representative position, or working in a capacity involving decision-making authority concerning, or custody or control of, labor organization funds or assets. In a reentry context where black and Latino citizens make up approximately 60% of the American population currently under correctional supervision (Glaze and Herberman, 2013), this sort of legislation does significant damage to the inclusion and mobility prospects of racial and ethnic minorities in the labor union workforce. Jalon (2290) is a 36-year-old black male persister who described how his frequent bidding interrupted his union membership

⁴² 29 U.S.C.A. § 401

eligibility. Because he couldn't "pay his way in" it was years before he could join.

He explains:

Okay, when did you become in the union?

I ain't get to the union 'til {YEAR}. Cause you have to work, you either have to pay to get in or you have to work your hours.

Okay.

And I stayed in and out of jail so....

Right, no consistent hours.

Under Title VII of Civil Right Act of 1964 employers must secure applicants' written permission before ordering a criminal background report (EEOC, 2012).

Because this is an additional step, and conducting searches costs businesses, many choose not to run these sorts of checks. Their decision not to request that applicants allow them to conduct the search, however, has proven to be arbitrary at best and downright racist at worst (Holzer, Raphael, and Stoll, 2006; Newell, 2013; Segall, 2011; Simonson, 2006). As labor unions are led and operated by white cohorts, history tells us that these organizations tend to protect their race-based monopoly on labor relations in their region and industry (Butler, 2006). Despite the Section 504 mandate laid out in LMRDA, many shop stewards turn a blind eye to applicants' criminal records, as long as they can pass a urine test (Bible, 1986; Knudsen, Roman, and Johnson, 2004). It is less likely, however, that discretionary exceptions would be made for qualified black applicants. In fact, Donnie (6024) recounts that even when

he had known of such a union that did not conduct background checks, he was still deterred by the number of tests he was asked to take, none of which he had heard of other applicants taking as a requisite for employment.

When you got out do you typically work electrical jobs?

Yeah I work electrical jobs, but I mean, if I can't get electric, I'll do whatever. The electric thing kind of went south for me because I had moved down to {CITY} for a minute and was in the union down there and when I came back to Delaware they wanted me to take all these union tests and stuff over and the map was kind of messing me up on the test. So, I just went to regular electric and then they look at your record. The union wouldn't worry about it.

So, now, it looks like from what I'm seeing is that you've had a lot of sporadic employment. Longest probably, ever since DC, like one year and your record really did you for a loop there with the union. That's a big hit on your employment because you have a hard skill that you can make money on it.

You can make money on electric.

Reginald (6183) is a 34 white male, chronic offender is still committing crimes, who very plainly shared that he has no concerns about prison sentences disrupting his employability. After each bid, he knows he can return home to a job that is more than likely waiting for him.

Yeah but see with the union, you got to put 2000 hours in before you can get into the union and like, it's like you may go down there for two or three months and not get on, you know what I'm saying, you have to know somebody that knows somebody so they keep picking you... See these days I already know, these days you have to know somebody that can get your foot in the door, especially somebody like me who has a record cause with me, I'm not gonna sit up here and lie on an application...

Reginald is not required to lie as some ex-felon applicants have felt compelled to do. He possesses both the necessary savvy and social capital to secure a job despite his record, and in part, because of that security he is not especially motivated to desist from crime. Like many of the white men and women interviewed in this study, Reginald is relying on race-based hiring discretionary practices that are widespread in a shrinking labor market (Pager, Western, and Sugie, 2009). Harris and Keller (2005) reveal that conducting background checks for union membership or access to employment at large, does not generally offer any reliably accurate risk assessment for employers. Rather, it is precisely this sort of colorblind legislation and individual-level authoritative discretion that keep black citizens at a disadvantage. Reginald serves an example of how despite his criminal record, his white privilege provides him with a means to circumvent the legal restrictions that preclude employment for his black counterparts.

On a more macro scale, studies illustrate that drug law enforcement policies of the last few decades has wreaked absolute havoc on communities of color (Alexander, 2010; Lynch et al., 2013; Tonry and Melewski, 2008) and the presence of local law enforcement appears a particularly pronounced and suddenly permanent feature of cities like Wilmington, that are in utter decline (Capers, 2009; Wacquant 2009, 2010). These policing practices are tremendously disruptive for everyone under surveillance, but it most often interrupts the lives of prison releasees under probation, who are most closely watched and followed. Seeking work in this arena becomes an even more difficult undertaking. Beckett and Herbert (2010) assert that the settings whose signatures include concentrated disadvantage, social disorganization, recurring violence, and physical isolation are far more likely to see increased, aggressive police presence. Yes impoverished former prisoners of all races and ethnicities often return to the same urban squalor that law enforcement authorities believe justifies their presence. However, the rate at which black residents are suspected, policed, and rounded up in the current of local Drug Task Force initiatives, far outpaces the experiences shared by their white counterparts (Fleury-Steiner and Smith, 2011; Sun, Payne, and Wu, 2008).

Ryan Lizza (2002) reports specifically on Wilmington Delaware's 'Operation Bold Eagle' sweeps where local drug task force squads were deployed to roam the city, looking for curbside drug dealing suspects. Colloquially referred to as "jump-out squads" by local residents, these units would round up and detain suspects, take their portraits, and record their contact information. Innocent bystanders, guilty only of

being residents in the most devastated and heavily policed black neighborhoods in Wilmington, were not safe from the scope of this new law enforcement agenda. Several black respondents expressed a deep frustration with drug enforcement personnel who interrupted their daily lives and made “going straight” that much harder. Deirdre (2437) was arrested and unfairly accused of crack cocaine trafficking. Though she does not deny the unlawfulness of her drug possession, she claims that the substance was only discovered because of the heightened police surveillance that was typical of her neighborhood. Deirdre shared that it was her roommate who was selling drugs, and the fallout from this experience has suspended her employability:

{YEAR} I got arrested. They was watching my house I wasn't even home. But I came home they taken my legal abandominium from me. And the cops like pushed my head up against the car and beat me and talk all crazy to me and everything. So they arrest me.

For what?

I had crack in my pocket and they got me on it. But they tried to tell me I was selling. When they went in the house the girl named XX who was selling, she had like paraphernalia, manufacturing goods like the baking soda, the cookers, and all that... So what I did was I pleaded guilty to simple possession and they threw everything else out... Through the grace of God I turned myself in - terminated from the door but

what they didn't tell me is they didn't terminate the money.

So you owed them all the fines and restitutions?

No I owed them {DOLLAR AMOUNT}. I just found out cause I tried getting a job with the census and I found out. But they still ain't hiring me. I went and got a letter from probation saying I completed everything. They still ain't hiring me, they kept giving me false hope.

It is worth highlighting how Harris's (1993) "Whiteness as Property" thesis is applicable to the practice of the surveillance and penal state. By focusing on who owns the ideology of punishment and how that ownership is built upon social distance from not only prisoners of color, but poor white prisoners as well, we can see just how disenfranchising the conviction experience becomes. Ideologically, the architects of penology may see these arrangements (persistent unemployment instigated by restrictive laws, for instance) as natural and deserved rather than exacerbating and unproductive. Probation supervision can complicate many aspects of reentry for individuals coming home from prison (Clear and Dammer, 2002) including securing employment. Studies show that former prisoners of color, however, are policed more than their white counterparts (Chiricos and Delone, 1992; Jones and Mauer, 2013) and consequently confront a more hostile reentry terrain.

Study participants made repeated mention of ubiquitous intensive community supervision personnel interrupting their employment efforts. Miller (2013) identifies the ever-present "synthetic" probation officer, whose role blends social worker and

law enforcement responsibilities, and thereby justifies their multidimensional intrusion in their clients' lives. Several men and women from the "persister" trajectories cited that the obligation of satisfying probation guidelines often conflicted with stable employment. Doug (2346) stated disappointedly that juggling work and correctional supervision was an often impractical feat where, "I can't go to work. Probation's coming to your job and lock you up so you can't stay too long." Leslie (2457) echoed a similar basis for frustration and described what appears to be an impossible time of balancing her work commute and the expectations of her work-release counselor:

Do you have a job?

I'm struggling trying to find one.

It's tough times out there.

It's tough and nobody wants to hire from the {WORK-RELEASE CENTER}. They've got a bad reputation the counselors are a hassle. They're a hassle to us, so I can't imagine what an employer goes through... [T]hey're always wanting to give you a program violation for something... They disrupt your whole life, they pack all your stuff up, you got to go there, you got to come back, you got to go through orientation. It's insane. And I don't know I'm going to get through a year of this, I don't know how I'm going to do it.

Do you have any other options?

None... This unaccountable time thing were going through, it's reached the point of just insanity. Complete insanity, I went out the

other day, they only give you two and half hours, what the hell are you supposed to do in two and half hours? And you travel by bus. The average bus only travels every thirty minutes. She let me out at 9:45 I had to be back at 12:30. I had to take the 22, it runs every hour... She wanted to know why, she let me out at 9:45, why wasn't I on the ten o clock bus? I said there is no ten o clock bus, that bus comes 10:10, 10:15. Oh no. I said I don't give a shit what the schedule says lady I'm telling you there's no ten o clock... [It's] to the point now, where I don't want to go out and job seek. I had to go through a different counselor to get a pass to come here today. I went to a treatment counselor, he knew I was going to be awhile... They make it so hard. They're very discouraging. I don't want to go out and job seek anymore. I don't want to keep going through that. I'm scared to death they're going to write me up and send me to the {PAROLE VIOLATIONS CENTER}. If they do that then I don't get to go home, that affects my daughter. Then the following week I'm on orientation so I don't get to go home again. You know, this shit, long term it affects everybody but you're writing me up for things that, it's unbelievable. I'm not doing anything wrong. You always make me feel like I'm doing something wrong... I'm at the point now where I'm ready to violate and go back to jail and go back before my judge. I can't possibly do no worse.

Community supervision that disrupts employment and reintegration instead of facilitating prosocial progress, not only derails the desistance process but it obscures the role that law plays in perpetuating recidivism. Police supervision is inextricably linked to employment because repeated parole violations and arrests stemming from hypersurveillance complicates employment and individuals' earnest attempts to go straight. Respondents of color in this sample detail a persistent frustration and distrust of legal and law enforcement institutions. This sort of intensive supervision directed at communities of color, results in disproportionate arrests, technical violations, and reincarcerations. More importantly, these trends point at a fabricated inherent criminality among blacks, rather than shedding light on the inconsistent policing and punishment practices codified by criminal law.

6.4 Intersectionality and the Experiences of Multi-Marginalized Women

Coming Home

Critical Race Theory scholarship underscores the belief that race is a mediator of all of our other subjective identities. Those who subscribe to the intersectionalist school of thought, however, believe that researchers must cement a clear understanding of the political context of race. Intersectional theorists would agree that race is significant in the distribution of power and privilege, but it may not be the sole cornerstone of oppression in the lives of marginalized individuals (Crenshaw, 1989; Harris, 1990; MacKinnon, 1991). Delgado and Stefancic (2012: 57) write, “‘Intersectionality’ means the examination of race, sex, class, national origin, and

sexual orientation, and how their combination plays out in various settings.” For a contemporary prisoner reentry cohort increasingly comprised of black, poor, unmarried, queer, and/or Muslim women, and whose lives unfold counter to the institutional expectations imbued with the beliefs and practices of white, male, heteronormative, Judeo-Christian assumptions, an intersectional perspective on (re)integration processes is much needed (Richie, 2001). These women are returning to the very same hostile labor markets, but without the invisible and unearned “privilege knapsack,” (McIntosh, 2004:188) with which many of their male counterparts are furnished. In fact, research indicates that the group most deleteriously impacted by War on Drugs related correctional supervision is poor, black, unmarried women (Huebner, DeJong, and Cobbina, 2010). For this demographic, the nature of the relationship between employment status and desistance highlights an even broader scope of legally sanctioned harm.

The first difference that distinguishes men and women’s reentry experience is their divergent pathways to offending. Qualitative and quantitative research findings highlight that women’s criminality is marked by a blurred line between offending and victimization histories (Belknap, 2010; Chesney-Lind, 2002; Richie, 1996). Many studies also demonstrate that early physical and sexual abuse trauma that persist into adulthood, is correlated with subsequent offending patterns (Jennings, Piquero, and Reingle, 2012; Stewart, Elifson, and Sterk, 2004; Taylor et al., 2008). The majority of the women interviewed as *Roads Diverge* study participants cited the significance of their victimization history and marginalized status in the coalescence of their deviant

lives. In fact, for this subsample, criminal legal system supervision only aggravates their isolation.

Second, women's reentry needs differ from that of men's in part because upon returning from prison, they must reconcile very different gendered obligations. More than men, women are coming home to parental obligations that they must fulfill on their own and in some of the direst circumstances. Scroggins and Malley (2010) examined a sample of 155 reentry programs and found that there is an enormous gulf between the services provided and the needs of women and mothers. Women are charged with caring for their children, and reentry legislation negatively impacts parenting, children and families by fail to account for that responsibility. Through interviews with 24 formerly incarcerated women Cobbina (2010) was able to glean that in order to achieve reintegration success, these women relied most upon (1) family support, (2) a supportive parole officer, and (3) post-release services. More than any other group, black women also cited that competing demands of securing employment, while caring for children, and without social or institutional support, spelled certain failure. In this study, Coretta (2021) is a 48-year-old black women who lost her TANF benefits, was raising her children alone, and due to inclement weather, could not take the three buses required of her daily commute.

So you had started using?

Yup, yup, I relapsed

Were you still living at your own apartment?

Yup

Can you take me to the relapse, what happened? What did you do? What were you thinking?

I had stopped working cuz it was snowing and they wanted me to come in and I couldn't make it. I missed like two days and next thing I know they told me they let me go so when they told me that I waited like a week or two later, then I started smoking crack again. I bought some at my house and my kids would go to school and I started using again.

So you think it was the losing of the job?

The lost of the job, yup that really did it.

Perhaps this is an example of why some studies reveal that motherhood imposes a negative impact on desistance efforts (Bachman and Kerrison, and Smith 2013; Brown and Bloom, 2009; Robbins, Martin, and Surratt, 2007). The demands are compounded and nearly impossible to surmount.

Collateral consequences legislation that punitively singles out former prisoners with felony drug charges disproportionately impacts hyper-marginalized women (Hagan and Dinovitzer, 1999; Rubinstein and Mukamal, 2003) and further intensifies an already difficult employment acquisition process (Clear, 2007; Listwan et al., 2013). The more severe and apparently unjust the sanction, the more likely one may be to recidivate (Cochran, Mears, and Bales, 2014; Spohn and Holleran, 2006). More than their white counterparts, many black women I interviewed in this study shared their histories of homelessness, abandonment, and failed attempts at survival. Lenore

(6097) is a 36-year-old black female persister who is drug-addicted, homeless, and regularly victimized by a long-term romantic partner. She vehemently lambasts the role that the state has played in her reentry failures, and identifies how being abandoned by the state leaves her even more vulnerable and likely to offend. Before the conclusion of her interview she offers this plea to policymakers:

If this is the end of my tape I want y'all to know that y'all really need to talk to the people in the hierarchy cause I don't know why when we get out of jail we will be forced back to a life of crime. Because no matter where we go to try to apply for a job they want to do background check and once they run your background check you can't even get a job. What am I suppose to do? If I can't get a job how am I suppose to eat? And then they got so strict welfare even saying you got a drug conviction no food stamps and no Medicaid. How do y'all do that? Cause I'm telling you. The system ain't never did nothing for me. Nothing even being in prison all these years didn't teach me anything.

Lenore attributes her recidivist patterns to being barred from access to state aid and consequently cannot imagine a life that is crime-free. While several states have modified or opted out of the federal mandate that prohibits the disbursement of TANF benefits to individuals with felony drug convictions, Delaware has not (The Sentencing Project, 2013). Without financial support, many women in this reentry

cohort find leading conventional lives very difficult. More than white women in the sample, black women expressed an intense concern about their future since more often than not, their lives were marked by the total absence of social support that many of their white counterparts could still tap into.

Another issue that many women must reconcile is occupational niching, the effects of which are more pronounced for women of color. Socialization and institutional discriminatory practices steer women towards jobs in education, healthcare and hospitality (Damaske, 2011) and women of color, especially those with convictions, are systematically excluded from these positions (Becker, 2010; Bellair and Kowalski, 2011). As was discussed earlier in Chapter 3, it is clear that the impact that certain drug and property related convictions have on employment eligibility, disproportionately affects women. It is important to also note that women of color exhibit the highest arrest and conviction rate of any demographic group (Carson and Golinelli, 2013). Dorothy (6066) is an educated black woman who is fully qualified to work as an office technician but explains that she is barred from working in a hospital because of her criminal past:

Did you ever want to pursue anything further?

Um, I went to {SCHOOL}. Yeah. I graduated there for medical office technician.

So you had four, uhm two years?

Two...uh huh.

Good for you! Did you ever work in that field?

No, I had drug charges.

So you didn't, you wasn't even able to use all that?

Exactly.

Desperate from the unending search for viable employment, other women in the sample lied about their criminal backgrounds to secure the only work that the correctional facility programming had prepared them for. Corinne (6098) admits her decision to lie about her past in order to get a good job that provided benefits:

[W]e actually had to go out and apply ourselves, for job seeking. I went up there and I had taken a course while I was in prison for CNA. So I had my CNA license, so that made me available to them...I got a license in cardiovascular technician. They never knew, you just write it on the paper... I mean your life, you might be doing right, but you still tell some lies along the way to get what you want, for real for real. People don't know that, but they do.

You were working full-time when you were working at {EMPLOYER}?

Uh huh.

Did that job come with benefits?

It had life insurance and health insurance.

You had gotten that job on your own?

Uh huh (laughs)!

For those who are unable to secure whatever is left of the more attractive and stable employment options, they must settle for whatever they can, little of which truly bolsters their desistance efforts. These jobs are low-paying, often informal or “off the books,” and do not guarantee any employment longevity. Gloria acknowledges her choices and shared that she was just content about having found work, however long it lasts. She cites the hardship of others in her cohort and considers herself lucky to acquire some form of regular income, however small or brief:

If you could have changed anything in your life what would it have been?

Not to sell drugs or none of that. I can't even get a job, a good job. Thank God for this lady who likes me and fired her other nurse... I'm there and I'm not even a certified nurse I just take care of her... I can't get a good job because I'm a convicted felon... I'm never going to have a good job because I'm old now, 42, I'm getting up there.

Gloria is a poor black woman who has come to accept that the laws that preclude her employment options are a feature of her life as a former prisoner. She, like so many other women of color in this sample lamented over their lack of access to social networks that might bolster their employment potential, as well as their perceived unsuitability to fill positions that are systematically slated for their white counterparts. This is a reality that puts an immense burden on women of color coming home to a contracted labor market. As a replication of Pager’s (2007) research, Ortiz (2014)

conducted an experiment that tests whether employers' interest in candidates with criminal records is at all conditioned by the applicants' race. She found that for an array of entry-level positions, white women fared better than both black and Latino female applicants. Hispanic women, however, were more likely to be hired for food service jobs when they applied in person. This sort of race-based discriminatory practices in hiring makes finding jobs even in the lowest sector of the service economy, quite difficult. Some female respondents of color also noted their suspicion that their persistent unemployment was attributed to intersectional discrimination. Consistent with research that points to the same (Best et al., 2011) they cited, however, that neither law nor legal institutions could serve as a platform to mend those injustices. Angie (1093) is a black woman still committing crime, simply because she no longer sees the value in making the effort to pursue a conventional life.

Tell me about some of those times. Did they actually tell you they wouldn't hire you because of your record?

Yes. It is the same way it is now. Jesus, I can't even get hired by Dollar Tree and they hire about anyone. I have to live with it. I guess some people who can afford it can get their records expunged but I can't... Yeah, I would like to work. Seems like right now everybody's hurting and I'm all like, what's the use?

Angie's surrender is emblematic of how for a hypermarginalized group, legal consciousness, and the perception of imminent failure in the conventional world is likely, can lead to relapse and reoffending.

In summary, it is evident that most participants in the study, even those who continued to use drugs and commit crimes, seek employment upon release from prison. The quality of the limited employment available to this cohort, however, is insufficient and cannot provide a foundation for a life course turning point that would allow for a true attempt at conventional behavior. Further, the fruitless labor market coupled with criminal background checking, and ramped up policing practices makes securing and maintaining employment a near impossible feat.

This study's findings do not suggest that employment is utterly ineffectual in the desistance process. Rather, the concern raised here highlights the extent to which law and legal institutions preclude the possibility of work for so many former prisoners returning home. These narratives suggest that for this sample, both law and personnel involved with legal institutions can impose an immensely deleterious influence on former prisoners' employment prospects. It would appear that for many, that damage is modified by racial and gender marginalization. In addition, these men and women who attributed their relapse and reoffending patterns to a deep frustration with their restricted movement and the extent to which they were policed, give voice to how legal consciousness shapes their desistance potential, as well as their willingness and capacity to lead a conventional life.

Chapter 7

CONCLUSIONS AND POLICY IMPLICATIONS

The purpose of this study is not to persuade researchers or policymakers that the proliferation of collateral consequences legislation serves as the exclusive explanation for contemporary recidivism trends. There are many reasons for which criminal justice involved citizens struggle to secure gainful and stable employment, many of which are discussed in this work. Certainly, there were some like Luther who emphasized the significance of individual responsibility and shared that he had very little difficulty securing post-release employment. He claims, “Nope, I never once had a problem getting a job. I had to get up off my ass, but once I did I was cool.” During his interview, Jonathan underscores the need for former inmates to acquire a marketable skill in order to get ahead in the labor market and exceed the ranks of the more unstable blue-collar positions:

Honestly, I tell people all the time... If you can get a trade (and mopping ain't no trade), you be set for life! Folks need people who can actually do shit, 'stead of answering phones and what not. I got my head in the game.

By and large, however, even for those who desisted from crime and substance abuse, respondents made some mention of laws that interrupted their transition to a conventional life. The fallout of this constant state-sanctioned disruption could have far-reaching implications for society's most marginalized citizens.

As such, this study sought to explore two research questions: 1) Do law and legal institutions structurally impact desistance patterns? and 2) Is there a relationship between legal consciousness and desistance potential? Quantitative findings revealed that there does not appear to be a statistically significant relationship between employment status and offending patterns. The qualitative findings, however, suggest that employment could not possibly impose a significant influence on offending patterns if it is: 1) unattainable by virtue of codified law; and 2) not worth committing to if a host of laws and authorities backed by legal institutions make investing in employment an impractical feat. Whites in the sample possessed an understanding that despite their record, their white privilege would net them benefits among informal professional networks, inaccessible to their black counterparts. This disparity corroborates Critical Race theorists' claims that the weight of laws that appear to be meant for everyone, varies by race, where black citizens are disproportionately disadvantaged. Additionally, collateral consequences legislation disproportionately exacerbates the reentry experience for black women, more than any other group surveyed, as the laws that limit the freedoms of former prisoners, further marginalize these women, leaving them more susceptible to reoffending and relapse. Lastly, the knowledge that one's reentry failures are connected to laws that do not serve them,

imposes profound impacts on one's sense of citizenship and willingness to comply. These findings suggest that for many, legal consciousness is emergent from engagement (or lack thereof) with law and authority figures that represent the law, and indirectly steers prosocial outcomes.

Beginning with David Engel (1984, 1988) and Sally Engle Merry (1990), contemporary sociolegal scholarship has sought to illustrate individual-level conceptualizations of law. Meanings assigned to laws may vary across groups, which can also explain a diverse measure of impressions of citizenship and agency. In Tyler's original work, legitimacy was defined as "acceptance by people of the need to bring their behavior into line with the dictates of an external authority" (Tyler, 1990: 25). Legitimacy, defined as such, captures two mechanisms: (1) perceived obligation to obey the law and (2) communicated support for legal authority. Bottoms and Tankebe (2012) point out, however, that theoretically, one's willingness to yield to the law does not signal their unqualified support of that body of law or the institution(s) from which it came. Tankebe (2012) tests this hypothesis using London household survey data and reveals findings that suggest that legitimacy is not only multidimensional in nature, but that its influence on cooperation with law enforcement decreases by 58% when the influence of obligation is taken into account. Existing deterrence arguments that highlight the influence of legitimacy on conformity must consider the significance of legal compliance derived from fear and powerlessness. Weber (1978: 214) warned that "...people may submit from individual weakness and helplessness because there is no acceptable alternative." Conventional behavior

derived solely from obligation is not only inauthentic, but it is potentially unstable.

Legal coercion begets forced compliance instead of long-term buy-in, which could perhaps explain why so many former prisoners, although engaged in the process of desistance, never reach a “zero” offending level (for approaches to “non-offending” measurement, see Bushway et al., 2001; Bushway, Thornberry, and Krohn, 2003; Jennings and Reingle, 2012). Criminal justice involved citizens whose offending patterns have decelerated, may still harbor feelings of legal cynicism, particularly given the discussion of unfairness shared earlier in this study. Kirk and Matsuda (2011) define legal cynicism as a “cultural orientation in which the law and the agents of its enforcement are viewed as illegitimate, unresponsive, and ill-equipped to ensure public safety.” Crime may flourish in neighborhoods characterized by legal cynicism because individuals who view the law as illegitimate are both less likely to comply with it, and to engage with legal institutions by reporting crimes to legal authorities (Kirk et al., 2012; Papachristos, Meares, and Fagan, 2012). These practices operate at the macro-level, and unfold independent of individual-level criminal propensity. Using a cross-sectional survey, Reisig, Wolfe, and Holtfreter (2011) found that, “legitimacy and legal cynicism exert direct independent effects on law-violating behavior and that these relationships are not confounded by low self-control.” So what does this mean for convicted communities like Wilmington, DE, to which so large a proportion of society’s contemporary drug-involved reentry cohort must return?

Employment is but one reentry domain reconciled by criminal justice involved citizens, but it is a significant barrier to reintegration upon which policymakers can improve. Henry and Jacobs (2007) identify three principal strategies that could be better developed to improve former prisoners' employability: (1) former convicts require education and job-specific training; (2) reentry programming and support initiatives must *help* clients identify employment opportunities; (3) put an end to legally-sanctioned employment discrimination against this population.

First, longitudinal studies confirm that inmates who participate in carefully designed, thoughtfully implemented correctional training and work experience while incarcerated are more likely to be employed upon release and are less likely to recidivate (Jensen and Reed, 2006; Saylor and Gaes, 1992, 1996). Lawrence and colleagues (2002) note the important distinction between vocational training (involves skill development in a particular trade or industry, such as carpentry, auto detailing, electronic servicing, graphic arts/printing, horticulture, masonry, and welding), employment services training (focused on providing assistance with obtaining and retaining employment: interviewing skills, professional workplace habits, etc.) and prison industries programming (consists of work in prison-based industries like laundry and license plate manufacturing). The first two initiatives affect a much more positive and far-reaching impact on desistance processes. For black respondents in their study, Case and Fasenfest (2004) reported that more satisfaction was gleaned from having participated in vocational training than educational programming. The individuals did not dismiss the value of education, but the consensus highlighted a

greater utility in job-specific training. Women in the study identified low self-esteem as the most significant barrier to employment, and they also remarked that the only training opportunities available to them focused on developing secretarial and cosmetology skills. Individuals who struggle with low self-esteem are less likely to excel in these service-sector arenas that require confidence and strong interpersonal skills. As such, those skills can and must be bolstered prior to release, too (Heilbrun et al., 2008; McCollum, 2000). Finally, regardless of the employment training agenda, for an increasingly drug-addicted modern cohort, the provision of simultaneous and extensive substance abuse treatment services is imperative as well (Taxman and Belenko, 2011; Young et al., 2009). Rather than focusing on employment exclusively, it may also prove more useful if correctional rehabilitation programming was prioritized, as many inmates simply are not ready to yield the greatest potential benefits from educational and vocational programming until their substance use and addiction problems are addressed. Consistent with a maturation hypothesis are recent findings indicating that employment is an *outcome* of desistance, a change in patterned thinking, and the adoption of a conventional life, rather than a precursor of it (Skardhamar and Savolainen, 2014).

Next, many respondents in the *Roads Diverge* study expressed frustrations with their absence of social capital and utter lack of entrée into professional networking spaces. In a particularly constrained labor market, returning prisoners need help finding jobs. As it stands, the labor market information system is highly exclusive and private sector employment opportunities are publicly posted with

increasing infrequency. Access to informal social networks is increasingly influential in securing work for job applications marked by the stigma of a criminal record (Berg and Huebner, 2011; Morani et al., 2011). As employment assistance improves the job chances of prison releasees (Ramakers, van Wilsem, and Apel, 2012) it is critical that communities with a stake in prisoner reentry continue and broaden their job identification programming. Work release is a generally effective bridge between incarceration and community release, for it helps to foster relationships between inmates and employers, which bolsters desistance efforts (Butzin et al., 2006), and for cities like Wilmington, DE, enables cost avoidance and community regeneration (Duwe, 2014).

Lastly, there is a nationwide call to establish alternatives to discriminatory criminal background checks (Henry and Jacobs, 2007). It is estimated that anywhere from 65 to 92 million Americans have criminal history record information on file in a state repository (Rodriguez and Emsellem, 2011) which makes the fallout from background checking, a sobering social justice issue. Reentry advocates and policymakers committed to decreasing recidivism trends and putting a stop to barring former prisoners from legitimate employment opportunities, are urging states to adopt laws that prohibit employers from asking applicants about their criminal pasts. More than 60 cities in 27 states have shifted to a “ban the box” application protocol where background checks are only conducted if required by law or if the applicant is a finalist who is being seriously considered for the position (National Employment Law Project, 2014). Although opponents argue that this law imposes an undue

administrative burden on employers who are trying to fill positions quickly, this legislative movement seeks to uphold Title VII of the Civil Rights Act of 1964, and seems to be gaining traction across the nation.

Criminal record expungement and/or redaction are presented as options for individuals who may have been arrested or charged but not convicted, and seek to erase their criminal status and reclaim a clean slate. Many petitioners seek this legal remedy because they believe that their records preclude their employability. The filing duration can last up to a year and the associated processing fees can range between \$450 and \$2000 – a wholly impractical burden for many unemployed claimants seeking relief from this continued discrimination. Further, it is a little known fact that even for vacated criminal records, if a private company purchased a jurisdiction’s records prior to the state’s granting an expungement, that information remains in their repository and is available to an employer, housing authority panel, licensing commission, or any other host of organizations who might be interested in their applicants’ backgrounds (Wayne, 2012). Technology has outpaced regulation and the consequences of digitized data sharing are dire for millions of Americans. Hancock’s (2012) research notes that while it is unlawful for an employer to use non-conviction data in hiring decisions, employers who adopt blanket criminal history record information policies, which reject any individual with any type of criminal history record information, often end up excluding applicants with non-conviction records. Legislation that prohibits this unchecked data sharing would prove helpful for this already hyper-marginalized population.

Future research endeavors will further explore the implications of this study's findings. This study's data limitations prevent a systematic analysis of the desistance process throughout the life course, but much is still gleaned from the group trajectory model analyses. For instance, the *Roads Diverge* dataset offers survey data from respondents six months following their release from the original Key-Crest supervision, and later survey data plots would prove useful. Sample attrition, particularly for deviant populations is a common limitation. However, the trajectory models upon which the multinomial logistic regressions are based, are derived from official arrest records through records collected through 2008. As such, findings from this study cannot predict individual change, but group membership is confidently predicted here, and that information can serve as a proxy for individual change and desistance patterns. Future studies will incorporate growth-curve models that will help illustrate individual-level change. Also, despite the richness that qualitative data offer the research community, there is always some degree of qualitative measurement error. The demonstration of desirability bias among respondents asked to disclose their engagement in deviant and illegal behavior is expected. I am pleased, however, with demonstrated commitment to research subject protection and comfort offered by all *Roads Diverge* field research team members. My future qualitative data collection efforts will similarly include a devoted resolution to putting study respondents at ease and carefully advancing their positions wherever possible.

Despite these limitations, these data make a significant contribution to the literature examining desistance. This study presents data for one of the longest

follow-up periods available for a sample of drug involved former offenders and has provided a quantitative analysis of official records for nearly thirty years along with qualitative narratives that capture respondents' lived experiences and self-reported criminal involvement throughout the life course.

It is unsurprising that findings from this study are inconsistent with life course criminological discourse that advances the significance of external turning points as precursors to long-lasting desistance from crime. There are few employment positions that carry the same consequence and focus as the need to feed an addiction. For many of the men and women surveyed in this study, as long as their addictions remained untreated, their illness was their full-time job. Moreover, the ramped up policing and correctional supervision practices aimed at the communities to which these people return is also counterproductive. Recent research suggests that targeting low-risk nonviolent offenders like this actually increases recidivism insofar as those individuals who arguably do the least harm and are situated on the more conventional end of the offending spectrum are now subject to the criminogenic effects of net-widening crime control (Pew Center on the States, 2011).

The majority of the people interviewed in this study expressed a sincere desire to get clean and go straight, but they also cited an inability to pass a urine test and stay out of the purview of criminal justice supervision. Probationary supervision was not only a failed deterrent for many respondents in the sample, but it was a direct impediment to successful reentry and long-term desistance. Many communicated a great deal of frustration with the daily obligations connected with probation officer

meetings including securing childcare, convenient and affordable public transportation, missing work, and even sleep for those working several jobs. Many expressed the desire for incrementally decreasing supervision or setting meetings that were more regularly scheduled to help abate the stresses of intensive supervision.

Within the sample, many recreational drug users who held jobs, participated in their communities, and who at some point expressed pro-social long-term goals, saw their futures snatched from them once charged with the stigma and deleterious effect of an offender status. Many were forced to resort to the only networks and markets that would accommodate them. Recent policy approaches to America's contemporary drug addiction problem appears to be a significant departure from former operations, with more emphasis on treatment and prevention. Unfortunately, there appears to be little effect of this philosophical transition in actual policies as the budget for domestic law enforcement was still projected to increase much more than that which was allocated for treatment (Office of National Drug Control Policy, 2013).

From an economic perspective, incarcerating drug-addicted offenders instead of diverting them to treatment is not cost-effective (Roman and Harrell, 2001; Zarkin et al., 2012). Medicalizing drugs like marijuana can provide massive sales tax revenues as well as significant savings in criminal justice budgets (e.g. court costs, correctional supervision, and interdiction of substances). Empirical evidence from within the United States (Semaan et al., 2011) and other countries (Bravo et al., 2007; Bravo et al., 2009) suggests that such harm reduction strategies such as Needle Exchange Programs do not promote new drug injectors and significantly reduce HIV

infections. These studies indicate that there are no measurable negative effects of these harm reduction strategies, thereby suggesting that decriminalization and/or a reduction of punitive measures for possession offenses could present a viable alternative to mass incarceration.

A nontrivial number of respondents in this study lamented that law and legal institutions simply did not provide a useful platform for their desistance efforts. At best, the services provided were unavailing; at worst, the outcomes of law were utterly destructive. This sort of continued social estrangement, isolation, and reduced citizenship is not only harmful for the individuals who must reconcile this reality, but is also antithetical to the America's democratic project. If justice is to be served and preserved, we must work towards a model of equity and inclusion, where citizens feel both motivated and equipped to fully participate in a society.

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Appendix A

NVIVO TREE NODES

Type	Name	Memo Link	Sources	References		
Tree Node	AGENCY OR CONTROL		9	13		
	Type	Name	Memo Link	Sources	References	
	Tree Node	Absence of control or agency		59	92	
	Tree Node	Financial		44	57	
	Tree Node	No more nonsense		56	75	
	Tree Node	on acquiring agency or control		186	392	
	Tree Node	Readiness		88	117	
Tree Node	ALCOHOL		6	8		
	Type	Name	Memo Link	Sources	References	
	Tree Node	Common Exposure		73	108	
	Tree Node	Drinking Patterns		101	207	
	Tree Node	Onset		218	242	
	Tree Node	Peers		141	181	
	Tree Node	Periods of Abstinence		28	42	
	Tree Node	Relapse		31	45	
	Tree Node	Thoughts about Addiction		23	38	
		Type	Name	Memo Link	Sources	References
		Tree Node	Casual and Controlled		34	54
		Tree Node	Escape		25	38
		Tree Node	Out of Control		9	10
		Tree Node	Thrill		3	4
		Tree Node	Thrill or Fun		9	15
Tree Node	BLAME FOR DRUGS AND OR CRIME		23	25		
	Type	Name	Memo Link	Sources	References	

	Tree Node	Anger or Frustration		36	45
	Tree Node	Boredom or Curiosity		37	51
	Tree Node	Depression		52	88
	Tree Node	Father or Stepfather		19	26
	Tree Node	Friends		43	53
	Tree Node	Illness or Disability		13	16
	Tree Node	Mother or Stepmother		14	18
	Tree Node	Partner or Girl-Boyfriend		20	25
	Tree Node	Poverty or Disadvantage		17	30
	Tree Node	Self		44	63
	Tree Node	Stigma or Exclusion		17	20
	Tree Node	Stress		44	76
	Tree Node	Un(der)employment		19	32
Tree Node	CHILDHOOD EXPERIENCES		63	93	
	Type	Name	Memo Link	Sources	References
	Tree Node	Alcohol		78	103
	Tree Node	Criminal Family Members		153	220
	Tree Node	Divorce or Separation		98	119
	Tree Node	Drugs		81	119
	Tree Node	felt Love and or belonging		77	103
	Tree Node	Grandparents		67	110
	Tree Node	isolation loneliness lack of love		63	94
	Tree Node	Married parents		75	76
	Tree Node	Poverty or Disadvantage		46	62
	Tree Node	Runaway		22	29
Tree Node	CRIME		17	24	
	Type	Name	Memo Link	Sources	References

	Tree Node	Change Over Time		65	81	
	Tree Node	Common Exposure		47	65	
	Tree Node	Consequences		86	131	
	Tree Node	Financial Gain		186	354	
	Tree Node	Onset		200	251	
	Tree Node	Peers		136	212	
	Tree Node	Thoughts about Risks		109	184	
	Tree Node	Type engaged in		48	57	
		Type	Name	Memo Link	Sources	References
		Tree Node	Dealing or Possession		178	413
		Tree Node	DUI		44	68
		Tree Node	Property		205	445
		Tree Node	Prostitution		45	69
		Tree Node	Violent		136	256
Tree Node	DESISTANCE			26	50	
		Type	Name	Memo Link	Sources	References
		Tree Node	Agency & Readiness		180	328
		Tree Node	Aging Out		65	91
		Tree Node	Attitude or Outlook Change		202	440
		Tree Node	Employment		69	97
		Tree Node	Fear		52	61
		Tree Node	Incarceration		68	91
		Tree Node	Relationships		20	30
		Type	Name	Memo Link	Sources	References
		Tree Node	Children		73	119
		Tree Node	Friends		33	37
		Tree Node	Grandchildren		22	31
		Tree Node	Parents		45	60
		Tree Node	Partner		85	159
Tree Node	Responsibility				12	17
		Type	Name	Memo Link	Sources	References
		Tree Node	for Self		105	165
		Tree Node	to Children		92	146

	Tree Node	to Grandparents to own Parents		3	3	
	Tree Node	Risk		97	140	
	Tree Node	Shame		27	35	
	Tree Node	Spirituality		106	184	
	Tree Node	Treatment		110	175	
Tree Node	DISCONTENT		58	86		
	Type	Name	Memo Link	Sources	References	
	Tree Node	Anger or Frustration		94	157	
	Tree Node	Anti-Authority		19	26	
	Tree Node	Betrayal		76	125	
	Tree Node	Bravado or Threat to Respect		21	34	
	Tree Node	Failure		49	83	
	Tree Node	Fear		41	56	
	Tree Node	Hopelessness		40	58	
	Tree Node	Loneliness		44	66	
	Tree Node	Mistrust		28	35	
	Tree Node	Poor Health		44	70	
	Tree Node	Regret		75	132	
	Tree Node	Secrecy		49	86	
	Tree Node	sick of being sick and tired		80	99	
	Tree Node	Trauma or Loss		128	234	
Tree Node	DRUGS		15	28		
	Type	Name	Memo Link	Sources	References	
	Tree Node	Common Exposure		94	173	
	Tree Node	Drug of Choice		39	67	
		Type	Name	Memo Link	Sources	References
	Tree Node		Alcohol		59	70
	Tree Node		Cocaine		106	157
	Tree Node		Crack		99	158
	Tree Node		Heroin		76	170
	Tree Node		Marijuana		89	159
	Tree Node		Pills & Others		53	81
	Tree Node	Onset		278	397	

	Tree Node	Overdose		8	8	
	Tree Node	Patterns of Use or Abuse		160	347	
	Tree Node	Peers		228	429	
	Tree Node	Periods of Abstinence		133	216	
	Tree Node	Prescription Drugs		70	120	
	Tree Node	Relapse		170	346	
	Tree Node	Thoughts About Addiction		120	231	
		Type	Name	Memo Link	Sources	References
		Tree Node	Casual or Controlled		84	125
		Tree Node	Escape		72	116
		Tree Node	Out of Control		70	97
		Tree Node	Thrill or Fun		76	111
Tree Node	EDUCATION			23	26	
	Type	Name	Memo Link	Sources	References	
	Tree Node	Adult		78	98	
	Tree Node	Child-- Negative		66	75	
	Tree Node	Child- Positive		53	64	
	Tree Node	In prison		46	54	
	Tree Node	Incomplete or Drop-Out		19	23	
	Tree Node	No Access to		11	11	
Tree Node	EMPLOYMENT			47	57	
	Type	Name	Memo Link	Sources	References	
	Tree Node	Lack of		117	187	
	Tree Node	Negative Influences		30	35	
	Tree Node	Positive Influences		110	147	
	Tree Node	upon release		186	254	
	Tree Node	While Offending		47	59	
	Tree Node	While Using		123	202	
Tree Node	FATHER			36	39	
	Type	Name	Memo Link	Sources	References	
	Tree Node	Absent		93	115	

	Tree Node	Abuse of Others		58	80	
	Tree Node	Abuse of Subject		43	72	
	Tree Node	Alcohol		76	100	
	Tree Node	Bad Relationship		65	94	
	Tree Node	Crime and Incarceration		52	64	
	Tree Node	Discipline		42	50	
	Tree Node	Drugs		45	58	
	Tree Node	Good Relationship		112	152	
	Tree Node	No Relation		41	49	
	Tree Node	Present		34	38	
	Tree Node	Single		1	1	
	Tree Node	Step-father or Mom's Boyfriend		73	107	
	Tree Node	Supportive		35	42	
	Tree Node	Unsupportive		29	38	
	Tree Node	Victim of Abuse		1	1	
	Tree Node	INTERVIEW FEEDBACK	2	2		
		Type	Name	Memo Link	Sources	References
	Tree Node		Anxiety and Hesitation		4	4
	Tree Node		Gratitude and Relief		38	42
	Tree Node	LEGAL CONSCIOUSNESS				
		Type	Name	Memo Link	Sources	References
	Tree Node		Adjudication & Punishment		30	38
	Tree Node		Child Support		8	10
	Tree Node		Custody		6	7
	Tree Node		Education		1	1
	Tree Node		Employment		45	56
	Tree Node		Housing		3	3
	Tree Node		Law Enforcement		16	17
	Tree Node		Legal & Court Fees		20	22
	Tree Node		Post-Prison		37	47

		Supervision			
	Tree Node	Restitution		6	8
	Tree Node	War on Drugs		10	14
Tree Node	MOTHER		41	48	
	Type	Name	Memo Link	Sources	References
	Tree Node	Absent		35	47
	Tree Node	Abuse of Others		13	14
	Tree Node	Abuse of subject		36	50
	Tree Node	Alcohol		40	63
	Tree Node	Bad Relationship		46	73
	Tree Node	Crime and Incarceration		24	41
	Tree Node	Discipline		66	79
	Tree Node	Drugs		36	59
	Tree Node	Good Relationship		195	310
	Tree Node	No Relation		4	5
	Tree Node	Present		35	43
	Tree Node	Single		48	59
	Tree Node	Step-mother or Dad's Girlfriend		19	23
	Tree Node	Supportive		114	185
	Tree Node	Unsupportive		30	40
	Tree Node	Victim of Abuse		54	72
Tree Node	NEIGHBORHOOD		6	6	
	Type	Name	Memo Link	Sources	References
	Tree Node	Community - Adult		12	12
	Tree Node	Community - Childhood		160	183
	Tree Node	Crime - Adult		18	24
	Tree Node	Crime - Childhood		44	62
	Tree Node	Drugs - Adult		20	29
	Tree Node	Drugs - Childhood		67	81
	Tree Node	Poverty - Adult		3	4
	Tree Node	Poverty - Childhood		43	47
	Tree Node	Violence -		9	11

	Tree Node	Adult Violence - Childhood		32	42	
Tree Node	OWN PARENTING Type		83	104		
		Name		Memo Link	Sources	Referenc es
	Tree Node	Absent		74	119	
	Tree Node	children's effects on offender's crime & drug use		177	451	
	Tree Node	Ex- or Detached Partner Help		41	51	
	Tree Node	Family Support		56	100	
	Tree Node	Grandparenting		38	45	
	Tree Node	is Married or Partnered		45	68	
	Tree Node	Single		27	31	
	Tree Node	Teenage		41	45	
	Tree Node	Thoughts About		59	75	
		Type	Name	Memo Link	Sources	References
		Tree Node	Fear		16	20
		Tree Node	Joy		44	58
		Tree Node	Regret		82	118
		Tree Node	Responsibility		85	155
Tree Node	PRISON Type		20	22		
		Name		Memo Link	Sources	Referenc es
	Tree Node	Common or Habitual Offender		81	146	
	Tree Node	Doing Time		117	169	
	Tree Node	First Arrest		184	203	
	Tree Node	First Incarceration		197	236	
	Tree Node	Impact on Employment		60	76	
	Tree Node	Impact on Reality		103	155	
	Tree Node	Impact on Relationships		76	116	
	Tree Node	Impact on Substance		95	139	

		Abuse			
	Tree Node	Release		44	52
	Tree Node	Thoughts about		38	56
Tree Node	RECENT INVOLVEMENT		10	10	
	Type	Name	Memo Link	Sources	References
	Tree Node	Alcohol		67	77
	Tree Node	Crime		14	17
	Tree Node	Drugs		96	136
	Tree Node	None		78	95
Tree Node	REENTRY		20	23	
	Type	Name	Memo Link	Sources	References
	Tree Node	Children		25	27
	Tree Node	Employment		188	277
	Tree Node	Family of Origin		82	114
	Tree Node	Fear		9	14
	Tree Node	Friends		19	24
	Tree Node	Grandparents		8	10
	Tree Node	Hope		22	25
	Tree Node	Housing		166	241
	Tree Node	Parents		71	94
	Tree Node	Probation and Parole		153	275
	Tree Node	Spouse or Partner		83	99
Tree Node	RELATIONSHIPS		36	45	
	Type	Name	Memo Link	Sources	References
	Tree Node	Children		99	166
	Tree Node	Friends		48	61
	Tree Node	Girl-BoyFriend		160	298
	Tree Node	Grandchildren		15	18
	Tree Node	Grandparents		44	57
	Tree Node	Marriage		105	200
	Tree Node	Siblings		138	187
Tree Node	SPIRITUALITY		12	14	
	Type	Name	Memo Link	Sources	References
	Tree Node	Adult		206	340

	Tree Node	Agnosticism or Atheism		19	21
	Tree Node	Child		176	194
Tree Node	STIGMA		3	3	
	Type	Name	Memo Link	Sources	References
	Tree Node	Offender or User - other family members		5	5
	Tree Node	Offender or User - Self		53	67
	Tree Node	Race - Adult		10	11
	Tree Node	Race - Child		14	19
	Tree Node	Sexuality - Adult		2	2
	Tree Node	Sexuality - Child		4	4
Tree Node	TREATMENT		115	167	
	Type	Name	Memo Link	Sources	References
	Tree Node	AA-NA		117	161
	Tree Node	Denial or Rejection		78	102
	Tree Node	Key-Crest		180	320
	Tree Node	Mental health		48	71
	Tree Node	Unavailability		10	13
Tree Node	TURNING POINTS		17	22	
	Type	Name	Memo Link	Sources	References
	Tree Node	Arrest		18	24
	Tree Node	Education or Graduation		4	5
	Tree Node	Employment		24	26
	Tree Node	Familial (Re)Inclusion or Reunion		22	39
	Tree Node	Familial Disownment or Dissolution		23	31
	Tree Node	Graduation		1	1
	Tree Node	Homelessness or Runaway		18	27
	Tree Node	Incarceration		73	101
	Tree Node	Marriage		14	21
	Tree Node	Military		3	3

	Type	Name	Memo Link	Sources	References
	Tree Node	Neighborhood		22	27
	Tree Node	OD'ing		4	4
	Tree Node	Rock Bottom		9	9
	Tree Node	Partners or Girl-Boyfriend		33	42
	Tree Node	Peer Group Change		53	81
	Tree Node	Pregnancy or Parenthood		35	54
	Tree Node	Relapse		7	9
	Tree Node	Rock Bottom		20	27
	Tree Node	Shame		10	12
	Tree Node	Spirituality		22	25
	Tree Node	Trauma or Loss		83	136
	Tree Node	Treatment		62	86
	Tree Node	Victimization		9	9
Tree Node	VICTIMIZATION		2	2	
	Type	Name	Memo Link	Sources	References
	Tree Node	Inflicted - Adult		39	56
	Tree Node	Inflicted - childhood		20	28
	Tree Node	rape or sexual assault		60	98
	Tree Node	Suffered - Adult		53	70
	Tree Node	Suffered - Childhood		140	235

Appendix B

HUMAN SUBJECTS IRB APPROVAL

RESEARCH OFFICE
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DATE: July 3, 2014
TO: Ronet Bachman
FROM: University of Delaware IRB

STUDY TITLE: [136948-7] Roads Diverge: Long-term Patterns of Relapse, Recidivism, and Desistance for a Reentry Cohort

SUBMISSION TYPE: Continuing Review/Progress Report

ACTION: Approved for Data Analysis Only
APPROVAL DATE: July 3, 2014
EXPIRATION DATE: July 20, 2015
REVIEW TYPE: Expedited Review

REVIEW CATEGORY: Expedited review category # (8)

Thank you for your submission of Continuing Review/Progress Report materials for this research study. The University of Delaware IRB has APPROVED your submission. This approval is based on an appropriate risk/benefit ratio and a study design wherein the risks have been minimized. All research must be conducted in accordance with this approved submission.

This submission has received Expedited Review based on the applicable federal regulation.

Please remember that informed consent is a process beginning with a description of the study and insurance of participant understanding followed by a signed consent form. Informed consent must continue throughout the study via a dialogue between the researcher and research participant. Federal regulations require each participant receive a copy of the signed consent document.

Please note that any revision to previously approved materials must be approved by this office prior to initiation. Please use the appropriate revision forms for this procedure.

All SERIOUS and UNEXPECTED adverse events must be reported to this office. Please use the appropriate adverse event forms for this procedure. All sponsor reporting requirements should also be followed.

Please report all NON-COMPLIANCE issues or COMPLAINTS regarding this study to this office. Please note that all research records must be retained for a minimum of three years.

Based on the risks, this project requires Continuing Review by this office on an annual basis. Please use the appropriate renewal forms for this procedure.

If you have any questions, please contact Nicole Farnese-McFarlane at (302) 831-1119 or nicolefm@udel.edu. Please include your study title and reference number in all correspondence with this office.