THE EFFECT OF CRIMINAL BACKGROUND CHECKS ON HIRING EX-OFFENDERS*

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Research Summary

The rapid increase in the nation's incarceration rate over the past decade has raised questions about how to reintegrate a growing number of ex-offenders successfully. Employment has been shown to be an important factor in reintegration, especially for men over the age of 27 years who characterize most individuals released from prison. This article explores this question using unique establishment-level data collected in Los Angeles in 2001. On average, we replicate the now-common finding that employer-initiated criminal background checks are negatively related to the hiring of ex-offenders. However, this negative effect is less than complete. The effect is strongly negative for those employers that are legally required to perform background checks, which is not surprising because these legal requirements to perform checks are paired with legal prohibitions against hiring ex-offenders. However, some employers seem to perform checks to gain additional information about ex-offenders (and thus hire more ex-offenders than other employers), and checking seems to have no effect on hiring ex-offenders for those employers not legally required to perform checks.

Policy Implications

One public policy initiative that has received considerable attention is to deny employers access to criminal history record information, which includes movements to "ban the box" that inquires about criminal history information on job applications. The assumption underlying this movement is that knowledge of ex-offender status leads directly to a refusal to hire. The results of this analysis show that policy initiatives aimed at restricting background checks, particularly for those firms not

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> *legally required to perform checks, may not have the desired conse-*
> *quences of increasing ex-offender employment. This result is consistent*
> *with an alternative view that some employers care about the character-*
> *istics of the criminal history record and use information about criminal*
> *history in a more nuanced, nondiscrete way.*

One dramatic social transformation that has occurred in the United States over the past two decades has been the rapid increase in the prison population. Between 1980 and 2000, the U.S. prison population increased four-fold from 300,000 to more than 1.2 million. Including those persons in local jails, more than 2 million individuals are currently incarcerated. At these rates, the Bureau of Justice Statistics estimates that approximately 9% of all men will serve some time in state or federal prisons, with this fraction increasing over the near future.[1]

The successful reintegration of these (mostly) men depends in part on their ability to find and maintain gainful employment (Travis, Solomon, and Waul, 2001). However, several factors suggest potentially negative effects of criminal convictions on labor market outcomes. On the supply side of the labor market, those who served time fail to accumulate work experience, sever social networks that may aid in finding employment, and may experience an erosion of skills while incarcerated. Hence, a prison sentence may permanently worsen the labor market prospects of ex-convicts who already have dim prospects before entering prison (Petersilia, 2003).

On the demand side, employers may be reluctant to hire workers with criminal convictions for fear that an ex-convict may harm a customer or be more likely to steal. Employers may place a premium on the trustworthiness of employees, especially when the ability to monitor employee performance is imperfect. In response to these concerns, employers may perform background checks to exclude ex-offenders from employment. Moreover, certain occupations are closed legally to individuals with felony convictions under state and, in some cases, federal law (Hahn, 1991), which requires employers to perform criminal background checks. Examples include jobs that require contact with children, certain health-services

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1. The trends in incarceration are especially pronounced for California and, within California, for Los Angeles in particular (the area in which our employer sample was drawn). California houses a disproportionate share of the nation's recently released prisoners. In 2002, about 23% of the nation's approximately 600,000 recently released prisoners resided in California, in contrast to a state population equal to 11% to 12% of the nation's population. What is more, of the approximately 140,000 released prisoners in California in 2001, a disproportionate share of these—nearly 34%—returned to Los Angeles County (which houses about 28% of the state's population) (U.S. Bureau of the Census, 2002; U.S. Bureau of Justice Statistics, 2001).

occupations, and employment with firms that provide security services. These types of background checks often amount to an outright ban on hiring ex-offenders and could drive a policy tension between those interested in public-safety concerns that in part motivate enactment of these statues and those interested in reintegrating ex-offenders through employment. Clearly, if employers respond to criminal history record information by barring all ex-offenders from employment, then policy makers need to be careful about who has access to this kind of information.

One policy example of this is the "ban the box" movement, which aims to eliminate criminal history questions from standard employment applications. It is based on the belief that employers immediately eliminate from consideration anyone who has a criminal history record. Boston, Chicago, Minneapolis, San Francisco, and St. Paul have all recently passed laws to eliminate the question about criminal history records from applications for municipal jobs. A similar proposal is now on the table in Los Angeles, among other places. It is important to note that these laws do not bar the government from asking about criminal history records, but simply postpone the question until later in the process. The goal is to get the individual with a criminal conviction on his record to be considered on the basis of his other merits before adding in the information about the criminal history record.

However, it is not clear that the basic assumption of the "ban the box" movement—that information about criminal history eliminates people from the job queue—is correct, and in this article, we seek to assess that assumption. We simply do not know much about how employers use criminal history information or what its effect on hiring ex-offenders might be. Employers are forbidden already by statute in some states like New York from blanket exclusions on formerly convicted individuals. The Equal Employment Opportunity Commission guidelines state that information about a criminal history must be relevant for the job before it can be used as grounds not to hire someone. In this spirit, New York State requires background checks for all unlicensed workers in nursing homes, but it provides for discretionary hiring for some classes of ex-offenders.[2] The

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2. The Statutory New York State Public Health Law and Executive Law created a class of convictions that acted as a presumptive bar to employment, unless the DOH determined that employment would not jeopardize the health, safety, or welfare of the patients in any way. The crimes in this presumptive denial class include a lifetime ban for a sex offense or a felony conviction as well as a 10-year ban for a violent felony conviction or a misdemeanor endangering the welfare of an incompetent or physically disabled person ([PL 260.25], B,C, D or E felony conviction for: assault [PL 120]; larceny [PL 155]; robbery [PL 160]; diversion of prescription medications [PL 178]; controlled substances [PL 220]; felony for endangering welfare of elderly person [PL 260.32 and 260.34).

Department of Health (DOH) performs the background check and makes the final decision on the basis of several factors, which include the nature of the offense and the time since last offense. Employers often advocate for individuals with criminal history records in this context, and individuals with criminal history records are in fact still allowed to work in nursing homes in New York. California State law requirements are much more nuanced. Some statutes require employers to conduct criminal background checks, whereas others require blanket exclusion from employment of those with criminal records. As a result, employers in California may have greater uncertainty about the exact legal requirement that surrounds background checking and employment exclusion of those with records.[3]

Employers that are not required to perform background checks also may run criminal background checks to make more informed decisions about hiring these workers. Although studies unquestionably show that ex-prisoners run a high risk for recidivism (Langan and Levine, 2002), risk assessments show that not all ex-offenders are equally at risk for reoffending (Gendreau, Little, and Goggin, 1996; Kurlychek, Brame, and Bushway, 2006, 2007). For some employers, especially those that purposefully seek additional information to make better risk-assessed hiring decisions, background checks may not exclude ex-offender applicants altogether but could actually increase their hiring. Finally, other employers may check ex-offender status as a standard, routine recruitment and hiring practice to protect themselves against negligent hiring lawsuits.[4] Moreover, they may do so without regard to whether such background checks actually exclude ex-offenders. Checking in this instance may have little effect on whether the firm actually hires ex-offenders. Thus, it is not altogether clear what the effect is of criminal background checks on hiring ex-offenders.

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3. California does not have a simple, clear document that outlines these state statues to employers, which makes interpretation of these laws difficult. Moreover, we hired a law student to review the California State statutes in this regard and to create a matrix by industry outlining state requirements to check or to exclude ex-felons from hiring. This task proved to be difficult, as many of these statutes that concern treatment of ex-felons are vague either in what is required by the employer or in what job/industry the statute applies.

4. Legally, negligence is premised on the idea that one who breaches a duty of care to others in an organization or to the public is legally liable for any damages that result (Glynn, 1988). Under the theory of negligent hiring, employers may be liable for the risk created by exposing the public and their employees to potentially dangerous individuals. As articulated by Bushway (2004:277), "employers who know, or should have known, that an employee has had a history of criminal behavior may be liable for the employee's criminal or tortuous acts." Thus, employers may be exposed to punitive damages as well as to liability for loss, pain, and suffering as a result of negligent hiring.

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This article seeks to understand better the effect of employers' use of criminal background checks on hiring ex-offenders. Previous research on this and related questions has not directly addressed the question of what effect such use of criminal background checks has on hiring ex-offenders. Some studies, using employer-based surveys, examine employer willingness to hire ex-offenders and the characteristics of firms that run background checks, how and when these checks are performed, and whether they have increased over time (Holzer, Raphael, and Stoll, 2007a, 2004). The evidence from this research shows, unsurprisingly, that employer aversion to ex-offenders is high, and that firms that check backgrounds are larger, in industries that have more customer contact such as in retail trade and service, are increasing over time, and are conducted mostly through private sources.

Consistent with these studies, Pager (2003), using an audit study framework, finds that both white and black men with criminal records are much less likely to be called back for a job interview than their counterparts without such records. However, the criminal background penalty is more pronounced for whites than blacks, perhaps because employers statistically discriminate against black men on the basis of perceived criminality (Holzer, Raphael, and Stoll, 2007b; Pager, 2003). The Pager study is interesting for many reasons. First, it only studied firms that do not formally check criminal history records. Second, the auditors were instructed to inform all employers that they were ex-offenders. Overall, 17% of the white auditors with a criminal history record received a call back from an interested employer. Although this result is half the call-back rate of white nonoffenders, this finding nonetheless demonstrates that knowledge of criminal history records does not always result in a bar to employment. The question in this article is whether hiring of known ex-offenders takes place in firms that actually check for criminal history records from an outside source, and how the effect differs conditional on whether the check is legally mandated and on the source of the check.

Of course, we do not address or remain agnostic toward many aspects of this question. Certainly, many public safety interests guide and motivate state statutes requiring certain employers to check backgrounds or exclude ex-offenders. We do not debate nor take issue with these motivations. Rather, we take these state mandates as given and acknowledge them as being one of many factors that drive employers to check backgrounds and possibly exclude ex-offenders. Similarly, one could question whether the state mandates to perform checks are legitimate or whether states overreach in setting these statutes given the intended goals. Again, we remain agnostic on this question and assess the effects of performing checks given the varied reasons and ways that employers might check.

Specifically, we analyze whether employer-initiated criminal background checks negatively affect the actual hiring of ex-offenders using a unique establishment data set collected from a representative sample of employers in Los Angeles in 2001. As expected, we find evidence that use of criminal background checks is negatively related to the hiring of ex-offenders. This effect is particularly strong for those employers that are legally required to check. Whether employers are legally required to perform checks operates independently of their attitudes toward ex-offenders. And whereas employers that are not willing to hire ex-offenders are substantially more likely to check criminal history records, we also find that the negative effect of checking on hiring ex-offenders is not absolute. Some employers seem to perform background checks to gain additional information about ex-offenders and hire more ex-offenders than other employers, whereas others' checking behavior is uncorrelated with hiring practice. These latter results are especially true for those employers that are not legally required to perform checks. We speculate that these employers may be using inexpensive Internet background checks as a kind of insurance against negligent hiring lawsuits.

The primary lesson of this article is that the background check is not the problem for people concerned about the hiring of ex-offenders. Firms that are unwilling to hire ex-offenders do not hire ex-offenders whether or not they use outside searches to check criminal history records. Furthermore, the motive for the background check seems to be as important as the background check itself in driving hiring processes. Reassessing the type and number of statutes that require checks to make sure they are in line with the actual costs associated with hiring ex-offenders and restricting the costs of negligent-hiring lawsuits might be more productive policy initiatives to increase hiring of ex-offenders than limiting background checks themselves.

Data and Description of Main Variables

The data were collected using 20-minute telephone surveys administered to 619 establishments in Los Angeles between May 2001 and November 2001.[5] Employers were drawn from lists compiled by Survey

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5. The survey was conducted in Los Angeles because it is a large and populous metropolitan area in a state with a large incarcerated population. Nearly one third of recently released prisoners in California return to Los Angeles County, which represents the geographic boundaries of our study area. At the time of the survey, its regional economy registered some of the lowest unemployment rates in 30 years and seemed relatively strong, whereas the national economy had dipped into a recession. However, while the survey was in the field, the Los Angeles economy began to weaken, particularly in the manufacturing sector, and of course, the events of September 11 took

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Sampling Inc. (SSI) primarily from telephone directories. To the extent possible, the phone interviews were conducted with the person in the establishment who is responsible for entry-level hiring. Establishments were screened according to whether they had hired an employee into a position not requiring a college degree within the previous year. However, this screen eliminated no firms from our sample. The overall survey response rate was 65%, which is in the range of other similar firm surveys (Holzer, 1996; Holzer and Stoll, 2001; Kling, 1995).

The surveyed firms were drawn from a sample that was stratified ex-ante by establishment size. Sampling across strata was performed in proportion to the amount of regional employment accounted for by the establishment size category. Within strata, firms were sampled at random. Thus, the sample is representative of the distribution of the workforce in the Los Angeles region across establishment size categories without any need for additional size weighting. Although concerns exist with the data in studying these issues as we discuss below, it represents the best available data to investigate these questions. We carefully probed the data and conducted empirical checks to estimate the magnitude of these concerns, the expected direction of bias if any, and the factors that might mitigate these concerns.

Of course, our data come from one metropolitan area that might not be generalizeable to all cases or areas. But a comparable employer survey in the mid-1990s revealed that employers were all similarly averse to hiring ex-offenders in Los Angeles, Atlanta, Boston, and Detroit and that such aversion varied across key variables such as those for industry in strikingly similar patterns across these metro areas. Likewise, a strong similarity was observed in the extent to which employers checked the criminal backgrounds of their applicants across these metro areas (Holzer et al., 2004). This observation was true despite the fact that California is identified in the 2002 Compendium of State Privacy and Security Legislation as having some of the most restrictive statutes regarding access to the criminal records maintained for the criminal justice system. For example, it is not one of the 23 states with open-records policies that allow non-criminal justice access to the public repository without statutory authorization. Thus, we have some confidence that the results of our analysis will not be specific to Los Angeles or California.

The main variables we will focus on in this analysis are indicators of employers' *actual* hiring of ex-offenders. To gauge this hiring, the survey asks, "To your knowledge, has your business in the past year hired any men with criminal records?" The options provided are as follows: "Yes,

place. These events have only modestly affected employer responses to questions about their willingness to hire ex-offenders, in the negative direction.

no, do not know; and if yes, how many men have you hired?" Based on answers to these questions, we developed two alternative measures of actual ex-offender hiring at the firm. The first is defined as the percent of all jobs (filled and unfilled) in the firm filled by ex-offenders over the last year, and the second is defined as the percent of all new hires who are ex-offenders at the firm over the last year. As we note below, larger firms are more likely to check, may be more likely to hire ex-offenders, and are more likely to conduct a lot of hiring generally. Thus, firm size may account for much of the hiring of ex-offenders between firms that perform checks and those that do not. As a result, we include this second, alternative measure of ex-offender hiring because it should be less sensitive to these concerns.

For this study, a person has a criminal history record if they had previously been convicted of a felony, so it is open ended as to whether that person served time in prison. An additional concern is whether employers know they have hired ex-offenders. Given the survey questions, it is unlikely that all employers know whether they have hired ex-offenders, or the true number of them they have hired. However, our focus is on those employers that check. About half of the employers in this survey routinely check for criminal backgrounds, and another 20% check sometimes. Moreover, previous work using similar employer surveys show that a large fraction of employers (about 30%) have contact with employment agencies that attempt to place disadvantaged workers, which include ex-offenders, into jobs (Holzer and Stoll, 2001). Thus, a large fraction of employers will know the criminal background status of their employees. Still, the lack of complete information means that the level of ex-offender hiring at the firm is likely to be systematically underestimated.

The next main variables we examined in the analysis concern whether, how, and why establishments perform criminal background checking. We ask in the survey, "How often do you check the applicant's criminal record?" The options provided are as follows: "Always, sometimes, never." Whether a firm checks criminal backgrounds is measured as those firms that always check because our analysis of these answers indicates that little difference in behavior and hiring exists for those firms that indicate that they sometimes or never check. We will also examine a series of questions for the last-filled, non-college position at the firm in our data concerning whether employers were legally required to perform checks and how (or from what source, including criminal justice agencies, private sources, or other methods) they performed the checks.

Some concerns surround the checking measures in our analysis. The question that examines whether employers were legally required to perform background checks and how they checked was asked for the

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last-filled job rather than at the firm level. Thus, some mismeasurement of these variables is likely introduced. Still, the last-filled job at the firm is likely highly correlated with average jobs at the firm, and thus, we should be able to detect the association between legal requirements (and methods of performing checks) and ex-offender hiring at the firm. Moreover, to the extent that this mismeasurement is classic in nature, we should have answers that are biased toward zero or, alternatively, conservative estimates of their association with hiring ex-offenders.

A second concern is that we cannot disentangle whether employers are actually legally required to perform background checks or whether they simply perceive they are legally required to perform checks. To gain insight into this question, we explored two areas. First, we examined the different methods employers used to check backgrounds given their responses to questions about whether they were legally required to check. In California, employers that are required statutorily to check backgrounds for certain jobs must use the Bureau of Criminal Identification to do so and are not allowed to use private vendors. Private vendors make use of publicly available information from court records and other sources, and the information is not guaranteed to match the information in the public repository (Bushway et al., 2007). The data indicate that 56% of employers reporting that they were legally required to perform checks used criminal justice methods (which is consistent with the use of public repositories), whereas 31% of these used private sources. This finding compares with 19% and 67%, respectively, for employers that perform checks and that indicate they were not legally required to perform checks.[6]

Second, we examined the Compendium of State Security and Privacy Legislation from the U.S. Bureau of Justice Statistics and identified the likely four-digit standard industrial classification codes for employers legally required to perform background checks according to California statutes. We then weighted industries by employee size using data from the 2000 U.S. Census for California and calculated the industrial distribution of industries that are legally required to check the criminal background of applicants. Finally, we compared this distribution with the industrial distribution of employers in our sample that indicated that they were legally required to perform checks and used criminal justice methods

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6. A potential measurement problem is found here. Firms that are required to perform background checks may not deal directly with a criminal justice agency. In California, employers deal directly with the regulating agency covered by the statute, and that agency deals with the Bureau of Criminal Identification. Employers may also contract out this function to a private human resources company, which would nonetheless get the information from the Bureau of Criminal Identification as required by law.

to do so. We found very similar distributions across these two estimates, with about 90% of industries (and employers) within the service industry.[7]

Our empirical strategy was as follows. First, we examined mean differences in ex-offender hiring outcomes between establishments that perform checks and those that do not perform criminal background checks of their applicants. The key problem in identifying the relationship between employer checking and hiring of ex-offenders is that employer attitudes could drive such checking of criminal backgrounds, which leads to a spurious correlation between performing checks and hiring of ex-offenders. Partly to address this concern, we estimated a series of regression models that include an extensive list of establishment characteristic control variables to examine whether firms that perform background checks are less likely to hire ex-offenders. Then, we included additional control variables into the equation that measure employer attitudes toward hiring ex-offenders. Next, we estimated similar equations for employers' prospective hiring of ex-offenders. If employer attitudes are driving whether they check backgrounds and hire ex-offenders, then the effect of checking backgrounds should be strongly related to their prospective hiring of ex-offenders as well.[8] Finally, we examined whether the effect of performing background checks on hiring ex-offenders is stronger for those employers that indicate that they were legally required to perform background checks. Employer attitudes do not singularly affect whether firms are legally required to perform checks (especially for those that use criminal justice agencies to perform checks). In the second part of the analysis, we examined heterogeneity in the use of criminal background checks and how these different uses of such checks affect ex-offender hiring.

Empirical Results

Unadjusted Differences in Hiring Outcomes

Figure 1 presents the means of the ex-offender hiring variables for the sample as a whole and stratified by whether the firms perform criminal background checks. The data indicate that employers hired ex-offenders into about 1.4% of jobs at the firm over the past year. Previous estimates

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7. See Table A.2 in Appendix A for the industrial distribution of employers that indicated that they were legally required to perform background checks and used criminal justice agencies to do so.

8. These prospective measures of ex-offender hiring are defined as the percent of jobs at the firm that employers would be willing to fill currently (at the time of the survey) with ex-offenders, and as the percent of jobs at the firm that employers would be willing to fill over the next year with ex-offenders. These prospective measures are similar to those used to estimate prospective employer demand for other disadvantaged groups, such as welfare recipients (Holzer and Stoll, 2001).

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for 1999 indicated that the total stock of unemployed former felons at any point in time is about 3% to 4% of the labor force, whereas that of former prisoners is about 1.5% to 2% of the labor force (Holzer et al., 2004). Thus, our actual hiring figure seems reasonable given these figures, and it does not suggest a huge imbalance between the potential labor supply from former offenders and the aggregate job availability they might face. About 5% of new hires at the firm are ex-offenders. This finding suggests even greater opportunity to absorb ex-offenders into the labor market.

Figure 1. Ex-Offender Hiring Means by Whether Firm Checks Backgrounds
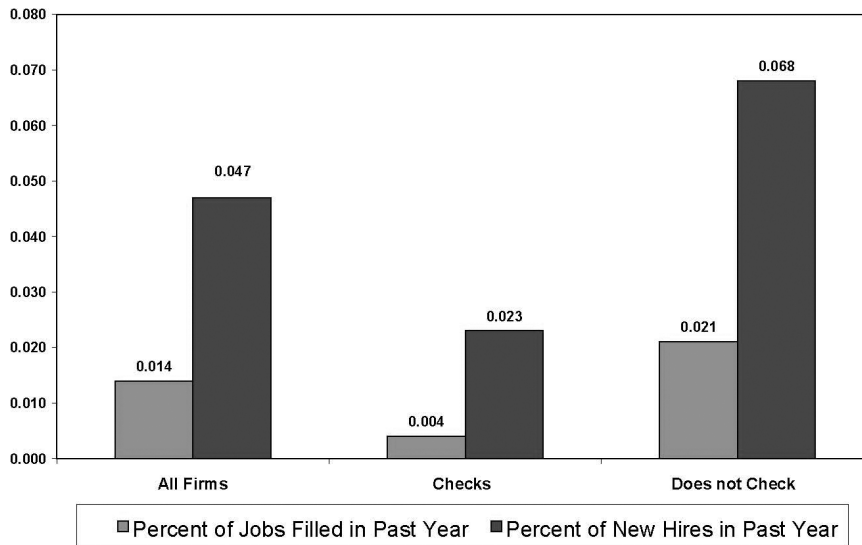
Figure 1 also shows that for both measures of actual hiring, firms that perform background checks are less likely to hire ex-offenders than firms that do not perform checks. For the percent of jobs filled in the past year measure, the difference in ex-offender hiring between firms that do perform checks and those that do not perform checks is about 1.7 percentage points. Thus, at the mean level, a strong, negative relationship seems to exist between performing background checks and ex-offender hiring.

Figure 2 shows that about 44% of firms check backgrounds. This level of checking is up by 12 percentage points since the 1992–1994 period, perhaps because of the emergence of relatively inexpensive, quick, private companies that provide background-checking services over the Internet and perhaps even changes in laws that require such checks (Holzer et al., 2007a).

Figure 2. Proportion of Firms that Check Backgrounds, 1992–1994 and 2001
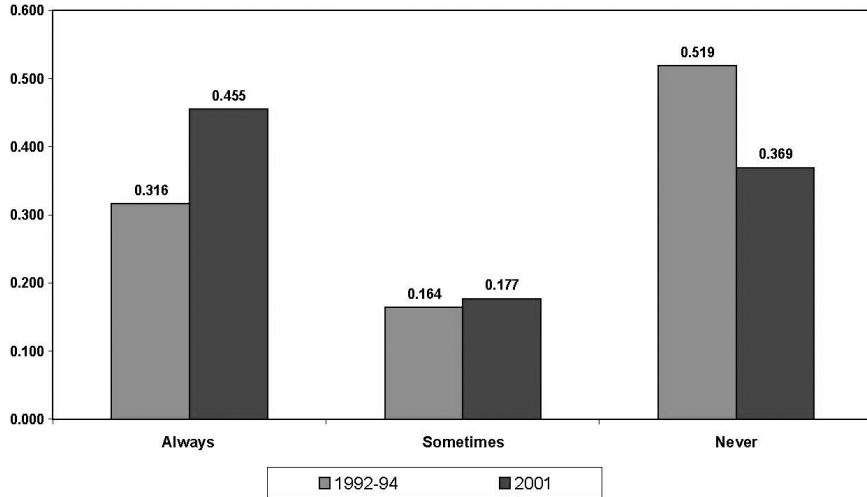
Table 1 indicates that about half of these firms perform checks because they are (or perceive they are) legally required to perform checks, whereas a plurality of these background-checking firms use private sources, such as those that can be accessed through the Internet. About 14% of firms indicate that they check backgrounds using other methods, which in this survey include asking applicants themselves. This method of performing background checks is not considered a formal criminal background check because the employer does not check the applicants' answers to a question of whether they have been convicted of a felony with actual rap sheets provided through public or private sources. As a result, in the analysis, we examined whether the effect of performing background checks on hiring ex-offenders changes when we recode employer responses of using "other methods" of checking to that indicating no formal criminal background check.

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Table 1. Means (S.D.) of Checking Variables

Checking Characteristics	All Firms (1)	Checks Criminal Background (2)	Does not Check Criminal Background (3)
Legally Required			
Legally required to perform background checks	0.194 (0.396)	0.527 (0.500)	0.009 (0.093)
Not legally required to perform background checks	0.187 (0.391)	0.473 (0.500)	0.032 (0.176)
Method			
Check with criminal justice agencies	0.141 (0.344)	0.368 (0.483)	0.017 (0.131)
Check with private sources	0.187 (0.391)	0.491 (0.501)	0.023 (0.151)
Other checking methods	0.120 (0.164)	0.140 (0.257)	0.000 (0.000)
N	604	268	336

Notes: S.D. = standard deviation.

Estimating Equations

The preceding analysis demonstrates differences in hiring ex-offenders between firms that perform background checks and those that do not perform checks on applicants' criminal backgrounds. In this section, we discuss the models used to estimate the relationship between checking and ex-offender hiring while controlling for extensive establishment characteristics and employer behaviors. We estimated the equations:

$$\% \textit{ Jobs Filled Ex-Offenders}_k = \beta_{11} CBC_k + \beta'_{12} X_k + \varepsilon_{1k} \qquad (1)$$

$$\% \textit{ New Hires Ex-Offenders}_k = \beta_{21} CBC_k + \beta'_{22} X_k + \varepsilon_{2k} \qquad (2)$$

where *CBC* is whether the firm checks the criminal background of applicants in firm k and X is a vector of independent establishment-level variables for firm k. Because a large fraction of establishments have hired no ex-offenders (about 80%), Equations 1 and 2 are estimated with the tobit functional form so as to censor the zero values.[9]

Variation in ex-offender hiring at the firm level may be attributable to several factors, which include the establishment's characteristics such as size, industry, location, vacancy rates, skill needs, presence of collective

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9. We experimented with other models such as ordinary least squares, but tobit best fit the data we examined here because the zeros in the dependent variables do provide information about employer hiring of this group.

bargaining, minority ownership, and nonprofit status. Larger firms, firms in industries with little customer contact, such as manufacturing, construction, and transportation, as well as firms that are more proximate to ex-offender populations, such as those in the central city, will be more likely to hire ex-offenders. This finding is likely also true for firms that have a larger fraction of lower-skilled jobs that might match the skill levels of ex-offenders and greater labor needs as measured by their vacancy rates.[10] Many of these factors also are likely to be correlated with whether the firm checks criminal backgrounds of their applicants; thus, we include these measures to adjust our estimates in the regression analysis that follows.

Employer attitudes toward ex-offenders also are likely to be correlated with their actual hiring of them as shown elsewhere (Holzer et al., 2007a). To gauge these attitudes, we included measures of employers' willingness to hire ex-offenders. These measures include those employers that are willing (very willing or somewhat willing), those that are unwilling (very unwilling or somewhat unwilling), and those that indicate that their willingness depends on the crime that the applicant committed. These attitudes, however, are strongly correlated with whether employers check the criminal backgrounds of these workers. Thus, we include regression models with and without these attitudinal variables.

Finally, another concern in the actual measure of ex-offender hiring is that, although it provides information on employers' actual behavior with respect to hiring male workers with criminal backgrounds, it is likely also to reflect a mixture of demand-side (i.e., firms) and supply-side (i.e., workers) factors that might influence access of such workers to these firms. For instance, to the extent that ex-offenders perceive that their job prospects are weaker at firms that check backgrounds than those that do not, they will be less likely to apply and, therefore, to be hired at establishments that check. This self-selection of ex-offender applicants across firms that perform checks and those that do not perform checks could lead to a spurious relationship between background checking and ex-offender hiring; without adequate controls, this measure could bias upwardly the expected negative effect of background checking on hiring ex-offenders.

Unfortunately, the data do not provide information on the criminal background status of applicants. We did, however, experiment with many potential proxies for ex-offender applicants. These proxies included a variety of supply-side variables generated from 2000 U.S. Census data sources, such as the firms' weighted distance to populations and the characteristics of males that are highly correlated with ex-offenders, such as those that

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10. Unskilled jobs refer to those jobs that do not require any particular skills, education, previous training, or experience when filled.

did not complete high school (and by race) or those who are "idle," that is, not working, not going to school, and did not complete high school (and by race). These variables were geocoded to our survey of employers at the census tract level. None of these measures, however, was ever statistically associated with the ex-offender hiring variables. Nevertheless, the data set does include direct information on the racial composition of firms' applicants. Relative to their percentages in the general population, blacks and Latinos are overrepresented among those with ex-offender backgrounds. Moreover, although not a perfect proxy for ex-offender applicants to firms, they are significant predictors of hiring ex-offenders. We thus use these measures as proxies for ex-offender applicants, but we acknowledge their limitation and the continued existence of this applicant bias.

Table 2 provides the means of these establishment-level and employer-attitude characteristics stratified by whether the firms check backgrounds. Table 2 shows that firms that perform background checks are disproportionately represented in retail trade and service industries, are larger firms, and are those firms that are nonprofit and unionized. Those employers that indicate that their willingness to hire ex-offenders depends on the crime are also among those that disproportionately perform background checks. Alternatively, firms that do not perform checks are disproportionately represented as those in manufacturing and construction industries, are smaller firms, and are minority owned. Employers that are willing to hire ex-offenders are also those that are less likely to perform checks. These results are consistent with previous research (Holzer et al., 2007a, 2004).

Table 3 presents tobit regression results of employer hiring of ex-offenders. Models 1 to 5 under A are estimated for the percentage of jobs filled by ex-offenders over the last year, whereas Model 6 under B is estimated for the percentage of new hires. Model 1 includes only the variable that indicates whether the firm performs criminal background checks and shows a statistically significant, negative relationship with ex-offender hiring that is consistent with the mean difference in hiring between firms that perform checks and those that do not perform checks shown in Table 1. The tobit model predicts a difference of ex-offender hiring between firms that perform checks and those that do not perform checks of 0.006 percentage points, which is slightly lower than for the unadjusted mean difference in hiring between these firms shown in Table 1.

Model 2 includes the establishment characteristics into the model specification. With their inclusion, the magnitude of the coefficient for firm checks background is reduced slightly, which indicates that differences in establishment characteristics between firms that perform checks and those that do not perform checks account for part of the difference in hiring ex-

Table 2. Means (S.D.) of Firm Characteristics and Employer Attitude Variables

Firm Characteristics	All Firms (1)	Checks Criminal Background (2)	Does not Check Criminal Background (3)
Industry			
Manufacturing	0.171	0.127	0.206
	(0.377)	(0.334)	(0.405)
Retail	0.185	0.193	0.180
	(0.389)	(0.395)	(0.385)
Service	0.435	0.498	0.384
	(0.496)	(0.501)	(0.487)
Construction	0.034	0.022	0.044
	(0.181)	(0.146)	(0.205)
Transportation, communication, and utilities	0.053	0.062	0.047
	(0.224)	(0.241)	(0.211)
Firm Size			
1–19	0.172	0.081	0.244
	(0.377)	(0.274)	(0.430)
20–99	0.422	0.396	0.443
	(0.494)	(0.490)	(0.498)
100+	0.405	0.522	0.313
	(0.491)	(0.500)	(0.464)
Vacancy Rate			
0.000	0.560	0.444	0.653
	(0.497)	(0.498)	(0.477)
0.001–0.040	0.235	0.300	0.183
	(0.424)	(0.459)	(0.387)
> 0.040	0.205	0.256	0.165
	(0.404)	(0.437)	(0.371)
% Jobs Unskilled			
0.000	0.221	0.247	0.201
	(0.415)	(0.432)	(0.401)
0.001–0.200	0.237	0.236	0.238
	(0.426)	(0.426)	(0.427)
> 0.200	0.540	0.516	0.558
	(0.499)	(0.501)	(0.497)
Central city	0.263	0.255	0.270
	(0.441)	(0.436)	(0.445)
Collective bargaining	0.240	0.317	0.180
	(0.428)	(0.466)	(0.384)
Not-for-profit	0.213	0.313	0.134
	(0.410)	(0.464)	(0.341)
Minority-owned	0.216	0.160	0.262
	(0.412)	(0.367)	(0.440)
Black female applicants	0.073	0.094	0.056
	(0.143)	(0.168)	(0.116)
Black male applicants	0.089	0.109	0.073
	(0.159)	(0.178)	(0.141)
Latino applicants	0.338	0.314	0.358
	(0.346)	(0.328)	(0.360)
Willingness to Hire			
Willing to hire	0.197	0.127	0.253
	(0.398)	(0.334)	(0.435)
Depends on crime	0.341	0.407	0.288
	(0.474)	(0.492)	(0.453)
Unwilling to hire	0.399	0.389	0.407
	(0.490)	(0.488)	(0.492)
N	604	268	336

Notes: S.D. = standard deviation.

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Table 3. Tobit Regressions of Employer Hiring of Ex-Offenders

| | A. Percentage of Jobs Filled over Past Year | | | | | B. Percentage of New Hires |
	(1)	(2)	(3)	(4)	(5)	(6)
Firm Checks Criminal Background	–0.063**	–0.053*	–0.064**	–0.042	–0.073**	–0.219*
	(0.032)	(0.034)	(0.034)	(0.036)	(0.035)	(0.119)
Industry						
Manufacturing	—	0.089	0.049	0.047	0.052	0.401
		(0.087)	(0.090)	(0.092)	(0.090)	(0.319)
Retail	—	0.089	0.073	0.062	0.074	0.263
		(0.086)	(0.086)	(0.086)	(0.086)	(0.307)
Service	—	0.001	0.001	–0.011	0.002	0.059
		(0.084)	(0.085)	(0.087)	(0.085)	(0.304)
Construction	—	0.326***	0.287***	0.274***	0.289***	1.206***
		(0.106)	(0.107)	(0.108)	(0.107)	(0.401)
Transportation, communication, and utilities	—	0.172*	0.165*	0.142	0.167*	0.150
		(0.099)	(0.100)	(0.101)	(0.100)	(0.384)
Firm Size						
1–19	—	–0.031	–0.022	–0.013	–0.026	–0.405*
		(0.057)	(0.057)	(0.058)	(0.058)	(0.238)
20–99	—	–0.001	–0.009	0.007	–0.014	0.019
		(0.036)	(0.037)	(0.038)	(0.037)	(0.129)
Vacancy Rate						
0.000	—	0.037	0.048	0.044	0.052	0.120
		(0.044)	(0.044)	(0.045)	(0.045)	(0.163)
0.001–0.040	—	0.031	0.040	0.028	0.044	0.123
		(0.049)	(0.051)	(0.051)	(0.051)	(0.181)
% Jobs Unskilled						
0.000	—	–0.038	–0.012	–0.008	–0.011	0.075
		(0.043)	(0.043)	(0.044)	(0.043)	(0.164)
0.001–0.200	—	–0.075*	–0.070*	0.069*	–0.072*	–0.259*
		(0.043)	(0.042)	(0.043)	(0.042)	(0.151)
Central city	—	–0.040	–0.054	–0.057	–0.055	–0.241*
		(0.038)	(0.038)	(0.040)	(0.039)	(0.0143)
Collective bargaining	—	0.021	0.013	0.024	0.013	–0.099
		(0.040)	(0.040)	(0.040)	(0.040)	(0.146)
Not-for-profit	—	–0.026	–0.015	–0.000	–0.014	–0.052
		(0.048)	(0.049)	(0.049)	(0.049)	(0.179)
Minority-owned	—	0.002	–0.019	–0.027	–0.020	–0.204
		(0.039)	(0.040)	(0.041)	(0.040)	(0.148)
Black female applicants	—	—	–0.001	–0.001	–0.001	–0.002
			(0.001)	(0.001)	(0.001)	(0.004)
Black male applicants	—	—	0.003***	0.003***	0.003***	0.012***
			(0.001)	(0.001)	(0.001)	(0.004)
Latino applicants	—	—	0.002***	0.002***	0.002***	0.005***
			(0.000)	(0.000)	(0.000)	(0.002)
Willingness to Hire						
Willing to hire	—	—	—	0.172***	—	—
				(.0043)		
Depends on crime	—	—	—	0.092**	—	—
				(0.040)		
Probability > chi square	0.103	0.004	0.000	0.000	0.000	0.000
N	604	604	604	604	604	587

Notes: Standard errors are in parentheses.

*p < 0.10. **p < .05. ***p < .01.

offenders between these firms. In particular, the industry and the fraction of jobs at the firm that is unskilled account for much of this difference. Still, the coefficient for the firms that perform background checks remains statistically significant with their inclusion. Note that firms with less customer contact, such as those in construction and transportation, and firms with a large fraction of unskilled jobs are much more likely to hire ex-offenders.

Model 3 adds the racial composition of applicants to the model to account for the potential supply of ex-offenders to these firms. Black male and Latino applicants are related significantly and positively to ex-offender hiring as we expect given that ex-offenders are represented disproportionately among these groups. With the inclusion of these variables, the statistically significant and negative coefficient for the firms that perform background checks becomes larger in magnitude, as expected.

Model 4 adds variables that measured employer willingness to hire ex-offenders into the model specification to account for employer attitudes toward these workers. The model indicates that employer willingness to hire ex-offenders is related significantly and positively to actual ex-offender hiring. As noted, a problem in identifying the effect of checking on hiring ex-offenders is that firms that perform checks are likely also those firms that are unwilling to hire ex-offenders generally. When these variables are included in the model specification, the magnitude of the negative coefficient for the firms that perform background checks is reduced by about one third, and it loses its significance.

Despite this finding, the coefficient remains reasonably large in magnitude. A strong correlation is observed between employer willingness to hire ex-offenders and whether the firm performs background checks; thus, including these employer attitude variables may overcontrol for relevant factors in the model. Table A.1 in Appendix A presents logit regressions of whether the firm performs background checks and shows that employers that are willing to hire ex-offenders are much less likely to check criminal backgrounds, even when controls for firm characteristics are taken into account. Thus, the potential multicollinearity between employer willingness to hire ex-offenders and whether firms perform background checks is likely to bias toward zero the effect of background checks on hiring ex-offenders when employer attitudes toward these groups are included in the model. Because of this concern, for the remainder of the analysis, we do not include these employer-attitudes variables into the analysis.[11]

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11. Still, when employer-attitude measures are included in models in which the "firms that perform background checks" variable is disaggregated into "legally required

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Model 5 presents estimates of the effect of criminal checks on hiring ex-offenders that is exactly comparable with Model 3, except that employer responses that indicate they checked backgrounds with other methods are recoded as "firm did not check backgrounds" for reasons discussed earlier. When this coding is performed, we find larger negative effects of background checking. This finding could indicate that use of other methods, such as asking the applicants themselves, is not an effective method of checking because, for instance, many ex-offenders may not volunteer information about their criminal status on job applications. It is also consistent with Pager's (2003) finding of a substantial call-back rate among employers that do not formally check for criminal history record but ask about it on the application. The tobit model under column 5 predicts a difference of ex-offender hiring between firms that perform checks and those that do not check of 0.010 percentage points, which is slightly higher than for that shown in Model 1. Following these findings, for the remainder of the analysis, employer responses that they performed background checks with other methods are recoded to indicate that the firm did not check backgrounds.

Model 6 presents estimates of the effect of background checks on the alternative measure of ex-offender hiring, which is the percentage of new hires who are ex-offenders. We find a significant and negative effect of checking on ex-offender hiring using this alternative measure. Moreover, many establishment characteristics—such as industry, the fraction of unskilled jobs, and the racial composition of applicants at the firm—that predict ex-offender hiring for our main measure of hiring also predict hiring for the alternative measure. However, larger and suburban firms are more likely to hire ex-offenders using our alternative measure of hiring.

Table 4 displays the results of a series of regressions that provide alternative strategies to identify the relationship between background checking and ex-offender hiring. All regressions include control variables listed in Table 3 Model 3. Columns 1 and 2 for Model A include two tobit regression estimates of the effect of background checks on the two prospective measures of hiring ex-offenders. As noted, if employer attitudes toward ex-offenders are driving whether firms check backgrounds and whether they hire ex-offenders, then the effect of checking also should be strongly related to their prospective hiring of ex-offenders. The results from both of these regressions indicate that employers' prospective hiring of ex-offenders is unaffected by whether the firm checks backgrounds. Although

to check" and "not legally required," as in Table 4, the statistical significance and magnitude of the coefficient for "legally required to check" is largely unaffected, as one should expect, given that the legal mandates are somewhat independent of employer attitudes toward ex-offenders.

it is not shown here, many establishment characteristics that predict actual hiring also predict prospective hiring of ex-offenders.

Table 4. Tobit Regressions of Employer Hiring of Ex-Offenders by Legal Requirements to Check

	Prospective		Actual	
	% of Jobs That Would Be Filled Currently (1)	% of Jobs That Would Be Filled Over Next Year (2)	% of Jobs Filled in Past Year (3)	% of New Hires in Past Year (4)
Model A.				
Firm checks criminal background	0.010	–0.012	—	—
	(0.021)	(0.024)		
Probability > chi square	0.000	0.010	—	—
Model B.				
Legally Required				
Legally required to perform background checks	—	—	–0.137**	–0.409**
			(0.058)	(0.205)
Not legally required to perform background checks	—	—	0.034	0.109
			(0.040)	(0.142)
Probability > chi square	—	—	0.000	0.000
Model C.				
Legally required and use criminal justice agencies	—	—	–0.266**	–0.858**
			(0.121)	(0.398)
Legally required and use private agencies	—	—	–0.037	–0.112
			(0.075)	(0.252)
Not legally required and use criminal justice agencies	—	—	0.017	0.004
			(0.086)	(0.175)
Not legally required and use private agencies	—	—	0.028	0.175
			(0.086)	(0.299)
Probability > chi square	—	—	0.000	0.000
N	604	604	604	587

Notes: All equations include all control variables listed in Table 3, Model 3. The reference variable for all models is "firm did not check criminal background of applicants." Standard errors are in parentheses.
**$p < .05$.

Columns 3 and 4 under Model B present coefficients for whether the firm is legally required to perform background checks from two equations that predict our two measures of actual hiring of ex-offenders. Employer attitudes toward ex-offenders should not affect whether firms are legally required to check, so whether a firm is legally required to perform background checks should have a direct effect on ex-offender hiring that is independent of these attitudes. The coefficient estimates for whether

employers are legally required to perform background checks for both alternative measures of actual hiring of ex-offenders are significant and negative. Moreover, these coefficient estimates are larger in magnitude than those for whether the firm checks backgrounds generally for the comparable equations in Table 2 Model 5 for percent of jobs filled and Model 6 for percent of new hires. Interestingly, the coefficients for firms that perform background checks but are not legally required to check are not significant and are positive in sign.

Some employers may perceive that they are legally required to perform background checks when in fact they are not. To identify better those employers that are actually required to check backgrounds, we separate those employers that indicate they are legally required to check into (1) those that use criminal justice agencies or (2) those that use private agencies. In California, as we noted, employers that are statutorily required to check backgrounds for certain jobs must use the public repository to do so. Thus, those employers that indicate that they are legally required to perform background checks and do so using criminal justice methods are more likely to be actually required to perform checks. If so, we expect that the negative effect of performing background checks for these employers should be stronger than for those that indicate that they are legally required to perform checks but use private agencies. We also separate those employers that indicate that they are not legally required to perform checks into (1) those that used criminal justice agencies versus (2) those that use private agencies.[12]

Columns 3 and 4 under Model C present coefficients for whether the firm is legally required to perform checks and the method used to perform background checks from two equations that predict our two measures of actual hiring of ex-offenders. As expected, we find that the negative and significant coefficients for firms that are legally required and use criminal justice agencies is much stronger than those that are legally required to perform checks and use private agencies (and those that are generally legally required to perform background checks [in Models B above]) for

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12. Employers that indicate that they were legally required to check are disproportionately firms in service industries, larger, unionized, and not-for-profit. Firms that are legally required to check and check using criminal justice methods are even more disproportionately firms in service industries, larger, unionized, and not-for-profit. See Table A.3 in Appendix A for the mean firm characteristics across firms that were legally required to perform background checks (or not), cross-referenced by the method used to perform checks.

both hiring outcome variables.[13] These results strongly suggest that government statutes requiring background screening have real, negative effects on hiring ex-offenders.

These results contrast sharply with the hiring practices of those that check backgrounds but are not legally required to do so. Two factors may help account for this finding. First, some employers may perform background checks to gain additional information about the ex-offenders whom they may consider hiring to help make intelligent, risk-assessed hiring decisions. Second, some employers may perform checks to protect themselves against possible negligent hiring lawsuits. We examine the first question by exploiting the information revealed by employers about their attitudes toward hiring ex-offenders. We stratified the sample by employers' stated willingness to hire ex-offenders, and we examined the extent to which employers check backgrounds and the effect of checking on hiring ex-offenders across these employers.

If some employers perform checks to glean additional information, we expected that employers that indicate that their willingness to hire ex-offenders depends on the crime should be more likely to conduct background checks and to use those background checks that may provide more accurate information than willing, and perhaps, unwilling employers. We interpreted that for those employers whose willingness to hire ex-offenders depends on the crime, the more information they receive about the ex-offenders seems to help them assess their willingness to hire. The information that may make a difference in whether these employers are ultimately willing to hire or actually do hire ex-offenders may include the type of crime for which the offenders were charged (i.e., violent or nonviolent), how long they have been out of prison, whether they have gained any work experience since prison, among other factors, as documented by previous research (Holzer et al., 2004).

Table 5 shows the mean level of background checks as well as the method of performing background checks used for these employers. As expected, employers that indicate that their willingness to hire ex-offenders depends on the crime are more likely to perform background checks than even unwilling employers. Moreover, at least compared with willing employers, "depends on crime" employers are much more likely to use criminal justice agencies to perform checks. Recent research indicates that these methods of checking are more accurate than private agencies. Private background checks are shown to produce substantially more false negatives (a true ex-offender, but not revealed in a criminal background

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13. When we include employer-attitude variables into this equation, the coefficient for this variable (legally required to check and used criminal justice methods) is unaffected and remains statistically significant.

Table 5. Means of Criminal Background Checks by Employers' Stated Willingness to Hire Ex-Offenders

	Willing to Hire	Depends on Crime	Unwilling to Hire
A. Full Sample			
Firm checks criminal background	0.286	0.531	0.433
	(0.454)	(0.500)	(0.497)
N	119	206	279
B. Checked Criminal Background Sample			
Method			
Check with criminal justice agencies	0.154	0.390	0.429
	(0.323)	(0.472)	(0.474)
Check with private sources	0.615	0.484	0.452
	(0.505)	(0.494)	(0.481)
Check with other methods	0.231	0.136	0.119
	(0.285)	(0.226)	(0.186)
N	35	109	121

*$p < .10$. **$p < .05$. ***$p < .01$.

check) than are public repositories (Bushway et al., 2007). That information is also of questionable quality, particularly if the information came from multiple sources or does not include disposition information. However, given the restrictions on non-criminal justice use of criminal history repositories in California, it is not surprising that private sources are used more frequently than the public repository.

Table 6 focuses on the percentage of jobs filled by ex-offenders over the last year only because the results do not differ between both hiring dependent variables. It shows tobit estimates of hiring ex-offenders as a function of different kinds of background-checking practices for the sample stratified by employers' willingness to hire ex-offenders. Because of the smaller sample sizes, we include the broader categories of "legally required to check" and "method of checking" rather than disaggregating these as we did above. We find no significant effect of performing background checks on hiring for employers that are unwilling to hire ex-offenders, probably because these employers are less likely to hire ex-offenders to begin with (as Table A.3 confirms).

If some employers perform checks to glean additional information, we expect that the negative effect of checking for those employers whose willingness to hire ex-offenders depends on the crime should be weaker than for the willing and, perhaps, unwilling employers. Table 6 reveals that in Model A for both measures of actual hiring of ex-offenders, the effect of legal requirements to perform background checks is less negative for those employers that indicate that their willingness to hire ex-offenders depends on the crime (although none of the coefficients is statistically significant). We do find evidence that the effect of checking when employers are not

Table 6. Tobit Regressions of Employer Hiring of Ex-Offenders: Sample Stratified by Employers' Stated Willingness to Hire Ex-Offenders

| | Sample Stratified by Employer Willingness to Hire Ex-Offender: | | | | | |
| | *Willing to Hire* | | *Depends on Crime* | | *Unwilling to Hire* | |
	% of Jobs Filled (1)	% of New Hires (2)	% of Jobs Filled (3)	% of New Hires (4)	% of Jobs Filled (5)	% of New Hires (6)
Model A. Legally Required						
Legally required to perform background checks	-0.174 (0.148)	-0.164 (0.143)	-0.015 (0.020)	-0.125 (0.225)	-0.212 (0.206)	-0.119 (0.372)
Not legally required to perform background checks	0.131 (0.098)	0.085 (0.207)	0.032** (0.014)	0.235* (0.125)	0.028 (0.153)	-0.100 (0.353)
Model B. Method of Checking						
Check with criminal justice agencies	-0.449** (0.198)	0.444** (0.221)	-0.001 (0.022)	-0.177 (0.245)	-0.123 (0.204)	-0.259 (0.591)
Check with private sources	-0.146 (0.112)	-0.186 (0.174)	0.007 (0.015)	0.069 (0.168)	-0.079 (0.170)	-0.203 (0.303)
N	119	119	206	206	279	279

Notes: All equations include all control variables listed in Table 3, Model 3. The reference variable for all equations is "firm did not check criminal background of applicants." Standard errors are in parentheses.
*$p < .10$. **$p < .05$. ***$p < .01$.

legally required to perform checks is positive and significant for "depends on crime" employers for both measures of actual hiring.

Table 6 also reveals that in Model B for both measures of actual hiring of ex-offenders, the negative effect of performing checks with criminal justice agencies is smaller in magnitude for "depends on crime" employers (although for both "unwilling" and "depends on crime" employers, the effect is not significant). It is negative and significant for willing employers. Finally, the effect of "performing checks with private sources" is generally insignificant for all employers but is positive in sign for "depends on crime" employers. Thus, taken together, the evidence in Tables 4 and 5 is consistent with the idea that some firms perform checks to gain information and not necessarily to exclude altogether the hiring of ex-offenders. Indeed, we find evidence that some background checking may lead to the hiring of ex-offenders.

Because of the availability of relatively quick and inexpensive methods of performing background checks that can be accessed through private companies on the Internet, it is possible that some employers are using these methods of checking to protect themselves against potential negligent hiring lawsuits. The employers that perform checks for this reason may or may not be adverse to hiring ex-offenders, but if they do hire them, they have evidence of checking backgrounds that may act as a defense against such lawsuits.[14] If some employers are performing checks to protect themselves from these lawsuits, then the effect of background checks on hiring ex-offenders should be less negative for those employers that use private as opposed to public methods of checking.[15]

The evidence in Table 7 is consistent with this idea. For the full sample of employers, we find that the negative effect of performing background checks using criminal justice agencies on both actual hiring measures is larger in magnitude than the effect of performing checks using private

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14. In fact, evidence from the data is consistent with the idea that employers that use private sources of performing background checks are much less adverse to hiring ex-offenders than employers that use criminal justice agencies. About 44% of employers that use criminal justices agencies indicate that they are unwilling to hire ex-offenders, whereas about 36% of employers indicate this for those that use private methods of performing background checks. Alternatively put, about 18% of employers that use private methods of performing background checks are willing to hire ex-offenders, whereas the equivalent figure is 9% for employers that use criminal justices methods.

15. It is possible to argue that any effect will be driven by the lower quality information available from the private sources. However, the greatest source of inaccuracy is false negatives—which would also mean that employers that use private companies would be less likely to know they hired ex-offenders. As a result, this source of inaccuracy would bias the coefficient for private companies away from zero (more negative).

sources. Restricting the sample in group B to those employers that checked criminal backgrounds produces a similar set of findings.

Table 7. Tobit Regressions of Employer Hiring of Ex-Offenders for Method Used to Check Criminal Backgrounds

| | A. Full Sample | | B. Checked Criminal Background Sample | |
	% of Jobs Filled in Past Year (1)	% of New Hires in Past Year (2)	% of Jobs Filled in Past Year (3)	% of New Hires in Past Year (4)
Checked with criminal justice agencies	–0.142**	–0.363*	–0.024**	–0.165*
	(0.063)	(0.221)	(0.011)	(0.094)
Checked with private sources	–0.009	–0.070	—	—
	(0.042)	(0.154)		
N	604	587	237	237

Notes: All equations include all control variables listed in Table 3, Model 3. The reference variable in Models 1 and 2 is "firm did not check." The reference variable in Models 3 and 4 is "firm checked with private sources." Standard errors are in parentheses.
*$p < .10$. **$p < .05$. ***$p < .01$.

Conclusion

The growing presence of men with criminal backgrounds in society coupled with the rapid increase in employers' use of criminal background checks begs the question of what effect such background checks have on hiring ex-offenders. In this article, we have examined the effect of employer-initiated criminal background checks on the actual hiring of ex-offenders using an establishment survey taken in 2001 in Los Angeles. We find evidence that use of background checks is negatively related to the hiring of ex-offenders.

Although these data represent the best available information to address this issue, many empirical concerns remain. Major concerns in the analysis include whether the effect of performing background checks on hiring ex-offenders is spurious; that is, it could operate through employer attitudes toward ex-offenders. Employer attitudes toward ex-offenders are strongly correlated with whether the employer checks the criminal backgrounds of their applicants, which could explain both employer use of background checks and their actual hiring behavior. The major concerns also include whether the results are driven by unobserved ex-offender application rates across firms that perform checks and those that do not perform checks, which leads to upward bias in these effects. Ex-offenders will be less likely to apply to firms that perform background checks for fear they will not be hired; this behavior would cause a spurious relationship between checking firms and hiring ex-offenders. We used a variety of empirical strategies to

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examine and address these concerns, which included estimating similar models for prospective measures of employer hiring of ex-offenders, whether the negative effect of criminal background checks is larger in magnitude for those employers that indicate that their checking is legally required, and using proxies for ex-offender applicants. The results of these efforts are generally supportive of the idea that performing background checks has real, negative effects on hiring ex-offenders.

Figure 3 summarizes the results of the study by providing the predicted hiring rates for employers divided by method and reason for performing background checks using the models reported in Tables 3 and 4. Panel A reports the average finding from the data. On average, 1.1% of the jobs filled in the past year were filled by ex-offenders in firms that check, whereas 2.2% of the jobs filled in the past year were filled by ex-offenders in firms that do not check. This sizeable difference is consistent with policy efforts to restrict background checks.

Figure 3. Predicted Means in Hiring Ex-Offenders by Whether and How Employers Check Criminal Background of Applicants
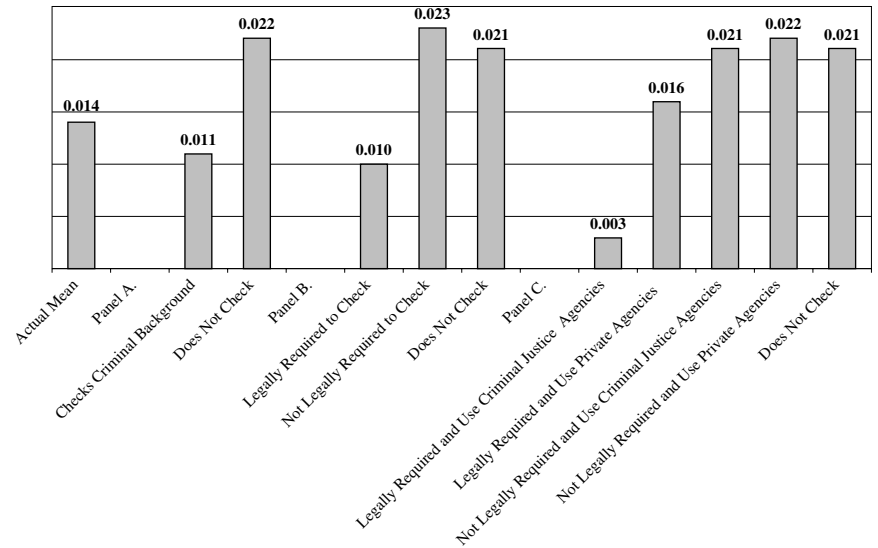
Notes: Panel A: Predicted means derived from model estimates from Table 3, Model 5. Panel B: Predicted means derived from Table 4, Model B. Panel C: Predicted means derived from Table 4, Model C.

However, our evidence does not support the claim that the hiring difference is caused by the act of performing background checks itself. Panel B compares the predicted hiring rates by firms that report being required to perform checks versus those firms that perform checks but are not

required to do so. Firms that perform checks but are not required to do so hire ex-offenders at the same rate as those firms that do not perform checks (2.3%). Panel C breaks down those employers that are legally required to perform checks into (1) those employers that check using the California public repository and (2) those employers that report using other sources of information. The results are stark. Firms that are legally required to perform checks and use the public repository virtually never hire ex-offenders (0.3%). Those firms that believe they are legally required to perform checks but use private sources hired ex-offenders 1.6% of the time. We conclude that the average effect of performing background checks on hiring is driven nearly entirely by California statutes that require background checks and restrict hiring of ex-offenders. These results suggest that efforts to improve ex-offender hiring need to be focused on state statutes that require background checks to make sure they are aligned with legitimate concerns about ex-offenders and not on background checks themselves.

Although interesting from a policy perspective, this finding also creates an interesting puzzle. Why do firms that are not legally required to perform checks do so if they hire ex-offenders at the same rate as firms that do not perform checks? We find evidence that two factors may account for this puzzle. First, some employers perform background checks to gain additional information about the ex-offenders whom they may consider hiring to help make risk-assessed hiring decisions. Second, some employers may perform checks to protect themselves against possible negligent hiring lawsuits. Those employers that seek additional information about ex-offenders are more likely to check criminal backgrounds than employers that are willing or unwilling to hire these men. They also hire more of these men when they check criminal backgrounds when not legally required to do so. Finally, the level of actual hiring of ex-offenders at the firm is not affected by whether employers use private sources to check criminal backgrounds, whereas use of criminal justice agencies to check records lowers this level of hiring. Because private sources are relatively quick and inexpensive to use, this evidence is consistent with the idea that some employers use these methods of performing background checks to protect themselves against potential negligent hiring lawsuits rather than to exclude ex-offenders completely from employment.

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Appendix A

Table A.1. Logit Regressions of "Firm Checks Criminal Backgrounds of Applicants"

	(1)	(2)
Willingness to Hire		
Willing to hire	−0.700***	−0.631***
	(.0.232)	(.0.233)
Depends on crime	0.364**	0.362**
	(0.162)	(0.164)
Industry		
Manufacturing	—	−0.919**
		(0.470)
Retail	—	−0.580
		(0.452)
Service	—	−0.625
		(0.426)
Construction	—	−1.007*
		(0.569)
Transportation, communication, and utilities	—	0.408
		(0.574)
Firm Size		
1–19	—	−1.573***
		(0.335)
20–99	—	−0.574***
		(0.212)
Vacancy Rate		
0.000	—	−0.712***
		(0.251)
0.001–0.040	—	−0.316
		(0.296)
% Jobs Unskilled		
0.000	—	0.318
		(0.251)
0.001–0.200	—	−0.237
		(0.236)
Central city	—	−0.325
		(0.218)
Collective bargaining	—	0.265
		(0.240)
Not-for-profit	—	0.748***
		(0.262)
Minority-owned	—	−0.070
		(0.241)
Black female applicants	—	0.007
		(0.007)
Black male applicants	—	0.011*
		(0.007)
Latino applicants	—	−0.001
		(0.00f3)
Probability > chi square	0.000	0.000
N	604	604

Notes: Standard errors are reported in parentheses. Reference variable for industry is FIRE.
*$p < .10$. **$p < .05$. ***$p < .01$.

Table A.2. Means (S.D.) of Variables by Legal Requirement to Check

Firm Characteristics	Legally Required to Check (1)	Not Legally Required (2)	Legally Required and Criminal Justice Agency (3)	Legally Required and Private Source (4)	Not Legally Required and Criminal Justice Agency (5)	Not Legally Required and Private Source (6)
Industry						
Manufacturing	0.025	0.189	0.000	0.086	0.200	0.186
	(0.157)	(0.394)	(0.000)	(0.284)	(0.410)	(0.392)
Retail	0.117	0.241	0.031	0.229	0.150	0.186
	(0.322)	(0.430)	(0.175)	(0.426)	(0.366)	(0.392)
Service	0.742	0.319	0.906	0.486	0.350	0.371
	(0.440)	(0.468)	(0.294)	(0.507)	(0.489)	(0.487)
Construction	0.008	0.026	0.000	0.000	0.000	0.043
	(0.091)	(0.159)	(0.000)	(0.000)	(0.000)	(0.204)
Transportation, communication, and utilities	0.050	0.095	0.031	0.086	0.150	0.114
	(0.219)	(0.294)	(0.175)	(0.284)	(0.366)	(0.320)
Firm Size						
1–19	0.078	0.087	0.082	0.029	0.158	0.071
	(0.269)	(0.283)	(0.276)	(0.169)	(0.375)	(0.259)
20–99	0.379	0.409	0.377	0.286	0.368	0.343
	(0.487)	(0.494)	(0.489)	(0.458)	(0.496)	(0.478)
100+	0.543	0.504	0.540	0.686	0.474	0.586
	(0.500)	(0.502)	(0.502)	(0.471)	(0.513)	(0.496)
Central city	0.233	0.241	0.219	0.257	0.300	0.257
	(0.424)	(0.430)	(0.417)	(0.443)	(0.471)	(0.440)
Collective bargaining	0.435	0.209	0.508	0.235	0.211	0.257
	(0.497)	(0.408)	(0.504)	(0.431)	(0.419)	(0.440)
Not-for-profit	0.525	0.129	0.703	0.200	0.200	0.143
	(0.501)	(0.337)	(0.461)	(0.406)	(0.410)	(0.352)

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Firm Characteristics	Legally Required to Check (1)	Not Legally Required (2)	Legally Required and Criminal Justice Agency (3)	Legally Required and Private Source (4)	Not Legally Required and Criminal Justice Agency (5)	Not Legally Required and Private Source (6)
Minority-owned	0.167	0.138	0.203	0.171	0.150	0.086
	(0.374)	(0.346)	(0.406)	(0.382)	(0.366)	(0.282)
Black female applicants	0.126	0.066	0.130	0.153	0.081	0.062
	(0.188)	(0.128)	(0.198)	(0.205)	(0.179)	(0.112)
Black male applicants	0.109	0.095	0.073	0.167	0.097	0.098
	(0.174)	(0.148)	(0.126)	(0.224)	(0.170)	(0.150)
Latino applicants	0.312	0.333	0.310	0.314	0.410	0.287
	(0.310)	(0.343)	(0.307)	(0.300)	(0.348)	(0.320)
Willingness to Hire						
Willing to hire	0.083	0.181	0.094	0.057	0.100	0.200
	(0.277)	(0.386)	(0.294)	(0.236)	(0.308)	(0.403)
Depends on crime	0.441	0.388	0.453	0.486	0.450	0.400
	(0.499)	(0.489)	(0.502)	(0.507)	(0.510)	(0.493)
Unwilling to hire	0.433	0.387	0.391	0.429	0.450	0.314
	(0.497)	(0.489)	(0.492)	(0.502)	(0.510)	(0.468)
N	120	116	64	35	20	70

Notes: S.D. = standard deviation.

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Table A.3. Means (S.D.) of Actual Hiring Measures of Ex-Offenders by Employer Willingness to Hire

Ex-Offender Hiring Outcomes	Willing to Hire (1)	Depends on Crime (2)	Unwilling to Hire (3)
Actual			
% of jobs filled in past year	0.028	0.010	0.007
	(0.144)	(0.091)	(0.019)
% of new hires in past year	0.070	0.051	0.037
	(0.236)	(0.245)	(0.409)
N	119	206	279