

Punishment Without End

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SUMMARY |

Criminal justice punishments are an investment that societies make to protect the safety and order of communities. Following decades of rising prison populations, however, U.S. policymakers are beginning to wonder if they have invested too much in punishment. Policies adopted in previous decades now incarcerate large numbers of Americans and impose considerable costs on states. Mass incarceration policies are costly and potentially iatrogenic—i.e. they may transform offenders into repeat offenders. Public officials and citizens alike often assume that known offenders pose a permanent risk of future offending. This belief entangles millions of offenders in the justice system for life, with little hope of being fully restored to a non-criminal status. Yet, research indicates that risks posed by ex-offenders decline over time. At some point, which this report terms “risk convergence,” the probability that an ex-offender will commit a new offense reaches a level that is indistinguishable from the general public. Societies gain nothing from ineffective and inefficient criminal justice policies that impose punishments on offenders far beyond the point of risk convergence. These policies waste resources and hinder ex-offenders struggling to rebuild legitimate lives when they pose no greater risk to the public safety than any of their neighbors. There are, of course, solutions to this problem. This report addresses some of the solutions being implemented across the country.

INTRODUCTION |

The stated goal of the correctional system is to protect the public by punishing and rehabilitating criminal offenders, thereby holding offenders accountable for their behavior and deterring future crime. How much punishment is required to achieve these goals? Is it possible to buy too much punishment? How would policymakers know if they are paying too much?

It is possible to identify the point at which paying for more punishment becomes irrational from a purely economic perspective. This point could be called “risk convergence,” or the moment when the probability of recidivism for an ex-offender living a law-abiding lifestyle has declined so much that it converges with the risk of offending for all other individuals in the general population.

Criminal justice punishment often extends beyond the point of risk convergence, and this imposes immense costs on the community as well as on punished individuals. Ex-offenders lose many rights and privileges and are excluded from some aspects of social life, often permanently. Such permanent punishments interfere with ex-offender reintegration. To reduce recidivism, improve public safety, and create a more cost-effective justice system, policies should promote reintegration by helping ex-offenders become productive and contributing members of society. Public policies should include incentives for ex-offenders to remain crime-free and to regain their community status by overcoming the barriers that inhibit successful reintegration. A good starting point for improving justice policies would be to focus on the moment of risk convergence and to adjust offender incentives accordingly.

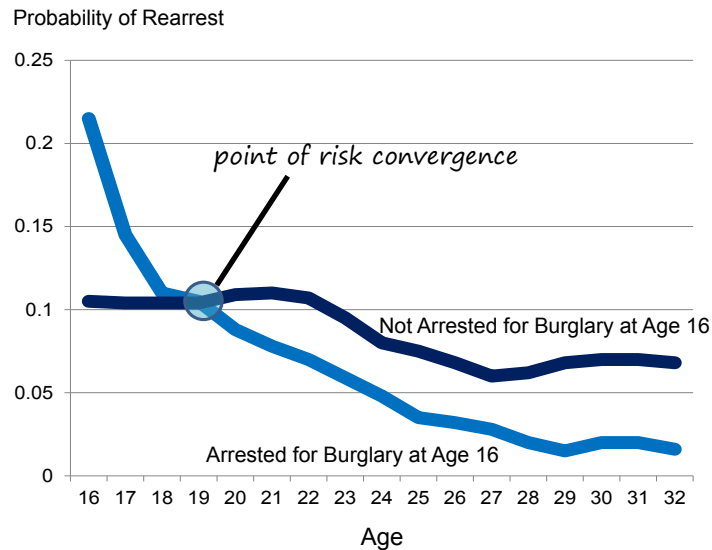
RISK CONVERGENCE |

Most offenders eventually stop committing crime (Langan and Levin 2002). When ex-offenders have served their full sentences and have remained crime-free for a sufficient period of time, their chances of committing another crime eventually drop to a level which is equivalent to that of the general public. Blumstein and Nakamura (2009) called this point in time “redemption.” We prefer to call it “risk convergence.”

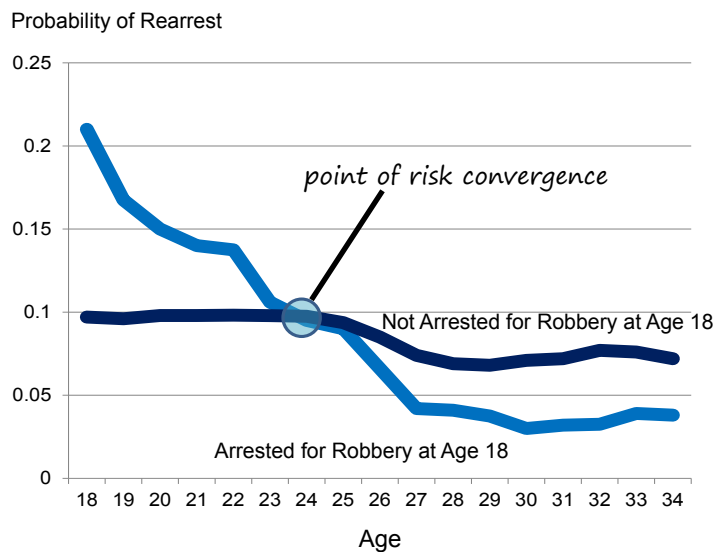
Blumstein and Nakamura (2009) described a statistical technique for determining the duration of time it takes an individual with a criminal record to reach the point of risk convergence. The calculation involves an actuarial prediction of the probability of recidivism. They analyzed a sample of more than 88,000 first-time offenders convicted in New York in 1980 to calculate the amount of time required to reach risk convergence. Their results suggest that the risk of offending continues to decline the longer ex-offenders have no contact with the legal system. The rate of decline depends on the previous offense type and the age at which the offender committed the previous offense. Violent offenders and younger offenders need longer durations of time to reach the point of risk convergence. In Blumstein and Nakamura’s (2009) study, individuals who committed a robbery at age 18 required nearly eight crime-free years to reach risk convergence, but 18 year olds arrested for burglary required fewer than four years to reach risk convergence. Younger offenders (e.g., 16 year olds) required more time (5 years) while older offenders (e.g., 20 year olds) required less time (3 years) to reach risk convergence following their first arrest for burglary (see

figure below). Similar research by Bushway, Nieuwbeerta and Blokland (2011) found that repeat offenders required more time (20 years or more) to have an offense likelihood comparable to non-offenders. These studies indicate a positive association between number of offenses committed and time until risk convergence and a negative association between age and time until risk convergence.

By year five, the probability of arrest for 16 year olds arrested for burglary was equal to that of 16 year olds not arrested for burglary



By year eight, the probability of arrest for 18 year olds arrested for robbery was equal to that of 18 year olds not arrested for robbery



Source: Blumstein and Nakamura (2009)

Of course, there is never a point at which an ex-offender would have zero risk of committing a new offense. There is always some chance that any person will commit a crime and be arrested. At the point of risk convergence, however, the chance of new crime is no greater among the ex-offender population than it is among the entire population. Researchers cannot pinpoint which specific individuals will commit new criminal offenses, but this is just as true for the general public as it is for ex-offenders. A criminal record provides some information about an individual's risk of committing another offense, but records are most useful for predicting short-term behavior. There is little actuarial difference between individuals who committed an offense many years ago and individuals with no criminal record (Kurlychek, Brame and Bushway 2007).

When the risk of recidivism for an ex-offender converges with the risk of the general public, it does not serve public policy goals to place permanent obstacles in the offender's path that only make it more difficult to reintegrate into the community and to build a post-crime life. Policies that impose permanent punishments can only serve the purposes of shaming and stigmatizing ex-offenders and reducing available opportunities for them to support their families and contribute to their communities as employed taxpaying citizens. The question for policymakers and taxpayers is, "just how much public shaming can we afford?"

BARRIERS TO REINTEGRATION |

Nearly all inmates *re-enter* their communities upon release from prison, but many are unable to *reintegrate* into society. It is important to distinguish between these two terms. Reentry is simply the release from prison into the community, and 95 percent of inmates eventually leave prison (Mallenhoff 2009). Reintegration, on the other hand, refers to the ability of former inmates to become productive and functioning members of their communities. To achieve reintegration, ex-offenders must be able to secure the political, financial, and social assets necessary to avoid reoffending (Macrae 1999).

Recent statistics indicate that more than 40 percent of ex-offenders return to prison within three years of their release (Pew Center on the States 2011). If successful reintegration were more common, the total *recidivism* rate would decrease. Several barriers prevent the successful reintegration of ex-offenders. Most have difficulty obtaining employment. In addition to the stigma of a criminal conviction, many lack vocational skills and they have obvious gaps in work history due to incarceration (Fahey, Roberts and Engel 2006). Community supports and interventions are not widely available to help ex-offenders find housing, apply for government benefits, and access treatment services (Thompson 2003). When ex-offenders have no jobs, no stable residence and no family or friends to provide even temporary housing, they have little stake in the well-being of their communities and are more likely to engage in anti-social behavior (Petersilia 2001). Some may turn to crime as an easy way to make money, while others may use drugs or alcohol to cope with a lack of opportunities and an abundance of free time. Barriers to reintegration remain in an offender's life indefinitely, making it much harder to obtain employment, to become financially stable, to secure housing, and to reclaim the basic rights of citizenship.

RECIDIVISM

Much like initial contact with the criminal justice system, recidivism involves a social dynamic between law enforcement and characteristics of the individual. The following factors influence the likelihood of an individual becoming involved in the system repeatedly:

AGE AND RACE

There is an inverse relationship between recidivism and age at release from custody. Those under age 18 at release recidivate at a rate that is nearly twice as high as those age 45 or older (Langan and Levin 2002). In terms of race, a study of more than 270,000 inmates released from 15 states found that Blacks had the highest recidivism rate of all racial groups (Langan and Levin 2002). However, this study used official statistics, which may not only reveal something about the relationship between race and crime, but also about aspects of policing practices, legal system discrimination, and social conditions (Piquero and Brame 2008). There is an interactive effect of age and race such that Black youth experience disproportionately high contact with law enforcement, which increases their likelihood of arrest and subsequent recidivism (Weitzer and Tuch 1999).

SOCIOECONOMIC FACTORS

Unemployment prevents ex-offenders from becoming productive workers capable of achieving financial stability, which makes criminal behavior more appealing (Pogarsky 2006). Unemployment also increases the risk of a technical rule violation (TRV) because frequently, parole or probation conditions stipulate that ex-offenders must maintain employment (Barklage, Miller and Bonham 2006). Many ex-offenders return to neighborhoods with high unemployment and few opportunities for economic growth (Kubrin and Stewart 2006). This results in homelessness for some ex-offenders and increases the likelihood of recidivism (Kushel et al. 2005).

CHILDHOOD JUSTICE SYSTEM INVOLVEMENT

The younger an individual is at the time of first arrest, the greater the likelihood that he or she will commit additional offenses (Kurlychek, Brame and Bushway 2006) and/or be re-arrested. A study of 999 adjudicated delinquents in New York found that 85 percent were re-arrested at least once before the age of 28 (Colman, Kim, Mitchell-Herzfeld and Shady 2009). Indirect involvement with the justice system (children with an incarcerated parent) increases the risk of juvenile delinquency. Such children may suffer from low self-esteem, depression and emotional withdrawal and may exhibit disruptive behaviors during childhood (Geller, Garfinkel, Cooper and Mincy 2009). Parental incarceration increases the prevalence of single-parent households and compounds financial hardships, both of which intensify the likelihood that children of incarcerated parents will be involved in the justice system at some point in their lives (Travis 2005b).

RELATIONSHIPS

Relationships between ex-offenders and their family members and peers may either facilitate the development of a pro-social identity or increase the likelihood of recidivism. Relationships with supportive peers not involved in criminal behavior may prevent reoffending, while relationships with peers involved in criminal activity or substance abuse may be associated with a higher risk of reoffending (Visher and Travis 2003). Family members who offer housing, emotional support and acceptance increase the likelihood of post-incarceration success for ex-offenders (Visher and Travis 2003).

SUBSTANCE ABUSE

The association between drugs and crime may be reciprocal, especially among adolescents (Menard, Mihalic, and Huizinga 2001). There are three explanations for the relationship between drugs and crime: the effects of certain drugs influence users to commit a crime; users commit crime to generate money to buy more drugs; and drug dealers use violence to maintain territory and settle disputes (Bean 2008). The link between drugs and crime is reflected in arrest statistics. The majority of a large sample of arrestees in 10 major U.S. cities had traces of drugs in their system at the time of arrest (Stevens 2007). Youth who frequently abuse substances are twice as likely to be re-arrested (Stoolmiller and Blechman 2005). Methamphetamine abuse, heroin abuse and the combination of drug and alcohol abuse are predictive of recidivism (Cartier, Farabee and Prendergast 2006; Travis and Waul 2003; Dowden and Brown 2002).

MENTAL ILLNESS

More than 800,000 people enter U.S. jails with severe mental disorder(s) each year (McNiel and Binder 2007). Incarceration may exacerbate mental illness. While fewer than one-third of federal and state inmates were taking psychiatric medications prior to entering prison, more than two-thirds were taking psychiatric medications following their admission (Wilper et al. 2009). Those who do not receive adequate care for mental illness have an increased likelihood of arrest and a higher rate of incarceration after arrest (Human Rights Watch 2003). Combined, mental illness and substance abuse produce a far greater likelihood of future offending. A study of 61,000 prison inmates in Texas found that those with a psychiatric diagnosis and a substance abuse disorder had a considerably higher rate of repeat incarceration when compared to inmates with either a psychiatric diagnosis or a substance abuse disorder (Baillargeon et al. 2010).

EMPLOYMENT

Meaningful employment is an essential building block for successful reintegration (Thompson and Cummings 2010). When faced with two otherwise equally qualified individuals, employers are inherently less likely to hire an ex-offender (Fahey, Roberts and Engel 2006). Some employers worry that ex-offenders will be lazy or unreliable workers, while others fear that they may steal from the company or victimize customers or other employees (Fahey, Roberts and Engel 2006). According to Title VII of the Civil Rights Act of 1964, employers may use criminal records when making employment determinations, and this is only considered discrimination if a decision to reject an applicant was based on race, color, religion, sex or national origin (Equal Opportunity Employment Commission 2000). Several states have passed laws permitting employers to reject applicants with prior convictions or arrests (Harris and Keller 2005). Ex-offenders may be excluded from working in certain occupations. Those who simply had an arrest as a juvenile are often unable to work in child care, education and many health care positions, and some unions deny membership to ex-offenders (Petersilia 2005).

In addition to being hindered by the impact of fear and stigma, many ex-offenders lack the education and experience to secure employment. Poorly developed interpersonal skills may harm their job prospects even further (Fahey, Roberts and Engel 2006). Employers may refrain from hiring ex-offenders to avoid lawsuits that would occur if employees were to commit criminal offenses while on the job. These concerns may be aggravated in the case of ex-offenders that are racial or ethnic minorities because employers may already fear being accused of discrimination if they have to terminate a minority employee (Pager 2007). These realities make securing employment extremely challenging for ex-offenders, and without steady employment, reaching financial stability is unlikely.

Methods of Defining and Measuring Recidivism

Method	Definition	Limitation	Statistic
Re-Arrest	An arrest for a new offense following prior criminal justice contact. This is the broadest definition of official recidivism.	Not everyone who is rearrested is charged, convicted or incarcerated. Compared to other criminal justice measures, this gives the most generous estimate of recidivism.	An analysis of data on more than 272,000 ex-offenders released from prison in 1994 showed that 2/3 were rearrested within 3 years of release (Langan and Levin 2002).
New Offense	A formal accusation against an individual that he or she has committed a new crime since being released from incarceration.	A new offense may not result in a conviction and may even be dismissed, which leaves this measure susceptible to legal determinations.	A study of more than 6,000 parolees in Georgia showed that 48 percent were arrested and charged with a new offense while on parole. The average length of parole was 22 months (Meredith, Speir and Johnson 2007).
Reconviction	Conviction for a new offense. This is a formal pronouncement of guilt.	Reconviction measures legal outcomes more than reoffending. Not all who are reconvicted committed a criminal offense, and some people who avoid reconviction may have committed a criminal offense.	Research indicates that nearly 47 percent of ex-offenders were reconvicted for a new crime within three years of their release (Langan and Levin 2002).
Re-incarceration	An ex-offender is sent back to jail or prison. This is the most conservative way to characterize recidivism.	A small percentage of people who are arrested will later be incarcerated. A sizeable percentage of re-incarceration is the result of a parole violation rather than a new offense.	More than 50 percent of persons released from prison returned to prison within three years of their release due to a new offense or a technical violation that resulted in their prison sentence (Langan and Levin 2002).
Technical Rule Violation (TRV)	A breach of release conditions or a violation of parole.	This is distinct from the other categories because it includes acts that otherwise would not be considered criminal.	About 1/3 of prisoners are there for violating a parole condition. The most common violations are failing a drug test or not reporting to a parole officer (Travis and Lawrence 2002).

FINANCIAL STABILITY

Financial stability is necessary for successful reintegration. In addition to employment barriers that compromise their ability to earn a stable wage, individuals with a criminal record stand to lose government benefits, including food stamps, Temporary Assistance for Needy Families (TANF), and federal student loans to which they otherwise would be entitled (Demleitner 2002; Chiricos, Barrick, Bales and Bontrager 2007). Some ex-offenders may be fortunate enough to have family members or friends willing to support them financially until they are able to get back on their feet. Those without such support, however, may struggle to fulfill their basic needs—shelter, food, clothing—and have difficulty affording transportation to work or to apply for jobs.

Child support arrearages (debt) for incarcerated parents present another threat to financial stability post-incarceration. Child support debt continues to grow throughout the duration of incarceration. In some states, there are no policies in place to modify child support orders if a non-custodial parent is in jail or prison (Bartfeld 2003). When they come out of prison, ex-offender parents may not only owe back payments for child support, but interest on those payments as well. For those fortunate enough to find a job after release, officials in some jurisdictions may take a large percentage of an ex-offender's earnings or withhold their tax refunds to pay off child support debt (Anthony and Mellgren 2009). In these instances, a large portion of the money goes directly to the state to cover expenses associated with enforcement and collection, rather than to the custodial parent. Without a consistent source of income, child support arrearages become an afterthought for ex-offenders, which contributes to the total national child support debt, now in the billions of dollars (Bartfeld 2003).

HOUSING

Housing is essential to reintegration. In addition to shelter, it provides ex-offenders with a residence in the community and a physical mailing address, without which it would be impossible for them to apply for a legitimate job, open a bank account, or get identification such as a driver's license. Shelter is a basic human need that many individuals coming out of prison struggle to attain due to existing barriers. Many ex-offenders cannot afford application fees, security deposits, and the first and last month's rent required to lease an apartment in urban areas. Additionally, certain classes of ex-felons, particularly those convicted of sex or drug crimes, are prohibited from living in government-subsidized housing (Travis 2005a). Ex-offenders also may be prohibited from living in certain neighborhoods and landlords may use background checks to bar tenants with criminal histories or criminal records (Oyama 2009). These barriers force many ex-offenders to take residence in homeless shelters, and because most cities have limited shelter space, many ex-offenders have no other option than to live on the streets (Foscarinis and Troth 2005).

GOOD IDEAS

Span, Inc.

Started in 1978 in Boston, MA, Span has assisted more than 7,000 ex-offenders to rebuild healthy and productive lives. Span services address difficulties that ex-offender clients face (e.g., unemployment, addiction) by helping clients access public benefits, education, health services, substance abuse counseling, affordable housing, career development, employment, food, clothing, and transportation. Support groups enable clients to offer and receive assistance with issues such as relapse and social skills development. Span also advocates for criminal justice reforms to reduce mass incarceration and increase the use of community-based alternatives to incarceration.

The difficulty ex-offenders have securing housing creates further problems for them and the rest of society. Many returning offenders become homeless or transient (Foscarinis and Troth 2005). Convicted sex offenders subject to residency restrictions often have to concentrate in remote locations that provide some form of shelter and shield them from community antagonism (Travis 2005a). In Florida, a large group of sex offenders was found to be living under a bridge because it was one of the few areas outside of restricted zones in the city (Mayo 2011). On one level, these are inhumane living conditions, but on another level, housing issues compromise public safety due to the difficulty of tracking ex-offenders without permanent residence.

CIVIL RIGHTS

Convicted offenders often lose many of their civil rights. Although there may be a rationale for certain restrictions that have a nexus to the conviction (e.g., restrictions on gun ownership), most restrictions serve only to extend the punishment of ex-offenders. States vary in terms of the rights denied to ex-offenders, but felony disenfranchisement laws currently limit the voting rights of nearly six million Americans (Uggen, Shannon and Manza 2010). Depending on the jurisdiction, ex-felons may also lose their right to serve on a jury, to run for public office, and if they are on probation or parole, they may be unable to travel outside their jurisdiction of residency (Travis 2005a). Restricting the rights of ex-offenders weakens their ties to social institutions, such as family, employment, and education (Bazemore and Stinchcomb 2004).

Restrictions on civil rights increase recidivism by undermining reintegration, prolonging punishment, and inhibiting civic participation. A study of ex-offenders in Florida found that those who were released from prison and had most of their civil rights restored had a recidivism rate that was one-third less than those released from prison without having their rights restored (Florida Parole Commission 2011). Allowing ex-offenders to restore or retain their rights offers them a stake in their communities and encourages them to become engaged in civic activities, therefore resulting in a more complete reintegration into society. It underscores the notion that despite past wrongdoings, they are still capable of becoming contributing members of society.

POLICY IMPLICATIONS |

Convicted offenders spend much of their post-conviction lives struggling to regain their sense of personal legitimacy and social belonging. If they fail to reintegrate, they may be tempted to give up and resort to a criminal lifestyle. Although some programs exist to assist the transition of ex-offenders back into society, mechanisms that facilitate ex-offender reintegration are not often widely available, difficult to access, and politically unpopular. Building effective reintegrative policies would represent a critical shift towards a justice system that is rehabilitative and cost-effective without sacrificing public safety.

GOOD IDEAS

R.I.S.E.

Support in the community following release from prison is beneficial for ex-offenders seeking to build a successful life and desist from criminal involvement. Reintegration Services for Ex-Offenders (R.I.S.E.) is an initiative of the mayor's office in Philadelphia that merges local reentry programs into a network that assists ex-offenders in becoming productive citizens. R.I.S.E. offers various services to participants, including life skills, vocational training and education. Participants have access to workshops on personal and civic responsibility, navigating parole and probation, expunging criminal records, health awareness, and community service opportunities. Job readiness training is available in addition to specific training in entrepreneurship, culinary arts, forklift operation, and financial and computer literacy. Education programs assist ex-offenders in the attainment of a GED.

Policymakers should explore strategies for enhancing reintegration and reducing criminal stigma. Such policies would not only reduce recidivism, but they would improve public safety and awareness in a cost-effective way. There are an estimated 65 million people in the United States with a criminal record (Rodriguez and Emsellem 2011), and many are unlikely to re-offend. While it may be important for employers, landlords, and certain members of the public to know that an individual has a felony conviction, there are few benefits to requiring persons to report any and all misdemeanor convictions. Society's focus on ex-offenders should be skewed towards those who are more deeply involved in the criminal justice system—those who are convicted rather than arrested, and those who are incarcerated rather than those who are on probation. There are a number of existing mechanisms that seek to reduce the barriers to reintegration for ex-offenders and to reduce their likelihood of recidivism.

MECHANISMS FOR REINTEGRATION

Criminal record expungement is compatible with the concept of risk convergence. An expungement, which only a judge can grant, means that an ex-offender does not have to report the expunged offense to a potential employer (Love 2002). There are some circumstances in which an individual must report an expunged offense, such as when applying for a government job. Some jurisdictions retain expunged records, but grant access to the data only to criminal justice personnel (i.e., police, courts, corrections officials). Each state has a unique method and criteria for record expungement (Shlosberg, Mandery and West 2011). Typically reserved for first time and low-level offenders, it takes considerable time to acquire and prepare the necessary documents and await an expungement hearing. An expunged record effectively restores the citizenship of ex-offenders, eliminates the legal barriers to reintegration, and reduces the stigma of a criminal conviction. The growth of the Internet has made it difficult for criminal records to truly be expunged because data brokers, which are non-government sources that purchase criminal record data from jurisdictions and release it to paying customers, are not required to update these records (Wayne 2012). The consequence is that employers or landlords who use data broker websites to conduct electronic background checks on prospective employees or tenants will still have access to expunged criminal records and even criminal records of those who were wrongfully convicted. Policymakers should expand the criteria for ex-offenders to expunge their criminal records if they are able to remain crime-free for a specified period of time depending on their offense and the age at which they committed it. Additionally, federal statutes should require data brokers to update their databases periodically to remove criminal records that have been legally expunged as well as records for those who were wrongfully convicted (Wayne 2012). Monetary sanctions for non-compliance will ensure that data brokers follow the statute.

GOOD IDEAS

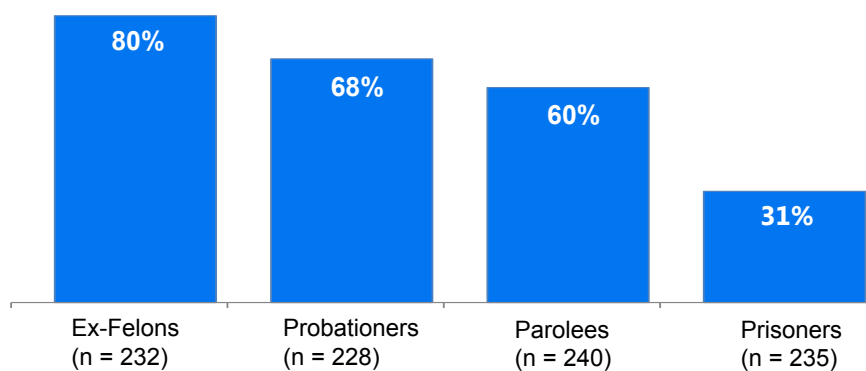
RECYCLE FORCE

Recycle Force is an example of how social causes can be merged to have a broad community impact. The program helps formerly incarcerated individuals rebuild their lives by providing them transitional employment for up to six months and comprehensive social services to help get their lives back on track. The program provides workforce training in addition to employment for ex-offenders in the recycling industry. Work involves accepting donations, separating recyclable materials, and shipping reusable materials. There is a peer mentoring component to the program in which long-tenured full-time employees mentor transitional employees, modeling positive work behavior and teamwork.

A *pardon*, which is a legal process of exonerating an ex-offender for his or her crime and nullifying the associated penalties, is more difficult to attain than an expungement. Depending on the case, pardons can be broadly restorative by eliminating legal barriers and signifying rehabilitation of an ex-offender. However, pardoned individuals still must report their conviction on employment applications and to other agencies that request such information (Love 2002). Ex-offenders should also have the ability to apply for a pardon if they are able to remain crime-free for a specified period of time. Currently, the process of attaining a pardon is difficult, costly, and time consuming. The applicant must fill out a lengthy application, submit judicial records, undergo a strict background check, and garner recommendations from references, including police officers. The process could take years and often results in denial for unexplained reasons. Furthermore, only high-ranking federal and state officials (e.g., President of the United States, state governors) can issue pardons. Governors typically have the final say on granting state-level pardons but are often hesitant to do so because of uncertainty about how it would affect their chances of reelection (Love 2002). The pardon process could be streamlined to enhance clarity, offer assistance, minimize delays, and include specific benchmarks that must be achieved before an individual is eligible to apply for a pardon. Ideally, these changes would offer ex-offenders incentives to remain crime free and to take the necessary pro-social steps to improve their chances at receiving a pardon.

Policies that restore the rights of ex-felons may also improve their reintegration and reduce their likelihood of recidivism by encouraging their civic participation. A study on the impact of voting found that ex-offenders who participated in voting were arrested at a much lower rate (12%) than ex-offenders who chose not to vote (27%) (Uggen and Manza 2004). Extending voting rights to ex-offenders does not compromise public safety and may instill within them a sense of civic engagement and a greater stake in their communities. Elected officials may believe that the public favors broad measures to disenfranchise all ex-offenders, including parolees, probationers, and those who have completed their sentences, but public opinion polls refute this notion (Manza, Brooks and Uggen 2004). Survey data show that the public is largely in favor of re-enfranchisement,

Percent of the public favoring re-enfranchisement based on offender's status



Source: Manza, Brooks and Uggen (2004)

particularly for those who have fulfilled their sentences. Fully 80 percent of respondents favored the restoration of rights for ex-felons, between 60 and 68 percent were in favor of restoring the civil rights of probationers and 60 percent favored rights restoration for parolees (Manza, Brooks and Uggen 2004). Only when it came to those currently incarcerated did fewer than half of respondents support re-enfranchisement.

A *certificate of rehabilitation* is a document stating that an individual has met certain post-conviction requirements that enable him or her to be considered for rights restoration. Although a certificate of rehabilitation does not always guarantee rights restoration, it sets in motion the process of applying for a pardon. Several states, including California, Illinois and New York, currently offer ex-offenders the opportunity to earn a certificate of rehabilitation if they meet certain obligations that vary by state. In order to satisfy the requirements for a certificate of rehabilitation in the state of California, according to California Penal Code § 4852.05, “the person shall live an honest and upright life, shall conduct himself or herself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land.” The certificate intends to eliminate employment barriers by providing employers with official proof that an individual has demonstrated rehabilitation. In Texas and Ohio, to address employer concerns about hiring ex-offenders, lawmakers recently passed additional legislation to limit their liability and protect employers from negligent hiring claims.

Mechanisms for Improving Ex-Offender Reintegration

Method	Definition
Pardon	Forgiving an ex-offender's crime and nullifying the punishments associated with it.
Record Expungement	The elimination of a criminal record.
Restoration of Rights	Allowing ex-offenders to earn back one or more civil rights.
Certificate of Rehabilitation	A court-certified document stating that an ex-offender has demonstrated moral and law-abiding character for a specified amount of time.
Ban the Box	A campaign effort to remove criminal history inquiries from job applications.
Prioritize Offense Reporting	Require individuals to only report convictions instead of arrests and felonies instead of misdemeanors on applications for jobs, loans, and higher education admission.
Reduce Duration of Reporting	Shorten the required duration of reporting one's criminal history from lifetime to 3 to 7 years, depending on the severity of the offense and number of prior offenses.
Free Employers from Liability	If ex-offenders have reached the point of risk convergence based on their offense type and duration since committing it, legislation should protect employers from the actions of their ex-offender employees.
Work Opportunity Tax Credit	Offers financial incentives in the form of tax breaks to employers who hire and employ recently convicted felons.

Another method for improving ex-offender reintegration is a campaign known as *ban the box*, which seeks to eliminate criminal history reporting requirements on job applications. Reporting a criminal offense on a job application considerably reduces one's prospects for obtaining employment, particularly for Black applicants (Pager 2007). Banning the box does not mean that ex-offenders can hide their conviction history from potential employers, but it does increase their chances of landing an interview and demonstrating their work-related qualifications prior to disclosing this information. Ban the box advocates maintain that this proposal would not apply to public safety occupations and positions that involve work with vulnerable populations (Minnesota Department of Human Rights 2013). Currently, nine states have "banned the box" statewide (California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Mexico) and do not ask applicants to report any prior felonies (National Employment Law Project 2013).

Policies should also address *employer incentives* for hiring ex-offenders. One reason that some employers avoid hiring ex-offenders is because there may be a concern for the possibility of liability suits that could result from harmful actions committed by their ex-offender employees. If a court determines that an employee's harmful action caused injury to a victim and that this injury was foreseeable based on the employee's criminal history, an employer could be held liable (Hickox 2010). Based on Blumstein and Nakamura's (2009) analyses, policymakers should follow the lead of Ohio and Texas and adopt legislation to protect employers from liability suits if they hire an ex-offender who has reached the point of risk convergence. Some courts have refused to impose such liability on employers unless their ex-offender employee's prior criminal behavior matches the current act that caused harm (Hickox 2010).

Policymakers also should consider financial incentives for hiring ex-offenders. Many ex-offenders are motivated and dedicated workers that only need a job to start getting their lives on track. The Work Opportunity Tax Credit (WOTC) offers federal tax credits to employers that hire individuals from groups that typically experience difficulty obtaining employment, including people recently convicted of a felony or recently released from prison. Tax credits range between \$1,200 and \$9,600 depending on the employee hired (United States Department of Labor 2013). Small-scale evaluations have indicated that some employers do not believe that tax credits outweigh the costs of recruitment, hiring, and training employees (Levine 2005). On the other hand, WOTC tax credits often target low-wage jobs that have high turnover rates, so employers can reap tax credits with few long-term hires (Levine 2005). Despite its shortcomings, the WOTC is a crucial policy that seeks to improve employment prospects for ex-felons.

CONCLUSION |

Formal and informal restrictions last long after offenders complete their sentences, sometimes for the remainder of their lives. Criminal justice punishment creates long-lasting barriers to reintegration and does not effectively reduce reoffending as evidenced by recidivism rates that often exceed 40 to 50 percent. If punishment often fails to achieve its intended effects, it would seem obvious that society should reconsider the scope and frequency of punishment. Yet, the United States has done the opposite—expanding and extending the use of criminal justice punishments, which are now virtually perpetual for many offenders. Once convicted, offenders lose many rights and privileges and are excluded from some aspects of social life indefinitely. The justice system appears to value retribution and social exclusion of offenders independently from any rehabilitative or public safety purposes.

Criminal justice involvement, especially felony conviction, triggers a number of barriers to reintegration following release from incarceration. These barriers limit social participation and may have a detrimental effect on the post-release success of ex-offenders. Many ex-offenders are prevented from finding meaningful employment, achieving financial stability, securing stable and suitable housing and—depending on the state—even exercising basic civil rights.

If the purpose of the criminal justice system is to rehabilitate offenders and protect the public safety, lawmakers should embrace policies that facilitate the reintegration of ex-offenders. Research indicates that after some duration of time, ex-offenders reach a point of “risk convergence,” when they pose no greater risk of crime than anyone else in the general public. State and local governments should consider removing the stain of permanent punishments when ex-offenders have avoided further criminal involvement for a specified period of time. These are not changes that can be implemented all at once, but over time, strong incentives for successful reintegration will reduce public expenditures, improve public safety, and motivate ex-offenders to avoid criminal behavior.

REFERENCES |

Anthony, Karen and Linda Mellgren (2009). **Child support and reentry: Basic facts and promising practices**. Corrections Today, 71(6), 84-88.

Baillargeon, Jacques, Joseph V. Penn, Kevin Knight, Amy Jo Harzke, Gwen Baillargeon and Emilie A. Becker (2010). **Risk of reincarceration among prisoners with co-occurring severe mental illness and substance use disorders**. Administration and Policy in Mental Health and Mental Health Services Research, 37(4), 367-374.

Barklage, Heather, Dane Miller and Gene Bonham, Jr. (2006). **Probation conditions versus probation officer directives: Where the twain shall meet**. Federal Probation, 70, 37-41.

Bartfeld, Judi (2003). **Forgiveness of state-owed child support arrears**. University of Wisconsin-Madison: Institute for Research on Poverty (Special Report no. 84).

Bazemore, Gordon and Jeanne B. Stinchcomb (2004). **Civic engagement and reintegration: Toward a community-focused theory and practice**. Columbia Human Rights Law Review, 36, 241-286.

Bean, Philip (2008). **Drugs and crime**. Portland, OR: Willan Publishing.

Blumstein, Alfred and Kiminori Nakamura (2009). Redemption in the presence of widespread criminal background checks. Criminology, 47(2), 327-359.

Bushway, Shawn D., Paul Nieuwebeerta and Arjan Blokland (2011). The predictive value of criminal background checks: Do age and criminal history affect time to redemption? Criminology, 49(1), 27-60.

Cartier, Jerome, David Farabee and Michael L. Prendergast (2006). **Methamphetamine use, self-reported violent crime, and recidivism among offenders in California who abuse substances**. Journal of Interpersonal Violence, 21(4), 435-445.

Chiricos, Ted, Kelle Barrick, William Bales, and Stephanie Bontrager (2007). The labeling of convicted felons and its consequences for recidivism. Criminology, 45(3), 547-581.

Colman, Rebecca, Do Han Kim, Susan Mitchell-Herzfeld and Therese A. Shady (2009). **Long-term consequences of delinquency: Childhood maltreatment and crime in early adulthood**. Albany, NY: Office of Child and Family Services.

Demleitner, Nora V. (2002). **“Collateral damage”: No re-entry for drug offenders**. Villanova Law Review, 47, 1027-1054.

Dowden, Craig and S. L. Brown (2002). **The role of substance abuse factors in predicting recidivism: A meta-analysis**. Psychology, Crime & Law, 8(3), 243-264.

Equal Opportunity Employment Commission (2000). Enforcement guidance: Consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964. New York, NY: EEOC.

Fahey, Jennifer, Cheryl Roberts and Len Engel (2006). **Employment of ex-offenders: Employer perspectives**. Boston, MA: Crime and Justice Institute.

Florida Parole Commission (2011). **Status update: Restoration of civil rights' cases granted 2009 and 2010**. Tallahassee, FL: Author.

Foscarinis, Maria and Rebecca K. Troth (2005). **Reentry and homelessness: Alternatives to recidivism**. Clearinghouse Review, 39, 440-457.

Geller, Amanda, Irwin Garfinkel, Carey E. Cooper and Ronald B. Mincy (2009). Parental incarceration and childhood wellbeing: Implications for urban families. Social Science Quarterly, 90(5), 1186-1202.

Harris, Patricia M. and Kimberly S. Keller (2005). **Ex-offenders need not apply: The criminal background check in hiring decisions**. Journal of Contemporary Criminal Justice, 21(1), 6-30.

Hickox, Stacy A. (2010). **Employer liability for negligent hiring of ex-offenders**. St. Louis University Law Journal, 55, 1001-1046.

Human Rights Watch (2003). **Ill-equipped: U.S. prisons and offenders with mental illness**. New York, NY: Author.

Kubrin, Charis E. and Eric A. Stewart (2006). Predicting who reoffends: The neglected role of neighborhood context in recidivism studies. Criminology, 44(1), 165-197.

Kurlychek, Megan C., Robert Brame, and Shawn D. Bushway (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? Criminology & Public Policy, 5(3), 483-504.

Kurlychek, Megan C., Robert Brame and Shawn D. Bushway (2007). **Enduring risk? Old criminal records and predictions of future criminal involvement**. Crime & Delinquency, 53(1), 64-83.

Kushel Margot B., Judith A. Hahn, Jennifer L. Evans, David R. Bangsberg, and Andrew R. Moss (2005). **Revolving doors: Imprisonment amount the homeless and marginally housed population**. American Journal of Public Health. 95(10), 1747 – 1752.

Langan, Patrick A. and David J. Levin (2002). Recidivism of prisoners released in 1994. Federal Sentencing Reporter, 15(1), 58-65.

Levine, Linda (2005). **The Work Opportunity Tax Credit (WOTC) and the Welfare-to-Work (WtW) tax credit**. Ithaca, NY: Cornell University Industrial Labor Relations School.

- Love, Margaret Colgate (2002). **Starting over with a clean slate: In praise of a forgotten section of the model penal code**. Fordham Urban Law Journal, 30, 1705-1741.
- Macrae, Joanna (1999). Aiding peace... and war: UNHCR, returnee reintegration and the relief-development debate (Working Paper no. 14). London, UK: Humanitarian Policy Group, Overseas Development Institute.
- Mallenhoff, Quintan B. (2009). Criminal reform: Prisoner reentry into the community. Hauppauge, NY: Nova Science.
- Manza, Jeff, Clem Brooks, and Christopher Uggen (2004). **Public attitudes toward felon disenfranchisement in the United States**. The Public Opinion Quarterly, 68(2), 275-286.
- Mayo, Michael (2011). **Do we really want sex offenders to live like wild animals?** Sun Sentinel (June 25, 2011).
- McNiel, Dale E., and Renee L. Binder (2007). Effectiveness of a mental health court in reducing criminal recidivism and violence. American Journal of Psychiatry, 164(9), 1395-1403.
- Menard, Scott, Sharon Mihalic, and David Huizinga (2001). Drugs and crime revisited. Justice Quarterly, 18(2), 269-299.
- Meredith, Tammy, John C. Speir, and Sharon Johnson (2007). **Developing and implementing automated risk assessments in parole**. Justice Research and Policy, 9(1), 1-24.
- Minnesota Department of Human Rights (2013). **Examples of occupations excluded from the “ban the box” law**. St. Paul, MN: Author.
- National Employment Law Project (2013). **Ban the Box: Major U.S. cities and counties adopt fair hiring policies to remove unfair barriers to employment of people with criminal records**. New York, NY: Author.
- Oyama, Rebecca (2009). **Do not (re)enter: The rise of criminal background tenant screening as a violation of the Fair Housing Act**. Michigan Journal of Race and Law, 15, 181-222.
- Pager, Devah (2007). **Marked: Race, crime and finding work in an era of mass incarceration**. Chicago, IL: The University of Chicago Press.
- Petersilia, Joan (2001). **Prisoner reentry: Public safety and reintegration challenges**. The Prison Journal, 81(3), 360-375.
- Petersilia, Joan (2005). **Hard time: Ex-offenders returning home after prison**. American Correctional Association, 67, 66-72.
- Pew Center on the States (2011). **State of recidivism: The revolving door of America’s prisons**. Washington, DC: Pew Charitable Trusts.

Piquero, Alex R. and Robert W. Brame (2008). **Assessing the race-crime and ethnicity-crime relationship in a sample of serious adolescent delinquents**. *Crime & Delinquency*, 54(3), 390-422.

Pogarsky, Greg (2006). Criminal records, employment, & recidivism. *Criminology & Public Policy*, 5(3), 479-482.

Rodriguez, Michelle N. and Maurice Emsellem (2011). **65 million “need not apply”**: The case for reforming criminal background checks for employment. New York, NY: National Employment Law Project.

Schlosberg, Amy, Evan Mandery and Valerie West (2011). **The expungement myth**. *Albany Law Review*, 75, 1229-1241.

Stevens, Alex (2007). **When two dark figures collide: Evidence and discourse on drug-related crime**. *Critical Social Policy*, 27(1), 77-99.

Stoolmiller, Mike and Elaine A. Blechman (2005). **Substance use is a robust predictor of adolescent recidivism**. *Criminal Justice and Behavior*, 32(3), 302-328.

Thompson, Anthony C. (2003). **Navigating the hidden obstacles to ex-offender reentry**. *Boston College Law Review*, 45, 255-306.

Thompson, Mindi N. and Devon L. Cummings (2010). Enhancing the career development of individuals who have criminal records. *The Career Development Quarterly*, 58(3), 209-218.

Travis, Jeremy (2005a). **But they all come back: Facing the challenges of prisoner reentry**. Washington, DC: Urban Institute Press.

Travis, Jeremy (2005b). **Families and children of offenders who return home**. *Federal Probation*, 69, 31-42.

Travis, Jeremy and Sarah Lawrence (2002). **California’s parole experiment**. Washington, DC: Urban Institute Justice Policy Center.

Travis, Jeremy and Michelle Waul (2003). **Prisoners once removed: The children and families of prisoners**. In Travis, Jeremy and Michelle Waul (Eds.) *Prisoners once removed: The impact of incarceration and reentry on children, families, and communities* (pp. 1-30). Washington, DC: Urban Institute Press.

Uggen, Christopher and Jeff Manza (2004). **Voting and subsequent crime and arrest: Evidence from a community sample**. *Columbia Human Rights Law Review*, 36(1), 193-215.

Uggen, Christopher, Sarah Shannon and Jeff Manza (2010). **State-level estimates of felon disenfranchisement in the United States, 2010**. Washington, DC: The Sentencing Project.

United States Department of Labor (2013). **Work Opportunity Tax Credit**. Washington, DC: Author.

Visher, Christy A. and Jeremy Travis (2003). **Transitions from prison to community: Understanding individual pathways**. Annual Review of Sociology, 29, 89-113.

Wayne, Logan Danielle (2012). **The data-broker threat: Proposing federal legislation to protect post-expungement privacy**. The Journal of Criminal Law & Criminology, 102(1), 253-282.

Weitzer, Ronald and Steven A. Tuch (1999). **Race, class, and perceptions of discrimination by the police**. Crime & Delinquency, 45(4), 494-507.

Wilper, Andrew P., Steffie Woolhandler, Wesley Boyd, Karen E. Lasser, Danny McCormick, David H. Bor and David U. Himmelstein (2009). **The health and health care of US prisoners: Results of a nationwide survey**. American Journal of Public Health, 99(4), 666-672.

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