

EDITORIAL INTRODUCTION

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

Judicious criminal justice policy strikes a balance that maximizes both public safety and the rights and liberties of individual citizens. When new technologies or innovations tip the balance in one direction or another, policy makers consider taking measures to recalibrate the scales. As the following three pieces in this issue make clear, we have reached such a critical policy juncture in the area of criminal background checks.

As Michael Stoll and Shawn Bushway (2008, this issue) report, more than 40% of the employers in their California sample are now checking the criminal backgrounds of job applicants, which is a percentage that has jumped dramatically in the past decade. In the not-so-distant past, hiring authorities were forced to pay an investigator or traipse to the courthouse themselves to scrutinize an applicant's criminal history. Although some employers routinely undertook such research, others reserved such efforts for special cases involving particularly sensitive jobs or applicants that had somehow aroused suspicion. Today, employers can routinely run checks that are cheap and easy—if not quick and dirty—unearthing the details of decades-old traffic offenses as well as fresh felony convictions. In such an environment, how are we to balance the legitimate interests of employers against those of potential workers?

Although answering such questions is as much a matter of values as evidence, criminological research can provide a sound empirical basis for weighing the relative stakes. On one side of the scale, clear and convincing social science evidence exists that employers discriminate on the basis of criminal history (Pager, 2003). On the other side of the scale, at least a preponderance of social science evidence suggests that employment hastens desistance from crime (Sampson and Laub, 1993; Uggen, 2000). In addition to documenting the rising prevalence of background checks, Stoll and Bushway help specify who checks, how they check, and the extent to which such checks affect hiring. Their results suggest that law, as well as economics, is shaping employer practices; statutory requirements to run

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background checks dramatically alter firms' propensities to hire applicants with criminal records.

The Stoll and Bushway (2008) article, and the powerful policy responses it provoked from Richard Freeman (2008, this issue) and Bruce Western (2008, this issue), offer a diversity of perspectives from disparate disciplinary orientations. Each of these scholars thinks seriously and well about crime and employment, although each approaches the issue from markedly different orientations. With doctorates in urban planning and public policy analysis, respectively, Michael Stoll and Shawn Bushway are agnostic as to the motivations of employers or applicants, asking simply whether conducting background checks negatively affects the actual hiring of persons with criminal backgrounds. They find evidence for such negative effects, but their fine-grained analysis suggests that these effects are smaller in magnitude than previously thought and that they are unevenly distributed across social space.

Whereas some may worry that too much information cripples the job prospects of those with criminal backgrounds, economist Richard Freeman proposes making *more* information about the extent and nature of an applicant's postconviction history available to employers. In the absence of reliable signals about applicants' criminality, he argues, employers will rely instead on statistical discrimination—assuming the worst about applicants from high-crime neighborhoods, regardless of whether they have a criminal history (see also Raphael, 2006). Moreover, Professor Freeman's market orientation cautions us that cheap criminal history information is “not a genie that can be readily put back into Aladdin's lamp.”

Sociologist Bruce Western accepts much of this argument, but he contextualizes the effect of criminal background checks within a deep pattern of social marginality that may include poverty, substance use, chronic disease, and mental illness. From this perspective, whether criminal history information is locked away or brought to light is less important than making the sustained social investments that will directly build skills and improve the health and well-being of former prisoners. Even if we were to discard public knowledge of their records, Western argues, persons with such records are beset by social disadvantages that place them at the very rear of the labor queue.

Taken together, these articles show that employers now routinely check the criminal backgrounds of their applicants and that such employers are indeed responsive to the stigma of a criminal record. Nevertheless, these actions must be understood as operating within a legal environment that mandates such checks in some situations, but not others, and within a social environment that heaps myriad other disadvantages on those with criminal records. Given this set of circumstances, policy efforts to facilitate

prisoner reintegration by cloaking such records may yield only modest effects and, perhaps, some ugly unintended consequences. In different ways, all of the authors call for a more nuanced and sophisticated treatment of criminal histories, so that interested parties might make more meaningful distinctions among them.

None of this is to deny that stigma matters and is keenly felt by those who bear its weight. I know I am not the only criminologist to receive desperate phone calls, e-mails, and even suicide notes from persons afraid that they will never escape their criminal histories (Anonymous, 2008). Their records, sometimes very old records for trivial crimes, typically cast them out at the application stage. Worse still, such records may surface months after hiring, only to bounce new workers from the jobs of their dreams. In balancing the myriad interests surrounding criminal background information—the privacy concerns of citizens, the reintegrative value of employment, the interests of employers, the rights of victims, and the safety of the public—judicious policy makers might also give some small consideration to this human toll.

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