Creating Second Chances

BY DEVAH PAGER

With more than 2 million individuals currently incarcerated in the United States, and more than 12 million who have prior felony convictions, integrating the large and growing population of the formerly incarcerated has become an urgent priority. Because steady work reduces the incentives that lead to crime, making sure ex-offenders find employment is crucial. But ex-offenders face bleak prospects in the labor market, in part because a criminal record makes it difficult to find work. Indeed, survey estimates suggest that more than 60 percent of employers would not knowingly hire an applicant with a criminal background.

These problems were revealed in a recent experiment I carried out using an audit methodology that sends pairs of job applicants to apply for entry-level jobs. The pairs were carefully matched in all respects (such as education and training) except that one presented evidence of a criminal record and the other did not. I found that employers use the "negative credential" of a record as a screening mechanism, weeding out ex-offenders at the outset. As a result, ex-offenders were only one-half to one-third as likely to receive initial consideration from employers, as compared with equivalent applicants without criminal records. Given these stark differences, the problem of finding steady work for the large numbers of ex-offenders returning to communities each year is clearly a challenge.

Of course, it is important to keep in mind that the employment of ex-offenders is not necessarily without cost. Employers bear the burden of workplace theft and workplace violence as well as the more mundane problems of unreliable staff and employee turnover. A criminal record is arguably a relevant signal. Indeed, to the extent that the past is a strong predictor of the future, a conviction conveys some information about the likelihood of future illegal, dangerous, or debilitating forms of behavior. Employers thus have good reason to be cautious about hiring individuals with known criminal pasts. Any policy designed to promote the employment of ex-offenders must address the risks employers face when they hire individuals with criminal records.

This article will consider how we might reform prisoner re-entry interventions and policy in light of the evidence of what works, what doesn't, and why. The current political environment points to some optimistic signs for significant policy reform in this area. The Second Chance Act, passed recently with broad bipartisan support, authorizes a range of programs and services in support of a more integrated and proactive model of prisoner re-entry. Though this bill remains limited in scope, it signals a willingness among politicians on both sides of the aisle to confront this pressing matter.

Avoiding the Mark

Current estimates suggest that nearly 700,000 inmates will be released from prison this year. Given ongoing prison expansion, the problem of prisoner re-entry will only continue to grow. Over much of the past three decades, the expansion of the criminal justice system received widespread support from politicians and the public. The nearly universal call for stricter enforcement and harsher penalties largely muted consideration of viable alternatives to incarceration.

Now, however, there is some indication that the tide is turning. After a decade of falling crime rates and an expanding economy through the 1990s, public sentiment became more receptive to alternatives, emphasizing longer-range solutions to the problems of crime and delinquency. Fully three-fourths of Americans surveyed in 2002, for example, approved of sentencing nonviolent offenders to probation or treatment instead of prison. Whereas Americans were more evenly split in 1990 over the goals of prevention versus punishment, more than two-thirds now believe that more money should be spent "attacking the social and economic problems that lead to crime through better education and training" as opposed to "deterring crime by improving law enforcement with more prisons, police, and judges." Furthermore, the majority of Americans now favor eliminating mandatory sentencing laws and returning discretion to judges.

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At the same time, as the economy slows and states face tightening budgets, legislators are also looking for more cost-effective ways to manage crime. By 2003, more than a dozen states had made significant changes in their sentencing or corrections policy, including the repeal or reduction of mandatory sentencing laws for drug offenders, changes in approaches to technical violators of parole, increased investments in rehabilitative services, and the expansion of treatment alternatives to incarceration. If sustained, these changes could have long-term effects on the rate of incarceration and on the total number of individuals behind bars. There exists a glimmer of hope, then, that the rapid 30-year expansion of the criminal justice system may at last be slowing its pace.

As states consider moving away from imprisonment, there has been a renewed emphasis on finding alternatives to incarceration. Although still representing only a small fraction of criminal justice expenditures, many states are experimenting with programs that place an emphasis on restorative justice, community service, treatment, or intensive community supervision. Evaluations of these programs have found that certain alternatives to incarceration can in fact have sustained positive effects. Indeed, despite the pessimistic reviews of prison rehabilitation from the early 1970s, there is more recent evidence to suggest that well-targeted programs can have lasting effects on drug abuse, employment, and recidivism.

One model that has spread quickly in recent years is the drug court, a set of proceedings that runs parallel to, but independent of, the criminal court. Drug courts recognize that users and first-time offenders can often benefit from treatment, mental health services, and close supervision rather than confinement. These diversion programs allow minor offenders the opportunity and assistance to go straight before harsher sanctions kick in. In many cases, those who successfully complete the treatment program authorized by the drug court avoid altogether the formal markings of a criminal conviction.

The research on such issues reveals that reduced rates of recidivism among drug court participants and the savings relative to traditional court interventions are indisputable. These results provide support for the notion that well-targeted, sustained interventions can complement, and in some cases replace, incarceration with more lasting positive results. If federal and state governments are willing to invest in the development and evaluation of prison alternatives, the long-term costs of crime and incarceration could be substantially reduced.

Easing the Transition

A second strategy for easing the problems of prisoner re-entry—and for reducing the extraordinarily high rates of recidivism—emphasizes assistance in the transition from prison to home. One particular approach that has received little attention in the evaluation literature, despite its growing popularity in practice, involves intermediaries who facilitate employment of returning inmates. Intermediaries function as liaisons between employers and ex-offenders, often making first contact with employers, discussing the employer's staffing needs and evaluating the possible fit between the employer and particular ex-offender job seekers. Intermediaries can help reduce employers' concerns about hiring ex-offenders by vouching for the individual in question and by providing additional supervision capabilities through the initial employment transition. In this process, intermediaries also serve as staffing agents for employers, particularly those not large enough to have a human resources division and those who lack the time to screen many applicants from the open market. Furthermore, intermediaries can address the job-readiness needs of ex-offenders, including simple issues such as attire and interview skills as well as more complicated concerns about job skills and substance abuse. Several model programs in New York, Chicago, and Texas have been recognized for their success, each showing strong improvements in the employment outcomes of ex-offenders and significant reductions in recidivism. For example, an independent evaluation of the Texas-based project found that participants were nearly twice as likely to find employment relative to a matched group of parolees (60 percent versus 36 percent), and rates of re-arrest and re-impris-

onment were likewise significantly reduced. More evaluations employing careful experimental designs would strengthen our understanding of what works and point us toward successful models for a national program.

Although re-entry policy has emphasized employment for keeping ex-offenders out of crime, little has been done to safeguard those employers who stand at the front lines of our re-entry initiatives. Currently, only one resource, the Federal Bonding Program, provides some relief for employers who suffer loss or damages caused by an employee. The bonding program insures ex-offender employees (at no cost to the employer) for between $5,000 to $25,000 for a six-month period. This sum, however, is woefully inadequate relative to the size of negligent hiring lawsuits, which can reach 100 times that amount. We need to think more carefully about the necessary incentives to encourage employers to hire ex-offenders. At a minimum, an effective policy would impose limits on liability, or assume federal responsibility for a larger share of damages. If we believe that the employment of ex-offenders is an important step toward criminal desistance (and therefore relevant to public safety overall), employers should be encouraged, not punished, for providing this population with a much-needed second chance.

Erasing the Mark

The criminal credential does not fade with time. With no mechanism for removal, the information remains prominently displayed in background checks, coloring the reception even of those most indisputably rehabilitated. Several years ago, for example, I received a letter from a 43-year-old man in Missouri. He had been laid off from his job as a carpenter/contractor about six months before, and had been searching for work ever since. A felony conviction from 10 years earlier kept coming up in job interviews and, in the slow-growth economy, no employer seemed willing to take him on. He talked about his three young children, and his frustration in not being able to provide for them. He said his heart broke each morning when his 6-year-old daughter would leave for school and say to him, "Good luck in your job search, Daddy!" knowing that he would have to face her later that day with nothing more to offer.

Criminal records have been distributed ever more widely in recent years. Even those states prohibiting discrimination on the basis of criminal background continue to allow employers full access to information about criminal backgrounds, despite the fact that in most cases they are not supposed to use it. This policy is somewhat incongruous, especially given that other protected categories place corresponding restrictions on access to "incriminating" information: Employers are not permitted to ask the age of applicants, nor their marital status; and information about the race of applicants, while often collected for Equal Employment Opportunity Commission reporting requirements, is always optional.

In my earlier review of job applications, I noted that a few large national employers had modified the questions on their application forms to respond to specific state law. For example, one employer's application form asked about prior convictions for theft or embezzlement but did not seek information about other types of criminal convictions. These employers took it upon themselves to limit exposure to information that could taint their evaluation of candidates for reasons unrelated to the job, or in ways sanctioned by the state. Nevertheless, it is unrealistic to expect all employers to adopt such sophisticated and variable screening procedures. Rather, state governments could far more effectively govern when and where criminal record information is made available.

The United States is unique in privileging access to information over other social and political priorities. Many other countries, by contrast, place significant restrictions on access to information about the private experiences of individual citizens with the law. In France, for example, information about individual criminal backgrounds is carefully safeguarded within a single centralized and government-controlled database. Certain employers have the right or are even required to obtain criminal background information on prospective employees, while the vast majority of employers and other private citizens have no grounds for accessing this information. Indeed, it would scarcely occur to most French citizens to think of such information as relevant to the employment process. In the U.S. context, there are twelve closed-record states in which criminal record information is limited and regulated by centralized state agencies and provided to employers only when a reasonable case can be made for direct relevance. There is a strong argument for mandating such a system throughout the country.

Another approach is to place time limits on access to information about an individual's criminal history. The risk of re-offending declines precipitously following the first three years after release, and after five years without arrest, the rate of re-offending is extremely low. The public safety rationale for identifying an individual's criminal history beyond this point thus becomes steadily less compelling. Simultaneously, the possibility of expungement (or the sealing of records) offers a tangible incentive for ex-offenders to stay out of crime. If an offender feels he will be relegated to unemployment or dead-end jobs for the rest of his life as the result of a prior conviction, the lure of the illegal economy becomes all the more powerful. If, on the other hand, this individual knows that buckling down for just a few years will earn him the opportunity to escape his past and build a better future, the incentives to stay

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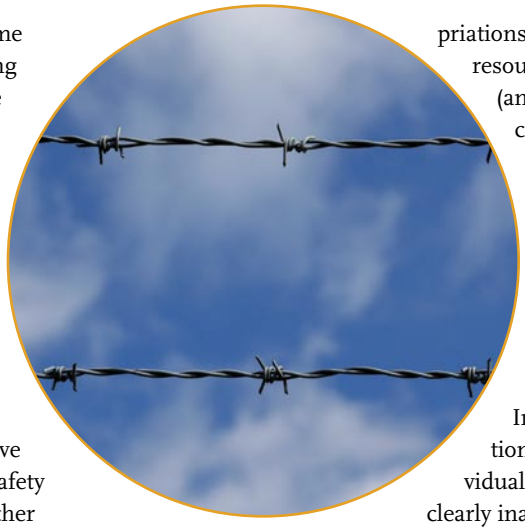
clean increase. The case for imposing time limits on the distribution of incriminating information has direct precedence in the case of credit checks. According to the Fair Credit Reporting Act of 2002, breaches of credit worthiness must be wiped clean after seven years. The law implicitly acknowledges that, while lenders and financial agents must be aware of the credit risks of prospective clients, individuals must be granted an opportunity for a "second chance" at financial solvency. Time limits on credit blemishes allow individuals to move beyond past mistakes. So, while public safety concerns mandate that employers and other members of the public retain the ability to identify those engaged in criminal activity, for individuals who have left their criminal past behind them (as the vast majority of young offenders eventually do), the opportunity for a fresh start should be granted. At the time of this writing, seventeen states allow certain convictions to be expunged or sealed. Many of these laws limit expungements (or sealing) to first-time offenses or grant them after an individual has remained crime-free for a specified amount of time. Federal policy could help make such expungements more widespread and uniform for reasonable types of employment and offenses.



Toward a Comprehensive Policy for Prisoner Re-entry

Fortunately, there are some signs of progress in re-entry policy. After winding its way through Congress over a period of more than five years, the Second Chance Act was passed in April 2008 with broad bipartisan support. The act authorizes $300 million in grant programs to facilitate successful re-entry, including funding for local re-entry demonstration programs; grants to provide job training, mentoring, and transitional services; new funding for re-entry courts; funding for substance abuse treatment and drug courts as alternatives to incarceration; and grants for research and evaluation of re-entry policy and practice. The act sets a broad and ambitious agenda by providing integrated services and alternatives to conventional crime control techniques. Departing from recent decades, when reincarceration was the primary tool used to manage re-entry failures, this policy approach recognizes that the transition from prison to home is fraught with roadblocks, and that goals of reducing recidivism can be reached only by developing realistic alternatives and support along the way.

At the same time, the Second Chance Act represents only a first step in this direction. The $300 million authorized at the time of this writing (albeit not yet cleared through appropriations) is a relatively small commitment of resources for such a huge social undertaking (and trivial relative to the overall annual corrections budget of $56 billion). Moreover, there are critical components that have been left out of the final legislation. One of the key legal barriers facing ex-offenders, for example, is pervasive restrictions on occupational licensure, barring many ex-offenders from public sector employment and a growing number of private occupations. In certain cases, the logic of these occupational restrictions is straightforward—individuals with a history of violent crime are clearly inappropriate candidates for employment in child care institutions or schools. In many other cases, however, legal restrictions on ex-offenders have far less connection to apparent safety concerns. In some states, for example, ex-offenders are restricted from jobs as septic tank cleaners, embalmers, billiard room employees, real estate agents, plumbers, eyeglass dispensers, and barbers. Currently, fewer than half of states offer standards for the use of criminal record information in making decisions about employment and licensure. Federal guidance on this question is much needed.

The current legislation also offers no strategy for the expungement or sealing of records for ex-offenders who have shown clear evidence of rehabilitation. Fortunately, this may be remedied soon. A second bill (the Second Chance for Ex-Offenders Act of 2007) has been introduced into the House of Representatives by Congressman Charles Rangel. This bill, which is still pending, would amend the federal criminal code to allow an individual to file a petition for expungement of a record of conviction for certain nonviolent criminal offenses.

Overall, policy development in prisoner re-entry shows some promising signs of change. No longer is the provision of services to offenders immediately viewed as "soft on crime," and the broad support for the Second Chance Act suggests great potential for moving beyond traditional partisan lines. But there is still a long way to go. Re-entry capacity at the state and local level remains woefully inadequate relative to the hundreds of thousands of individuals re-entering communities each year. The Second Chance Act sends a strong message about the importance of a coordinated and proactive approach to prisoner re-entry. The task of achieving this goal remains for the future.

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