

MARYLAND DATA ANALYSIS CENTER

DEPARTMENT OF CRIMINOLOGY AND CRIMINAL JUSTICE ♦ UNIVERSITY OF MARYLAND, COLLEGE PARK

A Report to the Workgroup on Collateral Consequences of Convictions Governor's Office of Crime Control & Prevention

A Review of the Literature on Collateral Consequences and the Information Value of Prior Criminal History, and Recommendations for the Consideration of the Workgroup

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EXECUTIVE SUMMARY

This paper examines the published literature regarding the following topics relevant to the Workgroup's charge: the impact of collateral consequences on re-entry success (particularly in the area of ex-offender employment), and the useful duration of the information value of prior criminal history in evaluating future risk. While the literature on these topics is not extensive, due to the relatively recent appearance of empirical studies on such topics, findings are discussed to assist the Workgroup in making recommendations to improve the employment prospects of ex-offenders in light of barriers presented by current collateral consequences. In addition, the most common remedies enacted to ameliorate the impacts of collateral consequences are described, and, where research has been conducted, the effectiveness of such remedies is summarized. Finally, in the concluding section, we present a set of recommendations, based on the literature and Maryland-specific developments, identifying the data necessary to understand better the impact of collateral consequences in Maryland, and how the published literature may inform the Workgroup's deliberations on recommendations for policy reform.

INTRODUCTION

Rising incarceration rates over the past few decades have resulted in not only more individuals behind bars, but also in more individuals being released from prison into the community each year. Offenders released from prison face a myriad of barriers to a successful reentry into society. Collateral consequences are often described as invisible punishments, in that these additional consequences tend to be an underappreciated after-effect of interaction with the criminal justice system. While these barriers impact various aspects of life, from voting to employment to housing, there remains relatively little empirical research on collateral consequences and their impact on an individual's risk for recidivism.

The concern about the deleterious effects of collateral consequences stems from the understanding that such consequences make it more difficult for offenders to reintegrate fully back into society, resulting in a higher likelihood that the ex-offenders will return to offending, and thus return to criminal justice supervision or imprisonment. Such concerns are well-founded. Recidivism is a significant problem throughout this country's criminal justice systems, as the majority of released prisoners will recidivate. Of all prisoners released from prison in 2005 in 30 states examined, 67.8% were arrested within three years of release, and 76.6% were arrested within five years (Durose et al., 2014). Of those rearrested within five years of release, 36.8% were arrested within their first six months back in society. Additionally, property offenders were the most likely to be rearrested -- 82% within 5 years of release (Durose et al., 2014). These figures contribute to the idea of the "revolving door" of our criminal justice system.

Recidivism rates for individual states are harder to come by, particularly because a significant minority of individuals are arrested in more than one state. (This is demonstrated by Durose et al. (2015) who found 24% of prisoners released from Maryland facilities in 2005 had a prior out-of-state arrest, and of those released from incarceration in Maryland in 2005, 13% were arrested in another state within 5 years of release.) In a 2013 publication from Maryland's Department of Public Safety and Correctional Services, it was stated that the state's three-year recidivism rate (measured as the rate of ex-inmates returning to prison or community supervision for new offenses), had declined since 2007, from 47.8% to 40.5% in 2012 (DPSCS, 2013).

This report will focus on the research literature examining the impact of collateral consequences. Collateral consequences span various aspects of an ex-offender's life, and existing studies into these various areas are reviewed. Another area of research which must be considered in any discussion of the impact of collateral consequences is the information value provided by prior criminal history. Policy makers have begun implementing time limits for how long a collateral consequence will apply after arrest or conviction. Research investigating the time to "redemption" (when an ex-offender's risk of offending reaches that of the general population) is discussed. We also review common "remedies" adopted to ameliorate collateral consequences, including expungement & shielding of criminal history, the adoption of "ban the box" policies in the application and hiring process, and the issuance of "certificates of rehabilitation" by criminal justice agencies for those who are no longer under criminal justice supervision or incarceration. Finally, for the consideration by the Workgroup, recommendations drawn from the research literature are presented at the conclusion of this paper.

IMPACT of COLLATERAL CONSEQUENCES

While some collateral consequences, such as the effect of a criminal record on employment, have been well-known and researched for decades (Schwartz and Skolnick, 1962), the majority of current collateral consequences have been rarely or never researched. In the past few years, more attention has been given to these less studied consequences. The vast majority of research into the impact of collateral consequences has divided the various laws by descriptive category, and typically focused on one specific type of consequence (Travis et al., 2014; Wheelock, 2005).

The area of collateral consequences that has received the most attention is the impact of criminal justice involvement on employment and employment opportunities. The majority of research has documented that incarceration and other forms of criminal justice involvement are related to poor employment outcomes (Holzer et al., 2006; Pager, 2003; Pager et al., 2009; Stoll and Bushway, 2008; Travis et al., 2014; Western et al., 2001). Studies utilizing survey data, administrative data, ethnographic observation, and the examination of aggregate effects overall, have demonstrated these negative employment outcomes (Travis et al., 2014). However, some research has not found such a relationship. Loeffler (2013) examined the impact of imprisonment in the life course, utilizing an experiment in which judges were randomly assigned cases, and did not find an effect of imprisonment on employment. This study suggests selection results in imprisoned individuals later having employment difficulties (Loeffler, 2013).

Pager (2003) and Pager et al. (2009) conducted experiments in Milwaukee and New York City, respectively, in which four individuals, two black and two white, were paired by race and applied for entry-level jobs, such as wait staff or sales. Each week, one individual in each pair

was assigned a felony criminal record and the rest of the resume was made equal. The pairs were randomly assigned 15 job applications each week where each individual would meet the employer, fill out an application and complete an interview if asked to do so. Individuals with criminal records were much less likely to receive callbacks in both Milwaukee and New York City. Additionally, these studies found that whites with criminal records were as likely, if not more so, to receive callbacks as black applicants with no criminal record.

Uggen et al. (2014) conducted a similar experiment in the Minneapolis-St. Paul area in which matched pairs of white and African-American men applied for entry-level jobs. One member of each pair was randomly assigned a disorderly conduct arrest, but no conviction, on their record. This study found while an arrest-only record did not have as large of an impact as the conviction record, as seen in Pager (2003) and Pager et al. (2009), the disorderly conduct arrest decreased employer callbacks by 4% among both whites and African-Americans (Uggen et al., 2014).

Other studies have examined not only the impact of a criminal record in the hiring process but also the wage penalties that accompany those who are hired with a criminal record. In examining past research and methodologies, Western et al. (2001) estimated incarceration results in a wage penalty ranging between 10% and 30%. Western et al. (2001) conclude that wage penalties are greater for white-collar criminals. More research is needed to understand the impact of arrest, conviction, and time in jail on subsequent earning potential.

An important aspect of the employment research is the availability of criminal history online and the use of background checks in the hiring process. Research has found that the availability of online criminal records has a negative impact on ex-offenders. Finlay (2009), utilizing the National Longitudinal Survey of Youth (NLSY), examined the availability of online

records on employment outcomes. In open-record states compared to states without open records, ex-offenders earned hourly wages that were 8.7% lower, and annual earnings (wages and salary) that were 18.7% lower. In addition, ex-offenders in open records states were 5% less likely to be employed. These estimates overshadowed the impact of incarceration alone. Thus, Finlay (2009) concludes that the availability of criminal history records is a major determinant of economic outcomes for ex-prisoners. Additionally, Luca (2015) examined the link between online criminal records and recidivism, and found that the availability of online records led to an 11% increase in recidivism, as measured by those with a prior felony conviction being admitted to prison with a new sentence.

Stoll and Bushway (2008) focused on the use of criminal background checks in hiring, using an establishment survey in Los Angeles. As expected, this study found employer-initiated background checks were negatively associated with the hiring of ex-offenders, however, that relationship was largely driven by employers who were legally obligated to perform such checks. Employers who were not legally required to perform checks, but conducted them for their own benefit, hired the ex-offenders at the same rate, about 2.3%, as employers in establishments that did not perform checks, compared to 1% for employers legally required to check (Stoll and Bushway, 2008).

There have been somewhat surprising research findings, however, that indicate criminal background checks may be beneficial for the hiring of disadvantaged groups. The background check is typically viewed as screening out individuals, although in one study, the background check served as a mechanism by which positive information was gained, acting to override negative stereotypes regarding the “typical” offender, which would otherwise persist in the absence of a background check. Holzer and colleagues (2006), utilized an establishment survey

conducted from 1992 through 1994, which included 3,000 establishments (businesses) in Atlanta, Boston, Detroit, and Los Angeles. This study found employers who checked criminal histories in their hiring process were 8.4% *more* likely to hire African American men. This relationship was even stronger among employers who expressed a strong aversion to hiring ex-offenders, indicating that without background checks, employers act according to bias, and are more likely to discriminate against minorities.

Compared to the employment context, additional areas of collateral consequences have not received as much attention by researchers. These consequences can be organized into the following categories: civic consequences, benefits and aid, and other consequences (Wheelock, 2005). Civic collateral consequences include voting restrictions, jury exclusion, gun ownership restrictions, and restrictions from serving in public office. Benefits and aid consequences involve eligibility for programs and services such as welfare, school grants and loans, and public housing. Lastly, the other or miscellaneous category includes consequences such as immigration deportation, residential registry and community notification, or parental custody.

For civic collateral consequences, the research available has focused on felon disenfranchisement. As of 2010, 2.5% of the U.S. voting age population was disenfranchised due to contact with the criminal justice system, and 1 out of every 13 African Americans were disenfranchised (Uggen et al., 2012). Only Maine and Vermont place no restrictions on felon voting while every other state ranges from disenfranchising prisoners to disenfranchising all individuals in prison, on parole and probation, and all ex-felons (Uggen et al., 2012). Researchers have discussed widespread disenfranchisement as a punitive continuation of outsider status to ex-offenders (Alexander, 2010; Kleinig and Murtah, 2005; Manza and Uggen, 2006). In an attempt to understand the bigger picture of felon disenfranchisement, Manza and Uggen

(2006) examined the impact of these laws on past elections. Examining Florida, the authors determined that state's disenfranchisement laws impacted the presidential election of 2000. Manza and Uggen (2006) calculated the number of disenfranchised individuals in Florida, estimated the percentage of those individuals who would vote if allowed, and how those individuals would vote, and found if all 800,000 former felons had been allowed to vote in that election, Al Gore would have won the state of Florida and thus the national election. In another study in Florida utilizing 54 interviews with ex-offenders, Miller and Spillane (2012) found 39% of their sample believed there was at least some connection between the ability to vote and their ability to stay out of trouble.

Benefits and aid consequences involve eligibility for programs and services such as welfare, school grants and loans, and public housing. Lovenheim and Owens (2014) conducted one of the few studies on service and aid consequences when they examined the impact of amendments to the Higher Education Act in 2001, which made federal financial aid unavailable for up to two years for individuals convicted of drug offenses. Utilizing data from the National Longitudinal Study of Youth, these researchers found the ban on federal financial aid increased the amount of time between graduating high school and attending college, by about two years on average. Additionally, there is some support that individuals convicted of drug charges had a lower probability of ever attending college compared to before the amendments went into effect. Furthermore, the authors did not find evidence that the amendments in any way deterred drug offenders (Lovenheim and Owens, 2014).

Holtfreter et al. (2004) utilized interviews with 134 female felony offenders to examine the impact of receiving state-sponsored assistance, broken up into two categories of housing or "life and skills programming", on two measures of recidivism, rearrest and parole or probation

violation. These authors found poor offenders who did not receive either type of state-sponsored assistance were 3.3 times more likely to recidivate (45% vs. 14%). Providing state resources for immediate needs to poor female offenders was associated with a lower odds of recidivism (odds ratio=.17). This study highlights the potential benefits of public assistance to aid successful reintegration into society for poverty-stricken female offenders, and the difficulties faced by this group when certain types of public assistance are denied due to an individual's criminal history (Holtfreter et al., 2004).

Another aspect of service and aid consequences involves food aid. Examining a sample from three different states with varying bans on Supplemental Nutrition Assistance Program (SNAP) for drug offenders, Wang et al. (2013) found that states which enacted bans on SNAP eligibility had higher rates of food insecurity among the individuals subject to the ban. Although this study only had a small sample, it suggests evidence of the negative impact of aid restrictions for ex-offenders. In her literature review of the effect of collateral consequences on recidivism, Whittle (2016) stated, "There has been practically no qualitative research on the impact that collateral sanctions have on access to public assistance benefits and recidivism in the United States" (10). Additionally, "No one knows exactly how many people are excluded from public housing because of criminal records, or even the number of people with criminal records who would be ineligible if they applied" (Alexander, 2010; 147). The lack of data on these and other areas of collateral consequences makes it more difficult to understand the impact these laws have on the ex-offender population.

In the last category of miscellaneous consequences, ex-offenders are subject to consequences involving immigration deportation, community notification, or parental custody. Most of the research focusing on these other consequences involves sex offender registration.

Utilizing surveys from registered sex offenders in Kentucky, Tewksbury (2005) found a sizeable proportion of the sample experienced negative consequences of registration: “More than a third of registrants report losing a job, losing or being denied a place to live, being treated rudely in public, losing at least one friend, and being personally harassed due to their registration as a sex offender” (Tewksbury, 2005: 78). As with similar exploratory studies, Tewksbury (2005) utilized a small sample but his findings demonstrate the widespread negative impact of being labeled as a registered sex offender. In summarizing the literature examining the effects of numerous sanctions on sex offenders, Whittle (2016) concluded sex offender registration and notification (SORN) policies had “no significant effect on sexual recidivism, time to recidivism, or number of victims” (13). Additionally, “sex offender residence restrictions do not significantly impact recidivism” (Whittle, 2016; 13).

Due to the disparate reach and impact of all types of collateral consequences, only one study has attempted to analyze the effects of collateral consequence laws across states to examine their collective impact on a measure of recidivism. Sohoni (2014) utilized data from two national datasets, the National Prisoner Statistics Survey and the Bureau of Justice Statistics Parole Survey, to examine if states with harsher combined collateral consequence laws had higher rates of recidivism, measured as returns to prison. Using the National Prisoner Statistics Survey, returns to prison was measured as the percent of a state’s 2010 prison admissions that were returns from conditional release, whether for a violation or for a new crime. Using the BJS Parole Survey, returns to prison was measured as the percent of exits from parole that were returned to prison. Sohoni (2014) focused on 6 areas of collateral consequence laws: voting, access to records, employment, housing, public assistance, and driver’s licenses. The main finding of note is that while the effect of collateral consequence laws on returns to prison for a

new crime was mixed, for technical violation returns to prison, it was found that harsher laws resulted in lower rates of returns to prison. Sohoni (2014) explains this counterintuitive finding with the hypothesis that parole officers are more sympathetic with technical violators in states with harsher laws, and are thus less likely to send those offenders back to prison for minor technical violations. Although this study had mixed results from the two data sources used, it represents an important first step toward understanding the impact of collateral consequence laws as a whole.

Understanding the impact of collateral consequences in obstructing or delaying the successful re-entry of those with prior contact with the criminal justice system is a relatively new, but growing, area of research. Currently, no Maryland-specific study exists on the impact of any collateral consequence in practice in the state, or how any collateral consequence is related to successful reentry or recidivism. In the conclusion, we describe possible future data collection activities which may assist the State as it contemplates collateral consequence reform.

THE USEFUL DURATION of CRIMINAL HISTORY INFORMATION

Criminologists have explored the causes of desistance from crime for decades (Blumstein et al., 1985; Brame et al., 2003; Sampson and Laub, 2003), and previous literature has demonstrated that the risk of reoffending decreases steadily over time (Schmidt and Witte, 1988; White et al., 1987). Only in the past few years has research turned to the specific issue of redemption, the examination of how long after a criminal conviction or incarceration an individual's risk of reoffending approaches that of the general population (Blumstein and Nakamura, 2009; Bushway et al., 2011; Kurlychek et al., 2006; Kurlychek et al., 2007).

The first study to examine this issue was conducted by Kurlychek and colleagues (2006) who examined police contacts among two groups of juvenile males born in 1958 in Philadelphia, and collected their records of arrest through age 26. This cohort study utilized hazard rates to examine the probability of future arrests for the police contact group and the group with no contacts. While the authors point out that, through age 26, at no point do individuals with police contacts become indistinguishable from those with no contact, the difference in magnitude between the two groups is small and decreases over time. Additionally, the authors separated age-18 violent and nonviolent offenders and found the violent offender hazard rate tended to be slightly higher than the non-violent group but the two were difficult to statistically distinguish. Kurlychek et al. (2006) conclude by stating they believe this study “supports explicit time limits in any statutory restrictions on employment” (499).

Later studies sought to expand on Kurlychek et al.’s (2006) exploratory study, particularly by increasing the follow-up period. Utilizing the 1942 Racine, Wisconsin cohort of 670 males, Kurlychek et al. (2007) examined the impact of juvenile police contacts with a 15-year follow up period. The authors focused on the same question as their previous study, without differentiating by crime type. With similar findings to the 2006 study, Kurlychek et al. (2007) concluded with “if a person with a criminal record remains crime free for a period of about 7 years, his or her risk of a new offense is similar to that of a person without any criminal record” (80).

Blumstein and Nakamura (2009) examined how the point of redemption varied by crime type and age at first arrest for individuals who had their first arrest in 1980 in New York State. This was the first redemption study that was based on large, representative administrative records, similar to the records actually used in employment background checks. With a 27-year

follow-up, comparing their sample to both the general population and to the population of never arrested, Blumstein and Nakamura (2009) found that those who were younger at first arrest and violent offenders had longer redemption periods. The study found that those who had committed a robbery at age 16 had the longest time to redemption (8.5 years), while those whose first robbery occurred at age 20 had a redemption period of only 4.4 years in comparison, to reach the risk level of that of the general population. Burglary and aggravated assault were similar, with 4.9 years to redemption with first arrest at age 16, and 3.2 and 3.3 years, respectively, for arrest at age 20. The authors recommend providing employers with information regarding the relationship between crime type and age at first arrest on time to redemption, as well as information about the diminished predictive value of records over time, to allow for employers to make the most informed decision about the future risk of an applicant.

Bushway et al. (2011) sought to expand the redemption literature by studying a Dutch sample of individuals convicted of a crime in 1977 and a non-offender sample gathered from Netherlands' draft records. This study examined the effect of age at last conviction and the number of prior convictions on progress toward redemption. While finding similar results as the previous redemption literature with regard to young offenders with no criminal history, Bushway et al. (2011) found that age at last conviction had an impact on redemption in that older offenders resembled the non-offender sample much more quickly than younger offenders. Additionally, the study found individuals with an extensive criminal history (with 4 or more convictions) had risks of offending that either never converged with the non-convicted sample or only converged after at least 23 years. This study demonstrated the complexity of redemption research and the limitation posed by studies that only focused on young offenders from their first arrest.

(A table detailing all four redemption studies is provided in Appendix A.)

REMEDIES: EXPUNGEMENT & SEALING, “BAN THE BOX”, and CERTIFICATES OF REHABILITATION

An important distinction in remedies for the availability of criminal history should be made between expungement laws and shielding/sealing laws. Although laws vary widely across states, expungement typically entails the destruction of the criminal record, meaning the record is no longer accessible to anyone, including criminal justice officials. On the other hand, shielding or sealing criminal history does not result in the destruction of the criminal record, as the record continues to exist and remains accessible for designated purposes, but the record is removed from public inspection or dissemination (Ispa-Landa and Loeffler, 2016; Subramanian et al., 2014).

State governments have increasingly adopted policies in recent years that expand eligibility for expunging one’s criminal history. Typically, expungement is made available for individuals who have committed minor misdemeanors and have successfully completed all supervision and other requirements (e.g., court-ordered victim restitution) (Ispa-Landa and Loeffler, 2016; Shlosberg et al., 2014; Subramanian et al., 2014). In Maryland, individuals must petition for the expungement of their records, and may not petition to do so until at least 10 years after all components and conditions of their sentence have been served or satisfied.

The use of expungements is increasing in Maryland, from 15,729 expungements in 2004, to 36,412 in 2015 (Maryland, 2016; preliminary year-to-date figures suggest the 2016 total will be in the range of 40,000-45,000 expungements). This number is expected to increase further after 2017, as the recently enacted Justice Reinvestment Act further expands the availability of expungement for several dozen additional offenses, including controlled substance and

paraphernalia possession, misdemeanor property offenses, prostitution, fraud, and second-degree assault, among other offenses.

There is a practical concern with the effectiveness of expungement and sealing/shielding laws as remedies. Expunged, sealed, or shielded records may continue to be available for inspection via online databases (including media coverage of offenders). There are practical and legal difficulties in regulating for-profit third parties who distribute these records to employers (Shlosberg et al., 2014), in addition to the potential for employers to discriminate against minorities in the absence of records, as discussed previously (Holzer et al., 2006; Agan and Starr, 2016). The private sector plays a significant role in the background check arena, in selling their services to employers, and private records companies often promote their service as quicker, more comprehensive, and more up-to-date compared to background checks performed by official state criminal history repositories.

Compared to sealing/shielding laws, which remove criminal history information from public inspection or dissemination, there is an additional unanticipated consequence of expungement. Factually and historically complete criminal history records are necessary for a variety of research purposes, both by criminal justice agency, academic, and other researchers. The “redemption” literature reviewed earlier would be difficult to pursue in a state with significant and selective expungement of criminal history records. Increasingly, correctional agencies use risk and needs assessment tools for developing case management plans, and norming and validating such tools require complete and accurate criminal history records. Even the calculation of the key criminal justice performance measure – recidivism – is compromised when using incomplete criminal history records. While expungement may help remedy the impact of a prior offense limiting an individual’s future opportunities, sealing/shielding records,

with the provision that records are archived for criminal justice and research purposes, would also allow for the advantage of expungement, without the accompanying disadvantage.

Another policy increasingly being adopted to counteract the negative effect criminal history has on employment opportunity is the enactment of “ban the box” laws. The “box” referred to in these laws is the question commonly present on job applications asking the applicant if he or she has a criminal conviction (Agan and Starr, 2016; D’Alessio et al., 2015; Henry and Jacobs, 2007). More than 100 jurisdictions and 24 states have implemented a “ban the box” law, most of which apply to public employees. Seven of these states (such as New Jersey and Minnesota) and many cities have also extended the ban to private employers (Rodriguez and Avery, 2016). Maryland’s “ban the box” law was signed into law in 2013 and applies solely to state public employers (Rodriguez and Avery, 2016).

At the federal level, the Federal Interagency Reentry Council began working in 2011 to identify policy reforms that would improve re-entry outcomes for ex-offenders. Furthermore, President Obama released a memorandum in November 2015, directing the Office of Personnel Management to evaluate strategies to reduce barriers to employment and licensing by delaying consideration of an applicant’s criminal records to later in the hiring process, and consider the nature and time passed since an individual’s offense in the granting of a license (The White House, 2015 and 2016).

Although “ban the box” laws vary by state and city, they typically mandate moving the question to later in the hiring process, when individuals undergo a background check only after they are among the remaining few applicants being considered. Many of these laws also state that an individual can only be rejected if the crime discovered in the background check is directly relevant to the job in question (D’Alessio et al., 2015). A caveat to “ban the box” movements

that merits mention is these laws would only impact the most employment-ready ex-offenders (Henry and Jacobs, 2007).

In an analysis of a “ban the box” law, D’Alessio et al., (2015) examined the impact of Hawaii’s 1998 law on repeat offending in Honolulu County. The authors measured repeat offending by coding as a “repeat offender” all individuals who were prosecuted for a felony, and also had a previous felony or misdemeanor criminal conviction. The study examined court processing data before and after passage of the “ban the box” law in 1998, to examine the bill’s impact on the number of individuals prosecuted for felonies who had previous convictions. This study found that passage of the “ban the box” law lowered the odds of repeat offending by 57%, when controlling for other factors associated with offending.

Other research has demonstrated that the “ban the box” tactic might not be as beneficial as expected. Agan and Starr (2016) examined the impact of “ban the box” in New Jersey and in New York City, and found the implementation of the law *increased* statistical discrimination that could disadvantage black males. This study focused on applications to jobs at establishments that were suitable for individuals with limited work experience and education, such as restaurants and convenience stores. Online applications were filled out both before and after “ban the box” went into effect, using fictitious pairs of applicants (one white applicant and one black applicant). Assigning applicants with a minor felony from at least two years before (of a nonviolent drug offense or a property crime), and with no history of incarceration, this study found that among employers where “ban the box” had taken effect, “white applicants went from being 7% more likely to receive a callback than similar black applicants to being 45% more likely” (33). This research found support for Holzer et al.’s (2006) findings in that *without* criminal background checks, employers were more likely to discriminate against minority

applicants. Further research is needed to understand the full impact – intended and unintended – of “ban the box” laws.

A final avenue pursued in recent years to counteract the negative effect of criminal history has been the availability of certificates of rehabilitation. Bushway and Apel (2012) discuss the use of signaling as a way for ex-offenders to demonstrate they would be reliable and productive employees. One such potentially positive signal could be transmitted through the attainment of a certificate of rehabilitation, which states that an offender has completed all necessary requirements, and has become “reformed” or “rehabilitated” since their offense. It is hypothesized that certificates of rehabilitation will allow employers to balance the information provided by criminal history with the positive information transmitted via a certificate of rehabilitation.

The Justice Reinvestment Act of 2016 in Maryland provides for the issuance of certificates of rehabilitation by the Department of Public Safety and Correctional Services, for all offenses except certain violent and sexual offenses, upon completion of all requirements of supervision. The law further instructs that these certificates of rehabilitation be given consideration by state occupational licensing and certification boards when reviewing an applicant with a criminal history. The particular process by which certificates will issued, and after what period of time, and their consideration by the relevant boards, will be specified further through implementing regulations in 2017.

CONCLUSIONS AND RECOMMENDATIONS

The numerous barriers faced by individuals after having contact with the criminal justice system, and their impact on successful reentry, are increasingly the subject of empirical research.

Although much has been learned in the past decade about these issues, outside of the research on employment restrictions, most collateral consequences are rarely studied. In conducting a literature review of the research on collateral consequences and recidivism, Whittle (2016) concluded, “Currently, the evidence is mixed overall with the majority of research finding that collateral sanctions are positively associated with recidivism (i.e., increase recidivism) or have null/mixed effects (i.e., do not significantly impact recidivism up or down)” (16).

Significant uncertainty exists about the impact of collateral consequences in the context of hiring and employment, and this situation is not unique to Maryland. Below we provide four recommendations for the Workgroup to consider as it deliberates its final recommendations for policy change to reduce the impact of collateral consequences of convictions.

Recommendation #1: Limit the consideration of criminal histories older than 7-10 years.

The redemption literature discussed previously provides support for the idea that collateral consequence laws, and the consideration of criminal history in employment, can be limited in duration, particularly when an individual remains crime-free for a several year time-span, and has a limited criminal history (ideally, only one prior offense). The charge to the Workgroup is to balance the need for public safety with the need for greater, legal employment among the ex-offender community. Giving more weight to recent criminal history, versus older criminal history, is a more effective and valid use of available criminal history information about an individual.

In addition, existing provisions in Justice Reinvestment Act allow for the issuance of certificates of rehabilitation. As the Department of Public Safety & Correctional Services implements this provision, attention should be paid to the existing research that may inform how

long an individual must wait before receiving such a certificate. The success of certificates of rehabilitation will depend upon the screening process used to issue them, and the corresponding integrity of the signal they provide to those evaluating someone with a criminal history. A key, necessary condition in signaling in this instance is that obtaining a signal should be possible for desisters, but very difficult for non-desisters. Otherwise, the certificate, as a signal, would become useless over time because employers would learn that the certificate does not successfully differentiate desisters from non-desisters.

The previously discussed “redemption” literature can inform the allocation of the positive signal among the ex-offender population. In addition, the work of Kurlychek et al. (2012) found that a significant minority of offenders exhibit (what they term) “instantaneous” desistance. Their study of 972 individuals, sentenced in Essex County, NJ, during 1976-1977, and followed-up for 18 years thereafter, found that approximately 25% of their sample desisted immediately after their first sentence. Such individuals will likely make up a significant portion of certificate awardees, and the durability of their desistance over time will allow for the certificate of rehabilitation to convey a strong, positive signal.

Recommendation #2: *Use sealing or shielding instead of expungement of criminal history to counter the effects of collateral consequences.*

As discussed previously, expungement completely eliminates the criminal record as maintained by the official state repository. Expungement, however, does not entirely eliminate the ability of interested parties to discover previous arrests and convictions, due to the warehousing of criminal history records by private sector companies, as well as any information contained in media archives. Individuals may not always be aware that their criminal history persists despite expungement, and a circumstance can result in which an applicant may attest he

or she has no criminal history, but the discovery of criminal history by a prospective employer causes additional difficulty in the application process.

This destruction of this data also limits the ability of policymakers and researchers to study various topics based on criminal history records, which would diminish the ability to make evidence-based and data-driven policy changes. Furthermore, the practice of expungement also diminishes the historical accuracy of the official criminal history repository, which would likely increase the demand among employers for private sector background screening companies. A more preferable way to combat the lifelong impact of a criminal record is through sealing or shielding, which removes the record from public inspection, while allowing for criminal history to continue to be used for public safety and research purposes.

Recommendation #3: *For Maryland agencies to begin collecting, analyzing, and reporting relevant data:*

- a) From Maryland state licensing and certification boards: The number of applications received for occupational certifications and licenses, the number of applicants with a criminal history, and the number of applicants accepted and rejected with a criminal history, and
- b) From Maryland state agencies: The number of applicants for state government jobs employed despite, or rejected due to, criminal history, and follow-up data on the employment outcomes of public employees hired with a criminal history.

With regard to (a) and (b) above, retaining individual-level data about these two topics will allow more detailed study of the relationship between criminal history and an applicant's

ability to successfully achieve licensure or certification. These data would provide the information needed to begin to measure the relationship between policies or practices that limit employment for ex-offenders, and the employment outcomes for offenders. These data, collected over time, would also allow measurement of any impact of collateral consequence reforms that may be enacted.

In the limited timeframe of the Workgroup's current efforts, the Department of Health and Mental Hygiene gathered preliminary data on the outcomes of initial and renewal license applications across its various occupation boards. Those data are displayed in full in Appendix B.¹ The annual totals for recent fiscal years clearly indicate that denials of licenses due to applicants having a criminal history are rare events. However, it may be the case that those with a criminal history are currently deterred from applying for licenses, thus contributing to the low rates of denial. That is why, in addition to these helpful and illuminating data, a more complete understanding of licensing outcomes would be gained if boards were able to collect and report data on approval rates among applicants with a criminal history.

An obstacle to better understanding the particular impact of criminal justice system involvement on employment or income attainment is presented by how little is known about individual attainment prior to criminal justice system involvement. Knowing such information would help identify specific mechanisms about how, and to what extent, criminal justice system involvement disrupts successful re-entry.

¹ We gratefully acknowledge the assistance of workgroup member Christi Megna, Assistant Director of the Office of Governmental Affairs, Department of Health and Mental Hygiene, who facilitated the collection and reporting of these data.

In Maryland, for a more comprehensive understanding of the educational, employment, and income histories and trajectories of the ex-offender population, data from the Maryland Longitudinal Data System (MLDS) may be usefully consulted (<https://mldscenter.maryland.gov/>). The MLDS collects, in a linked data warehouse, individual records about educational attainment, labor and workforce participation, and income for the entire population of Maryland. Studying the available MLDS data for a sample of offenders would allow for a rare understanding of the income and employment trajectories of the ex-offender population, both before and after contact with the criminal justice system, and would help illuminate the particular role of collateral consequences in employment outcomes.

Recommendation #4: *For Maryland state agencies to publish more information and guidance -- addressed to potential certification/license applicants and employment applicants -- about what types of criminal history, and the “age” of criminal history, that will be considered in applicant evaluation and hiring.*

Licensing and certification boards retain significant discretion in evaluating applicant backgrounds, and assessing the suitability of applicants for particular professions. Beyond state level regulations, certain professions are also subject to federal guidelines and standards for determining applicant eligibility.

Making available any summary statistics that arise from the data collection described in Recommendation #3 (and illustrated in Appendix B) would help reduce the considerable uncertainty that exists among applicants regarding the likelihood of success in pursuing certifications/licenses and employment opportunities. It may be the case that applied discretion in the reviewing and hiring process currently produces more success among applicants with a criminal history than is commonly understood (alternatively, it may be the case that such success

is exceedingly rare). It may also help to overcome the anticipated reactions of ex-offenders, who may be discouraged from applying in the first instance, to provide illustrative, narrative examples of individuals who, despite having a criminal history, still achieved licensure/certification, or direct employment with the state.

Finally, this recommended information and guidance about available occupations may also prove useful to the Department of Public Safety & Correctional Services, as it may guide that agency in aligning educational and vocational programming with viable employment opportunities for prisoners and supervisees upon release.

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APPENDIX A: REDEMPTION STUDIES

Study	Methodological Details	Crime Type	Time to Redemption
Kurlychek et al. (2006)	<ul style="list-style-type: none"> Philadelphia 1958 cohort Followed through age 26 	Compared violent and nonviolent offenders	At no point in follow-up period (through age 26) were offender and non-offender groups indistinguishable, although the difference is small and decreases over time
Kurlychek et al. (2007)	<ul style="list-style-type: none"> Racine, Wisconsin, 1942 cohort 15-year follow-up 	N/A	Approximately 7 years
Blumstein & Nakamura (2009)	<ul style="list-style-type: none"> Individuals whose first arrest was in 1980 in New York 27-year follow-up Offense type and age at first arrest Redemption times compared to the general population 	Robbery	First arrest at 16: 8.5 years First arrest at 20: 4.4 years
		Burglary	First arrest at 16: 4.9 years First arrest at 20: 3.2 years
		Aggravated Assault	First arrest at 16: 4.9 years First arrest at 20: 3.3 years
Bushway et al. (2011)	<ul style="list-style-type: none"> Dutch sample convicted in 1977 compared to non-offender sample 25-year follow-up Age at conviction and number of previous convictions 	N/A	<p>Oldest and Youngest categories:</p> <p>Aged 12-16 with no convictions: 16 years Aged 12-16 with 1 conviction: 18 years Aged 12-16 with 2/3 convictions: 23 years Aged 12-16 with 4-7 convictions: 24 years Aged 12-16 with 7+ convictions: Never</p> <p>Older than 47 with no convictions: 2 years Older than 47 with 1 conviction: 6 years Older than 47 with 2/3 convictions: 7 years Older than 47 with 4-7 convictions: 15 years Older than 47 with 7+ convictions: Never</p>

APPENDIX B: DEPARTMENT OF HEALTH AND MENTAL HYGIENE LICENSE APPLICATION OUTCOMES

DHMH - Applications for Initial Licensure

Board	# of Complete Applications Received (Fiscal Year)					# of Licenses Denied for Criminal History/Character (Fiscal Year)					# of Licenses Denied for Other Reasons (Fiscal Year)				
	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
State Acupuncture Board	81	88	84	90	81	0	0	0	0	0	0	0	0	0	0
State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech Language Pathologists	491	442	412	413	397	0	0	0	0	0	4	1	3	0	0
State Board of Chiropractic and Massage Therapy Examiners	528	589	540	572	501	1	3	5	0	3	0	0	0	0	0
State Board of Dental Examiners	1142	1091	905	114	977	0	1	0	2	1	0	0	1	2	0
State Board of Dietetic Practice	137	135	162	162	205	0	0	0	0	0	0	0	0	0	0
State Board of Morticians and Funeral Directors	52*	69	75	87	453	0	0	0	0**	0	0	0	0	0	0
State Board of Nursing	(not available)														
State Board of Nursing Home Administrators	15	14	9	26	31	1	0	0	0	1	0	0	0	0	0
State Board of Occupational Therapy Practice	245	284	372	356	380	0	0	0	0	0	0	0	0	0	0

State Board of Examiners in Optometry	57	53	60	55	58	0	0	0	0	0	0	0	0	0	0
State Board of Pharmacy	1599	2830	2387	2844	3544	2	2	2	1	3	10	0	1	1	1
State Board of Physical Therapy Examiners	679	753	860	839	863	1	0	1	1	0	0	0	0	0	0
State Board of Physicians	(see end of Appendix B)														
State Board of Podiatric Medical Examiners	47	55	47	61	57	0	0	0	0	0	0	0	0	0	0
State Board of Professional Counselors and Therapists	1101	1162	1262	1415	1538	0	0	0	0	0	0	1	2	1	0
State Board of Examiners of Psychologists	159	158	163	161	174	0	0	0	0	0	0	0	0	0	0
State Board of Social Work Examiners	1498	1627	1582	1715	1723	0	0	0	0	0	0	0	0	0	0
State Board for Certification of Residential Child Care Program Professionals	15	10	14	14	584	0	0	0	0	0	0	0	0	0	0
State Board of Environmental Health Specialists	n/a	n/a	58	100	92	0	0	0	0	0	0	0	0	0	0

TOTALS

5 6 8 4 8 14 2 7 4 1

* Estimated, full numbers not found

** Intent to deny, but applicant withdrew application

DHMH - Applications For Renewal of Licensure

Board	# of Complete Applications Received (Fiscal Year)					# of Licenses Denied for Criminal History/Character (Fiscal Year)					# of Renewals Denied for Other Reasons (Fiscal Year)				
	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
State Acupuncture Board	384	372	399	403	432	0	0	0	0	0	0	0	0	0	0
State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech Language Pathologists	762	3912	770	4166	2544	0	0	0	0	0	0	0	0	0	0
State Board of Chiropractic and Massage Therapy Examiners	738	3789	950	4969	1007	0	0	0	0	0	0	0	0	0	0
State Board of Dental Examiners	9367	4182	9648	4384	10985	0	0	0	0	0	0	0	0	0	0
State Board of Dietetic Practice	661	648	702	670	712	0	0	0	0	0	0	0	0	0	0
State Board of Morticians and Funeral Directors	452	899	837	485	833	0	0	0	0	0	0	0	0	0	0
State Board of Nursing	(not available)														
State Board of Nursing Home Administrators	233	247	244	228	242	0	0	0	0	0	0	0	0	0	0
State Board of Occupational Therapy Practice	3062	3145	3360	3577	3760	0	0	0	0	0	0	0	0	0	0
State Board of Examiners in Optometry	714	119	386	466	398	0	0	0	0	0	0	0	0	0	0
State Board of Pharmacy	0*	5719	10715	8407	11526	1	0	0	0	2	1	5	0	0	0
State Board of Physical Therapy Examiners	3318	3480	3600	3795	3430	0	0	0	0	0	0	0	0	0	0

State Board of Physicians	(see end of Appendix B)														
State Board of Podiatric Medical Examiners	435	472	432	447	438	0	0	0	0	0	0	0	0	0	0
State Board of Professional Counselors and Therapists	2523	1755	2629	1885	2763	0	0	0	0	0	0	0	0	0	0
State Board of Examiners of Psychologists	1201	1255	1271	1386	1339	0	0	0	0	0	0	0	0	0	0
State Board of Social Work Examiners	4204	3862	4489	4132	4641	0	0	1	0	0	0	0	0	0	0
State Board for Certification of Residential Child Care Program Professionals	48	53	21	86	0	0	0	0	0	0	0	0	0	0	0
State Board of Environmental Health Specialists	n/a	n/a	437	108	459	0	0	0	0	0	0	0	0	0	0
TOTALS						1	0	1	0	2	1	5	0	0	0

**Licensing data lost when transferred to new licensing system*

Maryland Board of Physicians Denial of Licensure - Criminal History and Character Clarification

	# of Licensees Denied for Criminal History/Character	Type of Practitioner's Denied	Comments
FY11	1	Respiratory Care Practitioner (RCP) (1)	<ul style="list-style-type: none"> Denial based on lack of good moral character/felony convictions Denied for felony drug convictions but also for lying on application Final conclusion was that the RCP lacks good moral character
FY12	4	Physicians (4)	<ul style="list-style-type: none"> All 4 denied based on lack of good moral character 1 was for an underlying child pornography conviction All 4 had underlying disciplinary grounds under 14-404(a)
FY13	1	Physician (1)	<ul style="list-style-type: none"> Denial based on lack of good moral character Pled guilty to child endangerment Denied based on conviction
FY14	1	Physician (1)	<ul style="list-style-type: none"> Denial based on lack of good moral character with underlying disciplinary grounds under 14-404(a)
FY15	4	Physician (1) Polysom Practitioner (1) Respiratory Care Practitioner (1) Radiographer (1)	<ul style="list-style-type: none"> All 4 denied based on lack of good moral character 1 radiographer had a conviction for abuse/neglect of vulnerable adult
FY16	2	Physicians(2)	<ul style="list-style-type: none"> Both denials based on lack of good moral character Underlying disciplinary grounds under 14-404(a)

Notes:

- Types of crimes: child pornography, child endangerment, abuse, and neglect of vulnerable adult.
- There were a total of 13 denials from FY11 through FY 16 for all practitioners (initial applicants). The Medical Practice Act (Act) permits denial not only for lack of good moral character, but also for an act that falls under our disciplinary grounds. In accordance with § 14-205(b)(1)(iii) of the Act, the Board may deny a license to an applicant for any of the reasons that are grounds for action under § 14-404. The Board requires applicants to meet the same threshold regarding violations as those already licensed..
- Reasons for denials other than criminal history are also the underlying disciplinary grounds pursuant to the Act.