

Expungement of Criminal Convictions: An Empirical Study

Community Legal Services of Philadelphia
& National Record Clearing Project
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“Prescott Starr Expungement SSRN”

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Rapid Growth in Expungement Policies

Many Dozens of States

Adopted or expanded expungement laws over last few years

Automatic Expungement:

- Pennsylvania (2018)
 - Utah (2019)
 - California (2019)
- New Jersey (2019)
- Michigan (2020)

Eligibility Restrictions Vary...

WAITING PERIODS: range from 0 to 20 years, running from either sentence completion or conviction

CLASS OF CRIME: e.g., misdemeanors only

TYPE OF CRIME: e.g., nonviolent offenses

NUMBER OF CONVICTIONS: limits on total number applicant can have, as well as number allowed to be expunged

Motivation:

Lots of Americans Have Criminal Records!

- FBI count (arrests—mainly felonies): 1/3 of adults
- Felony convictions: about 8% of adults; 33% of black men (Shannon et al. 2017)
- Misdemeanor arrests and convictions: ??? (more than felonies)

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LIABILITY		Trader J
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SECURITY

SECURITY		EARLIEST TIME	LATEST TIME
<p>HAVE YOU EVER BEEN CONVICTED OF (OR have read the state specific information below</p> <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>			
<p>THE CONVICTION(S) (OR GUILTY</p> <p>NO <input type="checkbox"/></p>		No. of Times	
<p>EACH CONVICTION</p> <p>in applicant, but</p>		No. of	

YES ☐

DID THE

NO ☐ **VICTIM**

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YES ☐ NO ☐ **BEEN CONVICTED OF (OR PLEADED GUILTY TO) ANY CRIME IN ANY STATE specific information below.)**

EXPLAIN EACH CONVICTION(S) (OR GUILTY OR NOLY CONVICTION(S))

No. of Times

No. of Times

disqualify an applicant, but it may affect your

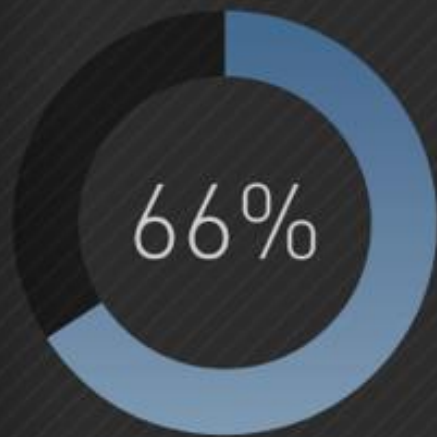
EXPLAIN EACH CONVICTION (AND GUILTY OR NOLY CONVICTION(S))

No. of Times

No. of Times

disqualify an applicant, but it may affect your

Criminal background checks are used by...



Colleges



Employers



Landlords

Graphic Source: Center for American Progress

Collateral Legal Consequences of Convictions

- Occupational Licensing: especially security guards, health care, long term care, day care, schools/school services, firefighters, banks/financial services
- Federally subsidized housing
- Federal student loans and small business loans
- Some public benefits
- Parental rights
- Firearms
- Sex offender registration
- Deportation
- Public office

Many Unanswered Empirical Questions?

- How many people obtain expungements, and who tends to get them?
- What are the effects on employment and other socioeconomic outcomes?
- At what rate do people who obtain expungements subsequently reoffend?
- Does expungement affect recidivism rates?

Our Data

De-identified, Statewide Dataset Covering:

- All Michigan expungement (“set-aside”) recipients through 2014
- Large comparison groups of people with similar records (including those legally eligible for set-asides) for 1999-2008 conviction cohorts

Data Sources (linked by state agency):

- Michigan State Police: full criminal histories through 2014
- Workforce Development Agency/Unemployment Insurance Agency: quarterly wage/employment data

Criminal Record Set-Asides in Michigan

- Conviction removed from databases (divulging it is a misdemeanor)

- For most purposes, can legally answer:
NO conviction.



- Eliminates some collateral legal consequences

But record isn't *completely* expunged

The Michigan State Police retain the record and share it for:

- Sentencing of subsequent felonies
- Subsequent set-aside and pardon requests
- Occupational licensing by the judicial branch (i.e., the bar!)
- Background checks for law enforcement hiring
- Enforcement of rules governing sex offenders

M.C.L. 780.621: Eligibility Requirements (Pre-2011)

- One conviction on one count, ever
- 5 years after sentencing or prison release, whichever is later
- Exclusions: offenses carrying potential life terms, most sex offenses, driving offenses

Petition-Based System

- Applicant must apply and pay \$50 fee (plus some additional costs)
- Prosecutor notified and may oppose
- If applicable, victim notified and may appear
- Judge *may* grant set-aside if warranted by defendant's subsequent behavior and if "consistent with public welfare"

Key Findings

- 1. *LOW UPTAKE:*** Very few of those eligible for set-asides receive them.
- 2. *LOW RECIDIVISM:*** Set-aside recipients have extremely low subsequent rearrest and reconviction rates.
- 3. *EMPLOYMENT/WAGE IMPROVEMENTS:*** Recipients see substantial increases in employment rates and wages.

“Uptake Rate” Analysis (Probability of Set-Aside Receipt If Eligible)

Our main analysis sample

- Those we can identify as becoming legally eligible for set-asides from 2004 through mid-2006
- Limited to those *never incarcerated*
- Limited to those with a specific list of set-aside-eligible statutory offenses
- Excludes people with out-of-state licenses

OVERALL 5-YEAR UPTAKE RATE

Balance Includes Non-Applicants, Unsuccessful Applicants, and those who wait more than 5 years

Best estimate:
about 6.5%

Sources of uncertainty

- Need to impute some missing set-aside dates
- Incarcerated defendants excluded
- Eligibility coding misses out-of-state offenses
- Some offenses excluded from sample

**Table 1. Uptake Rates:
Receipt of Set-Aside Within 5 Years of Eligibility**

Version	5-Year Uptake	N
1. Main	6.5%	9,103
2. Accounting for Unknown Date Set-Asides: Lower Bound	5.7%	9,103
3. Accounting for Unknown Date Set-Asides: Upper Bound	6.7%	9,103
4. Add Incarcerated (< 1 Year)	5.4%	14,223

Why is Uptake so Low?

Insights from expert interviews

- Lack of information
- Administrative complexity/hassle
 - Fees
 - Fear and distrust
 - Lack of counsel
- Not everyone is highly motivated to remove conviction

Findings: Recidivism Within 5 Years of Set-Aside

Rearrested: 7.1% (2.6% violent, 2.7% felony)

Reconvicted: 4% (0.6% violent, 1% felony)

[Based on all set-aside recipients through 2008, except MI non-residents.]

Table 4. Re-Arrest and Reconviction Rates for Set-Aside Recipients

	2-Yr Arr.	2-Yr Conv.	5-Yr Arr.	5-Yr Conv.
A. Full Sample				
Overall Arrest/Conviction Rates	3.4%	1.8%	7.1%	4.2%
Violent Arrest/Conviction Rates	1.0%	0.2%	2.6%	0.6%
Felony Arrest/Conviction Rates	1.2%	0.3%	2.7%	1.0%
B. Subsamples (Overall Rate Unless Specified)				
Set-Aside <6 Years from Conv./Release	3.8%	2.1%	8.1%	4.9%
Set-Aside 10-11 Years from Conv./Release	2.6%	1.6%	6.1%	3.4%
Set-Aside Conviction Was Felony	4.0%	1.9%	8.1%	4.6%
Set-Aside Conviction Was Misdemeanor	3.1%	1.8%	6.4%	3.8%
Incarcerated for Set-Aside Offense	3.2%	1.7%	6.7%	3.9%
Not Incarcerated for Set-Aside Offense	3.5%	1.8%	7.2%	4.3%
Set-Aside Offense Was Violent	4.4%	2.2%	8.4%	4.4%
Set-Aside Offense Was Violent: Violent Rate	1.6%	0.3%	4.0%	0.8%

Recidivism: Comparison to the General Population (Metric is Total Number of Arrests in Two Years)

SET-ASIDE RECIPIENTS: 4.7 Arrests/100 Persons

GENERAL ADULT POPULATION OF MICHIGAN: 6.6 Arrests/100 Persons

Two possible explanations for these low rates

(Our data can't disentangle these)

1. SET-ASIDE RECIPIENTS HAVE A LOW BASELINE CRIME RISK.

- Supported by research on **desistance** from crime
- People who have gone 5 years from their last conviction rarely reoffend
- Limited records + self-selected pool

2. SET-ASIDES REDUCE CRIME RISK.

- Supported by research on **risk factors for recidivism**, including unemployment and housing instability
- No research supports the expectation that set-asides would *increase* crime risk on balance.

Employment and Wage Analysis

We estimate **within-person** changes in employment and wage **trends** after receipt of a set-aside, with controls for Michigan economic conditions in the calendar quarter.

$$\begin{aligned} Employed_{it} = & \alpha + \gamma Elapsed_{it} + \delta Elapsed_{it} \times Post_{it} \\ & + \theta TotalEmployment_t + \vartheta URate_t + \epsilon_{it}. \end{aligned}$$

Sample: Employment and Wage Analysis

- Received set-aside on known date, Jan. 1998-May 2011
- Matched to UIA data during at least one quarter in 1997-2013
- No out-of-state driver's license
- For the time window used in the particular regression:
 - Whole window falls within the time range of our UIA data
 - Individual was between 18 and 64 years old

Key Findings: Employment and Wages

Within one year of receiving a set-aside conviction, on average:

- Employment probability goes up by factor of 1.13 (about 8pp)
- Probability of earning at least \$100/week goes up by factor of 1.23
- Quarterly wages go up by 23% (combines higher employment, more hours, higher pay)

These gains remain pretty stable after 1 year.

Figure 3a. Employment Rate (Any Wages in Quarter) Before and After Set-Aside

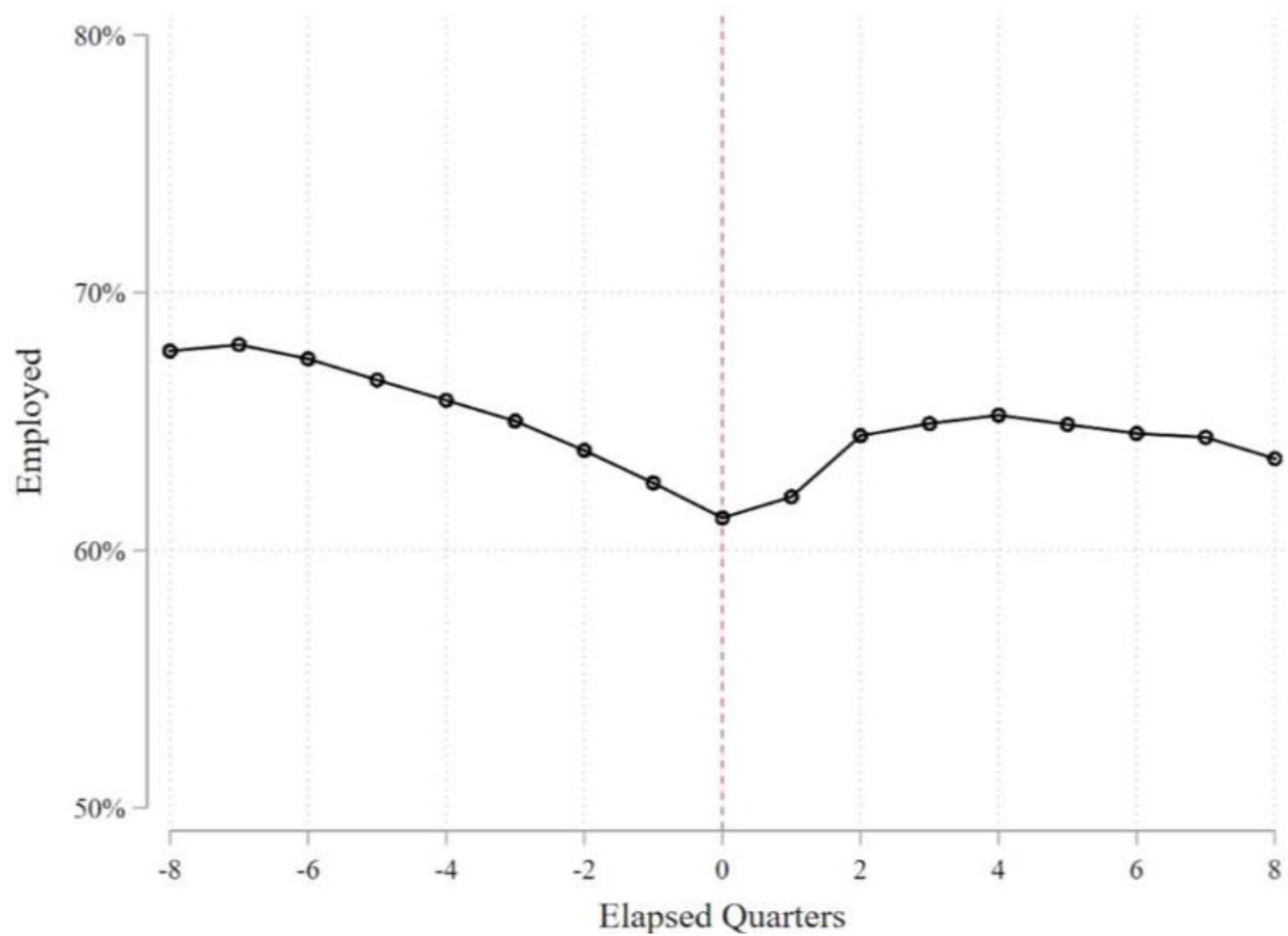


Figure 3b. Employment Rate (>\$100/week) Before and After Set-Aside

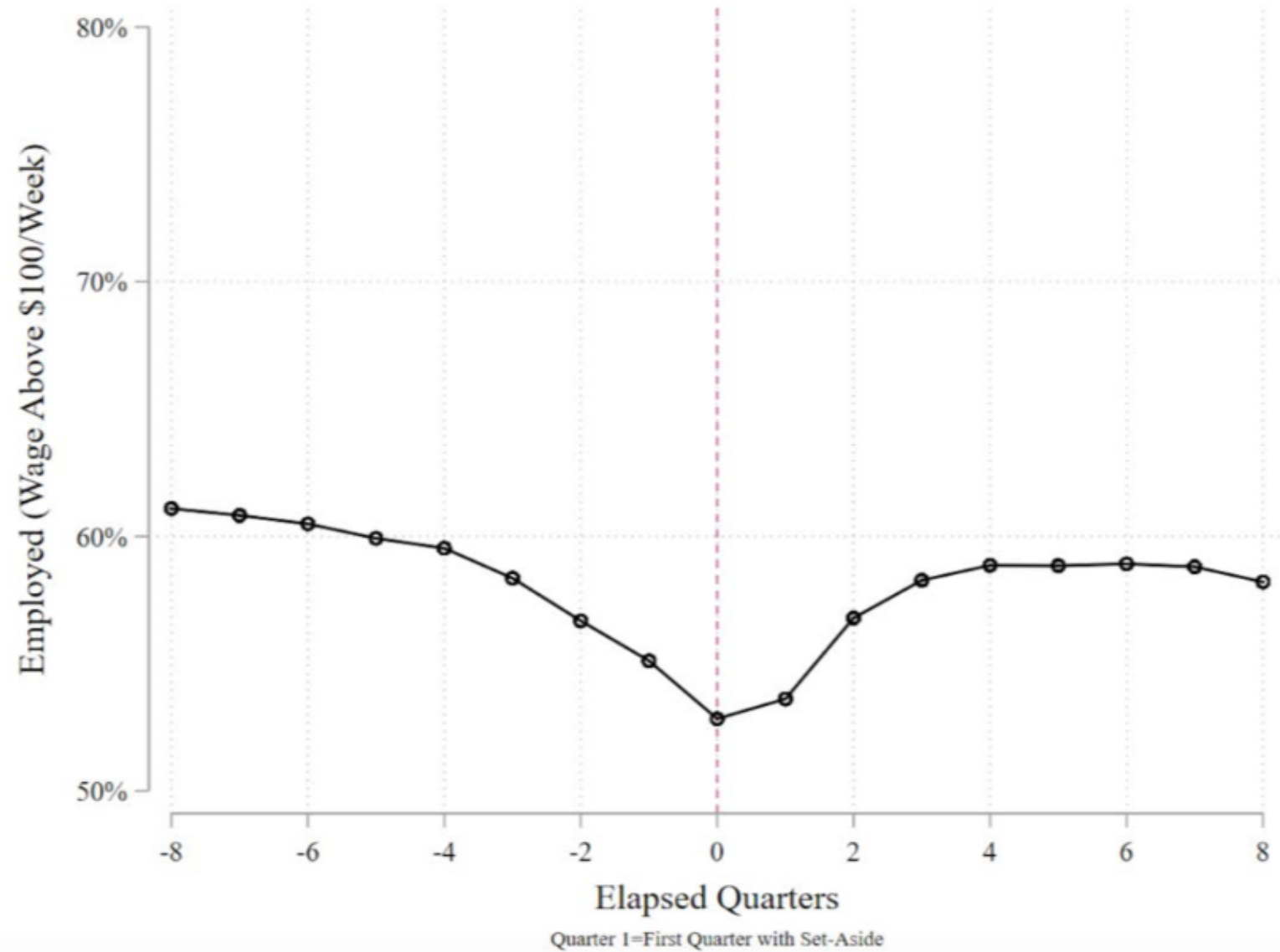
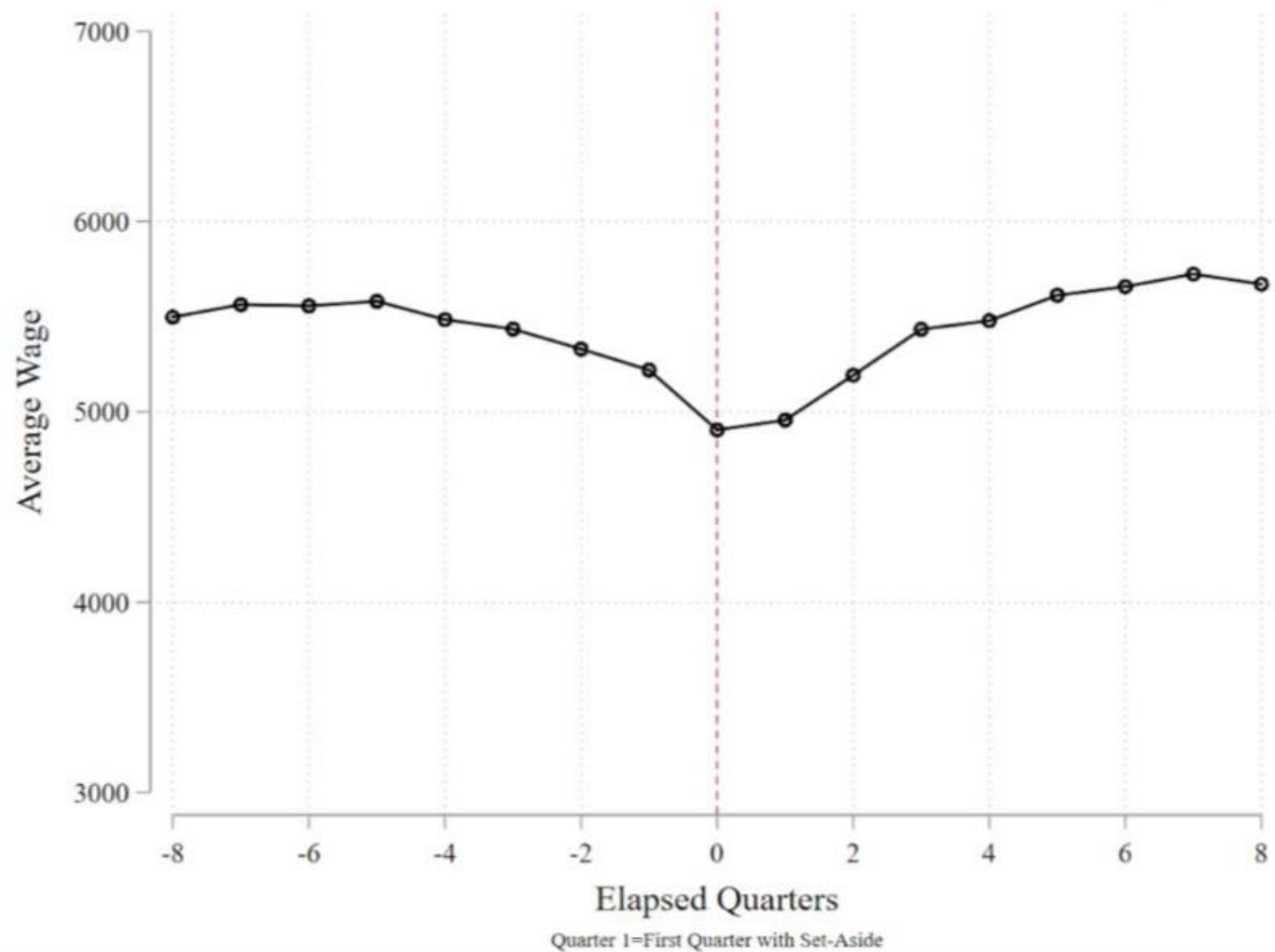


Figure 3c. Average Quarterly Wages Before and After Set-Aside



A. Employment Rate (Any Wage)

Elapsed × Post	0.0247*** (0.004)	0.0198*** (0.002)	0.00945*** (0.001)	0.00559*** (0.001)
Elapsed	-0.00610* (0.003)	-0.00649*** (0.001)	-0.00346*** (0.001)	-0.00247*** (0.000)
<i>Net Gain</i>	0.049	0.079	0.076	0.067
<i>Proportional Net Gain</i>	8.0%	12.8%	12.3%	10.9%
No. of Observations	57,596	125,451	226,525	301,500
Window (Quarters)	+/- 2	+/- 4	+/- 8	+/- 12

B. Employment Rate (>\$100/week)

Elapsed × Post	0.0367*** (0.003)	0.0308*** (0.002)	0.0149*** (0.001)	0.00838*** (0.001)
Elapsed	-0.0144*** (0.002)	-0.0124*** (0.001)	-0.00562*** (0.001)	-0.00320*** (0.000)
<i>Net Gain</i>	0.073	0.123	0.119	0.101
<i>Proportional Net Gain</i>	13.9%	23.1%	22.4%	18.9%
No. of Observations	71,899	125,451	226,525	301,089
Window (Quarters)	+/- 2	+/- 4	+/- 8	+/- 12

C. Wages

Elapsed × Post	314.5*** (36.77)	277.8*** (18.12)	154.2*** (10.38)	92.22*** (7.80)
Elapsed	-160.5*** (22.26)	-113.5*** (11.78)	-43.57*** (7.32)	-14.95* (6.10)
<i>Net Gain</i>	\$629.00	\$1,111.20	\$1,233.60	\$1,106.64
<i>Proportional Net Gain</i>	12.7%	22.5%	24.9%	22.2%
No. of Observations	71,899	125,451	226,525	301,089
Window (Quarters)	+/- 2	+/- 4	+/- 8	+/- 12

Causal Identification Concerns

People are somewhat likelier to apply for set-asides when they have recently lost a job/experienced wage decline.

Two related concerns:

- *MOTIVATION*: If set-aside applicants are also applying for jobs, the job search—not the set-aside—could drive subsequent gains.
- *MEAN REGRESSION*: Even without motivation effects, if these recent declines are essentially random, we would expect subsequent bounce-back on average.

Reasons to think a substantial part of the effect is causal

- (1) **TIMING OF GAINS:** The trend turnaround begins in the quarter the set-aside is *received*, not when it is applied for (~1-2 quarters earlier)
- (2) **EFFECTS ON EARLY SET-ASIDE RECIPIENTS:** Those who apply right after becoming eligible show extremely similar gains, despite:
 - No pre-period negative trend
 - Application timing seemingly driven by arbitrary 5-year rule
- (3) **THEORY/OTHER RESEARCH PREDICTS IT.** Ample evidence has shown that records impair employment prospects.

The Policy Upshot

THE GOOD NEWS: Expungement seems to have substantial benefits for recipients and raises no real public safety concern.

THE BAD NEWS: Hardly anyone (even among those eligible) actually receives expungement.

SO: Make expungements easier to obtain—especially procedurally. Strong case for [automatic expungement](#) (like PA, UT).

Waiting periods don't need to be longer than 5 years.

Further research is still needed

- Pilot interventions (or timing of them) could be randomized to study the effects, allowing strong causal inference
- Effects of automatic set-asides
- Effects with expanded eligibility requirements
- Effects on outcomes other than crime and employment

M.C.L. 780.621: Eligibility Requirements (Until April 2020)

(1) Still minimal record, but you can now have:

- One conviction only
- OR two misdemeanors (can set aside both)
- OR one felony plus up to two misdemeanors (set aside only felony)

(2) Only the conviction(s) you seek to set aside must be 5 years old

(3) But the 5 year period now runs from completion of ALL sentence components

(4) Slightly expanded excluded-offense list

Who *does* get set-asides?

Individual Characteristics

Black 30%, White 66%, Other 4%

Male 61%

Employed when became eligible 66%

Employed quarter before set-aside 61%

Average quarterly wages ~\$5000

Who *does* get set-asides?

Case Characteristics

Felony 44%

Incarcerated 29%

Incarcerated more than 1 year 2%

Crime Type:

- Violent 15%
- Drug 18%
- Property 53%
- Other 18%

Figure 1. Years Elapsed Between Sentencing and Set-Aside

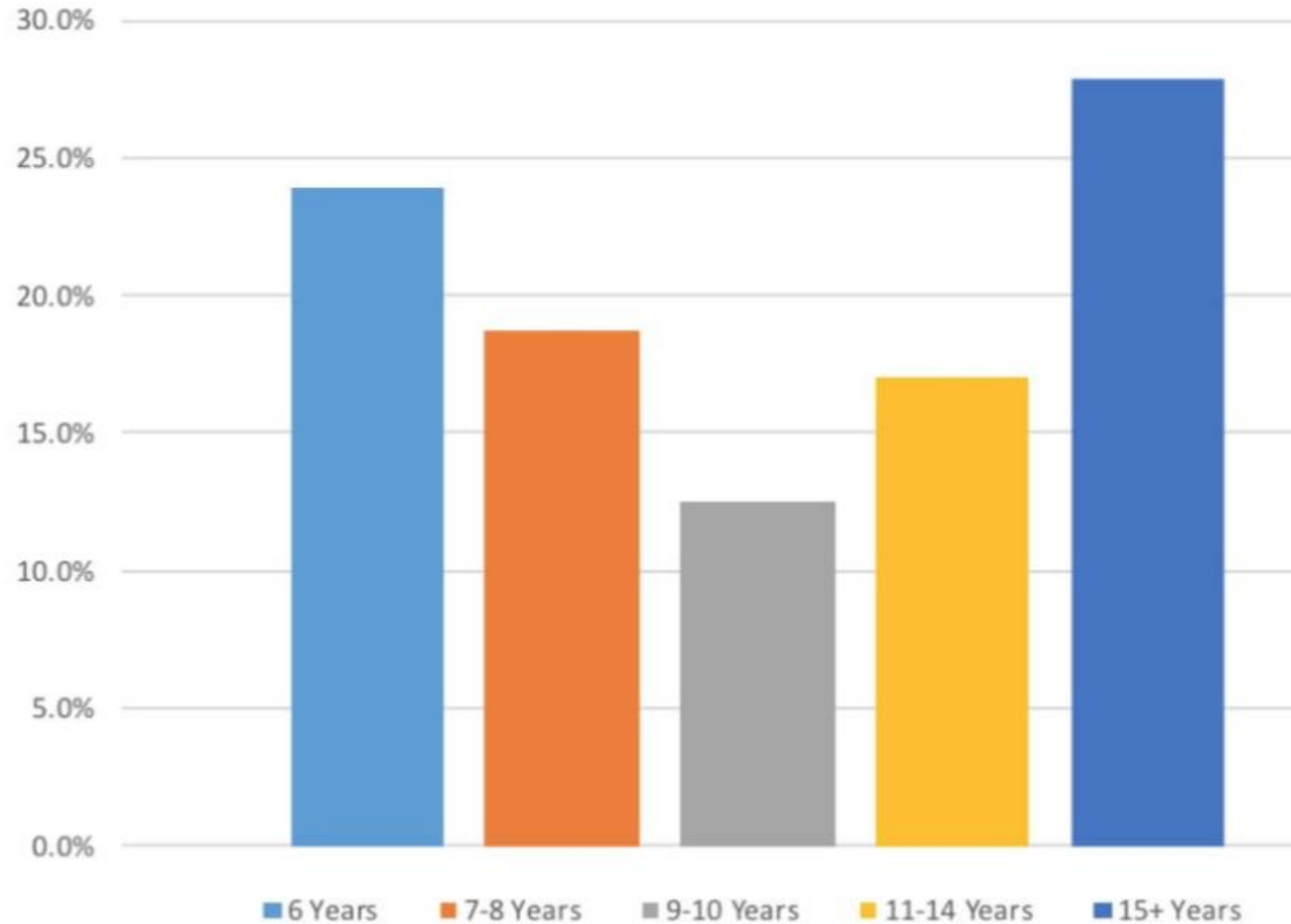
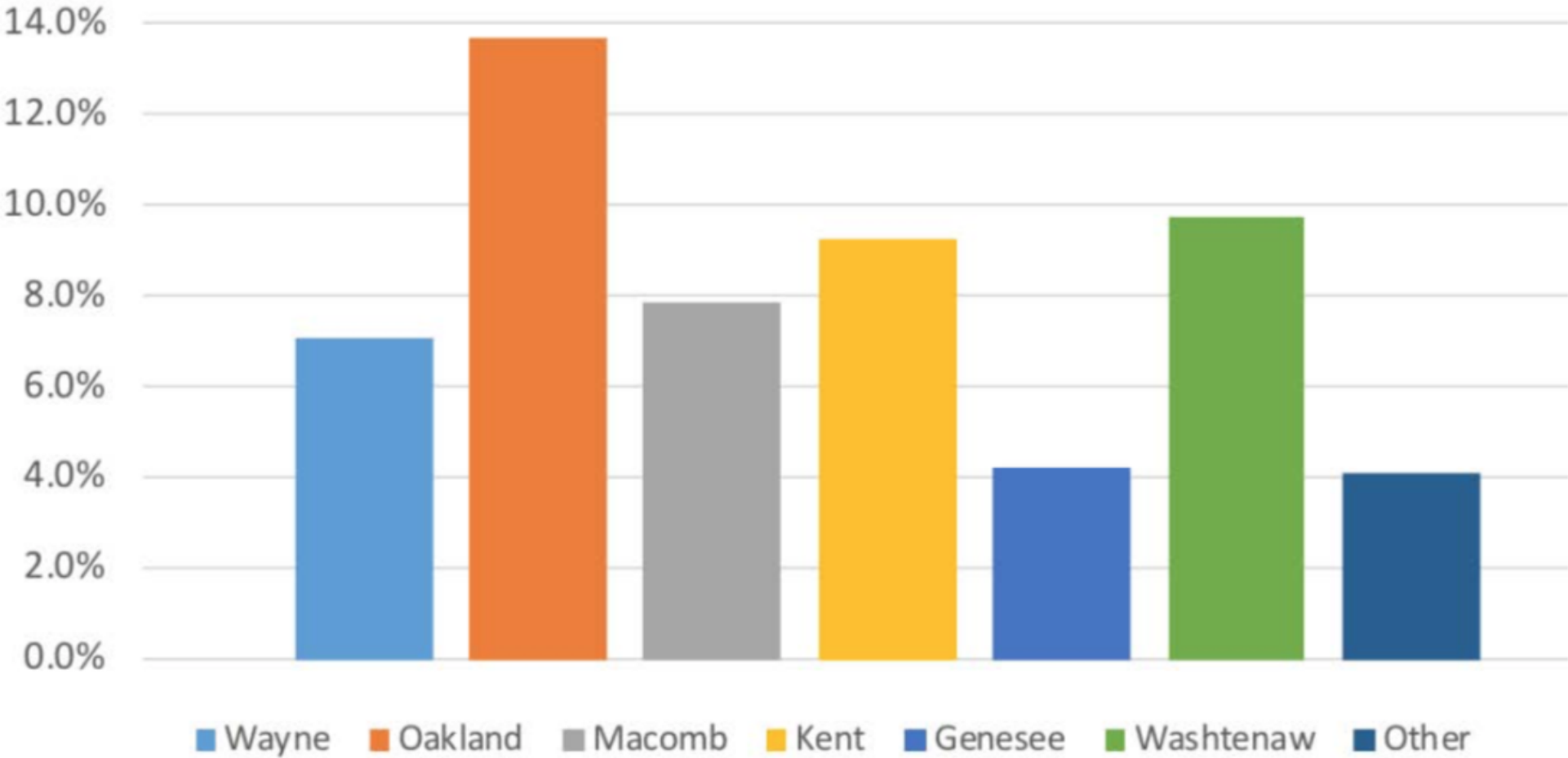


Figure 2. Uptake Rates by County



Significant Predictors of Increased Set-Aside Probability Among Those Eligible (from Table 3 Uptake Regressions)

- Female
- Younger age at conviction
- Felony
- Not a violent offense
- Not sentenced to incarceration
- Employed in preceding quarter [but see next one!]
- Recent wage (or employment) loss

	5-Year Uptake			Set-Aside Received in a Given Quarter	
Male	0.663** (0.064)	0.654** (0.067)	0.671** (0.058)	0.693** (0.051)	0.692** (0.052)
Black	0.989 (0.109)	0.825 (0.098)	0.846+ (0.086)	0.936 (0.079)	0.948 (0.083)
Age at conviction	0.988** (0.004)	0.986** (0.004)	0.986** (0.004)	0.988** (0.003)	0.990** (0.003)
Felony	2.552** (0.284)	2.129** (0.262)	2.211** (0.227)	2.262** (0.194)	2.446** (0.219)
Violent Offense	0.464** (0.068)	0.545** (0.085)	0.525** (0.070)	0.554** (0.064)	0.571** (0.069)
Drug Offense	1.243 (0.170)	1.487** (0.221)	1.306* (0.171)	1.400** (0.150)	1.468** (0.164)
Public Order/Other Offense	1.272* (0.153)	1.297+ (0.175)	1.331* (0.150)	1.387** (0.128)	1.449** (0.140)
Incarcerated			0.553** (0.057)	0.676** (0.057)	0.672** (0.058)
Wage (Previous Quarter)				1.004 (0.007)	
Employed (Previous Quarter)				1.768** (0.158)	
Past-year 20% wage loss					2.268** (0.196)
Conviction Year FE	✓	✓	✓	✓	✓
County FE		✓	✓	✓	✓
Years since conviction				✓	✓