

Redemption and Recidivism Research Implications for Act 53 of 2020

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Introduction

It is my understanding that Act 53 provides for the Pennsylvania occupational licensing boards to create lists of “directly related” offenses that place the burden on the license applicants to demonstrate that they do not pose “substantial risk” in performance of the occupation. The vast majority of the listed offenses are not limited in duration, effectively creating lifetime barriers for the license applicants. However, research has consistently demonstrated that the reoffending risk of people with criminal history diminishes with the passage of time, providing a strong empirical basis for the time-limited use of criminal history records.

Qualifications

I am an Assistant Research Professor of Criminology and Criminal Justice at the University of Maryland. My research spans issues related to criminal justice policy (policing, courts, corrections), and research on criminal careers and consequences of criminal justice involvement. Much of my research focuses on the issue of “redemption” for individuals with criminal-history records. Redemption refers to the process through which the risk of recidivism declines to a level of appropriate benchmarks so that prior criminal convictions are no longer meaningfully predictive of future reoffending. My research on redemption has been funded by the National Institute of Justice, has appeared in leading criminology journals, and has been cited in the Equal Employment Opportunity Commission’s (EEOC) revised enforcement guidance on the use of criminal-history records in employment. I received my B.A. in Criminology, Law and

Society from University of California, Irvine, and my Ph.D. in Public Policy and Management from Carnegie Mellon University.

Recidivism and Redemption Research: Diminishing Relevance of Criminal History over Time

The unprecedented expansion of criminal justice control over the last half century has resulted in a dramatic increase in criminal records, especially for racial minorities (Brame et al., 2012; Brame et al., 2014; Shannon et al., 2017). The use of criminal history information for employment and occupational licensing purposes has thus raised concerns of collateral consequences that could stigmatize and handicap the job prospects of a large number of individuals (Agan and Starr, 2017; The National Inventory of Collateral Consequences of Conviction [NICCC], 2021; Pager 2008). While criminal history information could be relevant to predicting recidivism risk, it is clear that the predictive value decays over time. Recidivism research has long shown that recidivism risk is typically highest immediately following the last contact with the criminal justice system (e.g., arrest, conviction, release from incarceration) but the risk declines more or less steadily as time since the last criminal justice contact elapses (e.g., Durose et al., 2014; Maltz, 1984). This is consistent with theories of desistance in criminology, which posit that whether desistance from crime occurs gradually over time (Bushway et al., 2001; Sampson and Laub, 1993) or instantaneously at a discrete time point (Brame et al., 2018; Kurlychek et al., 2012), the length of recidivism-free time is a strong indicator of desistance. In other words, the risk that prospective workers with criminal records present decreases as time goes by without further criminal conduct.

Based on the empirical pattern of recidivism risk and desistance theories, redemption literature (Blumstein and Nakamura, 2009; Bushway et al., 2011; Kurlychek et al., 2006, 2007; Soothill and Francis, 2009) provides estimates of “redemption times”, i.e. how long it takes those

with a record to become sufficiently low risk, compared to benchmarks. More specifically, the **research has found that the recidivism risk of those with a prior criminal record falls below the risk of arrest for the general population approximately after four to seven years for violent offenders, four years for drug offenders, and three to four years for property offenders** (Blumstein and Nakamura, 2012).

Thus, while these redemption times can vary across characteristics such as the age of an individual under consideration and the extensiveness of criminal history (Blumstein and Nakamura, 2009; Bushway et al., 2011), for those who are concerned about the risk of individuals with a criminal record, **the value of the criminal record in predicting future criminality diminishes with time and likely becomes virtually irrelevant for many purposes after approximately seven years or even less** (Blumstein and Nakamura, 2012; see also DeWitt et al., 2017).

Application of Research Findings to Act 53

If an offense is listed as “directly related” to the profession or occupation defined in Act 53, it would be presumed that the person would pose a “substantial risk” to others’ health and safety. The lack of a time limit to how long an offense is “directly related” indicates that the offender continues to pose “substantial risk” uniformly over their career. This is not consistent with the recidivism and redemption research discussed above. Recidivism risk is not static, as the list presumes; rather, risk is variant and declines considerably even within a few years of the last conviction. Thus, the level of risk should be assessed as a function of the length of time elapsed since the last conviction, and approximately after 7 years, the risk should no longer be considered substantial. Such time-limited use of criminal records is not only evidence-based but also good public policy as it can help reduce recidivism and improve employment prospects

(Denver, 2017; Denver et al., 2017). Thus, the existing research supports that the time-limited use of criminal records based on the length of recidivism-free time should be applied to as many offense types that are currently on the “directly related” list as possible.

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