

Redemption in the Face of Stale Criminal Records Used for Background Checks

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Opinions or points of view expressed are those of the authors and do not necessarily
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Motivation for the Project

- Technology has made background checking easy – and so very ubiquitous
 - Most large companies (80-90%) now do background checks
 - Statutes require background checks for many jobs and occupational licenses
- Criminal records are also ubiquitous
 - Nearly 14 million arrests a year
 - 92 million criminal records in state repositories
- As a result, many people can't get a job or otherwise – all because of a crime that happened long ago
- Need to explore when relief from that prior mark of crime – “redemption” – should be granted

A Story

- Earl Nixon was convicted of marijuana possession in Pennsylvania when he was 19
- He worked in the healthcare field for the last 10 years
- Pennsylvania passed a law that prohibits people with criminal records from healthcare jobs
- He is now 52, but is unable to get a job in the same field

*"With this law," Nixon said,
"it's one strike and you're out."*

"I understand the state's desire to protect a vulnerable population, but ... It was (more than) 31 years ago." ¹

¹ USA Today 11/21/2003

The Problem of “Redemption”

- It is well established that recidivism probability declines with time clean after an arrest or conviction
- If a person with a criminal record remains crime-free sufficiently long, his risk becomes less than some appropriate comparison groups
 - That record is then “stale”

Need Empirical Approach and Estimates

- The Attorney General's Report on Criminal History Background Checks (2006):
"Congress should consider...appropriate time limits that ... [provide] an individual the opportunity to seek a waiver from the disqualification."
- This is a widely shared concern:
 - EEOC, ABA, legal professionals, organizations that facilitate reentry of ex-offenders, etc.
 - In too many cases, redemption is prohibited forever
- Past efforts to set time limits lacked empirical basis
- We now have some strong estimates of redemption time

Research Approach

- **Data:** Arrest history records (“rap sheets”) from NY state criminal-history repository (DCJS)
 - All individuals who were arrested for the first time in **NY** as adults in **1980** ($\approx 88,000$)
 - Follow-up time > 25 years
 - Focus on a subset of arrestees who were convicted
 - Age at first arrest: **A₁** = 19-20 vs. 25-30
 - Crime type of first arrest: **C₁** = Violent vs. Property vs. Drug
- **Measure of Recidivism Risk: Hazard**
 - Probability that a new arrest occurs at any particular time ***t*** for those who stayed clean until ***t***
 - New arrest here could be for any crime type (**C₂** = any)
 - Can consider concern about specific subsequent crime types

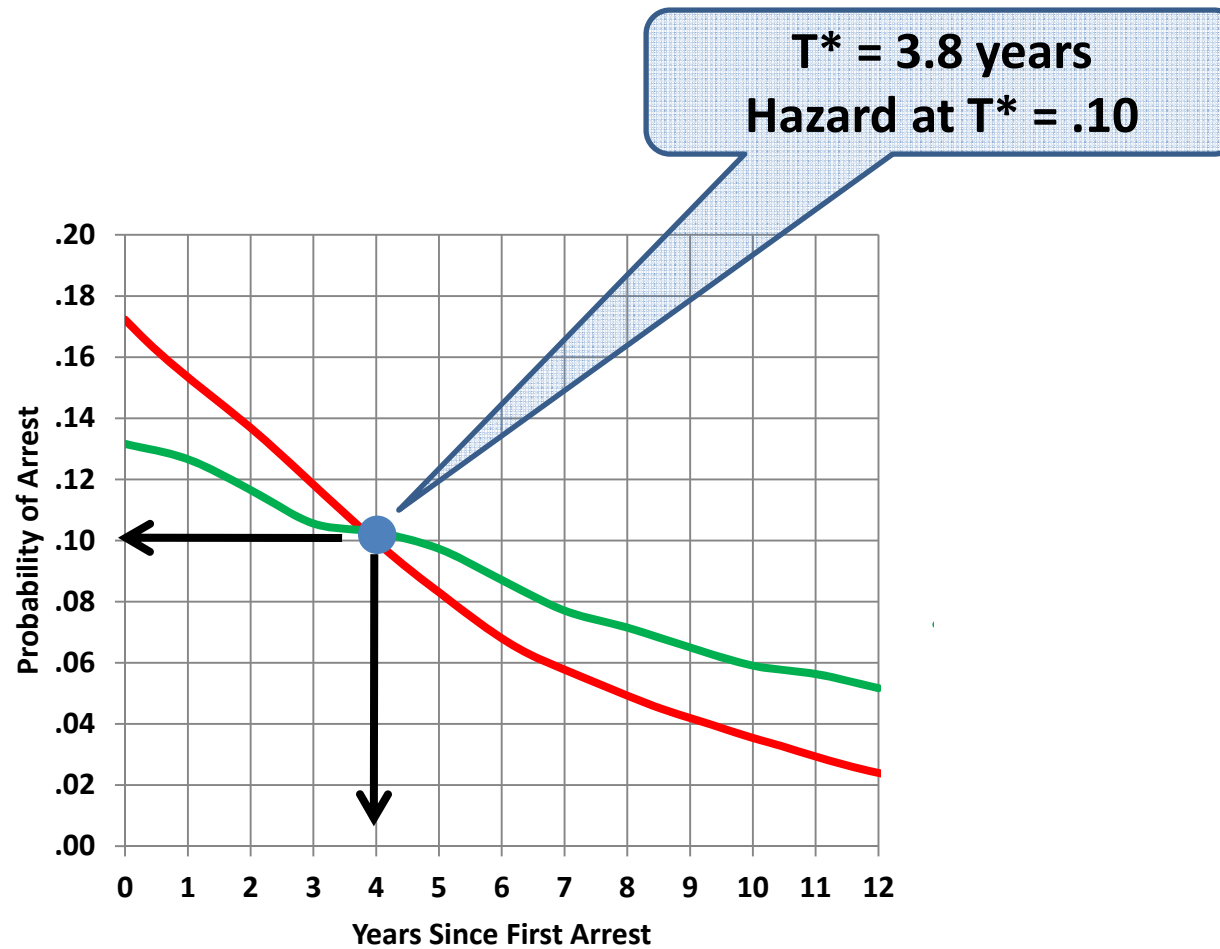
Two Comparison Criteria

- Compare hazard of those with a prior conviction to
 - 1) Risk of arrest for the **general population** of the same age: T^*
 - 2) Risk of arrest for **those with no prior arrest**: T^{**}

T^* : Comparison to General Population of the Same Age

- Comparison based on the age-crime curve:
 - $A(a)$ = rate of arrest at age a in the general population
- Estimate time to redemption, T^* , when hazard drops below the age-crime curve

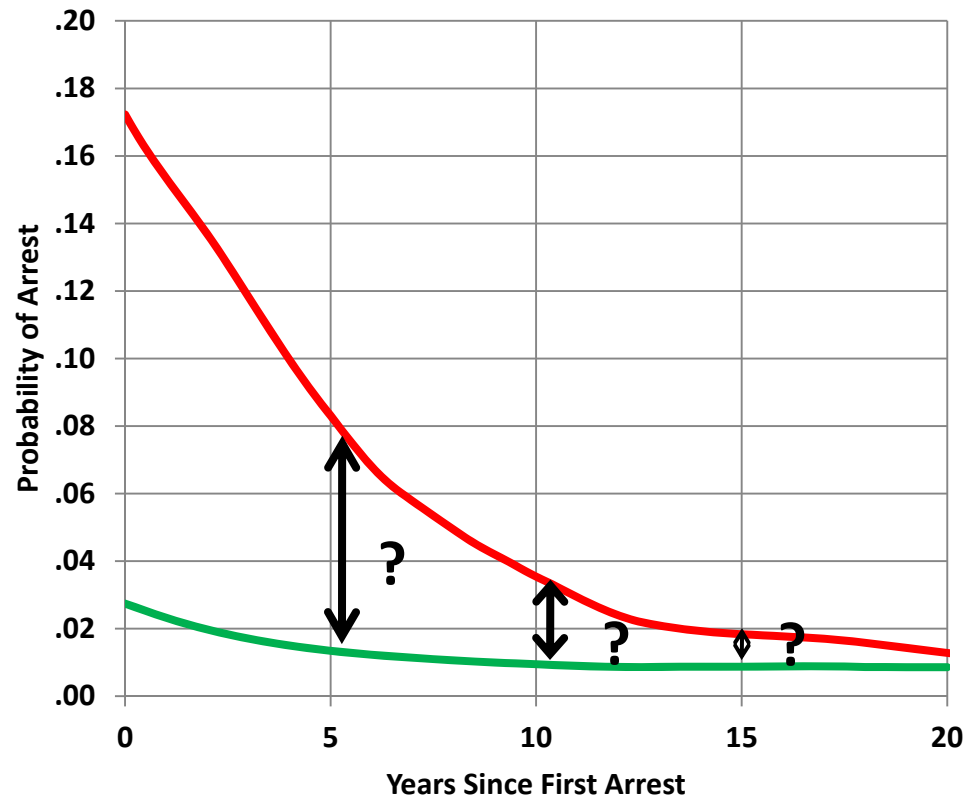
Estimation of T^* (Comparison to General Population)



T** : Comparison to the Never Arrested

- Comparison between the risk for those *with* a prior vs. those *without* a prior arrest (*the never arrested*)
- Simple intersection method used for T* won't work if *the never arrested* are *consistently below hazard*
- Estimate time to redemption, T**, when hazard of those with a prior and *the never arrested* are “*close enough*”

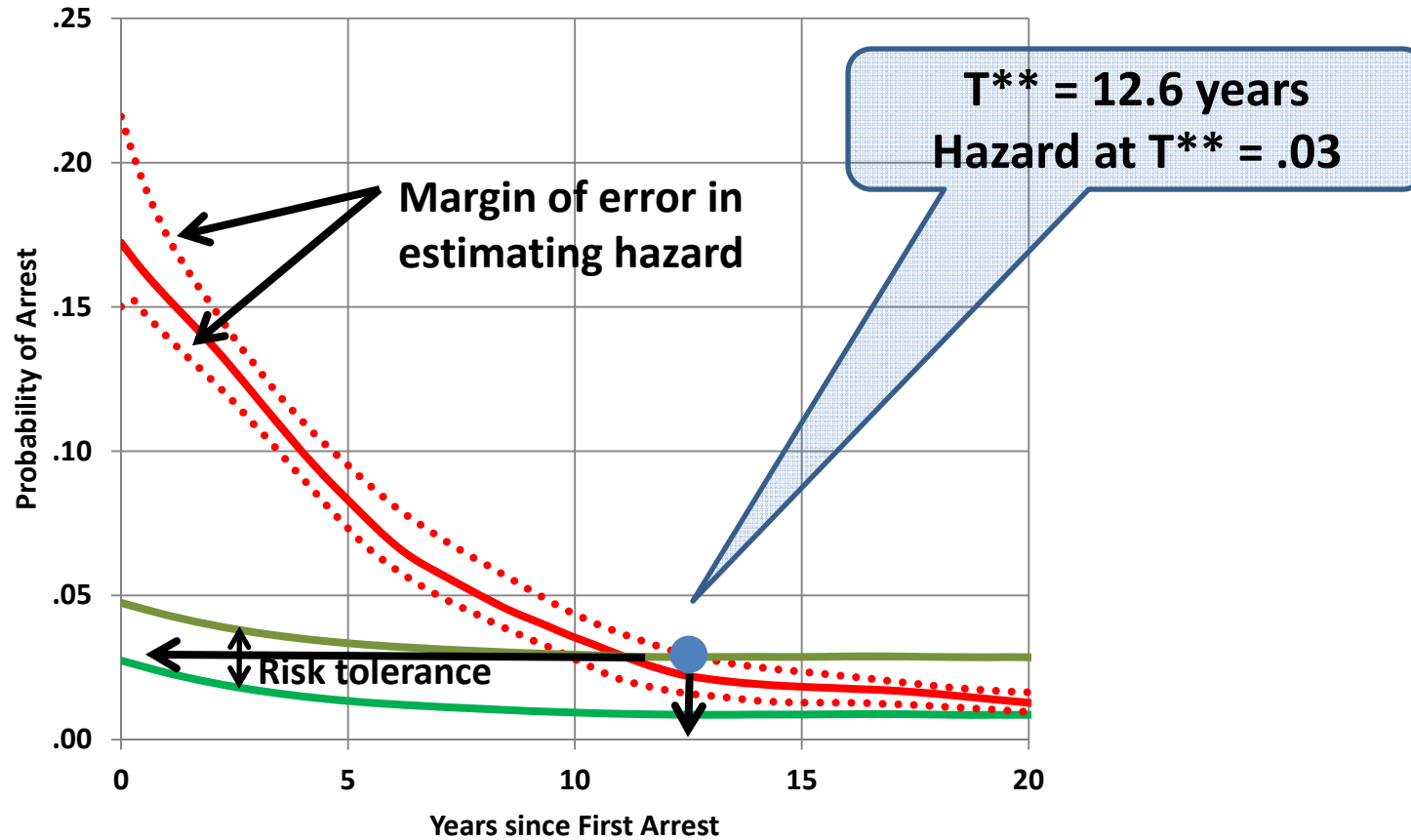
T** : Comparison to the Never Arrested



- Introduce a **risk tolerance** (“*close enough*”)
 - How much extra risk an employer is willing to tolerate – perhaps to get a better employee

Estimation of T^{**}

(Comparison to the Never Arrested)



Choice of Benchmark: T^* or T^{**} ?

- Factors to be considered:
 - Applicant pool
 - Many with priors (T^*) vs.
 - Primarily never-arrested (T^{**})
 - Nature of the job and its risk sensitivity
 - < 10% risk (T^*) for minor theft from cash register or bar-room fight
 - < 3% risk (T^{**}) for embezzlement risk or assault of vulnerable customers

Concern for Arrests Outside NY

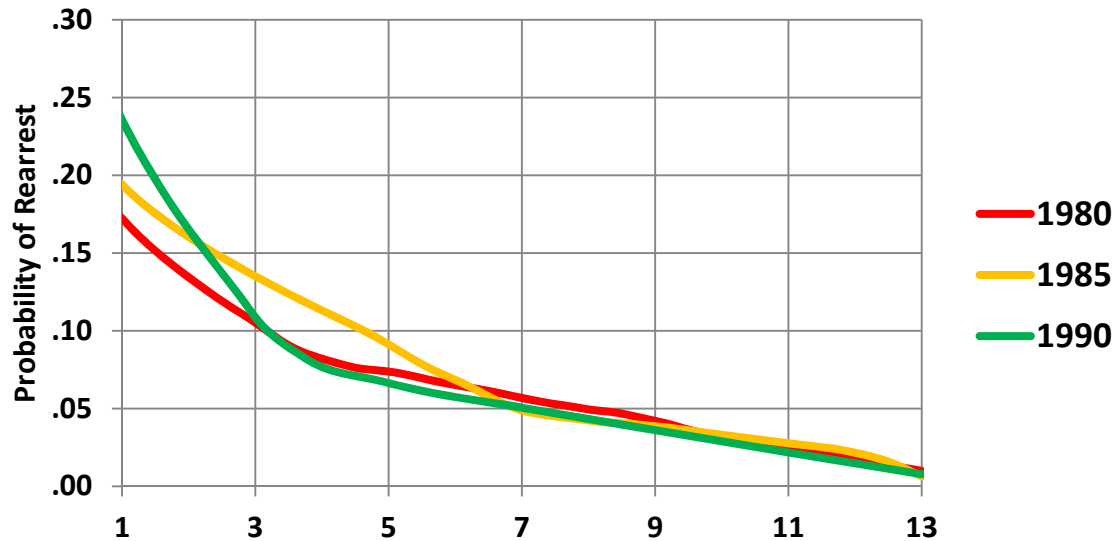
- Those who appear clean in NY might have been arrested elsewhere
- Obtained from the FBI national criminal records for a sample of 1980 NY arrestees **with no re-arrest in NY**
 - About 23% of them were found to have arrests elsewhere
- Adjusted hazard for out-of-state arrests based on
 - The proportion of the FBI sample with out-of-state arrests
 - The distribution of time to the out-of-state arrest

Concerns about Robustness

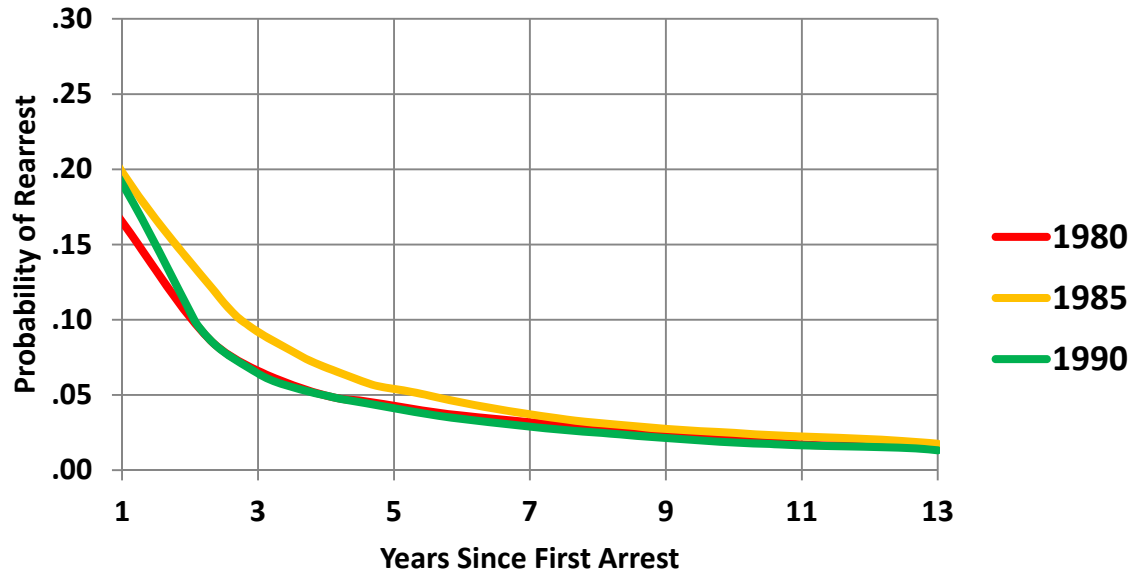
- Estimates of redemption times are based on 1980 first-time arrestees in NY
- How reliable are our estimates for use at different times or in different places?
- We test the robustness of estimates to:
 - Different Sampling years ('85, '90 from NY)
 - Different States (Florida, Illinois in 1980)

Hazards across Three Sampling Years

A₁ = 19-20
C₁ = Violent

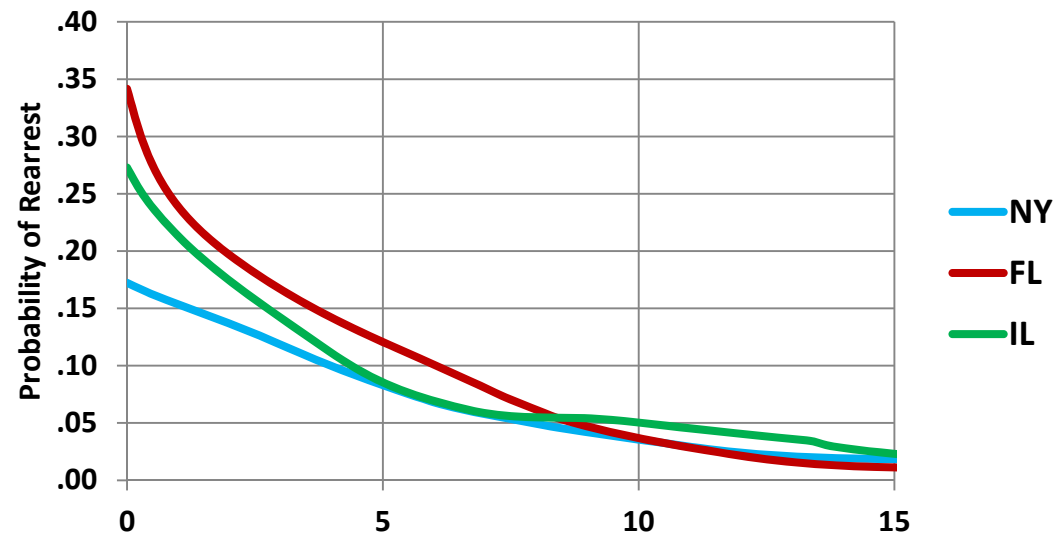


A₁ = 19-20
C₁ = Property

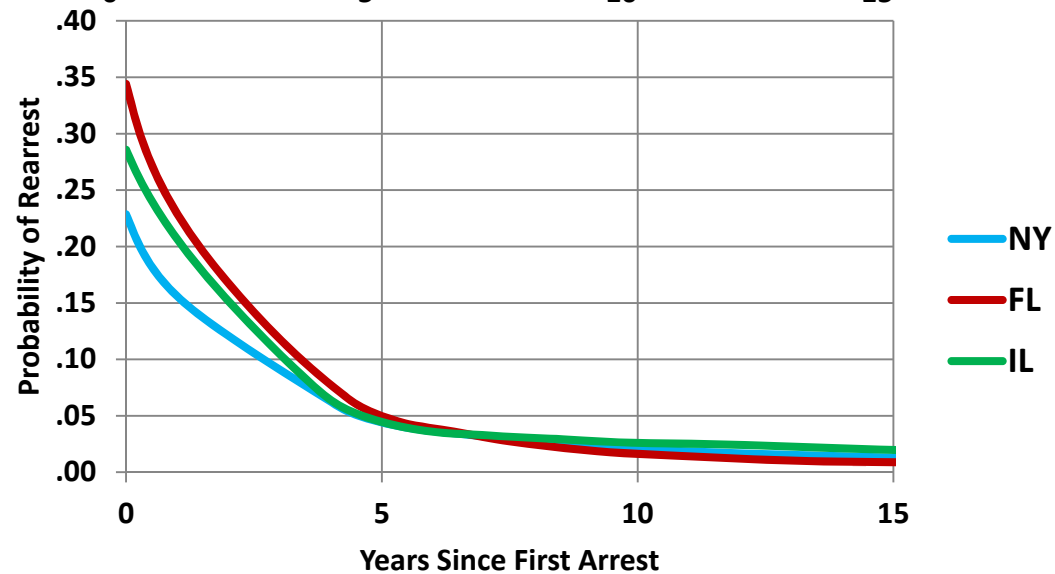


Hazards from NY, FL, and IL

$A_1 = 19-20$
 $C_1 = \text{Violent}$



$A_1 = 19-20$
 $C_1 = \text{Property}$



Robustness of Redemption Times

- We are reasonably comfortable with the robustness of our hazard estimates
 - Less so for the first 5-year interval, but that period is less relevant for consideration of redemption
 - We find them to be much more similar in later years
- Now we examine how these hazard differences affect the redemption times
- Two general benchmark probabilities for redemption
 - Probability of re-arrest for the 1980 cohort

C_1	Benchmarks (probability of re-arrest)	
	.1	.03
Violent	4-7	11-15
Drugs	4	10-14
Property	3-4	8-11

Redemption Policies: Historical Backgrounds

- The idea of redemption or a second chance is not new
 - National Conference on Parole in 1956
 - National Council on Crime and Delinquency (NCCD)'s model statute in 1962
 - American Law Institute (ALI)'s Model Penal Code in 1962
- Past reforms suffer from *a lack of empirical support*

Redemption Policies: In Other Countries

- Sealing/purging of criminal records after some “rehabilitation period” is common in many countries
 - Rehabilitation of Offenders Act 1974 in the UK - the convicted, after specified rehabilitation periods, are not obligated to reveal the record
 - Every country in the European Union has some mechanism of erasing criminal records
 - “Setting aside” a criminal conviction in the form of pardons in Canada

Redemption Policies: Implementation

- Employers
 - Inform employers of the low relevance of stale records
 - Enact statutes to protect employers from “due-diligence liability” claims – especially if they accept reasonable risk tolerance
 - Redemption time should not interfere with reentry support – Employment should be facilitated as soon as possible
 - Especially with employment situations that are risk tolerant (e.g., construction)
 - Other information should be used to encourage employment (e.g., positive work history, marriage)
- Repositories & commercial vendors
 - State repositories could withhold stale records
 - Could seal (or perhaps expunge) sufficiently stale records

Redemption Policies: Implementation (continued)

- Potential problem of erasing records
 - Difficult to ensure complete erasure
 - In conflict with a legal system founded on establishing “truth”
 - Unintended consequence – “statistical discrimination” of minority group members, even those without criminal records
- Potential Remedies
 - Certificate of Rehabilitation
 - Explicitly acknowledge rehabilitation
 - Postponing criminal background checks until final hiring stages (“Ban the Box”)
 - Still allows employers to assess risk in light of redemption times
 - Increases the chance of selecting the best qualified for the job
 - Decreases the chance of discrimination based on blanket exclusion

Conclusions

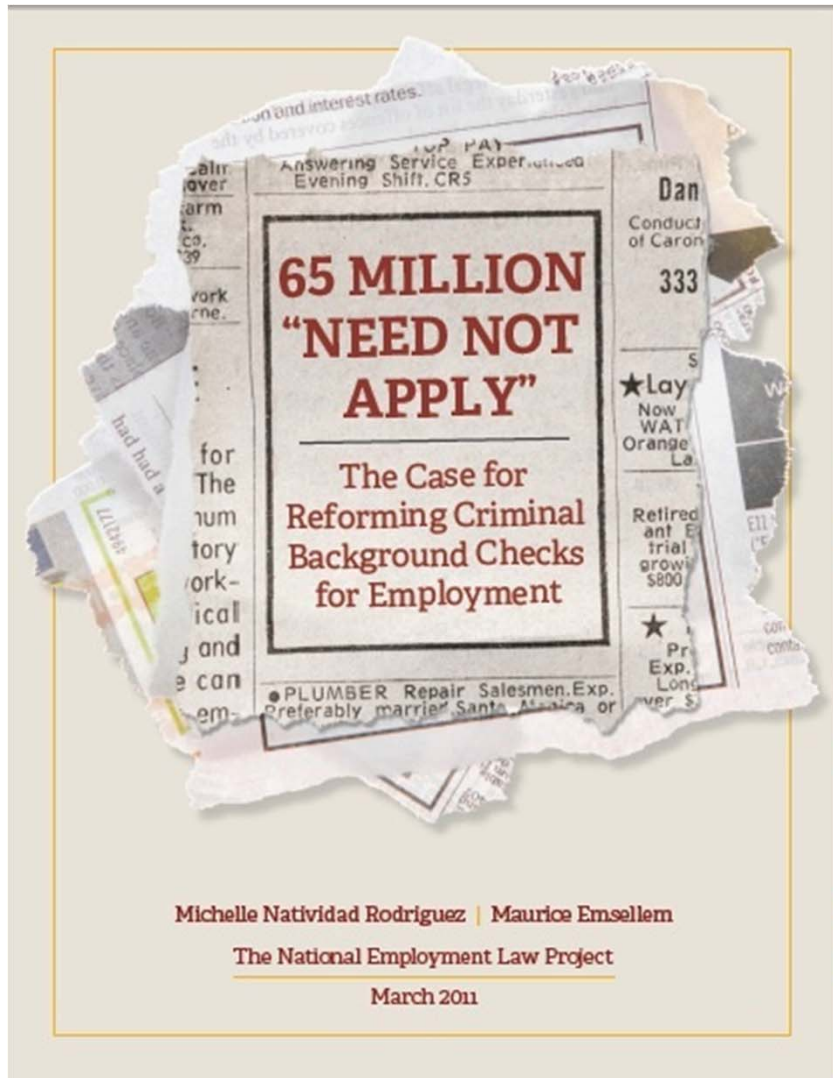
- Recidivism risk declines with time clean
 - Important consideration to many employers
- Redemption times (T^* and T^{**}) identify key time points when the criminal record loses its value in predicting risk
 - Strong empirical estimates of redemption times
 - Based on a large set of official data
 - Tested for robustness over time and across states
 - Other researchers have produced similar estimates (Kurlychek et al. 2006, 2007; Bushway et al. 2011; Soothill and Francis 2009)
 - Provides a basis for responsiveness to user criteria in assessing redemption
 - Redemption times can be generated based on the specifications (A_1 , C_1 , δ , C_2 , etc.) set by the users
 - Avoids inappropriately denying jobs to people with stale records
- Eliminate or rethink “forever rules”

Future Work

- Consider more complex prior records
 - Greater prior involvement in crime is associated with a higher risk of recidivism and likely results in longer redemption times (Bushway et al. 2011)
 - Those with multiple prior records are more likely to be incarcerated for a reasonable length of time
 - Need better data on “time served”
- Special case of prison releasees
 - Prejudice against ex-prisoners
 - Could well have longer records
 - Warrant redemption also, probably with longer redemption times
 - Still need estimates of their redemption times based on sample of releasees
 - Take account of treatments/programs while incarcerated and in community

Thank you!

Questions & Suggestions?



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The National Employment Law Project

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ets a Criminal Past Catch Up

leo store in California in 1997, Ayanna Spikes decided to change the years, she has had no further brushes with the law.

nt in prison, she said, were "the best thing that ever happened to me,"

persuading her to pursue training in medical administration and complete coursework for a degree in psychology at the [University of California, Berkeley](#). At 38, she is a far different person from the confused young woman who strayed into crime, she says.

But employers, initially impressed by her credentials, grow leery when they learn her history through criminal background checks. She has been turned down for more than a dozen jobs since finishing college in 2010.

**THE ATTORNEY GENERAL'S
REPORT ON
CRIMINAL HISTORY BACKGROUND CHECKS**

June 2006



United States Department of Justice



U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

THE SECRETARY

June 17, 2011

Dear PHA Executive Director:

Each year, more than half a million people are released from prisons in the United States, and an additional seven million are released from jails. Research shows that ex-offenders who do not find stable housing in the community are more likely to recidivate than those who do, yet people returning to their communities from prison often face significant barriers to obtaining housing. Studies have also found that the majority of people released from prison intend to return to their families, many of whom live in public or other subsidized housing.

The Department is engaged in several initiatives that seek a balance between allowing ex-offenders to reunite with families that live in HUD subsidized housing, and ensuring the safety of all residents of its programs. To that end, we would like to remind you of the discretion given to public housing agencies (PHAs) when considering housing people leaving the criminal justice system. The Department encourages you to allow ex-offenders to rejoin their families in the Public Housing or Housing Choice Voucher programs, when appropriate.

Within HUD statute and regulations, there are only two explicit bans on occupancy based on criminal activity. PHAs must establish a lifetime ban on admission to the Public Housing and Housing Choice Voucher programs for:

1. Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing (24 CFR 960.204, 24 CFR 982.553); and
2. Sex offenders subject to a lifetime registration requirement under a State sex offender registration program (24 CFR 960.204, 24 CFR 982.553).

Additionally, PHAs must establish standards that prohibit admission if the PHA determines that any household member is currently engaged in illegal use of a drug, or the PHA has reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of drug or alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. PHAs must also prohibit admission of an applicant for 3 years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. In this case, however, PHAs retain discretion to consider the circumstances and may admit households if the PHA determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, including those supervised by drug courts, or that the circumstances leading to eviction no longer exist (24 CFR 960.204, 24 CFR 966.4, 24 CFR 982.553).

www.hud.gov espanol.hud.gov

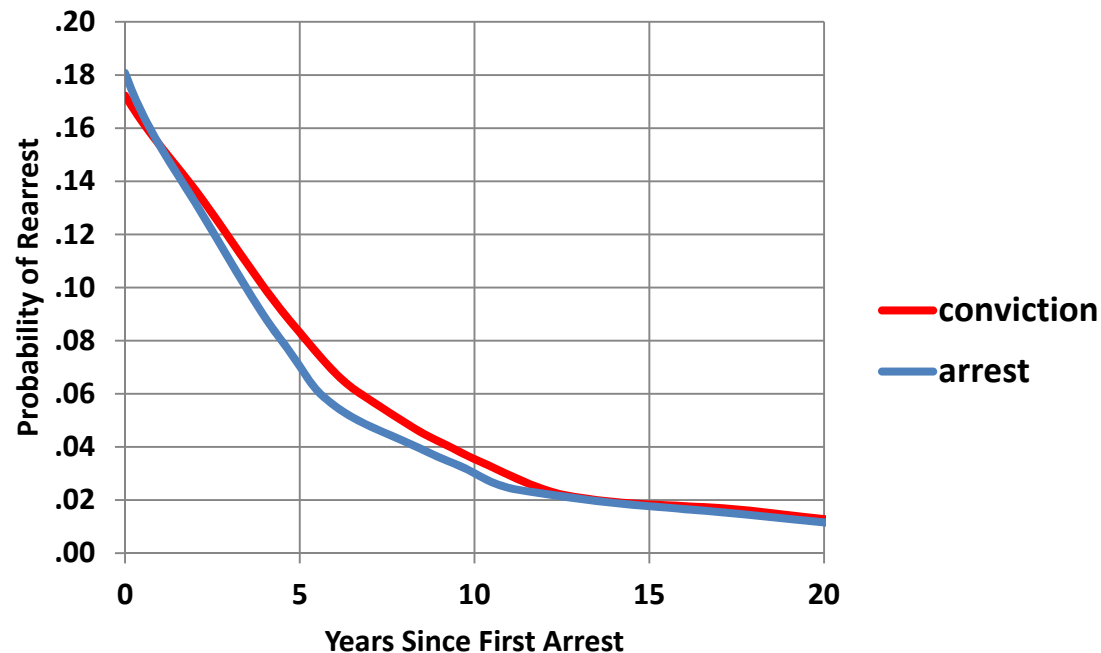
EXTRA: Differences between NY and FBI records

- Sample for the FBI (n = 2,514)
 - Arrested for the **first time** in **NY** in **1980** and have **no subsequent arrest** (except for DUI) in NY
 - 1,969 have an FBI Number and were sent to the FBI
- In the FBI record
 - 92 with no record of their 1980 NY arrest (4.7%)
 - 20 with no record returned from the FBI
 - 15 with arrests in NY prior to 1980 (0.8%)
 - Most in the late 70s
 - 53 with subsequent non-minor arrests in NY (2.7%)

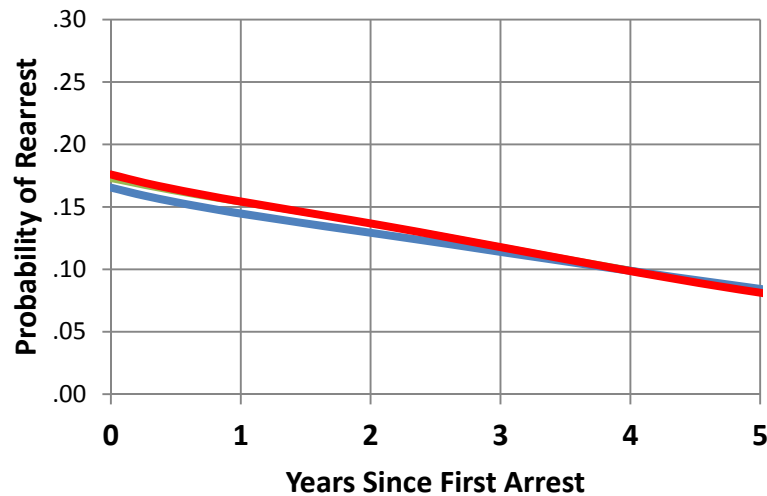
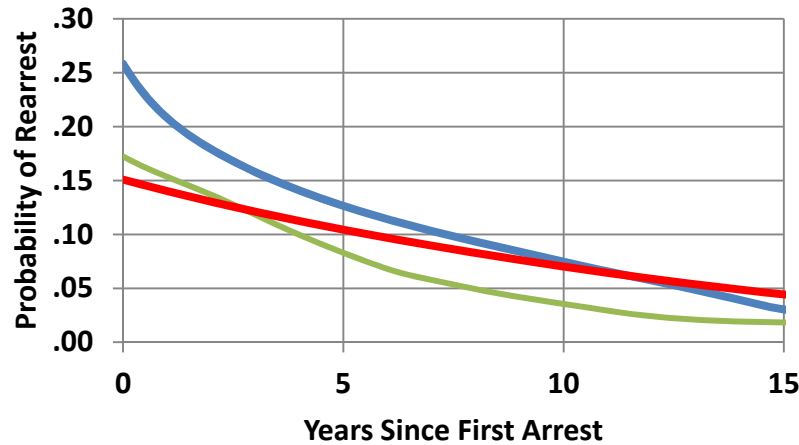
EXTRA: Conviction vs. Arrest

- In many employment settings, employers are prohibited from asking about an arrest record without a following conviction
 - Fewer convictions than arrests and hazards similar

A₁ = 19-20
C₁ = Violent



EXTRA: Consideration of Adjustment to Hazard for Incarceration ($A_1 = 19-20$, $C_1 = \text{Violent}$)



- No need for adjustment on hazard for first-time offenders 30

EXTRA: Approximating the Hazard of the Never Arrested

- Repository data don't have any info on the never-arrested, so we have to estimate $N_{na}(A)$
- First we estimate the population of the never-arrested at each age A ($N_{na}(A)$):
 - Number of New Yorkers of age A
 - Subtract all the first-time arrestees arrested before age A
- Then we calculate the hazard of the never-arrested at age A ($h_{na}(A)$) as:
 - $h_{na}(A) = \text{no. of our first-time arrestees at age } A / N_{na}(A)$

EXTRA: Approximating the Hazard of the Never Arrested

- Population of the never arrested at age A ($N_{na}(A)$):

$$N_{na}(A) = \text{Population of New York of age } A \text{ in 1980} \\ - \Sigma(\text{First-time arrestees in 1980 for all } A_1 < A)$$

- Hazard of the never arrested at age A ($h_{na}(A)$) is calculated as:

$$h_{na}(A) = \frac{\text{\# of first-time arrestees for } A_1 = A}{N_{na}(A)}$$