

The mark of a criminal record

By Devah Pager

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Among those recently released from prison, nearly two-thirds will be charged with new crimes and 40 percent will return to prison within three years. Those who are not reincarcerated have poorer employment and incomes than those without criminal records. But there is strong disagreement over the reasons that ex-offenders do so poorly after release. Does incarceration itself actually lead to lower employment and income? Or do the poor outcomes of ex-offenders merely arise from the environmental and personal histories that sent them to prison in the first place—the broken families, the poor neighborhoods, the lack of education and absence of legitimate opportunities, the individual tendencies toward violence or addiction?¹

Survey research has consistently shown that incarceration is linked to lower employment and income. Many hypotheses have been proposed for this relationship: the labeling effects of criminal stigma, the disruption of social and family networks, the loss of human capital, institutional trauma, and legal barriers to employment. It is, however, difficult, using survey data, to determine which of these mechanisms is at work and whether, for any given mechanism, the results are due to the effect of imprisonment or to preexisting characteristics of people who are convicted. A further issue, given racial disparities in imprisonment rates, is whether the effect of a criminal record is more severe for African American than it is for white ex-offenders.

In the research reported here I sought to answer three primary questions about the mechanisms driving the relationship between imprisonment and employment.² First, to what extent do employers use information about criminal histories to make hiring decisions? Second, does race, by itself, remain a major barrier to employment? Its continued significance has been questioned in recent policy debates.³ Third, does the effect of a criminal record differ for black and white applicants? Given that many Americans hold strong and persistent views associating race and crime, does a criminal record trigger a more negative response for African American than for white applicants?

The employment audit

Just as a college degree may serve as a positive credential for those seeking employment, a prison term attaches a

“negative credential” to individuals, certifying them in ways that may qualify them for discrimination or social exclusion. Using an experimental audit design, I have been able to isolate that institutional effect, holding constant many background and personal characteristics that otherwise make it very difficult to disentangle cause and effect.⁴

In an employment audit, matched pairs of individuals (“testers”) apply for real job openings to see whether employers respond differently to applicants on the basis of selected characteristics. The methodology combines experimental methods with real-life contexts. It is particularly valuable for those with an interest in discrimination, and has primarily been used to study characteristics such as race, gender, and age that are protected under the Civil Rights Act.

Several states, including Wisconsin, have expanded fair employment legislation to protect individuals with criminal records from discrimination by employers, because of their concern about the consequences of the rapid expansion and the skewed racial and ethnic composition of the ex-offender population over the last three decades. Under this legislation, employers are warned that past crimes may be taken into account only if they closely relate to the specific duties required by the job—as, for example, if a convicted embezzler applies for a book-keeping position, or a sex offender for a job at a day care center. Because of the Wisconsin legislation barring discrimination on the basis of a criminal record, we might expect circumstances to be, if anything, more favorable to the employment of ex-offenders than in states without legal protections.

This audit was conducted between June and December, 2001, in Milwaukee, Wisconsin, which in population, size, racial composition, and employment rate is typical of many major American cities. At the time, the local economy was moderately strong and unemployment rates ranged between 4 and 5.2 percent.⁵

I used two audit teams of 23-year-old male college students, one consisting of two African Americans and the other of two whites. All were bright and articulate, with appealing styles of self-presentation. Characteristics that were not already identical, such as education and work experience, were made to appear identical for the purposes of the audit. Within each team, one auditor was randomly assigned a “criminal record” for the first week; then week by week auditors took turns playing the ex-offender role. The “criminal record” consisted of a non-violent, felony drug conviction (possession of cocaine with intent to distribute). If the employment application did not request information about previous convictions,

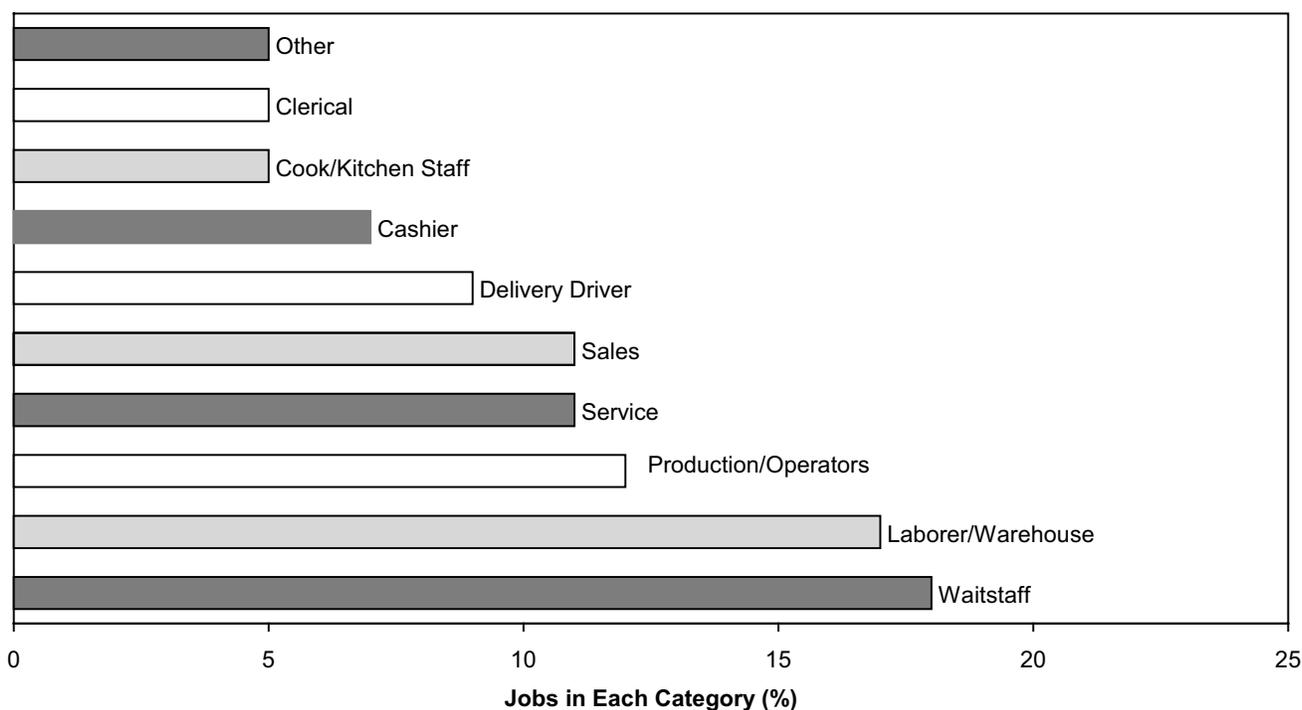


Figure 1. The jobs in the Milwaukee audit sample.

ways were found to include that information—for example, by reporting work experience in the correctional facility and citing a parole officer as a reference.

The audit teams applied to separate sets of jobs drawn from the Sunday classified section of the city’s major daily newspaper, the *Milwaukee Journal Sentinel*, and from Jobnet, a state-sponsored Web site for employment listings. Since nearly 90 percent of state prisoners have no more than a high school diploma, the job openings chosen were for entry-level positions requiring no previous experience and no education beyond high school (see Figure 1). All openings were within 25 miles of downtown Milwaukee; a majority were in the suburbs or surrounding counties.⁶ The survey audited 350 employers, 150 by the white audit team and 200 by the black team.

The audit study focused only on the first stage in the employment process—the stage most likely to be affected by the barrier of a criminal record. Auditors visited the employers, filled out applications, and went as far as they could during that first interview. They did not return for a second visit. Thus our critical variable of interest was the proportion of cases in which employers called the applicant after the first visit. Reference checks were included as an outcome, in the belief that it would be important to have a former employer or parole officer vouch for applicants with criminal records. As it turned out, employers paid virtually no attention to references; only 4 out of 350 actually checked.

Even though employers are not allowed to use criminal background information to make hiring decisions, about three-quarters of employers in this sample explicitly asked if the applicant had ever been convicted of a crime and, if so, for details. A much smaller proportion, just over a quarter, indicated that they would perform a background check (employers are not required to say if they intend to, and this doubtless represents a lower-bound estimate). The use of background checks by employers has been increasingly steadily, however, because of greater ease of access to criminal history information and growing concerns over security.

To what extent are applicants with criminal backgrounds dropped at the beginning of the process? For answers, we turn to the results of the audit.

The effects of a criminal record and race on employment

Given that all testers presented nearly identical credentials, the different responses they encountered can be attributed fully to the effects of race and criminal background.

The results in Figure 2 suggest that a criminal record has severe effects. Among whites, applicants with criminal records were only half as likely to be called back as equally qualified applicants with no criminal record.

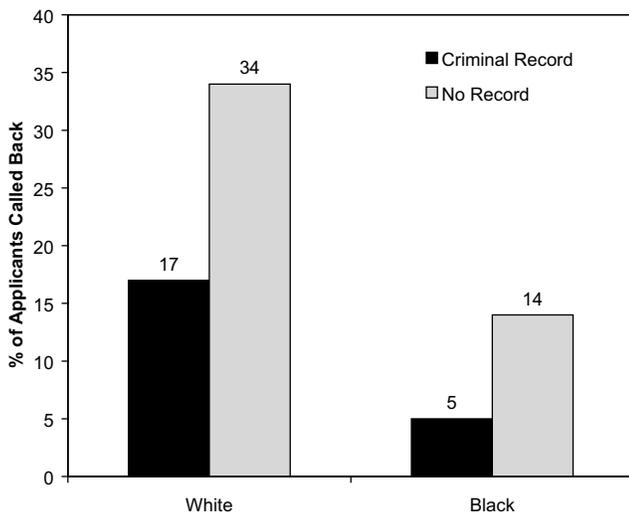


Figure 2. The effect of a criminal record in the Milwaukee audit sample.

The second question involved the significance of race, by itself, in shaping black men’s employment prospects, and here too the audit offered an unequivocal answer (Figure 2). The effect of race was very large, equal to or greater than the effect of a criminal record. Only 14 percent of black men without criminal records were called back, a proportion equal to or less than even than the number of whites *with* a criminal background. The magnitude of the race effect found here corresponds very closely to effects found in previous audit studies directly measuring racial discrimination.⁷ Since 1994, when the last major audit was reported, very little has changed in the reaction of employers to minority applicants, at least in Milwaukee.

In addition to the strong independent effects of race and criminal record, evidence suggests that the combination of the two may intensify the negative effects: black ex-offenders are one-third as likely to be called as black applicants without a criminal record. It seems that employers, already reluctant to hire blacks, are even more wary of those with proven criminal involvement. None of our white testers was asked about a criminal record before submitting his application, yet on three occasions black testers were questioned. Our testers were bright, articulate young men, yet the cursory review that entry-level applicants receive leaves little room for these qualities to be noticed.

In some cases, testers reported that employers’ levels of responsiveness changed dramatically once they had glanced down at the criminal record questions. Employers seemed to use the information as a screening mechanism, without probing further into the context or complexities of the applicant’s situation. But in a few circumstances employers expressed a preference for workers who had recently been released from prison be-

cause (in one case) “they tend to be more motivated and are more likely to be hard workers” and (in the case of a janitorial job) the job “involved a great deal of dirty work.” Despite these cases, the vast majority of employers were reluctant to take a chance on applicants with a criminal record.

The evidence from this audit suggests that the criminal justice system is not a peripheral institution in the lives of young disadvantaged men. It has become a dominant presence, playing a key role in sorting and stratifying labor market opportunities for such men. And employment is only one of the domains affected by incarceration. Further research is needed to understand its effects on housing, family formation, and political participation, among others, before we can more fully understand its collateral consequences for social and economic inequality. ■

¹For discussions of the effect of incarceration, see, e.g., J. Grogger, “The Effect of Arrests on the Employment and Earnings of Young Men,” *Quarterly Journal of Economics* 110 (1995): 51–72; B. Western, “The Impact of Incarceration on Wage Mobility and Inequality,” *American Sociological Review* 67, no. 4 (2002): 526–46.

²This research is reported in D. Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108, no. 5 (2003): 937–75. IRP thanks the University of Chicago Press for permission to summarize the article.

³See, for example, D. Neal and W. Johnson, “The Role of Pre-market Factors in Black-White Wage Differences,” *Journal of Political Economy* 104, no. 5 (1996): 869–95; S. Steele, *The Content of Our Character: A New Vision of Race in America* (New York: Harper Perennial, 1991).

⁴The method of audit studies was pioneered in the 1970s with a series of housing audits conducted by the Department of Housing and Urban Development, and was modified and applied to employment by researchers at the Urban Institute in the early 1990s. M. Turner, M. Fix, and R. Struyk, *Opportunities Denied, Opportunities Diminished: Racial Discrimination in Hiring* (Washington, DC: Urban Institute Press, 1991).

⁵Bureau of Labor Statistics, Local Area Unemployment Statistics. Last accessed March 2003. <<http://www.bls.gov/lau/home.htm>>.

⁶Over 90 percent of recent, entry-level job openings in Milwaukee were located in the outlying counties and suburbs, and only 4 percent in the central city. J. Pawasarat and L. Quinn, “Survey of Job Openings in the Milwaukee Metropolitan Area: Week of May 15, 2000,” Employment and Training Institute Report, University of Wisconsin–Milwaukee, 2000.

⁷M. Bendick, Jr., C. Jackson, and V. Reinoso, “Measuring Employment Discrimination through Controlled Experiments,” *Review of Black Political Economy* 23 (1994): 25–48.