

Paying a Price, Long After the Crime

By ALFRED BLUMSTEIN and KIMINORI NAKAMURA
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In 2010, the Chicago Public Schools declined to hire Darrell Langdon for a job as a boiler-room engineer, because he had been convicted of possessing a half-gram of cocaine in 1985, a felony for which he received probation. It didn't matter that Mr. Langdon, a single parent of two sons, had been clean since 1988 and hadn't run into further trouble with the law. Only after The Chicago Tribune wrote about his case did the school system reverse its decision and offer him the job.



A stunning number of young people are arrested for crimes in this country, and those crimes can haunt them for the rest of their lives. In 1967, President Lyndon B. Johnson's Crime Commission found that about half of American males could expect to be arrested for a nontraffic offense some time in their lives, mostly in their late teens and early 20s. An article just published in the journal Pediatrics shows how the arrest rate has grown — by age 23, 30 percent of Americans have been arrested, compared with 22 percent in 1967. The increase reflects in part the considerable growth in arrests for drug offenses and domestic violence.

The impact of these arrests is felt for years. The ubiquity of criminal-background checks and the efficiency of information technology in maintaining those records and making them widely available, have meant that millions of Americans — even those who served probation or parole but were never incarcerated — continue to pay a price long after the crime. In November the American Bar Association released a database identifying more than 38,000 punitive provisions that apply to people convicted of crimes, pertaining to everything from public housing to welfare assistance to occupational licenses. More than two-thirds of the states allow hiring and professional-licensing decisions to be made on the basis of an arrest alone.

Employers understandably want to protect their employees and customers from risk. Yet at the same time, there is a growing public interest in facilitating job opportunities for those who have stayed crime-free for a reasonable period of time. The weak economy and a rethinking of the logic of mass incarceration — driven in large part by budget pressures — have also brought attention to the situations of ex-offenders like Mr. Langdon, who face the collateral

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consequences of conviction long after their involvement with the criminal justice system has ended. Federal authorities are beginning to pay attention. Last April, Attorney General Eric H. Holder Jr. urged state attorneys general to review laws and policies “to determine whether those that impose burdens on individuals convicted of crimes without increasing public safety should be eliminated.”

It is well established that the risk of recidivism drops steadily with time, but there is still the question of how long is long enough. By looking at data for more than 88,000 people who had their first arrest in New York State in 1980, and tracking their subsequent criminal histories over the next 25 years, we estimate the “redemption time” — the time it takes for an individual’s likelihood of being arrested to be close to that of individuals with no criminal records — to be about 10 to 13 years. We also found that about 30 percent of the first-time offenders in 1980 were never arrested again, in New York or anywhere else.

Employers could apply their own judgments around those estimates, but the real problem is the state and local rules — often embedded in statutes — that restrict employment or licensing for the rest of the individual’s life. In New York, former offenders can be forever denied licenses for certain jobs, ranging from beer distributor to real estate broker. Such “forever rules” — which fall heavily on minorities, who are particularly likely to be arrested — are inherently unfair.

We propose that the “forever rules” be replaced by rules that provide for the expiration of a criminal record. We believe it is unreasonable for someone to be hounded by a single arrest or conviction that happened more than 20 years earlier — and for many kinds of crimes, the records should be sealed even sooner. The state, as well as private employers, should face a heavy burden to demonstrate the need for any rule that imposes consequences on someone who has remained crime-free decades after a single offense. Yes, there are legitimate exceptions for high-security positions in law enforcement and national security — and there can be exemptions in particular cases; banks cannot afford to hire someone convicted of financial fraud.

A number of states have placed limits on the availability of stale criminal records. Under a law that will take effect in May, Massachusetts will limit employers’ access to information about convictions to 5 years for misdemeanors and 10 years for felonies. And the new law will protect

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employers from due-diligence liability suits if someone they hire in accord with these restrictions commits a further offense.

Policies that encourage employers to hire people who made a mistake in the past but have since rebuilt their lives would not only help those people, but also our economy and our society. With unemployment so high, we need to make it easier, not harder, for people to find jobs. And by embracing the principle that having paid the price for crime, there should be a limit on the time they are made to suffer, we would be giving true meaning to the ideals of rehabilitation and redemption.