U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics

Survey of State Criminal History Information Systems, 2014

Criminal Justice Information Policy

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A Criminal Justice Information Policy Report

December 2015

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Glossary of terms

Automated fingerprint identification system (AFIS): An automated system for searching fingerprint files and transmitting fingerprint images. AFIS computer equipment can scan fingerprint impressions (or use electronically transmitted fingerprint images) and automatically extract and digitize ridge details and other identifying characteristics in sufficient detail to enable the computer's searching and matching components to distinguish a single fingerprint from thousands or even millions of fingerprints previously scanned and stored in digital form in the computer's memory. The process eliminates the manual searching of fingerprint files and increases the speed and accuracy of ten-print processing (arrest fingerprint cards and noncriminal justice applicant fingerprint cards).

AFIS equipment also can be used to identify individuals from "latent" (crime scene) fingerprints, even fragmentary prints of single fingers in some cases.

Criminal history record information (CHRI) or criminal history record information system: A record (or the system maintaining such records) that includes individual identifiers and describes an individual's arrests and subsequent dispositions. Criminal history records do not include intelligence or investigative data or sociological data such as drug use history.

CHRI systems usually include information on juveniles if they are tried as adults in criminal courts. Most, however, do not include data describing involvement of an individual in the juvenile justice system. Data in CHRI systems are usually backed by fingerprints of the record subjects to provide positive identification. State legislation and practices vary widely concerning disclosure of juvenile record information and access to criminal history records for noncriminal justice purposes.

Data quality: The extent to which criminal history records are complete, accurate, and timely. In addition, accessibility sometimes is considered a data quality factor. The key concern in data quality is the completeness of records and the extent to which records include dispositions as well as arrest and charge information. Other concerns include the timeliness of data reporting to state and Federal repositories, the timeliness of data entry by the repositories, the readability of criminal history records, and the ability to have access to the records when necessary.

Interstate Identification Index (III): A fingerprint-supported "index-pointer" system for the interstate exchange of criminal history records. Under III, the Federal Bureau of Investigation (FBI) maintains an identification index to persons arrested for primarily felonies or serious misdemeanors under state or Federal law. The index includes identification information (such as name, date of birth, race, and sex), FBI Numbers, and State Identification Numbers (SID) from each state that holds information about an individual.

Search inquiries from criminal justice agencies nationwide are transmitted automatically via state telecommunications networks and the FBI's National Crime Information Center (NCIC) telecommunications lines. Searches are made on the basis of name and other identifiers. The process is entirely automated. If a hit is made against the Index, record requests are made using the SID or FBI Number, and data are automatically retrieved from each repository holding records on the individual and forwarded to the requesting agency. As of October 5, 2008,

all 50 states and the District of Columbia participated in III. Responses are provided from FBI files when a jurisdiction, such as a U.S. territory, is not a participant in III. The III system may also be employed when responding to fingerprint-based noncriminal justice purpose record background checks.

Participation in III requires that a state maintain an automated criminal history record system capable of interfacing with the III system and also capable of responding automatically to all interstate and Federal/state record requests.

Juvenile justice records: Official records of juvenile justice adjudications. Most adult criminal history record systems do not accept such records, which are frequently not supported by fingerprints and which usually are confidential under state law. The FBI accepts and disseminates juvenile records. States, however, are not required to submit such records to the FBI and may be legislatively prohibited from doing so.

Lights-out processing: "Lights-out" criminal record processing occurs when fingerprint data submitted to a criminal record repository by a local justice jurisdiction for the purpose of determining an individual's identity, and frequently associated criminal history record information, is processed electronically and a response is returned electronically to the submitting jurisdiction, all without human intervention.

Livescan: The term "livescan" refers to both the technique and technology used to electronically capture fingerprint and palm print images without the need for the more traditional ink-and-paper methods. Livescan devices also allow the electronic transfer of digitized images and accompanying textual information to a criminal history repository.

National Crime Information Center (NCIC): A computerized information system available to law enforcement and criminal justice agencies maintained by the FBI. The system includes records for wanted persons, missing persons, other persons who pose a threat to officer and public safety, and various property files. The III is accessible through the NCIC system. The NCIC operates under a shared-management concept between the FBI and local, state, tribal, and Federal criminal justice agencies. The FBI maintains the host computer and provides a telecommunications network to the Criminal Justice Information Services Systems Agency (CSA) in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, as well as Federal criminal justice agencies. A CSA is a criminal justice agency that has overall responsibility for the administration and usage of NCIC within a district, state, territory, or Federal agency. NCIC data may be provided only for criminal justice and other specifically authorized purposes.

National Crime Prevention and Privacy Compact: An interstate and Federal/state compact that establishes formal procedures and governance structures for the use of the III. It is designed to facilitate the exchange of criminal history data among states for noncriminal justice purposes and to eliminate the need for the FBI to maintain duplicate data about state offenders. Under the Compact, the operation of this system is overseen by a policymaking council comprised of state and Federal officials.

The key concept underlying the Compact is agreement among all signatory states that all criminal history information (except sealed records) will be provided in response to noncriminal justice requests from another state—regardless of whether the information

being requested would be permitted to be disseminated for a similar noncriminal justice purpose within the state holding the data. (That is, the law of the state that is *inquiring* about the data—rather than the law of the state that *originated* the data—governs its use.) In some cases, ratification of the Compact will have the effect of amending existing state legislation governing interstate record dissemination, since most states do not currently authorize dissemination to all of the Federal agencies and out-of-state users authorized under the Compact. Noncriminal justice inquiries sent to the FBI are handled by a combination of information retrieval by the FBI from its files of voluntarily contributed state arrest and disposition records and by accessing state-held information. This requires that the FBI maintain duplicates of state records (see National Fingerprint File discussion for exception) and generally results in less complete records being provided, since FBI files of state records are not always as complete due to reporting deficiencies.

The Compact was passed by Congress and signed into law by President Clinton in October 1998. The Compact became effective in April 1999, following ratification by two state legislatures: Montana on April 8, 1999, and Georgia on April 28, 1999. As of April 2013, 28 additional states have entered into the Compact: Nevada (May 1999); Florida (June 1999); Colorado (March 2000); Iowa (April 2000); Connecticut (June 2000); South Carolina (June 2000); Arkansas (February 2001); Kansas (April 2001); Alaska (May 2001); Oklahoma (May 2001); Maine (June 2001); New Jersey (January 2002); Minnesota (March 2002); Arizona (April 2002); Tennessee (May 2003); North Carolina (June 2003); New Hampshire (June 2003); Missouri (July 2003); Ohio (January 2004); Wyoming (February 2005); Idaho (March 2005); Maryland (May 2005); Oregon (July 2005); West Virginia (March 2006); Hawaii (May 2006); Michigan (January 2009); Vermont (July 2010); and New York (March 2013). Eleven other states and territories have signed a Memorandum of Understanding indicating compliance with the Privacy Compact: American Samoa, Guam, Illinois, Kentucky, Mississippi, Nebraska, New Mexico, North Dakota, Puerto Rico, South Dakota, and Virginia.

National Fingerprint File (NFF): A system and procedures designed as a component of the III system, which, when fully implemented, would establish a totally decentralized system for the interstate exchange of criminal history records. The NFF will contain fingerprints of Federal offenders and at least one set of fingerprints on state offenders from each state in which an offender has been arrested, primarily for a felony or a serious misdemeanor. Under the NFF concept, states are required to forward only the first-arrest fingerprints of an individual to the FBI, accompanied by other identification data such as name and date of birth.

Fingerprints for subsequent arrests are not required to be forwarded. Disposition data on the individual also is retained at the state repository and is not forwarded to the FBI. Upon receipt of the first-arrest fingerprint card (or electronic images), the FBI enters the individual's fingerprint information, name and identifiers in the III, together with an FBI Number and an SID Number for each state maintaining a record on the individual. Charge and disposition information on state offenders are maintained only at the state level, and state repositories are required to respond to all authorized record requests concerning these individuals for both criminal justice and noncriminal justice purposes. States are required to release all data on record subjects for noncriminal justice inquiries, regardless of whether the data could legally be released for

similar purposes within the state. As of January 2015, the NFF has been implemented in 19 states: Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maryland, Minnesota, Missouri, Montana, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, West Virginia, and Wyoming.

Next Generation Identification (NGI): The NGI system, developed over multiple years, is an incremental replacement of the FBI's Integrated Automated Fingerprint Identification System (IAFIS) that provides new functionality and improves existing capabilities. This technological upgrade accommodates increased information processing and sharing demands from local, state, tribal, Federal, and international agencies. The NGI system offers state-of-the-art biometric identification services and compiles core capabilities that serve as the platform for multimodal functionality. Achievement of full operational capabilities of NGI was attained on September 15, 2014.

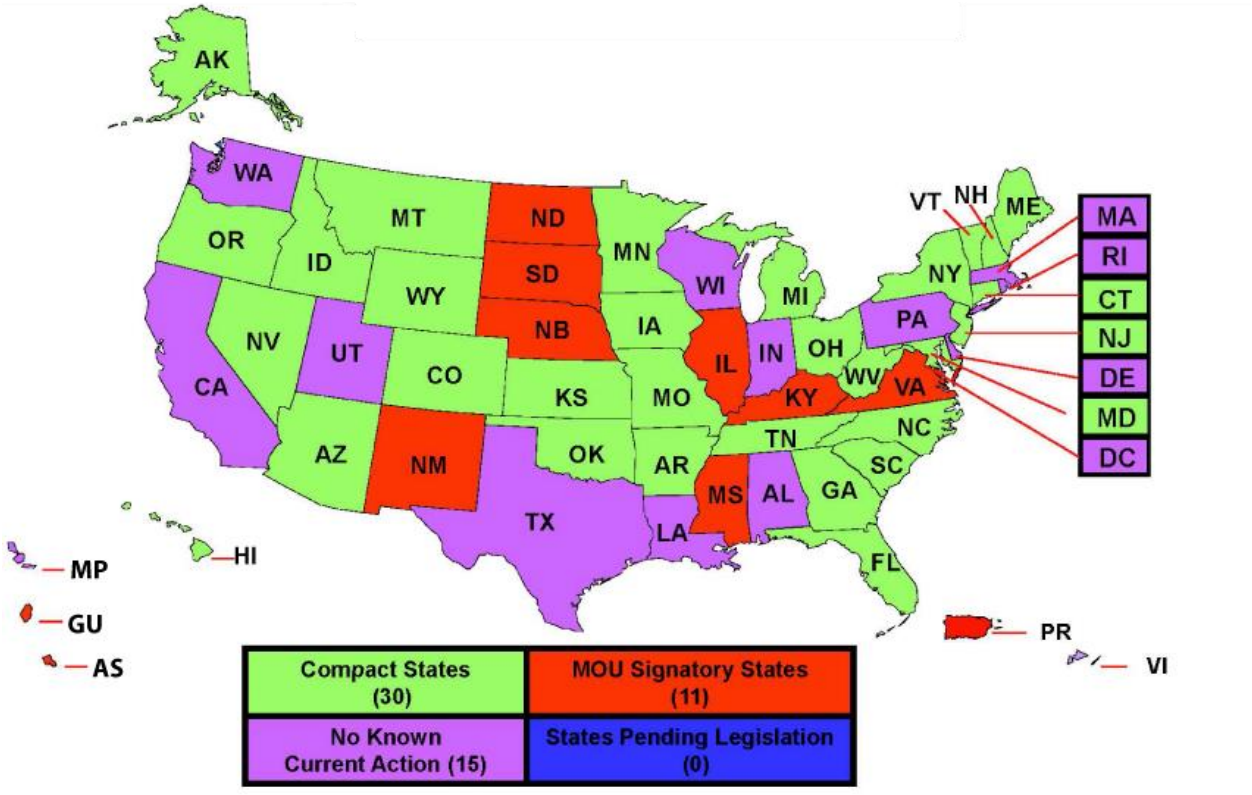
Positive Identification: Identifying an individual using biometric characteristics that are unique and not subject to alteration. In present usage, the term refers to identification by fingerprints, but may also include identification by iris images, voiceprints, or other techniques. Positive identification is distinguished from identification using name, sex, date of birth, or other personal identifiers as shown on a document that could be subject to alteration or counterfeit, such as a birth certificate, Social Security card, or driver's license. Because individuals can have identical or similar names, ages, etc., identifications based on such characteristics are not reliable.

Rap back: A "rap back" or "hit notice" program will inform an employer or other designated entity when an individual who has undergone a fingerprint-based background check—and whose fingerprints are retained by a criminal history repository after the check—is subsequently arrested. His or her fingerprints, obtained after the arrest, are matched against a database that contains the fingerprints that were initially submitted. The employer or designated entity is then notified of the individual's arrest. There is a fee for the service in some states; other states provide the service free. Some states also provide "rap back" services for notifications within the criminal justice system. For example, this might involve a notification to a parole or probation officer of the arrest of a person under supervision.

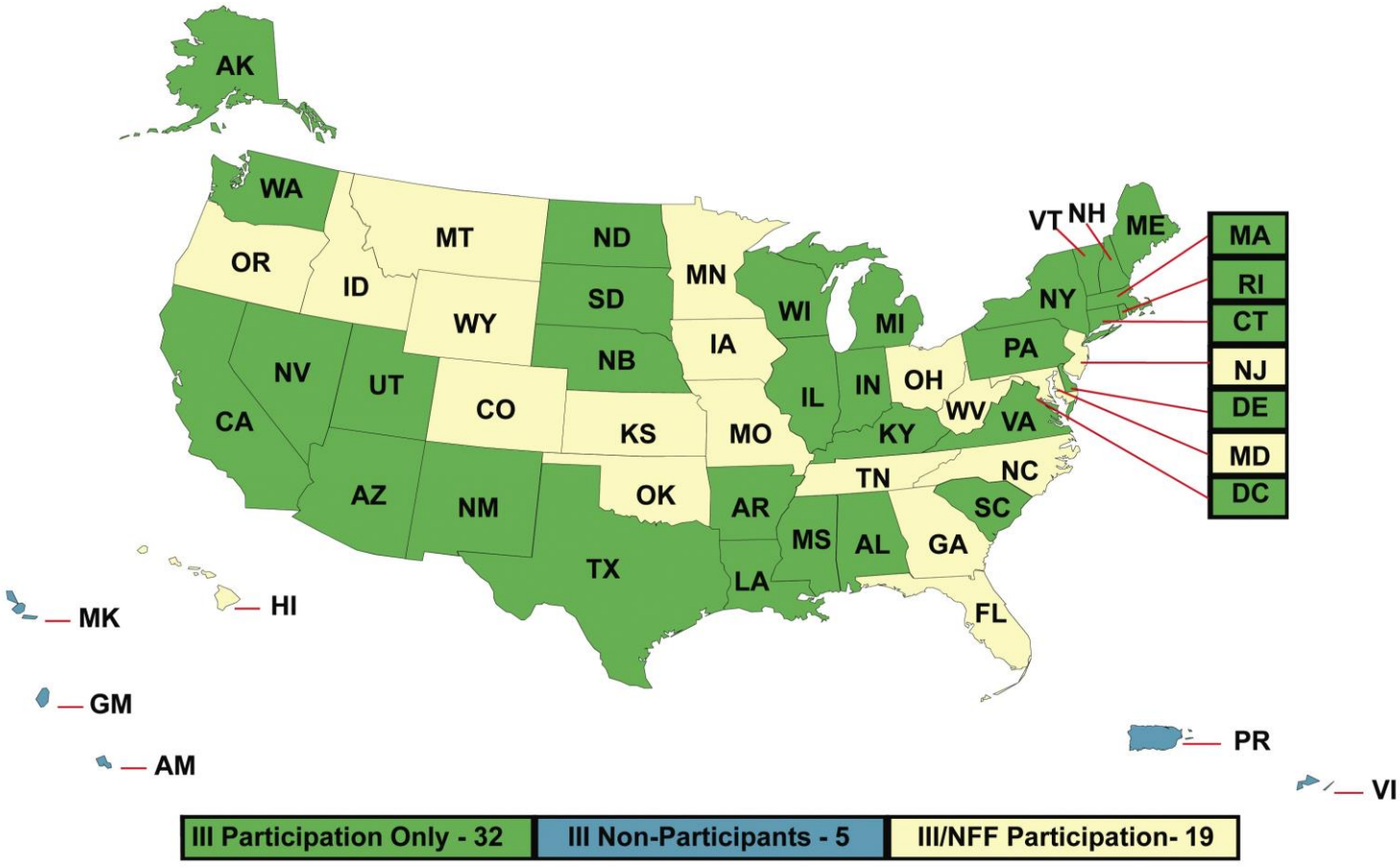
State central repository: The database (or the agency housing the database) that maintains criminal history records on all state offenders. Records include fingerprint files and files containing identification segments and notations of arrests and dispositions. The central repository is generally responsible for state-level identification of arrestees. The repository agency often is the Criminal Justice Information Services Systems Agency (CSA) for contact with FBI record systems. Non-fingerprint-based inquiries from local agencies for a national records check are routed to the FBI via the central repository. Although usually housed in the Department of Public Safety, the central repository is maintained in some states by the State Police, Attorney General, or other state agency.

Maps

Compact States and Territories
(April 10, 2013)



Interstate Identification Index (III)
National Fingerprint File (NFF)
(January 13, 2015)



Note to readers

This is the thirteenth survey of criminal history information systems conducted by SEARCH, The National Consortium for Justice Information and Statistics, since 1989. Some of the tables include data from previous surveys. Use caution in drawing comparisons between the results of earlier surveys and the data reported here. Over the course of the survey years, the U.S. Department of Justice, Bureau of Justice Statistics (BJS), has continued to administer assistance programs dedicated to improving criminal history records. As a result, some states focused new or additional resources on the condition of their records and, in many cases, know more about their records today than in the past. Similarly, expansion, advancement, and adoption of technology have also made a beneficial impact. Some state repositories, however, have suffered fiscal cutbacks and consequently have had to shift priorities away from certain criminal history information management tasks. For these and other reasons, trend comparisons may not as accurately reflect the status of each state's criminal history records as the current data considered alone.

Survey revisions

Given the dramatic advances in information technology, legislative and social trends that increase demand for criminal history record access, and the need for criminal record managers to respond to these developments, BJS and SEARCH conducted an in-depth review of the previous survey questions and developed a revised survey instrument for 2014.

SEARCH updated formats for easier response and collection of data and also added new questions to collect information on new and emerging information sharing practices. Many of these changes were suggested by users and respondents during the review process. Comments and suggestions focused on:

- increasing data on wanted person and disposition reporting
- charge tracking and record flagging
- livescan usage and repository operations
- rap back services
- how information is disseminated and how it is used.

SEARCH continues to use an online database system to collect more complete and comprehensive survey data. Features include online, password-protected reporting forms that allow respondents to complete and submit individual sections of the survey, as well as to examine/update previously submitted portions.

The *Survey of State Criminal History Information Systems, 2014* consists of 36 data tables of information, and reflects the evolving criminal record management environment.

Introduction

This report is based upon the results from a survey conducted of the administrators of the state criminal history record repositories in March–June 2015. SEARCH surveyed 56 jurisdictions, including the 50 states, the District of Columbia, American Samoa, the Territory of Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, and the U.S. Virgin Islands.[1] All 50 states, the District of Columbia, Guam, and Puerto Rico submitted survey responses. This report presents a snapshot as of December 31, 2014.

Throughout this report, the 50 states are referred to as "states"; the District of Columbia, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands are referred to as "territories," and "Nation" refers collectively to both states and territories.

[1] Hereafter, these territories are referred to as the District of Columbia, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands.

In addition, the Federal Bureau of Investigation (FBI) was the source for some of the information relating to criminal history records, including state participation in the Interstate Identification Index (III) system (the national criminal records exchange system) and the number of III records maintained by the FBI on behalf of the states; the number of records in the wanted person file; and the protection order file of the FBI's National Crime Information Center (NCIC) database.

Major findings

Criminal history files

Overview of state criminal history record systems, December 31, 2014 (table 1):

- Forty-nine states, the District of Columbia, Guam, and Puerto Rico report the total number of persons in their criminal history files as 105,569,200, of which 100,024,400 are automated records. (An individual offender may have records in more than one state.)
- Twenty-nine states, the District of Columbia, Guam, and Puerto Rico have fully automated criminal history files.

Level of disposition reporting

Overview of state criminal history record systems, December 31, 2014 (table 1):

- Seventeen states and Guam, representing 38% of the individual offenders in the Nation's criminal history records, report that 80% or more arrests within the past 5 years in the criminal history database have final dispositions recorded.
- Twenty-five states and Guam, representing 49% of the individual offenders in the Nation's criminal history records, report that 70% or more arrests within the past 5 years in the criminal history database have final dispositions recorded.
- Twenty-nine states and Guam, representing 59% of the individual offenders in the Nation's criminal history records, report that 60% or more arrests within the past 5 years in the criminal history database have final dispositions recorded.
- When arrests older than 5 years are considered:

— Twenty-one states and Guam, representing 41% of the individual offenders in the Nation's criminal history records, report that 80% or more arrests in the entire criminal history database have final dispositions recorded.

— Twenty-six states and Guam, representing 54% of the individual offenders in the Nation's criminal history records, report that 70% or more arrests in the entire criminal history database have final dispositions recorded.

— Thirty-one states and Guam, representing 65% of the individual offenders in the Nation's criminal history records, report that 60% or more arrests in the entire criminal history database have final dispositions recorded.

- In 11 states and Guam, 90% or more felony charges have a final disposition recorded in the criminal history database. In 19 states and Guam, 80% or more felony charges have a final disposition recorded in the criminal history database.

Overview of state criminal history record system functions, 2014 (table 1a):

- Fifty states, the District of Columbia, Guam, and Puerto Rico processed 23,886,000 fingerprint records in 2014; of these, 11,687,700 were used for criminal justice purposes and 12,198,500 were used and submitted for noncriminal justice licensing, employment, and regulatory purposes.

- In 14 states and Guam, fingerprints processed for criminal justice purposes account for 60% or more of the state's total number of fingerprints processed.

- Thirty-seven states, the District of Columbia, Guam, and Puerto Rico retain all fingerprints processed for criminal justice purposes.

- Ten states do not retain any fingerprints processed as part of conducting noncriminal justice background checks.

Detailed findings

Status of state criminal history files

Number of subjects (individual offenders) in state criminal history file, 2010, 2012, and 2014 (table 2):

- Ninety-five percent of the approximately 105 million criminal history records maintained by the state criminal history repositories are automated.

- Five states (Arizona, California, Connecticut, Michigan, and Oregon) report an overall decrease in the total number of subjects in manual and automated files between 2012 and 2014.

- Four states (Louisiana, Massachusetts, Mississippi, and New York) report an overall increase of at least 20% in the total number of subjects in manual and automated files between 2012 and 2014.

- Forty-five states, Guam, and Puerto Rico report an overall increase in the total number of subjects in manual and automated files between 2012 and 2014.

Criminal history records of Interstate Identification Index (III) participants maintained by state criminal history repositories and the Federal Bureau of Investigation (FBI), 2014 as of January 14, 2015 (table 21):

- Nationwide, over 85.9 million criminal history records are accessible through the III. The states maintain 70% of all III records and the FBI maintains 30%.

Biometric and image data

Biometric and image data collection by state criminal history repository, 2014 (table 3):

- Twenty-five states, the District of Columbia, and Guam reported accepting latent fingerprint images.

- Eleven states, the District of Columbia, and Guam accept flat fingerprint images.

- Twelve states accept 2-finger print images for identification purposes.

- Fifteen states accept 10-finger print images for making incarceration/ release decisions.

- Twenty-one states, the District of Columbia, and Guam accept palm print images.

- Ten states and the District of Columbia accept facial images or digitized mug shots. Three states accept facial recognition data and associated biometric information.

- Three states (Illinois, Michigan, and Minnesota) report accepting biometric information regarding scars, marks, and tattoos.

- One state (California) captures biometric iris information and one state reports accepting less than 10-finger print images for disposition reporting/processing purposes.

Protection order information

Protection order information and record counts, 2014 (table 4):

- Forty-two states, the District of Columbia, and Guam maintain protection order files, which total over 2.1 million records.

- All states, the District of Columbia, Guam, and the Virgin Islands enter protection order records onto NCIC, totaling over 1.4 million records.

- Protection orders in 24 states, the District of Columbia, and Guam are entered into state protection order files by courts.

- In 8 states without protection order files, all indicate that law enforcement agencies enter protection orders directly to NCIC.

Warrants and wanted persons

Warrant and wanted person file information, 2014 (table 5),

Warrant and wanted person file record counts, 2014 (table 5a):

- Forty states, the District of Columbia, Guam, and Puerto Rico maintain warrant files, which total over 7.8 million records. Of these, over 725,000 represent felony-level warrants and over 3.8 million represent misdemeanor-level warrants.

- Twenty-two states and the District of Columbia indicate that local law enforcement agencies enter warrants onto the state warrant file.

- Five states (Hawaii, Massachusetts, North Carolina, Utah, and West Virginia), Guam, and Puerto Rico indicate that courts enter warrants onto the state file.

- In 14 states and the District of Columbia, entry onto the state file is made by both law enforcement and courts.

- In states without warrant files, 9 states report that law enforcement agencies enter warrants directly to NCIC.

- All states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands enter warrant records into NCIC, totaling over 2.1 million records as of December 31, 2014.

Flagging of records

Flagging of records, 2014 (table 6):

- Thirty-three states have felony flagging capability for all criminal history subjects.

- Nine states have felony flagging capability for some criminal history record subjects.

- Eight states, the District of Columbia, Guam, and Puerto Rico do not have a felony flagging capability for criminal history record subjects.

- States employ flagging to indicate:
  - a sex offender registrant (35 states and Guam)
  - a convicted drug offender (3 states—Kansas, Maryland, and South Carolina)
  - a violent offender (10 states)
  - a domestic violence conviction (12 states and Guam)
  - a mental health adjudication (5 states—Arkansas, California, Hawaii, Illinois, and Massachusetts)
  - DNA available (30 states)
  - DNA not yet collected (10 states)
  - a person ineligible for firearms purchases under Federal law (14 states and Guam)
  - a person ineligible for firearms purchases under state law (10 states and Guam)

Accessibility of records and services through state repositories

Access to records, 2014 (table 6a):

- State repositories offer access to:
  - a sex offender registry (42 states, the District of Columbia, Guam, and Puerto Rico)
  - orders of protection (28 states, the District of Columbia, and Guam)
  - warrants and wanted persons information (32 states, the District of Columbia, and Guam)
  - retained applicant prints (22 states)

- rap back for criminal justice purposes (12 states)
- firearm registration information (7 states)
- domestic violence incident reports (6 states)

Dispositions

Number of final dispositions reported to state criminal history repository, 2008, 2010, 2012, and 2014 (table 7):

- Forty-eight states, the District of Columbia, Guam, and Puerto Rico provided data on the number of final dispositions reported to their criminal history repositories. They indicated that over 12.1 million final dispositions were reported in 2014—a 12% decrease from that reported in 2012.

Disposition reporting to the Federal Bureau of Investigation (FBI), 2014 (table 7a):

- In accordance with acceptable National Fingerprint File (NFF) practices, 14 NFF-participating states have elected not to send disposition information to the FBI on second and subsequent arrests.
- Twenty-nine states and Guam sent nearly 6.2 million final case dispositions to the FBI.
- Eighteen states sent 95% or more final case dispositions to the FBI via machine-readable data (MRD).
- Four states (Connecticut, Minnesota, New Mexico, and Virginia), the District of Columbia, and Guam sent 100% of final case dispositions to the FBI via hard copy or paper.
- Ten states sent 100% final case dispositions to the FBI via III message key.

Interim disposition reporting and posting of indictment information, 2014 (table 7b):

- Twenty-five states collect charge tracking information (interim dispositions) to show case status through the criminal justice process.
- Sixteen states and Guam post indictment information to the criminal history record.

Disposition reporting by local prosecutors, 2014 (table 7c):

Matching of dispositions between prosecutors and the repository, 2014 (table 7d):

- Thirty-four states, the District of Columbia, and Puerto Rico receive dispositions from local prosecutors.
- Seven states receive dispositions from local prosecutors via automated means.
- Seven states and Puerto Rico receive dispositions from local prosecutors via prosecutorial case management systems.
- Fifteen states receive dispositions in paper form.
- Eighteen states and the District of Columbia receive dispositions from local prosecutors via a mix of automated and paper-based processes.
- Twenty-one states match dispositions received from prosecutors through the assignment of a Process Control Number (PCN) or a Transaction Control Number (TCN) during booking and/or

subsequent to the arrest/booking process.

- Eleven states match dispositions received from prosecutors through a comparison of the State Identification Number (SID) and 12 states match dispositions by the Arrest Number.

- Nineteen states match dispositions received from prosecutors by the subject's name and date of birth, and 9 states match dispositions by charge.

Receipt of court disposition information by automated means and record matching, 2014 (table 8):

- Thirty-nine states and the District of Columbia receive court disposition data by automated means.

- Seventeen states report that 90% or more of all court dispositions are reported to repositories by automated means.

- Twenty-six states match dispositions received from courts through the assignment of a PCN or a TCN during booking and/or subsequent to the arrest/booking process.

- Twenty-one states and the District of Columbia match dispositions received from courts through a comparison of the SID, and 19 states and the District of Columbia match dispositions by the Arrest Number.
- Thirty-two states match dispositions received from courts by the subject's name and date of birth, and 16 states match dispositions by charge.

Matching of dispositions received to specific arrest events, 2014 (table 8a):

- Eight states report that 25% or more of all dispositions received could not be linked to a specific repository arrest record.

- Twenty-three states place dispositions that cannot be matched to a specific arrest into a suspense log for further investigation, and 13 states reject the disposition information.

- Repository staff in 28 states and Puerto Rico conducts follow-up actions when dispositions cannot be matched to a specific arrest. In 25 states and Puerto Rico, repository staff follows-up and contacts the court to obtain additional information.

Record processing times, livescan devices in courtrooms, and disposition backlogs, 2014 (table 14)

- Forty states, the District of Columbia, and Guam report a total of over 3.3 million felony arrests in 2014.

- Twenty states reported having backlogs in entering court disposition data into their criminal history database.

- Collectively, 19 states have over 3 million unprocessed or partially processed court disposition forms, ranging from 200 in North Dakota to over 1 million in Nevada.

- The length of time between occurrence of the final felony court disposition and its receipt by the repository ranges from 1 day or less in 8 states and Guam to 164 days in Missouri.

- The number of days between receipt of a final felony court disposition and its entry into the criminal history

database ranges from 1 day or less in 20 states to over 100 days in Oregon.

- Ten states use livescan devices in the courtroom to link positive identifications with dispositions.

State criminal history repository practices and technologies employed

Arrest fingerprint cards processed, 2008, 2010, 2012, and 2014 (table 9):

- During 2014, over 11.6 million arrest fingerprint cards were submitted to state criminal history repositories. This is an 8% decrease from that reported in 2012.

- Twenty-one states report an overall increase in the total number of arrest fingerprint cards submitted to the state repository.

- Nine states report an overall increase of at least 10% in the total number of arrest fingerprint cards submitted to the state repository.

- Twenty-nine states report an overall decrease in the number of arrest fingerprint cards submitted to the state repository.

Criminal history system software employed by state criminal history repositories, 2014 (table 10):

- Software components of state criminal history systems:
  - Current system was acquired from a software vendor and configured for the state's environment, but with no software modifications (2 states—New Hampshire and Wyoming—and Guam)
  - Current system was acquired from a software vendor, but customized changes were made to account for the state's environment (19 states and the District of Columbia)
  - Current system was built in-house either by staff or contractors (26 states and Puerto Rico)
- Software environment / platform used for state criminal history systems:
  - Microsoft.NET platform (9 states)
  - Java platform (14 states, the District of Columbia, and Puerto Rico)
  - Mainframe platform (11 states)
  - Other (14 states and Guam)

Arrest/fingerprint reporting, 2014 (table 11):

- Forty-nine states, the District of Columbia, Guam, and Puerto Rico report having a total of 25,439 law enforcement agencies. Of these, over 10,000 law enforcement agencies submit arrest fingerprint images to state repositories using livescan technology.

- Over 400 law enforcement agencies submit arrest fingerprint images to state repositories using cardscan technology.

- Nearly 2,700 law enforcement agencies submit hard copy arrest fingerprint cards to state repositories.

Electronic fingerprint capture devices and the submission of arrest fingerprints, 2014 (table 11a):

- Forty-nine states, the District of Columbia, Guam, and Puerto Rico report receiving over 10.3 million arrest fingerprint records by livescan.
- Over 89,000 fingerprint records were scanned and submitted to repositories using cardscan, and over 591,000 hard copy arrest fingerprint cards were submitted and received from law enforcement.

Electronic fingerprint capture devices and the use of livescan/cardscan for criminal and noncriminal justice purposes, 2014, (table 11b):

- Forty-one states, the District of Columbia, Guam, and Puerto Rico report having 6,810 livescan devices and 500 cardscan devices in use for both criminal and noncriminal justice purposes. Similarly, 8,704 livescan devices and 168 cardscan devices are used exclusively for noncriminal justice purposes.

Electronic fingerprint capture devices and the submission of fingerprints for noncriminal justice purposes, 2014 (table 11c)

- Forty-three states, the District of Columbia and Puerto Rico report receiving over 10 million noncriminal justice fingerprint requests by livescan and over 627,000 by cardscan.

- Forty-three states, the District of Columbia, and Puerto Rico indicate over 80% of noncriminal justice fingerprints are submitted using livescan while 5% are submitted using cardscan.

- Four states and Guam indicate that all noncriminal justice fingerprints are submitted using other methods.

Mobile technology for capturing and transmitting fingerprints, 2014 (table 11d):

- Twenty-eight states, the District of Columbia, and Puerto Rico use mobile technology to transmit fingerprints for identification purposes.

- Four states use mobile technology to transmit fingerprints for booking purposes.

- Eight states and the District of Columbia plan to implement mobile technology to capture non-fingerprint biometric information.

- Twenty-four states employ Rapid ID and have conducted over 1.7 million searches that produced over 1 million "hits" or positive responses.

Record/database content and combining criminal events with noncriminal justice applicant information, 2014 (table 12):

- Twenty-five states and Puerto Rico combine both criminal events and noncriminal justice applicant information in the same record.

- Four states and Puerto Rico indicate that 30% or more of their records contain both criminal events and noncriminal justice applicant information.

Privatization of noncriminal justice fingerprint capture services, 2014 (table 13):

- Thirty-two states have privatized the capture of noncriminal justice fingerprints. In 18 of these states, a single vendor provides this service.
- In 30 states, the vendor assesses a fee above what the state charges for the background check. These fees range from $8–$20.

Noncriminal justice background checks

Noncriminal justice name-based background checks, 2014 (table 15):

- Forty-two states and the District of Columbia performed over 19.4 million name-based noncriminal justice background check requests.
- Twenty-nine states performed over 17.4 million name-based noncriminal justice background checks that were received via the Internet.
- Thirty-five states and the District of Columbia performed over 1.1 million name-based noncriminal justice background checks that were received via the mail.
- Two states—Nevada and Oregon—received 112,700 name-based noncriminal justice background checks via telephone.
- Twelve states and the District of Columbia performed 732,100 additional name-based noncriminal justice background checks that were received via other means, such as modem or public walk-in access.

Noncriminal justice fingerprint-based background checks, 2014 (table 16):

- Information contained in the results of a fingerprint-based noncriminal justice background check:
  - Full record (39 states, the District of Columbia, Guam, and Puerto Rico)
  - Convictions only (3 states—Kentucky, Maine, and New Hampshire)
  - Juvenile records (5 states)
  - Arrests without dispositions—over 1 year old (18 states and the District of Columbia)
  - Other (20 states)
- Twenty-four states report that 10% or more fingerprint-based noncriminal justice transactions are identified against arrest fingerprints.
- Twenty-three states attempt to locate missing disposition information before responding to fingerprint-based noncriminal justice inquiries.

Legal authority for conducting noncriminal justice background checks, 2014 (table 17)

- All states, the District of Columbia, Guam, and Puerto Rico report having legal authority to conduct noncriminal justice background checks against a wide range of occupational groups, and licensing and regulatory functions. This authority is granted most often through specific state statute and where applicable, Federal statute pursuant to U.S. Public Law 92-544, the National Child Protection Act (NCPA),

and the Volunteers for Children Act (VCA). In instances where legal authority is not available, noncriminal justice background checks are not conducted. See table 17 for the specific circumstances under which these background checks are conducted.

Lights-out fingerprint processing, 2014 (table 18):

- Thirty-seven states, the District of Columbia, and Guam conduct "lights-out" fingerprint processing (an identification decision is made without fingerprint technician intervention).
- Twenty-one states and Guam report 60% or more of criminal and noncriminal fingerprints received are handled using "lights-out" processing techniques.

Assessment and allocation of fees, 2014 (table 19):

- All states, the District of Columbia, Guam, and Puerto Rico report charging a fee to conduct a search of the state's criminal history database for noncriminal justice purposes.
- Fifteen states and the District of Columbia allocate all fees collected for such purposes to their state general fund.
- Three states (Georgia, New Jersey, and New York) allocate a percentage of collected fees to state repository operations.
- Twenty-one states and Guam allocate all fees collected for noncriminal justice background checks to their state repository.
- Eleven states and Puerto Rico allocate all fees to fund other activities/ programs. These include funding of Automated Fingerprint Identification Systems (AFIS), criminal justice information system support, information sharing activities, etc.

Web-based services for noncriminal justice purposes, 2014 (table 20):

- Twenty-seven states provide web-based noncriminal justice background checks to the public.
- Twenty-five states collect a public access fee to conduct a background check of Internet requests. Fees charged per inquiry range from $1 in Missouri to $31 in Maine.

Rap back

Criminal justice rap back services, 2014 (table 22)

- Eighteen states provide in-state criminal justice rap back services.
- At year's-end 2014, no states were participating in the FBI's Next Generation Identification (NGI) criminal justice rap back service.
- Nearly 59,000 in-state criminal justice rap back notifications were made by 10 states.
- Purposes in which criminal justice agencies can be notified of a subsequent inquiry and/or record posting via the in-state criminal justice rap back service:
  - — Error correction/record management updates (6 states)
  - — Investigative lead (1 state—Kansas)
  - — Sex offender (2 states—Florida and New York)

- Parolee (5 states—Florida, Hawaii, Louisiana, New York, and Texas)
- Probationer (6 states)
- Permit/privileged license revocation (4 states—Connecticut, Delaware, Kansas, and Kentucky—and the District of Columbia)
- Noncriminal justice purpose fingerprint search (2 states—Connecticut and Florida)
- Other – criminal justice employment, arrests, CCW permit revocation, warrants, and record updates (8 states)

Noncriminal justice rap back services, 2014 (tables 23 and 23a)

- Twenty-seven states provide in-state noncriminal justice rap back services. In 25 of those states, rap back is authorized by state law or administrative regulation. In 19 states, state law or administrative regulation specifies the purposes in which agencies can be notified.
- Over 1.1 million in-state noncriminal justice rap back notifications were made by 16 states.
- At year's-end 2014, no states were participating in the FBI's NGI noncriminal justice rap back service.
- Occupational groups in which agencies can be notified for subsequent record postings:
  - Persons working with children (22 states)
  - Persons working with the elderly (19 states)
  - Healthcare providers (19 states)
  - Security guards (16 states)
  - Police, fire, and public safety personnel (19 states)
  - Other (16 states)
- Six states charge a fee for enrolling in the state's noncriminal justice rap back service and 3 states charge a fee upon making a rap back notification. In Texas, fees are assessed for both enrollment and each notification.
- Ten states report having in-state noncriminal justice rap back validation requirements similar to that required by NGI for all or some of its rap back subscriptions.

Data tables

Table 1. Overview of state criminal history record systems, December 31, 2014

State	Number of subjects (individual offenders) in state criminal history file			Percent of arrests in database that have final case dispositions recorded		
	Total	Automated	Manual	All arrests	Arrests within past 5 years	Felony charges with final disposition
Total	**105,569,200** **a**	**100,024,400**	**5,544,800**			
Alabama	2,164,900	2,164,900	0	na	20	na
Alaska	270,400	260,200	10,200	91	91	92
American Samoa	nr	nr	nr	nr	nr	nr
Arizona	1,653,400	1,653,400	0	58	66	71
Arkansas	712,000	712,000	0	68	79	90
California	11,365,000	9,568,700	1,796,300	na	na	na
Colorado	1,641,800	1,641,800	0	19	34	21
Connecticut	1,155,400	556,200	599,200	68	98	97
Delaware	2,380,800	2,380,800	0	96	**96**	96
District of Columbia	470,300	470,300	0	43	43	43
Florida	6,346,900	6,346,900	0	71	66	81
Georgia	3,965,200	3,965,200	0	71	85	71
Guam	2,100	2,100	0	100	100	100
Hawaii	543,800	543,800	0	95	89	95
Idaho	394,100	394,100	0	50	39	57
Illinois	6,646,200	6,071,100	575,100	69	37	17
Indiana	1,700,000	1,700,000	0	46	43	14
Iowa	721,100	703,100	18,000	92	88	32
Kansas	1,455,200	1,004,100	451,100	56	41	62
Kentucky	1,355,900	1,355,900	0	38	19	48
Louisiana	2,809,700	2,109,600	700,100	21	na	na
Maine	544,600	506,700	37,900	82	65	70
Maryland	1,578,800	1,578,800	0	98	95	28
Massachusetts	1,715,300	1,715,300	0	na	na	na b
Michigan	2,967,900	2,967,900	0	84	75	84
Minnesota	1,080,700	1,080,700	0	nr	nr	nr
Mississippi	866,600	866,600	0	14	11	10 c
Missouri	1,640,300	1,491,400	148,900	69	70	53
Montana	232,200	232,200	0	48	53	41
Nebraska	411,900	411,900	0	70	75	78
Nevada	823,500	823,500	0	49	55	10
New Hampshire	495,200	470,400	24,800	83	83	90
New Jersey	2,255,400	2,215,600	39,800	88	83	96
New Mexico	629,000	534,200	94,800	24	20	27
New York	9,289,000	9,289,000	0	90	88	85
North Carolina	1,608,900	1,608,900	0	85	72	91
North Dakota	179,800	169,800	10,000	87	81	na
No. Mariana Islands	nr	nr	nr	nr	nr	nr
Ohio	2,360,800	2,021,700	339,100	53	40	68
Oklahoma	975,600	905,800	69,800	39	34	53
Oregon	1,225,900	1,225,900	0	82	78	92
Pennsylvania	2,713,000	2,431,500	281,500	75	62	89
Puerto Rico	342,200	342,200	0	nr	nr	nr
Rhode Island	1,189,600	1,189,600	0	85	na	na
South Carolina	1,672,200	1,626,000	46,200	65	na	na
South Dakota	285,100	285,100	0	84	na	na
Tennessee	1,909,800	1,898,700	11,100	50	75	na
Texas	13,050,800	13,050,800	0	86	92	72
Utah	741,300	741,300	0	77	72	83
Vermont	244,700	244,700	0	93	88	92
Virgin Islands	nr	nr	nr	nr	nr	nr
Virginia	2,230,500	2,172,700	57,800	88	89	89
Washington	1,706,900	1,706,900	0	96	94	99
West Virginia	654,100	421,000	233,100	na	na	na
Wisconsin	nr d	nr d	nr d	87	83	83
Wyoming	193,400	193,400	0	84	82	87

Table 1 explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).
- The "number of subjects (individual offenders)" in the state criminal history file for each year applies only to the criminal history file, including partially automated files, and does *not* include release by police without charging, declinations to proceed by prosecutor, or final trial court dispositions.
- The total number of subjects (individual offenders) in state criminal history files does not include American Samoa, the Northern Mariana Islands, the Virgin Islands, and Wisconsin, from which no data were submitted.

Data footnotes:

a. The total number of subjects in state criminal history files does not equal the sum of automated and manual files due to rounding.

b. Massachusetts Courts do not submit fingerprint-supported final dispositions to the repository. A major project is currently underway to link court disposition data to the repository.

c. Low percentages are due to a number of factors. Lack of training of court clerks, turnover, illegible handwriting on manual documents, court information system not linked to criminal history repository system, updated records at local level are not being forwarded to repository system, etc.

d. Wisconsin's DOJ IT personnel were unable to provide this data within the timeframe requested.

Table 1a. Overview of state criminal history record system functions, 2014

State	Total number of fingerprints processed		Total criminal justice purposes	Fingerprints processed for criminal justice purposes: Retained	Percent of 2014 volume	Not retained	Percent of 2014 volume	Total noncriminal justice purposes	Fingerprints processed for noncriminal justice purposes: Retained	Percent of 2014 volume	Not retained	Percent of 2014 volume
Total	**23,886,000**	**a**	**11,687,700**	**11,286,800**		**400,900**		**12,198,500**	**8,434,000**		**3,764,500**	
Alabama	268,800		225,000	225,000	84	0	0	43,800	43,800	16	0	0
Alaska	62,000		22,200	22,200	36	0	0	39,900	39,900	64	0	0
American Samoa	nr		nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Arizona	475,100		346,500	346,500	73	0	0	128,600	128,600	27	0	0
Arkansas	228,200		127,500	127,500	56	0	0	100,600	100,600	44	0	0
California	3,379,000		1,465,700	1,446,500	43	19,200	1	1,913,200	1,913,200	57	0	0
Colorado	394,100		235,400	235,200	60	200	0	158,800	152,400	39	6,400	2
Connecticut	182,100		97,200	97,200	53	0	0	84,900	84,900	47	0	0
Delaware	85,200		34,300	34,300	40	0	0	50,900	50,900	60	0	0
District of Columbia	12,500		600	600	5	0	0	11,900	700	6	11,200	90
Florida	2,178,100		773,400	773,400	36	0	0	1,404,700	497,300	23	907,400	42
Georgia	903,500		503,000	503,000	56	0	0	400,600	0	0	400,600	44
Guam	4,000		2,500	2,500	63	0	0	1,500	1,500	37	0	0
Hawaii	87,500		48,200	48,000	55	200	0	39,400	0	0	39,400	45
Idaho	145,900		63,200	63,200	43	0	0	82,600	5,500	4	77,100	53
Illinois	951,300		503,900	463,300	49	40,600	4	447,400	402,700	42	44,700	5
Indiana	618,500		237,800	237,800	38	0	0	380,700	380,700	62	0	0
Iowa	129,300		87,100	87,100	67	0	0	42,200	0	0	42,200	33
Kansas	186,800		131,200	131,200	70	0	0	55,700	55,700	30	0	0
Kentucky	227,400		172,300	172,300	76	0	0	55,100	400	0	54,700	24
Louisiana	466,800		327,200	327,200	70	0	0	139,600	139,600	30	0	0
Maine	43,300		30,700	17,000	39	13,700	32	12,600	10,400	24	2,200	5
Maryland	535,000		266,800	266,800	50	0	0	268,200	268,200	50	0	0
Massachusetts	351,100		150,000	146,700	42	3,300	1	201,000	201,000	57	0	0
Michigan	667,200		384,200	279,400	42	104,800	16	282,900	279,500	42	3,400	1
Minnesota	202,100		154,300	152,300	75	2,000	1	47,800	100	0	47,700	24
Mississippi	223,400		88,200	88,200	39	0	0	135,200	0	0	135,200	61
Missouri	394,800		220,400	220,400	56	0	0	174,400	174,400	44	0	0
Montana	49,100		21,000	21,000	43	0	0	28,100	0	0	28,100	57
Nebraska	69,500		43,600	43,600	63	0	0	25,900	25,900	37	0	0
Nevada	275,800		81,200	79,000	29	2,200	1	194,600	47,600	17	147,000	53
New Hampshire	75,700		42,000	42,000	56	0	0	33,700	0		33,700	44
New Jersey	606,000		185,100	164,200	27	20,900	3	420,900	233,700	39	187,200	31
New Mexico	182,700		79,800	79,800	44	0	0	102,900	102,900	56	0	0
New York	1,476,400		886,900	713,100	48	173,800	12	589,600	554,600	38	35,000	2
North Carolina	539,500		270,300	251,700	47	18,600	3	269,200	64,500	12	204,700	38
North Dakota	50,500		25,600	25,600	51	0	0	24,900	8,200	16	16,700	33
No. Mariana Islands	nr		nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Ohio	1,216,100		277,300	277,300	23	0	0	938,800	938,800	77	0	0
Oklahoma	291,600		152,200	152,200	52	0	0	139,300	139,300	48	0	0
Oregon	262,200		137,500	137,500	52	0	0	124,700	34,500	13	90,200	34
Pennsylvania	813,500		335,200	335,200	41	0	0	478,400	22,000	3	456,400	56
Puerto Rico	41,600		15,400	15,400	37	0	0	26,200	26,200	63	0	0
Rhode Island	51,300		32,000	32,000	62	0	0	19,200	0	0	19,200	38
South Carolina	366,400		281,300	281,300	77	0	0	85,200	49,400	13	35,800	10
South Dakota	30,500		29,500	29,500	97	0	0	1,000	0	0	1,000	3
Tennessee	601,500		385,700	384,300	64	1,400	0	215,800	215,800	36	0	0
Texas	1,687,700		818,500	818,500	48	0	0	869,200	868,800	51	400	0
Utah	381,800		117,000	117,000	31	0	0	264,800	69,100	18	195,700	51
Vermont	29,600		15,300	15,300	52	0	0	14,300	0	0	14,300	48
Virgin Islands	nr		nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Virginia	507,600		256,500	256,500	51	0	0	251,000	0	0	251,000	49
Washington	440,800		220,600	220,600	50	0	0	220,300	8,600	2	211,700	48
West Virginia	187,800		105,300	105,300	56	0	0	82,500	82,500	44	0	0
Wisconsin	201,500		157,900	157,900	78	0	0	43,700	8,200	4	35,500	18
Wyoming	46,300		16,200	16,200	35	0	nr	30,100	1,400	3	28,700	62

Table 1a explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).
- The total number of fingerprint-based background checks in state criminal history files does not include American Samoa, the Northern Mariana Islands, and the Virgin Islands, from which no data were submitted.

Data footnotes:

a. The total number of fingerprints processed does not equal the sum of fingerprints processed for criminal and noncriminal justice purposes due to rounding.

Table 2. Number of subjects (individual offenders) in state criminal history file, 2010, 2012, and 2014

State	Number of subjects in manual and automated files		Number of subjects in manual and automated files, 2014			Percent of automated files			Percent change in total file	
	2010	2012	2014 total	Manual file	Automated file	2010	2012	2014	2010-2012	2012-2014
Total	**95,960,700**	**100,596,300**	**105,569,200**	**5,544,800**	**100,024,400**	**92%**	**94%**	**95%**	**5%**	**5%**
Alabama	1,751,700	2,021,200	2,164,900	0	2,164,900	89	100	100	15	7
Alaska	248,000	258,600	270,400	10,200	260,200	96	96	96	4	5
American Samoa	nr	900	nr	nr	nr	na	na	na	na	na
Arizona	1,594,400	1,706,500	1,653,400	0	1,653,400	100	100	100	7	-3
Arkansas	613,300	676,800	712,000	0	712,000	100	100	100	10	5
California	10,641,300	11,438,800	11,365,000	1,796,300	9,568,700	85	83	84	7	-1
Colorado	1,495,800	1,547,200	1,641,800	0	1,641,800	100	100	100	3	6
Connecticut	1,265,800	1,301,200	1,155,400	599,200	556,200	67	53	48	3	-11
Delaware	2,114,300	2,263,300	2,380,800	0	2,380,800	100	100	100	7	5
District of Columbia	645,100	nr	470,300	0	470,300	100	na	100	na	na
Florida	5,844,000	6,300,800	6,346,900	0	6,346,900	100	100	100	8	1
Georgia	3,541,500	3,759,600	3,965,200	0	3,965,200	100	100	100	6	5
Guam	2,000	2,000	2,100	0	2,100	100	100	100	0	5
Hawaii	519,100	540,600	543,800	0	543,800	100	100	100	4	1
Idaho	364,300	349,700	394,100	0	394,100	100	100	100	-4	13
Illinois	5,752,100	6,164,800	6,646,200	575,100	6,071,100	90	91	91	7	8
Indiana	1,488,500	1,595,700	1,700,000	0	1,700,000	100	100	100	7	7
Iowa	619,100	677,000	721,100	18,000	703,100	100	98	98	9	7
Kansas	1,303,200	1,381,200	1,455,200	451,100	1,004,100	68	70	69	6	5
Kentucky	1,211,900	1,280,900	1,355,900	0	1,355,900	100	100	100	6	6
Louisiana	2,193,000	2,231,100	2,809,700	700,100	2,109,600	71	71	75	2	26
Maine	464,000	522,000	544,600	37,900	506,700	89	92	93	13	4
Maryland	1,455,600	1,522,600	1,578,800	0	1,578,800	100	100	100	5	4
Massachusetts	1,114,600	1,179,600	1,715,300	0	1,715,300	73	75	100	6	45
Michigan	3,350,000	4,053,000 [a]	2,967,900	0	2,967,900	100	100	100	21	-27 [a]
Minnesota	837,900	1,022,600	1,080,700	0	1,080,700	100	100	100	22	6
Mississippi	510,600	689,800	866,600	0	866,600	100	100	100	35	26
Missouri	1,520,600	1,617,200	1,640,300	148,900	1,491,400	90	91	91	6	1
Montana	207,500	213,500	232,200	0	232,200	100	100	100	3	9
Nebraska	366,600	388,400	411,900	0	411,900	100	100	100	6	6
Nevada	704,500	772,500	823,500	0	823,500	100	100	100	10	7
New Hampshire	427,700	422,900	495,200	24,800	470,400	94	94	95	-1	17
New Jersey	2,072,700	2,155,200	2,255,400	39,800	2,215,600	100	93	98	4	5
New Mexico	544,200	595,700	629,000	94,800	534,200	100	81	85	9	6
New York	8,075,100	7,379,600	9,289,000	0	9,289,000	100	100	100	-9	26
North Carolina	1,545,300	1,490,500	1,608,900	0	1,608,900	98	100	100	-4	8
North Dakota	153,300	170,800	179,800	10,000	169,800	87	89	94	11	5
No. Mariana Islands	nr	nr	nr	nr	nr	na	na	na	na	na
Ohio	2,114,000	2,239,400	2,360,800	339,100	2,021,700	87	100	86	6	5
Oklahoma	852,400	920,900	975,600	69,800	905,800	92	92	93	8	6
Oregon	1,429,500	1,526,600	1,225,900	0	1,225,900	100	100	100	7	-20
Pennsylvania	2,661,900	2,528,100	2,713,000	281,500	2,431,500	81	91	90	-5	7
Puerto Rico	nr	312,500	342,200	0	342,200	na	na	100	na	10
Rhode Island	1,035,500	1,117,200	1,189,600	0	1,189,600	97	100	100	8	6
South Carolina	1,544,200	1,609,500	1,672,200	46,200	1,626,000	99	97	97	4	4
South Dakota	252,100	268,700	285,100	0	285,100	99	100	100	7	6
Tennessee	2,266,300	1,651,000 [b]	1,909,800	11,100	1,898,700	100	95	99	-27	16
Texas	10,883,600	11,824,200	13,050,800	0	13,050,800	100	100	100	9	10
Utah	534,300	704,700	741,300	0	741,300	80	100	100	32	5
Vermont	229,700	238,000	244,700	0	244,700		100	100	4	3
Virgin Islands	nr	nr	nr	nr	nr	na	na	na	na	na
Virginia	1,996,600	2,109,900	2,230,500	57,800	2,172,700	80	97	97	6	6
Washington	1,569,600	1,666,000	1,706,900	0	1,706,900	55	100	100	6	2
West Virginia	599,300	629,200	654,100	233,100	421,000	100	58	64	5	4
Wisconsin	1,263,000	1,374,600	nr [c]	nr	nr	100	100	na	9	na
Wyoming	170,100	182,000	193,400	0	193,400	100	100	100	7	6

Table 2 explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).
- The totals for the percent of automated files and the percent change in total files represent percentages of column totals, not averages.
- The total number of subjects in manual and automated state criminal history files for 2014 does not include American Samoa, the Northern Mariana Islands, the Virgin Islands, and Wisconsin, from which no data were submitted.
- The "number of subjects (individual offenders)" in the state criminal history file for each year applies only to the criminal history file, including partially automated files, and does not include the master name index.

Data footnotes:

a. 2012 totals were overstated by including applicant retained fingerprint cards. This total was adjusted from 4,053,000 to 2,967,900 in this year's report.

b. The decrease between 2010 and 2012 totals is from adjusting how law enforcement applicants and other retained applicant fingerprint cards are accounted for in the state database. Additionally, 90,310 records were expunged from state files in 2012.

c. Wisconsin's DOJ IT personnel were unable to provide this data within the timeframe requested.

Table 3. Biometric and image data collection by state criminal history repository, 2014

State	Volume/acceptance of repository biometric information												
	Latent prints	Flat prints	2-finger prints for ID purposes	2-finger prints for incarceration/ release	10-finger prints for incarceration/ release	Palm prints	Facial images/ mug shots	Scars, marks, tattoos	Facial recognition data	Iris capture	1- or 2-finger prints for updating dispositions	Other	
Total	**2,196,200**	**28,327,300**	**568,444**	**0**	**1,687,000**	**10,811,200**	**3,457,500**	**185,100**	**1,900**	**16,000**	**4,200**	**305,201**	
Alabama	6,800					1,400							
Alaska	400										4,200		
American Samoa	nr												
Arizona	900												
Arkansas	nr												
California	38,700	110,400	179,500		42,400	1,264,600				16,000		29,400	a
Colorado	7,900	387,500	344			240,200	6,100						
Connecticut	7,000					84,700							
Delaware	nr												
District of Columbia	200	598,900				227,800	120,100						
Florida	163,900	21,817,500			507,200	4,881,700	1,458,400						b
Georgia	300												
Guam	100	100				100							
Hawaii	10,700					200	8,800		100				
Idaho	3,000		600		7,300	41,300	8,800						
Illinois	na				42,000	na	1,002,800	2,200					c
Indiana	2,800				230,100	400							
Iowa	1,200												
Kansas	nr												
Kentucky	1,200												
Louisiana	nr												
Maine	nr												
Maryland	6,800	410,500	233,200		266,100	106,400							
Massachusetts	6,100	791,800				132,900	190,900						
Michigan	5,300	649,500	800			298,100	298,600	160,900	1,400				
Minnesota			118,000		6,600			22,000	400			1	d
Mississippi	nr												
Missouri	8,000		13,300		9,100	326,300							
Montana					400								
Nebraska	14,400	69,500	400		69,500	46,100							
Nevada	1,000		4,400			10,700						275,800	e
New Hampshire	nr												
New Jersey	5,500		5,000		233,500	28,800	101,300						
New Mexico	700	79,800	4,700		79,800	68,300							
New York	nr												
North Carolina	nr												
North Dakota					3,800								
No. Mariana Islands	nr												
Ohio	nr												
Oklahoma	nr												
Oregon	nr												
Pennsylvania	nr												
Puerto Rico	nr												
Rhode Island	nr												
South Carolina	5,000					845,400	115,300						
South Dakota	nr												
Tennessee	1,500					125,600	146,400						
Texas	120,000	700	8,200		72,200	1,446,500							
Utah		117,000			117,000	50,000							
Vermont	nr												
Virgin Islands	nr												
Virginia	nr												
Washington	1,776,800	3,294,100				583,700							
West Virginia	na												c
Wisconsin	nr												
Wyoming	nr												

Table 3 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Images maintained together (facial, mug shots, scars, marks, tattoos, etc.).
b. Numbers represent counts as of April 2015.
c. Biometric and image date is collected by the repository but volumes for this report are not available.
d. Footprints
e. Latent prints include those entered by NVDPS and remote AFIS processing sites. Other = 10-digit rolled for criminal and civil.

Table 4. Protection order information and record counts, 2014

State	State maintains a protection order file	Agencies entering protection orders onto the state file: Law enforcement	Courts	Other	Protection orders entered to NCIC	Agencies entering protection orders directly to NCIC: Law enforcement	Courts	Other	Number of active records in state protection order database as of 12/31/2014	Number of active records in NCIC protection order file as of 12/31/2014	
Total									**2,143,002**	**1,404,205**	
Alabama	Yes	X			Yes	X			9,944	4,434	
Alaska	Yes	X			Yes	X			4,866	1,267	
American Samoa	nr	nr			nr				nr	0	
Arizona	Yes	X			Yes	X			16,500	17,918	
Arkansas	No				Yes	X				11,357	
California	Yes	X	X		Yes	X	X		278,029	65,112	
Colorado	Yes	X	X		Yes	X	X		185,360	110,967	
Connecticut	Yes	X	X		Yes	X	X		29,808	28,939	
Delaware	Yes		X		Yes		X		2,221	1,695	
District of Columbia	Yes		X		Yes		X		2,233	1,828	
Florida	Yes	X			Yes	X			276,157	187,693	
Georgia	Yes		X		Yes	X	X		8,918	8,148	
Guam	Yes		X		Yes		X		141	465	
Hawaii	Yes		X		Yes			Repository	11,485	3,842	
Idaho	Yes	X			Yes	X			6,441	979	
Illinois	Yes	X	X		Yes		X		88,670	29,057	
Indiana	Yes		X		Yes		X		84,294	83,105	
Iowa	Yes	X	X		Yes	X	X		50,640	21,709	
Kansas	No				Yes	X				4,735	
Kentucky	Yes	X			Yes	X			16,390	16,409	
Louisiana	Yes			Supreme Court	Yes	X			na	10,716	
Maine	Yes			ME State Police	Yes			ME State Police	na	4,625	
Maryland	Yes	X			Yes	X			5,506	7,654	
Massachusetts	Yes		X		Yes			CJ Services	35,728	19,540	
Michigan	Yes	X	X		Yes	X			29,428	15,265	
Minnesota	Yes		X		Yes		X	Repository	11,614	16,301	
Mississippi	Yes	X	X		Yes	X	X		11,541	607	
Missouri	Yes	X			Yes	X			15,497	14,581	
Montana	Yes	X			Yes	X			4,524	4,438	
Nebraska	Yes	X			Yes	X			5,101	1,111	
Nevada	Yes	X	X	State Repository	Yes		X		2,715	25	a
New Hampshire	Yes	X	X		Yes	X	X		18	3,702	
New Jersey	Yes		X		Yes		X	Interface w/AOC	168,000	169,956	
New Mexico	No				Yes	X				6,304	
New York	Yes		X		Yes		X	DCJS interface	228,360	230,664	
North Carolina	No				Yes	X				11,649	
North Dakota	Yes		X		Yes	X			1,362	31	
No. Mariana Islands	nr				nr					0	
Ohio	No				Yes	X				32,493	
Oklahoma	No				Yes	X				5,835	
Oregon	Yes	X	X		Yes	X		Co. sheriffs only	11,644	15,130	
Pennsylvania	Yes	X	X		Yes	X	X		65,272	29,392	
Puerto Rico	nr				nr				nr	0	
Rhode Island	Yes			Attorney General	Yes			Attorney General	47,576	12,713	
South Carolina	No				Yes	X				2,380	
South Dakota	Yes		X		Yes	X			3,821	2,901	
Tennessee	No				Yes	X				16,404	
Texas	Yes	X			Yes	X			17,141	15,920	
Utah	Yes		X		Yes			Court Advocates	192,897	4,181	
Vermont	Yes	X			Yes	X			2,166	2,166	
Virgin Islands	nr				Yes					102	
Virginia	Yes	X			Yes	X			85,756	26,914	
Washington	Yes	X	X		Yes	X	X		102,726	98,948	
West Virginia	Yes		X		Yes		X		3,556	2,617	
Wisconsin	Yes	X			Yes	X			18,296	18,295	
Wyoming	Yes	X			Yes	X			660	986	

Table 4 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. At year's end 2014, 25 protection orders were entered to NCIC. Nevada courts are not 24x7. This causes courts not to be able to comply with longstanding NCIC policy requiring "hits" against NCIC records to be confirmed by the entering agency 24x7. Also, courts and law enforcement are not available or willing to validate the accuracy of protection orders under the existing NCIC validation requirement. Protection orders that meet NICS entry criteria are entered to the NICS Index by repository staff for use in making firearm suitability determinations.

Table 5. Warrant and wanted person file information, 2014

State	State maintains a warrant file	Agencies that enter warrants to state file			Agencies that enter warrants to NCIC		
		Law enforcement	Courts	Other	Law enforcement	Courts	Other
Alabama	Yes	X			X		
Alaska	Yes	X			X		
American Samoa	nr						
Arizona	Yes	X			X	X	
Arkansas	No				X		
California	Yes	X	X		X	X	
Colorado	Yes	X	X		X	X	
Connecticut	Yes	X	X		X	X	
Delaware	Yes	X	X		X	X	
District of Columbia	Yes	X	X		X		
Florida	Yes	X			X		
Georgia	No				X		
Guam	Yes		X			X	
Hawaii	Yes		X		X		
Idaho	Yes	X			X		
Illinois	Yes	X	X		X	X	
Indiana	Yes	X			X		
Iowa	Yes	X			X		
Kansas	Yes	X			X		
Kentucky	Yes	X			X		
Louisiana	No				X		
Maine	Yes	X			X		
Maryland	Yes	X		Parole Commission	X		Parole Commission
Massachusetts	Yes		X		X		
Michigan	Yes	X	X		X	X	
Minnesota	Yes	X		County and State Departments of Corrections	X		County and State Department of Corrections
Mississippi	No				X		
Missouri	Yes	X			X		
Montana	Yes	X			X		
Nebraska	Yes	X			X		
Nevada	Yes	X	X		X	X	
New Hampshire	Yes	X	X		X	X	
New Jersey	No				X		
New Mexico	No				X		
New York	Yes	X	X		X	X	
North Carolina	Yes		X		X		
North Dakota	Yes	X			X		
No. Mariana Islands	nr						
Ohio	No	X	X		X	X	
Oklahoma	No				X		
Oregon	Yes	X	X		X	X	
Pennsylvania	Yes	X	X		X	X	
Puerto Rico	Yes		X		X	X	
Rhode Island	Yes	X	X	Attorney General	X	X	Attorney General
South Carolina	No				X		
South Dakota	Yes	X			X		
Tennessee	No				X		
Texas	Yes	X			X		
Utah	Yes		X	Adult Probation and Parole, State Board of Pardons	X		Adult Probation and Parole, State Board of Pardons
Vermont	Yes	X			X		
Virgin Islands	nr						
Virginia	Yes	X			X		
Washington	Yes	X	X		X	X	
West Virginia	Yes		X		X		
Wisconsin	Yes	X			X		
Wyoming	Yes	X			X		

Table 5 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

Table 5a. Warrant and wanted person file record counts, 2014

State	Number of records in state warrant database as of 12/31/2014		NCIC Wanted Person File record count, as of 12/31/2014		Breakdown of warrants in state warrant database: Felony warrants	Misdemeanor warrants	Other	
Total	**7,823,581**	a	**2,126,579**	a	**725,076**	**3,868,351**	**859,476**	
Alabama	184,351		11,577		17,179	167,160	12	c
Alaska	13,597		404		2,576	3,821	7,200	c
American Samoa	nr		1					
Arizona	342,950		18,735		43,158	874,595		
Arkansas		b	147,253					b
California	1,068,009		242,694		278,337	780,672		
Colorado	236,044		36,770		26,281	142,921	66,842	c
Connecticut	16,753		3,331		9,585	7,168		
Delaware	220,856		3,259		10,820	174,361	35,682	c
District of Columbia	10,105		615					
Florida	244,311		269,619					
Georgia		b	222,756					b
Guam	1,394		364		248	242	904	c
Hawaii	91,199		524		0	33052	58,147	c
Idaho	74		24,514					
Illinois	384,481		35,802					
Indiana	86,354		52,452					
Iowa	51,469		11,715		2,454	49,015		
Kansas	39,529		8,956		0	39,529		
Kentucky	313,616		10,231					
Louisiana		b	12,926					b
Maine	na		1,420					
Maryland	195,106		19,168					
Massachusetts	428,409		16,827		95,112	333,297		
Michigan	948,775		77,498		26,488	377,133	545,154	c
Minnesota	66,838		16,552		14,565	12,610		
Mississippi		b	11,321					b
Missouri	271,330		28,296		28,188	114,356		
Montana	20,628		2,938					
Nebraska	17,003		6,377			17003		
Nevada	203,048		14,484					
New Hampshire	31,116		2,742					
New Jersey		b	57,363					b
New Mexico		b	99,991					b
New York	288,174		33,745		66,626	195,168	26,380	c
North Carolina	831,703		25,146		na	na	na	
North Dakota	32,321		1,232					
No. Mariana Islands	nr		0					
Ohio		b	14,946					b
Oklahoma		b	19,405					b
Oregon	na		17,054		na	na	na	
Pennsylvania	104,839		106,811		20,042	46,898	37,899	c
Puerto Rico			1,522					
Rhode Island	na		1,817					
South Carolina		b	64,218					b
South Dakota	na		1,057					
Tennessee		b	33,143					b
Texas	223,553		219,227					
Utah	222,241		1,594		16,276	184,627	11,118	c
Vermont	5,407		256					
Virgin Islands	nr		80					
Virginia	175,996		52,671					
Washington	215,845		44,673		49,284	165,731	830	c
West Virginia	12,022		1,528		4,096	7,916	10	c
Wisconsin	176,134		15,812		13,761	93,075	69,298	c
Wyoming	48,001		1,167		0	48001		

Table 5a explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. State counts may include warrants ineligible for NCIC entry, such as civil warrants, and certain traffic and juvenile warrants.

b. State does not maintain a warrant file.

c. States reporting "Other" indicate that warrants in this category pertain to attempt to locate civil, child support, juvenile, ordinance infractions, small claims, and/or traffic-related matters.

Table 6. Flagging of records, 2014

State	Felony conviction flagging capability for criminal history record subjects	Flagging also employed to indicate: Sex offender registrant	Convicted drug offender	Violent offender	Domestic violence conviction	Mental health adjudication	DNA available	DNA not yet collected	Ineligible for firearms purchases under Federal law	Ineligible for firearms purchases under state law	Other
Alabama	Yes, all	X									
Alaska	Yes, all	X			X		X	X	X	X	
American Samoa	nr										
Arizona	Yes, all	X					X				
Arkansas	Yes, all	X				X	X		X		
California	No	X				X	X	X			
Colorado	No	X		X			X				a
Connecticut	Yes, all	X			X						
Delaware	Yes, all	X			X		X				
District of Columbia	No										b
Florida	Yes, some	X					X				c
Georgia	Yes, all	X					X		X		
Guam	No	X			X				X	X	d
Hawaii	Yes, all	X		X		X	X	X			e
Idaho	Yes, all						X				
Illinois	Yes, all	X		X		X	X	X	X	X	
Indiana	No										
Iowa	Yes, all						X	X			
Kansas	Yes, all	X	X		X		X				
Kentucky	Yes, some	X					X		X	X	
Louisiana	Yes, some	X					X	X			
Maine	No										
Maryland	Yes, some	X	X	X							f
Massachusetts	No	X									
Michigan	Yes, all				X	X	X				
Minnesota	Yes, some								X		
Mississippi	No	X									
Missouri	Yes, all	X		X			X		X		
Montana	Yes, all	X		X			X				
Nebraska	Yes, all	X			X						
Nevada	Yes, all	X					X				
New Hampshire	No										
New Jersey	Yes, all	X			X		X	X			g
New Mexico	Yes, all	X									
New York	Yes, all	X		X			X				h
North Carolina	Yes, all				X		X		X		
North Dakota	No										
No. Mariana Islands	nr										
Ohio	Yes, some	X					X	X			i
Oklahoma	Yes, some										
Oregon	Yes, all	X					X		X	X	j
Pennsylvania	Yes, all	X			X				X	X	
Puerto Rico	No										
Rhode Island	Yes, all	X									
South Carolina	Yes, some	X	X	X					X	X	
South Dakota	Yes, all										
Tennessee	Yes, some						X			X	
Texas	Yes, all	X			X		X				
Utah	Yes, all										
Vermont	Yes, all	X		X			X				
Virgin Islands	nr										
Virginia	Yes, all	X							X		
Washington	Yes, all				X		X		X	X	
West Virginia	Yes, all	X		X	X		X	X			k
Wisconsin	Yes, all	X					X	X	X	X	
Wyoming	Yes, all									X	

Table 6 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Deceased, identity theft
b. Most violent offender
c. All registrations
d. Warrants, custody status
e. Career criminal, firearms risk
f. Domestic crimes
g. Gang-related
h. Parole, probation, deported alien, wanted, missing persons
i. Wanted, sealed, caution flags
j. Deceased, presumed dead
k. Child abusers, bail enforcement, CCW permits

Table 6a. Access to records, 2014

State	Other records and services that are accessable through state repositories							
	Sex offender registry	Orders of protection	Wanted persons/ warrants	Retained applicant prints	Rap back for criminal justice purposes	Firearm registration	Domestic violence incident reports	Other
Alabama	X	X	X	X			X	
Alaska	X	X	X	X				a
American Samoa	nr							
Arizona	X	X	X					
Arkansas	X	X	X					
California	X			X	X			
Colorado	X	X	X	X	X			
Connecticut	X					X		
Delaware	X	X	X	X	X		X	
District of Columbia	X	X	X					
Florida	X	X	X					b
Georgia	X	X	X					
Guam	X	X	X					
Hawaii	X	X				X		
Idaho	X	X	X					c
Illinois				X	X			
Indiana	na							
Iowa	X	X	X					
Kansas	X		X	X	X		X	
Kentucky	X	X	X					
Louisiana	X			X	X			
Maine								
Maryland	X	X	X	X	X	X	X	
Massachusetts				X				
Michigan	X							
Minnesota	X	X	X		X			d
Mississippi	X	X	X					
Missouri	X	X	X	X				e
Montana	X							
Nebraska	X	X	X	X				
Nevada	X	X	X					c, f
New Hampshire	X							
New Jersey	X	X	X	X	X	X	X	
New Mexico								
New York	X	X	X	X			X	
North Carolina	X							
North Dakota	X	X	X					c
No. Mariana Islands	nr							
Ohio	X		X	X				
Oklahoma				X				
Oregon	X		X	X				
Pennsylvania	X	X	X	X	X	X		
Puerto Rico	X							
Rhode Island	X		X	X				
South Carolina								
South Dakota	X			X		X		
Tennessee	X	X	X					
Texas	X			X	X			
Utah	X	X	X					
Vermont	X	X	X		X			
Virgin Islands	nr							
Virginia	X	X	X					g
Washington	X	X	X			X		
West Virginia	X		X	X				
Wisconsin								
Wyoming	X	X	X					

Table 6a explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. State rap back for certain non-criminal justice clients
b. Missing persons, child support writs
c. Concealed weapons permits
d. Domestic abuse no-contact orders, arrest photos, concealed weapons permits
e. Rap back service for schools
f. Parole and probation information
g. Mental health, machine gun, concealed handgun permits

Table 7. Number of final dispositions reported to state criminal history repository, 2008, 2010, 2012, and 2014

State	Number of final case dispositions				Percent change		
	2008	2010	2012	2014	2008-2010	2010-2012	2012-2014
Total	**12,215,600**	**12,964,000**	**13,798,300**	**12,181,300**	**6%**	**7%**	**-12%**
Alabama	65,500	66,600	27,800	31,700	2	-58 a	14
Alaska	46,200	34,100	72,100	46,700	-26	111 b	-35
American Samoa	nr	nr	1,300	nr	nr	nr	nr
Arizona	185,800	172,100	278,700	370,500	-7	62	33
Arkansas	185,800	44,500	42,900	54,800	-76	-4	28
California	1,784,100	1,616,800	1,565,000	1,471,100	-9	-3	-6
Colorado	22,800	66,700	34,300	115,500	93	-49	237 c
Connecticut	104,800	53,200	88,600	70,200	-49	67	-21
Delaware	127,000	341,100	476,700	451,600	169	40	-5
District of Columbia	nr	nr	nr	30,200	nr	nr	nr
Florida	1,316,800	2,224,700	2,057,400	1,419,800	69	-8	-31
Georgia	600,600	728,000	658,900	729,100	21	-9	11
Guam	900	1,100	5,000	4,300	22	355 d	-14
Hawaii	51,200	67,400	70,400	72,700	32	4	3
Idaho	126,000	156,500	141,200	171,600	24	-10	22
Illinois	436,600	380,400	275,000	289,200	-13	-28	5
Indiana	201,600	295,400	244,400	169,000	47	-17	-31
Iowa	253,400	306,800	305,000	350,800	21	-1	15
Kansas	192,900	168,600	229,000	115,600	-13	34	-50 e
Kentucky	95,000	62,000	141,000	106,500	-35	127 f	-24
Louisiana	18,600	32,800	42,400	21,300	76	29	-50 g
Maine	10,200	92,300	32,900	33,500	805	-64 h	2
Maryland	335,900	248,500	282,000	239,500	-26	13	-15
Massachusetts	423,200	na i	na i	na i	na i	na i	na i
Michigan	348,000	440,300	824,200	428,100	27	87 j	-48 j
Minnesota	166,200	k 152,400	93,400	114,700	-8	-39	23
Mississippi	13,100	15,400	15,200	28,600	18	-1	88 l
Missouri	188,500	134,600	157,800	172,400	-27	17	9
Montana	21,400	23,100	26,200	22,600	8	13	-14
Nebraska	47,900	65,600	56,200	72,200	37	14	28
Nevada	35,900	46,400	50,000	119,800	29	8	140 m
New Hampshire	nr	nr	nr	73,800	nr	nr	na
New Jersey	525,700	370,500	693,200	139,200	-30	87 n	-80 n
New Mexico	16,300	21,700	10,000	4,900	33	-54 o	-51 o
New York	517,400	532,300	576,200	548,700	3	8	-5
North Carolina	312,500	307,300	256,000	243,300	-2	-17	-5
North Dakota	19,000	18,000	nr	19,800	-5	na	na
No. Mariana Islands	nr	nr	nr	nr	nr	nr	nr
Ohio	288,300	575,100 p	351,800	400,400	99	-39	14
Oklahoma	68,800	69,000	75,500	85,200	<1	9	13
Oregon	190,600	164,000	149,400 q	87,500	-14	-9	-41 q
Pennsylvania	157,300	153,900	141,200	172,900	-2	-8	22
Puerto Rico	nr	nr	18,100	41,500	nr	nr	129
Rhode Island	13,300	23,300	15,900	7,800	75	-32	-51
South Carolina	204,500	151,900	183,800	112,100	-26	21	-39
South Dakota	64,900	59,800	na	350,900	-8	na	na
Tennessee	223,600	266,000	255,700	258,600	19	-4	1
Texas	986,200	959,700	1,398,300	1,040,100	-3	46	-26
Utah	180,600	202,900	118,300	79,900	12	-42	-32
Vermont	28,500	19,700	19,500	19,400	-31	-1	-1
Virgin Islands	nr	nr	nr	nr	nr	nr	nr
Virginia	433,600	432,500	464,400	460,800	<1	7	-1
Washington	305,200	287,700	396,800	396,900	-6	38	<1
West Virginia	46,000	66,000	66,500	na	43	1	na
Wisconsin	211,000	231,500	302,400	302,500	10	31 r	<1
Wyoming	16,400	13,800	10,300	11,500	-16	-25	12

Table 7 explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).
- Final dispositions include release by police without charging, declination to proceed by prosecutor, or final trial court disposition.

Data footnotes:

a. Final dispositions reported in 2008 and 2010 include dispositions in backlog. The 2012 total does not.

b. The 2012 increase in reported dispositions is caused by efforts to enter case dismissals that are reported to the repository by statewide courts. This also influences the 2014 percent change notation.

c. The 2014 increase in reported dispositions is caused by a change in counting methodologies from previous cycles. The current method is to count each charge within each arrest event, as opposed to only counting individual arrest events and not each charge.

d. The 2012 increase in reported dispositions is caused by efforts to complete a backlog reduction project.

e. The 2014 decrease in reported dispositions is caused by a legislative change that required courts to electronically report dispositions to the repository by July 1, 2013. Prior to that date, statewide prosecutors reported dispositions; however, on the effective date of the new law, courts were not ready to report dispositions and prosecutors discontinued reporting. Prosecutors have since begun to report again and work is being done to build electronic court exchanges to report dispositions to the repository.

f. The 2012 increase in reported dispositions is caused by NCHIP- and NARIP-funded efforts to research and enter dispositions for charges for which final dispositions were not reported.

g. The 2014 decrease in disposition receipts is caused by the clearing of a 2012 backlog of disposition reports.

h. The 2012 decrease in reported dispositions is caused by completing a 2010 project with statewide courts to recover past "legacy" disposition data.

i. The Commonwealth of Massachusetts has a separate disposition database. Currently these dispositions are not submitted to the repository. Massachusetts reports 99% of records in its database have dispositions.

j. The 2012 increase in reported dispositions is caused by efforts to research and enter dispositions for charges for which final dispositions were not reported. The 2014 decrease follows a 2013 legislative change making deferrals nonpublic and not subject to reporting of same to the repository.

k. In the 2008 survey, Minnesota reported 230,100 final dispositions. This total was overstated by 63,900 and adjusted in this report to total 166,200.

l. The 2014 increase in reported dispositions is caused by a major educational outreach project with statewide courts.

m. The 2014 increase in reported dispositions is caused by a major outreach project and backlog reduction effort following a fall 2013 audit of criminal history records between the repository and statewide courts.

n. The 2012 increase in reported dispositions is caused by implementing an automated linking and flagging process between the New Jersey State Police and statewide courts. This process went into production in 2011 and stabilized following a backlog reduction effort in 2013 and 2014.

o. The 2012 and 2014 decreases in reported dispositions are caused by completing a backlog reduction project.

p. Ohio's 2010 total number of final case dispositions received was decreased from 770,900 to 575,100 in this year's report. Also, the 2008–2010 percent change figure was adjusted to reflect this change. The higher number included dispositions that were processed from an accumulated backlog.

q. Oregon's 2012 total number of final case dispositions received was decreased from 202,500 to 149,400 in this year's report. Also, the 2010–2012 percent change figure was adjusted to reflect this change. The 2014 decrease in reported dispositions is caused by a change in counting methodologies from previous cycles.

r. The 2012 increase in reported dispositions is a result of receiving electronic dispositions from statewide county prosecutors.

Table 7a. Disposition reporting to the Federal Bureau of Investigation (FBI), 2014

State	Of total dispositions received, number sent to the FBI		Of dispositions sent to the FBI, percent sent by: Machine readable data (MRD)	Hard copy or paper	Interstate Identification Index (III) Message Key	NFF-participating states electing not to send disposition information to FBI on second and subsequent arrests	
Total	**6,196,600**						
Alabama	nr		100				
Alaska	41,500		99	1			
American Samoa	nr						
Arizona	370,500		0	75	25		
Arkansas	54,800		95	1	4		
California	1,010,500		99	1			
Colorado	0	a				Yes	
Connecticut	16,000			100			
Delaware	451,600				100		
District of Columbia	nr			100			
Florida	0	a				Yes	
Georgia	0	a				Yes	
Guam	2,100			100			
Hawaii	5,000	a	100			No	
Idaho	0	a				Yes	
Illinois	272,400				100		
Indiana	144,800				100		
Iowa	6,900	a	100			No	
Kansas	0	a				Yes	
Kentucky	94,400		100				
Louisiana	na						
Maine	7,600				100		
Maryland	10,400	a	100			No	
Massachusetts	na						
Michigan	428,100				100		
Minnesota	nr	a		100		Yes	b
Mississippi	28,600				100		
Missouri	0	a				Yes	
Montana	0	a				Yes	
Nebraska	nr		100				
Nevada	30,000				100		
New Hampshire	nr						
New Jersey	nr	a				No	
New Mexico	4,900			100			
New York	548,700		100				
North Carolina	0	a				Yes	
North Dakota	19,800		100				
No. Mariana Islands	nr						
Ohio	400,400	a	100			No	
Oklahoma	0	a	100			Yes	
Oregon	0	a				Yes	
Pennsylvania	149,800		100				
Puerto Rico	nr						
Rhode Island	7,800				100		
South Carolina	112,100		100				
South Dakota	210,000		98	b			
Tennessee	0	a				Yes	
Texas	1,040,100				100		
Utah	0	c					
Vermont	16,700		95	5			
Virgin Islands	nr						
Virginia	22,400	d		100			
Washington	396,900		100				
West Virginia	0	a				Yes	
Wisconsin	291,800				100		
Wyoming	0	a				Yes	

Table 7a explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).

NOTE: National Fingerprint File (NFF) states are signatories to the National Crime Prevention and Privacy Compact, under which these states have agreed to provide all criminal history information when responding to requests received from the FBI in connection with national civil purpose background checks. Consequently, disposition information is made available for all inquiries received from the FBI for arrests that occurred subsequent to the state becoming an NFF participant. In some instances, an NFF state may provide information that predates NFF participation. States that do not participate in the NFF program continue to voluntarily forward disposition information to the FBI.

Data footnotes:

a. NFF-participating state.

b. The repository sends dispositions to the FBI when requested for specific cases.

c. A project to send disposition information to the FBI is underway. It began in 2015 and it includes dispositions received by the repository in previous years.

d. The Virgina State Police is redesigning its criminal history system to include sending disposition

Table 7b. Interim disposition reporting and posting of indictment information, 2014

State	State collects charge tracking information (interim dispositions) on the criminal history record to show case status through the criminal justice process	State posts indictment information to the criminal history record	
Alabama	Yes	nr	
Alaska	No	No	
American Samoa	nr	nr	
Arizona	nr	No	
Arkansas	Yes	No	a
California	No	No	
Colorado	No	Yes	
Connecticut	No	nr	
Delaware	Yes	Yes	
District of Columbia	No	nr	
Florida	Yes	No	
Georgia	Yes	Yes	b
Guam	No	Yes	
Hawaii	Yes	Yes	c
Idaho	No	Yes	
Illinois	Yes	No	
Indiana	No	No	
Iowa	No	No	
Kansas	Yes	Yes	
Kentucky	No	No	
Louisiana	No	No	
Maine	Yes	Yes	
Maryland	Yes	Yes	
Massachusetts	No	nr	
Michigan	Yes	Yes	
Minnesota	No	No	
Mississippi	Yes	Yes	
Missouri	Yes	Yes	
Montana	Yes	No	
Nebraska	No	No	
Nevada	Yes	No	
New Hampshire	Yes	Yes	
New Jersey	Yes	No	
New Mexico	No	No	
New York	Yes	No	
North Carolina	No	No	
North Dakota	Yes	No	
No. Mariana Islands	nr	nr	
Ohio	Yes	Yes	
Oklahoma		No	
Oregon	No	No	
Pennsylvania	No	nr	
Puerto Rico	nr	nr	
Rhode Island	No	nr	
South Carolina	No	Yes	
South Dakota	No	No	
Tennessee	No	No	
Texas	Yes	No	
Utah	Yes	Yes	
Vermont	Yes	No	
Virgin Islands	nr	nr	
Virginia	No	No	
Washington	No	No	
West Virginia	No	No	
Wisconsin	Yes	Yes	
Wyoming	Yes	No	

Table 7b explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Arkansas rarely uses indictments. Instead, a criminal information is filed, which starts the criminal proceeding. Information obtained about the person and arrest and status of the criminal proceeding are posted to the record as received.

b. Indicted disposition entered at the discretion of the prosecutor.

c. Indictment information is posted to the criminal history record once the offender is served the warrant and booked.

Table 7c. Disposition reporting by local prosecutors, 2014

State	Does the repository receive any final case dispositions from local prosecutors?		How dispositions are received: Automated means	Prosecutors' case management system	Is paper-based	Mix of automated and paper-based
Alabama	No					
Alaska	Yes				X	
American Samoa	nr					
Arizona	Yes					X
Arkansas	Yes				X	
California	Yes					X
Colorado	No					
Connecticut	No					
Delaware	Yes			X		
District of Columbia	Yes					X
Florida	No					
Georgia	Yes		X	X		X
Guam	No					
Hawaii	Yes			X		X
Idaho	Yes				X	
Illinois	Yes					X
Indiana	Yes			X		
Iowa	No					
Kansas	Yes					X
Kentucky	No					
Louisiana	Yes					X
Maine	Yes		X			
Maryland	No		X			
Massachusetts		a				
Michigan	Yes		X			
Minnesota	Yes					X
Mississippi	Yes				X	
Missouri	Yes					X
Montana	Yes					X
Nebraska	No					
Nevada	Yes				X	
New Hampshire	Yes				X	
New Jersey	Yes					X
New Mexico	Yes					
New York	Yes					
North Carolina	No					
North Dakota	Yes				X	
No. Mariana Islands	nr				X	
Ohio	Yes				X	
Oklahoma	Yes					X
Oregon	Yes				X	X
Pennsylvania	No					
Puerto Rico	Yes			X		
Rhode Island	No					
South Carolina	Yes					X
South Dakota	Yes				X	
Tennessee	No					
Texas	Yes					X
Utah	Yes		X	X	X	X
Vermont	No					
Virgin Islands	nr					
Virginia	No					
Washington	Yes				X	
West Virginia	No					
Wisconsin	Yes		X	X	X	X
Wyoming	Yes		X	X	X	X

Table 7c explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. The Commonwealth of Massachusetts has a separate disposition database. Currently these dispositions are not submitted to the repository. Massachusetts reports 99% of records in its database have dispositions.

Table 7d. Matching of dispositions between prosecutors and the repository, 2014

State	How records are matched between prosecutors and the repository: N/A, state does not receive automated dispositions from prosecutors		PCN or TCN assigned at time of arrest/ booking†	PCN or TCN assigned subsequent to arrest/ booking†	State ID #	Arrest #	Name	Date of birth	Charges	Other
Alabama	X									
Alaska	X									
American Samoa	nr									
Arizona			X				X	X		
Arkansas					X	X	X	X	X	
California					X	X	X	X	X	
Colorado	X									
Connecticut	X									
Delaware										
District of Columbia	X									
Florida	X									
Georgia			X	X	X				X	
Guam	X									
Hawaii			X		X	X	X	X	X	Social Security Number
Idaho			X			X	X	X	X	
Illinois			X							
Indiana			X				X	X		Case number
Iowa	X									
Kansas			X				X	X		
Kentucky	X									
Louisiana					X	X			X	
Maine							X	X		Arrest tracking number
Maryland	X									
Massachusetts		a								
Michigan			X	X						
Minnesota							X	X		Controlling agency number
Mississippi						X				
Missouri			X							
Montana						X	X	X		
Nebraska	X									
Nevada			X				X	X		Date of arrest
New Hampshire			X							
New Jersey					X		X	X		Date of incident
New Mexico			X				X	X	X	Originating agency identifier
New York					X	X				Arrest date
North Carolina	X									
North Dakota			X							
No. Mariana Islands	nr									
Ohio			X				X	X		
Oklahoma			X							
Oregon			X	X	X	X	X	X		
Pennsylvania	X									
Puerto Rico	X									
Rhode Island	X									
South Carolina					X	X	X	X	X	
South Dakota	X									
Tennessee	X									
Texas				X	X	X				
Utah				X						
Vermont	X									
Virgin Islands	nr									
Virginia	X									
Washington			X		X	X	X	X	X	
West Virginia	X									
Wisconsin			X				X	X		
Wyoming			X				X	X		

Table 7d explanatory notes:

- na (not available).
- nr (not reported).

† Process Control Number (PCN), Transaction Control Number (TCN)

Data footnotes:

a. The Commonwealth of Massachusetts has a separate disposition database. Currently these dispositions are not submitted to the repository. Massachusetts reports 99% of records in its database have dispositions.

Table 8. Receipt of court disposition information by automated means and record matching, 2014

State	Was any court disposition data reported directly to the repository by automated means?		Percentage of court dispositions reported by automated means	Records matched between the court system and repository: PCN or TCN assigned at arrest/booking†	PCN or TCN assigned after arrest/booking†	State ID number	Arrest number	Name	Date of birth	Charges	Other
Alabama	No										
Alaska	No										
American Samoa	nr										
Arizona	Yes		24%	X		X		X	X	X	
Arkansas	Yes		70	X			X	X	X		
California	Yes		80			X	X	X	X	X	
Colorado	Yes		57				X	X	X		Docket number
Connecticut	Yes		99				X	X	X		
Delaware	Yes		100			X					
District of Columbia	Yes					X	X				
Florida	Yes		100	X		X	X	X	X	X	
Georgia	Yes		99	X	X	X	X	X	X	X	
Guam	No										
Hawaii	Yes		100	X		X	X	X	X	X	Social Security Number
Idaho	Yes		100	X				X	X		
Illinois	Yes		45	X		X					
Indiana	Yes		83	X				X	X		Case number
Iowa	Yes		70	X				X	X		
Kansas	Yes		1	X				X	X		
Kentucky	Yes		13				X				Citation number
Louisiana	Yes		na								
Maine	Yes		99				X	X	X		
Maryland	Yes		100	X	X	X	X	X	X		
Massachusetts		a									
Michigan	Yes		93	X	X	X	X	X	X		
Minnesota	Yes		nr					X	X		Controlling agency case #
Mississippi	No										
Missouri	Yes		78	X							
Montana	Yes		7				X	X	X	X	Court docket number
Nebraska	Yes		100	X	X	X		X	X		
Nevada	Yes		26	X				X	X	X	
New Hampshire	No			X	X	X		X	X	X	
New Jersey	Yes		nr			X		X	X		
New Mexico	No										
New York	Yes		100			X	X				Arrest date
North Carolina	Yes		nr	X		X					
North Dakota	No										
No. Mariana Islands	nr										
Ohio	Yes		74		X	X		X	X		
Oklahoma	No										
Oregon	Yes		64		X			X	X		
Pennsylvania	Yes		100			X		X	X	X	Social Security Number
Puerto Rico	No										
Rhode Island	Yes		100								Interface does electronic match
South Carolina	Yes		60				X	X	X	X	Warrant number
South Dakota	Yes		60	X				X	X	X	
Tennessee	Yes		65	X							
Texas	Yes		92	X		X	X	X	X	X	
Utah	No										
Vermont	Yes		95			X	X	X	X		
Virgin Islands	nr										
Virginia	Yes		95	X		X	X	X	X	X	
Washington	Yes		83	X		X	X	X	X	X	
West Virginia	No			X	X	X	X	X	X	X	
Wisconsin	Yes		100	X				X	X	X	
Wyoming	No										

Table 8 explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- na (not available).
- nr (not reported).

† Process Control Number (PCN), Transaction Control Number (TCN)

Data footnotes:

a. The Commonwealth of Massachusetts has a separate disposition database. Currently these dispositions are not submitted to the repository. Massachusetts reports 99% of records in its database have dispositions.

Table 8a. Matching of dispositions received to specific arrest events, 2014

State	Percentage of all dispositions received that could not be linked to a specific arrest record	Actions taken when disposition cannot be matched					
		Placed in suspense file (no further action)	Placed in a suspense file for further investigation	Disposition information is rejected	Follow-up actions are taken by repository staff	Court is contacted	Other
Alabama	unknown				X	X	
Alaska	unknown						a
American Samoa	nr						
Arizona	16			X			
Arkansas	1			X		X	
California	8						b
Colorado	44						c
Connecticut	15		X				
Delaware	0				X	X	
District of Columbia	nr						
Florida	28		X		X	X	
Georgia	0						
Guam	0						
Hawaii	22		X		X	X	
Idaho	nr		X		X		
Illinois	3		X		X	X	
Indiana	40		X				
Iowa	2		X				
Kansas	nr				X		
Kentucky	18			X			
Louisiana	14				X	X	
Maine	unknown			X			
Maryland	26		X		X	X	
Massachusetts	nr						
Michigan	11		X		X	X	
Minnesota	nr		X		X	X	
Mississippi	nr				X		
Missouri	17		X		X	X	
Montana	5		X		X	X	
Nebraska	0						
Nevada	44		X	X	X	X	
New Hampshire	41						d
New Jersey	19		X		X	X	
New Mexico	nr						
New York	8					X	
North Carolina	0			X		X	
North Dakota	nr		X	X	X	X	
No. Mariana Islands	nr						
Ohio	47		X	X	X	X	
Oklahoma	nr			X			
Oregon	12		X	X	X	X	
Pennsylvania	26		X				
Puerto Rico	0				X	X	
Rhode Island	0				X		e
South Carolina	unknown				X	X	
South Dakota	nr				X		
Tennessee	2	X					
Texas	2				X		f
Utah	19		X		X	X	
Vermont	5						
Virgin Islands	nr						
Virginia	21		X	X	X	X	
Washington	3		X		X	X	g
West Virginia	2		X	X	X	X	h
Wisconsin	8		X		X	X	
Wyoming	3			X			

Table 8a explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- na (not available).
- nr (not reported).

Data footnotes:

a. Known information is added and flagged to indicate the information is not fingerprint supported.
b. Added to repository as an "orphan disposition".
c. Placed in a temporary file for later processing and matching to arrests.
d. Disposition is entered to CCH without arrest information.
e. BCI contacts law enforcement for follow-up with court.
f. Placed in a suspense file and checked daily for arrest.
g. Arresting law enforcement agency is contacted.
h. Arresting law enforcement agency is contacted.

Table 9. Arrest fingerprint cards processed, 2008, 2010, 2012, and 2014

	Fingerprints processed for criminal justice purposes				Percent change		
State	2008	2010	2012	2014	2008-2010	2010-2012	2012-2014
Total	**12,106,400**	**11,921,800**	**12,691,630**	**11,687,700**	**-2%**	**6%**	**-8%**
Alabama	169,500	273,100	265,800	225,000	61	-3	-15
Alaska	23,000	24,900	23,300	22,200	8	-6	-5
American Samoa	nr	nr	30	nr			
Arizona	234,100	207,000	189,600 a	346,500	-12	-8	a 83 a
Arkansas	103,500	116,700	118,000	127,500	13	1	8
California	1,579,300	1,654,100	1,463,700	1,465,700	5	-12	<1
Colorado	249,400	236,100	228,500	235,400	-5	-3	3
Connecticut	166,000	132,200	98,000	97,200	-20	-26	-1
Delaware	41,600	34,600	40,400	34,300	-17	17	-15
District of Columbia	49,600	46,400	nr	600	-6		
Florida	1,060,900	904,300	914,000	773,400	-15	1	-15
Georgia	506,100	531,800	491,200	503,000	5	-8	2
Guam	3,700	2,300	nr	2,500	-38		
Hawaii	33,100	38,600	42,200	48,200	17	9	14
Idaho	82,800	81,100	71,000	63,200	-2	-12	-11
Illinois	691,500	624,000	575,800	503,900	-10	-8	-12
Indiana	201,100	216,200	244,500	237,800	8	13	-3
Iowa	87,700	83,700	92,100	87,100	-5	10	-5
Kansas	148,400	161,500	136,700	131,200	9	-15	-4
Kentucky	213,600	188,900	199,100	172,300	-12	5	-13
Louisiana	336,900	297,400	326,900	327,200	-12	10	<1
Maine	25,400	30,700	28,900	30,700	21	-6	6
Maryland	234,000	244,200	256,300	266,800	4	5	4
Massachusetts	169,200	148,700	135,100	150,000	-12	-9	11
Michigan	435,100	383,500	370,100	384,200	-12	-3	4
Minnesota	153,900	143,200	157,100	154,300	-7	10	-2
Mississippi	77,600	87,500	91,400	88,200	13	4	-4
Missouri	225,900	240,000	223,300	220,400	6	-7	-1
Montana	20,700	19,900	21,200	21,000	-4	7	-1
Nebraska	47,800	54,000	49,000	43,600	13	-9	-11
Nevada	109,100	104,200	103,200	81,200	-4	-1	-21
New Hampshire	29,500	35,800	45,000	42,000	21	26	-7
New Jersey	234,000	225,800	205,000	185,100	-4	-9	-10
New Mexico	88,000	94,200	107,600	79,800	7	14	-26
New York	730,100	762,500	737,300	886,900	4	-3	20
North Carolina	148,500	171,500	283,900 b	270,300	15	66	b -5
North Dakota	11,800	14,000	22,800	25,600	19	63	12
No. Mariana Islands	nr	nr	nr	nr			
Ohio	308,200	288,500	426,900	277,300	-6	48	-35
Oklahoma	98,200	123,600	143,900	152,200	26	16	6
Oregon	122,800	123,900	120,800	137,500	1	-3	14
Pennsylvania	283,200	309,100	334,100	335,200	9	8	<1
Puerto Rico	nr	nr	586,400	15,400			
Rhode Island	39,400	37,500	34,100	32,000	-5	-9	-6
South Carolina	275,700	240,700	229,400	281,300	-13	-5	23
South Dakota	27,100	26,400	28,300	29,500	-3	7	4
Tennessee	393,100	368,300	428,000	385,700	-6	16	-10
Texas	914,200	882,100	1,101,300	818,500	-4	25	-26
Utah	106,900	107,400	76,500	117,000	<1	-29	53
Vermont	25,800	23,400	18,000	15,300	-9	-23	-15
Virgin Islands	nr	nr	nr	nr			
Virginia	302,800	296,600	296,100	256,500	-2	-1	-13
Washington	265,500	243,800	235,900	220,600	-8	-3	-6
West Virginia	32,900	66,000	97,300	105,300	101	47	8
Wisconsin	172,500	154,000	162,200	157,900	-11	5	-3
Wyoming	15,700	15,900	14,400	16,200	1	-9	13

Table 9 explanatory notes:

- Percentages and numbers reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).

Data footnotes:

a. 2012 totals were understated, causing the 2012-2014 percent change increase.

b. The 2012 increase of fingerprint card submissions to the repository is caused by an increase of misdemeanor offenses submitted by large municipal police agencies throughout the state.

Table 10. Criminal history system software employed by state criminal history repositories, 2014

State	Software components of state criminal history systems	Software environment / platform used for state criminal history system			
		Microsoft .NET platform	Java platform	Mainframe platform	Other
Alabama	2		X		
Alaska	3			X	
American Samoa	nr				
Arizona	3			X	
Arkansas	3			X	
California	3				a
Colorado	2		X		
Connecticut	3			X	
Delaware	3		X		
District of Columbia	2		X		
Florida	2			X	
Georgia	2		X		
Guam	1				b
Hawaii	3		X		
Idaho	2		X		
Illinois	3				c
Indiana	2			X	
Iowa	3				d
Kansas	2				e
Kentucky	2				f
Louisiana	2		X		
Maine	3				g
Maryland	3			X	
Massachusetts	2		X		
Michigan	3	X			
Minnesota	3				h
Mississippi	3		X		
Missouri	2		X		
Montana	3				i
Nebraska	2	X			
Nevada	3	X			
New Hampshire	1				j
New Jersey	3	X			
New Mexico	2				k
New York	3	X			
North Carolina	3	X			
North Dakota	3				l
No. Mariana Islands	nr				
Ohio	2				m
Oklahoma	3		X		
Oregon	2				n
Pennsylvania	3	X			
Puerto Rico	3		X		
Rhode Island	nr				
South Carolina	2			X	
South Dakota	4			X	
Tennessee	3	X			
Texas	3			X	
Utah	3		X		
Vermont	2		X		
Virgin Islands	nr				
Virginia	2			X	
Washington	nr				
West Virginia	2				o
Wisconsin	3		X		
Wyoming	1	X			

Table 10 explanatory notes:

- na (not available).
- nr (not reported).

Legend: Software components of state criminal history systems

1. Acquired from software vendor and configured for the state's environment, but with no software modifications.
2. Acquired from software vendor but customized changes were made to account for the state's environment.
3. Built in-house either by staff or contractors.
4. Other.

Data footnotes:

a. PL/SQL on Oracle 11G, Linux OS on Dell servers.

b. Omnixx Enterprise Platform that incorporates BixTalk servers. Datamaxx message switch and SQL servers.

c. Oracle forms and reports.

d. Oracle software.

e. Microsoft Visual Basic 6 with COM+ components.

f. Sequel servers.

g. PL / SQL.

h. Microsystem cluster with multiple languages (C++, COBOL, PL/I, SQL).

i. Oracle 11g database/Oracle 10g GUI on Windows platform.

j. Access.

k. Oracle.

l. Progress.

m. C++.

n. CRIMEvue is on a Windows 2003 platform using mostly C++ code. Moving to either Windows 2008R2 or Windows 2012 this summer. The data is stored on a Microsoft SQL Server 2005 database.

o. Oracle forms.

Table 11. Arrest/fingerprint reporting, 2014

State	Total number of law enforcement agencies	Number of law enforcement agencies that submit arrest prints via livescan	Percentage of arrest prints submitted via livescan	Number of agencies that submit arrest fingerprints via cardscan	Number of agencies that submit hard copy arrest fingerprint cards	Number of felony arrests reported to the repository
Total	**25,439**	**10,062**		**203**	**2,442**	**3,340,600**
Alabama	962	166	nr	nr	nr	nr
Alaska	49	41	96	0	15	5,300
American Samoa	nr	nr	nr	nr	nr	nr
Arizona	136	97	97	16	113	66,900
Arkansas	590	531	90	nr	nr	52,500
California	1,648	a nr	100	nr	nr	662,000
Colorado	249	249	97	0	0	81,700
Connecticut	174	174	87	173	nr	nr
Delaware	76	76	74	0	0	10,000
District of Columbia	36	4	100	0	0	40,700
Florida	401	401	96	0	0	292,900
Georgia	672	652	99	0	0	162,100
Guam	1	1	100	0	0	3,200
Hawaii	14	14	100	5	5	6,700
Idaho	152	147	97	0	5	18,000
Illinois	1,670	612	93	3	36	125,800
Indiana	986	634	92	1	3	15,600
Iowa	366	57	89	0	309	37,400
Kansas	394	160	90	0	45	26,300
Kentucky	1,153	nr	100	0	0	56,900
Louisiana	821	201	na	2	21	nr
Maine	400	nr	70	nr	nr	9,600
Maryland	219	204	99	0	nr	41,500
Massachusetts	400	250	88	0	nr	nr
Michigan	650	650	98	0	nr	90,400
Minnesota	465	465	99	0	0	30,400
Mississippi	268	144	95	nr	nr	21,100
Missouri	663	306	88	0	357	122,800
Montana	126	122	26	0	4	5,300
Nebraska	228	20	84	0	187	14,100
Nevada	95	95	100	nr	nr	23,700
New Hampshire	212	nr	nr	nr	0	6,100
New Jersey	630	610	97	0	18	88,800
New Mexico	624	182	72	nr	150	8,500
New York	602	543	99	nr	42	153,400
North Carolina	568	269	99	nr	nr	94,600
North Dakota	123	78	82	0	38	nr
No. Mariana Islands	nr	nr	nr	nr	nr	nr
Ohio	962	na	90	0	nr	na
Oklahoma	327	284	91	0	43	59,600
Oregon	171	173	96	0	254	157,800
Pennsylvania	1,879	nr	95	nr	nr	48,700
Puerto Rico	6	nr	nr	nr	nr	nr
Rhode Island	41	41	100	2	2	6,600
South Carolina	272	65	89	0	62	na
South Dakota	204	34	99	nr	nr	nr
Tennessee	400	389	99	0	11	nr
Texas	2,737	531	93	0	nr	282,200
Utah	175	50	nr	nr	nr	25,100
Vermont	92	59	92	nr	nr	2,600
Virgin Islands	nr	nr	nr	nr	nr	nr
Virginia	343	na	97	na	na	164,800
Washington	179	152	88	1	27	188,900
West Virginia	765	72	70	0	693	26,800
Wisconsin	nr	nr	nr	nr	nr	nr
Wyoming	63	57	95	nr	2	3,200

Table 11 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Number represents the total number of law enforcement agencies that have California Law Enforcement Telecommunications System (CLETS) access. It does not account for the total number of agencies.

Table 11a. Electronic fingerprint capture devices and the submission of arrest fingerprints, 2014

Number of arrest fingerprints submitted to the repository by livescan, cardscan, and hard copy

State	Via livescan	Via cardscan	Hard copy	Total	
Total	**10,322,100**	**89,300**	**591,800**	**11,042,500**	a
Alabama	202,400	22,600	24,000	249,000	
Alaska	21,100	0	900	21,900	
American Samoa	nr	nr	nr	nr	
Arizona	184,300	0	20,300	204,600	
Arkansas	119,000	0	8,600	127,500	
California	1,258,800	0	2,000	1,260,800	
Colorado	229,200	0	6,000	235,100	
Connecticut	84,700	0	12,100	96,800	
Delaware	25,400	0	8,900	34,300	
District of Columbia	40,600	0	100	40,700	
Florida	743,800	0	28,900	772,600	
Georgia	497,200	0	5,800	503,000	
Guam	2,500	0	0	2,500	
Hawaii	48,000	0	0	48,000	
Idaho	63,000	0	300	63,300	
Illinois	359,500	0	25,600	385,100	
Indiana	192,800	100	700	193,700	
Iowa	77,500	0	9,700	87,100	
Kansas	118,700	0	12,500	131,200	
Kentucky	171,600	0	700	172,300	
Louisiana	324,200	0	3,000	327,200	
Maine	11,500	0	5,500	17,000	
Maryland	263,800	0	3,000	266,800	
Massachusetts	129,400	0	17,300	146,700	
Michigan	642,600	6,800	17,700	667,200	
Minnesota	112,000	0	300	152,300	
Mississippi	84,000	4,300	0	88,200	
Missouri	194,300	0	26,000	220,400	
Montana	5,500	0	15,500	21,000	
Nebraska	36,600	0	7,100	43,600	
Nevada	79,200	0	2,900	82,100	
New Hampshire	30,000	0	12,100	42,000	
New Jersey	160,700	0	103,600	264,300	
New Mexico	57,600	22,200	0	79,800	
New York	548,200	na	1,000	549,200	
North Carolina	223,800	0	2,800	226,600	
North Dakota	17,400	0	3,800	21,100	
No. Mariana Islands	nr	nr	nr	nr	
Ohio	261,100	0	22,900	284,000	
Oklahoma	138,200	0	14,100	152,200	
Oregon	130,700	0	5,000	135,600	
Pennsylvania	317,400	0	17,800	335,200	
Puerto Rico	15,300	0	0	15,300	
Rhode Island	32,000	0	0	32,000	
South Carolina	249,200	0	32,100	281,300	
South Dakota	28,600	0	800	29,500	
Tennessee	376,200	0	8,100	384,300	
Texas	754,900	0	63,600	818,500	
Utah	117,000	0	0	117,000	
Vermont	14,200	1,100	0	15,300	
Virgin Islands	nr	nr	nr	nr	
Virginia	251,000	nr	5,500	256,500	
Washington	208,300	0	11,000	219,300	
West Virginia	51,100	32,200	22,000	105,300	
Wisconsin	nr	nr	nr	nr	
Wyoming	16,000	0	200	16,200	

Table 11a explanatory notes:

- Percentages and numbers are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).

Data footnotes:

a. Due to rounding, the total does not equal the sum of livescan, cardscan, and hard copy.

Table 11b. Electronic fingerprint capture devices and the use of livescan/cardscan for criminal and noncriminal justice purposes, 2014

State	Livescan use		Cardscan use	
	Noncriminal justice purposes only [a]	Used for both criminal and noncriminal justice purposes [a]	Noncriminal justice purposes only [a]	Used for both criminal and noncriminal justice purposes [a]
Total	**8,704**	**6,810**	**168**	**500**
Alabama	0	166	2	2
Alaska	40	20	2	0
American Samoa	nr	nr	nr	nr
Arizona	0	0	2	0
Arkansas	16	75	0	0
California	3,010	1,835	0	0
Colorado	23	386	23	386
Connecticut	25	55	nr	0
Delaware	nr	nr	nr	nr
District of Columbia	15	37	2	2
Florida	1081	0	0	0
Georgia	na	na	0	0
Guam	2	3	1	2
Hawaii	17	0	8	0
Idaho	29	4	2	0
Illinois	558	238	3	0
Indiana	67	0	2	0
Iowa	nr	nr	nr	nr
Kansas	12	160	0	0
Kentucky	72	180	0	0
Louisiana	2	142	66	5
Maine	6	22	1	2
Maryland	238	108	10	10
Massachusetts	25	250	0	0
Michigan	150	450	2	2
Minnesota	14	0	2	0
Mississippi	180	324	0	0
Missouri	68	302	0	5
Montana	1	34	1	1
Nebraska	8	0	0	0
Nevada	105	19	2	2
New Hampshire	3	41	0	0
New Jersey	27	644	1	0
New Mexico	105	0	0	12
New York	nr	nr	nr	nr
North Carolina	44	167	0	0
North Dakota	17	41	0	0
No. Mariana Islands	nr	nr	nr	nr
Ohio	2,352	0	0	0
Oklahoma	9	95	0	0
Oregon	na	na	0	0
Pennsylvania	0	279	0	3
Puerto Rico	15	15	8	8
Rhode Island	41	41	2	41
South Carolina	16	0	4	4
South Dakota	nr	nr	nr	nr
Tennessee	55	185	1	0
Texas	98	0	1	0
Utah	nr	nr	1	6
Vermont	0	59	0	0
Virgin Islands	nr	nr	nr	nr
Virginia	na	na	na	na
Washington	126	293	16	3
West Virginia	32	110	3	4
Wisconsin	nr	nr	nr	0
Wyoming	0	30	0	0

Table 11b explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Refer to table 11 for criminal justice totals.

Table 11c. Electronic fingerprint capture devices and the submission of fingerprints for noncriminal justice purposes, 2014

State	Number of noncriminal justice fingerprints submitted to the repository by livescan and cardscan			Percentage of non-criminal justice fingerprints submitted via livescan	Percentage of non-criminal justice fingerprints submitted via cardscan	Percentage of non-criminal justice fingerprints submitted via other method
	Via livescan	Via cardscan	Other			
Total	**10,097,100**	**627,700**	**1,439,000**	**83**	**5**	**12**
Alabama	31,100	12,700	0	71	29	0
Alaska	3,000	1,300	35,600	8	3	89
American Samoa	nr	nr	nr	nr	nr	nr
Arizona	0	11,500	117,100	0	9	91
Arkansas	10,200	0	90,400	10	0	90
California	1,908,800	4,400	0	99.8	0.2	0
Colorado	102,500	49,900	6,400	65	31	4
Connecticut	0	23,900	61,000	0	28	72
Delaware	nr	nr	50,900	nr	nr	100
District of Columbia	11,900	0	0	100	0	0
Florida	1,404,700	0	0	100	0	0
Georgia	400,600	0	0	100	0	0
Guam	0	0	1,500	0	0	100
Hawaii	34,500	4,800	0	88	12	0
Idaho	21,500	22,800	38,300	26	28	46
Illinois	444,500	1,800	1,100	99.4	0.4	0.2
Indiana	162,500	5,400	212,800	43	1	56
Iowa	2,800	0	39,400	7	0	93
Kansas	10,000	0	45,700	18	0	82
Kentucky	17,600	0	37,500	32	0	68
Louisiana	139,600	0	0	100	0	0
Maine	8,900	100	3,600	71	1	28
Maryland	253,400	14,800	0	94	6	0
Massachusetts	162,400	0	38,600	81	0	19
Michigan	276,100	6,800	0	98	2	0
Minnesota	6,000	14,100	27,700	13	29	58
Mississippi	117,800	17,400	0	87	13	0
Missouri	154,900	19,500	0	89	11	0
Montana	27,800	300	0	99	1	0
Nebraska	19,100	0	6,800	74	0	26
Nevada	143,000	51,600	0	73	27	0
New Hampshire	18,000	0	15,700	53	0	47
New Jersey	308,600	0	112,300	73	0	27
New Mexico	82,200	15,600	5,100	80	15	5
New York	562,900	31,200	4,600	94	5	1
North Carolina	230,400	0	38,800	86	0	14
North Dakota	0	0	24,900	0	0	100
No. Mariana Islands	nr	nr	nr	nr	nr	nr
Ohio	938,800	0	0	100	0	0
Oklahoma	73,200	0	66,100	53	0	47
Oregon	38,000	0	86,700	30	0	70
Pennsylvania	478,400	0	0	100	0	0
Puerto Rico	5,100	5,100	16,000	19	19	62
Rhode Island	19,200	0	0	100	0	0
South Carolina	22,100	63,100	0	26	74	0
South Dakota	nr	nr	1,000	nr	nr	100
Tennessee	200,400	0	15,400	93	0	7
Texas	825,800	43,400	0	95	5	0
Utah	86,000	174,200	4,600	32	66	2
Vermont	12,100	0	2,200	85	0	15
Virgin Islands	nr	nr	nr	nr	nr	nr
Virginia	71,500	9,700	169,800	28	4	68
Washington	198,300	0	22,000	90	0	10
West Virginia	50,900	22,300	9,300	62	27	11
Wisconsin	nr a	nr	nr	nr	nr	nr
Wyoming	0	0	30,100	0	0	100

Table 11c explanatory notes:

- Percentages and numbers are estimates.
- Percentages have been rounded to the nearest whole percent.
- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).

Data footnotes:

a. Wisconsin's DOJ IT personnel were unable to provide this data within the timeframe requested.

Table 11d. Mobile technology for capturing and transmitting fingerprints, 2014

State	Using mobile technology to transmit fingerprints: For identification purposes	Using mobile technology to transmit fingerprints: For booking purposes	Plans to implement mobile technology to capture nonfingerprint biometric information	Currently employing Rapid ID[a]	Rapid ID: Number of searches	Rapid ID: Number of hits
Total					**1,716,241**	**1,023,288**
Alabama	No	No	Yes	No		
Alaska	No	No	No	No		
American Samoa	nr	nr	nr	nr		nr
Arizona	Yes	Yes	nr	Yes	114,772	81,068
Arkansas	Yes	No	No	Yes	1,235	764
California	Yes	No	No	Yes	179,460	106,313
Colorado	Yes	No	No	Yes	344	na
Connecticut	No	No	nr	nr		
Delaware	Yes	No	No	No		
District of Columbia	Yes	No	Yes	No		
Florida	Yes	No	No	Yes	699,391	500,698
Georgia	Yes	No	No	Yes	331,530	82,549
Guam	No	No	No	No		
Hawaii	Yes	No	No	Yes	600	nr
Idaho	Yes	No	No	Yes	1	1
Illinois	Yes	No	No	Yes	nr	nr
Indiana	No	No	No	No		
Iowa	No	No	No	No		
Kansas	Yes	No	No	No		
Kentucky	No	No	No	No		
Louisiana	No	No	No	No		
Maine	No	No	Yes	No		
Maryland	Yes	No	No	Yes	233,197	145,625
Massachusetts	Yes	No	No	Yes	100	2
Michigan	Yes	No	Yes	Yes	753	327
Minnesota	Yes	No	No	Yes	118,010	87,269
Mississippi	No	No	Yes	No		
Missouri	Yes	No	Yes	Yes	13,325	9,768
Montana	No	No	No	No		
Nebraska	Yes	No	No	No		
Nevada	No	No	No	No		
New Hampshire	No	No	No	No		
New Jersey	No	No	No	Yes	nr	nr
New Mexico	Yes	Yes	No	Yes	4,662	2,725
New York	Yes	No	No	Yes	396	343
North Carolina	Yes	No	No	Yes	4,520	1,180
North Dakota	No	No	No	No		
No. Mariana Islands	nr	nr	nr	nr	nr	nr
Ohio	Yes	No	Yes	Yes	nr	nr
Oklahoma	No	No	No	No		
Oregon	No	No	Yes	No		
Pennsylvania	No	No	No	No		
Puerto Rico	Yes	No	No	No		
Rhode Island	Yes	No	No	No		
South Carolina	Yes	Yes	Yes	Yes	4,520	1,180
South Dakota	No	No	No	No		
Tennessee	Yes	No	No	Yes	96	4
Texas	Yes	No	No	Yes	8,195	2,909
Utah	No	No	No	No		
Vermont	No	No	No	No		
Virgin Islands	nr	No	nr	nr	nr	nr
Virginia	No	No	No	No		
Washington	Yes	No	No	Yes	2	2
West Virginia	Yes	No	No	Yes	1,132	561
Wisconsin	Yes	Yes	No	No		
Wyoming	No	No	No	No		

Table 11d explanatory notes:

- na (not available).
- na (not available).

Data footnotes:

a. Nonfingerprint biometric information includes the capture of scars, marks and tattoo images, facial recognition and iris data.

Table 12. Record/database content and combining criminal events with noncriminal justice applicant information, 2014

State	Does your state combine both criminal events and noncriminal justice applicant information in the same record?		Of the total records in your database, what percentage represents records that contain both criminal events and noncriminal justice applicant information?
Alabama	Yes		5%
Alaska	Yes		na
American Samoa	nr		nr
Arizona	No		
Arkansas	Yes		
California	Yes		18
Colorado	Yes		11
Connecticut	Yes		49
Delaware	Yes		
District of Columbia	nr		
Florida	No		
Georgia	No		
Guam	No		
Hawaii	No		
Idaho	Yes	a	
Illinois	Yes		9
Indiana	No		
Iowa	No		
Kansas	No		
Kentucky	Yes		
Louisiana	Yes		
Maine	No		
Maryland	Yes		31
Massachusetts	No		
Michigan	Yes		7
Minnesota	Yes		<1
Mississippi	No		
Missouri	Yes		7
Montana	No		
Nebraska	No		
Nevada	Yes		1
New Hampshire	No		
New Jersey	No		
New Mexico	Yes		100
New York	Yes		
North Carolina	No		
North Dakota	No		
No. Mariana Islands	nr		
Ohio	No		
Oklahoma	Yes		34
Oregon	Yes		5
Pennsylvania	Yes		2
Puerto Rico	Yes		100
Rhode Island	No		
South Carolina	No		
South Dakota	Yes		
Tennessee	No		
Texas	Yes		8
Utah	No		
Vermont	No		
Virgin Islands	nr		
Virginia	No		
Washington	Yes		na
West Virginia	Yes		
Wisconsin	No		
Wyoming	No		

Table 12 explanatory notes:

- Percentages and numbers are estimates.
- Percentages have been rounded to the nearest whole percent.
- na (not available).
- nr (not reported).

Data footnotes:

a. Maintained as part of the same record but distinguished from one another by the SID.

Table 13. Privatization of noncriminal justice fingerprint capture services, 2014

State	Has the state privatized the taking of noncriminal justice fingerprints?	Fingerprinting service provided by single (S) vendor or multiple (M) vendors	Does the vendor assess a fee above what the state charges for the background check?	Fee	Additional vendor-provided services
Alabama	Yes	M	Yes	nr	a
Alaska	Yes	M	Yes	Varies	b
American Samoa	nr	nr	nr	nr	
Arizona	Yes	S	Yes	$8.00	c
Arkansas	Yes	M	Yes	nr	d
California	Yes	M	Yes	nr	e
Colorado	No				
Connecticut	No				
Delaware	No				
District of Columbia	No				
Florida	Yes	M	Yes	nr	f
Georgia	Yes	S	Yes	9.00	g
Guam	No				
Hawaii	No				
Idaho	Yes	M	Yes	Unknown	h
Illinois	Yes	M	Yes	Varies	
Indiana	Yes	S	Yes	12.00	i
Iowa	No				
Kansas	No				
Kentucky	No				
Louisiana	No				
Maine	Yes	S	Yes	Varies	j
Maryland	Yes	M	Yes	20.00	
Massachusetts	Yes	S	Yes	10.00	k
Michigan	Yes	M	Yes	nr	l
Minnesota	No				
Mississippi	Yes	M	Yes	nr	m
Missouri	Yes	S	Yes	8.00	
Montana	No				
Nebraska	No				
Nevada	Yes	M	Yes	nr	n
New Hampshire	No				
New Jersey	Yes	S	Yes	10.00	o
New Mexico	Yes	S	Yes	8.00	p
New York	Yes	S	Yes	10.00	q
North Carolina	No				
North Dakota	No				
No. Mariana Islands	nr				
Ohio	Yes	M	Yes	Varies	r
Oklahoma	Yes	S	Yes	12.00	
Oregon	Yes	S	Yes	13.00	s
Pennsylvania	Yes	S	Yes	8.00	t
Puerto Rico	No				
Rhode Island	Yes	S	nr		
South Carolina	Yes	S	Yes	14.00	u
South Dakota	No				
Tennessee	Yes	S	Yes	8.00	v
Texas	Yes	S	Yes	10.00	w
Utah	Yes	M	No		
Vermont	No				
Virgin Islands	nr				
Virginia	No				
Washington	Yes	M	Yes	nr	x
West Virginia	Yes	S	Yes	9.00	y
Wisconsin	Yes	S	Yes	8.00	z
Wyoming	No				

Table 13 explanatory notes:

- na (not available).
- nr (not reported).
- Fees charged have been rounded to the nearest dollar.

Data footnotes:

Additional vendor-provided services:

a. Fees are set between the agency contracting the vendor for this service. Sending responses back to the requester.

b. In at least one case, the vendor delivers the fingerprint cards to the repository for processing.

c. Electronic application form and fee collection.

d. No additional services beyond taking prints is authorized.

e. Vendors collect and remit license/cert/permit fees to the California Department of Justice.

f. Private vendors do not receive CHRI. Results go directly to the noncriminal justice entity.

g. 3M Cogent provides customized website registration, and electronically captures and submits applicant fingerprints to GCIC.

h. Some do fingerprint capture only, while others transmit the prints electronically to the repository on behalf of the authorized agency.

i. Sending responses back to the requester.

j. Sends responses back. Collects fees. Schedules the capturing.

k. Hosting website for response review.

l. Fee collection.

m. None

n. None

o. None

p. Results are sent back to a portal for review by the requesting agency.

q. Verification of identification documents, photo capture, and transmission.

r. Evaluating responses for the requester, sending responses back to the requester.

s. Fingerprint capture and transmit only.

t. Sends responses to authorized recipient.

u. None

v. Fee collection.

w. None

x. Fieldprint & L1 vendors (out-of-state store and forward) set appointments, provide fee collection, tracking, and reports for state agencies.

y. Mails responses back to requester.

z. Sends responses to requesters.

Table 14. Record processing times, livescan devices in courtrooms, and disposition backlogs, 2014

State	Number of felony arrests reported to repository during calendar year 2014	Average number of days between occurrence of final felony trial court case disposition and receipt of data by repository	Average number of days between receipt of final felony court disposition and entry of data into criminal history database	Livescan devices used in the courtroom to link positive identifications with dispositions	Number of livescan devices in courtrooms	Backlog of entering court disposition data into criminal history database (i.e., not entered within 48 hours of receipt at repository)	Number of unprocessed or partially processed court dispositions
Total	**3,340,600**						**3,053,200**
Alabama	nr	1	nr	No		Yes	100,000
Alaska	5,300	23	35	No		Yes	3,800
American Samoa	nr	nr	nr	nr		nr	nr
Arizona	66,900	16	2	Yes	1	No	
Arkansas	52,500	21	1	No		No	
California	662,000	nr	60	Yes	nr	No	
Colorado	81,700	0	0	No		Yes	504,400
Connecticut	nr	1	1	No		Yes	373,500
Delaware	10,000	1	1	No		No	
District of Columbia	40,700	nr	nr	No		No	
Florida	292,900	28	1	No		No	
Georgia	162,100	30	2	No		No	
Guam	3,200	1	2	No		No	
Hawaii	6,700	9	0	No		Yes	149,700
Idaho	18,000	1	1	No		Yes	a 171,600
Illinois	125,800	30	32	No		No	
Indiana	15,600	nr	1	Yes	2	No	
Iowa	37,400	7	7	No		No	
Kansas	26,300	nr	nr	No		Yes	57,600
Kentucky	56,900	90	90	No		No	
Louisiana	nr	na	60	No		No	
Maine	9,600	15	0	No		No	
Maryland	41,500	10	0	Yes	1	nr	
Massachusetts	nr	nr	nr	No		No	
Michigan	90,400	1	1	Yes	14	No	
Minnesota	30,400	<1	1	No		nr	
Mississippi	21,100	nr	2	No		No	
Missouri	122,800	164	12	No		Yes	122,400
Montana	5,300	16	32	No		Yes	3,500
Nebraska	14,100	1	1	No		No	
Nevada	23,700	nr	nr	No		Yes	1,023,500
New Hampshire	6,100	nr	nr	No		No	
New Jersey	88,800	nr	7	No		Yes	37,500
New Mexico	8,500	nr	nr	No		Yes	12,000
New York	153,400	1	1	No		No	
North Carolina	94,600	12	0	No		No	
North Dakota	nr	nr	0	No		Yes	200
No. Mariana Islands	nr	nr	nr	nr		nr	
Ohio	na	na	na	Yes	46	Yes	2,300
Oklahoma	59,600	30	30	No		No	
Oregon	157,800	na	100	Yes	10	Yes	54,000
Pennsylvania	48,700	nr	1	No		Yes	281,100
Puerto Rico	nr	nr	nr	nr		nr	
Rhode Island	6,600	5	5	No		No	
South Carolina	na	16	1	No		No	
South Dakota	nr	nr	nr	No		No	
Tennessee	nr	30	nr	No		No	
Texas	282,200	30	1	Yes	50	No	
Utah	25,100	0	0	Yes	11	Yes	47,300
Vermont	2,600	60	60	No		No	
Virgin Islands	nr	nr	nr	nr		nr	
Virginia	164,800	14	14	No		Yes	108,400
Washington	188,900	7	5	No		No	
West Virginia	26,800	nr	nr	Yes	5	Yes	
Wisconsin	nr	nr	nr	No		No	
Wyoming	3,200	60	2	No		Yes	400

Table 14 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Due to data integrity issues in the court data feed in 2014, all dispositions were held until corrections were made. The 2014 dispositions were uploaded in early 2015.

Table 15. Noncriminal justice name-based background checks, 2014

State	Number of name-based noncriminal justice background checks performed				
	Total	Via Internet	Via mail	Via telephone	Other
Total	**19,486,300** a	**17,481,500**	**1,160,000**	**112,700**	**732,100**
Alabama	5,800	4,600	1,200	0	0
Alaska	19,400	0	2,200	0	17,200
American Samoa	nr	nr	nr	nr	nr
Arizona	2,700	0	2,700	0	0
Arkansas	219,800	201,300	18,500	0	0
California	8,100	0	0	0	8,100
Colorado	347,600	345,200	2,400	0	0
Connecticut	35,000	0	35,000	0	0
Delaware	nr	nr	nr	nr	nr
District of Columbia	29,700	0	2,700	0	27,000
Florida	911,600	887,500	24,100	0	0
Georgia	0	0	0	0	0
Guam	0	0	0	0	0
Hawaii	357,800	318,200	3,200	0	36,500
Idaho	17,500	0	16,900	0	700
Illinois	561,200	141,800	22,500	0	396,900
Indiana	724,700	692,900	24,900	0	6,900
Iowa	255,100	6,200	22,800	0	226,200
Kansas	305,400	303,900	1,500	0	0
Kentucky	0	0	0	0	0
Louisiana	32,000	29,100	2,900	0	0
Maine	284,800	275,300	22,400	0	0
Maryland	0	0	0	0	0
Massachusetts	nr	nr	nr	nr	nr
Michigan	1,861,200	1,860,000	1,100	0	0
Minnesota	91,000	0	91,000	0	0
Mississippi	3,900	0	3,900	0	0
Missouri	443,900	423,300	20,700	0	0
Montana	154,000	150,800	3,100	0	0
Nebraska	41,300	17,400	23,900	0	0
Nevada	146,100	45,900	0	95,400	4,800
New Hampshire	131,600	0	131,600	0	0
New Jersey	115,000	17,900	97,100	0	0
New Mexico	11,300	0	8,000	0	3,400
New York	nr	nr	nr	nr	nr
North Carolina	22,600	0	22,600	0	0
North Dakota	25,800	0	22,600	0	3,100
No. Mariana Islands	nr	nr	nr	nr	nr
Ohio	938,800	882,400	56,300	0	0
Oklahoma	231,300	0	231,300	0	0
Oregon	267,500	244,800	5,400	17,300	0
Pennsylvania	1,258,700	1,181,200	77,500	0	0
Puerto Rico	0	0	0	0	0
Rhode Island	0	0	0	0	0
South Carolina	475,100	429,600	45,500	0	0
South Dakota	800	0	0	0	800
Tennessee	143,100	143,100	0	0	0
Texas	6,722,700	6,722,700	100	0	0
Utah	14,200	14,200	0	0	0
Vermont	132,400	132,400	0	0	0
Virgin Islands	nr	nr	nr	nr	nr
Virginia	257,200	153,900	103,300	0	0
Washington	1,089,600	1,080,700	8,900	0	0
West Virginia	800	100	200	0	500
Wisconsin	775,100	775,100	0	0	0
Wyoming	0	0	0	0	0

Table 15 explanatory notes:

- Numbers have been rounded to the nearest 100.
- na (not available).
- nr (not reported).

Data footnotes:

a. The total number of name-based checks received does not equal the sum of individual state background checks received via the Internet, mail, telephone, and other sources, due to rounding.

Table 16. Noncriminal justice fingerprint-based background checks, 2014

State	Information contained in the results for fingerprint-based noncriminal justice background checks	Percentage of fingerprint-based noncriminal justice transactions identified against arrest fingerprints	Repository attempts to locate missing disposition information before responding to fingerprint-based noncriminal justice inquiries
Alabama	4	na	Updated upon request
Alaska	1,2,4,5	16	No
American Samoa	nr	nr	nr
Arizona	1	17	Yes
Arkansas	5	3	Yes
California	1,2,4,5	18	Yes
Colorado	1,5	16	No
Connecticut	1,2,4,5	25	Yes
Delaware	1,2,4,5	nr	No
District of Columbia	1,4	7	No
Florida	1,4,5	14	No
Georgia	1	19	No
Guam	1	na	No
Hawaii	1	17	No
Idaho	1	39	Yes
Illinois	1,2	20	Yes
Indiana	1,3,4	14	Yes
Iowa	1	7	No
Kansas	5	na	Yes
Kentucky	2	nr	No
Louisiana	1,2,4,5	na	No
Maine	2	1	Yes
Maryland	1,2,4	13	Yes
Massachusetts	1	7	No
Michigan	1,2,3,4,5	nr	No
Minnesota	1,2,3,4,5	19	Yes
Mississippi	1	10	No
Missouri	1,2,4	5	Yes
Montana	1,5	15	Yes
Nebraska	1	na	Yes
Nevada	1,4,5	6	No
New Hampshire	2	nr	Yes
New Jersey	1,2,4,5	na	No
New Mexico	1	na	No
New York	1,5	12	No
North Carolina	1	11	No
North Dakota	1	11	Yes
No. Mariana Islands	nr	nr	nr
Ohio	2,5	10	Yes
Oklahoma	1	na	No
Oregon	1,5	20	No
Pennsylvania	nr	nr	nr
Puerto Rico	1	na	No
Rhode Island	1,4	na	No
South Carolina	2,4	13	Yes
South Dakota	1,2,4	na	Yes
Tennessee	1	15	No
Texas	1,5	34	No
Utah	1,2,3	nr	Yes
Vermont	1	8	Yes
Virgin Islands	nr	nr	nr
Virginia	5	na	Yes
Washington	2,3,5	nr	Yes
West Virginia	1	na	No
Wisconsin	1,4	12	No
Wyoming	1	9	No

Table 16 explanatory notes:

- Percentages reported are estimates.
- Percentages have been rounded to the nearest whole percent.
- na (not available).
- nr (not reported).

Data footnotes:

Legend: Information contained in the results for fingerprint-based noncriminal justice background checks

1. Full record
2. Convictions only
3. Juvenile records
4. Arrests without disposition — over 1 year old
5. Other

Table 17. Legal authority for conducting noncriminal justice background checks, 2014

State	Legal authority used for background checks											
	Daycare providers	Caregivers at residential facilities	School teachers	Non-teaching school personnel	Volunteers working with children	Prospective foster care parents	Prospective adoptive parents	Relative caregivers	Nurses/ elder caregivers	Legal guardians	Hazardous materials licensees	Medical marijuana (dispensers, caregivers)
Alabama	4	3	4	4	4	4	4	1	3	3		
Alaska	3	3	3	3	3	3	3	3	3	3	3	1
American Samoa	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Arizona	3	3	3	3	3	3	3	1	3	3	1	1
Arkansas	3	3	3	3	3	3	3		3	2		1
California	2,3,4	2,3,4	2,3	2,3	2,3,4	2,3,4	2,3,4	2,3,4	2,3			
Colorado	2,3	2	2,3	2,3,4	2,3,4	2,3	2,3	2,3	2,3,4	2,3	1	2
Connecticut	4		4	4	4	4	4				3	
Delaware	3	3	3	3	3	3	3	3	3		3	3
District of Columbia	4	4	3,4	4	4	3,4	3,4	3,4	3,4	3,4		
Florida	3	3,4	3	3,4		3	4	3,4	3,4	3	3	3
Georgia	3	3	3	3,4	4	3	2,3	1	3	3	1	1
Guam	1	1	1	1	3	1	1	1	1	1	1	1
Hawaii	3	3	3	3	3,4			3	3	1	1	1
Idaho	3	3	3	3	4	3	3	3	3	3	1	1
Illinois	3	2	3	3,4	4	3	3	3	3,4	1	1	3
Indiana	4	3	4	4	4	4	4	4	4	4		
Iowa	3	4	4	4	4	4	4	4	2	1,2	1	1
Kansas	3	3	3	3,4	4	3	3	1	3	3	1	1
Kentucky	2	2	3	2	2	3	3	2	2	2	3	1
Louisiana	2	2	3	2	2	3	2,3	2	2,3	1	3	1
Maine	3	1	2,3	2	1	2,3	2,3	1	1	1	3	1
Maryland		2						2		2		
Massachusetts	3	3	4	4	4	4	4	1	1	1	1	1
Michigan	2	3	3	4	4	3	3	3	3	3	1	2
Minnesota	2,3	2,3	2,3	2,3	2,3	2,3	2,3	2,3	2,3	2,3	1	2,3
Mississippi	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Missouri	3,4	2	3,4	3,4	3,4	3	3,4	3	3,4	3		3
Montana	4	2,4	4	2,4	4	3	4	2,4	4	2,4	1	3
Nebraska	1	1	3	1	3,4	3	3	1	1	2	1	1
Nevada	3	3	3	3,4	4	3	3,4	3	3	3	1	2,3
New Hampshire	3	3	3	3	4	3	3	2	3	1	1	3
New Jersey	3	3	3,4	3,4	3,4	3,4	3,4	3	3	3,4	3	3
New Mexico	3	3	3	3	3	3	3	3	3			
New York	2	3	3	3	4	3	3	1	3	3	3	2
North Carolina	3	3	3	2	2	3	3	1		1	1	1
North Dakota	3		3	3	2,3	3	3	3	3	3	1	1
No. Mariana Islands	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Ohio	2	3		4	4	2	2	2	2	2		
Oklahoma	4	3,4	3	3	3	3	3	3	3	3	1	1
Oregon	3	3	3	3	3,4	3,4	1	1	3	1	1	3
Pennsylvania	3	3	3	3	2	3	3	3	3	3	3	
Puerto Rico	1	1	1	1	1	1	1	1	1	1	1	1
Rhode Island	3	3	3	2,3	2	3	3	2	3	2		3
South Carolina	3,4	3	3	2	2	3	3	2	3	2	1	1
South Dakota	3	2	3	3	4	3	3	3	3	2		
Tennessee	3	3,4	3	3	3,4	3	3	3,4	3,4	3	1	1
Texas	4	4	4	4	4	4	4	4	3	4	3	1
Utah	3	3	3	3	4	3	3	3	3	3	1	1
Vermont	2	3	3	3	4	3	3	4	4	3	1	3
Virgin Islands	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
Virginia	2	2	2	2	2,4	2	2	2	2	2	2	1
Washington	3	3	3,4	2,3	2	3	2,3	3	3	4	1	3
West Virginia					4				4			
Wisconsin	4	4	3	3	4	4	4	3	3	3	3	
Wyoming	4	3	3	4	4	3	3	3	3	3	3	1

Table 17 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

Legend: Legal authority states use to conduct background checks for the following occupational/regulatory inquiries.

1. N/A (State does not conduct these checks)
2. State statute
3. Public Law 92-544
4. National Child Protection Act (NCPA) / Volunteers for Children Act (VCA)

Table 18. Lights-out fingerprint processing, 2014

State	Repository conducts lights-out processing	Percentage of fingerprints handled with lights-out processing		
		Total	Criminal	Noncriminal
Alabama	No			
Alaska	Yes	10	10	10
American Samoa	nr	nr	nr	nr
Arizona	Yes	67	27	80
Arkansas	No			
California	Yes	81	80	82
Colorado	Yes	54	nr	nr
Connecticut	Yes	1	1	2
Delaware	Yes	nr	nr	nr
District of Columbia	Yes	29	0	100
Florida	No			
Georgia	Yes	95	95	95
Guam	Yes	100	100	100
Hawaii	Yes	87	89	85
Idaho	Yes	50	50	50
Illinois	Yes	51	65	41
Indiana	Yes	71	40	31
Iowa	No			
Kansas	Yes	80	80	70
Kentucky	Yes	58	76	
Louisiana	Yes	87	95	85
Maine	No			
Maryland	Yes	98	98	98
Massachusetts	Yes	54	89	90
Michigan	Yes	55	55	55
Minnesota	Yes	100	100	100
Mississippi	Yes	96	95	69
Missouri	Yes	90	90	90
Montana	Yes	na	na	na
Nebraska	Yes	15	0	25
Nevada	Yes	nr	nr	nr
New Hampshire	Yes	100	100	100
New Jersey	Yes	91	91	91
New Mexico	Yes	98	79	19
New York	Yes	75	79	72
North Carolina	Yes	87	79	99
North Dakota	nr	16	0	32
No. Mariana Islands	nr	nr	nr	nr
Ohio	Yes	nr	nr	nr
Oklahoma	Yes	63	91	48
Oregon	No			
Pennsylvania	No			
Puerto Rico	No			
Rhode Island	No			
South Carolina	Yes	98	79	99
South Dakota	No			
Tennessee	Yes	95	95	95
Texas	Yes	80	80	90
Utah	No			
Vermont	Yes	89	92	85
Virgin Islands	nr	nr	nr	nr
Virginia	No			
Washington	Yes	nr	nr	nr
West Virginia	No			
Wisconsin	Yes	nr	nr	nr
Wyoming	Yes	12	10	2

Table 18 explanatory notes:

- Percentages and numbers are estimates.
- Percentages have been rounded to the nearest whole percent.
- na (not available).
- nr (not reported).

Data footnotes:

Table 19. Assessment and allocation of fees, 2014

State	Fee charged to conduct a search of the criminal history database for noncriminal justice purposes	How fees are allocated	
Alabama	Yes	1	
Alaska	Yes	4	a
American Samoa	nr	nr	
Arizona	Yes	4	b
Arkansas	Yes	4	c
California	Yes	3	
Colorado	Yes	3	
Connecticut	Yes	1	
Delaware	Yes	1	
District of Columbia	Yes	1	
Florida	Yes	4	d
Georgia	Yes	2	
Guam	Yes	3	
Hawaii	Yes	3	
Idaho	Yes	3	
Illinois	Yes	3	
Indiana	Yes	1	
Iowa	Yes	1	
Kansas	Yes	3	
Kentucky	Yes	3	
Louisiana	Yes	3	
Maine	Yes	1	
Maryland	Yes	1	
Massachusetts	Yes	4	e
Michigan	Yes	4	f
Minnesota	Yes	3	
Mississippi	Yes	4	g
Missouri	Yes	3	
Montana	Yes	3	
Nebraska	Yes	4	
Nevada	Yes	3	
New Hampshire	Yes	3	
New Jersey	Yes	2	
New Mexico	Yes	3	
New York	Yes	2	h
North Carolina	Yes	1	
North Dakota	Yes	1	
No. Mariana Islands	nr	nr	
Ohio	Yes	1	
Oklahoma	Yes	3	
Oregon	Yes	3	
Pennsylvania	Yes	1	
Puerto Rico	Yes	4	
Rhode Island	Yes	1	
South Carolina	Yes	4	
South Dakota	Yes	3	
Tennessee	Yes	3	
Texas	Yes	3	
Utah	Yes	1	
Vermont	Yes	4	
Virgin Islands	nr	nr	
Virginia	Yes	4	
Washington	Yes	3	
West Virginia	Yes	1	
Wisconsin	Yes	3	
Wyoming	Yes	1	

Table 19 explanatory notes:

- Fees charged have been rounded to the nearest dollar.
- na (not applicable).
- nr (not reported).

Data footnotes:

a. Fees collected go to support repository operations, while excess funds revert to the state general fund.
b. Fees support the program's Applicant Clearance Card team and the Arizona Board of Fingerprinting.
c. Fees are used to maintain criminal history records and AFIS.
d. Fees collected are placed into a legislative trust fund to support criminal justice information systems.
e. 61% of fees collected go to support repository operations.
f. Fees are collected and designated for special purposes.
g. Fees support the state's Crime Information Center.
h. 33% of fees collected go to support repository operations.

Legend: How fees are allocated.

1. All fees go to the state general fund, with the repository funded by general fund allotment.
2. A percentage of fees go to support repository operations.
3. All fees go to support repository operations.
4. Other

Table 20. Web-based services for noncriminal justice purposes, 2014

State	Repository provides web-based noncriminal justice background checks to the public	Are public access fees collected for Internet access	Fee
Alabama	Yes	Yes	$15
Alaska	nr	No	
American Samoa	nr	nr	
Arizona	No	No	
Arkansas	Yes	Yes	2
California	No	No	
Colorado	Yes	Yes	7
Connecticut	No	nr	
Delaware	No	nr	
District of Columbia	No	No	
Florida	Yes	Yes	24
Georgia	Yes	Yes	15
Guam	No	No	
Hawaii	Yes	Yes	nr
Idaho	No	nr	
Illinois	Yes	Yes	10
Indiana	Yes	Yes	16
Iowa	Yes	Yes	15
Kansas	Yes	Yes	20
Kentucky	Yes	nr	
Louisiana	No	nr	
Maine	Yes	Yes	31
Maryland	No	No	
Massachusetts	No	nr	
Michigan	Yes	Yes	10
Minnesota	Yes	No	
Mississippi	No	nr	
Missouri	Yes	Yes	1
Montana	Yes	Yes	14
Nebraska	Yes	Yes	15
Nevada	No	nr	
New Hampshire	No	nr	
New Jersey	Yes	Yes	2
New Mexico	No	nr	
New York	No	nr	
North Carolina	No	nr	
North Dakota	No	nr	
No. Mariana Islands	nr	nr	
Ohio	Yes	Yes	nr
Oklahoma	No	nr	
Oregon	Yes	Yes	10
Pennsylvania	Yes	Yes	10
Puerto Rico	No	No	
Rhode Island	No	No	
South Carolina	Yes	Yes	25
South Dakota	No	nr	
Tennessee	No	No	
Texas	Yes	Yes	3
Utah	Yes	Yes	15
Vermont	Yes	Yes	30
Virgin Islands	nr	nr	
Virginia	No	nr	
Washington	Yes	Yes	10
West Virginia	No	nr	
Wisconsin	Yes	Yes	7
Wyoming	No	nr	

Table 20 explanatory notes:

- na (not available).
- nr (not reported).
- Fees charged have been rounded to the nearest dollar.

Data footnotes:

Table 21. Criminal history records of Interstate Identification Index (III) participants maintained by state criminal history repositories and the Federal Bureau of Investigation (FBI), 2014

(The information in this table was provided by the Criminal Justice Information Services Division, FBI - Statistics as of January 14, 2015)

State	Total III records in state and FBI files	State-supported records	FBI-supported records	Percent supported by state repositories	Percent supported by the FBI
Total	**85,909,018**	**60,208,743**	**25,700,275**	**70%**	**30%**
Alabama	1,251,180	709,662	541,518	57	43
Alaska †	229,073	147,529	81,544	64	36
American Samoa	697	0	697	0	100
Arizona †	1,750,198	1,031,604	718,594	59	41
Arkansas †	711,897	537,461	174,436	75	25
California	9,641,796	8,397,114	1,244,682	87	13
Colorado * †	1,455,710	1,229,800	225,910	84	16
Connecticut †	543,411	364,724	178,687	67	33
District of Columbia	306,143	54,767	251,376	18	82
Delaware	303,025	260,962	42,063	86	14
Florida * †	5,813,156	5,410,471	402,685	93	7
Georgia * †	3,579,395	3,353,554	225,841	94	6
Guam	33,763	0	33,763	0	100
Hawaii * †	302,476	240,157	62,319	79	21
Idaho * †	394,008	343,610	50,398	87	13
Illinois	3,479,628	1,826,490	1,653,138	52	48
Indiana	1,430,771	941,300	489,471	66	34
Iowa * †	698,925	417,614	281,311	60	49
Kansas * †	846,267	495,093	351,174	59	41
Kentucky	973,459	570,789	402,670	59	41
Louisiana	1,474,719	1,041,397	433,322	71	29
Maine †	180,126	45,039	135,087	25	75
Maryland * †	1,347,709	960,684	387,025	71	29
Massachusetts	957,253	595,021	362,232	62	38
Michigan †	2,181,141	1,924,365	256,776	88	12
Minnesota * †	919,799	868,186	51,613	94	6
Mississippi	503,694	297,985	205,709	59	41
Missouri * †	1,474,148	1,161,371	312,777	79	21
Montana * †	209,591	196,825	12,766	94	6
Nebraska	391,604	280,119	111,485	72	28
Nevada †	907,220	657,958	249,262	73	27
New Hampshire †	267,561	161,307	106,254	60	40
New Jersey * †	2,032,745	1,883,147	149,598	93	7
New Mexico	609,093	320,241	288,852	53	47
New York †	4,006,653	3,674,185	332,468	92	8
North Carolina * †	1,694,851	1,554,968	139,883	92	8
North Dakota	142,409	107,288	35,121	75	25
No. Mariana Islands	4,560	nr	4,560	0	100
Ohio * †	2,069,768	1,718,964	350,804	83	17
Oklahoma * †	887,004	583,904	303,100	66	34
Oregon * †	1,034,203	918,247	115,956	89	11
Pennsylvania	2,341,987	1,823,707	518,280	78	22
Puerto Rico	186,642	0	186,642	0	100
Rhode Island	210,824	187,597	23,227	89	11
South Carolina †	1,517,552	1,444,808	72,744	95	5
South Dakota	270,499	182,043	88,456	67	33
Tennessee * †	1,741,295	922,713	818,582	53	47
Texas	6,479,565	5,906,536	573,029	91	9
Utah	593,078	519,735	73,343	88	12
Vermont †	110,084	59,590	50,494	54	46
Virgin Islands	19,846	0	19,846	0	100
Virginia	2,008,027	1,661,803	346,224	83	17
Washington	1,507,863	1,218,888	288,975	81	19
West Virginia * †	378,208	224,788	153,420	59	41
Wisconsin	1,125,780	605,294	520,486	54	46
Wyoming * †	193,664	167,339	26,325	86	14
Federal	10,057,065	0	10,057,065	0	100
Foreign	126,210	0	126,210	0	100

Table 21 explanatory notes:
* State is a participant in the National Fingerprint File (NFF).
† State is a signatory of the National Crime Prevention and Privacy Compact.
- na (not available).
- nr (not reported).

FBI-supported: The FBI provides the criminal history records for persons arrested by a Federal agency and arrest data that III-participating states are unable to provide.

State-supported: A designated agency within a state referred to as a "III participant" provides records from its file upon receipt of an electronic notification from III.

(Source: FBI/CJIS, Interstate Identification Index/National Fingerprint File Operations and Technical Manual, December 2005).

Data footnotes:

Table 22. Criminal justice rap back services, 2014

State	State provides in-state criminal justice rap back services	Number of in-state criminal justice rap back notifications made for criminal justice purposes	Purposes in which criminal justice agencies can be notified of a subsequent inquiry and/or record posting via the in-state criminal justice rap back service								Currently participates in NGI criminal justice rap back service	
			Error correction/ record management updates	Investigative lead	Sex offender	Parolee	Probationer	Permit/privileged license revocation	Noncriminal justice purpose fingerprint search	Other		
Total		**58,922**										
Alabama	No										No	
Alaska	No										No	
American Samoa	nr										nr	
Arizona	No										No	
Arkansas	Yes	0	X								No	
California	Yes	14,200	X								No	
Colorado	Yes	na	X								No	
Connecticut	Yes	nr						X	X		No	
Delaware	Yes	10,185						X		a	No	
District of Columbia	No							X			No	
Florida	Yes	11,684	X		X	X	X		X	b	No	†
Georgia	No										No	
Guam	No										nr	
Hawaii	Yes	12,247				X	X				No	
Idaho	No										No	
Illinois	Yes	6,397	X								No	
Indiana	No										No	
Iowa	No										No	
Kansas	Yes	2,882		X				X		a	No	
Kentucky	No										No	
Louisiana	Yes	na				X	X	X			No	
Maine	No										No	
Maryland	Yes	13									No	
Massachusetts	No										No	†
Michigan	Yes	136	X								No	
Minnesota	Yes	na					X			c	No	
Mississippi	No										No	
Missouri	No										No	
Montana	No										No	
Nebraska	No										No	
Nevada	No										No	
New Hampshire	No										No	
New Jersey	Yes	nr									No	†
New Mexico	No										No	
New York	Yes	na			X	X	X			d	No	
North Carolina	No										No	
North Dakota	Yes	273								e	No	
No. Mariana Islands	nr										nr	
Ohio	No										No	
Oklahoma	No										No	
Oregon	No										No	
Pennsylvania	No										nr	
Puerto Rico	nr										nr	
Rhode Island	No										No	
South Carolina	No										No	
South Dakota	No										No	
Tennessee	Yes	905								a	No	
Texas	Yes	nr				X	X			f	No	
Utah	No										No	†
Vermont	No										No	
Virgin Islands	nr										nr	
Virginia	No										No	
Washington	No										No	
West Virginia	No										No	
Wisconsin	No										No	
Wyoming	No										No	

Table 22 explanatory notes:

- na (not available).
- nr (not reported).

† NGI rap back plans are pending development/programming.

Data footnotes:

a. Criminal justice employment

b. Arrests

c. Crime scene elimination prints

d. Warrants

e. CCW revocation advisement

f. On record searches, updates, and arrests

Table 23. Noncriminal justice rap back services, 2014

State	State provides in-state noncriminal justice rap back service		Authorized by state law or administrative regulation		State law/regulation specifies the purposes in which agencies can be notified		Occupational groups in which agencies can be notified for subsequent record postings						
							Persons working with children	Persons working with the elderly	Healthcare providers	Security guards	Police, fire, public safety personnel	Other	
Alabama	Yes		Yes		Yes		X	X	X	X	X		
Alaska	Yes		Yes		No		X	X	X	X	X	X	a
American Samoa	nr		nr		nr								
Arizona	No												
Arkansas	Yes		Yes		Yes		X	X	X	X		X	b
California	Yes		Yes		Yes		X	X	X	X	X	X	c
Colorado	Yes		Yes		No		X				X	X	d
Connecticut	Yes		Yes		Yes		X	X	X	X	X	X	e
Delaware	Yes		Yes		Yes		X	X	X	X		X	f
District of Columbia	No												
Florida	Yes		Yes		No		X	X	X		X	X	g
Georgia	No												
Guam	No												
Hawaii	No												
Idaho	No												
Illinois	Yes		Yes		Yes		X	X	X	X	X		
Indiana	No												
Iowa	No												
Kansas	Yes		No				X	X	X	X	X	X	h
Kentucky	No												
Louisiana	Yes		No				X		X	X	X		
Maine	Yes		Yes		Yes							X	i
Maryland	Yes		Yes		Yes		X	X			X		
Massachusetts	No												
Michigan	Yes		Yes		Yes		X	X	X		X	X	j
Minnesota	No												
Mississippi	No												
Missouri	Yes	k	Yes		Yes								
Montana	No												
Nebraska	Yes		No				X	X	X	X	X		
Nevada	Yes		Yes		Yes				X			X	l
New Hampshire	No												
New Jersey	Yes		Yes		No		X	X	X	X	X		
New Mexico	Yes		Yes		Yes		X	X	X	X	X		
New York	Yes		Yes	m	Yes		X	X	X	X	X	X	n
North Carolina	No												
North Dakota	No												
No. Mariana Islands	nr												
Ohio	Yes		Yes		Yes		X	X		X		X	0
Oklahoma	Yes		Yes		No								p
Oregon	No												
Pennsylvania	No												
Puerto Rico	nr												
Rhode Island	No												
South Carolina	Yes		Yes		No					X	X	X	q
South Dakota	Yes		Yes		Yes						X		
Tennessee	No												
Texas	Yes		Yes		Yes		X	X	X	X	X		
Utah	Yes		Yes		Yes		X	X	X		X	X	r
Vermont	Yes		Yes		Yes		X						
Virgin Islands	nr												
Virginia	No												
Washington	No												
West Virginia	Yes		Yes		Yes		X	X	X			X	s
Wisconsin	No												
Wyoming	No												

Table 23 explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Alcohol beverage handlers.

b. Concealed carry licenses.

c. Licensing, certification, and permits.

d. Concealed weapons, real estate, mortgage broker, marijuana sales, gaming, liquor, and lottery.

e. Board of Education and special revenue employees.

f. School staff and CCW permits.

g. Loan originators, professional solicitors, and parimutuel wagering.

h. Conceal carry permit and real estate licensure.

i. Department of Education.

j. Adult foster care, firearms, gaming, certified school employees, and driver's education.

k. Rap back is scheduled to be completed January 2015 and will be available for school employees.

l. CCW, Department of Education, and school district personnel.

m. Unless otherwise precluded by statute, DCJS may notify the print contributor of subsequent arrests.

n. Pistols, banking/finance, taxi/tow, hazmat, and controlled substance licenses.

o. Casino Commission.

p. All noncriminal justice applicants.

q. All prints stored by SLED.

r. Driving Privilege Cards, water districts, Motor Vehicle Enforcement Division.

s. Volunteers.

Table 23a. Noncriminal justice rap back services, continued, 2014

State	Total number of in-state noncriminal justice rap back notifications	Noncriminal justice rap back fingerprint enrollment fee	Noncriminal justice rap back notification fee	In-state noncriminal justice subscriptions require validation similar to NGI	Participant in NGI rap back service
Total	**1,119,483**				
Alabama	4,688	No	No	No	No
Alaska	na	No	nr	Yes, all subscriptions	No
American Samoa	nr	nr	nr	nr	nr
Arizona					No
Arkansas	16	No	No	Yes, some subscriptions	No
California	537,867	No	No	Yes, some subscriptions	No
Colorado	nr	No	$1	No	No
Connecticut	120,000	nr	nr	No	No
Delaware	12,499	No	No	No	No
District of Columbia					No
Florida	24,708	$24	No	Yes, some subscriptions	No
Georgia					No
Guam					No
Hawaii					No
Idaho					No
Illinois	77,209	No	No	No	No
Indiana					No
Iowa					No
Kansas	2,882	No	$3 a	Yes, all subscriptions	No
Kentucky					No
Louisiana	na	No	No		No
Maine	20	No	No	No	No
Maryland	35,412	No	No	Yes, all subscriptions	No
Massachusetts					No
Michigan	58,758	No	No	No	No
Minnesota					No
Mississippi					No
Missouri				Yes, all subscriptions	No
Montana					No
Nebraska	nr	No	No		No
Nevada	643	$10.50	No	No	No
New Hampshire					No
New Jersey	nr	$10	No	nr	No
New Mexico	10,994	No	No	Yes, all subscriptions	No
New York	173,142	No	No	Yes, some subscriptions	No
North Carolina					No
North Dakota					No
No. Mariana Islands	nr	nr	nr		nr
Ohio	nr	$5	No	No	No
Oklahoma	nr b	No	No	No	No
Oregon					No
Pennsylvania					No
Puerto Rico	nr	nr	nr		nr
Rhode Island					No
South Carolina	na	No	No	No	No
South Dakota	nr	No	No	No	No
Tennessee					No
Texas	58,373	$15	$1	Yes, some subscriptions	No
Utah	2,272	$5	No	No	No
Vermont	nr	No	No	No	No
Virgin Islands	nr	nr	nr		nr
Virginia					No
Washington					No
West Virginia	nr	No	No	No	No
Wisconsin					No
Wyoming					No

Table 23a explanatory notes:

- na (not available).
- nr (not reported).

Data footnotes:

a. Fee is assessed annually.

b. The CCH was replaced in 2014. The number of rap back notifications for that time frame is unknown.

OMB No. **1121-0312**: Approval Expires **03/31/2018**

Survey of State Criminal History Information Systems, 2014

Since 1989, the *Survey of State Criminal History Information Systems* has been used to collect the nation's most complete, comprehensive and relevant data on the number and status of state-maintained criminal history records and on the increasing number of operations and services involving noncriminal justice background checks provided by the state repositories. This data collection is supported by Cooperative Agreement No. 2011-MU-MU-K054 awarded by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. As in previous years, response to this survey is voluntary.

Respondents using the online survey tool, accessible at http://www.search.org/surveys/repository/, to enter 2014 data can view previously submitted 2012 data for comparison purposes. Where applicable, your state's 2012 responses are displayed in color within each section of the online survey. It is hoped that this information will assist respondents in completing the survey more accurately and efficiently. **The password to gain access to your state's online survey is provided in the cover letter**. If you have any questions or comments, please contact SEARCH staff Dennis DeBacco at 916-392-2550 ext. 325, email dennis@search.org.

If more convenient, you may print the survey sections, complete them manually, and fax (916-392-8440) or mail them to the attention of Dennis DeBacco at SEARCH, 7311 Greenhaven Drive, Suite 270, Sacramento, CA 95831. **The deadline for survey submission is April 30, 2015.**

The survey is divided into 6 sections, each of which may be submitted independently and not necessarily in the order presented. This was done so that different people on each repository's staff may submit the data for which they are responsible. **Repository directors are responsible to see that the survey is submitted in its entirety**. Please note the following:

1. All reported data should be for calendar year 2014, or as of December 31, 2014.
2. The term "felony" includes any crime classified as a felony under your state's laws. These offenses are generally punishable by a term of incarceration in excess of one year. If your state's laws do not use the term "felony," please substitute functional equivalents, such as class 1, 2, 3 and 4 offenses in New Jersey and class A, B and C offenses in Maine.
3. Questions that seek responses based on a "legal requirement" refer *only* to a *state statute* or a *state administrative regulation having the force of law*.
4. If additional space is needed, please use the "Additional Comments" area at the end of each section.
5. Please use the "Additional Comments" area at the end of each section to identify questions for which "no data is available" and to describe significant changes between the current response and data reported in the 2012 survey.
6. If a question is not applicable to your repository, please indicate "NA" in the "Additional Comments" area at the end of each section.

Burden Statement

Under the Paperwork Reduction Act, we cannot ask you to respond to a collection of information unless it displays a currently valid OMB control number. The survey will be sent to criminal history repositories in 56 jurisdictions, including the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. The average time required for each agency to complete the survey is estimated at 6.3 hours. Send comments regarding this burden estimate or any aspect of this survey, including suggestions for reducing this burden, to the Director, Bureau of Justice Statistics, 810 Seventh Street, NW, Washington DC 20531. Do not send your completed form to this address.

SECTION I: REPOSITORY

This section completed by

Name _____ Title _____

Agency _____

Phone _____ Email _____

Date completed _____

The following questions relate to descriptions of your state's criminal history record information and master name index databases:

1. How many subjects (individual criminal offenders) were in your criminal history file as of December 31, 2014? **Tables 1 and 2**

   (a) Automated records _____ (include subjects whose records are partially automated)

   (b) Manual records _____

   (c) Total records _____

2. Fingerprints processed in 2014: **Tables 1a and 9**

Purpose	Number	Percentage of 2014 volume	Totals
(a) Criminal (retained)	_____	_____%	
(b) Criminal (not retained)	_____	_____%	(a+b)_____
(c) Noncriminal (retained)	_____	_____%	
(d) Noncriminal (not retained)	_____	_____%	(c+d)_____

   (e) What was the <u>total number</u> of fingerprint-based background checks conducted during 2014? (a+b+c+d)_____

3. (a) Does your state combine both criminal events and noncriminal justice applicant information in the same record? **Table 12**

❒ Yes ❒ No

(b) Of the total records in your database, _____ % represent records that contain both criminal events and noncriminal justice applicant information.

4. (a) Do you have felony conviction flagging, i.e., does your criminal history record database include a data field or flag enabling you to quickly determine whether a given record subject has a felony conviction? **Table 6**

❒ Yes, all subjects with felony convictions

❒ Yes, some subjects with felony convictions

❒ No

(b) Do you employ flagging to indicate**?** (Check all that apply.)

❒ Ineligible to purchase firearms

❒ Sex offender registrant

❒ Convicted drug offender

❒ Violent offender

❒ Domestic violence conviction

❒ Mental health adjudication

❒ DNA available

❒ DNA not yet collected

❒ IFFS, indicating ineligible for firearms purchase under federal law

❒ IFFS, indicating ineligible for firearms purchase under state law

❒ Other (describe) _____

The following questions refer to repository administration, procedures and practices.

5. (a) As of December 31, 2014, did your repository conduct "lights out" processing of fingerprints (an identification decision is made without fingerprint technician intervention)? **Table 18**

❒ Yes ❒ No

(b) If yes, what percentage of fingerprints was handled with "lights out" processing? _____ %

(c) If yes, what percentage of <u>criminal</u> fingerprints was handled with "lights out" processing? _____ %

(d) If yes, what percentage of <u>noncriminal applicant</u> fingerprints was handled with "lights out" processing? _____ %

6. (a) Does your state maintain a protection order file? **Table 4**

❒ Yes ❒ No

(b) If yes, which agency(s) enter protection orders onto the state file? (Check all that apply.)

- ❒ Law enforcement
- ❒ Courts
- ❒ Other (describe) _____

(c) If yes, how many active records were in the state protection order record database as of December 31, 2014?

_____ records

(d) Are protection orders entered onto the FBI-NCIC Protection Order File?

❒ Yes ❒ No

(e) If yes, which agency(s) enter protection order information to the FBI-NCIC Protection Order File? (Check all that apply.)

- ❒ Law enforcement
- ❒ Courts
- ❒ Other (describe) _____

7. (a) Does your state maintain a warrant file? **Table 5**

❒ Yes ❒ No

(b) If yes, which agency(s) enter warrants onto the state file? (Check all that apply.)

- ❒ Law enforcement
- ❒ Courts
- ❒ Other (describe) _____

(c) If yes, how many records were in the state warrant database as of December 31, 2014?

_____ records **Table 5a**

(d) Of this total, indicate the number of:

Felony warrants_____

Misdemeanor warrants_____

Other (explain) _____

(e) Which agency(s) enter warrant information to the FBI-NCIC Wanted Person File? (Check all that apply.) **Table 5**

- ❒ Law enforcement
- ❒ Courts
- ❒ Other (describe) _____

8. In addition to criminal history information, to what other records does your state's repository provide access? (Check all that apply.) **Table 6a**

   - ❒ Sex offender registry
   - ❒ Orders of protection
   - ❒ Wanted persons/warrants
   - ❒ Retained applicant prints
   - ❒ Rap back services for criminal justice purposes
   - ❒ Firearm registration
   - ❒ Domestic violence incident reports
   - ❒ Other (specify) _____

9. (a) Which of the following most accurately describes the software components of your criminal history system? **Table 10**

   - ❒ Acquired from a software vendor and configured for the state's environment, but with no software modifications
   - ❒ Acquired from a software vendor, but software changes were necessary to customize for the state's environment
   - ❒ Built in-house (either by staff or contractors), such that the state's system is unique for our state
   - ❒ Other (specify) _____

   (b) Which of the following most accurately describes the software environment or platform used for your criminal history system?

   - ❒ Microsoft .NET platform
   - ❒ Java platform
   - ❒ Mainframe platform (e.g., COBOL, Natural, PL/I, etc.)
   - ❒ Other (specify) _____

ADDITIONAL COMMENTS:

SECTION II: ARREST/FINGERPRINT REPORTING AND ENTRY

This section completed by

Name _____ Title _____

Agency _____

Phone _____ Email _____

Date completed _____

1. How many felony arrests were reported to your repository during calendar year 2014?

   _____ arrests **Tables 11 and 14**

2. How many arrest fingerprints were submitted to your repository during 2014? (a+b+c = d)

   (a) _____ via livescan **Table 11a**

   (b) _____ via cardscan

   (c) _____ hard copy fingerprints

   (d) _____ total arrest fingerprints

3. What types of biometric information are currently utilized in identification search processes conducted by your agency? (Check all that apply, and indicate volume.)

   ❒ Latent fingerprints **Table 3** _____ 2014 volume

   ❒ Flat prints _____ 2014 volume

   ❒ 2-finger prints for identification purposes _____ 2014 volume

   ❒ 2-finger prints for updating incarceration or release information to criminal history _____ 2014 volume

   ❒ 10-finger prints for updating incarceration or release information to criminal history _____ 2014 volume

   ❒ Palm prints _____ 2014 volume

   ❒ Facial images/mug shots _____ 2014 volume

   ❒ Scars, marks, and tattoo images _____ 2014 volume

   ❒ Facial recognition data _____ 2014 volume

   ❒ 1- or 2-finger prints for updating disposition information _____ 2014 volume

   ❒ Iris capture _____ 2014 volume

   ❒ Other (specify) _____ _____ 2014 volume

4. (a) Are you using mobile technology to transmit fingerprints for identification purposes?

❒ Yes ❒ No **Table 11d**

(b) Are you using mobile technology to transmit fingerprints for booking purposes?

❒ Yes ❒ No

(c) Do you have plans to implement mobile technology that captures non-fingerprint biometric information?

❒ Yes ❒ No

(d) Is your state employing Rapid ID?

❒ Yes ❒ No

Number of searches conducted in 2014_____

Number of hits in 2014 _____

5. (a) Total number of law enforcement agencies in your state _____ **Table 11**

(b) Number of law enforcement agencies that submit arrest prints via livescan (including agencies without livescan devices that receive livescan services from agencies that do have that equipment, such as a sheriff that provides booking services for multiple local police departments) _____

(c) Number of agencies that submit arrest fingerprints via cardscan _____

(d) Number of agencies that submit hard copy arrest fingerprint cards _____

(e) Percentage of arrest prints submitted via livescan during 2014 _____%

ADDITIONAL COMMENTS:

SECTION III: DISPOSITIONS

This section completed by

Name _____ Title _____

Agency _____

Phone _____ Email _____

Date completed _____

The following questions seek to determine to what extent the records in your criminal history record database contain final case disposition information. ("Final case disposition" is defined as release by police after charging; decline to proceed by prosecutor; or final trial court disposition.)

1. If you are a National Fingerprint File (NFF) state, have you elected not to forward disposition information on second and subsequent arrests to the FBI? **Table 7a**

   ❒ Yes ❒ No ❒ N/A (Not an NFF participant)

2. Does your state collect charge tracking information (sometimes referred to as "interim disposition information") on the criminal history record showing the status of a case as it moves through the justice system? (E.g., reporting of an indictment, charges filed that are different than arrest charges, etc.) **Table 7b**

   ❒ Yes ❒ No

3. (a) How many final case dispositions did your repository receive during 2014? **Table 7** _____ dispositions

   (b) Of those, how many were sent to the FBI? **Table 7a** _____ dispositions

   Of the dispositions forwarded to the FBI:

   (c) What percentage was sent by Machine Readable Data (MRD) such as tape/CD/DVD? _____ %

   (d) What percentage was sent via hard copy/paper? _____ %

   (e) What percentage was sent by Interstate Identification Index (III) message key? _____ %

4. What percentage of all arrests in the criminal history database have final case dispositions recorded? **Table 1**

   (a) Arrests entered within past 5 years _____ %

   (b) Arrests in the entire database _____ %

   (c) Felony charges _____ %

5. (a) Of the dispositions received at the repository during 2014, what percentage could not be linked to a specific arrest record, either because of failed matching criteria or the arrest had not been reported to the repository? **Table 8a**

   _____%

   (b) When a disposition cannot be matched, the following action(s) is taken: (Check all that apply.)

   - ❒ Placed in a suspense file (no further action)
   - ❒ Placed in a suspense file for further investigation
   - ❒ Disposition information is rejected
   - ❒ Follow-up actions are taken by repository staff
   - ❒ Court is contacted
   - ❒ Other _____

6. (a) As of December 31, 2014, was any court disposition data reported directly to the repository by automated means? (Note: "automated" means a method by which data is transmitted by the court to the repository where it is matched against criminal history records and entered on the criminal history record, usually without manual intervention. This does not include dispositions received via fax or email, which require manual activity for criminal history record matching and data entry.) **Table 8**

   ❒ Yes ❒ No

   (b) If yes, what percentage of dispositions was reported in 2014 by automated means?

   _____%

   (c) How are records matched between the court system and the repository? (Check all that apply.)

   - ❒ Process Control Number (PCN) or Transaction Control Number (TCN) assigned when fingerprints were taken at time of arrest/booking
   - ❒ PCN or TCN assigned subsequent to arrest/booking
   - ❒ State Identification Number
   - ❒ Arrest Number
   - ❒ Name
   - ❒ Date of birth
   - ❒ Charges

❒ N/A. My state does not receive automated disposition information from courts

❒ Other (please explain)_____

7. In 2014, what was the average time elapsed between the occurrence of final felony trial court case dispositions and receipt of information concerning such dispositions by the repository? **Table 14**

_____ Days

8. In 2014, what was the average time elapsed between receipt of final felony trial court disposition information by the repository and entry of that information into the criminal history record database? **Table 14**

_____ Days

9. (a) As of December 31, 2014, was your state using any livescan devices in courtrooms/courthouses to link positive identifications with dispositions? **Table 14**

❒ Yes ❒ No

(b) If yes, how many livescan devices are in courtrooms/courthouses?

_____ Devices

10. (a) As of December 31, 2014, was there a backlog of court disposition data to be entered into the criminal history record database (i.e., not entered within 48 hours of receipt at repository, including dispositions that could not be matched to a criminal history record within 48 hours of receipt at the repository)? **Table 14**

❒ Yes ❒ No

(b) If yes, how many unprocessed or partially processed court case dispositions did you have?

_____

11. (a) Does the repository receive any final case disposition information (e.g., decline to proceed) from local prosecutors or a statewide prosecutors association? **Table 7c**

❒ Yes ❒ No

(b) If yes, this information is: (Check all that apply.)

❒ Received via automated means

❒ Received via the prosecutor's case management system

❒ Paper-based

❒ A mix of automated and paper-based

(c) If yes, how are records matched between prosecutors and the repository? (Check all that apply.) **Table 7d**

- ❒ N/A. My state does not receive automated disposition information from prosecutors
- ❒ Process Control Number (PCN) or Transaction Control Number (TCN) assigned when fingerprints were taken at time of arrest/booking
- ❒ PCN or TCN assigned subsequent to arrest/booking
- ❒ State Identification Number
- ❒ Arrest Number
- ❒ Name
- ❒ Date of birth
- ❒ Charges
- ❒ Other (please explain)_____

12. Does your state post indictment information to the criminal history record? **Table 7b**

❒ Yes ❒ No

ADDITIONAL COMMENTS:

SECTION IV: NONCRIMINAL BACKGROUND CHECKS

This section completed by

Name _____ Title _____

Agency _____

Phone _____ Email _____

Date completed _____

BACKGROUND CHECKS

1. (a) Does your state charge a fee to conduct a search of the criminal history record database for noncriminal justice purposes? **Table 19**

❒ Yes ❒ No

(b) If yes, how are fees allocated?

❒ All fees go to the state general fund, with repository funded by general fund allotment

❒ A percentage of fees go to support repository operations _____ %

❒ All fees go to support repository operations

❒ Other _____

2. Please indicate the legal authority your state uses for each of the following background checks. (Check all that apply.) **Table 17**

	N/A (state does not do these checks)	State check only	PL 92-544 statute	NCPA/VCA
Daycare providers				
Caregivers–residential facilities				
School teachers				
Non-teaching school personnel (including volunteers)				
Volunteers working with children				
Prospective foster care parents				
Prospective adoptive parents				
Relative caregivers				
Nurses/Elder caregivers				
Legal guardians				
Hazardous materials licensees				N/A
Medical marijuana (dispensers, caregivers)				N/A

FINGERPRINT-BASED SEARCHES

3. (a) Has your state privatized the taking of fingerprints for noncriminal justice purposes?

❒ Yes ❒ No **Table 13**

(b) Is this service provided by?

❒ A single vendor ❒ Multiple vendors

(c) Does the vendor(s) assess a fee above what the state charges to perform the background check?

❒ Yes, Fee $ _____ ❒ No

(d) Does the vendor provide any additional services besides the fingerprint capture? (e.g., evaluating responses for the requestor, sending responses back to the requestor, etc.)

_____

_____

4. (a) Total number of noncriminal justice fingerprints submitted to the repository via livescan during 2014 **Table 11c** _____

(b) Total number of noncriminal justice fingerprints submitted to the repository via cardscan during 2014 _____

(c) Percentage of noncriminal justice fingerprints submitted via livescan during 2014 _____

(d) Percentage of noncriminal justice fingerprints submitted via cardscan during 2014 _____

(e) Total number of livescan devices available for noncriminal justice purposes only **Table 11b** _____

(f) Total number of cardscan devices available for noncriminal justice purposes only _____

(g) Total number of livescan devices used for both criminal and noncriminal justice purposes _____

(h) Total number of cardscan devices used for both criminal and noncriminal justice purposes _____

5. What information is contained in the results for fingerprint-based noncriminal justice background checks? (Check all that apply.) **Table 16**

❒ Full record

❒ Convictions only

❒ Juvenile records

❒ Arrests without disposition–over 1 year old

❒ Other _____

6. What percentage of fingerprint-based noncriminal justice transactions are identified against arrest fingerprints? **Table 16**

   _____ %

7. Does the repository attempt to locate missing disposition information before responding to a fingerprint-based noncriminal justice inquiry? **Table 16**

   ❒ Yes ❒ No

NAME-BASED SEARCHES

8. How many name-based noncriminal justice background checks were performed in 2014? (a+b+c+d = e) **Table 15**

   (a) Received via Internet _____

   (b) Received via mail _____

   (c) Received via telephone _____

   (d) Other _____

   (e) Total _____

INTERNET ACCESS

9. Does your repository provide web-based noncriminal justice background checks to the public? **Table 20**

   ❒ Yes ❒ No

10. Are fees involved for Internet access for the general public (not including any registration or account fees)? **Table 20**

    ❒ Yes, Fee $ _____ ❒ No

ADDITIONAL COMMENTS:

SECTION V: CRIMINAL JUSTICE RAP BACK SERVICES

This section completed by

Name _____ Title _____

Agency _____

Phone _____ Email _____

Date completed _____

1. Does your state currently provide an in-state criminal justice rap back service?

   ❒ Yes ❒ No **Table 22**

   If you answered "No," skip to question 4.

2. What are the purposes in which criminal justice agencies can be notified of a subsequent inquiry and/or record posting via your in-state criminal justice rap back service? (Check all that apply.) **Table 22**

   ❒ Error correction/record management update
   ❒ Investigative lead
   ❒ Sex offender
   ❒ Parolee
   ❒ Probationer
   ❒ Permit/privileged license revocation (i.e., CCW permit, gaming work card, etc.)
   ❒ Noncriminal justice purpose fingerprint search
   ❒ Other (describe) _____

3. In 2014, how many in-state criminal justice rap back notifications were made to agencies for criminal justice purposes? **Table 22**

   _____

4. Do you currently participate in the FBI's Next Generation Identification (NGI) rap back service for criminal justice purposes? **Table 22**

   ❒ Yes ❒ No

   If you answered "No," skip questions 5 through 7.

5. As a participant in NGI's rap back service, do you allow criminal justice agencies in your state to subscribe to the following supervision populations in NGI, as described in the *NGI Rap Back Criminal Justice Policy and Implementation Guide*? (Check all that apply.) **[No table]**

   - ❒ Sex offenders
   - ❒ Parolees
   - ❒ Probationers
   - ❒ Other supervised persons (describe) _____
   - ❒ Uncertain

6. As a participant in NGI's rap back service, do you allow law enforcement agencies in your state to create law enforcement investigative subscriptions in NGI, as described in the *NGI Rap Back Criminal Justice Policy and Implementation Guide*? **[No table]**

   ❒ Yes ❒ No ❒ Uncertain

7. As a participant in NGI's rap back service, do you plan to: (Select one.) **[No table]**

   - ❒ Keep your in-state criminal justice rap back service
   - ❒ Keep your in-state criminal justice rap back service *and* allow enrollment in NGI
   - ❒ Retire your in-state criminal justice rap back service and use NGI for both in-state and national rap back services
   - ❒ Uncertain
   - ❒ My state does not provide an in-state criminal justice rap back service

ADDITIONAL COMMENTS:

SECTION VI: NONCRIMINAL JUSTICE RAP BACK SERVICES

This section completed by

Name _____ Title _____

Agency _____

Phone _____ Email _____

Date completed _____

Note: *Questions 1–7 apply to in-state rap back programs for noncriminal justice purposes.*

1. Does your state currently provide an in-state noncriminal justice rap back service?

   ❒ Yes ❒ No **Table 23**

   If you answered "No," skip to question 8.

2. (a) Is your in-state noncriminal justice rap back service authorized by state law or administrative regulation? **Table 23**

   ❒ Yes ❒ No

   (b) If yes, does the state law or administrative regulation specify the purposes in which noncriminal justice agencies can be notified of a subsequent inquiry and/or record posting?

   ❒ Yes ❒ No

3. Does your in-state noncriminal justice rap back service have a subscription validation process similar to that required for NGI rap back participation, as described in the *NGI Rap Back Noncriminal Justice Policy and Implementation Guide*? **Table 23a**

   ❒ Yes, for all subscription populations

   ❒ Yes, for some subscription populations

   ❒ No

4. What are the occupational groups in which noncriminal justice agencies can be notified of a subsequent record posting? (Check all that apply.) **Table 23**

   ❒ Individuals working with children

   ❒ Individuals working with the elderly

❒ Individuals providing healthcare

❒ Security guards

❒ Police, fire, public safety

❒ Other (describe) _____

5. In 2014, how many in-state noncriminal justice rap back notifications were made to agencies for noncriminal justice purposes? **Table 23a**

   _____

6. Does your in-state noncriminal justice rap back service impose a fee to enroll a subject's fingerprints for a prescribed period of time? **Table 23a**

   ❒ Yes $ _____

   ❒ No

7. Does your in-state noncriminal justice rap back service impose a fee for noncriminal justice rap back notifications? **Table 23a**

   ❒ Yes $ _____

   ❒ No

8. Do you currently participate in NGI's rap back service for noncriminal justice purposes? **Table 23a**

   ❒ Yes ❒ No

   If you answered "No," skip questions 9 through 10(d).

9. As a participant in NGI's rap back service, does your state restrict NGI subscribers from selecting from any of the available fees and their associated subscription terms? **[No table]**

   ❒ Yes, we limit NGI subscribers in our state to the following: (Select all that apply.)

      ☐ Two-year – $2.25

      ☐ Five-year – $6.00

      ☐ Lifetime – $13.00

   ❒ No, our subscribers can choose from any of the three fees and their associated subscription terms for their populations

   ❒ Yes, we limit our subscribers to using *only* the Lifetime fee ($13.00) and subscription term

   ❒ Yes, we limit our subscriber's choice of fees in a different manner

   (describe) _____

10. As a participant in NGI's rap back service— **[No table]**

(a) Do you plan to: (Select one.)

- ❒ Keep your in-state noncriminal justice rap back service
- ❒ Keep your in-state noncriminal justice rap back service *and* allow enrollment in NGI
- ❒ Retire your in-state noncriminal justice rap back service and use NGI for both in-state and national rap back services
- ❒ Uncertain
- ❒ My state does not provide an in-state noncriminal justice rap back service

(b) Do you restrict the Privacy Risk Mitigation Strategies that your subscribers can choose?

- ❒ Yes, we limit the Privacy Risk Mitigation Strategy choices to the following: (Check all that apply.)
  - ☐ Pre-notification with mandatory validation/expiration within 3 years
  - ☐ Authority for duration of a license
  - ☐ Statutory authority for a set period of time
  - ☐ One-year validation/expiration
  - ☐ Subscription synchronization through automated or formalized procedures
- ❒ No, we will allow the subscribers to choose any of the Privacy Risk Mitigation Strategies
- ❒ Not certain

(c) Do you restrict the Triggering Events that your subscribers may choose for future NGI Rap Back Activity Notifications?

- ❒ Yes, we currently restrict, or plan to restrict, the Triggering Event choices to the following: (Check all that apply.)
  - ☐ Criminal Retain Submission
  - ☐ Dispositions
  - ☐ Expunge/Partial Expungement
  - ☐ Warrant entry with FBI Number included
  - ☐ Warrant Deletion
  - ☐ Warrant Modification
  - ☐ Sex Offender Registry Entry
  - ☐ Sex Offender Registry Deletion
  - ☐ Sex Offender Registry Modification
  - ☐ Death Notices
- ❒ No, we will allow our subscribers to choose any of the Triggering Events to receive as future Rap Back Activity Notifications
- ❒ Not certain

(d) Do you use Event-Based Subscription Management (i.e., multiple enrollment of the same subject into NGI) or Category-Based Subscription Management (i.e., single

enrollment into NGI with additional enrollments held at the state level), as described in the *NGI Rap Back Noncriminal Justice Policy and Implementation Guide*?

- ❒ Event-Based Subscription Management
- ❒ Category-Based Subscription Management
- ❒ Both Event- and Category-Based Subscription Management
- ❒ Uncertain

ADDITIONAL COMMENTS:

Center for American Progress

AP PHOTO/RICH PEDRONCELLI

Removing Barriers to Opportunity for Parents With Criminal Records and Their Children

A Two-Generation Approach

By Rebecca Vallas, Melissa Boteach, Rachel West, and Jackie Odum December 2015

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Introduction and summary

Nearly four decades of mass incarceration and overcriminalization have made the United States the world leader in incarceration and arrests. The number of Americans in federal and state prisons and jails has quintupled over the past four decades—nearly 2.3 million Americans are behind bars today[1]—leaving the U.S. incarceration rate at more than six times the average across developed nations. Communities of color—and particularly, men of color—are hit hardest, with black men six times more likely and Latino men two-and-a-half times more likely to be incarcerated than white men.[2]

An even greater share—between 70 million and 100 million Americans, or as many as one in three American adults—have some type of criminal record.[3] Many have been convicted of only minor offenses, such as misdemeanors—and many only have arrests that never led to a conviction. But whether or not an individual has been incarcerated, having a criminal record often carries a lifetime of consequences, lasting long after someone has paid his or her debt to society. As discussed in a previous Center for American Progress report, "One Strike and You're Out," having even a minor criminal record can be a life sentence to poverty, presenting obstacles to employment, housing, education and training, public assistance, financial empowerment, and more.[4]

While the effects of parental incarceration on children and families are well-documented, less appreciated are the family consequences that stem from the barriers associated with having a criminal record, whether or not the parent has ever been convicted or spent time behind bars. A child's life chances are strongly tied to his or her circumstances during childhood. Thus, these barriers may not only affect family stability and economic security in the short term but also may damage a child's long-term well-being and outcomes.

Our new analysis estimates that between 33 million and 36.5 million children in the United States—nearly half of U.S. children—now have at least one parent with a criminal record.[5] In this report, we argue that parental criminal records

significantly exacerbate existing challenges among low-income parents and their families. We explore the intergenerational effects of criminal records through five pillars of family well-being:

- **Income.** Parents with criminal records have lower earning potential, as they often face major obstacles to securing employment and receiving public assistance.
- **Savings and assets.** Mounting criminal justice debts and unaffordable child support arrears severely limit families' ability to save for the future and can trap them in a cycle of debt.
- **Education.** Parents with criminal records face barriers to education and training opportunities that would increase their chances of finding well-paying jobs and better equip them to support their families.
- **Housing.** Barriers to public as well as private housing for parents with criminal records can lead to housing instability and make family reunification difficult if not impossible.
- **Family strength and stability.** Financial and emotional stressors associated with parental criminal records often pose challenges in maintaining healthy relationships and family stability.

Because these challenges affect such a large share of our nation's children, we ignore these intergenerational consequences at our peril. In this report, we make the case for a "two-generation approach" to address barriers to opportunity associated with having a criminal record.[6] We then offer policy recommendations to give both parents with criminal records and their children a fair shot.

As bipartisan momentum continues to mount in support of criminal justice reform, now is the time to find common ground and enact solutions to ensure that a criminal record does not consign an individual—and his or her children and family—to a life of poverty.

Criminal records: Creating barriers for two generations

The financial and emotional effects of parental incarceration on children and families are well-documented. Two-parent families typically experience a sudden, significant drop in income at the time of incarceration, due to the loss of the incarcerated parent's earnings.[7] The disruption in the lives of children of lone parents can be even more severe. Many children—and parents—experience feelings of loss and abandonment, which can be exacerbated by the difficulty of maintaining family bonds while a parent is incarcerated. Moreover, a large and growing body of literature connects parental incarceration with childhood illness, behavioral problems, poor educational outcomes, and even a greater likelihood of poor physical and mental health in adulthood.[8] Thus, it comes as little surprise that parental incarceration is increasingly considered to be an "adverse childhood experience," or ACE—an experience that is associated with a greater risk of traumatic stress.[9]

Less appreciated, however, are the consequences of parental criminal records—separate from incarceration—on children and families. To that end, we examine five pillars of family well-being—income, savings and assets, education, housing, and family strength and stability—in turn, and how the barriers associated with a parent's criminal record can negatively affect a child's short- and long-term outcomes. As a result, we are able to make the case that a parent's criminal record can itself serve as an ACE, even absent parental incarceration.

A parent's criminal record can hold back the whole family

Ms. N is a 35-year-old mother with three children—ages 9, 11, and 15—whom she supports on her own. More than a decade ago, she was convicted of two minor retail thefts. In both incidents, she was spending time with a friend who shoplifted and was merely in the wrong place at the wrong time. Ms. N found it very difficult to find a job when she moved to Philadelphia in 2010, despite having work experience as a lunch aide at an elementary school and as a direct care worker at a residential facility for people with disabilities. She finally secured a position as a home health aide but was fired after three days when the employer obtained the results from her background check. Desperate to feed her children, Ms. N turned to the Supplemental Nutrition Assistance Program, or SNAP, formerly known as food stamps, but she remains without any other source of income to support her family. She wants nothing more than to put her criminal record behind her so that she can return to being a productive member of society and the breadwinner for her family.

Community Legal Services Inc. provided the Center for American Progress with this story.

Income: Employment, earnings, and public assistance

Family income is one of the strongest predictors of economic mobility: Of those born into the bottom one-fifth of the income distribution, 42 percent of children—and 56 percent of African American children—remain in the bottom one-fifth as adults.[10]

On the flip side, a large and growing body of literature finds that addressing struggling families' income constraints not only mitigates hardship but also bolsters children's chances at upward economic mobility in the long term. Research by Greg Duncan and his colleagues finds that boosting a poor child's annual family income by just $3,000 between the prenatal year and age 5 leads to a 17 percent average increase in the child's annual earnings down the line.[11]

But having a criminal record can present barriers to employment, earnings, and even the meager benefits available from public assistance. The income-limiting effects of these obstacles, therefore, have broad implications—not just for the tens of millions of individuals who are prevented from moving on with their lives and becoming productive citizens but also for their children and families.

Today, nearly 9 in 10 employers conduct criminal background checks on their job applicants.[12] Even minor offenses such as misdemeanors and arrests without conviction can present major barriers to employment.[13] Additionally, state laws on hiring and occupational licensing categorically bar individuals with certain types of convictions from more than 800 occupations nationwide.[14] As a result, some 60 percent of formerly incarcerated individuals remain unemployed one year after their release.[15] And for those lucky enough to find steady employment, having a criminal history often comes with a substantial reduction in earnings. Research indicates that formerly incarcerated men, for example, take home an average of 40 percent less pay annually than if they had never been incarcerated, resulting in an earnings loss of nearly $179,000 by age 48.[16]

Notably, an individual need not have spent time behind bars—or even have been convicted of a crime—in order to face barriers to employment due to a criminal record. A study by the National Institute of Justice finds that having any arrest during one's life diminishes job prospects more than any other employment-related stigma, such as long-term unemployment, receipt of public assistance, or having a GED certificate instead of a high school diploma.[17]

Moreover, in many states, even public assistance can be out of reach for people with certain types of criminal records. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 includes a lifetime ban on receiving federal public assistance—through the Supplemental Nutrition Assistance Program, or SNAP or Temporary Assistance for Needy Families, or TANF—for individuals with felony drug convictions.[18]

Federal law gives states the option to modify or waive the bans, and most have done so to some extent, with Texas and Alabama the most recent to follow suit.[19] Yet the majority of states have retained a ban in whole or in part for TANF, SNAP, or both.[20]

This outdated and harsh policy has serious consequences for individuals and families. It deprives struggling families of vital nutrition assistance and pushes them even deeper into poverty at precisely the moment when they are seeking to regain their footing. Women are hit especially hard by this policy, as drug offenses accounted for half of the increase in the state female prison population between the mid-1980s and mid-1990s, compared with only one-third of the increase for men over the same period.[21]

When parents face challenges in securing employment or accessing basic income support to help meet basic needs, children suffer both short- and long-term negative consequences. In the early years, from infancy to age 3, children in lower-income households tend to develop vocabulary at a slower rate than their higher-income peers, and they ultimately have more limited language skills, affecting school performance.[22] As children enter their school years, parental job instability is associated with lower educational attainment. And when mothers struggle with unstable work, their children are more likely to exhibit absenteeism, bullying, or withdrawal.[23]

Research by Hilary Hoynes and her colleagues finds that safety net programs such as SNAP not only alleviate hunger, reduce poverty, and improve children's health in the short run but also improve children's long-term educational, economic, and health outcomes.[24] Studies find similar positive long-term benefits from the Earned Income Tax Credit and the Child Tax Credit: These programs not only improve the short-term well-being of children through reducing low birthweight and premature births[25] but also lead to improved educational and employment outcomes in adulthood.[26]

Savings and assets

While families need income to make ends meet, they also need savings to be economically secure and to get ahead. Unfortunately, having a criminal record affects a parent's job prospects, thereby undermining their ability to save for the future. In addition, interaction with the justice system also can result in crushing fines and fees, trapping families in a downward spiral of debt.

In a growing nationwide trend, states and municipalities have increasingly moved toward "offender-funded justice." This approach funds law enforcement and court systems—and in some cases, even substantial shares of a jurisdiction's budget—through fines and fees levied on justice-involved individuals.[27] For example, following the tragic death of Michael Brown—an unarmed, young black man who was shot by police in August 2014[28]—it came to light that his hometown of Ferguson, Missouri, had relied on municipal court fines for a staggering 20 percent of its $12.75 million total budget in 2013.[29]

Examples include various sorts of "user fees" that are assessed upon conviction, public defender fees for defendants who exercise their right to counsel, pay-to-stay fees designed to offset states' costs of incarceration, and fees for GPS ankle bracelets while an individual is on community supervision. Many states and localities also assess late-payment fees, steep collection fees, and even fees for entering an installment payment plan.

According to the Ella Baker Center for Human Rights, which promotes the advancement of social and economic justice for low-income families and communities of color, 85 percent of returning citizens face criminal justice debts, up from just 25 percent in 1991.[30] Total criminal justice debts can rise into the tens of thousands of dollars.[31] These debts often come on top of crushing child support arrears, which in many states can pile up while a parent is behind bars.[32]

Notably, these criminal justice debts exacerbate the consequences of having a criminal record and transform punishment from a temporary experience into a long-term or even lifelong status. In many states, individuals are not eligible to clean up their criminal records through expungement or sealing until they have paid off all their criminal debts. Outstanding criminal debt can also stand in the way of public assistance, housing, employment, and access to credit. Moreover, while being incarcerated for being unable to pay off debts was long ago declared unconstitutional, missing a payment can be a path back to jail in many states, setting up a modern-day debtor's prison.[33]

When families face debt, it not only undermines financial security but can also have negative psychological and mental health effects, affecting children's emotional health.[34] In fact, even when adjusting for income and other variables, people with more debt were more likely to have some sort of mental health challenges. And when parents face mental health challenges, it can have adverse effects on their marriage and parenting skills, which in turn affects children.[35]

Meanwhile, research shows that helping parents build savings has positive short- and long-term effects on children and families. For example, when working-age families can put aside even modest savings in the short term—even sums of less than $2,000—they are less likely to face hardships such as running short on food, forgoing needed health care, or having the utilities turned off than households with no savings.[36] In the long run, assets can have a positive effect on children, not only by ensuring that funding is available for education and other mobility-enhancing opportunities but psychologically as well, affecting children's aspirations to pursue higher education.[37] For example, having even modest educational savings set aside is associated with a substantially greater likelihood of children's college attendance and completion.[38]

When parents can build financial assets, rather than being caught in a cycle of debt due to a criminal record, the whole family benefits.

Education and training

One of the surest pathways to moving up the career ladder and achieving family economic security is securing additional education and training to better compete in the job market. Unfortunately, parents with criminal records face significant barriers to accessing the education and training they need, hindering their odds of finding stable work.

Additionally, parental education has profound effects on children. Children whose parents have less education are more likely to experience poverty, struggle with hunger, and lack health insurance, while the benefits of higher educational attainment among parents can help protect children from hardship even during tough economic times.[39]

Approximately two out of five Americans behind bars have neither finished high school nor obtained a GED certificate.[40] Of those with a high school diploma or GED certificate, nearly half—46 percent—lack postsecondary education.[41] Additionally, many struggle with low literacy: About 16 percent have below basic literacy levels, and 3 percent are completely illiterate in English.[42]

Obviously, limited education and literacy can make it difficult to compete in the labor market, even without a criminal record. It also limits a person's earning potential: The difference in median earnings between an individual with a high school diploma and someone with a bachelor's degree is more than $23,000 per year, a 70 percent gap.[43]

Education and training not only boost employment and earnings prospects but also reduce the likelihood that an individual will return to jail or prison. A recent study by the RAND Corporation—the largest-ever analysis of correctional education—found that inmates who participated in correctional education were 43 percent less likely to return to prison than those who did not and were substantially more likely to obtain employment.[44] Postrelease employment rates were 13 percent higher for individuals who participated in academic or vocational education programs while behind bars and 28 percent higher for those who participated in vocational training.[45] Furthermore, the study found that every dollar spent on prison education saved $4 to $5 in incarceration costs during the three years after the individual's release, the time period when recidivism is most likely.[46]

Unfortunately, despite the cost effectiveness of education and training behind bars, these types of programs are scarce.[47] In 1995, Congress removed access to Pell Grants for inmates—causing the number of postsecondary prison education programs to drop by more than 90 percent in the decade that followed.[48]

Additionally, formerly incarcerated individuals—and even those with criminal records who have never been incarcerated—can face obstacles to education and training. While there has been some progress in removing barriers to federal financial assistance for people with criminal records,[49] federal law prohibits individuals with felony drug convictions from receiving the American Opportunity Tax Credit, or AOTC, for life. The AOTC serves as a complement to Pell Grants, providing qualifying students and families with a partially refundable tax credit of up to $2,500 per academic year to offset some of their educational expenses.[50] To make matters worse, an estimated 66 percent of colleges and universities use background checks in the admissions process, further decreasing the chance that a person with a record will be able to access higher education.[51]

These obstacles for parents with a criminal record can have a profound effect on their children. Analysis by the Urban Institute reveals that even before the Great Recession, there were dramatic variations in child poverty rates by parental educational attainment. But those disparities were even greater after the recession. Between 2007 and 2010, children whose parents lacked a high school diploma saw their poverty rates rise by 8 percentage points, while those whose parents had a high school degree or some college saw theirs increase by 6 percentage points. Children whose parents had an associate's degree or four-year college degree saw their poverty rates rise by 3 percentage points and 2 percentage points, respectively.[52] The Urban Institute's analysis shows a similar pattern for child food insecurity and lack of health insurance.[53]

Parental education is not only associated with childhood risk of experiencing poverty and hardship in the near term but also with a child's long-term educational prospects. A mother's education level is strongly correlated with vocabulary and mental processing skills in the first few years of life, and with older children is predictive of school readiness, academic achievement, social engagement, and ability to regulate behavior.[54]

Chronically poor children whose parents have a high school degree or higher are significantly more likely to finish high school themselves than their counterparts whose parents do not have a high school degree.[55] And indirectly, children whose parents have higher levels of education tend to have higher educational aspirations themselves, leading to higher educational attainment and ultimately greater career prospects.[56]

Therefore, barriers to education and training associated with having a criminal record not only hold parents back from climbing the career ladder but can hamper children's educational and employment prospects as well.

Housing

Safe, decent, and affordable housing is foundational to the economic security of individuals and families. It also has powerful anti-recidivism effects for people with criminal histories. However, even a minor criminal record can affect the stability of a family's housing situation, both through loss of income leading to eviction or foreclosure and through overly harsh "one strike and you're out" public housing policies, which can make it impossible for an individual with a criminal record to physically rejoin his or her family.[57]

The nation's two major housing assistance programs are the Section 8 Housing Choice Voucher Program and Public Housing. Both are federally funded, and their use is governed by federal law and policies. Both are administered by local public housing authorities, or PHAs, however, which have tremendous discretion regarding admission and eviction policies.[58]

Federal public housing law includes a narrow, mandatory ban on access to public housing for people with certain types of criminal histories.[59] But it also gives local PHAs broad discretion to deny housing to prospective tenants and to evict current tenants on the basis of "criminal activity."[60] Thus, federal law effectively provides a floor that many PHAs choose to exceed by exercising their discretion in extreme ways. For example, many PHAs will evict or deny housing to an individual or even to an entire household if one household member has had an arrest, even if that arrest did not lead to conviction.[61] Guidance for PHAs published in November 2015 by the Department of Housing and Urban Development clarified the federal "one strike" policy, noting that arrests without conviction may not be considered evidence of "criminal activity" and thus may not serve as the basis for denial of housing or eviction.[62]

Overly broad interpretations of this policy by local PHAs can put housing out of reach for returning citizens. It also can stand in the way of family reunification because a returning citizen would put his entire family at risk of eviction if he or she went to live with them. Indeed, a 2015 study by the Ella Baker Center found that 79 percent of returning citizens reported being denied housing due to their criminal history, and 18 percent of families reported being evicted or denied housing when their incarcerated family member returned home.[63]

In addition to the obstacles that people with criminal records face to public housing, private housing can also be unattainable for individuals with criminal records and for their families. Four out of five landlords use criminal background checks to screen out potential tenants.[64] And as noted previously, the income-limiting effects of criminal records can also lead to eviction and housing instability—and, combined with the savings-limiting effects of a criminal record, can put homeownership far out of reach for many individuals with records and their families.

Housing instability can have harmful and long-lasting consequences for children. In the early years, frequent moves can affect children's mental health and language development. Multiple moves can lead to disruptions in education, residence in lower-quality housing and neighborhoods, and less parental engagement in the

child's education—all of which have negative consequences for children's academic outcomes.[65] Persistently poor children who experience residential instability before age 18 are significantly less likely to complete high school, enroll in postsecondary education, or complete a degree than their counterparts who had stable housing during childhood.[66]

Housing instability and foreclosure also can affect children's health, with more visits to the emergency room and more delays in preventive care in areas with high foreclosure rates.[67] And of course, family homelessness during childhood has severe short- and long-term effects as well, affecting physical, cognitive, social, and emotional development. Children who experience homelessness and housing instability are more likely to be separated from their parents, to experience hunger and lack of access to medical and dental care, to repeat a grade or drop out of high school, and to display emotional and behavioral problems such as anxiety and depression.[68]

As a result, the barriers to housing faced by parents with criminal records not only stand in the way of housing stability in the short term but also can carry substantial, negative, and long-term consequences for children.

Family stability and strength

A large and growing body of research documents the profound negative effects that parental incarceration can have on children and on family life.[69] Importantly, families can continue to face significant challenges long after a parent is released from a correctional facility—or even if the parent has a criminal record but never spent any time behind bars.

For starters, while child support represents an important contribution to the well-being of children who no longer reside with both parents, unaffordable child support orders can serve as a major driver of postincarceration debt. Many incarcerated parents enter correctional facilities with child support orders in place. While policies vary across states, in 14 states, incarceration is currently not a permissible reason for pausing child support orders, meaning that a noncustodial parent who is behind bars can accumulate sizable arrears and interest despite being unable to make payments while incarcerated.[70]

When this happens, formerly incarcerated parents can return home to find that their child support debts are in the tens of thousands of dollars. Given that, as previously discussed, many individuals leaving prison face barriers to employment and earnings and often have little to no savings, it can be difficult if not impossible to dig out of this hole. Failure to find employment—or a job that pays well enough to afford to meet child support obligations—can trigger a downward spiral of mounting debt, late-payment penalties, and the possibility of reincarceration for failure to pay.[71] Thus, it comes as little surprise that states report that 30 percent to 40 percent of their hard-to-collect child support cases involve noncustodial parents with criminal records or histories of incarceration.[72]

Making matters worse, noncustodial parents often end up behind bars for nonpayment of child support, again setting up the equivalent of a modern-day debtors' prison and making it even harder for the parent to find employment upon release. It is this vicious cycle that led to the tragic death of Walter Scott, a South Carolina father who was pulled over for a broken tail light: He was shot in the back while trying to flee law enforcement. His brother, Rodney Scott, suspected he fled because he feared being arrested for outstanding child support debt.[73]

Moreover, in a perverse and unintended consequence, unaffordable child support orders and arrears can take a toll on family bonds and impede family reunification after release. In a survey commissioned by the Ella Baker Center, more than half of survey respondents reported having to make the difficult financial choice between making a child support payment and meeting basic needs. The survey also showed that more than one-third of respondents reported that their inability to pay child support damaged familial relationships, including those with their own children.[74]

As illustrated in the previous sections, whether or not a parent has spent time in prison or jail, having a criminal record carries profound implications for family economic security, which in turn can affect family life, with detrimental consequences for both parents and children. In a recent report, "Valuing All Our Families," CAP set forth a family policy framework, underscoring that, as shown in Figure 1, family structure, stability, and strength are all interconnected and all matter for child as well as adult outcomes in a two-generation approach. Unfortunately, the economic insecurity associated with a criminal record negatively affects all three of these pillars.

FIGURE 1

The three S's: A new framework for family policy

When it comes to family stability—regardless of whether the parents are married, cohabiting, single, or in another type of family arrangement—children whose families experience unemployment are more likely to face a destabilizing change, whether it be divorce, doubling up with another family, or other disruptions in family life.[75] This is important because research suggests that "instability seems to matter more than family structure for [children's] cognitive and health outcomes, whereas growing up with a single mother (whether that family structure is stable or unstable over time) seems to matter more than instability for children's behavioral problems."[76]

In terms of family strength—or the quality of parents' relationships with one another and their children—economic security also plays an important role. Financial stress is a key predictor of marital violence, conflict, and divorce, whereas parents with higher incomes and educational attainment are more likely to report happier marriages than counterparts with lower incomes and less education.[77] Moreover, job loss and economic insecurity can carry over into family interactions. A report by the Brookings Institution and First Focus on the effects of foreclosures on children cites a body of research that points to how parents under financial stress can at times engage in "harsher and less supportive parenting, which in turn can lead to negative behaviors on the part of children, making it harder for them to interact well with peers and in school."[78]

And in terms of family structure, in cities where lower-income men are more disconnected from the economic mainstream—as measured by the degree to which their income falls below the median—they are less likely to marry. This mirrors a broader long-term trend, with higher levels of inequality being associated with a decline in marriage among men and women over time.[79] While the most sophisticated reviews of social science conducted to date suggest that the causal effects of a father's absence alone on child well-being are likely modest,[80] there is little debate that both children and adults would benefit from stronger, more stable marriages and committed relationships.

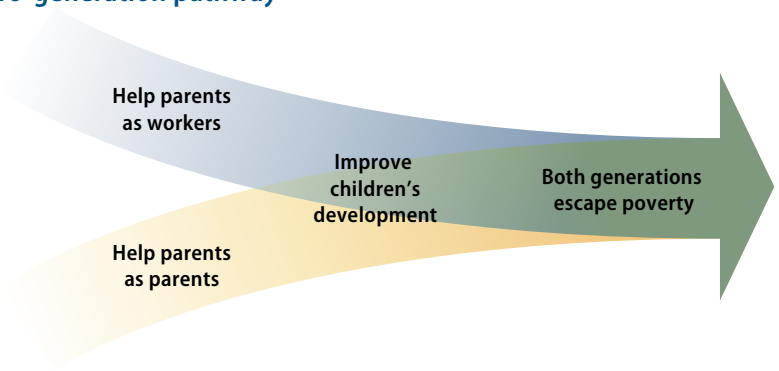
Thus, these types of economic stressors not only affect families who are already dealing with the emotional fallout of a parent returning from incarceration but also have implications for family structure, stability, and strength for any family in which a parent's criminal record is a barrier to the basic building blocks of economic security.

The case for a two-generation approach

In recognition that parent and child well-being are inextricably linked, two-generation approaches set out to address the needs of both disadvantaged parents and children together. While two-generation policy frameworks can vary, one thing remains consistent: Policies that help adults as both parents and workers can have a profound effect on a child's long-term outlook and well-being.[81] Two-generation approaches combat intergenerational poverty by boosting education, health and well-being; economic supports; and social capital for parents and their children.[82]

FIGURE 2

A two-generation pathway



Source: Stephanie Schmit, Hannah Matthews, and Olivia Golden, "Thriving Children, Successful Parents: A Two-Generation Approach to Policy" (Washington: Center for Law & Social Policy, 2014), available at http://www.clasp.org/resources-and-publications/publication-1/Two-Gen-Brief-FINAL.pdf.

As discussed in the previous section, the barriers associated with having a criminal record do not just result in lifelong punishment for the parent with the record; they also can significantly limit a child's life chances. Given that nearly half of all children have a parent with a criminal record, this is an underappreciated driver of economic insecurity among families with children.

Thus, as policymakers work together to reform the nation's criminal justice system, they must enact policies that reflect a two-generation approach. They must begin by removing barriers to opportunity for parents with criminal records, thereby giving both parents and children a fair shot at a better life and an even better future.

Recommendations to remove barriers to opportunity for parents with criminal records and their children

Several recent reports have offered an array of policy recommendations to alleviate the emotional and economic consequences of parental incarceration on children and families. These recommendations include ensuring that parents are not incarcerated at great distance from their families, making visitation more child and family friendly, addressing usurious phone rates,[83] and more.[84] These are steps that policymakers should take.

However, whether or not a parent has been incarcerated, having a criminal record carries tremendous negative consequences for his or her family and children. While by no means an exhaustive list, the following recommendations would go a long way toward mitigating the intergenerational effects of the barriers associated with parents' criminal records.[85]

Enable individuals with records to earn a clean slate

Enabling Americans with criminal records to earn a clean slate upon rehabilitation would permit them to redeem themselves and move on with their lives after they pay their debt to society. To that end, a comprehensive solution that would address many barriers is the automatic sealing of minor records after rehabilitation. Congress and the states should enact clean slate policies to automatically seal low-level, nonviolent records after an individual has proven his or her rehabilitation by remaining crime-free for a set period of time. While most states have expungement and other record-clearing laws in place, they typically require individuals to petition the court one by one on a case-by-case basis. As a result, many people are deprived of the opportunity to clear their record simply because they are unable to secure legal representation.[86] By contrast, automatic sealing has the benefit of expanding access to record clearing for individuals who have been rehabilitated, while reducing a burdensome and costly workload for the courts.

Congress should also enact the bipartisan Sentencing Reform and Corrections Act of 2015, which includes several important provisions to expand access to record clearing, such as sealing or expungement of juvenile criminal records under certain circumstances. Importantly, it also requires the attorney general to develop a process for individuals who are undergoing employment criminal background checks to challenge the accuracy of their federal criminal records, which would help address the well-documented problem of inaccuracies in criminal records databases.[87]

Remove barriers to employment and income assistance

Fair hiring policies should be enacted at the federal, state, and local levels. To ensure that the federal government is a model employer, the Obama administration should finalize its Office of Personnel Management, or OPM, rule "banning the box" for federal agency hiring, which would delay the point in the hiring process when a criminal record is considered.[88] Additionally, Congress should pass the bipartisan Fair Chance to Compete for Jobs Act of 2015, which would extend the "ban the box" policy to federal contractors, who are not covered by the OPM rule.

States and localities that have not already done so should follow the lead of the 19 states and more than 100 municipalities that have adopted fair chance hiring policies that incorporate features such as banning the box.[89] The strongest policies incorporate the Equal Employment Opportunity Commission's standards for consideration of criminal records in hiring, including that employers should not consider arrests without conviction; that employer demands for applications only from individuals without a criminal record are illegal; and that certain factors must be taken into account, such as the seriousness of the crime, the time that has elapsed since the conviction, and the nature of the job.[90]

In addition, to enable families to access needed income and nutrition assistance while seeking to get back on their feet, Congress should repeal the overly harsh lifetime felony drug ban on Temporary Assistance for Needy Families and the Supplemental Nutrition Assistance Program. In the meantime, states that have not already done so should exercise their authority to opt out of or modify the ban.

Remove barriers to financial empowerment

Despite the emergence of several best practices, many states and localities persist in criminal justice debt policies that present serious barriers to re-entry and trap families in a never-ending cycle of debt. In collaboration with the Consumer Financial Protection Bureau, the U.S. Department of Justice should release guidance that encourages states and localities to adopt best practices in levying and collecting criminal justice debt.[91] In the meantime, states and localities should reform their criminal justice debt policies, including by: conducting impact analysis before adopting new fees; considering ability to pay and permitting individuals to enter into affordable installment plans; implementing statutes of limitation and writing off uncollectible debt; permitting waiver of fees upon completion of re-entry programs;[92] and avoiding incarceration as a penalty for nonpayment.

Additionally, the Obama administration should finalize its proposed rule to modernize the child support enforcement system. It would go a long way toward breaking the link between unaffordable child support arrears and mass incarceration, while supporting noncustodial parents in obtaining employment so that they can pay more in child support.

Remove barriers to housing

The overly broad and harsh "one strike and you're out" policy in public housing should be repealed and replaced with a policy that requires individualized assessments. This would address safety concerns while removing the barriers that parents with records face to accessing public housing, and it also would promote family reunification and prevent the family homelessness that can result from a family member with a record joining the household after returning home from incarceration. The Department of Housing and Urban Development, or HUD, guidance released in 2015 clarifying the one-strike policy and laying out best practices for public housing authorities[93] marks a good first step, as it makes clear that arrests without conviction are not sufficient grounds for eviction or denial of housing. Even absent reform to the one-strike policy, local PHAs need not and should not exceed the narrow mandatory bans that they are required to implement, and they should adopt the best practices laid out in the recent HUD guidance. They also should follow the lead of New York City and other cities that have launched pilot programs to explore strategies for removing barriers to public housing for individuals with criminal records and their families.

To remove barriers to private housing, states and cities should adopt fair housing policies that prohibit landlords from discriminating on the basis of criminal history. While policies that lay out specific rights—such as Oregon's recently enacted fair housing law[94]—are optimal, states may be able to issue regulations that construe their own fair housing laws to limit discriminatory denials of housing without the need for new legislation.

Remove barriers to education and training

While progress has been made in terms of reducing barriers to federal financial aid for students with criminal histories, the harsh lifetime ban on the American Opportunity Tax Credit for individuals with felony drug convictions puts a vital source of financial aid out of reach for current and prospective students who might not otherwise be able to afford to pursue higher education or training. Congress should remove this ban to enable parents with criminal records to obtain the additional qualifications they need to compete in the labor market and provide for their families.

In 2015, the Obama administration announced the launch of a pilot program to test the restoration of Pell Grants to currently incarcerated students.[95] Upon the release of positive results, Congress should act to restore full access. Additionally, Congress and the states should increase investment in prison education and training to boost parents' employment and earnings prospects and better equip them to support their families upon release. And colleges and universities should follow New York's lead by limiting consideration of criminal history in the higher-education admissions process until after a conditional admission has been made; they also should only consider convictions if they indicate that the student poses a threat to public safety or if they have bearing on some aspect of the academic program or student responsibilities.

Enact policies to support family strength and stability

A previous CAP report offered a framework for family policy and laid out a two-part policy agenda to support strong and stable families. This framework includes an economic plank to bolster family economic security, as well as a social plank to ensure that struggling families are armed with the same tools as higher-income families to

navigate family-related decisions and disruptions.[96] The recommendations above underscore ways in which we can make many of these economic and social policies—from access to good jobs to removing barriers to income security and education—more fully available to parents with criminal records in ways that are likely to strengthen family structure, stability, and strength.

Given the unique challenges facing parents with criminal records, however, there are also specific policy interventions that would help strengthen family bonds both for formerly incarcerated parents and for the broader swath of Americans with some type of criminal record. Policies that support families in paying child support and strengthening parenting skills are an important set of supports that can help disadvantaged parents, including those facing barriers related to their criminal record.

For example, the Obama administration's proposed rule to modernize the child support system not only prevents child support debt from accumulating while parents are incarcerated but also gives state agencies new options to use federal child support funding for employment services to noncustodial parents who are unemployed and underemployed and thus struggling to make their payments. Efforts at the state level to help noncustodial parents find jobs, rather than setting them on a pathway to incarceration for nonpayment, have resulted in greater and more consistent payments for children.[97] The rule also allows states to incorporate discussions of visitation into support orders, which provides an opportunity to formalize a noncustodial parent's engagement with his or her child and enables states to offer education and resources to parents on effective co-parenting and family budgeting.[98] The rule should be finalized to ensure that states have these tools at their disposal to benefit children and families.

Another important policy tool is the administration's Pathways to Responsible Fatherhood Demonstration Grants, administered by the U.S. Department of Health and Human Services' Office of Family Assistance, which help fathers improve their relationship with their partners and/or the mothers of their children, strengthen their parenting skills, and contribute to their children's financial well-being.[99] This is a relatively small program, but results show that the important models it funds are strengthening families. (see text box on the Center for Urban Families for more information) As additional evidence emerges on best practices for serving parents with criminal records, Congress should consider appropriating additional funds to scale up programs that are showing positive results.

Finally, home visiting is an evidence-based, two-generation approach to improving parenting capabilities and child outcomes for disadvantaged families. Home visitation typically involves regular visits from a professional such as a nurse or social worker, which begin before the child's birth and extend through his or her early childhood. These visits, made only at the parent's request, can help provide information about child development, community resources, and effective parenting practices—and have been associated with better birth outcomes; increased parental action to promote literacy and a stimulating early learning environment; decreased involvement in the criminal justice system by the time participating children are teenagers; and higher grade point averages and graduation rates for children in the longer term.[102] These types of programs can be especially important for parents with a criminal record, but unfortunately, they only serve a fraction of the families who could benefit. To that end, CAP has recommended that policymakers amend the Medicaid statute to add a new home visiting option for states to expand evidence-based home visiting services to all eligible and interested families.[103]

A promising model

The Center for Urban Families

The Center for Urban Families, or CFUF, based in Baltimore, Maryland, is a grantee of the administration's Responsible Fatherhood Demonstration Grants program. Sixty percent of CFUF's clients have been convicted of either a felony or a misdemeanor, and 25 percent are on parole or probation.[100] CFUF's Family Stability and Economic Success, or FSES, model pairs employment services with family-strengthening supports to help parents achieve economic security as well as family stability. CFUF's holistic program serves more than 1,500 parents annually and has helped parents secure more than 6,400 full-time jobs upon completion of the program's employment services component.[101]

Boost resources for re-entry services

Direct service providers—such as civil legal aid organizations and nonprofit organizations that specialize in re-entry services[104]—play a critical role in supporting re-entry by helping individuals with criminal records clean up their records through expungement or sealing so that they can obtain employment; access needed public assistance while they seek to get back on their feet; secure stable housing for themselves and their families; reunify with their families; and more. However, many eligible individuals are turned away for lack of adequate funding; for example, for every client served by legal aid, another is turned away for lack of resources.[105] Resources for legal aid and other re-entry providers should be increased to enable more individuals with criminal records to get the help they need to achieve successful re-entry. To that end, Congress should reauthorize and boost funding for the bipartisan Second Chance Act, which authorizes the Department of Justice to award federal grants to government agencies and nonprofits to provide services designed to support re-entry and reduce recidivism.[106]

Enhance data collection efforts on the effects of criminal records

Efforts to engage in evidence-based policymaking to combat the legacy of mass incarceration and overcriminalization would be greatly improved by a better understanding of criminal records on individuals, children, and families—as well as our national economy. In fact, the paucity of data on individuals with criminal records may be a significant reason why individuals with criminal records have received little previous attention in the research literature. The Department of Justice's Bureau of Justice Statistics should seek ways to make more detailed information available to the research community and work with agencies, such as the Census Bureau, that administer household surveys to produce new data linking criminal records to individual and family characteristics and outcomes, including employment and other financial outcomes. These data should be made available to the research community to help researchers and policymakers better understand the patterns, implications, and effects of criminal records.

Conclusion

Following four decades of mass incarceration and overcriminalization, nearly half of U.S. children now have at least one parent with a criminal record. Given the barriers to economic security and mobility associated with having even a minor record, we ignore the intergenerational consequences at our peril. As bipartisan momentum continues to build in support of criminal justice reform, as well as in support of policies to put second chances within reach, now is the time for federal, state, and local policymakers to find common ground. We must enact solutions to ensure that a criminal record does not consign an individual—and his or her children—to a life of poverty.

Appendix: Methodology

Recent research estimates that between 70.3 million and 100.5 million American adults have a criminal record.[107] But how many minor children today have a parent—or parents—reflected in this statistic, whose criminal record may present a barrier to economic security, family stability, and future opportunity? Due to the scarcity of data on individuals with criminal records, the response provided in this report represents only a rough estimate—but the first of its kind.[108]

As a first step, our analysis distinguishes between two groups of individuals with criminal records, whose childbearing behavior is expected to differ for a number of reasons. Population 1 comprises adults who are currently or formerly incarcerated in prison, and Population 2 is made up of individuals who have a criminal record but have never spent time in prison.[109]

Population 1 has received a fair amount of attention in the research literature—as have their children, for whom parental incarceration has been shown to have severe and lasting detrimental consequences. Recent research by Sarah Shannon and others estimated that in 2012,[110] about 7.7 million Americans were currently or formerly incarcerated in prison.[111] And a recent Child Trends study estimated that in 2012, 5.2 million children—nearly 1 in 14—had a parent who was currently or formerly incarcerated in either jail or prison.[112] Leveraging data on recidivism, average duration of incarceration, and relative size of jail and prison populations, respectively, in 2012, we isolate the subset of these children—nearly 2.1 million—who have a parent in Population 1.[113]

However, the population of individuals with criminal records is much broader than those who have spent time behind bars in prison, as a large and growing share of individuals convicted of criminal offenses receive probation-only sentences and many people with records have arrests that did not lead to conviction. Subtracting the estimates given above—the size of Population 1 from the total number of Americans with a criminal record—suggests that between 62.6 million and 92.6 million Americans are part of Population 2. Much less is known about these individuals and their families.

To approximate the number of minor children in the United States who have at least one parent in Population 2, this analysis makes the simplifying assumption that all minor children have parents of "child-raising age"—defined here as the age range of the average age at first childbirth on the low end to 18 years above this age on the high end.[114] Because no data are directly available on Population 2—much less on their children or their fertility—this analysis selects a plausibly similar group whose childbearing behavior is knowable to serve as a proxy for Population 2.

In what follows, we develop a demographic profile of this proxy group, focusing on characteristics that are related to both childbearing behavior and the likelihood of having a criminal record. Then, by superimposing this demographic profile on nationally representative survey data, we can predict the expected fertility of a population with these characteristics.

A plausible proxy for Population 2 is the group of adult arrestees in 2012. The FBI's Universal Crime Reporting, or UCR, system collects detailed arrest records from state law enforcement agencies. For a set of 28 criminal offenses—ranging from minor to severe—the UCR system provides information on arrestees by select categories of age, sex, race, location, and other characteristics. Of course, some arrests result in imprisonment. To exclude these arrest records—which are relevant to Population 1 rather than Population 2—prison admissions data are used to adjust the number of arrests within each offense type according to the likelihood that arrest will result in imprisonment.[115] Following this adjustment, the FBI arrest data can be used to construct a demographic profile of arrestees in 2012.

Data and research point to several demographic characteristics that are strongly correlated with the likelihood that an adult has a criminal record and with expected childbearing behavior.[116] For example, a person's sex is strongly correlated with criminal activity, arrest, and incarceration, as well as with the timing of childbirth.[117] As discussed earlier in this report, communities of color are disproportionately likely to face arrest and incarceration, making race a strong correlate of both types of outcomes. And whether an individual resides in a metropolitan area or a more rural area is related to both expected number of births and the likelihood of encounters with law enforcement that can lead to a criminal record.[118]

Filtering the adjusted arrest records to include only adults of child-raising age or younger—that is, age 18 to about age 44 for this population[119]—we tabulate the shares of arrests in demographic groups defined by sex, race, and metropolitan location status.[120] A "cell" in this demographic profile might contain, for example, the share of 2012 arrests attributed to white females in nonmetropolitan areas.

Next, we turn to survey data in order to estimate the average number of minor children belonging to Population 2 individuals who were of child-raising age in 2012—taking advantage of the variation in childbearing habits by sex, race,[121] and metropolitan location status[122] to approximate this more closely. We use the National Survey of Family Growth, or NSFG, a nationally representative survey of men and women ages 15 to 44. The 2011–2013 NSFG had about 10,400 participants. In addition to detailed information on family life, marriage, health, and sexual behavior, the survey contains information on the number of children ever born to male or female respondents.[123]

The first step, using NSFG microdata, is to identify the subset of adults of child-raising age. We calculate the average age of first childbirth for respondents who have one or more children, within each gender, race, and metropolitan location status cell.[124] This produces an estimate of the average age of first childbirth of slightly less than 26 across the overall population; across individual demographic groups, the estimates range from age 21.9 to age 27.7.

We next obtain the weighted average number of minor children belonging to respondents in the child-raising age range, within each sex, race, and metropolitan location status cell.[125] Since each child has both a mother and a father, multiplying each cell-specific average by the corresponding cell-specific population of child-raising age—and then summing the results—produces a prediction of the total number of minor children that is roughly twice the size of this population in 2012.

Of course, not all children are actually born to parents in this stylized child-raising age range. For this reason, this approach will somewhat underestimate the population of minor children when the total number of children attributed to men and women is computed. Furthermore, men may in some cases be unaware of children they have fathered; therefore, the estimate of children born to men is expected to be smaller than that of children born to women. To adjust for these effects, as well as for parents' potential underreporting of children, estimates are calibrated to the total population of children under age 18 in 2012, as reported by the Census Bureau—about 73.7 million—by calculating separate adjustment factors for men and women.[126] These two adjustment factors are then applied to the quantities that represent the average number of minor children within the sex, race, and metropolitan location status groups.

In the case of some children, both the biological mother and biological father may have a criminal record;[127] an additional adjustment is made to the set of quantities that represent the average number of children per record-holder of child-raising age to avoid double-counting these children.[128]

To obtain the number of children in each demographic cell, the next step is to multiply these averages by the number of Population 2 individuals of child-raising age in the corresponding demographic cell. To do this, we return to the demographic profile constructed from UCR arrest records, which provides the share of Population 2 individuals of child-raising age in each sex, race, and metropolitan location status cell.

Translating these shares into numbers requires an estimate of Population 2 individuals of child-raising age. In 2012, roughly 32.7 percent of American adults were of child-raising age.[129] Assuming that a similar proportion of Population 2 falls into this age range,[130] between 20.4 and 30.2 million people with records—who have never been in prison—were of child-raising age in 2012. To ensure that the estimate is conservative, we rely on the lesser of these estimates.[131] Multiplying this topline number by the shares in each demographic cell—and summing over all of the demographic cells—yields the total number of children with at least one Population 2 parent.

The final step is to add these children to the children of Population 1 parents—that is, parents who are currently or have been formerly incarcerated. This again requires an adjustment for double-counting—this time to account for children who have one parent in Population 1 and the other in Population 2.[132] After subtracting these children, the remaining Population 1 children are added to the Population 2 children.

The approach yields a rough but conservative range of estimates for the number of children under age 18 who had at least one parent with a criminal record in 2012. We find that the number of U.S. children who have at least one parent with a criminal record ranges from 33 million—44.8 percent of minor children in the United States—to 36.5 million—49.5 percent of minor children.

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2 Robert Brame and others, "Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23," *Crime & Delinquency* 60 (3) (2014): 471–486, available at http://cad.sagepub.com/content/early/2013/12/18/0011128713514801.abstract.

3 The Department of Justice reports that 100.5 million Americans have state criminal history records on file. Some organizations, such as the National Employment Law Project, or NELP, have contended that this figure may overestimate the number of people with criminal records, as individuals may have records in multiple states. NELP thus suggests reducing the Department of Justice figure by 30 percent, which with 2012 data yields an estimate of 70.3 million individuals with criminal records. However, NELP concedes that this figure is almost certainly an underestimation. For the Department of Justice data, see Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (U.S. Department of Justice, 2014), available at https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf. For a discussion of NELP's methodology that yields a more conservative estimate using 2008 data, see Michelle Natividad Rodriguez and Maurice Emsellem, "65 Million 'Need Not Apply': The Case For Reforming Criminal Background Checks For Employment" (New York: National Employment Law Project, 2011), available at http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf.

4 Rebecca Vallas and Sharon Dietrich, "One Strike and You're Out" (Washington: Center for American Progress, 2014), available at https://www.americanprogress.org/issues/poverty/report/2014/12/02/102308/one-strike-and-youre-out/.

5 See Methodology.

6 As discussed in a subsequent section of this report, a two-generation approach is a policy framework that employs policies that help adults as both parents and workers to improve childhood outcomes and combat intergenerational poverty. See p. 6 and accompanying endnotes.

7 For example, 71 percent of parents incarcerated in state prisons were employed either full time or part time prior to incarceration. See Jeremy Travis, Elizabeth Cincotta McBride, and Amy L. Solomon, "Families Left Behind" (Washington: Urban Institute, 2006), available at http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf.

8 David Murphey and P. Mae Cooper, "Parents Behind Bars" (Washington: Child Trends, 2015), available at http://www.childtrends.org/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf.

9 Ibid.

10 Julia Isaacs, Isabel Sawhill, and Ron Haskins, "Getting Ahead or Losing Ground: Economic Mobility in America" (Washington: Brookings Institution, 2008), available at http://www.brookings.edu/research/reports/2008/02/economic-mobility-sawhill.

11 Greg Duncan, Kathleen Ziol-Guest, and Ariel Kalil, "Early-Childhood Poverty and Adult Attainment, Behavior, and Health," *Child Development* 81 (1) (2010): 306–325, available at http://www.ncbi.nlm.nih.gov/pubmed/20331669. The Center on Budget and Policy Priorities, in citing this paper, confirmed that the correct earnings increase is 17 percent, rather than the 19 percent reported in the paper. See Chuck Marr and others, "EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children's Development, Research Finds" (Washington: Center on Budget and Policy Priorities, 2015), available at http://www.cbpp.org//sites/default/files/atoms/files/6-26-12tax.pdf.

12 Society for Human Resource Management, "Background Checking—The Use of Criminal Background Checks in Hiring Decisions," available at http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx (last accessed November 2015). Employers indicate that they conduct background checks in hiring to avoid negligent hiring claims, to enhance workplace safety, and to reduce workplace theft, among other reasons. However, many may use background screening simply to make quick and rough judgments in their applicant pools. See Scott H. Decker and others, "Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment" (Washington: National Institute of Corrections, 2014), p. 52, available at https://www.ncjrs.gov/pdffiles1/nij/grants/244756.pdf.

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19 Marc Mauer and Virginia McCalmont, "A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits" (Washington: The Sentencing Project, 2013), available at http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf. See also Lavanya Mohan and Elizabeth Lower-Basch, "No More Double Punishments: Lifting the Lifetime Ban on Basic Human Needs Help for People with a Prior Drug Felony Conviction" (Washington: Center for Law and Social Policy, 2014), available at http://www.clasp.org/resources-and-publications/publication-1/Safety-Net-Felony-Ban-FINAL.pdf.

20 As of July 2015, seven states maintain a full ban on the Supplemental Nutrition Assistance Program and 12 continue to enforce a full ban on Temporary Assistance for Needy Families. See Randi Hall, "Alabama and Texas Lift Bans on Public Assistance for Individuals Previously Convicted of Drug Crimes" (Washington: Center for Law and Social Policy, 2015), available at http://www.clasp.org/issues/work-supports/in-focus/alabama-and-texas-lift-bans-on-public-assistance-for-individuals-previously-convicted-of-drug-related-crimes.

21 Marc Mauer, Cathy Potler, and Richard Wolf, "Gender and Justice: Women, Drugs, and Sentencing Policy" (Washington: The Sentencing Project, 1999), available at http://www.sentencingproject.org/doc/publications/dp_genderandjustice.pdf.

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26 Ibid.

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35 American Academy of Child and Adolescent Psychiatry, "Children of Parents with Mental Illness," available at https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Children-Of-Parents-With-Mental-Illness-039.aspx (last accessed November 2015).

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46 Davis and others, "Evaluating the Effectiveness of Correctional Education."

47 Ibid.

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61 Ibid.; Vallas and Dietrich, "One Strike and You're Out."

62 Ibid.

63 deVuono-Powell and others, "Who Pays? The True Cost of Incarceration on Families."

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70 Jessica Pearson, "Building Debt While Doing Time: Child Support and Incarceration," *Judges Journal* 43 (1) (2004): 5–12.

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82 Ibid.; The Aspen Institute, "The Two-Generation Approach," available at http://ascend.aspeninstitute.org/pages/the-two-generation-approach (last accessed November 2015).

83 This fall, the Federal Communications Commission capped prison phone charges—which had previously run as high as $14 per minute—at 11 cents per minute. See Federal Communications Commission, "FCC Takes Next Big Steps In Reducing Inmate Calling Rates," October 22, 2015, available at https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates.

84 Two notable reports published earlier this year were Murphey and Cooper, "Parents Behind Bars" and deVuono-Powell and others, "Who Pays? The True Cost of Incarceration on Families." A previous report by the Urban Institute—Travis, McBride, and Solomon, "Families Left Behind"—also offered important recommendations in this space.

85 For a comprehensive road map of policy recommendations for federal, state, and local policymakers to remove barriers to opportunity for Americans with criminal records, see Vallas and Dietrich, "One Strike and You're Out."

86 The need for civil legal aid generally far outstrips available resources. See Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans" (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf. Demand for expungements is no exception. See, for example, Meyli Chapin and others, "A Cost-Benefit Analysis of Expungements in Santa Clara County" (Stanford, CA: Stanford Public Policy Program, 2013), p. 12, available at https://publicpolicy.stanford.edu/publications/cost-benefit-analysis-criminal-record-expungement-santa-clara-county. This source discusses a shortage of resources for expungements.

87 For a detailed discussion of the problem of inaccuracies in criminal background checks, see Vallas and Dietrich, "One Strike and You're Out," p. 14.

88 Where in the hiring process a criminal record would be considered is one of the issues that will be developed during the rulemaking process.

89 Michelle Natividad Rodriguez and Nayantara Mehta, "Ban the Box: US Cities, Counties, and States Adopt Fair Hiring Policies" (New York: National Employment Law Project, 2015), available at http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/.

90 Equal Employment Opportunity Commission, "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq." (2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

91 It is important to note that victim restitution can and should be treated separately from other fines and fees.

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93 Office of Public and Indian Housing, *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions* (U.S. Department of Housing and Urban Development, 2015), available at http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf.

94 Oregon S.B. 91 was passed by the Oregon Legislature and signed into law by Gov. John Kitzhaber (D) in June 2013 and took effect on January 1, 2014. Under the law, a landlord may not refuse to rent to a tenant on the basis of an arrest record or certain types of criminal convictions. Additionally, the law provides that prospective tenants must be given a notice of adverse action stating the reason or reasons why they were denied housing. See Oregon State Legislature, "Oregon Legislative Information: 2013 Regular Session: S.B. 91," available at https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB91 (last accessed December 2015).

95 U.S. Department of Education, "U.S. Department of Education Announces Second Chance Pell Pilot Program for Incarcerated Individuals," Press release, July 31, 2015, available at http://www.ed.gov/news/press-releases/us-department-education-launches-second-chance-pell-pilot-program-incarcerated-individuals.

96 Fremstad and Boteach, "Valuing All Our Families."

97 For example, a pilot program in Virginia connects noncustodial parents facing jail with employment services and case management and ensures that monthly child support orders are adjusted to affordable amounts. According to state data, of the 2,736 noncustodial parents who participated in the program as of July 2014, 1,000 graduated and the average monthly payments per graduate more than doubled. See Tina Griego, "Locking up parents for not paying child support can be a modern-day debtor's prison," Storylines, September 26, 2014, available at https://www.washingtonpost.com/news/storyline/wp/2014/09/26/locking-up-parents-for-not-paying-child-support-can-be-a-modern-day-debtors-prison/.

98 Melissa Boteach and Rebecca Vallas, "3 Fact You Need to Know About the Obama Administration's Proposed Child Support Rules," Center for American Progress, June 18, 2015, available at https://www.americanprogress.org/issues/poverty/news/2015/06/18/115417/3-facts-you-need-to-know-about-the-obama-administrations-proposed-child-support-rules/.

99 Office of Family Assistance, "Responsible Fatherhood," available at http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood (last accessed November 2015).

100 Joe Jones, "Promoting Responsible Fatherhood" (Baltimore: Center for Urban Families, available at https://www.ets.org/s/sponsored_events/achievement_gap/pdf/center_for_urban_families.pdf (last accessed December 2015).

101 Center for Urban Families, "About Us," available at http://www.cfuf.org/About-Us/ (last accessed November 2015).

102 Mother and Infant Home Visiting Program Evaluation, "Project Description," available at http://www.mdrc.org/sites/default/files/img/MIHOPE_Project%20Description.pdf (last accessed November 2015).

103 Rachel Herzfeldt-Kamprath and others, "Paying It Forward" (Washington: Center for American Progress, 2015), available at https://www.americanprogress.org/issues/early-childhood/report/2015/11/12/122038/paying-it-forward/.

104 The Council of State Governments maintains a national database of re-entry service providers. See Council of State Governments Justice Center, "Reentry Services Directory," available at https://csgjusticecenter.org/reentry/reentry-services-directory/ (last accessed December 2015).

105 This is a phenomenon known as the "justice gap." See Legal Services Corporation, "Documenting the Justice Gap in America" (2007), available at http://archive.lsc.gov/sites/default/files/LSC/pdfs/justicegap.pdf.

106 The Second Chance Reauthorization Act was introduced earlier this year as S. 1513 by Sens. Rob Portman (R-OH) and Patrick Leahy (D-VT) in the Senate and as H.R. 3506 by Reps. Jim Sensenbrenner (R-WI) and Danny Davis (D-IL) in the House.

107 The Department of Justice, reports that 100.5 million Americans have state criminal history records on file. Some organizations, such as NELP, have contended that this figure may overestimate the number of Americans with criminal records, as some people may have records in more than one state. NELP thus suggests reducing the Department of Justice figure by 30 percent, which with 2012 data yields the more conservative estimate of 70.3 million American adults with criminal records. For the Department of Justice data, see Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012*. For a discussion of NELP's methodology using 2008 Department of Justice data, see Natividad Rodriguez and Ensellem, "65 Million 'Need Not Apply': The Case for Reforming Criminal Background Checks For Employment." For a general discussion, see Vallas and Dietrich, "One Strike and You're Out." Juvenile records—generally, records acquired when an individual is younger than age 18—are not counted in these estimates, nor are they considered in the analysis in this report.

108 To the authors' knowledge, this is the first estimate of children affected by parental criminal records. The authors hope that more extensive data collection on individuals with criminal records and their families—and greater attention to the intergenerational effects of criminal records—will spur additional research.

109 People who have been incarcerated in jail, as opposed to prison, are included in Population 2. Typically, jail is where individuals are sent while awaiting trial or upon conviction of a misdemeanor or low-level offense resulting in a sentence of less than one year. As noted, we anticipate the childbearing behavior of the two populations we define to differ for a number of reasons. For example, incarceration disrupts family formation and stability by removing an individual from his or her family members and, thus, may more severely impede one's ability to support a family after release than does a criminal record alone. Furthermore, on average, individuals who are or have been incarcerated tend to have committed more serious offenses. This may be correlated with riskier behavior, which may also be exhibited in sexual behavior or behavior toward family members, affecting childbearing habits. See, for example, Bryan Sykes and Becky Pettit, "Mass Incarceration, Family Complexity, and the Reproduction of Childhood Disadvantage," *Annals of the American Academy of Political and Social Science* 654 (1) (2014): 127–149, available at http://condor.depaul.edu/bsykes1/Publications_files/Sykes_Pettit_2014.pdf; Andrea Knittel and others, "Incarceration and Sexual Risk: Examining the Relationship Between Men's Involvement in the Criminal Justice System and Risky Sexual Behavior," *AIDS and Behavior* 17 (8) (2013): 2703–2714, available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3788090/.

110 Since the most recent available data from several key sources used herein is from 2012, the estimation approach in this report is focused on that year.

111 Sarah Shannon and others, "Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948-2010," available at http://paa2011.princeton.edu/papers/111687. Working paper under review at *Demography*.

112 Murphey and Cooper, "Parents Behind Bars."

113 This procedure is somewhat nuanced because we must account for children of formerly as well as currently incarcerated individuals. While work has been done to examine individuals formerly incarcerated in prison, research is scarce on those formerly incarcerated in jail. In 2012, about 68 percent of those incarcerated, or 1.57 million, were imprisoned, while the remaining 32 percent, or 0.74 million, were in jail. See Todd D. Minton, "Jail Inmates at Midyear 2012 - Statistical Tables" (Washington: Bureau of Justice Statistics, 2013), available at http://www.bjs.gov/content/pub/pdf/jim12st.pdf; Lauren E. Glaze and Erinn J. Herberman, "Trends in Admissions and Releases, 1991–2012" (Washington: Bureau of Justice Statistics, 2014), available at http://www.bjs.gov/content/pub/pdf/cpus12.pdf. However, these groups' children are unlikely to be divided into similar shares. Notably, the jail population turns over much more quickly, on average, than does the prison population because inmates in jail tend to be held for less time. Thus, we obtain the average duration of jail and prison spells, respectively, using 2002 data from the Bureau of Justice Statistics. See Doris James, "Profile of Jail Inmates, 2002" (Washington: Bureau of Justice Statistics, 2004), table 8 available at http://www.bjs.gov/content/pub/pdf/pji02.pdf; Erica Goode, "Average Prison Stay Grew 36 Percent in Two Decades," *The New York Times*, June 6, 2012, available at http://www.nytimes.com/2012/06/06/us/average-prison-stay-grew-36-percent-in-two-decades.html?_r=0. For an individual, though, average duration may not tell the complete story over time: Many—indeed, most—formerly incarcerated individuals will return to incarceration at some point. For this reason, we scale up our estimates of the total time the average individual of each population can expect to be incarcerated, developing a factor based on the average number of incarceration spells within each population. The next step is to estimate how many cohorts will cycle through—or, more specifically, the ratio of cohorts that will cycle through—incarceration of each sort during a given time period. Comparing these numbers, we calculate prison inmates as a share of all incarcerated individuals. We then presume that the ratio of prison inmates to all inmates is the same as the ratio of children of prison inmates to children of all inmates. Finally, using these shares, we are able to identify children in the Child Trends estimate who have an incarcerated parent. This produces a total estimate of Population 1 children—that is, children of current and former prisoners—of just fewer than 2.1 million. See Murphey and Cooper, "Parents Behind Bars."

114 Since average age at first childbirth differs somewhat across the demographic groups that we isolate for purposes of our analysis, child-raising age will also differ by demographic group. Ideally, data could be found to determine the lower bound of child-raising age according to the average age across all births—rather than the average age of first birth—for individuals with one or more children. However, the source of fertility data—the National Survey of Family Growth, described below—only contains information on the timing of first birth for male respondents. For this reason, the authors define the lower bound of child-raising age in this exercise according to the age of first childbirth among individuals who report having one or more children. Without further adjustment, this would cause the approach to slightly overestimate the average number of children born to adults of child-raising age. However, as described below, estimates are calibrated to the total number of children in the population in 2012 in order to adjust for this and for other effects.

115 For several reasons, new arrests do not translate directly into new criminal records. First, and most importantly, Universal Crime Reporting records include both arrests that eventually result in incarceration as well as those that do not. The authors adjust arrests within offense category according to the likelihood of incarceration in order to exclude arrestees who fall into Population 1. To do this, each of the 28 offenses categories in the UCR records is matched to its closest counterpart(s) in data on admissions to state and federal prisons in recent years. The authors calculate the share of arrests that resulted in incarceration, interpreting this as the likelihood that arrest will result in incarceration. See Bureau of Justice Statistics, "Arrest Data Analysis Tool, national estimates for 2009 by crime type," available at http://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm# (last accessed November 2015); Bureau of Justice Statistics, "Prisoners entering Federal prison, 2009, by offense," available at http://www.bjs.gov/fjsrc/var.cfm?ttype=one_variable&agency=BOP&db_type=Prisoners&saf=IN (last accessed November 2015); Bureau of Justice Statistics, "National Corrections Reporting Program: Most serious offense of state prisoners, by offense, admission type, age, gender, race, and Hispanic origin: 2009," available at http://www.bjs.gov/index.cfm?ty=dcdetail&iid=268 (last accessed November 2015). There are other discrepancies between arrests and people with records as well. For example, individuals may be arrested multiple times within one year, causing demographic information to be overrepresented in the demographic profile of arrestees. However, these additional discrepancies are expected to have a relatively minor effect on results.

116 Correlations may be due to actual patterns of criminal or risky behavior or to law enforcement practices and tactics—or to both.

117 For example, males accounted for nearly three-quarters of arrests in 2012 and made up nearly 94 percent of inmates serving sentences of more than one year in state and federal prisons in 2012. Compared with women, men tend to encounter the criminal justice system at earlier ages but have children later in life, on average. Authors' calculations from Federal Bureau of Investigation, "Universal Crime Reporting System, 2012, Tables 39 and 40," available at https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/table-guide (last accessed November 2015); Bureau of Justice Statistics, *Prisoners in 2012: Trends in Admissions and Releases, 1991–2012* (U.S. Department of Justice, 2013), Table 18, available at http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4842; Gladys Martinez, Kimberly Daniels, and Anjani Chandra, "Fertility of Men and Women Aged 15–44 Years in the United States: National Survey of Family Growth, 2006–2010," *National Health Statistics Report* (51) (2012), table 5, available at http://www.cdc.gov/nchs/data/nhsr/nhsr051.pdf.

118 Multiple other individual characteristics and statuses—such as income level, educational attainment, and marital status—are also strongly related to both expected fertility and the likelihood of a criminal record. However, information on these characteristics is less commonly collected in the context of encounters with law enforcement. On correlates of fertility and childbearing behavior, see, for example, ibid. For just two of many well-documented examples of how various personal attributes are related to risky behavior and criminal activity, see, on education, Lance Lochner and Enrico Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports," *American Economic Review* 94 (1) (2004): 155–189, available at https://www.aeaweb.org/articles.php?doi=10.1257/000282804322970751; on marriage, Robert Sampson, John Laub, and Christopher Wimer, "Does Marriage Reduce Crime? A Counterfactual Approach to Within-Individual Causal Effects," *Criminology* 44 (3) (2006): 465–508, available at http://scholar.harvard.edu/files/sampson/files/2006_criminology_laub-wimer_1.pdf?m=1360070470.

119 As noted above, NELP and Department of Justice statistics pertain to the number of American adults with nonjuvenile criminal records. With a few exceptions—such as for expungement and sealing—adult arrest records only ever accumulate over time. Thus, an individual who was arrested prior to having a minor child—before he or she entered child-raising years, for purposes of this exercise—nonetheless becomes a parent with a criminal record eventually if he or she has a child. For this reason, the demographic profile of arrestees uses data on individuals as young as age 18, the earliest age when an adult record could be acquired. Ideally, this age filter would extend up to the end of individuals' expected child-raising years—about age 44, though this differs somewhat by demographic group. However, data on age are somewhat limited in UCR data. For example, arrests by gender can be obtained for individuals ages 18 to 45, but information by race and metropolitan location status is for all adults ages 18 and older. In these cases, the approach assumes that the distribution of arrestees—and, by extension, of Population 2—by offense across race and metropolitan location status is identical for those of child-raising age and younger for older adults. Moreover, throughout this exercise, an implicit assumption is that the age distribution of arrestees by gender, race, and metropolitan location status has not changed substantially in the past couple decades—that is, that the distribution of parents who were on the younger end of their child-raising years was roughly equivalent to that of parents who were in their older child-raising years.

120 Ideally, information could be obtained for the full set of interactions between offense type, age, race, gender, and metropolitan location status. However, the UCR system makes only limited tabulations of arrest data available, allowing researchers to observe the interaction of gender and detailed age categories and the interaction of race and metropolitan location status. To combine gender with race and metropolitan location status, the authors assume that the race and metropolitan location status distribution is equivalent for both genders.

121 The UCR arrest records have four categories of race—white, black, American Indian or Alaska Native, and Asian American or other Pacific Islander. The final two available categories are combined to create three categories—white, black, and other. Notably, the arrest records do not have information by ethnicity, or origin. The NSFG data, on the other hand, contain two separate relevant variables—one for race—white, black, and other—and one for Hispanic origin. Unfortunately, there is no way to perfectly align the race and ethnicity categories between the two sources; in particular, the "other race" categories, though small, are not likely to match closely between the two sources.

122 In the UCR data, the authors define "metropolitan area" arrests as the total of city arrests and metropolitan county arrests. Nonmetropolitan area arrests include only UCR arrests in nonmetropolitan counties. The UCR system tracks a fourth category of arrests by race—suburban areas—but this geographic unit is not mutually exclusive with the three previously mentioned; for this reason, suburban areas are excluded. In NSFG data, the authors define a metropolitan area resident as a respondent who lives within a metropolitan statistical area, or MSA, and a nonmetropolitan area resident as one who does not live in an MSA. For a description of the UCR system's geographic areas, see Federal Bureau of Investigations, "Area Definitions," available at https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/area-definitions (last accessed November 2015). Throughout the analysis, the authors make the simplifying assumption that individuals who reside in metropolitan areas, as observed in NSFG data, tend to be arrested in metropolitan areas and that those who live in nonmetropolitan areas tend to be arrested in nonmetropolitan areas

123 By contrast, most nationally representative surveys, such as the Census Bureau's commonly used household surveys, such as the Current Population Survey, ask only about children who reside with or are dependent on adult respondents. The few surveys that do collect information on total fertility, such as the National Survey of Family Growth, tend to focus solely on women.

124 This calculation examines only NSFG participants ages 35 and older, in an attempt to exclude most respondents who were likely to have additional children; including these individuals would bias the estimate of age of first childbirth downward. Ideally, the calculation would be restricted to adults who were well past their childbearing years in 2012, but the limited sample size and age range of the survey—which samples individuals up to age 44—prevents this. Thus, this calculation tends to slightly underestimate the average number of children born to members of each gender, race, and metropolitan location status group, all else being equal. For two demographic groups, the average age of childbirth entails that the child-raising age range extends beyond the upper limit of the NSFG's age range by one year. For this group, the age of first childbirth is rounded down instead of up so as not to truncate the sample of individuals of child-raising age.

125 Note that for the overall population, this should produce an estimate equal to about twice the total number of minor children in 2012, since each child has a mother and a father. In theory, the number of children reported by women and by men should be about the same. However, since men may be unaware of children they have fathered—and perhaps for additional reporting-related reasons—the men's estimate is expected to be, and is, lower than the women's estimate.

126 This approach implicitly assumes that for each gender, the factor by which the approach underestimates the average number of children is equivalent for each race and metropolitan location status group.

127 Given the paucity of data and literature on people with records, it is hardly surprising that very little information exists to suggest how many pairs of co-parents of minor children both have criminal records. However, several factors suggest that the share is likely substantial. For example, research on so-called positive assortative mating documents individuals' tendency to seek partners who are similar to themselves in respects such as education attainment and earning potential. See, for example, Jeremy Greenwood, Nezih Guner and others, "Marry Your Like: Assortative Mating and Income Inequality." Working Paper 19829 (National Bureau of Economic Research, 2014), available at http://www.nber.org/papers/w19829. Insofar as individuals with criminal records come disproportionately from certain education, socioeconomic, and income groups, this literature suggests a greater correlation of criminal record status among co-parents than among two randomly chosen members of the population of each gender.

128 Because males represent the majority of people with records, the sensitivity of results to the assumption about double-counting can be minimized by adjusting the subset of children attributed to the smaller group, females. To ensure that the estimate is conservative—and in light of the discussion above—the authors presume that the incidence of double-counting is fairly high—that between 50 percent and 80 percent of the children attributed to females with records have a father who also has a record. This double-counting adjustment factor is applied to the average number of children born to women in each race and metropolitan location status cell. This implicitly assumes that double-counting is equally prevalent among all race and metropolitan location status groups.

129 According to authors' analysis of 2011–2013 NSFG data, the average age of first childbirth across the population in 2012 was just under 26—about 24.7 for women and 27.1 for men. The authors use Census Bureau population estimates by single year of age to tabulate the share of adults ages 18 and older who fell into the child-raising age range in 2012. See Bureau of the Census, "Annual estimates of the resident population by single year of age and sex for the United States: April 1, 2010 to July 1, 2014 (NC-EST2014-AGESEX-RES)," available at https://www.census.gov/popest/data/datasets.html (last accessed November 2015).

130 For several reasons, this is likely to be an underestimate—perhaps most notably because upticks in police activity; stringency of convictions and sentencing; and crime, particularly drug crime, coincided with a time when this cohort was at the age where they were most likely to have encounters with law enforcement. For the typical individual, criminal activity and delinquency tend to peak in the late teenage years of 15 to 19 and begin to decline during the early 20s. The cohort of child-raising age in 2012 would thus have lived through the peak years for risky behavior between the late 1980s and early 2000s. This coincides with the period between the late 1970s and 2008 when prison admissions and incarceration rates grew rapidly. See National Institute of Justice, "From Juvenile Delinquency to Young Adult Offending," March 11, 2014, available at http://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx; The Sentencing Project, "Trends in U.S. Corrections."

131 This estimate is based on a recent conservative estimate made by NELP, as discussed in endnote 104 above.

132 Before adjusting, the authors first set aside the share of Population 2 children who were already determined to have both parents in Population 2; they cannot also have a parent in Population 1. Once again, there is very little guidance in existing research on the extent of possible double-counting. To produce a conservative estimate—and to take into account the evidence on assortative mating discussed earlier—the authors replicate the earlier assumption that double-counted children make up at least 50 percent, and at most 80 percent, of Population 1 children. These children are then subtracted from Population 1 children.

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VERA INSTITUTE OF JUSTICE

FAMILY JUSTICE PROGRAM

Piloting a Tool for Reentry

A Promising Approach to Engaging Family Members

MARCH 2011 (updated)

Margaret diZerega • Sandra Villalobos Agudelo

Executive Summary

Research shows that incarcerated people who maintain supportive relationships with family members have better outcomes—such as stable housing and employment—when they return to the community. Many corrections practitioners and policy makers intuitively understand the positive role families can play in the reentry process, but they often do not know how to help people in prison draw on these social supports.

Staff of the Vera Institute of Justice's Family Justice Program developed the Relational Inquiry Tool (RIT) to help correctional case managers encourage people to better access this untapped source of assistance. The RIT, a series of questions designed to prompt conversations with incarcerated individuals about their family members and other loved ones, can help incarcerated people identify positive support that can be integrated into their plans for the future, after release. The Reentry Is Relational project provided training and technical assistance to pilot the tool in Oklahoma and New Mexico.

As part of the pilot process, Vera program staff interviewed agency staff to learn about current practices. They also gathered information—through surveys and interviews—from incarcerated people and their families about the impact of incarceration on family relationships and the potential for the RIT to help men and women plan for their return to the community.

These inquiries revealed that after leaving prison, incarcerated men and women expect to rely most on their families, followed by their friends; that contact with loved ones by phone or letters remains fairly consistent, but the frequency of visits fluctuates; and that maintaining contact presents financial and other challenges to family members. Forty-two percent of the men and women surveyed said, however, that some of their relationships grew stronger during their incarceration, particularly relationships with parents.

The surveys and interviews showed the potential benefits of using family-focused practices in prison reentry planning. Initial findings from the pilot—as reflected both in interviews with incarcerated people and actions taken by the participating institutions—suggest that these benefits can be reinforced in probation and parole settings. The research also identifies further areas of inquiry that, given some additional investigation, promise to reveal other opportunities to make policies and procedures more family-focused, ultimately leading to better reentry outcomes.

FROM THE PROGRAM DIRECTOR

Families and social networks play important roles for loved ones involved in the criminal justice system. They may, for example, address drug use, help raise children, offer financial support, and encourage loved ones to find and keep jobs—or simply provide motivation to change. Although people who work in corrections, juvenile justice, probation, or parole usually understand this, they typically do not know how to tap families as a resource.

The Vera Institute of Justice's Family Justice Program provides training, tools, and consultation to help correctional, probation, and parole agencies implement family-focused policies and practices. The Family Justice Program offers line staff safe and reliable ways to help incarcerated individuals maintain contact with supportive people in their lives and make constructive plans for their return to the community.

The successful implementation of a family-focused tool like the Relational Inquiry Tool described in this report profits from both guidance and inspiration. Vera's job is to provide the guidance. But the best inspiration comes from those who have benefited from the tool—for example, from the incarcerated woman who told us, "Normally I'm not asked anything about what's going on in my home life, what's going on with me… I'm usually told. It was different to be asked." Or this from a reentry coordinator: "One way the tool really impacted me was the humanization of the offender beyond what a stale file will do.… This tool could very well create a good framework for productive dialogue when trying to find resources and support for the offender."

The more corrections, parole, and probation agencies can replicate the experiences and attitudes of these two individuals, the closer they will be to drawing on the unique, cost-effective, and underutilized resources that families provide.

Margaret diZerega
Family Justice Program Director

Contents

Introduction

Approximately 735,000 people are released from prison in the United States every year.[1] Of these, an estimated 66 percent will be rearrested and more than 50 percent will be re-incarcerated within three years.[2]

Many factors, such as in-prison and community drug treatment, stable housing, and securing and maintaining employment, can contribute to better outcomes for people returning to the community after a period of incarceration.[3] Research shows that family and other sources of social support—such as neighbors and godparents—are key to helping incarcerated people return to the community successfully.[4]

It is not surprising that families help improve reentry outcomes. Research has shown that families are the most frequent provider of housing; the most common source of financial support; offer assistance in securing a job; and frequently help out with child care.[5] Family involvement has been shown to result in better employment outcomes and reductions in use of alcohol and other drugs.[6] Families also play a significant role in keeping formerly incarcerated individuals from returning to criminal activity. Individuals who had more contact with their families while in prison and report positive family relationships overall are less likely to be arrested again or re-incarcerated.[7]

Despite abundant evidence tying positive social support during incarceration to improved reentry outcomes, many correctional case managers do not routinely discuss such support with the people on their caseload. This may be the result of large caseloads, the profession's traditional focus on people who might negatively influence an incarcerated individual, and concerns about maintaining boundaries between staff and those who are incarcerated.

To facilitate productive conversations about incarcerated individuals' positive social supports, the Vera Institute of Justice's Family Justice Program helps agencies implement the Relational Inquiry Tool (RIT) for use by corrections staff who provide incarcerated people with day-to-day case management and help in reentry planning. The RIT is a list of eight carefully crafted questions, supported by a training module, that was developed with support from the National Institute of Corrections and in partnership with state departments of corrections in Massachusetts, Michigan, Ohio, and Oklahoma, and the nonprofit Safer Foundation. As a complement to standard correctional risk and needs assessments, the RIT has been shown to be effective in helping incarcerated people reflect on their social supports and draw on the strengths of their families, leading to better release planning.[8] (In addition, the Family Justice Program is partnering with the Ohio Department of Youth Services to implement a version of the RIT for use with juvenile populations.)

This report provides an overview of the Reentry Is Relational project, which implemented the RIT in two pilot jurisdictions. It also describes findings that emerged from surveys and interviews conducted as part of the pilot process and discusses the initiative's early outcomes.

Project Overview

Vera's Reentry Is Relational project operated from October 2008 to December 2010 and implemented the RIT at select prisons and community corrections offices in Oklahoma and New Mexico. Participating agency staff were trained to use a strength-based and family-focused approach in their work. This included hands-on practice with the RIT and instruction on complementary communication techniques. Prior to the training, work groups at each site identified policies and practices that could be more supportive of prisoners' relationships.[9] Vera staff also gathered information from incarcerated people and their families at each site, to shed additional light on existing practices and the current and potential influence of supportive relationships.

Vera partnered with the Oklahoma Department of Corrections (ODOC) and the New Mexico Corrections Department (NMCD) because of their commitment to family-focused approaches and their top administrators' support for this type of work. It fell to each department, however, to select a prison and a probation and parole office to participate in the project.

Oklahoma has the highest rate of incarcerated women in the country, and the ODOC has a long-standing goal of reducing that rate "to at or below the national average."[10] The Reentry Is Relational project worked with the state's largest women's prison outside of Oklahoma City, the Mabel Bassett Correctional Center, and with the Central District Probation and Parole Office in Oklahoma City.

In 2008, New Mexico's then-governor, Bill Richardson, assembled a task force on prison reform that called for strengthening partnerships between corrections and community corrections, involving families and social networks in reentry planning, and providing community-based services to people returning from prison and for their families. Through the Reentry Is Relational project, Vera helped the NMCD implement some of those recommendations at the Central New Mexico Correctional Facility (CNMCF), a men's prison in Los Lunas, and at an Albuquerque-area probation and parole office.

In both Oklahoma and New Mexico, Vera's goal was to improve reentry outcomes by enhancing case management practices and promoting collaboration between prison staff and probation and parole officers.

THE RELATIONAL INQUIRY TOOL: SAMPLE QUESTIONS

The Relational Inquiry Tool uses questions like these to prompt corrections case managers and incarcerated individuals to have conversations that might not happen otherwise:

"In thinking about your family support when you get out of prison, what are you most excited about?"

"In thinking about your family support when you get out of prison, what do you think the greatest challenges will be?"

"How did you help your family and friends before you came to prison?"

Gauging Policies and Attitudes

Before implementing the RIT, Vera staff gathered information about the types of family and community resources and support available to incarcerated men and women and the ways people draw on them. They also examined the degree to which the facilities' policies and practices helped or hindered individuals in maintaining contact with their loved ones.

Project staff met with work groups at both facilities to learn about relevant current practices. To understand the views and experiences of people who would be affected by the pilot, Vera staff interviewed a total of 98 incarcerated men and women from both facilities who expected to be released within six months. Seventy-eight of these people were interviewed before the RIT was implemented. The remaining 20 interviews occurred after the pilot was complete.

Vera staff also conducted a survey of incarcerated men at the CNMCF, in New Mexico, and women at Oklahoma's Mabel Bassett Correctional Center (n = 267). This includes 122 men (21.3 percent) out of CNMCF's minimum- and medium-security population of 574. At Mabel Bassett, 145 women (14.1 percent of the total population of 1,032) were surveyed.

It bears noting that the women had spent significantly more time in prison than the men had. For men, the average time spent in prison prior to completing the survey was 7.0 months. Among those in Level I the average was 6.9 months; among those in Level II it was 5.9 months. The women who completed surveys in Oklahoma had an average time served of 48.7 months. (In Oklahoma, the average sentence for women in minimum security is 9 years; women in medium security average 14-year sentences.)

Figure 1, below, provides detailed demographic information about the incarcerated men and women who completed this survey.

Finally, to gather input from family members, project staff distributed

Figure 1: Demographic Information of Survey Participants (n=267) and Facility Populations

	WOMEN			MEN		
	Mabel Bassett Minimum and Medium Security* (n = 1,032)	Vera's Sample (n = 145)		CNMCF Level I and II: Minimum and Medium Security (n = 574)	Vera's Sample (n=122)	
AGES						
18-23	17.6%	16	11%	4.2%	5	4.1%
24-29	19.4%	32	22.1%	14.3%	21	17.2%
30-34	17.6%	29	20%	17.8%	25	20.5%
35-39	12.4%	20	13.8%	13.1%	17	13.9%
40-44	11.2%	11	7.6%	12.7%	14	11.5%
45-49	10.5%	13	9.0%	18.6%	16	13.1%
50+	11.2%	19	13.1%	19.3%	20	16.4%
No answer		5	3.4%	0	4	3.3%
RACE/ETHNICITY						
African American	25.1%	20	14%	7.5%	5	4%
White	55.8%	70	50%	27.7%	35	29%
Latino/Hispanic	5.1%	11	8%	53.1%	65	53%
Native American	13.6%	34	24%	11.1%	13	11%
Other	0.4%	4	4%	0.5%	2	2%
No answer		6	4%	0	2	2%

* Note: Age breakdowns provided by Mabel Bassett Correctional Center were <= 20, 21 to 25, 26 to 30, 31 to 35, 36 to 40, 41 to 45, 46 to 50, 51 to 55, and s>= 56.

another survey during weekend visitation at both facilities (n=60) and conducted phone interviews with supportive family members identified by the incarcerated men and women (n=23).

Of the 267 incarcerated people surveyed, 205 reported having children—113 (77.9 percent) women and 92 (75.4 percent) men. More than 320 of the participants' children were younger than age 18.

Major Findings

Four main findings emerged from the research portion of this project:

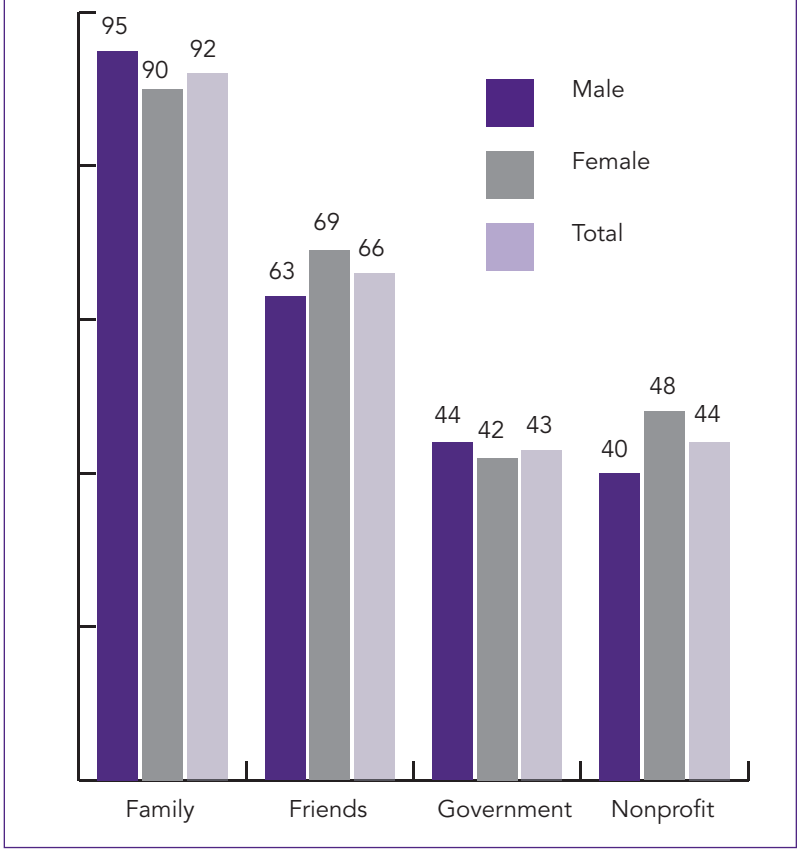
- In anticipating their needs upon release, incarcerated men and women expected to rely on families, and then friends, as the most important sources of support.
- Visitation rates fluctuated in frequency, but incarcerated individuals' contact with loved ones by telephone or letters was fairly consistent throughout a person's sentence.
- Maintaining contact with an incarcerated loved one presented family members with considerable financial burdens and other challenges.
- Forty-two percent of the incarcerated men and women reported that some of their relationships—particularly with their parents—grew stronger during their incarceration.

These findings are discussed below.

SOURCES OF SUPPORT FOR INCARCERATED MEN AND WOMEN

As Figure 2, right, illustrates, nearly 92 percent of all incarcerated individuals surveyed expected to rely on their families for housing, child care, financial support, and/or finding employment after release from prison. This finding is consistent with other research about the ways family members provide support for their loved ones leaving prison.[11] Friends were cited as the second-most common source of support (66 percent of respondents).

Figure 2: Expected Sources of Support After Release from Prison (n= 267)[12]



In addition, incarcerated men and women described several other types of support they receive from their families and friends. These include:

> depositing money in commissary accounts;

> providing emotional support;

> taking care of children and/or bringing children for visits;

> providing guidance and advice as participants prepare for release;

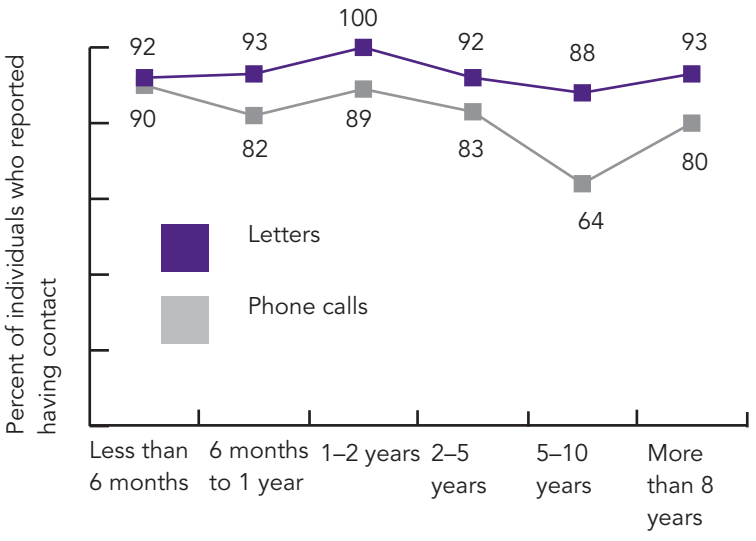
> motivating participants to do well; and

> providing care for family members in poor health or in financial need.

CONTACT WITH FAMILY AND OTHER SUPPORTIVE PEOPLE DURING INCARCERATION

Incarcerated individuals listed visitation, letters, and telephone calls as the most common forms of support they receive from their family during incarceration. Visiting family members surveyed by Vera staff also indicated that they contacted the incarcerated person through visits, phone calls, and letters. Seventy-six percent of surveyed family members stated that they maintain weekly contact with the incarcerated person. There was, however, some variation in contact, as discussed below.

Figure 3: Phone and Letter Contact with Family and Friends (n=267)



CONTACT BY TELEPHONE AND MAIL.

The survey of incarcerated men and women asked about the people with whom they have contact and how many they communicate with via telephone or letters. They were asked about contact with their parents, grandparents, siblings, extended family (such as aunts or cousins), significant others, children, and friends. Approximately 80 percent of incarcerated individuals reported that they maintain contact by phone or letter, regardless of their length of stay. Figure 3, left, shows that incarcerated people's reported contact with loved ones by phone or letters remained fairly consistent throughout their sentence.

OBSTACLES TO VISITATION AND OTHER FORMS OF CONTACT.

Incarcerated men and women alike indicated that it was impor-

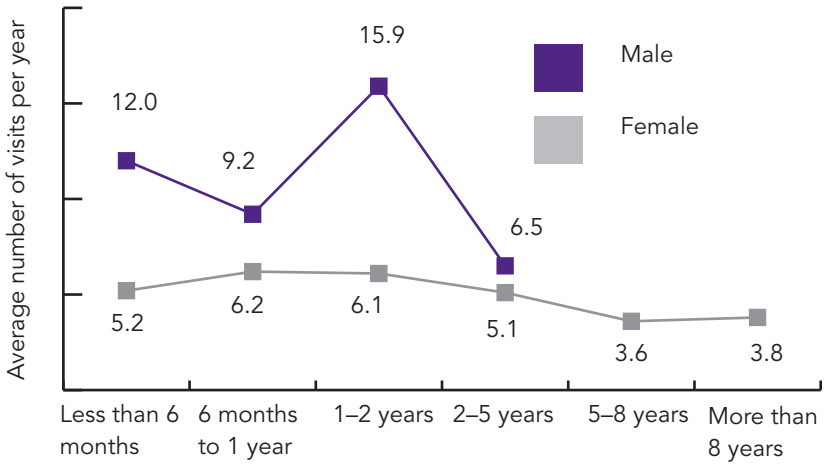
tant to them to see family members and expressed a desire for more contact. Their reported rates of visitation were less constant, however, than rates of contact by telephone or mail. Seventy-three (27 percent) of the incarcerated people surveyed indicated that they had not had any visits during their incarceration. Of these, 55 percent mentioned distance as the main reason. Among those who indicated that family members had visited them, 25 percent mentioned distance as the reason that they are not visited more often.

Incarcerated women reported different experiences with visits than incarcerated men did, as Figure 4, below, shows. Women received fewer visits during their first months in prison. This may be partly because of different visitation policies in the states where Vera worked. The New Mexico Corrections Department permits only relatives to visit while people are incarcerated at the Reception and Diagnostic Center (where they typically spend the first 30 days of their incarceration). Oklahoma does not permit visitation during the initial assessment period (also typically 30 days). In both states, non-relatives, including significant others, may submit a visitation application after a person moves to a longer-term prison.

Seventy-six percent of surveyed family members reported significant barriers to maintaining contact. Supportive family members Vera interviewed by telephone described similar challenges. Of these, the cost of calling cards, expensive collect calls, and access to transportation to and from the facility were the most commonly cited barriers. Other barriers mentioned include family responsibilities and work obligations. Many family members also indicated that prison rules and practices—including searches, long waits, and inconsistent interpretations of dress codes for visitors—can be unclear, unpleasant, too restrictive, and even keep people from visiting again.

It was also stated that incarceration of a loved one results in an emotional

Figure 4: Average Rates of Visitation (n=267)[13]



and financial gap, as family members may not get to see the person and may lose a source of income. This finding is consistent with research suggesting that family members experience the incarceration of a loved one as a loss and often assume additional responsibilities to fulfill the role of the absent person.[14]

SOME RELATIONSHIPS STRENGTHENED DURING INCARCERATION

The surveys of incarcerated men and women showed that 42 percent reported growing closer to some of their loved ones while in prison. Relationships with parents were most likely to have improved during incarceration: 53 percent of respondents who reported growing closer to someone said they grew closer to their mother; 49 percent grew closer to their father. Romantic relationships and friendships appear to follow different patterns during incarceration: 45 percent of respondents said they grew apart from their significant others and 50 percent reported growing apart from their friends.

Additional Findings

In addition to the findings described above, the research uncovered other findings that, with more study, could have implications for corrections practice.

Vera found, for example, a direct relationship between the time spent in prison and the openness of communication between incarcerated individuals and staff. The longer people stay in prison, the more comfortable they report feeling about discussing their families and other personal information with facility staff.

The research also showed another notable difference when comparing the men and women who participated in the interviews and surveys, although the responses came from women in one state and men in another. Figure 5, below, shows that a greater percentage of women report that they expect to look for formal sources of support, such as government or community-based organizations, to meet their needs.

Figure 5: Expected Sources of Support for Incarcerated Women and Men After Release from Prison (n=267)

	Women (n=145)				Men (n=122)			
	Family	Friends	Government	Nonprofit	Family	Friends	Government	Nonprofit
Housing	78.8%	45.3%	21.2%	28.5%	87.50%	33.6%	13.0%	16.2%
Finding Job	69.7%	45.8%	26.0%	38.2%	81.50%	50.0%	17.8%	25.9%
Child Care	67.7%	36.9%	21.5%	22.1%	89.8%	34.5%	15.5%	12.9%
Financial Support	76.9%	45.6%	26.4%	23.3%	86.1%	38.2%	20.6%	15.7%
Transportation	82.3%	41.5%	13.1%	21.5%	87.5%	40.0%	14.7%	10.5%
Job Training Programs	60.7%	36.4%	29.7%	37.3%	62.8%	32.3%	45.7%	31.2%
Motivation	87.3%	61.9%	7.5%	26.1%	96.1%	57.4%	5.9%	23.5%

Although additional study of these findings would be useful, they suggest that practitioners may want to consider building rapport with incarcerated individuals earlier in their sentence. (Doing so could also create additional opportunities for using the RIT in jail settings, for example, or with people serving shorter prison sentences than were served by men and women in Vera's samples.) Also, using the tool with men in Oklahoma for comparison might explain why women plan to seek help from nonprofit and government agencies more than men in the New Mexico sample do. If it holds true that women more often rely on people outside their social network for housing, practitioners may want to respond accordingly—by expanding transitional housing opportunities in counties where large numbers of women reside immediately after leaving prison.

Early Results from Implementation of the Relational Inquiry Tool

As a result of the Reentry Is Relational project, case managers in Oklahoma and classification officers in New Mexico (whose responsibilities are similar) now administer the RIT three to six months before a prisoner's anticipated release. Responses from the 20 incarcerated people interviewed after completing the RIT suggested that inquiries about family support can lead incarcerated individuals to think more about their reentry plans, contact positive sources of support, and discuss negative influences in their lives.

Eleven out of 20 participants stated that completing the RIT with prison staff motivated them to reach out to positive sources of support. Some also mentioned that going through the RIT process made them reconsider their reentry plans and motivated them to look for support from people who would increase their chances of success after release.

Below are some sample responses from the follow-up interviews that suggest the RIT can help incarcerated men and women think more critically about their reentry plans:

> "I know I can't go and live with my sister now. That will not be good for me. So maybe I will go to Exodus House."

> "Before I didn't care. I didn't have a plan. Now I am making plans for the future. I realize that this is serious and I can't go back to the stuff that got me in trouble."

> "It has furthered my vision of a successful reentry, knowing that I would have a safety net. I have someone that is there for me. I

want to have my own business and help other people."

> "My mother's side of the family is more positive. My dad's side of the family is always in trouble. I should reach out to my mother's side of the family. I have always sold drugs—that's the only life I know.... I want to get ahold of my mom, but I can't. I am so afraid that she will reject me but I need to make it happen. I have pushed my family away and I can't keep doing that."

Developments in the Pilot States

In addition to implementing the Relational Inquiry Tool, the state corrections departments in New Mexico and Oklahoma have taken other steps toward adopting family-focused approaches in facilities, probation, and parole.

CHANGES IN NEW MEXICO

The Central New Mexico Correctional Facility has implemented a number of concrete changes that reflect a focus on family and social support. During an initial meeting about the RIT, work-group members identified the need for a guide for families of incarcerated people. The New Mexico Corrections Department subsequently published "A Guide for Families and Friends of Justice-Involved New Mexicans," which is also featured on its website. The NMCD plans to distribute the guide in courthouses, jails, and elsewhere, so that families can learn about what to expect when their loved one becomes involved with the criminal justice system.

Work-group members also established a goal of incorporating families in reentry committee meetings, a process that takes place before individuals go before the parole board. At these meetings, various facility staff members make recommendations to people about services they may need after their release. By participating in those conversations, families can help plan for some services while contributing to a loved one's post-release plan.

In 2010 NMCD received an AmeriCorps award to engage volunteers in a year of service with its Education Bureau. After completing training on departmental policies and the tools of the Family Justice Program, AmeriCorps members will supplement the case management and programming available in a number of the state's prisons. The NMCD plans to have these volunteers use the RIT and other tools to help prisoners identify sources of social support.

CHANGES IN OKLAHOMA

Since 2008, the Oklahoma Department of Corrections has implemented the Relational Inquiry Tool at various levels within its system. Incarcerated women first encounter the RIT at Mabel Bassett Correctional Center. The tool is revisited twice more: at the community corrections centers and when women are under community supervision. Using the tool more than once provides people

the opportunity to assess any changes in their plans, medical needs, families, and potential housing, and other developments. Consistently emphasizing women's social supports also encourages them to stay in contact with their families.

To underscore the ODOC's emphasis on family and other social supports, work-group members developed a guidebook for visitors called "Guide for Families/Friends of Offenders." The ODOC has made improvements to the visiting area at Mabel Bassett Correctional Center to accommodate large group visits, and made the waiting room of the Central District Probation and Parole Office more welcoming to families.

Conclusion

The successful implementation of new tools and methods in corrections often requires support at the highest level of the organization, as well as from prison staff who are being asked to change how they work.[15] The long-term sustainability of the Reentry Is Relational project, and others like it, depends on how closely aligned the change effort is with the department's and the facility's culture. By documenting current practices and opportunities to make procedures more family-focused, and demonstrating the receptivity of incarcerated people and their families to this approach, the Reentry Is Relational project has helped create conditions that can benefit staff and families.

It bears noting that this pilot was conducted in uncertain times. Both Oklahoma and New Mexico's future leadership was in question while the Relational Inquiry Tool was first being implemented, with gubernatorial races under way in both states. Also, substantial budget cuts had recently been made. In Oklahoma, for example, decreases in drug treatment and staffing (and, as a consequence, visitation) were taking effect as the RIT was becoming a regular part of practice at Mabel Bassett Correctional Center.

Difficult times, however, need not prevent an agency from using a family-focused approach. In fact, when leadership is in flux or resources become scarce, it is arguably even more important to help incarcerated individuals draw on family and friends. Such support—unlike new programs, facilities, or staffing—requires no additional spending, and family members can continue to play a role in a person's life long after corrections agencies are out of the picture.

Both of Vera's partners have made substantial progress toward meeting the main goal of the Reentry Is Relational project. Changes in policy and practice and responses to interviews indicate that the prison, parole, and probation staff involved in this initiative have adopted—and will continue to pursue—a more family-focused approach that can have positive effects on incarcerated people's lives after their release.

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9 The work groups included a cross-section of staff from the prison and parole office. Participants ranged from case managers to parole officers and worked in both operations and programs.

10 Oklahoma Department of Corrections, Division of Female Offender Operations (2009). *Fiscal Year 2009 Annual Report*.

11 Martinez and Christian, 2009.

12 This figure represents information gathered from the survey with incarcerated individuals at ODOC and NMCD. Survey respondents completed a table that included the question, "In thinking about when you get out of prison, who do you think will support you in the following areas: finding employment, securing housing, child care, financial support, transportation, finding job training, and motivating you to do well?"

13 Survey participants were asked how long they had been at the prison and how often someone visited them. Respondents checked a box that best described how often they received visits. Possible options to check were never, less than once a year, once a year, two to three times a year, once a month, twice a month, or every week. The number of respondents in the >10-year category was low, but all reported frequent visits.

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Edited by Jules Verdone

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For more information about the Family Justice Program, contact the program's director, Margaret diZerega, at mdizerega@vera.org.

The Vera Institute of Justice is an independent nonprofit organization that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

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VERA INSTITUTE OF JUSTICE

Fact Card

March 31, 2017

Facts about Offenders in Confinement

Number of Prison Facilities		12
Number of Work Releases Facilities		14
Total Offenders in Confinement		19,243
Offenders in prison	87.5%	16,844
Offenders in work release	3.5%	683
Offenders in out-of-state rented beds	0.0%	0
Offenders in in-state rented prison beds	0.1%	25
Offenders in in-state rented beds	8.8%	1,691
Prison and Work Release Operational Capacity		17,454
Total operational capacity in prisons		16,700
Operational capacity in work release capacity		679
In-state rented prison bed capacity		75
Percent of Population to Operational Capacity		
Total Prison Confinement Percent of Operational Capacity		100.6%
Work Release Percent of Capacity		100.6%
Gender		
Male		92.0%
Female		8.0%
Race		
White		71.0%
Black		18.5%
American Indian/Alaska Native		4.8%
Asian/Pacific Islander		4.0%
Other		0.9%
Unknown		0.8%
Hispanic Origin		13.3%
Average Age		38.6
Length of Sentence		
Less than Two Years		15.3%
Two to Five Years		24.1%
Five to Ten Years		20.5%
Over Ten Years		24.4%
Life with the possibility of Parole or Release		12.1%
Life without Release		3.6%

Facts about Offenders in Confinement, cont.

Offense Types	
Murder 1 and 2	13.9%
Manslaughter	2.2%
Sex Crimes	19.7%
Robbery	9.2%
Assault	25.7%
Property Crimes	17.6%
Drug Crimes	7.5%
Other/Unknown	4.2%
Avg. Length of Stay for Offenders Released in the past year	23.7 mo
Return to Institutions for 2013 Releases (Three-Year Period)	31.4%

Facts about Offenders Supervised in the Community

Number of Offenders on Active Supervision		18,029
Risk Level Classification (Offender Risk to Reoffend)		
High Violent (HV)	42.4%	7,636
High Non-Violent (HNV)	27.2%	4,908
Moderate Risk to Reoffend (MOD)	13.6%	2,460
Low Risk to Reoffend (LOW)	16.0%	2,888
Unclassified	0.8%	137
Special Sentence Types		
Drug Offender Sentencing Alternative		2,304
Special Sex Offender Sentencing Alternative		659
First Time Offender Waiver		1,493
Family Offender Sentencing Alternative		35
From-Out-of-State		1,926
Offense Types		
Murder 1 and 2		1.1%
Manslaughter		0.7%
Sex Crimes		17.7%
Robbery		4.5%
Assault		22.2%
Property Crimes		16.7%
Drug Crimes		31.4%
Other/Unknown		5.8%
Offender Location Prior to Supervision		
Offenders who served time in prison prior to supervision		43.7%
Offenders who came directly from jail or the courts		56.3%

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QUORUM

MERF EHMAN & ANNA REOSTI

TENANT SCREENING IN AN ERA OF MASS INCARCERATION: A CRIMINAL RECORD IS NO CRYSTAL BALL

March 3, 2015

Abstract: This article focuses on Washington landlord liability in the tenant screening context and increasing housing access for rental applicants with criminal records. Part I examines the concept of foreseeability as it pertains to potential landlord liability for renting to an applicant with a criminal record whose actions harm another tenant. Part II surveys the relevant sociological research on the relationship between a criminal record and the ability to meet the obligations of tenancy. Based upon this review, we conclude that there is no empirical evidence establishing a relationship between a criminal record and an unsuccessful tenancy. Part III posits that since research demonstrates that a criminal record is not a reliable indicator for future tenant behavior, it should not serve as a proxy to determine future tenant dangerousness. Washington landlords should not be liable for future harm to tenants based solely upon renting to an applicant with a criminal record. Refusing to hold landlords liable in this way, would increase housing opportunities for this population which in turn will reduce recidivism thereby increasing public safety and promoting the rehabilitation of people with a criminal history.

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TENANT SCREENING IN AN ERA OF MASS INCARCERATION: A CRIMINAL RECORD IS NO CRYSTAL BALL

Merf Ehman & Anna Reosti

INTRODUCTION

Here in prison I understand that my name comes with a number and I am paying for my poor choices, but at the end of my time am I not paid in full? I lose the number and gain a box marked felon. I leave here in a year and I am told unless I know a private landlord who's willing to rent to me that it will be next to impossible to rent.[1]

The writer is not alone; her fear is real.[2] Every year the Washington Department of Corrections releases seven to eight thousand prisoners and even more cycle through county jails.[3] Estimates are that one in four, or approximately 65 million, people in the United States have a criminal record.[4] Upon release, many cannot obtain rental housing because of the stigma of a criminal record.[5] The ex-

[1] Letter from prisoner at Wash. Corr. Ctr. for Women to author (June 4, 2013) (on file with author).

[2] *See* Journey v. State, 895 P.2d 955, 959 (1995) ("Courts, commentators, and legislatures have recognized that a person with a criminal record is often burdened by social stigma, subjected to additional investigation, prejudiced in future criminal proceedings, and discriminated against by prospective employers.") (footnotes omitted).

[3] WASH. DEP'T OF CORRS., NUMBER OF PRISON RELEASES BY COUNTY OF RELEASE (2013), http://www.doc.wa.gov/aboutdoc/docs/msPrisonReleases.pdf.

[4] MICHELLE NATIVIDAD RODRIGUEZ & MAURICE EMSELLEM, NAT'L EMP'T LAW PROJECT, 65 MILLION "NEED NOT APPLY": THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT 3 (2011), *available at* http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1.

[5] HOUS. LINK, TENANT SCREENING AGENCIES IN THE TWIN CITIES: AN OVERVIEW OF TENANT SCREENING PRACTICES AND THEIR IMPACT ON RENTERS 40 (2004), *available at* http://www.housinglink.org/Files/Tenant_Screening.pdf ("[T]he increasingly popular use of tenant screening reports has resulted in a new class of people who are unable to access rental housing be-

perience of incarceration and the stigmatizing effect of a criminal record erect formidable barriers to accessing safe, affordable housing.[6] Many landlords routinely refuse to rent to applicants with a criminal record based upon a belief that a criminal record is a reliable indicator of a tenant's inability to meet rental obligations.[7] Tenant screening websites reinforce this belief through dire warnings about potential lawsuits and damage awards against landlords who rent to an applicant with a criminal record who may later harm another tenant.[8]

As detailed in this article, the notion that individuals with criminal conviction histories pose a future threat to people or property may seem superficially persuasive, but past criminal history is not predictive of future criminal activity. Moreover, landlord policies that ban admittance to applicants with a criminal history may violate fair housing law by negatively and disproportionately impacting

cause of past credit problems, evictions, poor rental histories or criminal backgrounds."); John Wildermuth, *Ex-offenders Compete for Low-Income Housing*, S.F. GATE (Feb. 17, 2013, 9:01 PM), http://www.sfgate.com/bayarea/article/Ex-offenders-compete-for-low-income-housing-4286606.php (reporting that nearly fifty percent of San Francisco prisoners who recently have been released under a statewide prison realignment effort are without permanent housing).

[6] *See* MARTA NELSON ET AL., VERA INST., THE FIRST MONTH OUT: POST-INCARCERATION EXPERIENCES IN NEW YORK CITY (1999); CATERINA GOUVIS ROMAN & JEREMY TRAVIS, URBAN INST., TAKING STOCK: HOUSING, HOMELESSNESS, AND PRISONER REENTRY 31 (2004), *available at* http://www.urban.org/UploadedPDF/411096_taking_stock.pdf; Amanda Geller & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40 SOC. SCI. RES. 1196, 1198 (2011); *cf.* KATHARINE BRADLEY ET AL., CMTY. RES. FOR JUSTICE, NO PLACE LIKE HOME: HOUSING AND THE EX-PRISONER 9 (2001), *available at* http://b.3cdn.net/crjustice/a5b5d8fa98ed957505_hqm6b5qp2.pdf (describing the difficulties that convicted criminals face finding housing following release from prison).

[7] *See* Marie Claire Tran-Leung, *Beyond Fear and Myth: Using the Disparate Impact Theory Under the Fair Housing Act to Challenge Housing Barriers Against People with Criminal Records*, 45 CLEARINGHOUSE REV. 4, 6 (2011) (citing David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, 33 L. & SOC. INQUIRY 5, 12 (2008)) ("In 2005 four out of five members of the National Multi-Housing Council engaged in criminal records screening.").

[8] *See* Heidi Lee Cain, *Housing Our Criminals: Finding Housing for the Ex-Offender in the Twenty-First Century*, 33 GOLDEN GATE U. L. REV. 131, 149–50 (2003) (citing Shelley Ross Saxer, *Am I My Brother's Keeper?: Requiring Landowner Disclosure of the Presence of Sex Offenders and Other Criminal Activity*, 80 NEB. L. REV. 522, 561–69 (2001)) (observing that a private landlord may be fearful of the possibility that he might be held liable for criminal acts committed by his tenants); *FAQ – Landlord Responsibilities: Criminal Activities*, FINDLAW, http://realestate.findlaw.com/landlord-tenant-law/faq-landlord-responsibilities-criminal-activities.html ("In increasing numbers, landlords are being brought to court by tenants that have been injured by criminals while in their rental properties. Settlements from these cases often reach into the millions of dollars, especially when a similar assault or crime occurred on the same rental property in the past."); Paul Prudente, *Background Check Quality & Landlord Liability*, MY SCREENING REPORT BLOG (Nov. 4, 2011, 1:28 PM), http://www.myscreeningreport.com/blog/archive/2011/11/04/negligent-leasing-theory-tenant-screening.aspx ("[A]n injured party (employee, another resident or others) may bring an action against a landlord arguing that the landlord failed to exercise sufficient care in conducting background checks on prospective tenants.").

black or Latino men.[9] These restrictive policies "create a racial caste system"[10] with no evidence that they achieve any safety goals.[11] In fact, sociological research suggests that criminal history does not provide reliable information about the potential for housing success.[12] Similarly, research shows that stable housing reduces the incidence of future criminal activity.[13] This research should inform the way courts consider negligence claims against landlords based upon harm caused by a tenant who had a criminal record. Under current negligence standards, an actor is only responsible for harm he could reasonably have foreseen and prevented. Based upon social science research, a criminal record cannot reliably indicate the risk of future problematic tenant behavior.[14] Therefore, the presence of a criminal record does not equal foreseeability of harm and should not by itself lead to liability.

Washington needs a rational research-based tort law standard that clearly sets out the boundaries of landlord liability for the criminal acts of third parties that harm tenants. A landlord should be liable only if he or she fails to maintain a habitable and secure premises that results in reasonably foreseeable harm to tenants by third-party criminal acts. A criminal record should not be considered evidence of a foreseeable risk of dangerousness or harm that creates landlord liability. We propose that future harm to tenants by an applicant with a criminal record should be unforeseeable as a matter of law. As shown in detail below, a landlord should not be held liable solely upon renting to an applicant with a criminal record. The need for tenant safety and the societal goals of reduced recidivism, public safety and fairness can be met by adopting this standard.

This article focuses on Washington tort law and landlord liability. Part I examines the concept of foreseeability as it pertains to potential landlord liability for renting to an applicant with a criminal record whose actions harm another tenant. Part II surveys the relevant sociological research on the relationship between a criminal record and the ability to meet the obligations of tenancy. Based upon this review, we conclude that there is no empirical evidence establishing a relationship between a criminal record and an unsuccessful tenancy. Part III posits that since research demonstrates that a criminal record is not a reliable indicator for future tenant behavior, it should not serve as a proxy to determine future

[9] *See* Mireya Navarro, *Lawsuit Says Rental Complex in Queens Excludes Ex-Offenders*, N.Y. TIMES, Oct. 30, 2014, at A25, *available at* http://www.nytimes.com/2014/10/31/nyregion/lawsuit-says-rental-complex-in-queens-excludes-ex-offenders.html?_r=0 (describing a lawsuit alleging that a landlord's policy of rejecting applicants with criminal histories violates fair housing laws due to the policy's disproportionate impact on black and Latino men); *infra* note 145.

[10] *Id*.

[11] *See infra* Part II.

[12] *Id*.

[13] *Id*.

[14] *Id*.

tenant dangerousness. Washington landlords should not be liable for future harm to tenants based solely upon renting to an applicant with a criminal record. Refusing to hold landlords liable in this way would increase housing opportunities for this population. Once housed, it is likely that the person's chances for recidivism will decrease, thereby increasing public safety and promoting the rehabilitation of people with a criminal history.[15]

I. CURRENT STATE OF THE LAW: NO LANDLORD LIABILITY FOR CRIMINAL ACTS OF THIRD PARTIES WITHOUT FORESEEABILITY

> *One morning while showering, Ms. Griffin heard a loud noise in her apartment. She found dirt and debris on her floor near the closet and in it. She saw that the board covering the crawl space above was askew. She immediately went to her property manager's office to report her observations. The property manager sent out two maintenance men who then screwed a two-by- four across the much larger opening of the crawl space. Two weeks later, she was attacked by her next door neighbor after he entered her apartment through that same crawl space. She filed suit against her landlord and the assailant. The jury found the landlord's attempted repair negligent, but awarded Ms. Griffin no monetary damages from the landlord*.[16]

These facts are from the only Washington case that has analyzed liability for the criminal acts of third parties in the landlord-tenant context. This Section first reviews current negligence law to understand whether the above landlord should be liable for the injuries the tenant sustained in the attack and then considers whether negligence liability should attach if her attacker had a criminal record that her landlord knew about when she rented him the apartment.

A. A landlord is not the insurer of a tenant's safety, but might have a duty to protect tenants from foreseeable harm

To establish negligence under Washington law, "the plaintiff must prove duty, breach, causation, and damages."[17] The legal analysis of a tenant's negligence claim for harm resulting from the criminal act of a third party centers on whether a landlord has a duty to protect tenants and the scope of that duty.[18] Prior

[15] *Id*.

[16] *See* Griffin v. W. RS, Inc., 984 P.2d 1070, 1072 (Wash. Ct. App. 1999), *rev'd*, 18 P.3d 558 (Wash. 2001).

[17] *See* Nivens v. 7-11 Hoagy's Corner, 943 P.2d 286, 289 (Wash. 1997).

[18] *Griffin*, 984 P.2d at 1073 (noting that, as a threshold matter, the court had to determine whether landlords owe heightened duties of care to their tenants in order to resolve the case at bar).

to 1970, the above tenant's claim would fail, as historically a landlord had no duty to protect tenants from injuries caused by the criminal acts of third parties.[19] However, this principle began to erode as the nature of the landlord-tenant relationship evolved from simply leasing a piece of land to renting a dwelling unit with complicated infrastructures such as heating, lighting, and plumbing that could only be maintained by the landlord.[20] By the 1970s, many states, including Washington, required landlords to adequately maintain these systems and keep the rental premises fit for human habitation.[21]

Once this duty to maintain the rental premises was established, courts began to hold landlords liable for the criminal acts of third parties in cases where landlords failed to maintain the physical premises and that failure facilitated the commission of a crime that injured a tenant.[22] For example, in a New Jersey case, a landlord failed to provide adequate locks on the front door to the building which resulted in a mugger entering the building and attacking a tenant.[23] The court found that the landlord breached his duty by failing to secure the building's front entrance.[24] The court held the landlord liable for the tenant's injuries be-

[19] *See Nivens*, 943 P.2d at 290 n.3, 292 (noting that landowners who invited others onto premises had a duty to protect these persons from foreseeable criminal acts of third persons based on a special relationship, but observing that this duty had been applied narrowly because courts had found only rarely that criminal acts were foreseeable); 17 WILLIAM STOEBUCK & JOHN WEAVER, WASH. PRACTICE, REAL ESTATE: PROPERTY LAW § 6.36 (2d ed. 2004) (Washington landlord was traditionally not liable to a tenant for injuries due to defective conditions on the premises); Corey Mostafa, Note, *The Implied Warranty of Habitability, Foreseeability, and Landlord Liability For Third-Party Criminal Acts Against Tenants*, 54 UCLA L. REV. 971, 974–75 (2007). However, all courts have rejected claims of strict liability in this and similar contexts. *See* Peterson v. Superior Court, 899 P.2d 905, 909–911 (Cal. 1995) (overturning previous ruling that landlords were strictly liable based upon the rule, adopted in the majority of other states to have considered the issue, that landlords are not strictly liable for to tenants caused by defective conditions of premises); Lincoln v. Farnkoff, 613 P.2d 1212, 1213 (Wash. Ct. App. 1980), *abrogated on other grounds by* Dexheimer v. CDS, Inc., 17 P.3d 641 (Wash. Ct. App. 2001) (concluding landlord not strictly liable for harm caused by a defect on his premises).

[20] *See* Kline v. 1500 Mass. Ave. Apt. Corp., 439 F.2d 477 (D.C. Cir. 1970); Mostafa, *supra* note 19, at 975.

[21] *See* Foisy v. Wyman, 515 P.2d 160, 164 (Wash. 1973) (en banc) ("[I]n all contracts for the renting of premises, oral or written, there is an implied warranty of habitability . . . ."). The term "warranty of habitability" means that "the tenant's promise to pay rent is in exchange for the landlord's promise to provide a livable dwelling." *Id*. at 164; WASH. REV. CODE ANN. § 59.18.060 (LexisNexis 2014) (landlord must maintain building's structural components and common areas and make repairs).

[22] *See, e.g.*, *Kline*, 439 F.2d at 481; Rosenbaum v. Sec. Pac. Corp., 50 Cal. Rptr. 2d 917, 921 (Cal. Ct. App. 1996) ("[A] landlord's duty to take reasonable steps to secure common areas of the premises against foreseeable criminal acts of third parties has become well established law in California."); Trentacost v. Brussel, 412 A.2d 436, 440 (N.J. 1980). *See also* 17 STOEBUCK & WEAVER, *supra* note 19, § 6.36.

[23] *See Trentacost*, 412 A.2d at 443 (holding that landlord had breached implied warranty of habitability by not securing front entrance in any way, which led to tenants' injuries by permitting access to the "criminal element.")

[24] *Id*.

cause there was ample evidence that criminal activity affecting the premises was reasonably foreseeable.[25]

Another court ruled that although the landlord is not an "insurer" of the tenant's safety, he has a duty to minimize the risk of harm to tenants from third party criminal attacks. Specifically, where:

> [T]he landlord has notice of repeated criminal assaults and robberies, has notice that these crimes occurred in the portion of the premises exclusively within his control, has every reason to expect like crimes to happen again, and has the exclusive power to take preventive action, it does not seem unfair to place upon the landlord a duty to take those steps which are within his power to minimize the predictable risk to his tenants.[26]

A landlord does not have an absolute duty to ensure a tenant's safety, but may be liable where a criminal attack is the reasonably foreseeable result of the landlord's failure to properly maintain the rental premises. Although no Washington court considering landlord liability for the criminal acts of third parties has based its holding on a violation of a landlord's duty to maintain the premises,[27] other states' courts have done so.[28] Most courts based these decisions on the theory that if a landlord violates his duty to maintain or secure the premises and that failure facilitates the commission of a crime that injures the tenant, then he is liable for those injuries.[29]

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[25] *Id*.

[26] *Kline*, 439 F.2d at 481.

[27] *See* Griffin v. W. RS, Inc., 984 P.2d 1070 (Wash. Ct. App. 1999) (basing landlord's potential liability for tenant's injury on the special relationship between landlord and tenant in a residential setting).

[28] *See, e.g.*, Duncavage v. Allen, 497 N.E.2d 433 (Ill. App. Ct.1986) (holding that a landlord could be liable where he breached duty to maintain areas of the building including lighting and weeds that could hide an intruder); Brichacek v. Hiskey, 401 N.W.2d 44 (Iowa 1987); Ward v. Inishmaan Assocs., 931 A.2d 1235, 1238 (N.H. 2007) (quoting *Walls v. Oxford Mgmt. Co.*, 633 A.2d 103, 106 (N.H. 1993)) ("[A] duty may arise 'when a landlord has created, or is responsible for, a known defective condition on a premises that foreseeably enhance[s] the risk of criminal attack.'"); *Trentacost*, 41 A.2d at 443 (holding that landlord breached implied warranty of habitability by not securing front entrance in any way, thus permitting access to the "criminal element").

[29] *See, e.g.*, *Duncavage*, 497 N.E.2d at 438 ("Illinois law also supports finding that defendant had a duty under the circumstances of this case to protect decedent from criminal acts of third persons."); *Brichacek*, 401 N.W.2d at 48 (holding that landlords can be held liable for criminal attacks on their tenants under some circumstances); *Ward*, 931 A.2d at 1238 (recognizing "four possible exceptions to the general rule that landlords have no duty to protect tenants from criminal attack"); *Trentacost*, 41 A.2d at 443 ("Under modern living conditions, an apartment is clearly not habitable unless it provides a reasonable measure of security from the risk of criminal intrusion."). *See also* 17 STOEBUCK & WEAVER, *supra* note 19, at 346.

Courts will hold landlords liable if the facilitation of a criminal act was the foreseeable result of the landlord's unreasonable failure to perform his duty.[30] Whether the harm to the tenant was reasonably foreseeable is a primary factor in determining liability.[31]

Foreseeability is the frame setting the boundaries of a landlord's liability for the criminal acts of third parties.[32] Many courts will not find a defendant negligent unless the plaintiff establishes foreseeable risk.[33] Courts that impose a duty on landlords to protect tenants from harm limit the scope of that duty to foreseeable harm.[34] Harm is foreseeable only if there is "some probability or likelihood, not a mere possibility, of harm sufficiently serious that ordinary men would take precautions to avoid it."[35] Criminal conduct can be foreseeable where "the result of the [criminal act] is within the ambit of the hazards covered by the duty imposed upon [the] defendant."[36]

But, whether a landlord has a duty to protect tenants from the criminal conduct of third parties and when that criminal conduct is foreseeable is in flux in Washington. The Washington Supreme Court has recognized that business own-

[30] 17 STOEBUCK & WEAVER, *supra* note 19, at 347 (noting that "no post-1970 decision has been found in which the landlord has not been held to be liable for foreseeable criminal injuries caused by an unreasonable failure to perform that duty").

[31] *See* RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL & EMOTIONAL HARM § 3 (2010) ("A person acts negligently if the person does not exercise reasonable care under all the circumstances. Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm."). There is disagreement among tort law scholars about whether foreseeability analysis should be a question of duty, breach, or causation. S*ee* W. Jonathan Cardi, *Purging Foreseeability*, 58 VAND. L. REV. 739 (2005). For purposes of this article, we focus on foreseeability as a part of the analysis of the duty element.

[32] *See* David G. Owen, *Figuring Foreseeability*, 44 WAKE FOREST L. REV. 1277, 1307 (2009) ("No one should doubt that foreseeability is an explicit, central consideration in evaluating whether a person's conduct should be blamed . . . .").

[33] *See* Browning v. Browning, 890 S.W.2d 273 (Ark. 1995); Cunis v. Brennan, 308 N.E.2d 617 (Ill. 1974); Mitchell v. Hadl, 816 S.W.2d 183 (Ky. 1991); Colvin v. A R Cable Servs.-ME, Inc., 697 A.2d 1289 (Me. 1997); Mang v. Eliasson, 458 P.2d 777 (Mont. 1969); Poelstra v. Basin Elec. Power Coop., 545 N.W.2d 823 (S.D. 1996). *See generally* RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL & EMOTIONAL HARM § 3 cmt. g (2010).

[34] *See* McKown v. Simon Prop. Grp., 689 F.3d 1086, 1092 (9th Cir. 2012) (discussing the Washington Supreme Court's conclusion that there is a duty between a business owner and invitees to protect them from reasonably foreseeable criminal conduct by third person); Gurren v. Casperson, 265 P. 472 (Wash. 1928) (holding the innkeeper liable for attack of one guest on another where owner knew of possibility of assault); Griffin v. W. RS, Inc., 984 P.2d 1070, 1077 (Wash. Ct. App. 1999) (recognizing that a residential landlord has a duty to protect its tenant against *foreseeable* criminal acts of third parties).

[35] Thomas v. Hous., 426 P.2d 836, 839 (Wash. 1967) (citing Hammontree v. Edison Bros. Stores, Inc., 270 S.W.2d 117, 126 (Mo. Ct. App. 1954)).

[36] *McKown*, 689 F.3d at 1092.

ers, but not specifically landlords, owe a duty to invitees to protect them from reasonably foreseeable criminal conduct by third persons.[37] However, the scope of that duty is unclear.[38] Four lower courts have limited this duty to circumstances where there is evidence that prior similar criminal conduct[39] occurred on the premises.[40] Under this analysis, third party criminal conduct is not reasonably foreseeable as a matter of law without proof of prior similar acts.[41] The business owner must know or have reason to know from "past experience" or the "place or character of his business" that he should "reasonably anticipate . . . criminal conduct on the part of third persons."[42] In *McKown*, a Washington federal district court found that prior acts were not similar enough because they occurred outside a mall rather than inside it.[43] The acts were "too dissimilar in location" to meet the Washington's "prior similar acts on the premises test."[44] Whether knowledge of prior similar acts off the premises would be sufficient to impose liability on an owner is unclear in Washington. The Ninth Circuit certified this question to the Washington Supreme Court, but, that Court has not yet affirmed or rejected this standard.[45]

Although, the Washington Supreme Court has not analyzed whether a landlord has a duty to protect tenants from the criminal acts of third parties in the

[37] *Id*.

[38] *Id*.

[39] Past criminal conduct can constitute a prior similar act when it is of the same nature as current act. For example, in *McKown*, the court gave McKown an opportunity to present evidence acts similar to the shooting that took place in that case. The court received eighty-six pages of information such as news articles, police reports, and courts records that demonstrated six shootings in the eight years prior. *Id*. at 1089–90. There was also evidence of three incidents involving guns at the mall. *Id*. at 1090. The district court ruled that these incidents were not evidence of prior similar acts because they were too remote in time (five years prior), occurred outside rather than inside the mall, and too dissimilar because the violent acts were directed at a specific person rather than at random people. *Id*. at 1090–91.

[40] *Id*. at 1093 (citing Wilbert v. Metro Park Dist., 950 P.2d 522 (Wash. Ct. App. 1998)).

[41] *Id*.

[42] *Id*. at 1092 (citing RESTATEMENT (SECOND) OF TORTS § 344 cmt. f (1965)).

[43] *Id*. at 1091.

[44] *Id*. at 1089–91.

[45] *Id*. The Washington Supreme Court accepted a certified question from the Ninth Circuit in *McKown* on whether prior similar acts are a necessary element to establish the foreseeability of third-party criminal conduct, and heard oral argument on February 21, 2013. *See Supreme Court Docket, Winter 2013*, WASHINGTON COURTS, *available at* http://www.courts.wa.gov/appellate_trial_courts/supreme/calendar/?fa=atc_supreme_calendar.display&year=2013&file=docwin13#A12 (last visited Feb. 17, 2015). As of February 9, 2015, the court has not issued an opinion. The Second Restatement's standard is: "A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it." RESTATEMENT (SECOND) OF TORTS § 344 (1965).

landlord-tenant context, one Washington court of appeals has done so.[46] The next section takes an in-depth look at the seminal Washington case on this issue regarding a landlord's duty—*Griffin v. West.*

B. No definitive tort standard established for Washington landlord liability for criminal acts of third parties

There is a movement in many courts around the country to erode the common law edict that a landlord owed no duty to protect tenants from the foreseeable criminal acts of third parties. It remains to be seen whether Washington courts will follow this trend. Thus far, no Washington court has definitively determined a landlord's duty in this context. However, *Griffin* and *Faulkner* give some indication that if a duty to protect tenants from the criminal acts of third parties exists in Washington, the scope of that duty—as in other states that have addressed the issue[47]—would be limited to only foreseeable criminal acts arising from a failure to secure or maintain the physical premises.[48] A discussion of the case law demonstrating the lack of a current tort law standard on this issue is set out below.

In *Griffin v. West*, a Washington jury held a landlord liable for the criminal acts of a third party based on the facts set out at the beginning of this Section. These facts are egregious—Ms. Griffin immediately reported to her landlord her suspicions regarding a possible intruder, the landlord failed to properly secure the crawl space entrance, and she was injured shortly thereafter by an attacker entering through that space.[49] The jury found that the corporation that owned Ms. Griffin's building failed in its duty to properly repair the premises and was negligent.[50] Yet, the jury decided that the landlord owed Ms. Griffin no damages because the attacker, rather than the landlord's failed repair, ultimately caused her injuries.[51]

Ms. Griffin appealed, arguing that the trial court gave the jury an incorrect instruction regarding a landlord's duty in these circumstances.[52] She requested this instruction: "[The landlord] had a duty to take reasonable steps to protect Christie Griffin from foreseeable criminal conduct of a third party." [53] Instead, the trial court gave its own instruction: "A landlord may be negligent if it under-

[46] *See* Faulkner v. Racquetwood Vill. Condo. Ass'n, 23 P.3d 1135, 1137 (Wash. Ct. App. 2001); Griffin v. W. RS, Inc., 984 P.2d 1070, 1077 (Wash. Ct. App. 1999).
[47] *See Faulkner*, 23 P.3d at 1137; *Griffin*, 984 P.2d at 1077.
[48] *See Griffin*, 984 P.2d at 1077.
[49] *Id*. at 1072.
[50] *Id*. at 1073.
[51] *Id*. at 1072.
[52] *Id*. at 1073.
[53] *Id*.

takes to protect a tenant against a danger of which it knows or in the exercise of ordinary care ought to know, and fails to exercise ordinary care in its efforts, and if the tenant reasonably relied upon the landlord's actions and therefore refrained from taking actions to protect herself."[54]

The appeals court agreed with Ms. Griffin that the trial court's instruction was incorrect. It held that Washington landlords have an affirmative duty to protect tenants from the foreseeable criminal acts of third parties where the landlords failed to properly repair or maintain the property.[55] The court said this was the same duty as that set out by the Washington Supreme Court for a business owner to its invitee since the invitee, like a tenant, "entrusts himself or herself to the control of the business owner over the premises."[56] The court reasoned that although the landlord "is not the insurer of the tenant's safety on the premises,"[57] the tenant "entrusts to the landlord the responsibility to deal with issues that arise from the landlord's control of the common areas of the premises."[58] As a result, the landlord, like a business owner, had a duty to protect Ms. Griffin from "foreseeable criminal conduct of third persons on the premises."[59] Thus, the trial court's instruction gave the jury the wrong standard regarding the duty the landlord owed to the tenant.[60] Moreover, the court reasoned that because duty and causation are intertwined, it could not be sure that the jury properly determined causation because it was incorrectly instructed on duty.[61]

On review, the Washington Supreme Court upheld the jury's verdict.[62] It refused to address the issue of whether a landlord has a duty to protect tenants from the criminal acts of third parties – not even in dicta.[63] Instead, the Court focused on causation.[64] The Court stated that the determination of causation is the same regardless of the type of duty imposed on the landlord.[65] Thus, the scope of the landlord's duty to the tenant was irrelevant given the jury's factual finding that the criminal conduct of the third party caused the tenant's injury rather than

[54] *Id*.
[55] *Id*. at 1076.
[56] *Id*.
[57] *Id*.
[58] *Id*. at 1077.
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] Griffin v. W. RS, Inc., 18 P.3d 558, 558 (Wash. 2001).
[63] *Id*.
[64] *Id*. at 562.
[65] *Id*.

the landlord's negligent repair.[66] As a result, the negligent landlord was not held liable for the criminal acts of a third party that attacked a tenant on its premises.[67]

Since *Griffin*, the Washington Supreme Court has only addressed the issue of a landlord's duty to protect tenants from third-party criminal acts in dicta. In a 2001 criminal case regarding a public housing landlord's right to exclude certain guests, the Court noted that the common law rule that a landlord had no duty to protect tenants from the criminal acts of third parties had eroded, but the Court had "never squarely addressed the issue."[68] The Court then posed, but did not answer, the question, "[s]hould a landlord be held liable for the foreseeable criminal acts of third parties causing injury to the landlord's tenant?"[69] The Court of Appeals has not found itself bound by any Supreme Court dicta. In a later case, it reiterated its holding in *Griffin* that a landlord may have a duty to protect the tenant from foreseeable criminal conduct but only in areas where the landlord exerts control over that area.[70] The appeals court imposed no liability in that case because the attack was in an area outside the landlord's control.[71] The Supreme Court refused review.[72]

Washington courts seem poised to adopt a tort law standard that would impose a duty on landlords to protect tenants from reasonably foreseeable criminal acts of third parties. The question remains as to the scope of that duty. Of interest for this article is whether such a duty would encompass requiring landlords to screen tenants for possible future dangerousness. The next Section explores the case law on this issue in the housing context. Due to the dearth of case law in this area, we look to tenant screening decisions in other states and negligent hiring

[66] *Id*.

[67] Ms. Griffin likely sued her landlord for money damages as well as her attacker because landlords likely have access to more funds than someone accused of a crime. *See* Ron Nixon, *Public Defenders Are Tightening Belts Because of Steep Federal Budget Cuts*, N.Y. TIMES (Aug. 23, 2013), http://www.nytimes.com/2013/08/24/us/public-defenders-are-tightening-belts-because-of-steep-federal-budget-cuts.html?pagewanted=all&_r=0 (reporting that about ninety percent of federal criminal defendants qualify for a public defender); CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, DEFENSE COUNSEL IN CRIMINAL CASES (Nov. 2000) *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=772 (stating that approximately eighty-two percent of felony defendants in large counties that were accused of a violent crime were represented by a public defender).

[68] City of Bremerton v. Widell, 51 P.3d 733, 738 (Wash. 2001) (citing W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 63, at 442–43 (5th ed. 1984)). *See also* Tracey A. Bateman & Susan Thomas, Annotation, *Landlord's Liability for Failure to Protect Tenant from Criminal Acts of Third Person*, 43 A.L.R. 5th 207, 257 (1996) (addressing cases in which courts have held that a landlord has a duty to protect tenants against reasonably foreseeable criminal acts of third parties).

[69] *Widell*, 51 P.3d at 739. In *Widell*, the court considered the appropriateness of criminal trespass convictions for guests invited onto the property by tenants.

[70] Faulkner v. Racquetwood Vill. Condo. Ass'n, 23 P.3d 1135, 1136 (Wash. Ct. App. 2001).

[71] *Id*.

[72] *See* Faulkner v. Racquetwood Vill. Condo. Ass'n, 37 P.3d 291 (Wash. 2001).

cases to better understand how courts may analyze criminal records and foreseeability in the housing context.

C. Tenant screening process—likely no landlord duty to screen tenants

1. Tenant Screening

Washington landlords have no statutory obligation to screen tenants for possible violent behavior.[73] There is also no Washington case law regarding a landlord's liability for negligent selection of tenants. This section considers the few cases from other states that consider a claim of negligent tenant screening.

Courts outside of Washington have not imposed a duty on landlords to affirmatively conduct tenant screening. In a Louisiana case, a court determined that a landlord owed no duty to protect the tenant from harm by conducting background investigations on prospective tenants.[74] The same court later considered whether a landowner could be liable for injuries to occupants when he allowed a person he knew or should have known had dangerous propensities to occupy the property.[75] The court determined that there was no liability for the landowner because it was not the occupant's mere presence on the property that caused the harm, but the person's unforeseeable act of shooting the tenant.[76] The California Supreme Court considered whether a landlord should be required to obtain criminal backgrounds on possible gang members.[77] The court rejected this argument because the landlord could not screen particular applicants without facing allegations of discrimination.[78] Ultimately, the landlord would be required to obtain full background checks on all applicants.[79] The court said that refusal to rent to those with arrests or convictions for any crime that could have involved a gang constituted – a "burden-

[73] Under the state Residential Landlord-Tenant Act, landlords are not required to screen tenants, but if they do then they must follow specific protocols. WASH. REV. CODE ANN. 59.18.257 (LexisNexis 2014) (stating that a landlord is required to provide prospective tenants information about the type of information reviewed, criteria considered and the name and address of the consumer reporting agency used, if any; and also providing that if the applicant is denied, the landlord must state in writing the reasons for the decision). Of course, landlords must comply with local, state, and federal fair housing laws. The lack of regulation and enforcement on tenant screening issues has created a myriad of problems. *See* Eric Dunn & Marina Grabchuk, *Background Checks and Social Effects: Contemporary Residential-Tenant Screening Problems in Washington State*, 9 SEATTLE J. FOR SOC. JUST. 319, 327–38 (2010) (discussing the problems caused by modern tenant screening practices such as errors and misleading information in tenant screening reports and unfair admission practices by landlords).

[74] *See* Robicheaux v. Roy, 352 So. 2d 766, 768 (La. Ct. App. 1977).

[75] *See* Dore v. Cunningham, 376 So. 2d 360, 362 (La. Ct. App. 1979).

[76] *Id*.

[77] *See* Castaneda v. Olsher, 162 P.3d 610, 618 (Cal. 2007).

[78] *Id*.

[79] *Id*.

some, dubiously effective and socially questionable obligation on landlords, at least absent circumstance making gang violence extraordinarily foreseeable."[80]

Only one state appellate court, in Georgia, found possible liability for a landlord who rented to an applicant with a criminal record who later harmed another tenant.[81] In *Stephens v. Greensboro Properties*, the court did not impose an affirmative duty on the landlord to screen tenants, but ruled that the landlord could be potentially liable for the shooting death of another tenant where it rented to *and* employed the perpetrator who had an extensive criminal record.[82] The management company "authorized him to engage in security-related activities which might reasonably result in altercations with co-tenants, notwithstanding knowledge of his long history of convictions and arrests for numerous violent crimes."[83] Under Georgia law, a prior similar criminal act is generally required to impose liability in these circumstances, but if the danger is "so obvious" then that act might be foreseeable even without a prior act.[84] Pursuant to this standard, the court permitted the case to go to the jury to determine if the harm to the tenant was foreseeable under these circumstances.[85]

No courts have imposed a duty on landlords to conduct background checks. Imposing this duty to protect other tenants would not "further the goals of the criminal rehabilitation system for 'ex-criminals' to be denied housing as they attempt to assimilate back into society."[86] Moreover, assessing whether a tenant might be violent in the future is challenging for even well-trained mental health experts let alone a landlord using a criminal background check.[87] Such a requirement may thwart fair housing laws by adversely impacting those with mental health issues, chemical dependency or racial minorities.[88] Only the *Stephens* court has allowed a jury to consider whether the tenant's harm was foreseeable given the specific facts in that case, which included employing and empowering the person with a criminal record.[89] There, foreseeability was the key

[80] *Id*.
[81] *See* Stephens v. Greensboro Props., Ltd., 544 S.E.2d 464 (Ga. Ct. App. 2001).
[82] *Id*.
[83] *Id*.
[84] *Id*. at 468.
[85] *Id*.
[86] *See* Saxer, *supra* note 8, at 565.
[87] *See id*. at 564–65.
[88] *See id*. at 564; *see also infra* Part III.B.
[89] *See* Saxer, *supra* note 8, at 567–68 (discussing Stephens v. Greensboro Props., Ltd., 544 S.E.2d 464 (Ga. Ct. App. 2001)).

issue in determining liability.[90] At this time, no appellate court has imposed liability for negligent renting.[91]

2. Employment Screening

Unlike landlords, employers have historically had a duty to foreseeable victims "to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others."[92] This duty flows from the traditional "master-servant" relationship.[93] Most negligent hiring cases focus on duty and foreseeability.[94] However, there is little agreement among courts as to what constitutes a foreseeable act.[95] Courts usually employ either a totality of the circumstances, a prior similar incidents test, or a balancing test.[96] The totality of the circumstances test scrutinizes past criminal acts, the nature of the business and the condition of the premises.[97] In contrast, the prior similar incidents test only looks to "the proximity, time, number, and types of prior violent incidents" to determine foreseeability.[98] The balancing test examines the type of employment to determine if a more thorough background check is warranted.[99] Courts have not imposed this type of duty and resultant test for foreseeability on landlords, although at least one scholar argued they should do so in the late 1970s.[100]

[90] *Id*.

[91] We could only find one trial court in the country that has imposed liability on a landlord in this context, where the landlord did not follow its own screening policies. *See Jury rules city liable in murder of public housing resident*, WCNC.COM (Feb. 15, 2010), http://www.wcnc.com/story/news/local/2014/06/19/10946859/; *Jury issues verdict in wrongful death lawsuit*, WBTV.COM (updated Mar. 8, 2010, 2:07 PM), http://www.wbtv.com/story/11958156/jury-issues-verdict-in-wrongful-death-lawsuit (both sources describing case in which plaintiff argued that public housing authority failed to conduct a background check when renting to an applicant with a criminal record, and jury returned an award against PHA for $132,000 of the $10.4 million sought).

[92] *See* Niece v. Elmview Grp. Home, 929 P.2d 420, 426 (Wash. 1996).

[93] *See* Davis v. Clark Cnty., 966 F. Supp. 2d 1106, 1141 (W.D. Wash. 2013) (quoting *Niece*, 929 P.2d at 426).

[94] *See* Stephen J. Beaver, Comment, *Beyond the Exclusivity Rule: Employer's Liability for Workplace Violence*, 81 MARQ. L. REV. 103, 110 (1997).

[95] *Id*. (few guidelines exist to help employers define employee fitness or determine how sufficient a background check should be).

[96] *Id*. at 109.

[97] *Id*.

[98] *Id*.

[99] *See* Carlsen v. Wackenhut Corp., 868 P.2d 882, 887 (Wash. Ct. App. 1994) ("Past Washington decisions tend to employ a type of balancing test to determine if the given employment warrants the extra burden of a thorough background check.").

[100] *See* Charles W. Cunningham, Note, *The Duty of a Landlord to Exercise Reasonable Care in the Selection and Retention of Tenants*, 30 STAN. L. REV. 725 (1978) (arguing that landlords should be required to exclude foreseeably dangerous individuals from the premises). This proposed duty has not taken hold in the courts, as most have not found an affirmative duty for landlords to screen tenants. *See supra* Part I.B.

Washington courts generally use the balancing test.[101] With no duty on employers to conduct specific background checks, courts focus on all the information from the background check process, such as references, resumes, criminal history and interviews rather than on the specific questions asked.[102] If the job involves "a serious risk of great harm" to third parties, then an employer's responsibility to thoroughly investigate a future employee increases.[103] When an employer discovers inconsistencies on an employment application and a lack of information provided by an applicant, the next step is to make additional inquiries if the position requires interaction with the public.[104]

Scholars considering the issue of negligent hiring find that in most cases, an employer's knowledge of a criminal record alone will not impose negligent hiring liability.[105] "The mere fact that a person has a criminal record, even a conviction for a crime of violence, does not in itself establish the fact that that person has a violent or vicious nature so that an employer would be negligent in hiring him to meet the public."[106]

This same lack of foreseeability analysis should be applied to reject attempts to impose liability on landlords for merely renting to a person with a criminal record who harms another tenant. Employment law can help frame the standard in the landlord context. Just like a landlord, an employer reviews information about an applicant to determine if that applicant has the necessary qualifications for a particular job. Similarly, landlords obtain information from rental applicants to see if they have the qualifications necessary to meet tenant obligations. These inquiries include a criminal background check, but also include reference checks with prior landlords and usually an interview with the applicant.

[101] *But see* Niece v. Elmview Grp. Home, 929 P.2d 420, 427 (Wash. 1996) (employing a totality-of-the-circumstances test to find foreseeability of sexual assaults in an employer liability setting by considering prior sexual assaults, a policy against unsupervised contact with residents, and legislative recognition that sexual abuse is a problem in residential care facilities).

[102] *See* Rucshner v. ADT Sec. Sys., Inc., 204 P.3d 271, 279 (Wash. Ct. App. 2009) (citing La Lone v. Smith, 234 P.2d 893, 896 (Wash. 1951)) (holding that employer can assume person offering to perform simple work is qualified, but there can be a contractual obligation to do so).

[103] *See Rucshner*, 204 P.3d at 279.

[104] *See Carlsen*, 868 P.2d at 886.

[105] *See* Timothy L. Creed, *Negligent Hiring and Criminal Rehabilitation: Employing Ex-Convicts, Yet Avoiding Liability*, 20 ST. THOMAS L. REV. 183, 193–94 (2008); Jennifer Leavitt, Note, *Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders*, 34 CONN. L. REV. 1281, 1286–87 (2002).

[106] Hersh v. Kentfield Builders, Inc., 189 N.W.2d 286, 289 (1971). *See also* Pruitt v. Pavelin, 685 P.2d 1347, 1354–55 (Ariz. Ct. App. 1984) (holding employer liable for the fraudulent actions of a real estate broker because it knew the employee had been convicted of passing bad checks and forging a signature on a document, and had lied to officers of the company about obtaining a real estate license); Betty Y. v. Al-Hellou, 988 P.2d 1031 (Wash. Ct. App. 1999) (holding employer not liable under negligent hiring theory where it knew of employee's conviction for third-degree child rape, but position was working on vacant apartments and contact with others was incidental).

Even though landlords have less control over the day-to-day behavior of tenants (they are not directly supervising tenant behavior and do not interact with a tenant several hours a day in the way an employer may), landlords still have control over who they do and do not accept as tenants. Given this, landlords should be subject to a similar tort standard as that imposed on employers.

II. SOCIAL SCIENCE RESEARCH: CRIMINAL RECORD NOT PREDICTIVE OF UNSUCCESSFUL TENANCY

Some courts have evaluated evidence intended to demonstrate an empirical link between a criminal history and propensity for dangerousness. In one such case, a city tried to argue that it was justified in refusing to issue a permit to an agency that facilitated the reentry of federal offenders into society because occupants of that residence were more likely to commit crimes than a person who had never been convicted of a crime.[107] The expert in that case was unable to provide conclusive research evidence to support this contention.[108] A later case considered whether the denial of a special zoning exception for a drug and alcohol treatment facility that accepted referrals from local prisons was constitutionally permissible.[109] The city based the denial in part on safety and security concerns.[110] The treatment provider appealed.[111] The court found that there was no evidence that the incidents presented to demonstrate a safety threat were "greater in number and intensity than incidents linked to similarly situated uses, such as dormitories, fraternities, or sororities."[112]According to the court "any safety concern related to the men being recovering addicts is therefore based upon unfounded fear, speculation, and prejudice."[113] This section reviews the recent social science research which supports the proposition that a criminal record is not predictive of a future threat.

The ostensible relationship between criminal history and an increased likelihood of a problematic tenancy is often cited by rental housing providers in defense of restrictive screening procedures and admissions policies.[114] Yet, there has been little discussion on the predictive value of a criminal record in the hous-

[107] *See* Bannum Inc., v. City of Louisville, 958 F.2d 1354, 1360–61 (6th Cir. 1992) (noting that city was unable to show that occupants who had been incarcerated more likely to commit crimes than those community residents without a criminal record).

[108] *Id*.

[109] *See* Open Homes Fellowship v. Orange Cnty, 325 F. Supp. 2d 1349, 1361 (M.D. Fla. 2004).

[110] *Id*. at 1354.

[111] *Id*.

[112] *Id*. at 1361.

[113] *Id*.

[114] *See* HOUSING LINK, *supra* note 5.

ing context.[115] A review of relevant scholarly research reveals there is no empirical basis for the assertion that a criminal record indicates a future problematic tenancy or a dangerous tenant.

This review describes the findings from academic studies in two areas: evaluations of supportive housing programs[116] and research on the relationship between housing status, incarceration and recidivism. Evaluations of supportive housing programs offer unique lessons regarding the predictive power of a criminal record in the housing context as they investigate how residents with criminal histories fare in those programs. Meanwhile, findings from studies exploring the impact of housing status on recidivism underscore the social imperative to expand housing access for the formerly incarcerated or those with criminal records.

A number of studies have evaluated the efficacy of supportive housing program serving populations at risk of homelessness.[117] More recently, some scholars have utilized evaluation data from such programs to investigate whether a criminal record or history of incarceration predicts program success.[118] Our broad survey of the relevant academic literature returned two large-scale, methodologically rigorous studies that compare program participants with and without criminal histories.[119]

[115] *See* Corinne Carey, *No Second Chance: People With Criminal Records Denied Access to Public Housing*, 36 U. TOL. L. REV. 545, 563 (2005) ("Curiously, there has been relatively little discussion among federal or local housing officials as to what, in fact, predicts a good tenant, much less the predictive value of a criminal record.").

[116] Supportive housing programs typically provide populations at risk of chronic homelessness with a variety of health and social services, including some form of subsidized housing. Those populations include those struggling with substance dependence and mental and physical health issues. Because these issues are relatively common among those that have had contact with the criminal justice system, supportive housing clients often include the formerly incarcerated or individuals with criminal conviction records. *See generally* Seena Fazel et al., *Substance Abuse and Dependence in Prisoners: A Systematic Review*, 101 ADDICTION 181 (2006) (discussing substance dependence among those who have been incarcerated); Michael Massoglia, *Incarceration, Health, and Racial Disparities in Health*, 42 LAW & SOC'Y REV. 275 (2008) (discussing the impact of criminal justice system contact on mental and physical health outcomes). Supportive housing programs are thus a relevant setting for research around the link between criminal history and tenant behavior. Nonetheless, findings from supportive housing programs may not be completely generalizable to other housing contexts on account of the unique resources and social services made available to residents.

[117] *See* H. Stephen Leff et al., *Does One Size Fit All? What We Can and Can't Learn from a Meta-Analysis of Housing Models for Persons with Mental Illness* 60 PSYCHIATRIC SERVS. 473 (2009); Debra J. Rog, *The Evidence on Supported Housing*, 27 PSYCHIATRIC REHAB. J. 334 (2004).

[118] *See* Edward S. Casper & Doris Clark, *Service Utilization, Incidents and Hospitalizations Among People with Mental Illnesses and Incarceration Histories in a Supportive Housing Program*, 28 PSYCHIATRIC REHAB. J. 181 (2004); Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders*, 60 PSYCHIATRIC SERVS. 224 (2009); Jack Tsai & Robert A. Rosenheck, *Incarceration Among Chronically Homeless Adults: Clinical Correlates and Outcomes*, 12 J. FORENSIC PSYCHOL. PRAC. 307 (2012). .

[119] *See* Malone, *supra* note 118; Tsai & Rosenheck, *supra* note 118. While Casper and Clark also addressed this question, the generalizability of the study's findings are very limited in light of the small

One study explored the impact of criminal history status on a wide range of outcomes among participants in a multi-city supportive housing program.[120] The researchers drew on a sample of 751 clients divided into three groups: those with no history of incarceration, those who had been incarcerated for one year or less and those who had been incarcerated for over one year.[121] Upon entering the program, the formerly incarcerated clients were markedly distinct from their never incarcerated counterparts; reporting higher levels of drug and alcohol dependence, longer histories of homelessness and lower levels of education.[122]After controlling for these baseline differences, researchers found that there were *no statistically significant differences* between the formerly incarcerated and never incarcerated study groups in program outcomes.[123] In light of their findings, the authors suggest that chronically homeless adults with incarceration histories can benefit as much from supportive housing as those without incarceration histories.[124]

In another study of the relevance of criminal history for successful supportive housing participation, Malone analyzed data collected from a Seattle housing program for homeless adults with behavioral health disorders.[125] The study drew on data from 347 housing clients, slightly more than half of whom

sample size and potential selection effects stemming from the fact that the formerly incarcerated participants were recruited as part of a jail-diversion program, in contrast to the voluntary recruitment of the never incarcerated participant group. Casper & Clark, *supra* note 118. For a review of statistical standards for generalizability, see JASON W. OSBORNE, BEST PRACTICES FOR QUANTITATIVE METHODS (2007).

[120] Tsai & Rosenheck, *supra* note 118, at 310 (examining community adjustment, substance abuse, employment, health status and utilization of health services for clients enrolled in a multisite supportive housing program implemented in eleven cities: Chattanooga, Tennessee; Chicago, Illinois; Columbus, Ohio; Denver, Colorado; Fort Lauderdale, Florida; Los Angeles, California; Martinez, California; New York, New York; Philadelphia, Pennsylvania; Portland, Oregon; and San Francisco, California).

[121] *Id*.

[122] *Id*. at 314–15 tbl.1 (showing baseline differences between participants with different incarceration histories).

[123] *Id*. at 316 (with the exception that clients who had been incarcerated longer than one year reported poorer physical health).

[124] *Id*. at 319 (citing Malone, *supra* note 118) ("The overall finding of no group difference in outcomes runs in contrast to our hypothesis, although it is similar to at least one previous study (Malone, 2009) and suggests chronically homeless adults with incarceration histories can benefit as much from supported housing as those with no incarceration histories. This finding may have particular implications for housing providers and policy makers who support practices that exclude those with criminal histories from applying for public housing.").

[125] Malone, *supra* note 118. The study defined success as the continuous retention of housing for two years. *Id*. at 224. The author focused on program success rather than recidivism in light of the research suggesting that much of the reoffending on the part of the formerly incarcerated—particularly those with mental illness—stems from low-level, nonviolent offenses. *Id*. at 225 (referencing R.A. Desai & Robert A. Rosenheck, *Childhood Risk Factors for Criminal Justice Involvement in a Sample of Homeless People with Serious Mental Illness*, 188 J. NERVOUS & MENTAL DISEASE 324 (2000)). Consequently, recidivism data may not be a justifiable basis on which supportive housing providers screen out prospective clients with criminal histories out of concern for the safety of other clients.

had a criminal record.[126] That analysis revealed that a *criminal record was not statistically predictive* of program failure.[127] When other characteristics that could potentially affect tenant behavior were taken into account, age was the only statistically significant determinant of housing success, where younger clients were less likely to retain housing.[128] In contrast to other similar evaluations of supportive housing programs, Malone's study was able to draw on detailed data on the *nature* of clients' criminal history, including the time elapsed since last conviction, the number of prior offenses, and the seriousness of past offenses.[129] None of these dimensions were statistically predictive of program success.[130]

These studies provide evidence that, at least within the supportive housing context, *criminal history is not predictive of problematic tenancy*.[131] As such, they raise important questions about the validity of standards of risk estimation, screening practices and admissions policies related to criminal records in the general rental housing context. With respect to the potential broader policy implications of his study for screening and admissions policies in other residential settings, Malone notes that:

> The finding that criminal history does not provide good predictive information about the potential for housing success is additionally important because it at least partially contradicts the expectations of housing operators and others. It certainly runs counter to common beliefs that housing needs to be free of offenders in order to be safe for the other residents.[132]

[126] *Id*. at 224.

[127] *Id*. ("Data were available for 347 participants. Most (51%) had a criminal record, and 72% achieved housing success. The presence of a criminal background did not predict housing failure. Younger age at move-in, presence of a substance abuse problem, and higher numbers of drug crimes and property crimes were separately associated with more housing failure; however, when they were adjusted for each of the other variables, only move-in age remained associated with the outcome.").

[128] *Id*.

[129] *Id*. at 228.

[130] *Id*. at 227–28 ("Criminal history appears to be largely unrelated to the ability of homeless persons with behavioral health disorders to succeed in supportive housing, suggesting that policies and practices that keep homeless people with criminal records out of housing may be unnecessarily restrictive. People with a more extensive criminal history succeeded at rates equivalent to those of others, as did people with more recent criminal activity, people with more serious criminal offenses, and people who began criminal activity at an earlier age. In other words, the criminal history of those who succeeded in housing was nearly indistinguishable from that of those who failed in housing.").

[131] *Id*. at 229. On account of the unique features of supportive housing programs, Malone cautions that his results are not necessarily generalizable to all housing contexts: "Because the study present here involved individuals with specific characteristics (lengthy homelessness and behavioral health disorders) who received a particular intervention (supportive housing), generalizing the results of our study to other situations may not be valid." *Id.*

[132] *Id*. at 228.

The notion that excluding those with criminal histories from housing enhances public safety is also undermined by a larger body of research that has established the strong empirical association between housing insecurity and recidivism. A number of studies have investigated the impact of former prisoners' post-release housing circumstances upon recidivism by utilizing statistical models that control for a number of individual level characteristics thought to potentially affect recidivism.[133] For example, researchers analyzed the case management records of 6,327 parolees in Georgia and found that, controlling for all other relevant factors, housing instability was significantly associated with recidivism (here defined as arrest for a new offense while under parole supervision).[134] Each change of address while on parole was associated with a twenty-five percent increase in the likelihood of re-arrest.[135] Their findings underscore the importance of access to *stable, affordable* housing for the formerly incarcerated.

Two Washington studies examined post-release outcomes as they related to housing stability. One study assessed the impacts of a pilot re-entry housing program in Washington by contrasting the re-entry outcomes of participants with a comparison group composed of non-participants who were released from corrections facilities at the same time.[136] Across every measure of recidivism and reintegration, the stably housed portion of the comparison group fared better than their unstably housed or homeless counterparts.[137] These findings offer strong support for the notion that housing stability significantly reduces recidivism and improves reintegration of the formerly incarcerated. This finding holds even after controlling for various individual-level background characteristics potentially shaping housing circumstances.[138]

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[133] *See, e.g.*, FAITH E. LUTZE ET AL., WASHINGTON STATE'S REENTRY HOUSING PILOT PROGRAM EVALUATION: YEAR 3 FINAL REPORT (2011), *available at* http://www.co.whatcom.wa.us/health/wchac/pdf/rhpp_year3_report_june_2011.pdf; TAMMY MEREDITH ET AL., APPLIED RESEARCH SERVS., INC., ENHANCING PAROLE DECISION-MAKING THROUGH THE AUTOMATION OF RISK ASSESSMENT, (2003); MELISSA SHAH ET AL., WASH. STATE DEP'T OF SOC. & HEALTH SERVS., ACHIEVING SUCCESSFUL COMMUNITY RE-ENTRY UPON RELEASE FROM PRISON (2013), *available at* https://www.dshs.wa.gov/sites/default/files/SESA/rda/documents/research-11-193.pdf.

[134] *See* MEREDITH, *supra* note 133, at 15.

[135] *Id.* ("Finally, there is a 25% increase in the likelihood of arrest each time a parolee changes address. That translates into doubling the odds of arrest by simply moving three times while on parole (having four residences).").

[136] *See* LUTZE ET AL., *supra* note 133.

[137] *Id.* at 15–16. Those dependent or outcome measures included new convictions, revocation of community supervision, readmission to prison, and the "time to failure" or the length of time between an individual's release date and the first instance of recidivism. *See also id.* at 36 ("Although this study was focused on RHPP/HGAP [the two pilot programs under study] performance, it is important to note the reentry experience of those who were released to unstable housing. These offenders tended to perform poorly across all counties on each of the outcome measures.").

[138] *Id.* at 14–18 (including age, gender, incarceration history, criminal conviction history and exposure to rehabilitative programming in prison).

In the second study, Washington researchers investigated the impact of post-release housing circumstances on various dimensions of prisoner reentry including recidivism, employment, earnings, medical care and substance abuse.[139] The researchers followed a sample of approximately 12,000 individuals released from a Washington State Department of Corrections (DOC) facility for one year.[140] Among study participants, those that received housing assistance and eventually secured permanent housing fared the best across multiple measures of reintegration; this group had the lowest rates of recidivism and the highest rates of employment, medical coverage and substance abuse treatment.[141]

Despite the importance of housing stability for successful reentry, a large body of research literature has unfortunately found that the formerly incarcerated experience high rates of homelessness and housing instability relative to the general population.[142] One such study drew on longitudinal survey data to compare the housing circumstances of formerly incarcerated men and of a group of men who share similar demographic characteristics but have never been incarcerated.[143] After controlling for an array of background characteristics (i.e. race, age, education, employment history, behavioral characteristics, etc.) and housing circumstances prior to incarceration, the authors found that the formerly incarcerated men were nearly twice as likely to have been homeless during the study period than their never-incarcerated counterparts.[144]

Of all the studies reviewed on the topic for this article, not one indicated a positive correlation between a criminal record and a future problematic tenancy. Rather, the studies indicated no correlation between the two. Based upon this

[139] *See* SHAH ET AL., *supra* note 133, at 1.

[140] *Id*.

[141] *Id*. at 1 ("Homeless ex-offenders who received housing assistance and transitioned to permanent housing had *lower* rates of criminal recidivism and *higher* rates of employment, Medicaid coverage, and substance abuse treatment, compared to other homeless ex-offenders.").

[142] *See, e.g.*, Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 CRIMINOLOGY & PUB. POL'Y 139 (2004); BRADLEY, *supra* note 6; Geller & Curtis, *supra* note 6, at 1196; NELSON, *supra* note 6; Roman, *supra* note 6.

[143] *See* Geller & Curtis, *supra* note 6, at 1197.

[144] *Id.* at 1206 ("[F]ormerly incarcerated men face more than twice the odds of homelessness as men who have not been incarcerated."). Another notable finding to emerge from that study is that formerly incarcerated men were not significantly more likely to have been evicted or to have skipped mortgage payments relative to their never-incarcerated study counterparts when relevant covariates are controlled for. *Id.* at 1203 (''Namely, differences in frequent moves and ''living with others without paying rent'' are consistently statistically significant, while differences in skipping a mortgage payment, eviction, and doubling up lose significance as additional covariates are controlled."). Their research is the first to compare the tenant behavior of formerly incarcerated and never-incarcerated individuals in the general rental housing context. As such, these findings provide early but important evidence challenging the assumption that a criminal history is an effective predictor of at least some forms of "bad" tenant behavior that result in eviction.

research, future harm resulting from renting to an applicant with a criminal record is not reasonably foreseeable.

III. BECAUSE CRIMINAL RECORDS DO NOT CREATE A FORESEEABLE RISK OF FUTURE HARM, TORT LIABILITY SHOULD NOT ATTACH TO RENTING TO A PERSON WITH A CRIMINAL RECORD

A tort standard that would not impose landlord liability on the sole basis of renting to an applicant with a criminal record supports societal goals of fair housing, habitable premises, public safety and rehabilitation.

A. Fair Housing

Imposing liability upon landlords for negligent screening also conflicts with the goals, policies, and language of laws that prohibit discrimination in housing. Reducing or eliminating liability on landlords who rent to tenants with a criminal record furthers fair housing goals. A specific goal of the Fair Housing Act is to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of impermissible characteristics."[145] However, restrictive tenant screening practices with respect to criminal history could undermine that goal and facilitate discriminatory treatment.[146] If a landlord refuses to rent to a person with a criminal history, she could be liable for violating the Fair Housing Act.[147]

The U.S. Department of Housing and Urban Development (HUD) has issued no guidance regarding fair housing and criminal records screening.[148] However, over twenty years ago, the EEOC recognized that "an employer's policy or practice of excluding individuals from employment on the basis of their convic-

[145] *See* Llanos v. Estate of Coehlo, 24 F. Supp. 2d 1052, 1056 (E.D. Cal. 1998) (discussing goal of Federal Housing Act, 42 U.S.C. § 3601). *See also* United States v. City of Black Jack, 508 F.2d 1179, 1184 (8th Cir. 1974).

[146] *See* Rebecca Oyama, *Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act*, 15 MICH. J. RACE & L. 181, 212–13 (2009).

[147] *Id.*; *see also* Gamble v. City of Escondido, 104 F.3d 300, 304–05 (9th Cir. 1997) (describing the burden-shifting scheme for disparate treatment claims under the Fair Housing Act).

[148] HUD has issued regulations regarding disparate impact liability that set out a three-step burden-shifting analysis. 24 C.F.R. § 100.500(c) (2013). A recent law review article provides an in-depth discussion of this rule and its implications for future court decisions. *See* Michael G. Allen et al., *Assessing HUD's Disparate Impact Rule: A Practitioner's Perspective*, 49 HARV. C.R.-C.L. L. REV. 155 (2014). *See also, e.g.*, Inclusive Cmtys. Project, Inc. v. Texas Dep't of Hous. & Cmty. Affairs, 747 F.3d 275, 282–83 (5th Cir. 2014) (applying the disparate impact test set out in the HUD regulations). The U.S. Supreme Court heard oral arguments in this case on January 21, 2015 to determine whether the Fair Housing Act prohibits housing policies that have a disparate impact on protected classes. Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., No. 13-1371 (U.S. argued Jan. 21, 2015).

tion records has an adverse impact on [African American and Latino workers] in light of statistics showing that they are convicted at a disproportionately higher rate than their representation in the population."[149]

Washington State corrections statistics demonstrate that African Americans are disproportionately represented in the corrections system. Washington State's 2013 estimated Census population estimate was 6,971,406.[150] Of that number, 81.2% were White, 11.9% Hispanic or Latino, 1.9% Native American and 4.0% were African American.[151] The Washington State Department of Corrections (DOC) collects data on the race of all offenders admitted to its facilities.[152] Of the 18,059 prisoners as of September 2014, 18.1% were African American, a rate almost five times the rate of African Americans in the general population.[153] For Native Americans, the incarceration rate was more than double their share of the state population at 4.4%.[154]

As a result of this disproportionate representation of protected classes in the criminal justice system, housing policies that eliminate applicants for consideration based upon a criminal record create a discriminatory effect. A tort law standard that reduces negligence liability for renting to an applicant with a criminal record could increase access to housing for historically marginalized groups. Landlords would have less fear of a negligence lawsuit, thereby removing one possible business justification for restrictive background screening policies. The proposed tort law standard supports the important public policy objective of removing unnecessary and impermissible barriers to housing for protected classes.

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[149] *See* U.S. EQUAL EMP'T OPPORTUNITY COMM'N, EEOC POLICY STATEMENT ON THE ISSUE OF CONVICTION RECORDS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C. § 2000 ET SEQ. (1982) (Feb. 4, 1987), *available at* http://www.eeoc.gov/policy/docs/convict1.html. The EEOC issued guidance in 1990 for consideration of arrest records. U.S. EQUAL EMP'T OPPORTUNITY COMM'N, EEOC POLICY STATEMENT ON CONSIDERATION OF ARREST RECORDS IN EMPLOYMENT DECISIONS UUNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C. § 2000 ET SEQ. (1982) (Sept. 7, 1990), *available at* http://www.eeoc.gov/policy/docs/arrest_records.html. In 2012, the EEOC updated this guidance. *See* U.S. EQUAL EMP'T OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Apr. 25, 2012), *available at* http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm. The 2012 guidance consolidates the 1987 and 1990 guidance, updates the research, and discusses disparate treatment and disparate impact analysis for employer criminal record policies under Title VII with an in-depth analysis and specific examples.

[150] U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS FOR WASHINGTON, *available at* http://quickfacts.census.gov/qfd/states/53000.html (last revised Feb. 5, 2015).

[151] *Id*.

[152] *Fact Card*, DEP'T OF CORRS. (Sept. 30, 2014), *available at* http://www.doc.wa.gov/aboutdoc/docs/msFactCard_002.pdf.

[153] *Id*.

[154] *Id*.

B. Habitable and Safe Premises

Landlords should be liable if they fail to maintain or secure the property resulting in harm to a tenant by another tenant's or third party's criminal act.[155] The few courts that have heard negligent tenant screening claims have not expanded liability to the future criminal acts of tenants who have a criminal record.[156] But, no uniform standard has been established.[157] We posit that a clear tort law standard should be established that reflects the relevant social science and psychological research regarding foreseeability and risk as well as the public policy goals of safety, rehabilitation, and fair housing.

Courts and legislatures have not and should not expand liability for the criminal acts of third parties to the tenant screening context. Rather than using a criminal record to reject an applicant for fear of future harm to other tenants or property, landlords should instead be incentivized to be responsible property managers and owners.[158] They should be encouraged to do what is already required—comply with applicable common law and statutory habitability and security requirements or face liability if their failure to do so results in reasonably foreseeable harm from the criminal acts of a third party.[159]

Prior case law and good public policy require that Washington courts hold a landlord liable for tenant injuries caused by a defective condition on the premises that could foreseeably cause harm to a tenant from third party criminal activity if:

- the condition is dangerous
- the landlord was aware of it or should have been
- the landlord failed to properly repair it; and
- the condition violated the warranty of habitability.[160]

[155] *See* Griffin v. West RS, Inc., 984 P.2d 1070, 1076 (Wash. Ct. App. 1999).

[156] See discussion *supra* Part I.C.

[157] *Id*.

[158] *See* B.A. Glesner, *Landlords as Cops: Tort, Nuisance & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 CASE W. RES. L. REV. 679, 791 (1992).

[159] *See* Degel v. Majestic Mobile Manor, 914 P.2d 728, 731 (Wash. 1996) (en banc) (holding that landlord has affirmative duty to maintain common areas in safe manner).

[160] *See* Pinckney v. Smith, 484 F. Supp. 2d. 1177, 1182 (W.D. Wash. 2007) (citing WASH. REV. CODE ANN. § 59.18.060(1) (2004) for the proposition that a dangerous condition is one that substantially "impairs the health or safety of the tenant"); Lian v. Stalick, 62 P.3d 933, 936 (Wash. Ct. App. 2003). Both cases cite to the RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 17.6 (1977). ("A landlord is subject to liability for physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of: (1) an implied warranty of habitability; or (2) a duty created by statute or administrative regulation.").

To incur liability, the landlord must have control over the part of the property where the defect occurred.[161]

In cases where the issue is an allegation of inadequate security, courts or the state legislature should define the factors that render criminal conduct reasonably foreseeable. These should include factors that actually relate to foreseeability:

> 1) whether criminal conduct previously occurred on or near the property at issue;
> 2) how recently the prior criminal conduct occurred;
> 3) how often the prior criminal conduct occurred;
> 4) how similar the prior criminal conduct was to the conduct that occurred on the property; and
> 5) what publicity was given to the prior criminal conduct that would indicate that the land owner knew or should have known about the potential for crime.[162]

This tort standard also recognizes that landlord behavior related to premises maintenance, adequate security, and appropriate management are more relevant factors in increasing tenant safety, and that these, rather than a past criminal history, should be the focus of liability. Research on criminal activity on or around rental property highlights the importance of factors unrelated to the potential for criminal behavior among tenants with a criminal record. For example, one study investigated the link between residential rental property ownership characteristics and crime.[163] In that study, rates of crime and disturbances were significantly higher in rental properties where property managers lived off-site, lending credence to anecdotal suspicions that absentee landlords or property managers are less effective when it comes to maintaining safety.[164]

C. Public Safety and Rehabilitation

The Washington legislature has declared that the criminal justice system should protect the public, reduce the risk of offenders reoffending in the community, and encourage the rehabilitation of felons through employment.[165] It has al-

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[161] *See* Faulkner v. Racquetwood Vill. Condo. Ass'n, 23 P.3d 1135, 1137 (Wash. Ct. App. 2001) (finding no duty to protect tenant from harm suffered in an area outside landlord's control).

[162] *See* Stan Perry & Paul Heyburn, *Premises Liability for Criminal Conduct: When is Foreseeability Established?*, THE HOUSTON LAWYER (Oct. 1998) at 21–22 (citing Timberwalk Apts., Partners, Inc. v. Cain, 972 S.W.2d 749, 757 (1998)).

[163] *See* Terance Rephann, *Rental Housing and Crime: The Role of Property Ownership and Management*, 43 ANNALS REGIONAL SCI. 435 (2009).

[164] *Id*.

[165] *See* WASH. REV. CODE ANN. § 9.94A.010 (West 2014); WASH. REV. CODE ANN. § 9.96A.010 (West 2014).

so recognized that housing increases the likelihood of success in the community for previously incarcerated individuals.[166]

The social science studies discussed in the previous section establish a link between reduced recidivism and stable housing.[167] While landlords purport to screen out tenants with a criminal history as a safety precaution,[168] this behavior may actually decrease overall community safety. Courts considering negligent renting claims have recognized the competing interests in landlords protecting tenants and staff and the need for people with conviction histories to find housing. One court turned down a tenant's claim that a landlord was obligated to reasonably screen potential tenants.[169] In rejecting this claim, the court raised concerns about a landlord being expected to predict possible future threats based upupon a criminal record. According to the court, this type of liability would:

> induce landlords to decline housing to those with a criminal record in the absence of evidence of an actual threat to cotenants or individual tenants. That would only export the 'problem' somewhere else. The resulting unstable living conditions or homelessness may increase the chances of recidivism to the detriment of public safety[170]

Similar to courts considering negligent renting liability, courts considering negligent hiring cases recognize the competing interests in employers protecting customers and employees and the need for ex-offenders to find jobs. One New York court noted that people with criminal records are "free to walk the streets, visit the playgrounds, and live and work in a society without being branded or segregated – the opportunity for gainful employment may spell the difference between recidivism and rehabilitation."[171] The Supreme Court of Michigan expressed its understanding of the difficulties people with criminal records face in finding employment: "We share … concern for those persons who, having been convicted of a crime, have served the sentence imposed and so are said to have paid their debt to society and yet find difficulty in obtaining employment."[172] One Florida court addressed the tort liability and criminal records issue head on:

> [T]o say an employer can never hire a person with a criminal record at the risk of being held liable for the employee's tortious

[166] *See* WASH. REV. CODE ANN. § 35.82.340 (West 2014).

[167] *See supra* Part II.

[168] *See* Oyama, *supra* note 146, at 187–88.

[169] *See* Davenport v. D.M. Rental Props., Inc., 718 S.E.2d 188, 191 (N.C. Ct. App. 2011) (citing *Anderson v. 124 Green St., LLC*, 2011 WL 341709, at *5, (Mass. Super. Jan. 18, 2011), *aff'd*, 974 N.E.2d 1167 (2012)).

[170] *Id*.

[171] *See* Haddock v. City of New York, 553 N.E.2d 987, 992 (N.Y. 1990).

[172] *See* Hersh v. Kentfield Builders, Inc., 189 N.W.2d 286, 289 (1971).

> assault, 'flies in the face of the premise that society must make a reasonable effort to rehabilitate those who have gone astray.'[173]

Establishing a tort law standard that eliminates negligent renting claims based upon a landlord's decision to accept an applicant for a criminal record effectuates the public policy goals of safety and rehabilitation. Such a standard would provide strong public policy support for a legal rule that such behavior is not foreseeable as a matter of law rather than leaving the question of foreseeability in these cases for the fact finder.[174]

CONCLUSION

An applicant's criminal record should be absent from the analysis of whether a future crime was foreseeable by a landlord because the mere presence of a record does not implicate foreseeability.[175] Washington courts should not send this question to the jury as the Georgia appeals court did. Rather, Washington courts should examine the relevant research set out above to find that there is no reasonably foreseeable likelihood that a rental applicant is a future threat based solely on a criminal record. A local or state legislature should also adopt this standard to ensure clarity regarding liability for landlords when making these rental decisions and to further the public policy goals outlined above. A reasonable standard would require landlords to meet their common law and statutory duties to maintain safe and habitable premises while removing barriers to housing for qualified applicants with criminal records.

The assumption that a criminal record is accurately predictive of a future problematic tenancy is not supported by current social science research. Tort law should not rely on assumptions about future threats based on a past criminal record when empirical evidence suggests that the risk is not inherent or predictable. Washington needs a rational uniform tort law standard that protects tenants and incorporates the public policy goals of public safety, rehabilitation and fair housing. The standard we suggest—that an applicant's future criminal behavior is not foreseeable solely based on a past criminal record as a matter of law—meets these criteria.

[173] *See* Garcia v. Duffy, 492 So.2d 435, 441 (Fla. Dist. Ct. App. 1986) (quoting Williams v. Feather Sound, Inc., 386 So.2d 1238, 1241 (Fla. Dist. Ct. App. 1980)).

[174] *See* Schooley v. Pinch's Deli Mkt., Inc., 951 P.2d 749, 754 (Wash. 1998) (noting that foreseeability is generally an issue of fact for the jury).

[175] There is no method that completely and accurately measures recidivism. *See* Robert Weisberg, *Meanings and Measurements of Recidivism*, 87 S. CAL. L. REV. 785 (2014). There are also methods of attempting to predict dangerousness, but there is no agreed-upon method or simple way to make this determination. *See supra* notes 107–113.

the affordability protections that implement the governing housing program.

An evaluation of five such approaches in this two-part article demonstrates that successful efforts must observe six key principles:

- meeting short-term and long-term physical and financial needs;
- reinvesting excess proceeds back into affordable housing;
- guaranteeing affordability for current and future tenants;
- weeding out poorly performing owners and managers;
- providing for tenant participation in the decision-making process; and
- ensuring clarity in the governing law and regulations.

Passage of Congressman Frank's draft omnibus preservation bill would be a significant step in the right direction for several of the types of properties reviewed here. Other innovative long-term measures should be explored as well, such as providing stronger incentives to transfer these projects to mission-driven nonprofits or to local land trusts, in order to provide greater assurances of long-term public benefit from responsible recapitalization.20 By combining the lessons learned from prior approaches with new innovative proposals, this important housing stock can remain a viable and valuable asset long into the future. ■

[20]Exit tax relief is one such important proposal that would help address the issue of many private owners being unwilling to sell due to the steep capital gains taxes they would incur as a result of having taken prior significant depreciation deductions. Many owners thus hold onto their property to secure the step up in basis that occurs upon transfer at death, thus eliminating both the tax revenue to the government, as well as potentially failing to recapitalize the property. Exit tax relief would eliminate this tax burden in cases of a sale to a preservation-motivated purchaser.

The Importance of Stable Housing for Formerly Incarcerated Individuals

Each year more than 725,000 people leave state and federal prisons.[1] An additional 230,000 people leave county jails every week.[2] Formerly incarcerated individuals struggle to secure employment, obtain medical care and avoid substance abuse. According to criminal justice officials, however, finding housing is the biggest challenge faced by individuals returning to the community.[3] This article will identify the barriers to accessing stable housing, describe the housing arrangements of individuals returning to the community and explore the relationship between residential instability and recidivism.

Obstacles to Stable Housing

A number of institutional and legal barriers prevent formerly incarcerated individuals from finding stable housing after release. Private housing represents 97% of the total housing stock in the United States.[4] Due to soaring prices, however, private housing is simply out of reach for many formerly incarcerated individuals living in urban areas.[5] Moreover, most landlords conduct criminal background checks on prospective tenants.[6] Given the short supply of affordable housing, landlords can afford to deny housing to applicants with criminal records. Screening for sex offenders is especially prevalent.

Federally assisted housing is the only option for many people leaving correctional facilities. Harsh admission

[1]Heather C. West & William J. Sabol, U.S. Dep't of Justice, Bureau of Justice Statistics, Prisoners in 2007 (2008), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf.

[2]Amy L. Solomon et al., Life After Lockup: Improving Reentry from Jail to the Community XV (2008), *available at* http://www.jjay.cuny.edu/centers institutes/pri/pdfs/Final%20Life%20After%20Lockup.pdf.

[3]Caterina Gouvis Roman & Jeremy Travis, The Urban Inst., Taking Stock: Housing, Homelessness, and Prisoner Reentry 2 (2004), *available at* http://www.urban.org/UploadedPDF/411096_taking_stock.pdf.

[4]Joan Petersilia, California Policy Research Center, Understanding California Corrections 69 (2006).

[5]*See* Nat'l Low Income Hous. Coalition, Out of Reach 2009, http://www.nlihc.org/oor/oor2009/data.cfm?getstate=on&getmsa=on&msa=2243&state=CA. For example, the fair market rent for a one-bedroom apartment in Oakland, California, is $1,093.

[6]*See* Maria Foscarinis & Rebecca K. Troth, *Reentry and Homelessness: Alternatives to Recidivism*, 39 Clearinghouse Rev. 440, 446 (2005). All 50 states allow private landlords to screen an applicant for a criminal record. *But see* Madison, Wis. Code of Ordinances, Ch. 39.03(1) and (4) (Renumbered by Ord. 12,039, Adopted 2-17-98), *available at* http://www.municode.com/resources/gateway.asp?pid=50000&sid=49, Urbana, Ill, Code of Ordinances, Ch. 12 Art. III. Div. 1, §§ 12-37 and 12-64, (Ord. No. 7879-92, § 1(29), 4-24-79; Ord. No. 9798-49, § 1, 10-6-97), *available at* http://www.city.urbana.il.us/. Both Madison, Wisconsin and Urbana, Illinois passed ordinances that prevent discrimination on the basis of an arrest or conviction record.

policies, however, prevent many people with criminal records from accessing federally assisted housing. Public housing authorities (PHAs) must reject lifetime registered sex offenders and individuals convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.[7] In addition, federal law permits PHAs to deny admission to applicants with histories of violent criminal activity, drug-related criminal activity, or criminal activity that may threaten the health, safety or peaceful enjoyment of the premises by other residents.[8] The statute directs PHAs to consider criminal activity that occurred within a "reasonable time" prior to the admission decision.[9] Nevertheless, some PHAs consider criminal activity that occurred as long as 10 years prior to the admission decision.[10]

Housing Arrangements After Release

Because of the barriers to obtaining stable housing, many formerly incarcerated individuals end up in unstable housing arrangements. A total of 10% of parolees are homeless nationwide.[11] In large urban areas such as Los Angeles and San Francisco, 30% to 50% of parolees are homeless.[12] A large portion of formerly incarcerated individuals rely on family members to provide shelter after release.[13] Some family members, however, set limits on the amount of time that a returning relative can stay.[14] Consequently, formerly incarcerated individuals end up "shuttling" between relatives, friends, shelters and the street.[15] A study of men returning to the metropolitan Cleveland area reveals the extent of the shuttling:[16] 63% of the study participants reported living in two, three, four, or five places within the first year after release.[17] At the end of the first year, 46% of the men referred to their housing arrangements as temporary and expected to move within a few weeks or months.[18] Conversely, a small portion of formerly incarcerated individuals manage to secure their own apartment or house after release. In a study of men returning to Chicago, only 19% of the study participants reported living in their own place 16 months after release.[19]

Relationship Between Unstable Housing and Recidivism

Ultimately, many individuals are not able to avoid re-incarceration. In California, for example, 79% of parolees return to prison or abscond.[20] Research suggests that securing stable housing is crucial to successful re-entry. The study of men returning to the Cleveland metropolitan area found that obtaining stable housing within the first month after release inhibited re-incarceration.[21] As stated in an Urban Institute study, "The importance of finding a stable residence cannot be overestimated: men who found such housing within the first month after release were less likely to return to prison during the first year out."[22] The study of men returning to Chicago reinforces the idea. Study participants who reported living in their own apartment or house two months after release faced a lower risk of re-incarceration.[23]

Moreover, a study of over 40,000 individuals returning to New York City from state correctional facilities reveals the correlation between shelter use and risk of recidivism.[24] Individuals who entered a homeless shelter within the first two years after release faced a higher risk of re-incarceration.[25] Perhaps more significantly, individuals who reported living in a shelter before incarceration faced a higher risk of both shelter use after release and re-incarceration.[26] The figures suggest that "the crossing

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[7] 42 U.S.C.A. §§ 1437n(f), 13663 (Westlaw Oct. 27, 2009). The ban on individuals convicted of manufacturing or producing methamphetamine does not apply to project-based Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, or USDA housing. The ban on lifetime registered sex offenders does not apply to USDA housing.

[8] 42 U.S.C.A. § 13661(c) (Westlaw Oct. 27, 2009).

[9] *Id*.

[10] *See* San Francisco Housing Authority Admissions and Continued Occupancy Plan 2008, *available at* http://www.sfha.org/about/pha/pdf/2008ACOP.pdf.

[11] Little Hoover Comm'n, Back to the Community: Safe & Sound Parole Policies 39 (2003).

[12] *Id*.

[13] *See* Nancy La Vigne et al., The Urban Institute, Chicago Prisoners' Experiences Returning Home 16 (2004), *available at* http://www.urban.org/UploadedPDF/311115_ChicagoPrisoners.pdf. In a study of men returning to Chicago, 88% of the men reported living with family members or intimate partners four to eight months after release.

[14] Tracey L. Shollenberger, The Urban Inst., When Relatives Return: Interviews with Family Members of Returning Prisoners in Houston, Texas 9-10 (2009), *available at* http://www.urban.org/UploadedPDF/411903_when_relatives_return.pdf. The study followed family members of men and women returning to Houston. Of the family members who provided housing to a returning relative, over half imposed limits on the duration of the housing arrangements. Some of the study participants said that the returning relative could stay until he or she found an apartment or a job. Others said that the returning relative could stay as long as he or she did not use drugs or engage in criminal activity.

[15] Jeremy Travis, But They All Come Back: Facing the Challenges of Prisoner Reentry 219 (The Urban Inst. Press 2005).

[16] Christy A. Visher & Shannon M.E. Courtney, The Urban Inst., One Year Out: Experiences of Prisoners Returning to Cleveland 1 (2007), *available at* http://www.urban.org/UploadedPDF/311445_One_Year.pdf.

[17] *Id*. at 3.

[18] *Id*.

[19] Jennifer Yahner & Christy Visher, The Urban Inst., Illinois Prisoners' Reentry Success Three Years After Release 3 (2008), *available at* http://www.urban.org/UploadedPDF/411748_reentry_success.pdf.

[20] Little Hoover Comm'n, *supra* note 11, at 55.

[21] Visher & Courtney, *supra* note 16, at 11.

[22] *Id*.

[23] Yahner & Visher, *supra* note 19, at 3.

[24] Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 Criminology & Pub. Policy 139 (2004).

[25] *Id*. at 147.

[26] *Id*. During the first two years after release, roughly 11% of the study participants entered a homeless shelter and 33% returned to prison. Among the study participants with a record of shelter use prior to incarceration, however, roughly 45% entered a homeless shelter and 42% returned to prison.

over from incarceration to homelessness, and vice versa, threatens to transform spells of incarceration or homelessness into more long-term patterns of social exclusion."[27] Directing housing assistance to individuals with a history of residential instability before incarceration could reduce the rate of homelessness and re-incarceration among the re-entry population.[28]

Conclusion

Many formerly incarcerated individuals end up in unstable housing arrangements after release. As the research above indicates, stable housing is a vital component of effective re-entry. By working to reduce the barriers that prevent formerly incarcerated individuals from accessing stable housing, advocates can reduce recidivism and improve public safety and community wellbeing. ■

[27] *Id.* at 142.

[28] *Id.* at 151; *see also* Corp. for Supportive Hous., Getting Out with Nowhere to Go: The Case for Re-entry Supportive Housing, *available at* http://www.csh.org/_data/global/images/ReEntryBooklet.pdf. Research shows that supportive housing—permanent affordable housing linked to services—works to break the cycle of homelessness and incarceration.

Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,[1] Lexis,[2] or, in some instances, the court's website.[3] Copies of the cases are *not* available from NHLP.

Housing Choice Voucher Program: Police Report Insufficient to Establish Drug-Related Criminal Activity

Weekes v. Boston Hous. Auth., No. 09H784CV00531 (Mass. Hous. Ct. Dec. 10, 2009). In terminating a voucher tenant's assistance, a hearing officer relied on a police report stating that officers seized clear plastic bags containing a substance "believed to be Class D marijuana" from the tenant's apartment. The court found that the statements in the police report, standing alone, were insufficient to establish by a preponderance of the evidence that the substance seized from the tenant's apartment was marijuana. The court therefore found that the hearing officer's conclusion that the tenant allowed her apartment to be used for drug-related criminal activity in violation of her Section 8 lease was legally erroneous. The court vacated the hearing officer's decision and ordered the housing authority to reinstate the tenant's voucher.

Housing Choice Voucher Program: Evidence Supported Hearing Officer's Finding that Tenant Was Evicted

Morford-Garcia v. Metro. Council Hous. & Redev. Agency, 2009 WL 4909435 (Minn. Ct. App. Dec. 22, 2009) (unreported). An owner filed an eviction action against a voucher tenant. The parties later entered into a settlement agreeing to a mutual termination of the lease. The settlement stated that if the tenant violated its terms, the landlord would be entitled to an immediate writ of recovery. The tenant violated the settlement, and a writ of recovery was issued but later canceled. The tenant argued that the record did not support the hearing officer's finding that she was evicted. The court disagreed, finding that an eviction judgment must have been entered in the owner's favor, or else a writ of recovery would not have been issued. The court also found that there was substantial evidence to support the

[1] http://www.westlaw.com.

[2] http://www.lexis.com.

[3] For a list of courts that are accessible online, see http://www.uscourts.gov/links.html (federal courts) and http://www.ncsc.dni.us/COURT/SITES/courts.htm#state (for state courts). See also http://www.courts.net.

SCARLET LETTERS AND RECIDIVISM: DOES AN OLD CRIMINAL RECORD PREDICT FUTURE OFFENDING?*

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Research Summary:
This research explores the issue of old prior records and their ability to predict future offending. In particular, we are interested in the question of whether, after a given period of time, the risk of recidivism for a person who has been arrested in the distant past is ever indistinguishable from that of a population of persons with no prior arrests. Two well-documented empirical facts guide our investigation: (1) Individuals who have offended in the past are relatively more likely to offend in the future, and (2) the risk of recidivism declines as the time since the last criminal act increases. We find that immediately after an arrest, the knowledge of this prior record does significantly differentiate this population from a population of nonoffenders. However, these differences weaken dramatically and quickly over time so that the risk of new offenses among those who last offended six or seven years ago begins to approximate (but not match) the risk of new offenses among persons with no criminal record.

Policy Implications:
Individuals with official records of past offending behavior encounter a barrier when they try to obtain employment, even if a person's most recent offense occurred in the distant past. There are many reasons for such obstacles, but they are at least partially premised on the concern that individuals with arrest records—even from the distant past—are more likely to offend in the future than persons with no criminal history. Our analysis questions the logic of such practices and suggests that after a given period of remaining crime free, it may be prudent to

* We would like to thank Maurice Emsellem for asking the question that instigated this research effort. We would also like to thank Alfred Blumstein, Alex Piquero, Debbie Mukamal, participants at the University of Maryland's Economics and Crime Seminar, NCOVR's Workshop on Criminal Career Research and Sentencing Policy, and John Jay College's Prisoner Reentry Institute for helpful comments and feedback. All errors remain our own.

wash away the brand of "offender" and open up more legitimate opportunities to this population.

KEYWORDS: Collateral Consequences, Recidivism, Desistance

INTRODUCTION

Legal restrictions on employing ex-offenders in certain types of jobs are an example of what is known in the legal literature as a "collateral consequence" of an arrest or conviction.[1] Collateral consequences are ethically, if not legally, problematic because they amplify punishment beyond the sanctions imposed by the criminal justice system. There is also a pragmatic public safety concern that ex-offenders who are restricted from jobs might resort to further criminal activity. Although it is important not to overstate the evidence supporting a link between work and crime, most researchers do conclude that employment is at least moderately helpful in the desistance process (see Bushway and Reuter, 2002; Fagan and Freeman, 1999; Sampson and Laub, 1993).

Despite the growing evidence that employment might decrease crime, the use of criminal history records in employment decisions has been increasing over the last 10 years. A recent employer survey suggests that over 50% of employers now check some type of criminal history records in the Los Angeles area (Stoll et al., 2006), and another survey of large employers reports that over 80% now use criminal history records checks in the hiring process. Moreover, new federal rules about background checks for workers in the transportation industry have dramatically increased the number of employees covered by background checks.

Concern about this widespread access to criminal history records has led to a renewed national conversation on the topic. For example, Congress has asked the Attorney General for feedback on the proper use of criminal history records in background checks, and the national consortium of state criminal history record repositories (SEARCH) has commissioned two national task forces to look into different aspects of the use of criminal history records by employers. The Second Chance Act of 2005, currently in Congress, specifically calls on states that request funds for dealing with prisoner reentry to reconsider statutory guidelines that explicitly limit employment opportunities for ex-offenders.

Much of this attention has focused not on denying access to the records

1. In the narrow legal definition, "collateral consequences" are formal legal restrictions imposed by the state on such rights as voting, owning a firearm, parental custody, and employment. For a discussion of the collateral consequences related to employment, see Rubin (1971). For a discussion of collateral consequences more generally, see Burton et al. (1987).

but on better defining the relevance of criminal history records. There is a consensus that the blanket exclusion of individuals with criminal history records makes little sense. Indeed, such a blanket exclusion has been explicitly disallowed as discriminating against minorities under Title VII of the Civil Rights Act.[2] The question is how to decide when a criminal history record is relevant. The Equal Employment Opportunity Commission, while outlawing blanket exclusion, allowed the use of an arrest or conviction record as evidence in an employment decision provided the employer considers the nature and gravity of the offense, *the time that has passed since the arrest*, and the nature of the job held or sought. According to the *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (SEARCH, 2005):

> The relevancy model of the collection, use, and disclosure of criminal justice record information remains in a very nascent stage. Information is increasingly readily available, but relevancy determinations are unclear. As a society, we know very little about whether, and under what circumstances, criminal justice record information (and different kinds of criminal justice record information) is relevant to various determinations involving employment. . .. As a result, the current default, especially in an increasingly dangerous and risk averse society, is to allow all (or virtually all) criminal justice information to reach end-users and then permit end-users, based on their own needs, culture, and law, to sort out the relevancy of the information (SEARCH, p. 75).

The goal of this article is to contribute to the discussion about the relevance of criminal history records for predicting employment behavior. In particular, we focus on the issue of timing. We start with the observation that lifetime bans for all felony convictions are not consistent with the research about desistance from developmental criminology. Recent analysis of data on offenders from adolescence to age 70 shows that most offenders desist, with the bulk of offenders not experiencing additional arrests after age 40 (Blokland et al., 2005; Laub and Sampson, 2003). But if lifetime bans are not appropriate, what exactly is the appropriate "window" on the use of criminal history records? The most recent statistics from the U.S. Department of Justice indicate that over two thirds of prison releasees commit a new offense or violate parole within three years of release (Langan and Levine, 2002) and the probability of failure declines the longer the time since the last offense. Therefore, it is reasonable to ask, from the perspective of the employer, whether the risk of offending

2. The Equal Employment Opportunity Commission (EEOC) issued a policy statement in September 1990 explicitly disallowing the "blanket exclusion" of individuals with criminal records.

for an ex-felon ever becomes similar, or equal to, the risk of offending for someone who has never offended at all? If so, after what period of time since the last arrest or conviction does this occur?

In phrasing the question this way, we want to be clear from the beginning that this article is fundamentally a policy exercise and not an exercise in developmental criminology. The article is specifically designed to help employers and public policy makers determine the relevance of criminal history records for predicting future behavior, including but not limited to future arrest and conviction. Therefore, we base our assessment on the types of criminal history records to which employers might have access, although we acknowledge that these are not a perfect reflection of criminality.

To be specific, we use arrest data from the Philadelphia police records for a cohort of individuals born in 1958. We imagine a scenario in which a Philadelphia native applies to a Philadelphia employer for a job. Our data approximate what a Philadelphia employer would have found had he/she gone to the local courthouse and conducted his/her own search. Such a search is relatively easy to conduct, and it is considered the gold standard of searches by the private records industry (Peterson, 2005). We begin in the next section with a discussion of the literature on the use of criminal history records to predict future behavior.

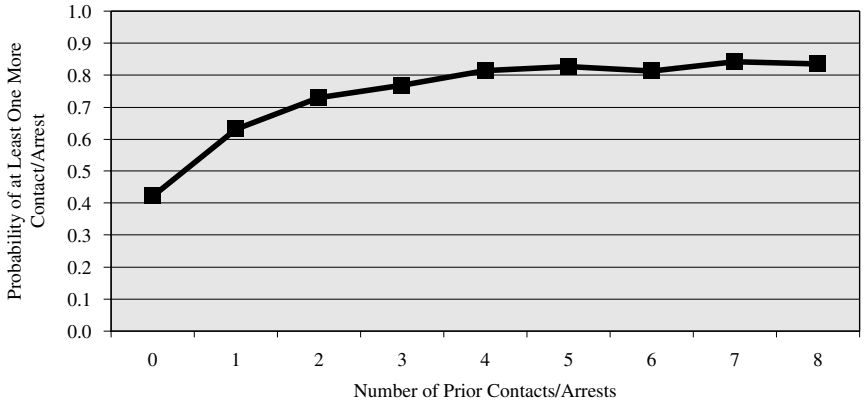
LITERATURE REVIEW

The notion that past behavior is one of the best predictors of future behavior has been accepted as fact in a variety of fields. For example, in the field of education, entrance to college depends on past academic performance in high school and on standardized tests to predict future success. In personal finance matters, creditors rely on an individual's past reliability in paying bills on time and meeting financial obligations to assign a credit score. This score is then used to determine future lending opportunities. Similarly, when applying for auto insurance, one is almost always asked a question such as: "Have you had any traffic violations in the past 3 years?" The answer to this all-important question directly impacts one's insurance premium.

The field of criminal justice has also relied heavily on this basic knowledge. For example, it is known that about 30% to 60% of juvenile delinquents go on to have at least one adult offense (Brame et al., 2003; Farrington, 1987; McCord, 1978; Shannon, 1982). Analysis of recidivism data in several cohorts reported by Blumstein et al. (1985) reveals that most individuals with multiple past official records of offending accumulate new official records of offending in the future [see also, Greenberg

(1991)]. Figure 1 illustrates this point with data from the 1958 (where individuals are followed through age 26). Knowledge of an offender's prior record is, therefore, used as a general indicator of dangerousness and propensity to reoffend at all key decision-making points in the criminal justice process from the police decision to arrest, to the prosecutor's charging decision, to the final sentence handed down by the criminal court judge (Blumstein et al., 1986:75–76; Gottfredson and Gottfredson, 1985).[3]

FIGURE 1. RISK OF NEW OFFENSES BY NUMBER OF PRIOR OFFENSE (1958 PHILADELPHIA BIRTH COHORT MALES, N=13,160)



Perhaps then it is also not surprising that employers would also want to use criminal history records to help them assess applicants. However, there are two primary differences between the employer use of criminal justice records and the other fields' use of past information. First, employers are using criminal justice records to predict employment behavior, whereas other fields rely more heavily on information specific to their own realm (educational achievement used to grant/restrict future educational opportunities, financial failures used to limit financial opportunities). Second, credit scoring companies and insurance companies explicitly restrict the time period for which prior behavior is considered relevant (e.g., credit scores typically look back seven years, whereas insurance records often limit their inquiry to three years).

In contrast, employers are given wide discretion to make decisions about the relevance of the record. The Fair Credit Reporting Act, which

3. At the same time, most researchers warn about the limits of these predictions, given that most measures of predictive accuracy are modest at best (Gottfredson and Gottfredson, 1994). This concern about the limits of our ability to predict future offending is absent in the discussion about employer use of criminal history record.

governs the use of consumer information like criminal history records, was amended in 1998 to eliminate any restrictions on how far back conviction records could be reported (SEARCH, 2005). Moreover, many (but not all) of the statutory prescriptions against employment by ex-offenders are lifetime bans. For example, 24 states have laws mandating lifetime disqualification from unarmed private security guard jobs for any felony conviction, with only 4 states providing offense age limits (Emsellem, 2005). This point becomes particularly significant when considering the criminological findings regarding past criminal behavior. Only about 5% to 10% of young offenders actually go on to become "chronic" criminals over time (see, e.g., Dunford and Elliott, 1984; Moffitt, 1993; Shannon, 1982; Wolfgang, Figlio and Sellin, 1972). Most people with a criminal justice contact at some point early in life actually pose little or no risk of going on to become long-term recidivists. Moreover, existing research suggests that the ignored element of "time since last arrest/conviction" may indeed prove to be useful for understanding the connection between past and future criminal activity.

For example, in an analysis of a sample of the original 1945 Philadelphia birth cohort, Raskin (1987) found the hazard rate for reoffending, defined as the probability of offending this period given that the individual has not yet offended, decreases steadily with time since last incident. The hazard rate for a new police contact was the greatest during the first six months following a previous contact, after which time it continually decreased. In fact, during the last month of the study, he found that none of the prior offenders who had "survived" to this point were rearrested. These findings lead Raskin (1987:63) to conclude that, "the longer an individual is able to survive without committing his next offense, the better his chances of desisting from crime."

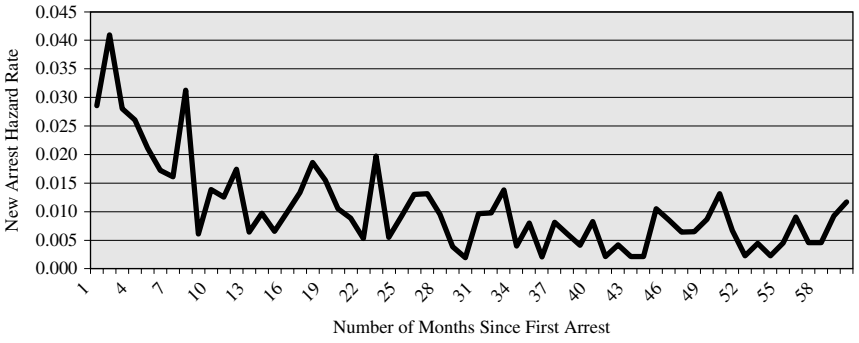
There is considerable ambiguity about why individuals who have refrained from offending for an extended period of time tend to recidivate at lower rates than individuals who last offended recently. One possibility is that the actual experience of offending abstinence has a causal effect on risk of reoffending; the more a life is lived crime-free, the more one comes to see the benefits of desistance. Another possibility is that individuals with a high risk of recidivism tend to recidivate quickly, whereas others who sincerely try to avoid new offenses tend to dominate the population of lower risk individuals. Regardless of the reason, however, it is clear that individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past.

Classic volumes on recidivism by Maltz (1984) and Schmidt and Witte (1988) are especially emphatic in pointing out that parametric models of time to the next recidivism event should be chosen with typical features of recidivism data in mind, the most prominent of which is a highly skewed

time-to-recidivism distribution. For example, Schmidt and Witte (1988) followed two cohorts of North Carolina prison releasees to estimate the percentage of released inmates who return to prison. Their analysis shows that the percentage of inmates returning to prison peaked before those inmates had been in the community for 10 months. At the 20-month mark, the percentage dropped to half of the peak level. By the 40-month mark, the estimated percentage returning to prison was half of its 20-month level. These results imply that risk of recidivism for a cohort of offenders returning to the community peaks fairly quickly and then diminishes considerably with the passage of time. Many studies exhibit this same time-to-recidivism pattern (see, e.g., Greenberg, 1978; Harris and Moitra, 1978; Harris et al., 1981; Lattimore and Baker, 1992; Maltz, 1984; Schmidt and Witte, 1988; Visher et al., 1991). In addition, most of the studies of which we are aware indicate that the percentage of the population recidivating begins to approach zero after several years of follow-up (see, e.g., Schmidt and Witte, 1988:50).

Figure 2 summarizes the five-year time-to-recidivism distribution for adult male offenders arrested for the first time between ages 18 and 20 in the 1958 Philadelphia cohort data examined later in this article. Over the five-year follow-up period, a total of 47.4% of these young adult arrestees were rearrested. But, as Figure 2 indicates, the risk of rearrest is not evenly distributed over the five-year follow-up period. The hazard rate plotted in Figure 2 represents the probability that an individual who successfully makes it to a particular time point in the follow-up period is arrested at that time point. This analysis indicates that time-to-recidivism patterns in the Philadelphia data are broadly congruent with those in other recidivism studies.

FIGURE 2. 5-YEAR ARREST RECIDIVISM HAZARD RATE AMONG OFFENDERS ARRESTED FOR THE FIRST TIME AT AGES 18-20 (N=805)



We are, therefore, led to the basis for a useful policy implication: Individuals who have official records of past offending are relatively more likely to offend in the future, but individuals who have managed to refrain from offending for a long period of time, even though they too offended in the past, consistently exhibit much lower risk of future offending than individuals who have offended in the recent past. This finding implies that the length of time that has passed since the last record of offending should accompany information about prior offending records. However, this information cannot be properly interpreted in a vacuum. Even individuals whose last offense record occurred years ago will, as a group, generally exhibit some nonzero risk of reoffending in the future. A logical point of comparison is needed. The likelihood that an individual who has no record will offend can serve as a comparative benchmark. For example, an individual whose last offense record was seven years ago may have much lower objective risk of new offenses now than six years ago. But such an analysis cannot, on its own, tell us anything about whether that person presents a substantially greater risk to the community than someone who has no record of offending.

In this article, we use data from the Second Philadelphia Birth Cohort Study to examine recidivism patterns for people who have a record of past offending in comparison to onset patterns for people who have no record of past offending. In the following sections, we further describe the data, present our analytical results, and offer concluding thoughts and priorities for future research.

DATA DESCRIPTION

For this study, we use a dataset of all males born in the city of Philadelphia in 1958 and who resided in the city between the ages of 10 and 17 years old (N = 13,160). The dates of juvenile police contacts for criminal events were collected on all subjects through age 17. After age 17, arrest dates were collected on all subjects through age 26.[4] Although some collateral consequences are dependent on a conviction, employers are not explicitly barred from taking arrests into account. Alternative data sources would include the FBI NCIC database that is mandated for truck drivers carrying hazardous materials, or the state repository background check from Pennsylvania that is mandated for private security guards. Although the Philadelphia search is less expansive geographically, it is more inclusive; prior research shows that there is substantial "slippage" as records move from the police to the courts and then finally into the repository systems (Briggs et al., 2006; Geerken, 1994). It also contains complete information on arrest, which can be used in employment background

4. Maximum age of subject in dataset is 26.9 years.

checks, and involves a broader measure of criminal activity. Having said that, we also accept that this is a first attempt to answer the question, and we hope that future research will help to answer the question more completely.

Other strengths of this dataset for this particular study include the availability of information about the offense that led to each contact or arrest, which allows us to assess potential differences across several types of offense categories and the inclusion of a population of both offenders and nonoffenders to provide a logical comparison group. .

One potential weakness of our analysis is that some individuals may have moved out of the city after age 17, leading to attrition in the dataset. The extent to which this issue is problematic depends on whether moving is more or less likely for those who get arrested versus those who do not. Generally speaking, wealthier individuals and whites are more likely to move out of a city as they age. These characteristics are negatively correlated with arrest. Therefore, it is reasonable to assume that those who are arrested are less likely to move than those who are not arrested at age 18 or 19 (Geerken, 1994). As a result, our estimates are likely to be overestimates rather than underestimates of the recidivism probabilities.

Finally, the results are unadjusted for periods of incarceration (Eggleston et al., 2004). On the one hand, it is not necessarily a problem. Most statutes and other restrictions are specifically tied to the time since conviction, not the time since release from prison. Therefore, the relevant framework for this policy analysis is the time since conviction. And information about incarceration is typically not available to employers, which makes it hard to think about incorporating incarceration information in any decision rule about past records. However, like developmental criminologists, we want to assess the current criminality of the people in our sample. As a result of this problem, the recidivism probabilities are likely underestimated (Eggleston et al., 2004). In this cohort, we expect the underestimation to be a minor problem.

We rely on two different but complementary analytic frameworks to study the Philadelphia data. First, we use the concept of a hazard rate. As our data are arrayed in discrete time, the hazard rate definition used in this article is straightforward. For any given group, G, comprising $i = 1, 2, \ldots, N$ individuals observed at discrete time points, $t = 1, 2, \ldots T$, we estimate the hazard rate by

$$h(t \mid G) = \frac{\text{\# of Individuals in Group } G \text{ Arrested at Time } t}{\text{\# of Individuals in Group } G \text{ Avoiding Arrest Prior to Time } t}$$

This formula means that individuals who are arrested at time $t - 1$ are no longer considered to be at risk for experiencing a new arrest at time t. That is, once they are rearrested, they are removed from the at-risk population.

The hazard rate as defined above is particularly useful for policy purposes because it represents the case with which a decision maker is often faced. Someone with a criminal record at some point in the past who has avoided new criminal activities for a particular period of time seeks a favorable decision. In this situation, an estimate of the hazard rate would provide helpful information above and beyond simply knowing that an individual had offended at some point in the past. Our hazard rate analysis divides the adult follow-up period into four-month periods through age 26.

Next we calculate the conditional probability that an individual is arrested during the two year period of ages 25 and 26. We denote this probability by $p(a \mid G)$, which implies that we condition our estimate of the probability on membership in a particular group G:

$$p(a \mid G) = \frac{\text{\# of Individuals in Group } G \text{ Arrested at Age 25-26}}{\text{\# of Individuals in Group } G}$$

Our objective here is to determine whether different groups of individuals can be distinguished by their probability of experiencing new arrests during the 25–26 age period.

ANALYSIS RESULTS

In this section, we present several analyses based on records of juvenile police contacts for criminal offenses and adult arrests in the Philadelphia data. As noted, we first estimate the probability that an arrest occurs at a particular time, conditional on no arrest having occurred prior to that time (i.e., the hazard rate). We then estimate the probability that an arrest occurs during the age-25–26 time period for various groups of past offenders and nonoffenders.

HAZARD RATE ANALYSIS

Although there are many ways of dividing a population like the Philadelphia cohort, several are of particular interest to us and we will be referring to them throughout our presentation of the results. Table 1 presents a summary of three different groups used in our hazard rate analysis. Each of these groups can be described in terms of their age-18 arrest records. Our analysis will compare the post-age-18 arrest experiences of the first two groups; in a supplementary analysis, we will also study the post-age-18 arrest experiences of the violent arrestee group.

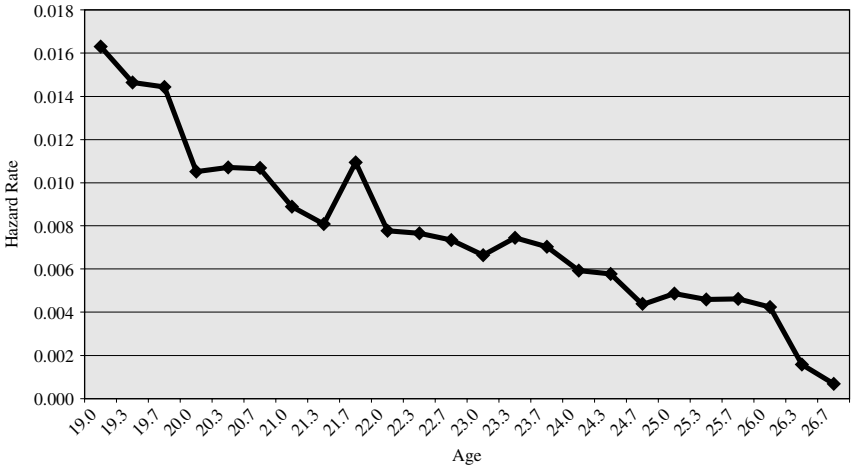
TABLE 1. GROUPS OF INDIVIDUALS USED IN HAZARD RATE ANALYSIS

Group Description	Number of Cases	Percent of Population
Exactly Zero Arrests at Age 18	12,151	92.3
At Least One Arrest at Age 18	1,009	7.7
At Least One Arrest for a Violent Crime at Age 18	375	2.8
At Least One Arrest at Age 18 But No Violence	634	4.8

NOTE: Violent Offenses include homicide/non-negligent manslaughter, rape, robbery, aggravated assault, and simple assault.

Our hazard rate analysis divides the entire period from age 19 to 26 into 24 consecutive four-month periods. At the beginning of each of those time periods, we identify all individuals who have not yet been arrested and the subset of those individuals who are arrested during the time period. The hazard rate at any of these 24 time points is obtained by dividing the latter number by the former. Figure 3 presents the arrest hazard rate from age 19 through age 26 for those individuals who were not arrested at all when they were age 18. The hazard rate for this group declines in nearly monotonic fashion over this eight-year period. At age 19, for example, the hazard rate is approximately 1.5%, which implies that about 1.5% of individuals at risk to be arrested for the first time since turning age 19

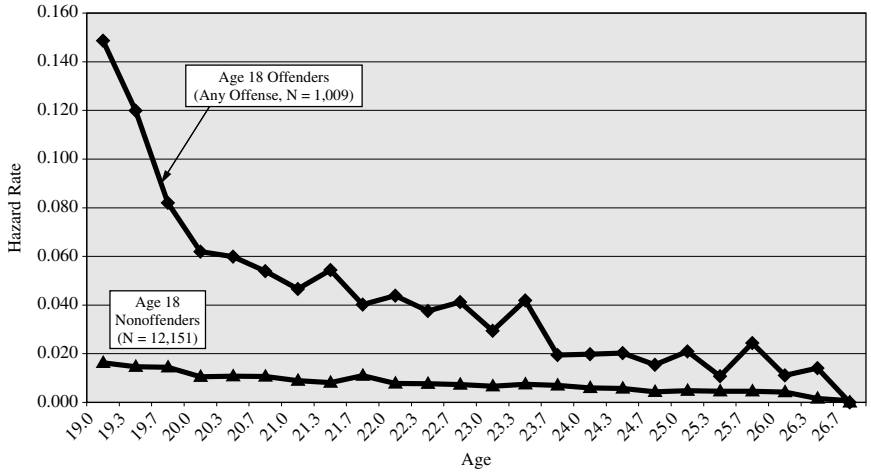
FIGURE 3. ARREST HAZARD RATE BY AGE (AGE 18 NONOFFENDERS, N=12,151)



actually are arrested. By age 25, however, the hazard rate has dropped to less than one half of 1%.

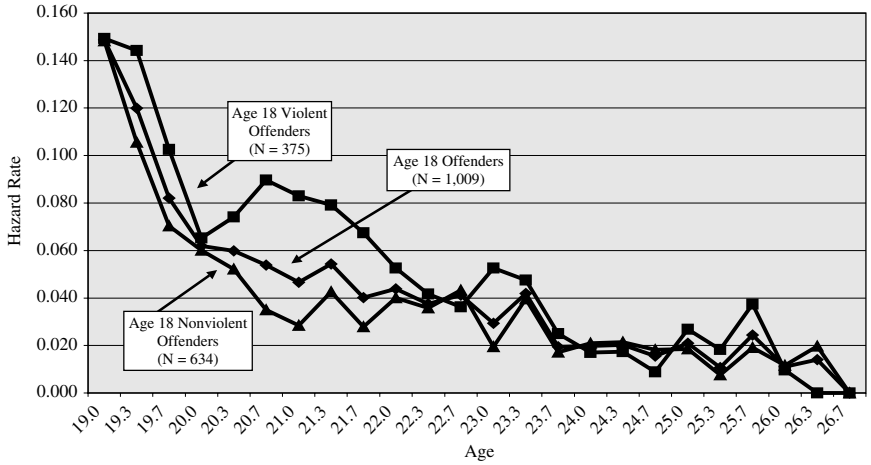
Despite the impressive decreasing trend in the hazard rate from Figure 3, the actual hazards are all very small. This point is best illustrated by comparing the hazard rate of these nonoffenders with those of the age 18 offenders (N = 1,009). Figure 4 presents this comparison. The analysis indicates that the hazard rate for the age-18 offenders is much higher than the age-18 nonoffender hazard rate during the early years of our follow-up period. Like the nonoffenders, the hazard rate for the age-18 offenders declines throughout the early twenties. However, unlike the nonoffenders, the hazard rate decreases in a much more dramatic fashion so that by age 24 the hazard rate for the age-18 offenders drops below 2%. Although this hazard rate is still higher than the comparable hazard rate for the age-18 nonoffenders, the magnitude of the difference is substantively small.

FIGURE 4. ARREST HAZARD RATE BY AGE



To explore the possibility that violent and nonviolent age-18 offenders have different underlying hazard rate patterns, we created two groups: (1) individuals with at least one violent arrest at age 18 (N = 375) and (2) individuals with at least one arrest but no arrests for violence at age 18 (N = 634). As Figure 5 indicates, the hazard rate for the age-18 violent offenders tends to be somewhat higher than for the age-18 offender group. On the whole, however, they are hard to distinguish statistically.

FIGURE 5. ARREST HAZARD RATE BY AGE AMONG AGE-18 OFFENDERS (N=1,009)



Conditional Probabilities at age 25–26

Next, we turn our attention to a comparison of age-25–26 arrest probabilities for several different groups of individuals. Table 2 provides a description of each group used for this analysis. The first group includes individuals who have no record of any juvenile criminal contacts or adult arrests prior to age 25. This group of "clean record" individuals represents a logical point of comparison with groups with some type of juvenile police contact or adult arrest record. Another reasonable comparison group includes individuals in the first group as well as individuals who have a record of at least one juvenile contact for a criminal offense but no adult arrests through age 24. This group is relevant for policies excluding consideration of juvenile offense records.

We also consider a variety of groups defined by the type and last occurrence of officially recorded criminal activity. The first and largest of these groups is comprised of individuals with at least one juvenile police contact for a criminal offense but no adult arrests through age 24 (N = 2,197). In addition, we study the subset of this group with juvenile contacts for nonviolent offenses only (N = 1,517). Next, we turn our attention to individuals who were arrested at least once at age 18 but had no new arrests through age 24 (N = 432). A subset of this group including those who were arrested exclusively for nonviolent offenses at age 18 was also examined (N = 257). Finally, we identified individuals who were, prior to age 25, last arrested at ages 19 (N = 341), 20 (N = 292), 21 (N = 361), 22 (N = 403), 23 (N = 497), and 24 (N = 594).

TABLE 2. CONDITIONAL POSTERIOR PROBABILITY OF ARREST AT AGE 25–26

Group	N=	Proportion Offending at Age 25–26	Median of Distribution	Lower 95% Limit	Upper 95% Limit
No Record	8,043	0.0133	0.0134	0.0110	0.0160
No Record + Juvenile Contacts Only	10,240	0.0204	0.0204	0.0178	0.0233
Juvenile Contacts Only	2,197	0.0464	0.0467	0.0384	0.0560
Juvenile Non-VO Contacts Only	1,517	0.0435	0.0439	0.0343	0.0549
Last Arrested at Age 18	432	0.0718	0.0730	0.0511	0.1001
Last Arrested at Age 18 (No VO Record)	257	0.0623	0.0645	0.0388	0.0987
Last Arrested at Age 19	341	0.1085	0.1100	0.0798	0.1460
Last Arrested at Age 20	292	0.0890	0.0909	0.1091	0.1273
Last Arrested at Age 21	361	0.1413	0.1425	0.1091	0.1810
Last Arrested at Age 22	403	0.1861	0.1871	0.1511	0.2270
Last Arrested at Age 23	497	0.1871	0.1879	0.1553	0.2238
Last Arrested at Age 24	594	0.2963	0.2967	0.2609	0.3342

Our objective for each of these groups is to estimate the probability of an arrest during the two-year period of ages 25 and 26. This analysis framework maps onto the following policy problem: a 25-year old individual approaches a decision maker and seeks a favorable decision. The individual has an official record of some type (i.e., a juvenile record only, or an arrest at age 18). The question is whether the estimated probability of an arrest at age 25–26 [$p(a \mid G)$ as described] differs between that individual compared to someone with no record at all. To develop inferences about the probability of an arrest at age 25 or 26, we calculate the full posterior probability distribution of this parameter for each of the groups described. The posterior distribution is given by

$$p(a \mid G) = \pi \times \binom{N_G}{r_G} P_j^{r_G} (1-p_j)^{N_G - r_G}$$

where π represents our prior uninformed belief about the magnitude of $p(a \mid G)$, which we assume to be identical for each value of $p(a \mid G)$ between 0.0001 and 0.9999

$$(\text{i.e., } \pi = \frac{1}{9999}).$$

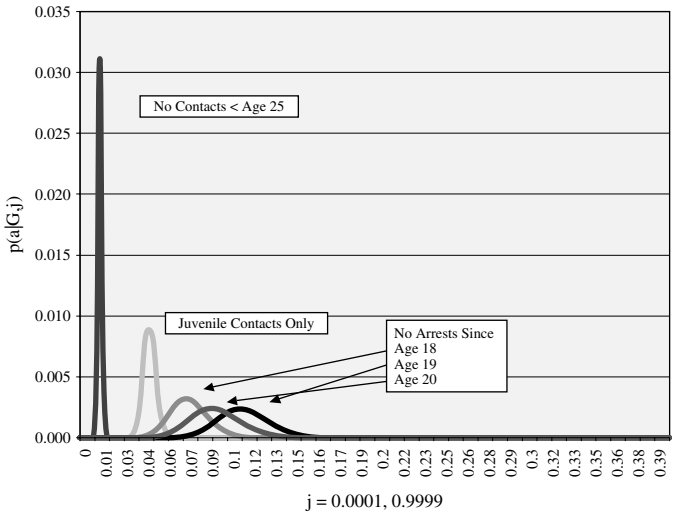
Next, we allow j to index the binomial probability from 0.0001 to 0.9999; this allows us to calculate the full posterior probability distribution of $p(a \mid G)$ conditional on N_G individuals in group G where a subset of the

individuals in that group, r_G, are arrested at ages 25 or 26. With an uninformed or flat prior distribution (π), the value of p_j that maximizes the posterior probability of $p(a \mid G)$ is simply

$$\frac{r_G}{N_G}.$$

But, as Table 2 indicates, the proportion of individuals arrested at age 25–26 is less than 0.08 for six groups in the analysis.[5] Figure 6 displays the full posterior probability distribution for $p(a \mid G)$ for these five different groups of individuals: those with no record at all; those with juvenile contacts only; and those whose last arrest occurred at ages 18, 19, and 20, respectively.

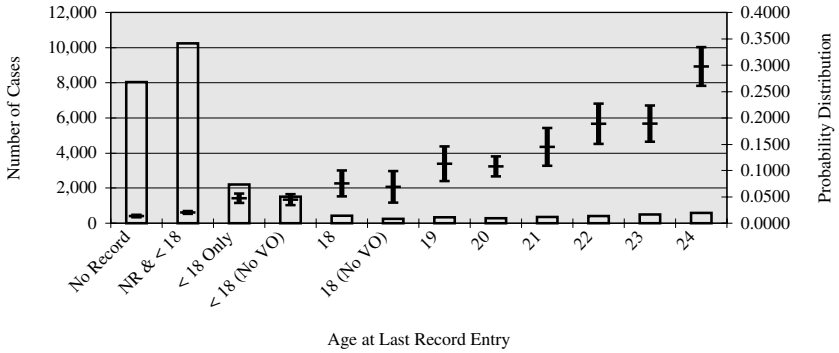
FIGURE 6. POSTERIOR DISTRIBUTION OF p(a | G) FOR 5 GROUPS



The most salient feature of these distributions is the amount of separation between those with and without offending records and their close proximity to zero (i.e., the probability of an arrest at age 25–26 is low regardless of the group to which one belongs). Figure 7 summarizes the analysis results for all groups, including the maximum posterior estimates, the posterior medians (i.e., the 50th percentile of the posterior distribution), and the 95% confidence limits (2.5th and 97.5th percentiles). Based

5. In cases where $p(a \mid G)$ lies close to the boundary of the parameter space (i.e., in this case, 0), standard confidence interval calculations can yield negative numbers at various confidence limits).

FIGURE 7. PROBABILITY OF ARREST AT AGE 25-26



on this information, we conclude that individuals with no record have a statistically lower risk of arrest at ages 25–26 than all other groups. We also conclude that individuals last arrested in the few years leading up to age 25 are much more likely to be arrested than individuals who were last contacted as juveniles or arrested as 18-year-olds. In other words, the groups included here represent a continuum of risk where those with no record at all have the lowest risk and those with recent records have much higher risk. Individuals in the middle, such as those who were last arrested at age 18, occupy a position on the continuum that is much closer to the no-record group than the recent-record group.

DISCUSSION AND CONCLUSIONS

We began our study with a specific policy question: How do we determine when a criminal history record is relevant to employment decisions? We base our approach on the knowledge that (1) a person who has offended in the past has been found to have a high probability of future offending, but (2) this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically. This marked and consistent decrease in the risk of future criminal activity then begged the question as to whether this risk ever becomes so small as to be indistinguishable from the risk of persons with no prior offending record. If so, we implied that current social practices of continued civil and social consequences of arrest and conviction may be ill informed.

Our answer to this question based on the current analysis of a cohort of young males from Philadelphia is twofold. First, statistically, we must conclude that persons with a prior police contact or arrest do not, at any time in the given follow-up period, become completely indistinguishable from those without a prior contact in regard to risk of offending. In Figure 4, we

see that although the hazard rate for persons with a prior offense rapidly approaches the lower hazard rate of persons without a prior record, at the five-year follow up, the two hazard rates are still separated by over 1 percentage point: a difference that achieves statistical significance in this population. Based on the age-25–26 outcome analysis, we again find that there is a statistically significant difference between those who have never been arrested and those whose first and last arrest occurred at age 18.

Second, the difference is substantively small in magnitude and decreases with time since last criminal event. That is, after some period of time has passed, the risk of a new criminal event among a population of nonoffenders and a population of prior offenders becomes similar. We are struck by the concordance between our results and the new federal statute on background checks for truckers driving hazardous materials. This statute explicitly limits the use of criminal history records to 7 years since the time of conviction. Although further research is clearly needed, we believe that our research supports explicit time limits in any statutory restrictions on employment.

Third, the substantive size of the difference depends on the length of the reference period. In the hazard analysis, we used an exposure period of 4 months and found that the difference in the probability of an arrest between those with no records and those with an arrest at age 18 is about one percentage point (2% vs. 1%) at age 26. When we use the entire two-year period of ages 25 and 26, the difference is almost 6 percentage points (7.2% vs, 1.3%). Although some of this difference can be explained by the fact that the hazard is continuing to decline somewhat rapidly as individuals age, the main reason for the difference is that the nonoffenders have an arrest probability that is close to zero. As we watch the offenders for longer periods of time, we expect that they will acquire disproportionately higher numbers of arrests than will the nonoffenders.

Suppose, for example, that we have two groups, Group A with a starting probability of being arrested in the next month of 0.004 and Group B with the probability of being arrested in the next month of 0.01. At first glance, this difference does not seem large. However, let us consider what happens if we expand our time horizons (assuming a continued declining arrest rate for both populations). After 6 months about 2% of Group A will have an arrest as compared with 7% of Group B. After 1 year, about 3.5% of Group A will have an arrest as compared with 12% of Group B. Moreover, this cumulative difference in arrests will continue to increase until such time, if ever, that the two hazards completely converge—a feat that was not observed within the 7-year time-frame of this particular analysis.

This empirical pattern suggests that the answer to the policy questions concerning the level of elevated risk that is acceptable will depend in part

on the decision maker's time horizon. An employer in an industry with high turnover will rationally expect to have relatively short-term contact with the employee, and might therefore be more willing to tolerate the risk than an employer looking to hire individuals for longer time periods. In fact, employer surveys have shown that employers in the secondary market with high turnover are more willing to hire ex-offenders than are those in the primary labor market where employees have long tenure (Holzer et al., 2006).

We must also note that these findings are but a first look at this important question. Our analyses are limited to one cohort of individuals representing one location during one time period. We were also artificially limited to a pre-age-27 follow-up period. To further understand patterns of desistance, we encourage further inquiry into this issue. Areas for future research include the examination of alternative populations from other locations and other time periods. We encourage studies designed to examine longer follow-up periods as our analyses clearly reveal a continued converging trend over time in the risk of new offending for nonoffenders and one-time offenders. We would also encourage a more detailed examination of patterns of desistance as they relate to type of prior offense and demographic characteristics of the population. For example, research suggests that certain statuses such as "being employed" and "being married" promote desistance (Sampson and Laub, 1993).

In addition, a thorough analysis would focus on both employment and criminal history. It strikes us as counter-intuitive that the new statutes requiring background checks have required employees who have been stable employees for several years to be fired if they have a criminal history record. The implicit assumption here is that the past conviction tells the employer more about this individual than the present period of employment. Although we can only speculate at this point, this assumption strikes us as problematic. A simple review of the reentry literature demonstrates that ex-offenders often have a very hard time holding a job (Travis, 2002). The fact that someone keeps the same job for over a year is an excellent predictor of ultimate desistance.

Clearly, there is much more work to be done on this topic. Our analysis provides but one important step toward creating the necessary information for informed discussion about the relative risks of offending presented by individuals with fading scarlet letters.

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