



## Ex-Offenders, Criminal Background Checks and their Racial Consequences Webinar Transcript

OFA Brown Bag Series

Transcribed by Pearl Interactive Network, Inc.

**[Josh, announcer]:** Good day, and welcome to the OFA Brown Bag, “Barriers to Re-entry and the Effects of Criminal Background Checks on Hiring Ex-Offenders” conference call. Please note, today’s conference is being recorded. At this time, I would like to turn the conference over to Mr. James Butler, Family Assistance Program Specialist. Please go ahead, sir.

**[James Butler]:** Hello everyone, and welcome again to the fourth in the series of our six Brown Bag Webinars brought to you by the Self-Sufficiency Branch of the Office of Family Assistance. Our webinar today, “Barriers to Re-entry and the Effects of Criminal Background Checks on Hiring Ex-Offenders,” will be presented to you today by Dr. Michael Stoll. He is a Professor and Chair of Public Policy in the School of Public Affairs, and Associate Director of the Center for Study of Urban Poverty at the University of California, Los Angeles. Dr. Stoll is going to talk to us today about some of the barriers encountered by ex-offenders as they seek to reintegrate themselves into society and into the workforce. He has published many works, to include an examination of the labor market and its difficulties of less skilled workers, in particular, the role that racial residential segregation, job location patterns, job skill demands, employer discrimination, and how criminal records affect employment opportunities for these populations. So we’re looking forward to hearing from Dr. Stoll today. He comes to you with a wealth of information, and he has studied extensively in this field. So, without further ado, I’d like to introduce to some and present to others, Dr. Michael Stoll.

**[Dr. Michael Stoll]:** Thanks, James, and thanks for the invitation to the virtual in Washington, D.C. So today I’m going to talk about ex-offenders’ criminal checks and their racial consequences. And what I’d like to do is talk a little bit about ex-offenders in the labor market, but mostly from the demand side of the labor market. The demand side refers to employer hiring decisions as well as the methods by which they recruit workers for jobs available in their firms. I want to pay particular attention to the consequences of these employer behaviors and methods used in hiring in the low-skilled labor market, particularly with regard to ex-offenders. And then I want to look at the collateral consequences of these employer behaviors and methods of hiring on even those who have clean histories, that is, no criminal histories, yet who look like, according to employers, those who should have records, are among demographic groups of people that employers think should have high incarceration rates. And so, what I want to talk to you about is the direct cause of ex-offender status in the labor market for low-skilled workers, but also the collateral consequence on low-skill workers of employer hiring of on even those who don’t have records. And this is what we call in economics statistical discrimination, or its equivalent



to what are some are angry about in even Ferguson, the youths, of what we as economists call the perception of criminality among people and the actions of decision makers on the basis of these perceptions, whether or not they are true. These same kind of psychological responses occur in the labor market, and they have direct negative consequences on those with records, but even those who don't. And so that's what we'll do.

So the question is, you know, why the question of those with records [is] important in the labor market, but for those of you who may not know much about criminology or criminal history—Among one of the statistical, I wouldn't say anomalies, but exceptional trends that has occurred over the last 34 years is the rise of the incarceration rate in the United States. From about 1900 to about 1970, the incarceration rate in the U.S. was relatively stable at about 100 people being incarcerated for every 100,000 people in the United States. And then about 1970s to '80s, we saw this rapid rise in the incarceration rate, which you can see on the slide that I'm presenting to you online now. There are a lot of reasons for this. In fact, my colleague, Steve Raphael at Berkeley, and I just wrote a book this past year, "Why Are So Many Americans in Prison?" And the short answer is that the rise in the incarceration rate is mostly driven by public policy decisions at the local, state, and federal level that have become much more punitive with respect to how we define crime, but also how we punish those who commit crimes. And that can explain 90 percent of the increase.

Be that as it may, what I'm concerned about here and would like to talk to you about, is the collateral consequences of this. What I should also note is that most of the increase in the incarceration rate—what has been disproportionately experienced by African American and, to a lesser extent, Latino men—most of those who drove the increase were disproportionately of those demographic groups. And that's important because when we look at the population of ex-offenders, that are those that have been charged, gone to prison, served their time, and now are in civil society, a disproportionate share of those ex-offenders in society are African-American or Latino. And of course, some of the average characteristics of those ex-offenders are that they are typically less educated, have less income, and are relatively younger, although that is becoming less true. But the collateral consequences of this imprisonment are many. And so there is both individual collateral consequences as well as community collateral consequences

I can't talk about all of these, but one of the biggest ones is employment, as a collateral consequence. For a variety of reasons, those with ex-offenders have a difficult time getting employment. Many of you may work with these populations and know this. And that could occur both on the supply side of the labor market, that is, the sort of skill sets that individuals bring to employers when they're looking for work, or the demand side, which is the behaviors and attitudes and decision-making by employers in the hiring for jobs at the firm. On the supply side, those with records have a limited opportunity set for employment for a whole host of supply set reasons, including that they have limited education and therefore limited skills. For those that served a long time in prison and had some skills going into prison, many of those skill sets may have eroded while they were in prison. For those that may have had

prosocial networks before they went into prison, many of those networks have been severed when they're released in society.

So even without taking into account how employers behave towards this group, ex-offenders, because of all these limitations on the supply side, are going to have a difficult time finding employment. But I'm going to focus on the employer side, on the demand side, for this talk. And one of the collateral consequences is the role that employers have in responding to the growing share of mostly low-skilled workers having criminal records. And as we noted in the earlier slide, the fraction of those in the labor market that are low-skilled who have records has grown rather dramatically. If you asked the question, well what fraction of the overall labor market or labor force are those with—What fraction of those in the labor force have criminal records? The answer to that is probably around two to four percent of the labor force is represented by those with criminal records. So you might say that's not very large, but remember, those with criminal records are typically low-skilled. So if we look at just the low-skilled labor market, we have to question what fraction of the labor force and the less educated or low skilled labor market are those with records. That fraction goes up to about 20 to 33 percent. So this is a non-trivial fraction of the low-skilled labor market, those workers searching with criminal backgrounds.

So the question is, how do employers respond to a growing share of low-skilled workers with criminal histories? Well, the first question is, are they averse to hiring these offenders? And I think the obvious answer to that is yes. And they are averse to hiring for a whole set of reasons, many of them nuanced.

First, employers are reluctant to hire ex-offenders, particularly if they put a premium on trustworthiness in the firm, and when employers are unable to perfectly monitor employees, they would be averse to hiring ex-offenders for fear that ex-offenders may steal or harm customers, etc., etc., etc. So there's a set of employers that under no circumstances would hire or consider hiring ex-offenders for those reasons. But there are another set of employers that hire into occupations where there are legal restrictions at the state level that prevent those with, in particular felony criminal histories, from getting employment. So employers who are hiring in those occupations are prevented from hiring and would have aversion to hiring ex-offenders.

But there's a third, I think less-known reason, which is that many employers may be agnostic to hiring ex-offenders, but are motivated by their need to protect themselves against potential negligent hiring lawsuit. And in law, there's a theory of negligence, where employers, in this instance, must do due diligence in finding out the backgrounds of their employees, and they are held legally liable for the actions and consequences of employees. So if [an] employer, for example, were to hire an employee without doing due diligence or background checking, and let's say this employer is in a home health care industry, hires an individual to work in the home health care industry without doing background checks, and that employee went on and harmed or even murdered—and this is an actual instance, this occurred—a patient in their home, then the employer would be held liable for the actions of that employee since they did not do due diligence in screening the background of that employee. So



employers are also leery of hiring ex-offenders because of the potential lawsuit. Now, it's not that a lot of employers have been sued and won judgments against them in court. What has happened more frequently is that lawsuits or potential lawsuits are threatened, and employers end up settling out of court, and those settlement sums could be relatively large. So even though there isn't a lot of litigation taking place in this domain, according to many lawyers who have studied this, there is quite a bit of activity on the negotiation front where employers are settling potential lawsuits for these reasons.

But for all these reasons, employers would be leery of hiring those with records, so it's not by accident that ex-offenders in the labor force have some of the highest unemployment rates or lowest employment rates among most demographic groups or of the characteristics that we can observe among workers searching for work.

So what are the correlates, the employer or firm correlates, of aversion to ex-offenders? Well what we know is that employers in smaller companies or firms, that is, those with employees of less than 50, are much more likely to be averse to hiring ex-offenders. Those employers in service industries where there is a lot of customer contact, and also in real estate and insurance, those employers are highly averse to hiring ex-offenders. Employers that have jobs that have a lot of customer contact that are averse, and then employers who are unwilling to hire other disadvantaged groups, such as those with TANF reciprocity [sic], or those who have spotty work histories, etc. Now I should note that much of the data I'm showing you is coming from a set of representative sample of employers in two large metropolitan areas, one of them being Los Angeles, and I conducted this survey a number of years ago, looking at some of the employer behaviors and attitudes and hiring patterns of ex-offenders, and this survey is representative of employers in that metropolitan area. So we have at least a general snapshot of the labor market for ex-offenders in a large metropolitan area.

So again, employers are averse. We know the kinds of firms and the tasks, job tasks that make employers averse to hiring ex-offenders. And the question is, given this aversion, how do the employers act on their aversion? What are the mechanisms that they use to try to weed out those with records? And there are two general approaches that employers use. One is that they can use criminal background checks, and I'll talk a little bit about that. And the other is that, in the absence of using criminal background checks, when employers are averse to hiring those with records, they could use statistical discrimination. That is, if they don't check the backgrounds of their workers, they could infer potential criminal histories of their applicants by demographic characteristics that they think are highly correlated with criminal history. So that might be young men without a high school diploma, or it could just be young men generally. More specifically, it is probably young black men or young Latino men. Any of these demographic characteristics that employers think are highly correlated with criminality, they would use in making statistical inferences about criminality and hiring or acting in, that's consistent with those assumptions. Whether or not they're right is a different question, but this is what they're using. And whether or not they are legal is also a different question, too. But employers are generally using these two mechanisms when they are averse to hiring ex-offenders.



So the question is, do employers have access to criminal records? Well the answer to that is yes, and that's increasingly so. About 20 years ago that was not necessarily the case, but with the advent of the internet and of the multitudes of firms now offering criminal background checks for as little as \$15, most employers have access to criminal history records relatively easily. They cost not too much, \$15 for a check, and the time with which they need to do that check is relatively quick. About 20 years ago, the way that employers would know about the criminal history records of their potential applicants is that they would have to get on the phone, call their local district attorney office and ask about the specific criminal histories of a particular applicant. The district attorney's office would charge them to do a search on the individual, and it could take weeks before the employer would get information that they had inquired about. And so it was very time-intensive and monetarily more costly than it is now.

As a result, the frequency with which employers check criminal backgrounds has increased mightily. I think, let me see if I have—yes, this is the next slide—so here's some data on the proportion of firms in the sample that checked backgrounds over the early 1980s and early 2000 period, because this is when we saw the greatest run-up in the increase in criminal background checking among firms because of the rise of the internet and these companies that are providing these relatively cheap services. So the fraction of those firms that said that they always check, rose from about 32 percent to about 46 percent. Now in 2010, although I don't have a—there isn't any other data that over time has looked at criminal background checks and employers using the same method so that we can get a believable estimate of the increase, but some of the best estimates I have is that that rate has gone up to nearly 50, 60 percent of firms that are always checking. Now there's this fraction of firms that are checking sometimes, and there's at least in the early 2000 period, a non-trivial fraction of employers that never checked. And so the question is, if employers are interested in knowing the criminal history background status of their applicants and they never check, you know, what is the ways they act on that aversion, and one of the ways that they do this, I just noted, is statistical discrimination.

There are different ways and reasons and motivations for why firms check. Firms could check because of their aversion, but they could also check because they are legally required to do so. As I noted before, many states have statutes on the books that either deny certain applicants with criminal histories access to a job outright, or that require employers to do a criminal background search within a narrow set of legal constraints that have to do with the business necessity of excluding ex-offenders from those kind of jobs. So the ban, as I talked about, are on certain occupations. For example, those that are charged with sexual assault cannot work, for example, in child care centers for obvious reasons. And those who have been charged with certain felony convictions cannot work as security officers who have equal access to guns. But there are other industries in which employers have latitude in hiring those with records, but they have to do due diligence in doing a criminal background search check, and states are requiring those. So there are a number of different reasons why firms are checking, and in the data, we try to query the employers about the different motivations that are driving their checking.



Now in most states, when states are legally required to check, they must do so through criminal justice agencies. So in the data, we have some interesting responses, where employers say that they were legally required to check, according to their interpretation, but did so through private sources, which is not allowed if it's a state mandate to check. State mandates to check can only go through criminal justice agencies.

So what we've done is we try to disentangle the different motivations and methods that employers are using to check criminal histories, and to see how that's affecting the hiring of ex-offenders at the firm. And the different methods that they use and the different motivations that they're using could have very different effects on hiring ex-offenders, as I'll talk about in just a second.

But let me just take a step back, too, before I talk about use of criminal background checks. Because in this discussion, I'm trying to present the dilemma faced by policymakers that are trying to maximize the welfare of hiring ex-offenders on the one hand, and what are the ways in which we can do that more successfully, and on the other hand, protect employment access for minority groups who have clean histories, yet look like those that are from demographic groups that have high incarceration rates. And those are mostly African-Americans or, to a lesser extent, Latinos. And it turns out that there is actually a tradeoff when we think about how we use criminal background checks in the labor market in achieving either one of those objectives.

For example, so some who work with ex-offenders say, well, it's obvious that criminal background checks negatively hurt ex-offenders' employment opportunities, and when firms use criminal background checks, they're less likely to hire those with records. And that's true. When firms do use criminal background checks, they are less likely to hire those with criminal backgrounds. But it's only a certain type of check, and it's the check that is mandated by legal state requirements. On the other hand, so some would say, well then, let's limit or ban the use of criminal background checks in order to maximize the employment opportunities for ex-offenders. And on some level, that is true. If you banned the use of criminal background checks, you're more likely to get a bump in the employment rates of ex-offenders for reasons that I just talked about there.

But, banning the use of criminal background checks or limiting the ways that employers could use them would not affect whatsoever employers' motivation for wanting to use it if it's driven by employers' fear of negligent hiring lawsuits. It does nothing to remove that fear. So if employers can't use criminal background checks yet are fearful of negligent hiring lawsuits, then they're going to still find a mechanism to try to sort and weed through their applicants on the basis of criminal background status. And so more than likely, they're going to use statistical discrimination. They're going to look at demographic groups that they think are more likely to be ex-offenders, and blanketly [sic] exclude them from employment opportunities altogether. And what that would mean is that employers that don't use criminal background checks, yet have aversion to hiring ex-offenders, are going to blanketly exclude, for



example, black men from hiring. And that collateral consequence, hiring black men, many of whom, probably most of whom, don't have criminal history records, is of public concern, social concern as well.

So there is a distinct tradeoff in use of criminal background checks. If we eliminate them, we may raise the employment rates of ex-offenders; at the same time, we may lower the employment rates of African-American men or Latino men more generally. And so the net effect of the elimination of the criminal background check would have to be observed and calculated, because it could be that the negative effect of blanketly excluding from employment African-Americans, dominates the positive effect of eliminating criminal background checks in trying to raise the employment rates of ex-offenders. And so while we may have achieved public policy goal on the one hand, we have introduced an unintended consequence on the other.

And so this is the point of this talk, which is based on the paper that I wrote, to say that we have to be very careful of how we use criminal background checks or how we promote or design public policy in trying to raise the employment rates of ex-offenders. And at the end of the talk. I'll talk a little bit about what some alternatives might be in raising employment rates of ex-offenders rather than just eliminating the criminal background check or limiting its scope. And that's consistent with a lot of states that are experimenting with this notion of "Ban the Box," where many municipalities, public employment offices, and even some private employers have proposed eliminating the "box" altogether in order to raise the rates of employment for ex-offenders, and I've argued that doing so would have a negative consequence that we should be aware of and that we should measure against these other social goals that we're trying to achieve.

Okay, now having said that, I'll go back. Now who is using criminal background checks? Most larger firms that are more likely to have human resource personnel offices that have the staff size to be able to conduct these checks. And then also, industries with characteristics that would be positively correlated with employer aversion to hiring ex-offenders. So those industries with customer contact that are in retail trade or services are much more likely to use criminal background checks.

As I noted before that criminal background check use is increasing over time, and now it's mostly coming from these private sources, whereas 20 years ago it wasn't. It was all criminal justice agencies providing this data. Now it's coming from private sources. Almost 80 to 90 percent of the criminal background checks that are taking place now are through private sources. That raises its own set of public policy concerns, because the private sources that provide these criminal history informations [sic] are much less accurate than are the criminal justice agencies, and usually they are inaccurate more likely on false positives than they are on false negatives. And what I mean is that people would show up in a private company search on a criminal record—people could show up as having a record when they actually don't have a record, so they are false positive. On the other hand, it is very rare that someone has a record and when a private company searches on that record, it doesn't show up. That's a false negative. That's very rare. So the false positives are of concern because someone who clearly may not have a



criminal history or a felony conviction criminal history could show up as having one, which could have tremendous collateral consequence for them in the labor market.

But that's a side conversation. What I should say is that one of the policy recommendations I make at the end is that we should be striving for more accuracy of record information that's obtained through private sources. And remember, private sources are searching on two sets of information: arrest records and conviction records. And what I think should be at play only is conviction records. Arrest records say little about whether or not people are actually convicted in court. As we know, there is over-policing in certain communities and arrest rates are going to be elevated for some demographic groups relative to others because of police monitoring strategies, and so those obviously are not a good source to check on. Conviction data would be better.

But there are other reasons that an employer may check, and some employers, it turns out, actually seek more information about ex-offenders because they want to make what we call risk-assessed hiring decisions. So employers may be open to hiring ex-offenders, but they want to know what was the ex-offender charged with, how long ago was that charge, whether or not there was any rehabilitative efforts that could demonstrate whether or not they've held a job in the recent past or for how long. So there are employers that are open, but they want to do the criminal background check because they want more information so they can make a better-informed risk-assessed hiring decisions for these applicants. And there, criminal background checking is actually a good thing. And there's a number of industries, in particular, someone in the truck driving industry where employers routinely do criminal background checks for the reasons that I say, not to blanketly exclude those records, but to try to hire among this group in the most informed, risk-assessed manner.

But based on all these motivations for why employers would use background checks and what their aversion level is to hiring ex-offenders, we can predict what effect all of these would have on hiring ex-offenders. For those employers that are reluctant and extremely averse or are motivated because of legal requirements to check, there is going to be a big negative effect on ex-offenders that we should observe in hiring. On the other hand, for those employers who may be agnostic to hiring ex-offenders but who are doing criminal background checks to protect themselves against negligent hiring lawsuits if they do occur, it could be an ambiguous effect on ex-offenders. Employers just may routinely do criminal background checks and don't use it to exclude ex-offenders, they just do it to protect themselves against these suits. And so we would expect there to be an ambiguous effect, probably no effect on hiring. And then there could be a potentially positive effect on hiring ex-offenders if employers are doing criminal background checks because they want more information so they can make better decisions. And what I've done in the data is—I won't show you any of these academic equations and all that—what I've tried to do is reduce a lot of the econometric estimates of hiring ex-offenders at firms that we sampled into a very informed chart that hopefully is easily to interpret [sic].



So if you look at this chart and you look at the bar all the way to the left, you will see something called “actual mean.” It says “0.014.” What that means is that in the firms that we sample, the employers said that of their employees, about 1.4 percent of them had a criminal background. Right? And that’s fairly consistent with the fraction of those in the labor market that we observe to have criminal history, so that average is about right. So firms are saying about 1.4 percent of their employees have criminal backgrounds. So that’s the bar against which we’re comparing all the other bars against.

Then we see Panel A to the right of that bar, and then to the right of Panel A, we see a column called “Checks Criminal Backgrounds.” So these are firms that check criminal backgrounds, and then we’re looking at what fraction of their employees have criminal histories. So for those firms that check criminal backgrounds, their employees, about 1.1 percent of them, have criminal backgrounds. So it’s lower than the average across all firms, so it means that those firms that check criminal backgrounds are going to have fewer ex-offenders represented among employees than those firms that do not check.

And then if you look at the bar next to the Checks Criminal Background bar, which is called “Does Not Check”—these are firms that don’t check criminal background—you can see that they’re much more likely to hire ex-offenders. And so there’s a greater share of employees at these firms that have criminal backgrounds, 2.2 percent.

Okay, so if you ask, “Does criminal background checking harm the employment of ex-offenders?” Then these two columns here suggest that there is some effect of that.

But we can further disentangle the motivations of why firms are checking into whether or not firms are legally required to check versus those that are not legally required to check. And Panel B, the next three rows to the right of Panel B, give us some information to make some conclusions and give answers to this question. And you can see that the negative effect of checking criminal backgrounds on hiring ex-offenders is almost entirely driven by those firms that are legally required to check. So it’s firms that must check and must exclude where the biggest negative effect on ex-offenders is occurring. Those that aren’t legally required to check but are checking are hiring at a fairly high clip, so this makes sense. So if firms, for example, are not legally required to check, but they’re checking just because they’re doing so to protect themselves against negligent hiring lawsuits, then they’re going to have an ambiguous effect or no effect on hiring those with criminal backgrounds, and that’s showing up in the data. On the other hand, it could be that firms that want information about ex-offenders because they’re open to hiring them, but they just want more information so they check, they’re probably going to hire more ex-offenders, and that’s also consistent with this as well.

Panel C, then, further specifies the basis on which firms are doing legal checking. And they could check through two sources, remember: criminal justice agency sources, or private agencies. And what we know from state statutes is that when you’re legally required to check by state statute, you must use criminal justice agencies. So the firms that said that they are legally required to check, and using criminal justice agencies to do that checking, they are most likely the ones that are statutorily required to check



and exclude ex-offenders for certain occupations. So when we look at that group of employers, legally required and use criminal justice agencies, there again, the negative effect is even stronger. And so almost all of the negative effect of hiring ex-offenders is through background checking that is motivated by legal requirements or state mandates. For all other reasons for checking, you see an ambiguous effect or no effect on the hiring of ex-offenders, or actually an elevated increase in the hiring of ex-offenders.

So again, those who use legal requirements and private agencies are much more likely to hire ex-offenders than those who are doing legal requirements and using a criminal justice agency. And those who are not legally required to check also show even more positive effects on hiring ex-offenders relative to those employers who are legally required and use criminal justice agencies. Again, this is consistent with our predictions. And it could be the case that employers are actually searching for more information in order to make informed decisions and actually hiring more ex-offenders than they would in the absence.

So what did we learn from this? Criminal background check does harm ex-offenders in the labor market, but is almost entirely driven by state mandates for employers to check, not by employers' voluntary checking efforts. Employers' voluntary checking efforts seems to have no effect on the hiring of ex-offenders, which, I think, is informative for this debate about Ban the Box that I talked about. But it's also informative for how we think about increasing the employment rates of ex-offenders.

So what I wanted to show last—and maybe then, if I have a few more minutes, I could talk about policies and we can open it up to some questions—is, what are these criminal background check consequences on hiring applicants at the firm by race? So what I also did in this employer survey was to ask, of the last employee that they hired, what the racial background of that employee was and what the gender background of that employee was. And so we were able to disaggregate among the last employees hired at the firm, those who were white, as well as those who are men and female, as well as the intersection of those two categories. And what we see in the left-hand column's "Last Hire White,"—and there was no difference between white men and white women, so I grouped whites together—what you could see is the blue bar indicating those firms that check criminal backgrounds, the magenta bar is those firms that don't check for criminal backgrounds, and the off-yellow bar is the difference between those two types of firms in hiring, for example, whites.

So let's look at Last Hire White, and look at the estimates, and then I'll be able to interpret for you much more effectively. So, the blue bar. So in firms that check criminal background records, the last hire about 20 percent of the time was white, so 20 percent of the last hire were whites. For those firms that don't check criminal backgrounds, about 21 percent of the hires were white. So that's not a very big difference, so we call that statistically insignificant. So for firms that check backgrounds or don't, the rate at which they hire whites is about the same, so criminal background checking doesn't seem to matter.



Now if I asked you, “What would the effect of criminal background checking be on African-Americans without looking at this graph?” most would probably say it would have a negative effect on hiring blacks. And your reasoning would be, “Well, you know, we do know, it is an empirical fact that, among African-Americans, that ex-offender status is much greater than among any other demographic racial group. So the fraction of blacks that have records is much larger than that for whites, and a little larger than that for Latinos.” So if that’s true, and employers are checking criminal backgrounds, then blacks are going to be excluded more often than not, or more often than whites and Latinos, because a greater share of blacks have records. And so you would say criminal background checking would have a negative effect on African-American employment. And I think any reasonable person would have that conclusion. But it turns out, that’s not the right answer to the question, and it’s not the right conclusion. It turns out that when employers do check for criminal backgrounds of their applicants, that the hiring rate of blacks goes up, not down. So let’s look.

So, for “Last Hire Black Male”—and this is particularly true for black men—so let’s check for Last Hire Black Male, which is the second three sets of columns, to the right of the Last Hire White columns. So the blue bar is those firms that are checking backgrounds, the magenta bar is those that don’t check. You see, those that check backgrounds are much more likely to hire black men than those that don’t check, right? And it’s a large difference, almost nine percentage point difference. Nine percent. So firms that check backgrounds, about 12 percent of their last hires are black men, whereas those that don’t check, about 3 percent of their last hires are black men.

And you say, “How is this true?” Well, it’s the same thing when we look at firms that do job skill tests. There’s a paper by a good friend of mine, David Autor at MIT, who did this paper that came to the same conclusion that I came up with this paper. And most people would say, “Well if firms do job skill tests, they are more likely to exclude African-American and Latinos because the assumption would be that they don’t have the same set of skills that other demographic groups do, like whites.” And it turns out that when you do this statistical calculation, that for firms that do test, they are much more likely to hire blacks than firms that don’t test.

And so you say, “Okay. In both instances, why is that true?” Well, in our case, with respect to criminal history background, that firms that aren’t checking—again, if they aren’t checking criminal backgrounds, and they’re averse to hiring ex-offenders, and they think that African-Americans are over-represented among those with ex-offender status, then they’re going to blanketly exclude them from hiring. So you don’t check, instead of checking, which might be a little cost to you. It’s cheaper just for you to exclude them from hiring. You don’t hire them. But when you check backgrounds of African-American, even if you are averse to hiring ex-offenders, the background information that you get from checking will give you accuracy with respect to the criminal background of the applicant, and employers can make more informed decisions on that basis. So they have better accuracy of information with respect to the criminal background status of their applicants who are black, and they are hiring correspondingly to that information.



The same thing with the tests. When the employer can assess the test, and they can observe the test amongst blacks, then they can hire accordingly, and they're going to hire blacks at a much higher rate than when they don't do the test and assume blacks can't perform on the tests.

And so this is a sort of counter-intuitive conclusion, but it's important because it's saying that if you want to increase the rates of hire of ex-offenders, and you want to do so by limiting the scope or use of criminal background checks, one consequence of this could be that you have negative employment effects on hiring African-Americans, but in particular, black men. And if you look at the pattern for black women, you don't see it to the same extent as for black men, which I think is consistent with sociologists or others who talk about the intensity of perceived criminality, but being much more intense for black men than it is for black women. And then you don't see this effect as strong for Latinos, although it is there, but not statistically significant.

I could go on, on this, but I think that would just be being, of course, unnecessarily [sic], and with the few remaining minutes that I have on my seminar, what I'll do is make some broad conclusions and then talk a little bit about, very briefly, well what else could be done if we're interested in increasing the hiring of ex-offenders?

Well, okay, one of the conclusions that I think I made several times in the presentation, but I'll just give very short summations of them now, that criminal background checking has varied impacts on hiring ex-offenders, but while there is an overall general negative effect on hiring ex-offenders in the labor market, that the driver of that negative effect is coming almost exclusively from legal requirements that states impose on employers to do the checking. But employers who are voluntarily checking for a variety of reasons, there doesn't seem to be a negative effect on hiring ex-offenders, which suggests that there is a lot of room in using criminal background checks, even if we're interested in increasing the hiring rates of ex-offenders. But on the other hand, checking has racial consequences, as I just talked about, because of the strong perception and the strong links between race and crime, and I won't go over that again, because I made that point several times.

So what can be done? Well, I think that if we're really interested in increasing the hiring rates of ex-offenders, that we have to do actions in three broad categories. One is legal requirements. The other is on the dimensions of risk, or perceived risk, that employers face. And the last is on the skill sets that ex-offenders bring to the labor market. On the legal front, I think there is much room for public policy professionals to push for the re-examination at the federal, state, and local levels on the employment licensing restrictions for those that have criminal records. During the 1990's, when the United States was getting tough on crime at both the federal and state level with respect to the use of imprisonment as a method to control crime, that kind of punitiveness [sic] spilled over into other domains, including the legislature and how they wrote restrictions on employment for certain kinds of felony convictions. So in the '90s and the early 2000s, many states, I believe, overreached in restricting certain occupations and industries from ex-offenders. And I think it would be good to reexamine many of these restrictions



and ask the basic common sense questions about whether or not requiring employers to check, or actions excluding certain kinds of ex-offenders from certain types of industries or occupations, makes sense. And there is a number of different justice-based questions that could be developed and used in assessing whether or not certain occupations that are now closed to ex-offenders should, in fact, be reexamined and changed in classification.

The other thing that ought to be done in the legal front, too, is to ensure the accuracy of records. There has to be some monitoring taking place at the federal or state level over the kinds of databases that private companies have access to that then generate the criminal background information on which employers make hiring decisions. As we said before, there has been some really terrific papers looking at the accuracy of criminal background records that private employers check on, and it turns out as I talked to you about, you know, there is pretty great inaccuracies, and so ensuring the accuracy of those records, I think, would be in order, too. And there should be efforts made to eliminate arrest data from these records that are publicly accessible and only focus on criminal conviction, and even there, perhaps even narrow bands about criminal convictions should be thought about, too. In other words, should the information on records be provided in the public domain for only the last five years, or should you really allow criminal history records on those from 20 years ago, particularly for those that have served their time and have been good citizens since their release? So there's a number of different pathways that we could go in addressing the question of accuracy of records.

On risk, there is a number of things that we could do to lower the risk that employers face in hiring ex-offenders. One of the things that we could do—Okay, let me jump forward and come back to risk. Because one thing that we could do is on the skills information, and two, discriminations. I want to focus on anti-discrimination.

We could focus on anti-discrimination efforts in the labor market by enforcing fair hiring practices for ex-offenders. The problem with this is that most of where the potential discriminatory practices against ex-offenders are occurring are in smaller firms, and firms that have employees of less than 50 are not monitored by the EEOC or regulatory agencies, and so there is no oversight over employer behavior in this part of the labor market. So even if we were to toughen anti-discrimination efforts against employers who discriminate against ex-offenders, it would have little teeth because it's not really directed at the firm level where the greatest discrimination takes place.

So the thing that we could do, though, for these smaller employers, is to address the potential risk that they may or may perceive to exist in hiring ex-offenders, and one of the ways we could do it is to indemnify employers by providing bonds. And currently, most states do provide bonds to employers to protect firms against the action of their employees, but those bond levels are relatively low. I think it's somewhere between six and ten thousand dollars, and some of the premiums for these are relatively high. But if states were to either subsidize the premiums or to regulate the bond industry such that bond prices could fall, then bonds with higher levels of protection in the order somewhere of fifteen and



thirty thousand dollars could probably be made more affordable to employers, and if they're marketed appropriately, to small employers, take-up rates for these could increase, and then the risk or perceived risk that employers have of ex-offenders could be reduced.

On the other hand, I think it also makes sense to think about common-sense record expunging. So many states have already gone down this path when they are looking at the criminal histories of those who have been released from prison. And I think it makes sense, particularly given the theory of desistance from crime, so there's good evidence that after about the age of 27, individuals who were engaged in criminal markets start to desist fairly strongly from those markets. Given those patterns, it makes sense that there could be incentives in place for people to desist from crime, that if, after they're released from prison, five or six years henceforth they remain clean, that their records could be expunged. And maybe it could be for certain kinds of felony convictions and maybe not for others. Maybe low-level felony convictions could be expunged with greater ease and frequency than those that are convicted of more violent offenses.

Okay, so having said that, let me just say the last thing we want to do is increase skills and promote the role of labor market intermediaries. And let me stop at that because I've overreached on the time that was allotted to me, and I want to thank you for allowing me to present to you today.

**[James Butler]:** Thank you so much, Dr. Stoll. We have about five minutes for questions, so Josh, if you could quickly just give some quick instructions as to how they can ask questions verbally or go online.

**[Josh]:** Yes, sir. On the phone lines, it is star one on your keypad to queue for a question. Again, ladies and gentlemen, it is star one on your keypad.

**[James Butler]:** Questions anyone?

**[male speaker]:** And we have a few questions that came in online, so I'll pose these to you, Dr. Stoll. The first question is, "Can insurance companies legally refuse to insure employers or charge higher rates for employers knowingly hiring ex-offenders?"

**[Dr. Michael Stoll]:** Yes. Bond markets are like insurance markets and there are actuaries that make these kind of assessments on premiums, so if it's the case that employers do hire ex-offenders at a greater rate, that may lead to higher premiums, but only if there's a history of there being problems with the employees. So there are market pressures for that to happen, but there also ways in which you could protect against those increases in insurance rates, too, for those employers that are more likely to hire ex-offenders, because employers could do their own risk histories of the employees that they hire as information used to generate the premium prices that bond companies could charge. So in other words, I don't think it's a big problem, and I don't think it is enough of a barrier to pursue a greater frequency in use of bonds if they increase the amount of bond protection that's made available at relatively lower prices.

**[male speaker]:** All right. Our next question states, “Does using private sources also pose a problem for an employee who is employed and the company who has been doing routine background checks and never had an issue, but at one point in the criminal background results may have come back false positive, resulting in a discharge of the employee? Does using private sources also pose a problem for an employee who is employed and the company that is doing the background check that may have gotten a false positive?”

**[Dr. Michael Stoll]:** Right. I think that could go for either private or public sources of checking. First of all, few employees retrospectively check the backgrounds of their current employees. Where that does occur, and where information is provided on a potential criminal history that doesn’t exist, there are legal avenues for employees to fight that. But it’s rare. It can occur, but there are legal channels for employees to defend themselves against it. But I don’t think those concerns warrant the entire elimination of criminal background checking, particularly if the accuracy of that checking is increased.

**[male speaker]:** Do we have any questions coming in through the phone lines, Josh?

**[Josh]:** At this point, we do not, sir.

**[male speaker]:** Thanks. So I’ll ask another question from online. It states—

**[Dr. Michael Stoll]:** --These are really good questions, by the way. These are great, great questions.

**[male speaker]:** —“What percentage of men in prison or in jail come from homes where there were absent fathers and what percentage of released offenders are fathers themselves? Do you have this data?”

**[Dr. Michael Stoll]:** I don’t study those, but I do know that information from previous studies, so I think it’s about somewhere between 70 and 80 percent of those who potentially get convicted and sent to prison have either an absentee father or a father that they know but have little interaction with, so it’s fairly high. And I think about 30 to 40 percent of men in prison have children. And it’s only slightly higher than the overall population of men in their age too. So the fraction of men in prison who have children looks a lot like the universe that they come from. On the other hand, the fraction of guys in prison, with respect to absentee father, looks nothing like the universe. Those in prison have much more likely to have absentee fathers. Now whether or not you can attribute causality to any of that is hard to say. So those are just statistical facts. They don’t suggest causation.

**[male speaker]:** So we’ll do one more question here, and it’s a long one, so please bear with me. “Is there a way to create a release training with a certificate that ex-offenders can participate in to show that they have met the ethical tests for valued employees to submit with job applications? And—“

**[Dr. Michael Stoll]:** Yes. And on that last slide that I still have up, that was the idea behind the promotion of the role of labor market intermediaries. Many of these are non-profit institutions that



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work with those with criminal backgrounds, and if they get them sooner than later [sic] after release, many of them have been successful in putting them through rigorous programs, and also doing risk assessment that they then can show employers. And given the trustworthiness that these non-profits have in the community, they vouch for the labor market preparedness of the participants that they serve, and they've had great success in raising the employment rates of their participants for all those reasons.

**[male speaker]:** Thank you, Dr. Stoll. And for the sake of time we're going to have to cut some of the questions short. James, would you like to do the closing?

**[James Butler]:** Thank you so much, Dr. Stoll. We really appreciate it. Of course you all know that today's presentation has been recorded and they will be available to you on the Peer TA Network within the coming weeks. Stay tuned for our next webinar in September. It will be on September the 10<sup>th</sup>, featuring Dr. Ron Mincy from Columbia University. Thank you all once again for joining us, and have a pleasant day.

**[Josh]:** And this will conclude today's conference. We thank you for your participation.