

How to Deal with Stale Criminal-History Records

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Criminal-History (CH) Records Are Ubiquitous

- Criminal Records Exist on ~100 Million Individuals
- 10 Million Criminal Records per Year
 - Arrest, Conviction, Probation, Parole, Incarceration
- Probability of a Male Being Arrested Some Time in His Life for a Non-Traffic Offense ~ 60%
 - Christensen – estimated 50% in 1967
- Criminal Records Are Now Long-Lasting and Computerized, Readily Available

CH Records Used for Employment Decisions

- Employers often seek criminal-record information on job candidates
 - Effort at Risk Aversion
 - Liability risk from clients, customers
 - Risk of theft of employer's assets
- Record May Be “Stale” with Information No Longer Relevant
 - Some statutes or job requirements apply “Forever”
 - Recidivism declines with time clean
 - Criminal activity peaks at age 17-21 and declines after that
- Employers rarely understand the true risks in a CH Record
 - Mostly tend to exaggerate the risks

Many Efforts to Counter Inappropriate Punitive Uses of Criminal Records

- EEOC challenges inappropriate and discriminatory uses
 - Particularly Stale Records
 - Job necessity
- “Ban the Box” Rule
 - Prohibit “Have You Ever Been Arrested/Convicted” query on job applications
 - Government uses, encourage others, especially government contractors
- Civic Organizations
 - Safer Foundation in Chicago
 - Legal services organizations
- Clear need for methods to address the trade-off between employer risk and employee opportunity

Need empirical approach and estimates

- Lack of empirical evidence leaves employers to set their own arbitrary cut-off points
 - 5 or 10 or 15 years (nice round numbers)
 - 7 years (Biblical origins?)
 - 15 years (conservative)
 - Forever (usually unreasonable)
- Employers vary in level of concern
 - Dealing with vulnerable populations (elderly, children)
 - Bank teller
 - National security
 - Construction worker

Possible Research Approaches

- Recidivism studies (e.g., BJS, 1997, 2002)
 - Usually involve short observation period -
 - Most recidivism studies wait only 3-5 years
- Birth Cohort studies (e.g., Kurlychek, Brame, & Bushway, 2006, 2007)
 - Limited sample size and short follow-up
- Need long-term follow-up
- All based on CH records from state repositories
 - Can provide rich samples with rich demographic and crime-type disaggregation and long-term follow-up
 - Provide no information about the never-arrested, out-of-state arrests, period effects

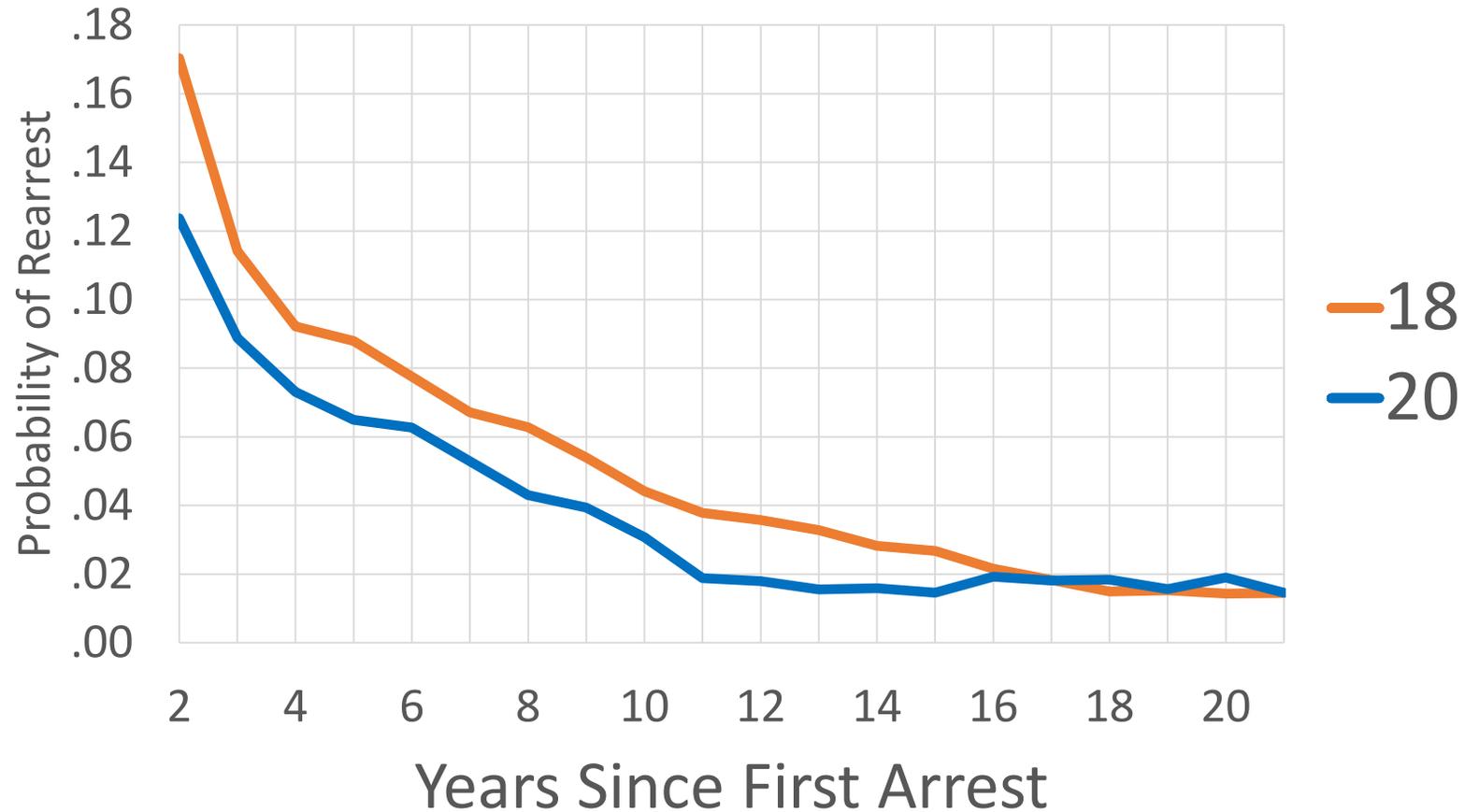
Approaches to Redemption Balancing the Risks

- Redemption from Negative Effects of Stale CH Record
 - Must accommodate reasonable concern re employer risks
 - Risk declines with “time clean”
 - Estimate when recidivism risk has dropped low enough for “redemption”
 - When risk is comparable to that of the general population
 - When risk is within a tolerance level of the never-arrested
 - That is the “Redemption Time”

Review of Some Research Results

- Redemption Research to estimate “redemption times”
 - Blumstein and Nakamura in *Criminology* 2009 and later
 - Sample of 88,000 First-Time Arrestees in 1980 in NY State
 - Used “Hazard Function” to Track Recidivism
 - Track over time the Probability of a **First** Recidivist Arrest
 - High initially and declines steadily

Probability(t) of a First New Arrest = Hazard (C_1 =Burglary; A_1 =18,20)

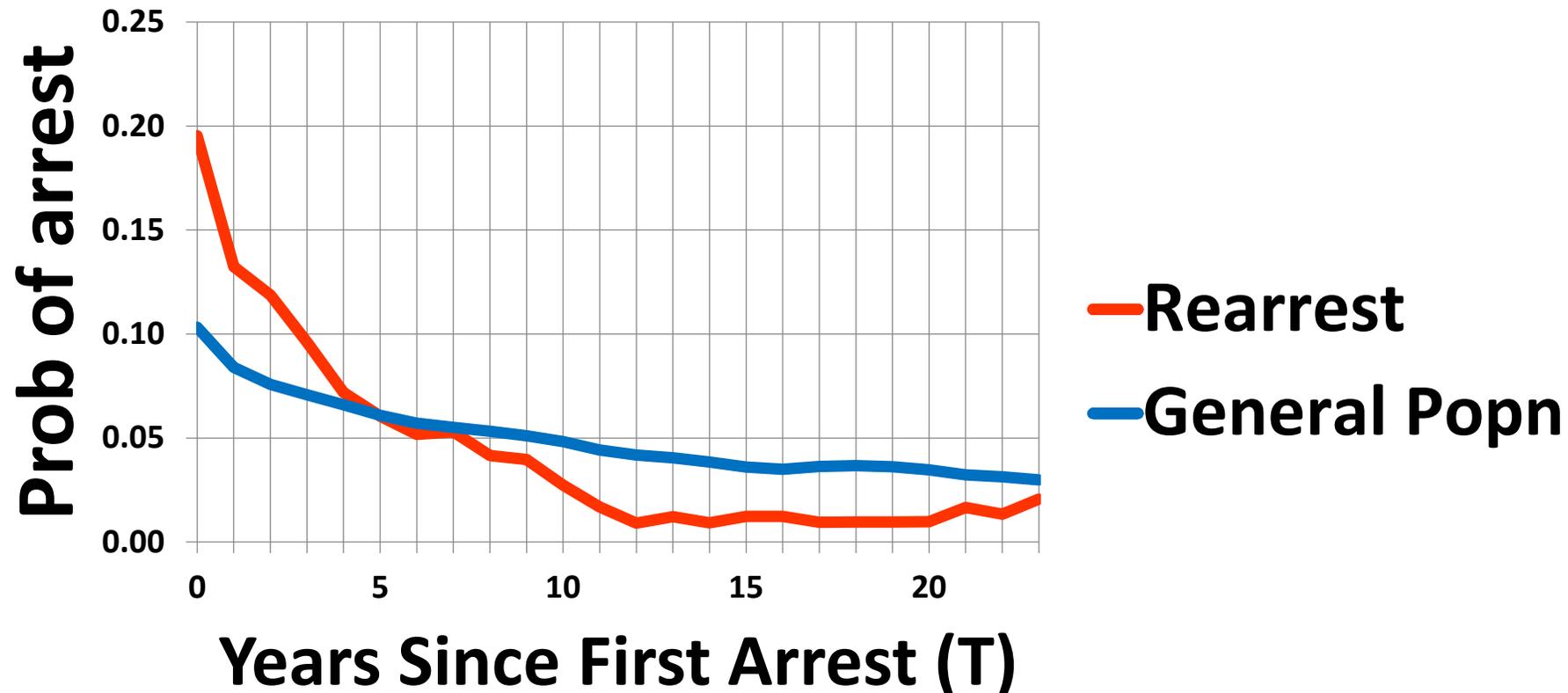


Choice of Redemption Time

- Compare Hazard to Arrest Rate of General Population
 - Age-Crime Curve = Arrests of Age a / Population of Age a
 - Hazard declines faster than Age-Crime Curve
 - Redemption time is when hazard crosses the Age-Crime Curve
- Redemption should occur when recidivism hazard drops below arrest rate of the general population of same age (i.e., the A-C Curve)
- Greater challenge if arrestees compared to the never-arrested
 - Choose a reasonable tolerable risk level (.05, .01, etc.)

Hazard vs. Age-Crime Curve (A1=20 and C1=Agg Assault)

$T^* \sim 5, P \sim .06$



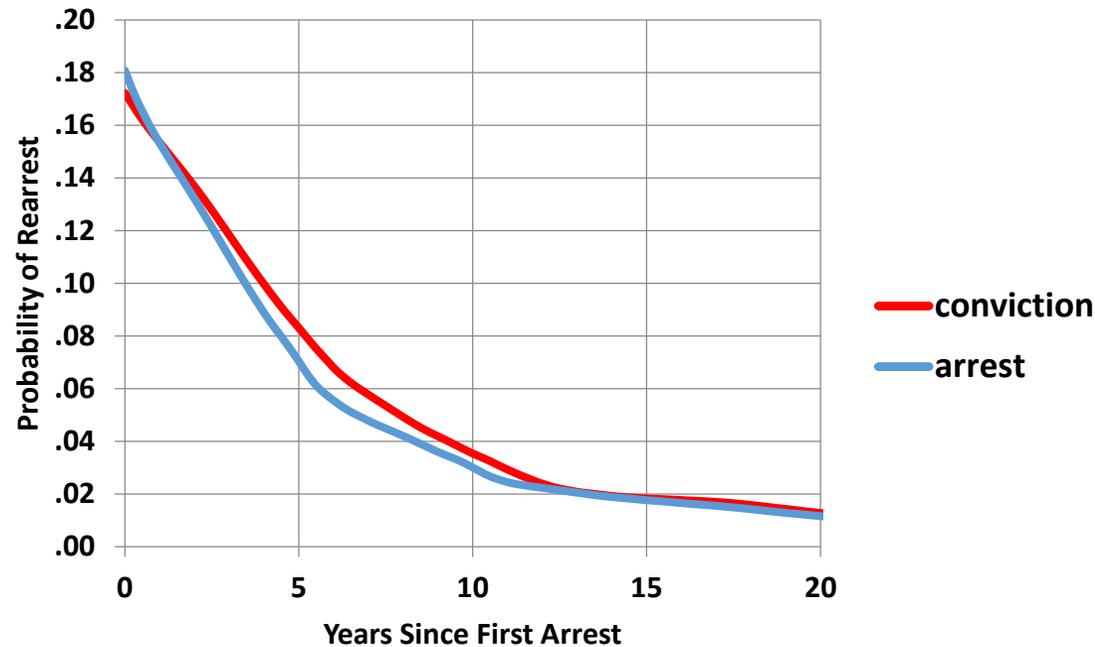
Additional Concerns to Be Addressed

- Concern that hazard is based on arrest records, not conviction
 - Arrest records vs conviction records
 - Analyzed a sub-sample of those reported to be convicted
- Concern re C2 – crime type of recidivism
 - Different employers will have different concerns re recidivist crime type
 - One-on-one home counselor vs bank teller vs construction worker
- Concern over arrests outside NY State
- Concern that applicant pool is largely “never-arrested”
 - Age-crime curve not indicative of their risk profiles
- Concern about robustness of findings: 1980!, just NY!

Conviction vs. Arrest

- In many hiring situations, employers are prohibited from asking about an arrest record without a following conviction
 - Those convicted are a subset of those merely arrested

A₁ = 19-20
C₁ = Violent

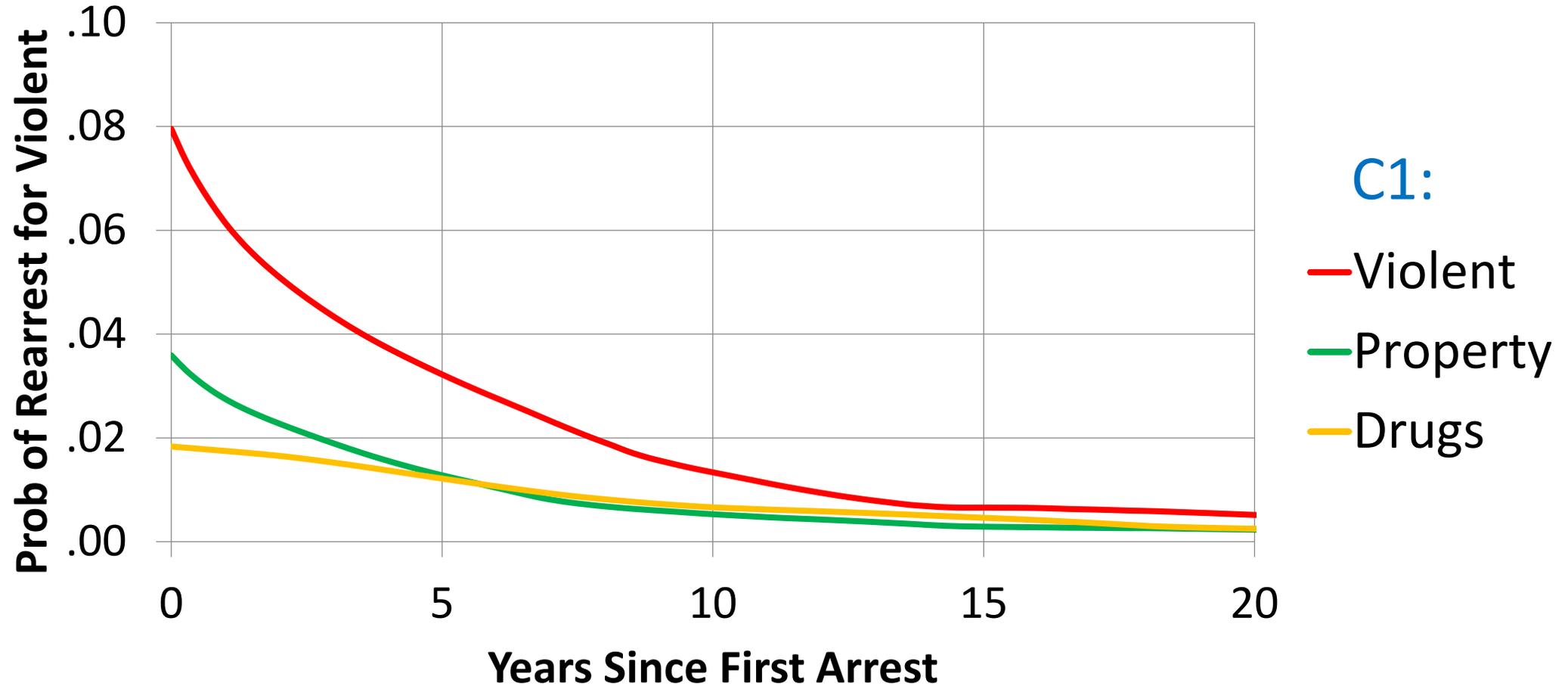


Concern over C_2 – The Next Crime

- Employers differ in the crime types they care about
 - Shop owners or banks care about property crimes
 - Those dealing with vulnerable populations care about violence
- EEOC requires employers to demonstrate “*business necessity*” to justify the use of criminal records
 - Invoking the prior record should be for job-related reasons
- Develop a “crime-switch matrix”
 - Probability of going from a first crime-type i to a second crime-type j
- Analyze crime-type-specific hazards
 - Risk of re-arrest for a particular second crime

C₂-Specific Hazard

(A₁ = 19-20, C₂ = Violent)



Crime-Type Redemption Times for C2 (P=.01)

- Initial crime type is an indication of recidivism crime type
 - This is especially true for violence
 - Prior violence indicates higher risk of violence in C2

		A ₁	
C ₂	C ₁	19-20	25-30
Violent	Violent	14.7	13.9
	Property	7.3	4.3
	Drugs	8.8	4.7
Property	Violent	11.1	9.1
	Property	9.2	12.5
	Drugs	11.6	8.8

For low risk tolerance – compare to the never-arrested

- Employers differ in their risk tolerance
 - Depends on the risk vulnerability of the position
 - Much depends on the applicant pool and their history
- For the Never-Arrested, their Hazard not expected to cross the ACC
 - The large initial difference diminishes over time
 - Difference likely to be very small after hazard drops to $\sim 1.5-2.0$
- Could examine confidence interval around hazard
 - Sensitive to small sample size remaining at large time
 - Confidence interval gets wider as N declines over T
- Could establish a reasonable risk tolerance level (.01?)
 - Redemption when the hazard crosses that level – or if

Concern for Arrests Outside NY

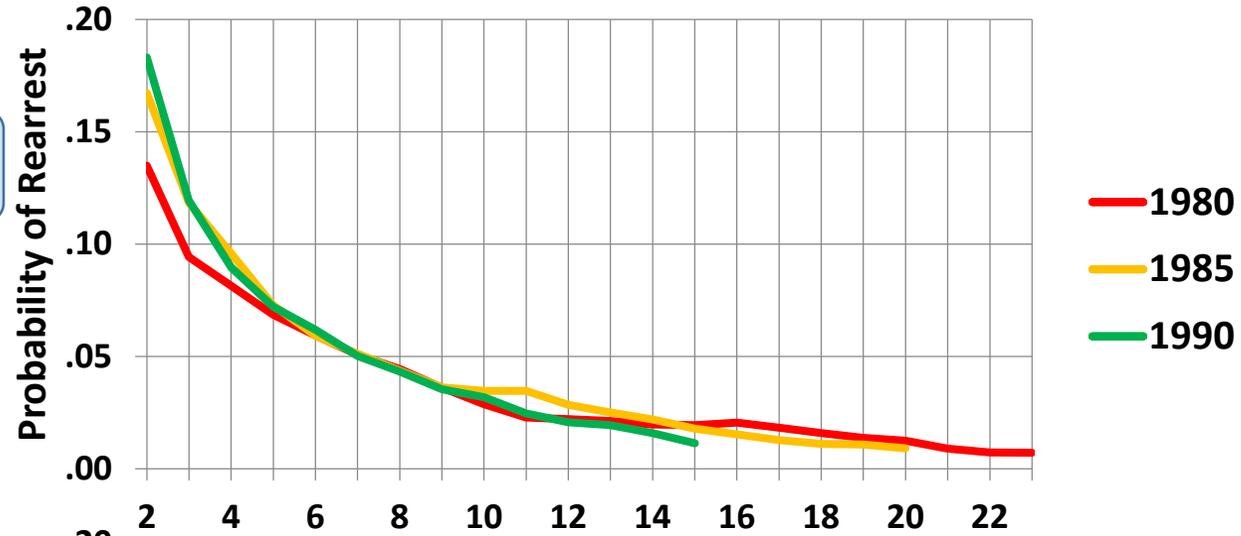
- Those who appear clean in NY might have been arrested elsewhere
- We obtained FBI national criminal records for our sample of 1980 NY arrestees **with no re-arrest in NY (40%)**
 - About 23% of them were found to have arrests elsewhere
- Adjustment of recidivism risk for out-of-state arrests is appropriate

Concerns about Robustness

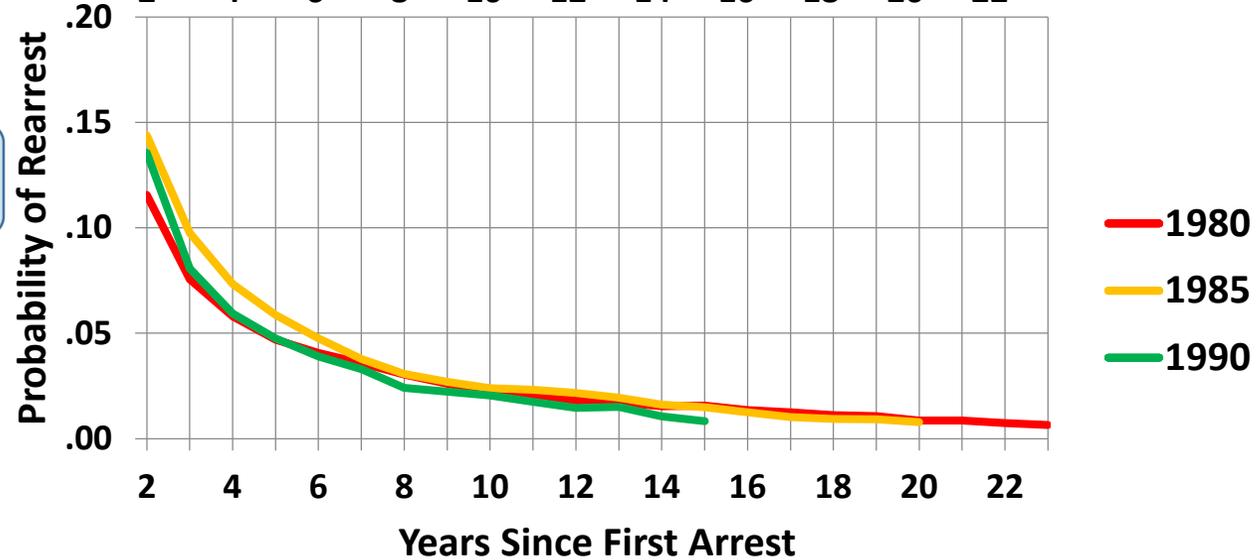
- Estimates of redemption times are based on 1980 first-time arrestees in NY
- How reliable are our estimates for use at different times or in different places?
- We test the robustness of estimates to:
 - Different States (Florida, Illinois in 1980)
 - Different Sampling years ('85, '90 from NY)
- State results are different in about the first 5-10 years
 - But very close after 5-10 years

Robustness to Sampling Years

C₁ = Violent



C₁ = Property



Conclusions

- Recidivism risk declines with time clean
 - Important consideration to employers and government regulators
- Redemption times identify key time points when the criminal record loses its value in predicting risk
 - We have reasonable empirical estimates of redemption times
 - Based on a large set of official data
 - Tested for robustness over time and across states
 - Other researchers have produced similar estimates
- Prior crime type provides an indication of future crime type, especially for violence
- Our analyses provide a basis for responding to user needs
 - Redemption times can be estimated based on user specs for A_1 , C_1 , C_2 , risk tolerance, etc.
 - Can avoid wrongly denying jobs to people with stale records
- Redemption times are consistently less than 20 years
 - Heavy burden on using CH older than 20 years

Balancing the Risks

- Time clean is important in assessing risk of future offending
 - Risk declines with time clean
- Not intended for people to be held in limbo until they reach what we call redemption times
 - Employment should be facilitated as soon as possible, especially with employment situations that are risk tolerant
- Other information should be used to encourage employment
 - Positive work history
 - Family structure – especially marriage
 - Experience with training and placement agencies

Potential Policy Approaches

- Inform appeals boards considering pardons
- Inform employers of the low relevance of events older than T^* if clean since then
- Protect employers from “due-diligence liability” claims if last arrest is older than T^*
- Seal recorded events if last is older than T^*
 - Can re-open with sufficient provocation
 - Consider if purging is appropriate
- Data availability from commercial sources?

Other Steps to Help in Redemption

- Do analyses of other CH sampling frames
 - Prison releasees is a good place to start
 - Explore possibility of convergence with arrestees
- Provide richer information re time off the streets in confinement
- Seal closed records rather than purging
- Facilitate access to out-of-state CH records
- Get commercial CH providers to adhere to sealing policies

A Source Document

- Available from NCJRS (National Criminal Justice Reference Service)
- Document No. 240100 (Nov. 2012)
- Extension of Current Estimates of Redemption Times: Robustness Testing , Out-of-State Arrests, and Racial Differences
- <https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf>

Thank you!

Questions & Suggestions?