

# Criminal Records, Recidivism, Redemption, and Expungement

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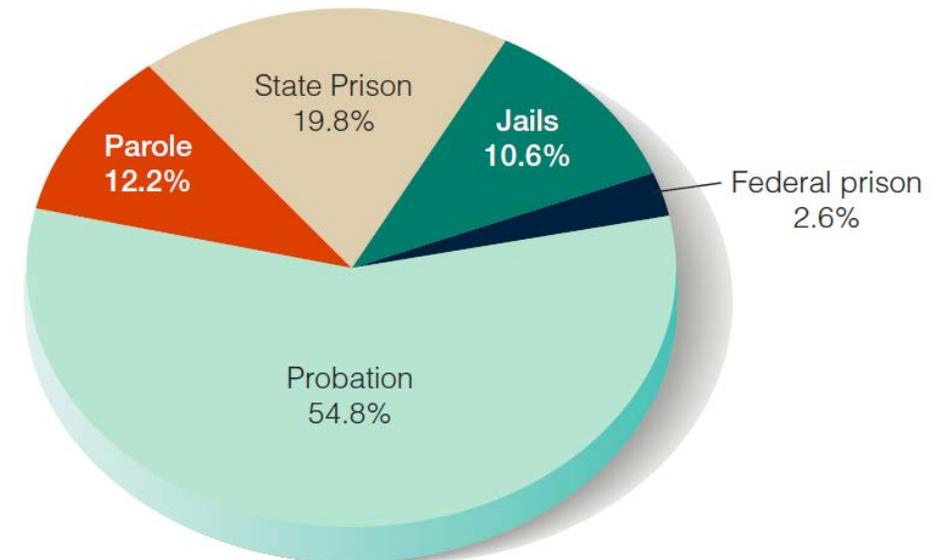
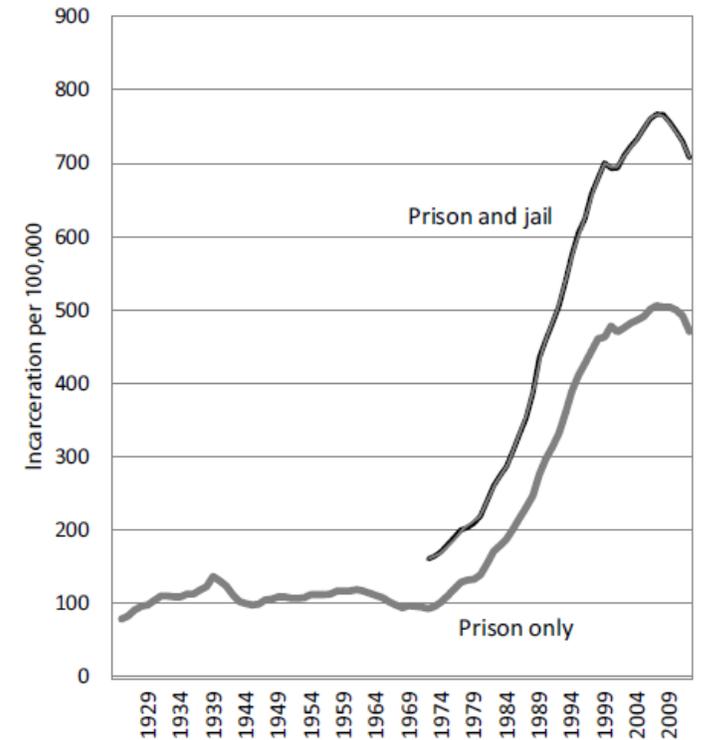
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# Prevalence of Criminal Records

- Expanded reach of the criminal justice system
  - Incarceration rate quadrupled [NRC, 2014]
  - Similar growth in probation [Phelps, 2017]
  - % of population with a felony conviction doubled [Shannon et al., 2017]
  - 1/4-1/3 arrested by mid-20's [Brame et al, 2012; Smith, 2019]
  - One in three adults with a criminal record [FBI, 2017]



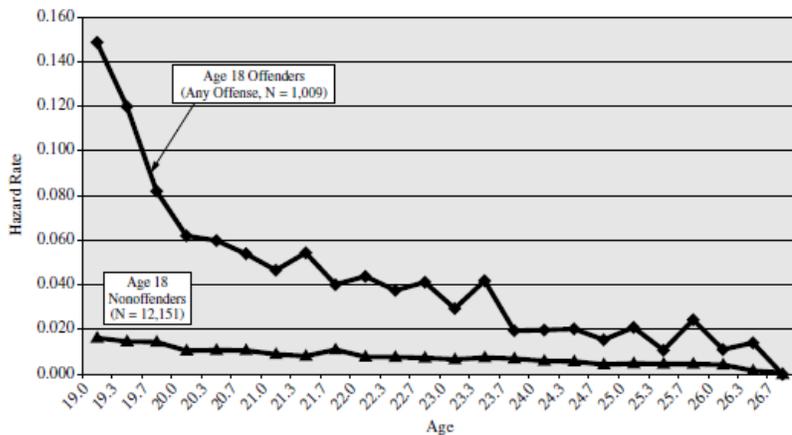
# Criminal Records and Recidivism

- Collateral consequences of criminal records [Leasure, 2018; Pager, 2003; Uggen et al., 2014]
- One of the best documented “facts” in criminology: Positive association between past and future offending
  - All risk assessment tools include criminal history
- But it has been long known that recidivists recidivate relatively quickly and risk declines over time [Baker, 1966; Hoffman & Stone-Meierhoefer, 1977; Kitchener et al., 1977]
- Why? Could be for multiple reasons - time is rehabilitative and/or a filter [Kurlychek et al., 2012]

# Redemption - When Does Recidivism Risk Become Low Enough?

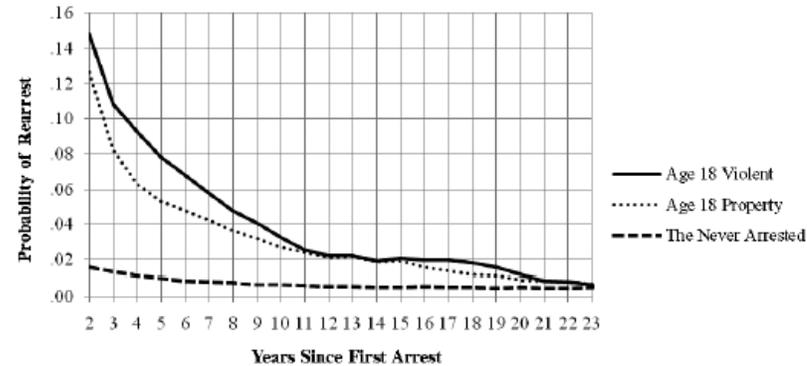
- Unanimous finding of declining recidivism risk
- Clearly, a criminal record has a diminishing value over time
- Range of redemption time estimates (5-10 years), depending on the benchmarks used

FIGURE 4. ARREST HAZARD RATE BY AGE



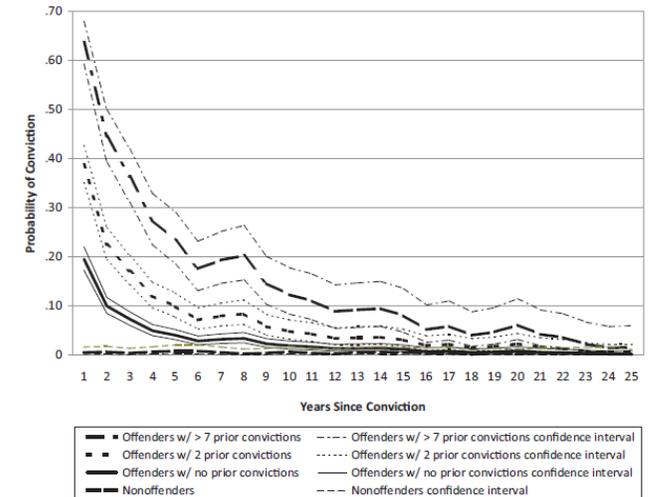
Kurlychek, Brame, & Bushway (2006)

Figure 4. Comparison with the Never Arrested (Age 18 Violent, Property)



Blumstein & Nakamura (2009)

Figure 3. Predicted Hazards of a 26-Year-Old Offender with Different Criminal History Records



Bushway, Nieuwbeerta, & Blokland (2011)

# Implications

- Empirical justifications for time-limited use of criminal records
  - “Waiting periods” in expungement and sealing, certificates of rehabilitation/relief
  - State Fair Credit Reporting Act laws (7-year rule)
  - EEOC Guideline (“the time that has passed since the offense”)
  - Exclusionary periods set by businesses and background check companies
- Removing or arbitrarily shortening waiting periods can increase “false negatives” and delegitimize relief mechanisms

# Record Clearing

- One mechanism of relief from collateral consequences: Limiting access to (full) criminal history information
- Existing studies suggest that record clearing improves employment and reduces recidivism [Loeffler et al., 2015; Prescott & Starr, 2019; Selbin et al., 2018]
- No experimental data yet – In observational data, who clears?  
Selection on unobservables
- No great understanding of the effects when it's automated – current up-take estimate is less than 10% [Chien, 2019; Prescott & Starr, 2019]

# Changing landscape of Record Clearing

- Clean Slate Act of 2018 in Pennsylvania
  - *Automatic* sealing
  - Summary offenses and many non-violent misdemeanor convictions after 10 years from disposition
  - Non-conviction records without waiting periods
  - Estimated 30 million cases or half of the state court caseload will be sealed
- Justice Reinvestment Act of 2016 in Maryland
  - Expungement
  - Over 100 misdemeanors, including drug possession and theft, after 10 years from sentence completion
  - Felonies including theft, drug trafficking, and burglary, after 15 years

# Increasing Relevance of Expungement in MD

## CJIS Expungements Calendar 2004-2018

<u>Year</u>	<u>CJIS Expungements</u>	<u>Year</u>	<u>CJIS Expungements</u>
2004	15,769	2012	30,654
2005	16,760	2013	34,207
2006	20,612	2014	33,801
2007	21,772	2015	36,412
2008	24,200	2016	41,854
2009	25,146	2017	48,211
2010	27,199	2018	59,026
2011	20,492		



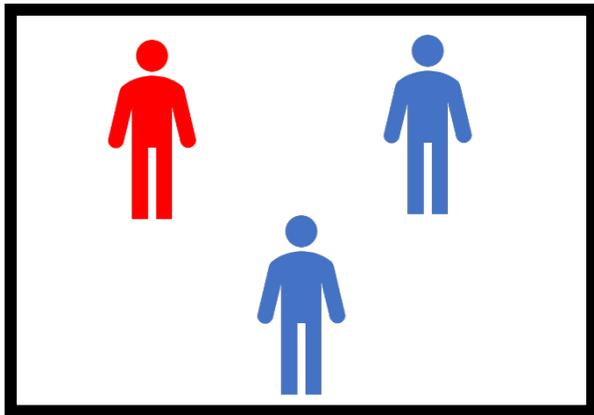
More than tripped

CJIS: Criminal Justice Information System

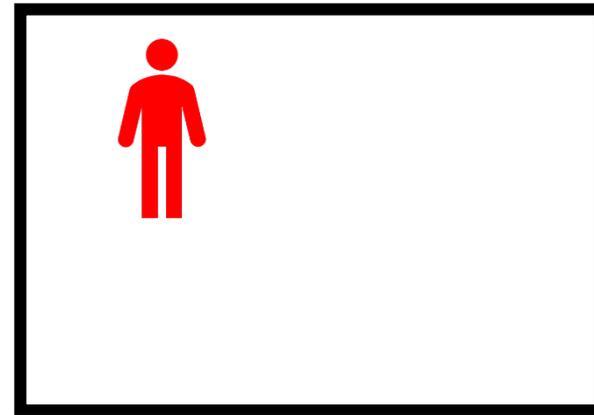
Source: Criminal Justice Information System; Department of Public Safety and Correctional Services

# Potential Unintended Consequences of Deleting Records

Risk assessment and redemption research suggests that criminal history predicts recidivism but recent history predicts better than old history – *Expungement systematically removes low risk people*



**Complete data**



**Data after expungement**

# How Would This Affect Recidivism Research?

## Hypothetical Example



Give us a cohort of first-time offenders sentenced to probation in 2005 and their recidivism

*Suppose most misdemeanors are expungeable after 10 years*

Part of non-recidivists with expungeable offenses would disappear from the data

	Recidivism (3 year)		Total
Original Offense Expungeable?	No	Yes	
No	35	15	50
Yes	35	15	50
Total	70	30	100

Higher recidivism rates, longer redemption times



$$43\% = 30 / (100 - 30)$$



30% recidivism rates

# How Would Expungement Affect Risk Prediction?

Take another sample of probationers and run a model predicting  
recidivism

Suppose the predictors are age, sex, and criminal history

After expungement, the sample would consist more of: first-timers,  
female, and older

Sample selection where the selection is related to the dependent  
variable would result in bias

# In Summary

- “Time” is an important factor in distinguishing low risk from high risk
- Record clearing could be an effective tool in removing collateral consequences, but more research is needed to understand its effects when implemented at scale
- Concerns about the impacts of record deleting on research and policy - systematically losing low risk individuals from repositories could compromise future redemption policy