

Probation Journal

<http://prb.sagepub.com>

Employment and ex-offenders in the United States: Effects of legal and extra legal factors

Sesha Kethineni and David N. Falcone

Probation Journal 2007; 54; 36

DOI: 10.1177/0264550507073325

The online version of this article can be found at:
<http://prb.sagepub.com/cgi/content/abstract/54/1/36>

Published by:



<http://www.sagepublications.com>

On behalf of:



The Trade Union and Professional Association for Family Court and Probation Staff

Additional services and information for *Probation Journal* can be found at:

Email Alerts: <http://prb.sagepub.com/cgi/alerts>

Subscriptions: <http://prb.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.co.uk/journalsPermissions.nav>

Citations <http://prb.sagepub.com/cgi/content/refs/54/1/36>

Employment and ex-offenders in the United States: Effects of legal and extra legal factors

Sesha Kethineni, Illinois State University

David N. Falcone, Illinois State University

Abstract One of the critical issues facing the US correctional system is recidivism among male offenders. Although some studies suggest a link between post-incarceration unemployment and crime, others have taken a contrary theoretical approach and consider unemployment to be a major risk factor. To address the unemployment–crime relationship, this article examines the following: rates of incarceration; cultural factors and social pathologies; factors in prison affecting inmates' ability to gain employment skills; post-prison factors such as stigma, employers' concerns toward hiring ex-offenders, and legal barriers restricting the employment of ex-offenders.

Keywords employment, ex-offenders, hiring ex-offenders, incarceration, legal barriers, post-prison factors, unemployment

Introduction

Between 1995 and 2004, the rate of incarceration in the USA increased from 601 per 100,000 persons to almost 724 (Harrison and Beck, 2005a: 2). This compares with rates of 116 in Canada, 145 in England and Wales, 88 in France, 97 in Germany, and 60 in Japan (The Sentencing Project, 2005: 1). The Bureau of Justice Statistics (2001) reports that approximately nine out of 10 incarcerated persons are eventually released.

These incarceration numbers, in relation to reportedly high levels of recidivism, are an important public safety issue. For many offenders, especially young men, prison is a revolving door; they commit serious crimes, are arrested and incarcerated, serve their time in prison, are released, commit new crimes, and are arrested and re-incarcerated, a cycle that will continue through multiple incarcerations (Freeman, 2003). For example, a 2002 special report on recidivism by the Bureau

of Justice Statistics demonstrated that 67.5 per cent (183,675) of 272,111 state prisoners released in 1994 from prisons in 15 states had committed new crimes within three years. The crimes for which they were re-arrested were either felonies¹ (similar to indictable offences in England) or serious misdemeanours.² Recidivism was measured using re-arrest, reconviction, re-sentencing, and return to prison with or without a new sentence. Overall, the measurement of recidivism included both in-state and out-of-state crimes. Of those subjects released, 46.9 per cent were reconvicted in state or federal court for a new crime and 25.4 per cent were re-sentenced to prison. These statistics did not include those offenders who were sent to local jails (Langan and Levin, 2002: 1).

A major concern is how correctional systems can manage the release of vast numbers of inmates and how communities can absorb and reintegrate them as law-abiding citizens. To understand the outcomes of various approaches, it is important to identify the cultural and social factors that influence post-release criminal behaviour, focusing on those that mitigate against offenders' successful social reintegration. The role of employability is particularly important in ex-offenders' efforts to avoid recidivism. Although some initiatives to rehabilitate ex-offenders and integrate them into society have shown promise, others – public and private sector initiatives, collateral consequences (a delimitation on certain civil rights and liberties following a felony criminal conviction as well as a statutory barrier to various forms of employment), and case law – undermine the potential for success and increase the likelihood of recidivism. Prior studies of the unemployment of ex-offenders generally focus on one or two issues (e.g. see Travis, 2002; Uggen and Manza, 2002; Wheelock, 2005) as impediments to employment. Those studies, although informative, provide only a partial picture of the overall factors affecting this endemic social problem. This article, however, takes a more holistic approach by addressing multiple issues involved in the inability of ex-offenders to secure viable employment in contemporary America. Female offenders constitute about 14.5 per cent of those incarcerated in the combined state and federal correctional systems in the USA (Harrison and Beck, 2005a: 5), but this article focuses on the evidence relating to adult male offenders.

Social pathologies, medical/mental learning disabilities and racial discrimination

The National Research Council (1993) argues that unemployment influences crime both directly and indirectly through social pathologies such as drug and alcohol use (considered to be precursors to violence and property crimes). The life-course trajectories of criminal career studies also show how losing a job can lead to substance abuse, which in turn leads to child and family violence.

Medical problems, mental problems and learning disabilities

Freeman (2003) finds that a disproportionate percentage of inmates have medical problems that further affect their employability. At the higher end, 21 per cent of

prisoners report some medical condition that limits their ability to work, compared to 11 per cent in the general population. One of the significant medical conditions reported was mental illness. Between 10 and 16 per cent of inmates have been either diagnosed or self-reported as having mental illnesses. These figures are in sharp contrast to the estimated 2 per cent in the general population. Similar trends are also reported for learning disabilities. Approximately 10 per cent of the prison population report learning disabilities, which is over three times the proportion reported for the general population (Freeman, 2003: 19), affecting their chances in the legitimate job market.

Racial discrimination in arrest and conviction

In addition to lack of education and work skills, a disproportionate number of arrestees and convicted offenders are black males. A study conducted by the Policy Institute reported that African Americans in Maryland make up 68 per cent of all drug arrests and 90 per cent of the state prison population incarcerated for non-violent drug offences (Williams, 2003). A study in Oklahoma reported similar racial trends. For example, African Americans in Oklahoma comprised 32 per cent of all incarcerations, while their percentage of the general population for the same period constituted only 12 per cent. The incarceration rate is 3452 per 100,000 black people and 572 per 100,000 for white people (Camp, 2004: 1).

Factors in prisons affecting inmates' ability to gain employment skills

According to Freeman (2003), the incarceration experience should change offenders' assessments of the cost of crime in relation to the benefits. The ideal criminal justice system should alter its values and assist released offenders in finding employment in the legitimate labour market and in making positive contributions to society. Historical prison mandates and political agendas to keep unemployment rates low have impeded the reforms that might have expanded employment opportunities for ex-inmates.

Historical prison mandate

In the 19th century, the main flaw concerning prison inmates was their 'absence of employability'; thus prison labour 'was exploited and rationalized as a mechanism to enhance felons' vocational knowledge, skills, and abilities' (Krienert and Fleisher, 2004: 42). In the 1930s, organized education started to emerge in prisons across the country (Albright and Denq, 1996). Introduction of vocational education was intended to shift the focus from agricultural to technological jobs. A general educational curriculum was introduced to assist inmates in correcting their shortcomings and to aid in adjusting to society (Wallack et al., 1939). Since then, in-prison educational programmes, vocational training, counselling, work-release

programmes and on-the-job training have expanded to almost all prisons programmes in the USA.

The rehabilitative era of the 1970s and early 1980s saw an expansion of many treatment and educational programmes. By the mid- to late-1980s, these programmes were viewed as irrelevant, ineffective and inconsistent with the mission of the correctional system, whose policy thrusts moved from rehabilitation to retribution and punishment (Pollock, 2004). The concept of 'pure rehabilitation' where offenders were considered 'sick' and thus in need of treatment in a setting that approximates a normal society, is now considered naive and without merit (Allen and Simonsen, 2000: 62). Under the pure rehabilitation model, all aspects of the correctional organization had to be directed towards treatment programmes designed to rehabilitate prisoners (Clear et al., 2006). Along with the shift in American correctional policy, criminological research has also taken a different direction and depicts inmates as having strong propensities to seek 'money without work, sex without courtship, revenge without court delays' (Gottfredson and Hirschi, 1990: 89). Therefore, it is deemed essential to keep these thrill-seekers compliant both inside and outside prison walls by providing effective vocational and educational programmes (Carlson, 2004). However, some contemporary criminological thought takes a more moderate approach, suggesting that the relationship of crime to employment is much more complex (Tarling, 1982). That perspective argues that social deprivation and economic disadvantages play an indirect and interactive role in explaining the complex relationship between unemployment and crime.

Political agendas to keep unemployment rates low

The 2004 employment status of civilian non-institutional data, which did not include prisoners, shows that 5.5 per cent (8,149,000) of the labour force is unemployed (US Department of Labor, 2005: 1). One of the reasons why US unemployment rates look so low in comparison to other industrialized democracies is that 2,131,180 prisoners were held in federal or state prisons or local jails as of 30 June 2004 – currently the highest incarceration rate in the world (Harrison and Beck, 2005b: 1). If the institutionalized population were included, unemployment statistics would be at least 2 per cent higher than the reported unemployment levels (Western and Beckett, 1999).

Western and Beckett further argue that in the short run US incarceration lowers conventional unemployment measures by removing able-bodied, working-age men from labour force counts. Social survey data show that incarceration raises unemployment in the long run by reducing the job prospects of ex-convicts (Western and Beckett, 1999: 1030). One could counter this argument by stating that the job skills of inmates are so deficient that if the inmates were trying to get into the outside job market, they would fail to push employment rates up.

The political agenda of maintaining low unemployment rates in the USA, according to the authors, depends on the willingness of the policy makers to expand the prison system. Such a policy, they note, will further deepen inequality by incarcerating more black males. Employment opportunities for ex-offenders are

also affected by post-prison factors such as the stigma of being incarcerated, the unwillingness of employers to hire ex-convicts, and state and federal statutes restricting employment of ex-convicts in certain professions (collateral consequences as mentioned previously).

Post-prison factors influencing ex-offenders' employment potential

Ross and Richards (2003) believe that the three basic needs of ex-convicts are employment, housing and someone to believe in them. Other factors include stigma for having a criminal record, state and federal restrictions on hiring ex-offenders and employers' concern for legal liability. Yet, according to Pollock (2004: 257), employment, housing, family adjustment, influence of old friends and the difficulties and loneliness of the outside world are the main barriers to ex-offenders' readjustment into society.

Stigma/discrimination

In 2004, one in every 138 US residents was incarcerated (Harrison and Beck, 2005a). Of those, one in every 109 men and one in every 1563 women were serving sentences in a state or federal prison. As a result of the high incarceration rate of males, researchers have recently started focusing on the consequences of this massive intervention on both white and black men (Harrison and Beck, 2005a; Kling, 1999; Needles, 1996). Using an experimental audit approach, Pager (2003) tested the degree to which a person's criminal record affects future employment opportunities. The methodology included having matched pairs of individuals apply for an entry-level job. In particular, the author studied the negative credentials associated with a criminal record. He posited that the state certifies individuals who are incarcerated in ways that qualify them for discrimination or social exclusion. The official status of this negative credential separates it from other forms of social stigma.

The fieldwork for the Pager (2003) project took place in Milwaukee, Wisconsin, where the economic conditions were moderately stable, ranging from a high of 5.2 per cent unemployment to a low of 4 per cent. The job openings for this study were selected from a local newspaper and an internet job services site. At the time of interview, roughly 75 per cent of the employers asked explicit questions on the application form about the applicant's criminal history even though, in most cases, employers were not allowed to ask criminal history questions. About 27 per cent of employers performed official background checks on the experimental subjects. The results showed that there was a reduction of 50 per cent in the likelihood of being invited for a follow-up interview (call-backs) if there was a criminal record.

The second question Pager (2003) addressed was the effect of a criminal record when the ex-offender was of minority ethnic extraction. White non-criminals served as the baseline representing the non-stigmatized group relative to black people and those with criminal records. Black non-criminals received 14 per cent call-backs,

compared to 34 per cent of white non-criminals. The effect of race on employment is made more obvious from the fact that even white people with criminal records received more call-backs (17%) than black people with no criminal records (14%). Numerous empirical studies support this contention (e.g. Pettus, 2005; Tonry, 1995; Wheelock, 2005). Racial minorities, especially African Americans, face numerous social disadvantages, which, when coupled with their disproportionate involvement with the criminal justice system, clearly impede their chances of gainful employment.

Employers' concerns

The extent to which employers are willing to hire ex-offenders has been addressed by Holzer et al. (2002) and Petersilia (1999). Petersilia conducted a survey in five cities and found that 65 per cent of all employers were not willing to hire ex-offenders under any circumstances. Holzer et al. (2002) found there was little interest in hiring ex-offenders, even compared to other disadvantaged groups of workers, such as welfare recipients and those who had been unemployed for a long time. Employers make their decisions either based on criminal history records of ex-offenders or, in the absence of such records, by discriminating against those perceived to be ex-offenders. Holzer et al. (2003) also noted some predictable patterns: (1) there was a strong reluctance on the part of employers to hire ex-offenders charged with violent offences; (2) employers were somewhat reluctant to hire those who were recently released from prison and were without work experience; and (3) employers were less averse towards hiring ex-offenders who were charged with drug and property offences.

Employers are genuinely concerned with workplace violence and property loss, which affects not only employees, but customers as well. The workplace is a major source of violent and property crimes. Bachman (1994) reported that the workplace is the location of 8 per cent of the rapes, 16 per cent of the assaults, and 7 per cent of the robberies nationally. The 2001 National Study by Hollinger and Davis (2003) shows losses from employee theft reaching \$32.2 billion in 2000. Employee theft alone accounted for 46 per cent of retail inventory shrinkage while shoplifting amounts to 30.8 per cent of loss by retailers. Employee theft and shoplifting together accounted for the largest source of property crime committed annually in the United States.

Obtaining gainful employment is not easy for most ex-offenders. Having the label of ex-offender carries with it a social stigma that cannot be erased easily. Many of the offenders had employment prior to their arrest and conviction. Going back to their old job upon release is often impossible. Even finding a new job for less money can be difficult. Studies have shown that ex-offenders often work in low-paid, low-skilled jobs (Dale, 1976; Taggart, 1972) earning less than \$6.00 per hour (Sharp, 1992). Lack of education and deficient job-skills have been cited as reasons for such low-paid jobs (Albright and Denq, 1996). Ex-offenders' criminal records made it even more difficult to obtain gainful, let alone well-paid, employment.

State statutes, programmes and case law

With growing concern about employee violence, theft and other criminal conduct, more employers are using criminal background checks to screen potentially problematic job seekers. Employers in certain professions, such as childcare, are required by state statutes to screen applicants. Where there are no such statutes, employers conduct these searches voluntarily to improve the safety and quality of their workforce. Although criminal background checks can be useful tools to filter potential troublemakers, employers must be cautious, as many states place limitations on how such checks may be used (Salgado, 2004).

Twenty-one states have standards governing the relevance of criminal conviction to the occupational licences sought by applicants, while 29 states have no such standards. State-licensing agencies also prohibit employers in certain professions (such as home healthcare, nursing, education, eyeglass dispensing, plumbing and barbering) from hiring ex-offenders, even when their convictions are unrelated to the job or licence sought. States such as Colorado, Georgia, Kentucky, Idaho and New York have no automatic ban for employment of ex-offenders in home health care, whereas in Wyoming individuals with criminal records who apply for a job in health care must submit to background checks (Legal Action Center, 2004).

Although states have the power to lift those bans by offering certificates of rehabilitation, only six states (Arizona, California, Illinois, Nevada, New Jersey and New York) offer either certificates of rehabilitation or a similar mechanism to remove occupational barriers to the employment of ex-offenders (Legal Action Center, 2004). Only 21 states have standards that require the applicant's criminal history to have a 'direct', 'rational' and 'reasonable relationship', to the licence sought. Delaware law, for example, prohibits ex-felons from obtaining licences to work in over 30 occupations. This means that convicted felons are no longer entitled to work as athletics trainers, barbers, clinical social workers, cosmetologists, electricians, landscape architects and plumbers. In Illinois, for example, convicted felons are prohibited from working as journeyman plumbers (Krienert and Fleisher, 2004). Colorado, South Carolina, Georgia and Virginia are rated worst in terms of limiting ex-offenders' employment opportunities.

When it comes to hiring ex-offenders for department of corrections (DOC) jobs, Montana, New Jersey and New Hampshire report having no formal policy or state statutory guidelines. Other states have either state statutory guidelines or internal policies (US Department of Justice, 2000). For example, California has a one-year employment ban following a misdemeanour for those wishing to become a police officer, and for parolees seeking employment in law, real estate, medicine, nursing, physical therapy and education. Arizona and Alaska ban employment in prison and probation work for marijuana conviction. Utah, for example, has a five-year ban for a hard drug use conviction.

When state statutes allow consideration of felony and misdemeanour convictions only to the extent they are related to applicants' suitability for employment for certain positions, how many employers really know the intent of those statutes? Some situations are obvious: a convicted child sexual predator can almost certainly be rejected for a teaching position. However, many situations are not clear. There

is little guidance for employers to judge the justification of denying a job applicant an accounting job when the job applicant had been previously convicted of a violent crime. Should an employer take a chance in hiring such an applicant, thereby placing other employees at risk or deny him or her the job and face legal liability? Can an employer be certain that such a person would not pose a threat to other employees or customers? They may not understand the type of offences that fall under misdemeanours or felonies in their particular states. Although some states classify the same crimes as felonies, others report them as misdemeanours. These discrepancies in offence classification have created legal problems for employers.

For example, VIP Companion-Care in central New York was sued in 2004 by the New York Attorney General for failure to conduct mandatory criminal background checks on employees who provided companion home care for aged clients. In at least two cases the company hired individuals with criminal histories. One of the two workers stole a credit card and an expensive ring from two elderly clients. Among other penalties, the company was ordered to pay approximately \$18,000 in restitution and fines (Office of the New York State Attorney General, 2004).

The imposition of liability for employers arises not only from denying employment based on criminal backgrounds checks when statutes ban such practice, but also from negligent retention of ex-felons. In one case, a Burger King employee – Paul Leahy – had been convicted of 24 separate offences, including sex offences. On 17 July 2002, Ally Zapp stopped at the restaurant to use the bathroom where she was attacked and stabbed to death by Leahy (Voss, 2002). The employer was responsible for negligent hiring and retention if the employer fails to make reasonable inquiry at the time of hiring or when the employer knows or should have known the applicant's criminal inclinations (Usry and Mosier, 1991). The doctrine of negligent retention liability is intended to provide safe working environments for employees, customers and third parties by holding employers liable for negligent retention.

Pennsylvania, for example, permits employers to consider applicants' felony and misdemeanour convictions, partly or wholly, in hiring decisions. As in Hawaii, Michigan, Kentucky and Missouri, criminal convictions in Pennsylvania may only be considered to the extent they relate to an applicant's suitability for the specific job in question. If an applicant is denied solely because of his or her criminal conviction, the employer must inform the applicant in writing. An applicant denied a position can sue an employer challenging his/her reliance on the background check. If, for example, an employer denies employment based on a conviction unrelated to the job, or if the employer relied on a mere arrest, the Criminal History Record Information Act allows actual and real damages, as well as punitive damages (up to \$10,000).

Unlike Pennsylvania, criminal history record statutes in New Jersey, Oklahoma and Delaware do not limit the use of criminal background checks for hiring purposes. However, under the Equal Employment Opportunity Commission (EEOC), employers may not automatically bar applicants based merely on arrest records. Instead, the EEOC, following the position stated in the Title VII of the Civil Rights Act of 1964, requires the employer to evaluate the arrest and determine whether

the conduct for which the applicant was arrested is both job-related and of recent origin.

The EEOC's position regarding criminal convictions is similar in that an employer cannot bar applicants with convictions without applying the rationale of 'business necessity'. For instance, in a business necessity an employer denied a delivery job to an applicant who had a conviction on a drug-related offence within the past year. Conversely, an employer was not permitted to deny employment for a house-keeping job to an applicant who had a 15-year-old drug conviction (Doerner, Saunders, Daniel and Anderson Law Firm, 2004).

Not only are criminal convictions considered relevant in employment decision of ex-convicts, but also arrest records. In this regard, most states (37) have laws permitting employers and occupational licensing agencies to ask questions about and consider arrests that never led to convictions in making employment decisions. Only 10 states prohibit employers and occupational licensing agencies from considering arrests in employment decisions if those arrests did not lead to convictions, and three states prohibit certain employers from using arrest information in employment decisions (see Legal Action Center, 2004).

When it comes to employment decisions by private employers, 45 states have no standards restricting private employers from considering arrest and conviction in hiring decisions. In Arkansas, for instance, private employers can ask prospective job applicants about arrests not leading to conviction. Similarly, while employers in Alaska can ask job applicants about arrests, applicants may answer 'no' if their arrest records have been sealed by the court (see Legal Action Centre, 2004).

To encourage job opportunities for ex-convicts, the City Council in Cleveland is proposing an anti-discrimination law for ex-offenders who want to re-enter the workforce. Under the proposed ordinance, the city would cancel contracts of companies that do business with the city if they discriminate against ex-offenders (Townsend, 2004). Companies could still ask applicants about their criminal record and would not be liable for failure to hire if applicants' prior offences are related to the job.

These statutory restrictions have limited the number of occupations in which ex-offenders can work (Petersilia, 1999). Placing ex-offenders in high-quality jobs based on their job skills seems to have more positive effect on recidivism than just any employment. Uggen (1999: 144) found that high-quality jobs decrease the likelihood of criminal behaviour. This research raised significant policy questions: 'Assuming that placing ex-offenders in high-quality jobs reduces recidivism, how can policymakers justify restricting their access to those jobs?', 'How can policymakers justify such a costly stance?', and 'How do policymakers justify the elimination of such barriers when the public believes scarce, high quality jobs should go to the most, not the least deserving in a large, needy underclass?'. Uggen (1999) suggests that one way to overcome this dilemma is to provide such incentives in a comprehensive, yet costly, national employment and training strategy.

Federal policies and legal barrier for hiring ex-offenders

Since the 1990s, legislators preoccupied with concerns of employee safety and other risks that employed offenders may pose, have decided to expand the statutory authority of non-criminal justice agencies and individuals to access criminal histories for employment screening, occupational licensing, and certifications (Bureau of Justice Statistics, 2003). There are about 15 federal laws dealing with backgrounds checks. Three laws (Public Law 105–277; National Child Protection Act of 1993; and Public Law 92–544) allow nursing home facilities to conduct criminal backgrounds on job applicants (Federal Statutes Authorizing Criminal Background Checks for Nursing Facility Job Applicants and Employees, 2004).

To specifically address the employment issue of ex-offenders, the federal government instituted policies focusing on reducing ex-offender unemployment by creating programmes and hiring incentives. Some of these efforts include the passing of the following acts: the Manpower Development Training Act of 1962 (MDTA), the Transitional Aid Research Project of 1973 (TARP), the Comprehensive Employment and Training Act of 1973 (CETA), and the Targeted Job Tax Credit (TJTCs).

The MDTA Act (1962) provided the first major federal job training programmes aimed at improving job skills. These programmes were made available for ex-offenders. The 1973 TARP was designed to reduce recidivism among ex-prisoners, especially property offenders, by lowering incentives for re-offending through minimum levels of income support and extension of some unemployment benefits to prisoners for up to one year after release. The first attempt to consolidate the array of federal programmes was the CETA, enacted in 1973. CETA transformed a number of population-specific job training programmes into block grants, for which states could apply. This Act, however, did not extend those services to ex-offenders, but was amended in 1978 to include provisions for employment assistance for ex-offenders. When the CETA funding ended in 1982, employment programmes for ex-offenders largely disappeared.

Congress enacted legislation in the 1980s and 1990s, including the Job Training Partnership Act (JTPA), which replaced CETA. Other notable laws included the 1984 Carl D. Perkins Vocational Education Act, which required states to distribute one per cent of their allocation to correctional education (Finn, 1999). Evaluations of these earlier ex-offender programmes have demonstrated limited success in improving ex-offenders' employment and earnings and reducing recidivism. According to Finn (1998), the reason for the limited success of some of these early government programmes to assist ex-offenders with regard to employment was their emphasis on job placement, instead of addressing the multiple barriers to employment such as job readiness and job retention.

Among the other recent government-led programmes to connect released offenders to the labour market is the creation of the Office of Correctional Job Training and Placement (1994). Affiliated with the National Institute of Corrections, the primary responsibility of this office is to encourage and support job training and placement services in states and local governments for released parolees and probationers. The office mainly funds research initiatives that show promise of

innovative models of practice instead of funding employment services to ex-offenders (Finn, 1998).

Another federal initiative is the Placement Program Branch created by the Federal Bureau of Prisons in 1996. The goal of the programme is to improve federal inmates' chances of employment after release by way of offering mock job fairs, special training in resumé preparation, and listings of job openings. The most recent legislation was the Workplace Investment Act (WIA), enacted in 1998. WIA consolidated a number of Labor Department job-training programmes and established one-stop-centres in all states (Almanac of Policy Issues, 2001).

Finn (1998) evaluated three innovative programmes: Safer Foundation, the Center for Employment Opportunities, and Project Rio. These programmes provided basic services of life skills training, job preparation skills, job placement, social support and follow-up assistance. All three programmes provided follow-up services after job placement of released offenders. Initial evaluations showed no clear evidence that they were able to help large numbers of ex-offenders to remain employed and crime-free.

Conclusions and recommendations

One of the obvious facts about incarceration is that eventually all of these released inmates will live among us. These individuals will either adjust to the rigors and temptations of life outside prison or will fail because of the 'suspended animation' of prison life they had experienced. Studies have shown that prison populations have serious medical and mental problems along with low education and low employment skills, and they are in disadvantaged positions. Generally persons with physical and mental problem, limited educations and poor job skills do poorly in the US job market independent of a criminal record.

As Freeman (2003: 11) states, 'Getting an ex-offender a job does not mean that they [he or she] will eschew a criminal opportunity if it arises'. Therefore, to minimize recidivism and improve employment opportunities, issues such as medical problems, mental illnesses and values or preferences with which ex-offenders assess legitimate activity have to be considered. Although there are several issues that the criminal justice system can address to reduce recidivism, one of the essential parts of offender reintegration is improving employment potential for ex-offenders. To achieve this objective:

- (1) the criminal justice system should assist ex-offenders through skill-building while in prison and help them gain employment upon release, even if not released under formal supervision;
- (2) employers should be given incentives to hire ex-offenders;
- (3) clear statutory guidelines should be established for employers, both in public and private sectors; and
- (4) crime prevention efforts to reduce opportunities for criminal behaviour should be given priority.

A programme known as Better People implemented in Multnomah County, Oregon, has shown some success. The goal of the programme was to reduce the number of people returning to crime through Moral Reconciliation Therapy (MRT), a type of cognitive behavioural therapy programme, and to provide job placement for qualified ex-offenders. The programme was developed by Little and Robinson (1989). The programme consists of 12–16 steps dealing with moral development and draws on the earlier works of Kohlberg (1972) and Piaget (1973). It focuses on addressing cognitive and behavioural issues and was first implemented in Shelby County, Tennessee, in the mid-1980s. Participants must demonstrate pro-social behaviour in order to advance to the next treatment step. The job placement occurs after clients move through the initial stages of treatment of the MRT programme. The agency accepts jobs that pay a minimum of \$8.00 per hour, in addition to health benefits. The average wage for job placement for Better People's clients was higher (\$8.79/hr), compared to reported average wages of other ex-offender employment programmes in New York (\$6.30/hr) and in St. Louis (\$7.25/hr). The programme also showed a strong retention rate of over 70 per cent, compared to 50–55 per cent in other ex-offender employment programmes. The strong retention rate means that businesses continue to hire ex-offenders and begin to see ex-offenders as a valuable source of reliable talent (Better People, 2000).

Somewhat similar government initiated programmes dealing with employment assistance for ex-offenders in the UK started in the late-1990s and are based on social-justice philosophies. For example, ASSET and Surrey Springboard Schemes were designed to improve employability and employment of convicted criminal offenders. However, these programmes are devoid of the moral development component present in the American MRT programmes. Another programme found in the UK attempting to deal with the relationship between crime and unemployment (the New Deal), involves a proactive strategy by providing government assistance to a broader range of clients than that provided by MRT programmes in the USA (Sarno et al., 2000).

To improve ex-offenders' employment opportunities and to provide quality jobs, employers need to be willing to hire ex-offenders. Some states are allowing employers free business insurance policies that protect employers from loss due to employee dishonesty. The policy serves as an incentive to companies to hire job applicants who are ex-offenders or have some other risk factors. It insures employers against employee theft, forgery, larceny or embezzlement, but does not cover liability due to poor work and job-related injuries or accidents.

Research on workplace risk posed by employees with criminal histories is at best scanty. Thus, the question is how one can inform law and policy about workplace risk so that informed decisions are made based on empirical data rather than fears. Sceptics may argue that the reason we have limited research linking employees with criminal histories to workplace violence, is because the laws and regulations have, thus far, been effective in reducing or eliminating workplace violence posed by those individuals. Statutes barring ex-offenders from securing and retaining gainful employment are tradeoffs. In terms of reducing workplace crime, such laws will have trickling risk effects. Studies have shown that those who are unemployed

pose a greater risk to society than those who are employed. Therefore, barring individuals with criminal histories from the labour market leads to more crime, thereby posing greater risk to society more generally, not just in the workplace. These recommendations are in no way endorsing employment for all ex-offenders, irrespective of their propensities to criminal behaviours. What is suggested here, are reasonable measures to reduce recidivism.

Notes

- 1 Felonies are crimes of greater severity than misdemeanours and are punishable by death or incarceration in a penitentiary for one year or more.
- 2 Minor misdemeanours are generally punishable by a fine or imprisonment (or both) to be served in jail, typically for only brief periods of time, while serious misdemeanours are punishable by incarceration for longer periods, e.g. for up to a full year.

References

- Albright, S. and F. Denq** (1996) 'Employer Attitudes toward Hiring Ex-offenders', *Prison Journal* 76 (2): 118–138.
- Allen, H.E. and C.E. Simonsen** (2000) *Corrections in America: An Introduction* (9th edn). Upper Saddle River, NJ: Prentice Hall.
- Almanac of Policy Issues** (2001) *Job Training and Vocational Education*. URL (accessed 19 October 2004): <http://www.policyalmanac.org/economic/job-training.shtml>
- Bachman, R.** (1994) *Violence and Theft in the Workplace. Crime Data Brief: National Crime Victimization Survey*. NCJ-148199. Washington, DC: US Department of Justice, Bureau of Justice Statistics.
- Better People** (2000) *2000 Annual Report*. URL (accessed 15 October 2004): <http://www.betterpeople.org/docs/report2.pdf>
- Bureau of Justice Statistics** (2001) *Prison Statistics*. URL (accessed 15 October 2004): <http://www.ojp.usdoj.gov/bjs/prisons.htm>
- Bureau of Justice Statistics** (2003) *Compendium of State Privacy and Security Legislation: 2002 Overview*. Washington, DC: US Department of Justice, Office of the Justice Programs.
- Camp, D.** (2004) *Incarceration Rates by Race*. URL (accessed 15 October 2004): <http://www.doc.state.ok.us/DOCS/OCJRC/OCJRC94/940650k.htm>
- Carlson, P.M.** (2004) 'Something to Lose: A Balanced and Reality-based Rationale for Institutional Programming', in J.L. Krienert and M.S. Fleisher, *Crime and Employment: Critical Issues in Crime Reduction for Corrections*, pp. 61–74. Walnut Creek, CA: Altamira Press.
- Clear, T.R., G.F. Cole and M.D. Reisig** (2006) *American Corrections* (7th edn). Belmont, CA: Thomson Wadsworth.
- Dale, M.** (1976) 'Barriers to the Rehabilitation of Ex-offenders', *Crime and Delinquency* 22: 322–7.
- Doerner, Saunders, Daniel & Anderson Law Firm** (2004) *Oklahoma Employment Law Letter*. URL (accessed 24 October 2004): http://web.lexis-nexis.com/universe/document?_m=ec30d185e5242736b535f790b8ce2f5f&_docnum=7&wchp=dGLbVzz-zSkVb&_md5=b27e93cab9b359e6870b3a2adfc225d.4

- Federal Statutes Authorizing Criminal Background Checks for Nursing Facility Job Applicants and Employees** (2004) URL (accessed 2 October 2004): <http://www.cms.hhs.gov/medicaid/reports/backchks.pdf>
- Finn, P.** (1998) 'Job Placement for Offenders in Relation to Recidivism', *Journal of Offender Rehabilitation* 28 (1/2): 89–106.
- Finn, P.** (1999) *Washington State's Corrections Clearinghouse: A Comprehensive Approach to Offender Employment*. Washington, DC: US Department of Justice.
- Freeman, R.** (2003) *Can We Close the Revolving Door? Recidivism vs. Employment of Ex-offenders in the US*. Cambridge, MA: Harvard University National Bureau of Economic Research.
- Gottfredson, M. and T. Hirschi** (1990) *A General Theory of Crime*. Palo Alto, CA: Stanford University Press.
- Harrison, P.M. and A.J. Beck** (2005a) *Prisoners in 2004. Bureau of Justice Statistics Bulletin*, NCJ 210677. Washington, DC: US Department of Justice.
- Harrison, P. M. and A.J. Beck** (2005b) *Prison and Jail Inmates at Midyear 2004*. Bureau of Justice Statistics Bulletin, NCJ 208801. Washington, DC: US Department of Justice.
- Hollinger, R.C. and J.L. Davis** (2003) *National Retail Security Survey: Final Report*. Gainesville, FL: University of Florida.
- Holzer, H., S. Raphael and M.A. Stoll** (2002) *Will Employers Hire Ex-offenders? Employer Preferences, Background Checks and their Determinants*. Institute for Research on Poverty, Discussion Paper No. 1243–02. URL (accessed 15 October 2004): <http://www.ssc.wisc.edu/irp/pubs/dp124302.pdf>
- Holzer, H.J., S. Raphael and M.A. Stoll** (2003) *Employer Demand for Ex-offenders: Recent Evidence from Los Angeles*. URL (accessed 15 October 2004): <http://www.urban.org/Template.cfm?NavMenuID=24&template=/TaggedContent/ViewPublication.cfm&PublicationID=8388>
- Kling, J.** (1999) *The Effects of Prison Sentence Length on the Subsequent Employment and Earnings of Criminal Defendants*. Woodrow Wilson School Discussion Paper no. 208. Princeton, NJ: Princeton University Press.
- Kohlberg, L.** (1972) 'A Cognitive Developmental Approach to Moral Education', *Humanist* 32 (2): 13–16.
- Krienert, J.L. and M.S. Fleisher** (2004) 'Economic Rehabilitation: A Reassessment of the Link between Employment and Crime', in J.L. Krienert and M.S. Fleisher, *Unemployment and Crime: Critical Issues in Crime Reduction for Corrections*, pp. 39–56. Walnut Creek, CA: Altamira Press.
- Langan, P.A. and D.J. Levin** (2002) *Bureau of Justice Statistics Special Report: Recidivism of Prisoners Released in 1994*. Washington, DC: Government Printing Office.
- Legal Action Center** (2004) *After Prison: Roadblocks to Re-entry. A Report on State Legal Barriers Facing People with Criminal Records*. URL (accessed 2 October 2004): <http://www.lac.org/lac/main.php?view=law&subaction=4>
- Little, G.L. and K.D. Robinson** (1989) 'Effects of Moral Reconciliation Therapy upon Moral Reasoning, Life Purpose, and Recidivism among Drug and Alcohol Offenders', *Psychological Report* 64: 83–90.
- National Research Council** (1993) *Losing Generations: Adolescents in High-risk Settings*. Washington, DC: National Academy of Sciences.
- Needles, K.E.** (1996) 'Go Directly to Jail and Do Not Collect? A Long-term Study of Recidivism, Employment, and Earnings Patterns among Prison Releases', *Journal of Research in Crime and Delinquency* 33 (4): 471–96.

- Office of the New York State Attorney General** (2004) Press Release, Central NY Firm Violated Criminal Background Check Law. URL (accessed 25 October 2004): http://www.oag.state.ny.us/press/2004/oct/oct13b_04.html
- Pager, D.** (2003) 'The Mark of a Criminal Record', *American Journal of Sociology* 108 (5): 937–75.
- Petersilia, J.** (1999) 'Parole and Prison Re-entry', in M. Tonry and J. Petersilia, *Crime and Justice: A Review of Research*, 26, pp. 30–43. Chicago, IL: University of Chicago Press.
- Pettus, K.I.** (2005) *Felony Disenfranchisement in America: Historical Origins, Institutional Racism, and Modern Consequences in Criminal Justice: Recent Scholarship*. New York: LFB Scholarly Publishing.
- Piaget, J.** (1973) *The Child and Reality: Problems of Genetic Psychology*. New York: Grossman Publishers.
- Pollock, J.M.** (2004) *Prisons and Prison Life: Costs and Consequences*. Los Angeles: Roxbury.
- Ross, J.I. and S.C. Richards** (2003). *Convict Criminology*. Belmont, CA: Wadsworth/Thomas Learning.
- Salgado, T.** (2004) *Criminal Background Checks in Hiring Decisions*. URL (accessed 5 October 2004): http://library.lp.findlaw.com/articles/file/00153/003531/title/Subject/topic/Constitutional%20Law_Religion,%20Freedom%20of/filename/constitutionallaw_2_1927
- Sarno, C., I. Hearnden, C. Hedderman and M. Hough** (2000) *Working Their Way out of Offending: An Evaluation of Two Probation Employment Schemes*. Home Office Research Study 218.
- Sentencing Project, The** (2005). *New Incarceration Figures: Growth in Population Continues*. Washington, DC: The Sentencing Project. URL (accessed 10 April 2005): <http://www.sentencingproject.org/pdfs/1044.pdf>
- Sharp, J.** (1992) *Windham School System and Other Prison Education Programs: A Performance Review, Schools Behind Board*. Huntsville, TX: Texas Controller Public Account.
- Taggart, R.** (1972) *The Prison of Unemployment: Manpower Programs for Offenders*. Baltimore, MD: Johns Hopkins University Press.
- Tarling, R.** (1982) 'Unemployment and Crime', *Home Office Research Bulletin* 14: 28–33.
- Tonry, M.** (1995) *Malign Neglect: Race, Crime, and Punishment in America*. New York: Oxford University Press.
- Townsend, A.** (2004) *Cleveland May Ban Bias Against Ex-offenders*. URL (accessed 24 October 2004): http://web.lexis-lexis.com/universe/document?_m=eba8b261c36f12706a2ead4a5fcbb410
- Travis, J.** (2002) 'Invisible Punishment: An Instrument of Social Exclusion', in M. Mauer and M. Chesney-Lind (eds), *Invisible Punishment: Collateral Consequences of Mass Imprisonment*, pp. 15–36. New York: New Press.
- Uggen, C.** (1999) 'Ex-offenders and the Conformist Alternative: A Job Quality Model of Work and Crime', *Social Problems* 46 (1): 127–51.
- Uggen, C. and J. Manza** (2002) 'Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States', *American Sociological Review* 67: 777–803.
- US Department of Justice, National Institute of Corrections** (2000) *Corrections Employment Eligibility for Ex-offenders*. URL (accessed 10 October 2004): <http://www.nicic.org/pubs/2002/018209.pdf>

- US Department of Labor** (2005) Labor Force Statistics from the Current Population Survey. URL (accessed 30 June 2005): <http://www.bls.gov/cps/home.htm#overview>
- Usry, M.L. and G.C. Mosier** (1991) 'Negligent Hiring: Headaches for the Small Businessperson', *Journal of Small Business Management* 29 (1): 72–6.
- Voss, G.** (2002) *Last Exit*. URL (October 2002, accessed 30 June 2005): www.bostonmagazine.com/articles/last_exit.
- Wallack, W., G. Kendall and H. Briggs** (1939) *Education within Prison Walls*. New York: Columbia University Press.
- Western, B. and K. Beckett** (1999) 'How Unregulated is the US Labor Market? The Penal System as a Labor Market Institution', *American Journal of Sociology* 104 (4): 1030–60.
- Wheelock, D.** (2005) 'Collateral Consequences and Racial Inequality: Felon Status Restrictions as a System of Disadvantage', *Journal of Contemporary Criminal Justice* 21 (1): 382–90.
- Williams, R.** (2003) *Could Incarceration be Race Driven?* Washington, DC: Justice Policy Institute.

Sesha Kethineni is a Professor of Criminal Justice in the Department of Criminal Justice Sciences, Illinois State University, Campus Box 5250 Normal, IL 61790–5250, USA. Email: skethine@ilstu.edu

David N. Falcone is a Professor of Criminal Justice Sciences, with a specialty in American policing and law enforcement, in the Department of Criminal Justice Sciences, Illinois State University, Campus Box 5250 Normal, IL 61790–5250, USA. Email: dnfalcon@ilstu.edu