

HIGHER EDUCATION AND REENTRY

What Information Travels After Release?

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ABSTRACT

There is an ongoing debate surrounding employers' use of criminal history records in the employment screening process. Is it possible to balance employers' concerns about hiring individuals with criminal records with the practical needs of individuals with criminal histories to obtain employment? Securing access to employment, housing, and education drastically improves formerly incarcerated individuals' likelihood of avoiding reoffending and successfully reentering society. Additionally, former convicts are often required to meet those milestones as part of parole stipulations. Those milestones, however, may be threatened by employers' and universities' access to the criminal histories and medical and psychiatric records of formerly incarcerated adults.

This paper raises concerns about the presence of the criminal history question on job applications, its relation to the position the formally incarcerated person is applying for, and the extent to which the question itself may be a deterrent to apply. From the on-set, "checking the box" has been an obstacle for those with criminal convictions seeking out housing, applying for employment, and completing college applications. While the question is not present on all college applications, many colleges do perform criminal background checks. After the 2007 mass shooting at Virginia Technical Institute, some colleges strengthened criminal background checks, supposedly for safety reasons. The Virginia Tech shooter, however, had no criminal record or mental health diagnosis.

In this paper I will review the evidence on the extent to which applicants with criminal records have been denied access to college, or offered provisional acceptance (Center for Community

Alternatives, 2009). I will further investigate the complex consequences of mental health treatment in prison, and the extent to which that presumably confidential medical information may follow a formerly incarcerated person post-release.

I am interested in exploring how personal and potentially damaging information is shared after individuals are released from incarceration or hospitalization. Some employers and colleges consider criminal history records in their hiring and admissions decisions. This paper prompts an important policy question: To what extent should employers, housing authorities, or higher education institutions have the right to access records of formally incarcerated persons, particularly records pertaining to disciplinary history and medical or mental health hospitalization? As non-incarcerated students' medical records are private and therefore not considered in their college application materials, does release of that information jeopardize formerly incarcerated individuals' options for successful reentry?

Introduction

Volumes of literature exist on employers' and housing authorities' use of criminal history records to deny employment and suitable public and private housing. However, studies that review the use of criminal history records for college application processing are a relatively recent area of interest in research. Current research suggests that many colleges seek and gain access to applicants' criminal history records; some may also have access to applicants' mental health hospitalizations, if the information is listed on their rap-sheet. Although CUNY schools do not pose criminal background questions on their applications for admission, this question is on the CUNY application for employment, but it is unclear if CUNY colleges request and review the applicants' rap sheets. Despite the rights of formerly incarcerated persons to request a copy of their rap sheet to review and/or dispute potentially inaccurate information, many choose not to do so. The extent to which medical, in particular psychiatric, information is included on these rap sheets, remains a serious policy concern.

Statement of the problem

Today most schools, including CUNY, express concerns for safety of students and faculty, particularly following the Virginia Tech shooting. One way this concern has been manifest in policy is the extent to which institutions have taken a vested interest in the use of criminal background histories of applicants. While their concerns are certainly valid, it should be noted that the person responsible for the Virginia Tech shooting did not have a criminal history.

The Center for Community Alternatives (CCA) has conducted a systematic national review of institutional policies and practices with respect to the college application process for formerly incarcerated applicants (2009). They report that approximately "66% of colleges conduct criminal history backgrounds, but not all consider it in their admission process. For those colleges that do, they tend to take additional steps in their admission process, such as requiring that the applicant submit a letter of explanation or a letter from a corrections official and completing probation or parole"(Executive Summary, i). CCA staff further report that there are a

number of “convictions that are viewed as negative factors in the context of admissions decision-making, including drug and alcohol convictions, misdemeanor convictions, and youthful offender adjudications” (Executive Summary, i).

CCA staff described a case in which a student applied was accepted to college, but was placed on probation status because of his criminal background. Even after he was selected for the Beta Alpha Psi Honor Society, the student’s disciplinary “probation status” prevented him from serving as an officer or representing the university in any way. The student reported that in his experience, he found the “university’s attitude towards him to be very discouraging,” and that he “could understand how someone with less commitment and fortitude would be deterred from pursuing their higher education goals.” While “probation status” is a direct result of this man’s involvement with the criminal justice system, this designation appears to be both humiliating and discriminating within the university environment.

CCA’s report recognizes that “the use of criminal justice information (CJI) to screen prospective college applicants grows out of legitimate concerns for public safety which emerged in the aftermath of the tragic and highly publicized events at Virginia Tech and a few other college campuses. While college campuses are not immune from crime, the data show that they are remarkably safe places compared to the community-at-large. This is particularly true for serious crimes that involve personal violence. Violent crime on campuses is rare, and the few college students who are victims of such crimes are mostly victimized off-campus by strangers. The Virginia Tech incident, a tragic but aberrational event, was committed by a student who did not have a criminal record” (CCA 2009).

The CCA findings are significant, but they are not new. More than a decade ago, the U.S. Department of Education (2001) reported that the overall rate of criminal homicide at colleges and universities was .07 per 100,000 students, compared to a rate of 14.1 per 100,000 young adults in society-at-large. CCA staff reports that “college students are 200 times less likely to be the victim of a homicide than their non-student counterparts” (p.5). According to Hart (2003) and Baum & Klaus (2005), rape and sexual assault are the only crimes showing no statistical differences between college students and non-students; these crimes are most often committed at campus parties by inebriated students who have no prior criminal records.

According to research conducted by Blumstein & Nakamura (2009), in time “a person with a criminal record is no more likely to commit a crime than a person without a criminal record. Depending on the offense and the age at which the crime was committed, after the passage of four and a half to eight years, if no further arrests have taken place, an individual has a minimal risk of re-offending.” The argument is not that colleges should wait eight years, but rather that colleges should examine figures on recidivism and consider them in their decision-making processes.

Olszewska (2007) challenges the traditional assumption that criminal justice screenings will make campuses safer and argues, in contrast: “However, there is no evidence upon which to base this assumption. In fact, in the only study that has investigated the correlation between criminal history screening and improved campus safety, no connection was found” (p. 6). Olszewska also found no statistically significant difference in the rate of campus crime between institutions of

higher education that explore undergraduate applicants' disciplinary background and those that do not (Olszewska 2007).

The CCA report argues that denying a person "access to higher education based on their criminal background does not make campuses safer; instead it undermines public safety by foreclosing an opportunity that has proven to be one of the most effective deterrents to recidivism." Further, the racial implications are severe. That is, because of the tragic racial disparities in the U.S. criminal justice system, the use of criminal records to screen out prospective students is not race neutral, but rather encroaches on the civil and human rights of people with criminal records. Moreover, as education is clearly associated with lower recidivism rates, impeding people's ability to get a college education undermines public safety in the larger society (CCA, Legal Action Center & National Hire Network).

If, as a society we are committed to successful re-entry, how do we reconcile employers' and universities' belief in their right to know, with formerly incarcerated students' rights to privacy? This right is even more vulnerable to violation when the incarcerated person has a history of mental illness and experienced psychiatric hospitalization while incarcerated. Another important policy question is: To what extent should information about incarceration and psychiatric troubles follow someone post-release? This is a particularly significant issue for women.

According to James and Glaze (2006; p.2), 12% of females in the general population have symptoms of a mental disorder, compared to 73% of females in state prison, 61% in federal prison, and 75% in local jails. An unknown number of these women end up serving time in solitary confinement. The adverse impact of isolation on mental illness has been well documented.

According to a briefing paper from the Human Rights Watch, reported by the AFSC (2003), "Isolation and sensory deprivation can aggravate or even cause a variety of psychiatric symptoms. As noted in a briefing paper from Human Rights Watch, prisoners subjected to prolonged isolation may experience depression, despair, anxiety, rage, claustrophobia, hallucinations, problems with impulse control, and an impaired ability to think, concentrate, or remember."

Indeed, a number of studies have focused on the adverse impact of solitary confinement on women. As early as 1993, several researchers from the University of Manchester, HM Prison Services, Cardiff University, and the University of the West in New England & Bromorgannwg NHS Trust conducted a study to evaluate the Department of Health Procedure for the transfer of prisoners to hospitals under the Mental Health Act 1983. They examined the transfer process of 95 allegedly psychotic women and found that only 54 of these women had been assessed. It was later revealed that many women were denied assessment due to doubts over their diagnosis or need for detention; some felt that the women had been "blacklisted" due to difficult behavior (Dell et al., 1993).

Grassian, who participated in the Madrid v. Gomez, a class-action lawsuit challenging conditions at Pelican Bay State Prison in 1992, has argued that "severe and prolonged restriction of environmental stimulation in solitary confinement is toxic to brain functioning,

and statistical analysis data demonstrated that inmates with such preexisting vulnerability were the most likely to develop overt confusional, agitated, hallucinatory psychoses as a result of SHU confinement” (Journal of Law & Policy, p. 348).

It is not known how frequently women with psychiatric diagnoses are placed in solitary confinement – but a few studies do exist. In 2007 the Correctional Association of New York studied the mental health programs and services at the Bedford Hills Correctional Facility, mental health level-one facility that provided women with the most intensive mental health services available in the state prison system. According to the Correctional Association, in 2005 42% of the women in the facility were on mental health caseloads; by 2007, the rate rose to 50%.

From January to June 2007, Bedford had 10 admissions to Central New York Psychiatric Center (CYNPC), an Office of Mental Health (OMH)-run secure psychiatric hospital located in Marcy, New York, with 17 beds reserved for state-sentenced women inmates. The findings further report that 22 of Bedford’s 24 Solitary Housing Unit cells were filled and that Office of Mental Health staff estimated that 14 of the 22 women (63%) in SHU were on the OMH caseload.

OMH reported that SHU inmates on the mental health caseload met with counselors about twice per month and with a psychiatrist once per month. During face-to-face interviews many women reported that their mental health condition had worsened since being placed in SHU. According to the Center for Mental Health Services (2005), there is the traditional belief that “placing women in seclusion or restraints is a need that should be utilized in mental health settings. However, both women patients and staff report an increased sense of safety and security when seclusion and restraint are reduced” (p 17). There is widespread recognition by mental health experts that inmates suffering from serious mental illness suffer further when placed in SHU.

Numerous national and state-wide human rights organizations have documented the adverse consequences of solitary confinement on women’s mental health. Reports from the U.S. Prisons and Offenders with Mental Illness, Human Rights Watch (October 2003); Lockdown , the New York: Disciplinary Confinement in New York State Prisons, the Prison Visiting Project, Correctional Association of New York (October 2003); and Mental Health in the House of Corrections: (A Study of Mental Health Care in New York State Prisons, Prison Visiting Project, Correctional Association of New York, June 2004), stated that the “unit’s restrictive setting aggravates most mental health conditions and can cause inmates to decompensate, even if they are able to meet with counseling staff on a regular basis.”

The Human Rights Watch (2007) found that “a woman at Bedford who had been diagnosed with a mental illness committed suicide while she was in disciplinary confinement and that in 2006 Bedford reported two Unusual Incidents (UIs) concerning self-injury in SHU. In 2007, ten women were admitted to CNYPC” (2007, p 2). They concluded that many inmates with mental illness “have combinations of psychiatric disorders predisposing them to both psychotic breakdown and to extreme impulsivity.... Such individuals tend to be highly impulsive, lacking in internal controls, and tend to engage in self-abusive and self-destructive behavior in the prison setting, and especially so when housed in solitary. They are among the most likely to suffer behavioral deterioration in super-max confinement” (p. 2). In conclusion, the literature reviews clearly

suggest women with mental health problems do not manage well in isolation and that any form of solitary confinement is likely to increase the onset of mental distress causing the need for possible psychiatric treatment/hospitalization. While these relationships are anecdotal at present, the patterns warrant further documentation.

While this is not an analysis of the over-reliance on solitary confinement, we are concerned that confidential information about hospitalization may follow a woman into college, as part of a larger net of admissions' information.

Suggestions for the limitations on the use of criminal histories

We are at a critical moment for re-thinking the conditions under which information about criminal justice and psychiatric involvement should "follow" women and men post-release into employment and university settings.

The literature and evidence provided in this paper suggests that there may need to be limitations on the information that others have free access to, and encourages us to envision a system that respects the medical and psychiatric histories of persons with criminal records just as those without criminal records are protected.

Until such a system is "if ever" implemented, I strongly feel that there needs to be more acknowledgements given to those who have successfully satisfied their probation or parole and have obtained their certificate of relief or good conduct. These women and men should not be made to re-live the offenses they committed after an extended period of time. What this means is that, for example: If a person committed an offense 5, 10, 15, or 30 years ago, has successfully completed his or her sentenced imposed, has successfully transitioned back into the community without further entanglement with the law, and has been granted either a certificate of relief or good conduct, which cannot be issued unless a person has remained free of committing crimes/entanglement with the law for at minimum, 3 years for the certificate of relief, and minimum of 5 years for the certificate of good conduct, then that should be sufficient enough since the overall purpose of the certificates is to make clear that the formerly incarcerated person is rehabilitated and considered to be a productive member/citizen of society that abides by the law.

Conclusion

There has been much advocacy on the need for higher education to be returned to correctional facilities. In fact, the Second Chance Act, which passed Congress on March 11, 2008, and the Senate and House versions of H.R. 4137, the College Opportunity and Affordability Act of 2007 all include provisions that improve access to higher education for people during their incarceration.

Every human-being should have the right to equal educational opportunities which continues to be the forefront of the civil rights struggles in the United States. While there have been significant gains in this regard, the battle is far from over for persons who have been convicted of a crime, and even more so for those with psychiatric involvement while incarcerated.

We strongly argue that one's criminal record and psychiatric history should not follow someone into employment and university settings. Rather, we as a society should reflect on how much punishment is enough and the medical privacy rights of persons who have been convicted of a crime.

My interest is to begin a conversation about the lack of privacy afforded to persons who have been convicted of crimes, hoping that this will become a catalyst for policy change.

I offer this essay to invite a much needed policy conversation, among policy makers, researchers, university administrators and formerly incarcerated persons so that we might craft informed policy that is driven by evidence, concerns about public safety and concerns about the rights to privacy, rather than policy driven by fear, discrimination and ignorance.

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