

Summary Report: State Policies and Employment Outcomes among Fathers with Criminal Records



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Background

Contact with the criminal justice system affects many families.

Contact with the criminal justice system is widespread in the United States, with serious implication for individuals and their families. Nearly one-third of American adults have criminal records (Goggins & DeBacco, 2018), and 10% are currently incarcerated (The Pew Charitable Trusts, 2010). The majority of these individuals are men, and many are parents (Glaze & Maruschak, 2010; The Pew Charitable Trusts, 2010), making it particularly important to understand the implications of criminal justice system involvement for fathers and children.

These experiences are disproportionately concentrated among black families (Wildeman, 2009; Western & Wildeman, 2009; Enns et al., 2019; The Pew Charitable Trusts, 2010), as black men are at greater risk of incarceration and conviction than their white counterparts (Uggen, Manza, & Thompson, 2006). Indeed, over 30% of black children whose fathers did not attend college experience paternal incarceration before they turn age 14 (Wildeman, 2009).

A large body of research has focused on the implications of a father's incarceration and, to a lesser extent, criminal justice system involvement for children and families. Children in these families are at greater risk for a number of adverse health and behavioral outcomes, which can partially be explained by these families' more precarious socioeconomic circumstances. Economic resources are a key way through which paternal incarceration impacts children (Dwyer Emory, 2018; Geller, 2013; Geller, Garfinkel, & Western, 2011; Murray & Farrington, 2005; Murray, Loeber, & Pardini, 2012).

Criminal records have a negative economic impact on families.

Fathers with criminal records, and incarceration histories in particular, face more difficult economic prospects, explaining to some extent their lower contributions to children (Geller, Garfinkel, & Western, 2011). Men with histories of criminal justice involvement are less likely to have stable employment in the formal economy (Visher & Kachnowski, 2007; Western, 2007; Western, Kling, & Weiman, 2001; Sykes & Geller, 2017), reflecting the reciprocal relationship between lower economic opportunities and criminal justice system involvement in the United States. Men with lower skills, education, and quality employment are more likely to become involved with the criminal justice system in the first place (Looney & Turner, 2018). Criminal records and incarceration histories then contribute to both employment and wage deficits that can last for years (Western, Kling, & Weiman, 2001; Pager, 2003; Pettit & Lyons, 2009; The Pew Charitable Trusts, 2010).

For fathers, this relatively weak connection to the formal economy is problematic for two reasons. First, formerly incarcerated individuals are often dependent on the economic support of family and friends (Braman, 2004; Comfort, 2016; 2008). Fathers' inability to find work makes it more difficult to reciprocate support or provide economic resources for children. Second, high-quality employment is associated with desistance from future crime (Apel & Horney, 2017; Denver, Siwach, & Buschway, 2017; Uggen, 2000). Inability to find work may thus put fathers at greater risk for illegal activity associated with the underground economy that may put them at risk for future criminal justice involvement or strain their existing romantic and familial relationships, both of which can be additionally damaging for families.

Some states have adopted a mix of policies to support the employment of individuals with criminal records.

State-level policies can play a key role in shaping economic opportunities available to formerly incarcerated fathers and those with criminal records. Multiple policy approaches are available to limit the degree to which criminal records can be taken into consideration during the hiring process, but broadly they fall into three categories regulating 1) what information employers can consider, 2) what information employers can access, and 3) what information employers



can ask about (e.g. “ban the box”). However, existing research on the effects of these policies is limited and mixed. Our research examines policies regulating 1) what information employers can consider for hiring and licensing, and 2) whether states make criminal records available in online databases (Table 1).

Table 1: State Policies included in Policy Indices

Index	State Policy
Employment Policy	Private employers cannot consider arrests that did not lead to convictions when making hiring decisions (yes/limited/no)
	Public employers cannot consider arrests that did not lead to convictions when making hiring decisions (yes/limited/no)
	Licensing agencies cannot consider arrests that did not lead to convictions when making hiring decisions (yes/limited/no)
	Private employers cannot issue blanket bans against the hiring of individuals with criminal records (yes/limited/no)
	Public employers cannot issue blanket bans against the hiring of individuals with criminal records (yes/limited/no)
	Licensing agencies cannot issue blanket bans against the licensing of individuals with criminal records (yes/limited/no)
Access to Criminal Records	State maintains searchable criminal records database (yes/no)
	State maintains searchable criminal records database only of those currently under supervision (yes/no)

Current Study

Our research investigates how these kinds of policies shape the economic opportunities available to fathers with criminal records. We use newly collected data on policies across the U.S. over time, linked with nine years of longitudinal survey data from the Fragile Families and Child Wellbeing Study, a population-based study of 5,000 children born in large U.S. cities between 1998 and 2000. The Fragile Families study contains rich data on the fathers of these children, including fathers' history of criminal justice involvement, the states in which they live, and their employment status. Our study includes data on 3,120 fathers interviewed up to five times over a nine-year period. We take advantage of variation in policies between states and over time to explore how these policies are related to employment outcomes among fathers with and without a criminal record, controlling for important characteristics of individuals, families, and state-level contexts.

Based on previous research, we expect that criminal justice involvement and incarceration will impair fathers' employment prospects. However, there are two competing hypotheses for how policies might affect the relationship between criminal justice involvement and employment.

- On the one hand, policies that make it more difficult for employers to use or access information about records may make it easier for fathers with records to obtain employment in the formal economy. This should improve their economic security.
- On the other hand, a small but growing body of research linking protective policies to racial discrimination has suggested that employers may respond to these kinds of policies by either intentionally or unintentionally increasing racial discrimination. This reaction may inadvertently have negative consequences for fathers from racial minorities and reduce their access to employment.



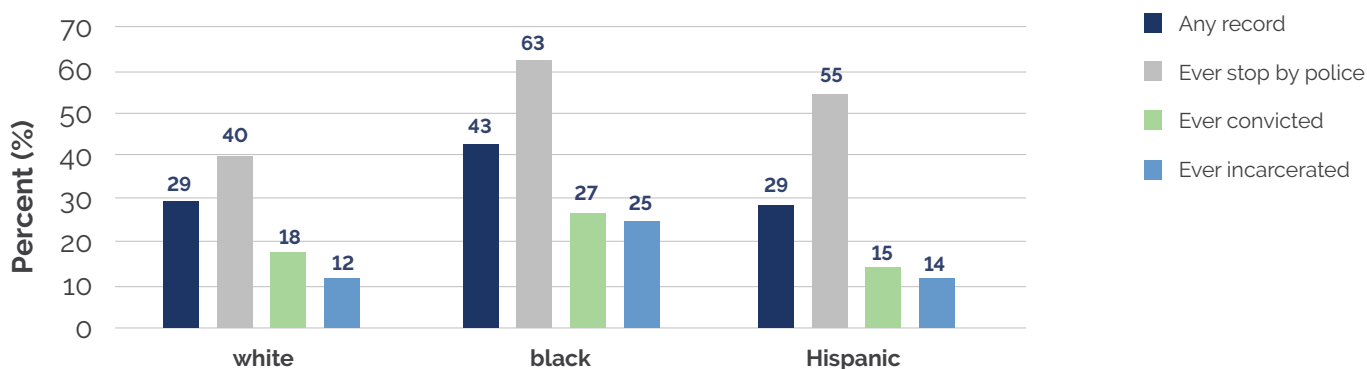
Key Findings

FINDING 1: More than one-third of the fathers in our study reported having a criminal record, with important differences by their race/ethnicity.

Over the nine-year study period, over one-third of fathers report contact with the criminal justice system consistent with acquiring a criminal record, including being arrested or charged, convicted, or incarcerated. Reflecting variation in criminal justice involvement, 22% of fathers reported a conviction (60% of fathers with records) and 18% reported having spent time in jail or prison (52% of fathers with records).

Over the study period, 43% of black fathers report having a criminal record, 63% report having been stopped by the police, 27% report having a conviction, and 25% report incarceration, compared to 29%, 40%, 18%, and 12% of white fathers, respectively (Figure 1). Hispanic fathers in our sample are no more likely than white fathers to have a criminal record (29% for both), are less likely to report having been convicted (15% versus 18%), and are slightly more likely to report having been incarcerated (14% versus 12%). The Hispanic/white difference is somewhat smaller than national data, possibly due to our sample exclusion criteria, the urban focus of the Fragile Families study, and an oversample of parents with nonmarital births.

Figure 1: Self-reported criminal justice system contact for fathers in analysis sample by race/ethnicity



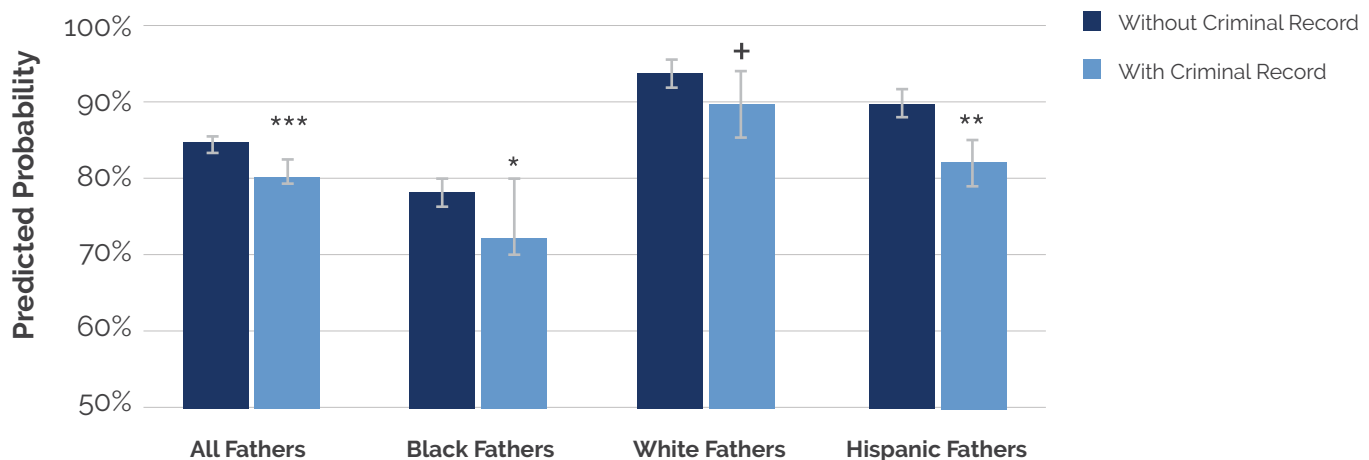
FINDING 2: Most fathers were employed, but fathers with records were less likely to be employed than those without.

In models adjusting for differences in fathers' characteristics and state contexts,¹ approximately 83% of fathers in the sample are predicted to be employed. Fathers with a criminal record are five percentage points less likely to be working than those without one (80% versus 85%). This disadvantage is approximately the same across fathers of all racial and ethnic backgrounds (Figure 2).

Control variables include 1) characteristics of fathers (race/ethnicity, impulsivity, age, marital status, education, income to poverty ratio, substance use, prior incarceration, nativity, region of country, recent interstate move); 2) state contexts (state unemployment rate, imprisonment rate, Gini coefficient, violent crime rate, property crime rate, local area unemployment, political ideology of state legislature); and 3) survey wave.



Figure 2: Predicted probability of employment for fathers from random effects models holding state and father attributes constant.



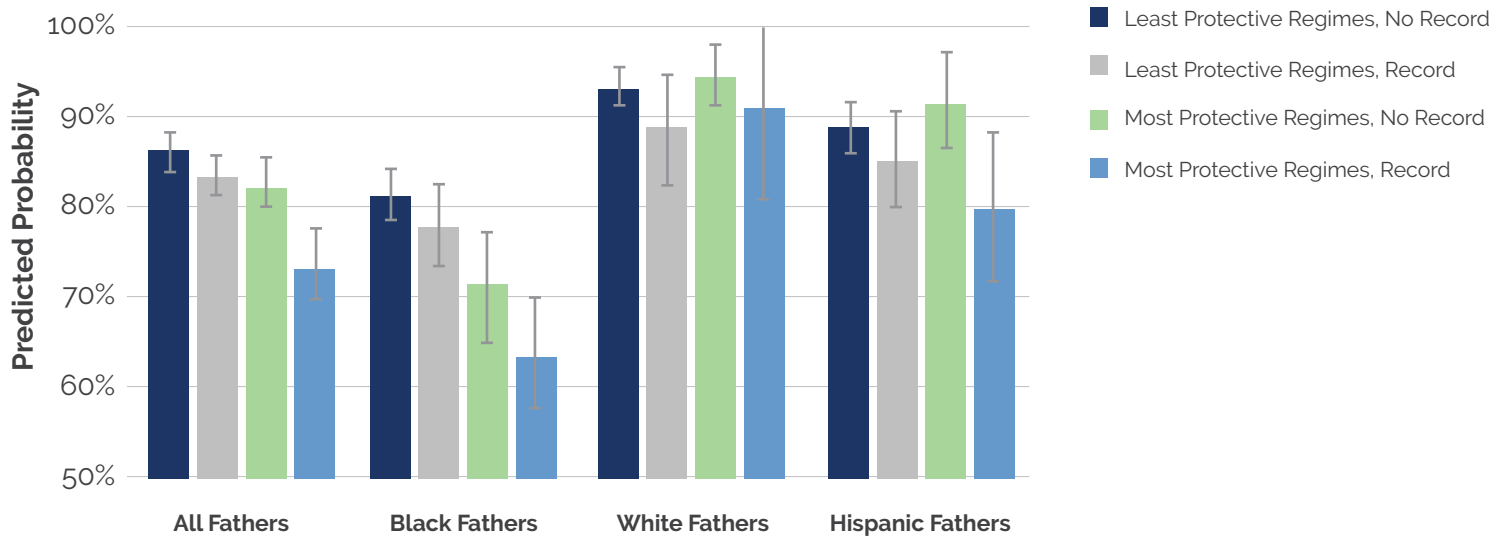
Asterisks indicate statistically significant differences between fathers with and without records, and error bars indicate the 95% confidence interval of the prediction. *** $p < .000$ ** $p < .01$ * $p < .05$ + $p < .10$

FINDING 3: State policies regulating information employers can consider in hiring decisions, designed to support the employment of individuals with criminal records, are linked to worse employment outcomes for black fathers.

Using the employment policy index, we compare the employment of fathers with criminal records in the least protective states—those in which the use of records is entirely up to employer discretion—and the most protective states—those in which neither public employers, private employers, or licensing agencies are allowed to consider arrests or have blanket bans based on criminal records. For black fathers with records, those living in the most protective states are 15 percentage points less likely to be employed than those in the least protective states (64% versus 79%). This lower likelihood of employment is paralleled among fathers who do not have records—we estimate that black fathers with no criminal records are also less likely to find work (10 percentage points) in states with all six protective policies compared to those with no protective policies in place (71% versus 81%). For Hispanic fathers with criminal records, living in states with all six protective policies in place is associated with a larger gap in employment relative to their counterparts without records (10 percentage points) than observed in less protective states. Unlike for black fathers, however, the employment of Hispanic fathers without records does not appear to be sensitive to the employment policies in place. For white fathers, whether their state has protective employment policies in place appears unrelated to the employment of fathers with or without records.

While counterintuitive, this pattern of findings is consistent with prior research on the more specific ban-the-box policies. One explanation, termed statistical discrimination in prior research, is that employers who want to avoid hiring people with records use race as a rough proxy for criminal justice involvement when information about criminal justice involvement is not available (Doleac & Hasen, 2016). Another possible explanation is that employers are susceptible to the racial stereotypes about criminality pervasive in the U.S. and, absent information to the contrary, may assume black applicants are more risky (Agan & Starr, 2018). This is consistent with research showing that black applicants as a group face less discrimination when employers use drug or personality testing (Wozniak, 2014; Autor & Scarborough, 2008). While we cannot say exactly why these findings emerge, our study adds to the growing body of research linking racial discrimination to policies intended to address discrimination based on criminal records.

Figure 3: Predicted probability of employment estimated from random effects models holding state and father attributes constant, stratified by father race/ethnicity. The least protective regimes are states in which no employment policies are in place, and most protective regimes are states in which all six employment policies are in place.

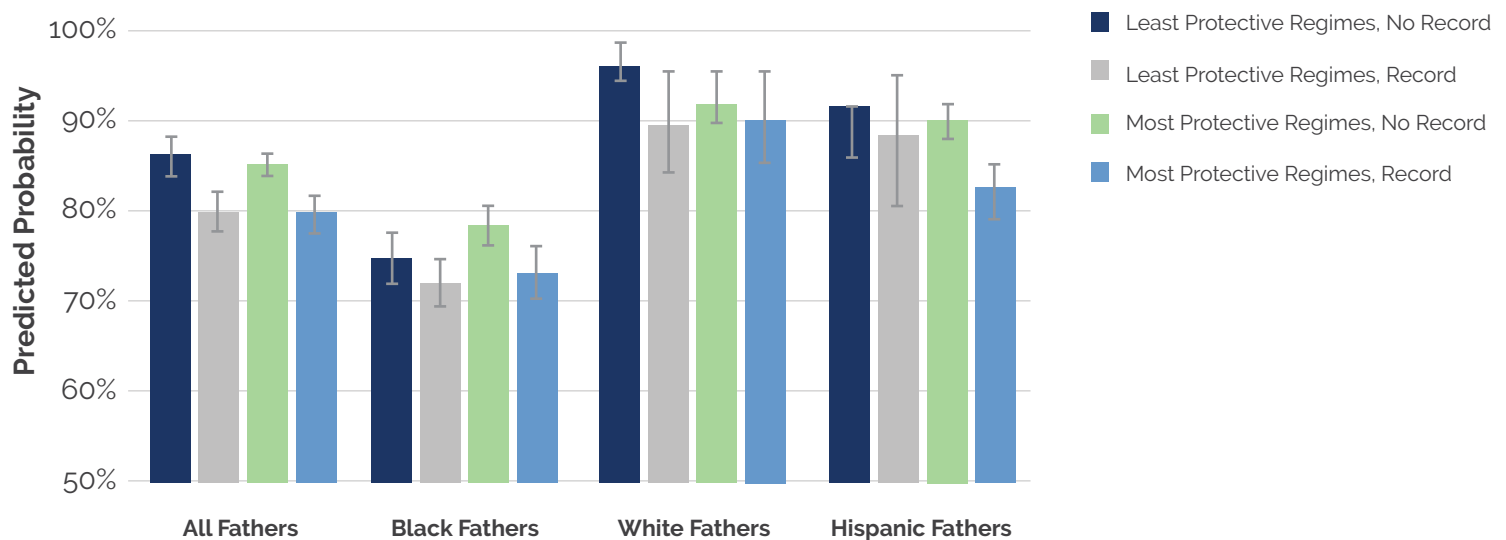


Error bars indicate 95% confidence intervals around the prediction.

FINDING 4: State policies limiting the availability of criminal records through online databases neither improve nor impair employment of fathers with criminal records.

The second kind of policies we examine are those regulating the extent to which states make criminal records available through searchable online databases. We compare the employment of fathers with criminal records in the least protective states—those in which criminal records are searchable in online databases—and the most protective states—those in which official criminal records are not available online. Unlike in the previous finding, living in a state with such searchable databases neither improves nor impairs the employment of fathers with criminal records. There is one exception to this finding, as white fathers without records are slightly less likely to be employed in more protective states than their counterparts in the least protective states.

Figure 4: Predicted probability of employment from random effects models holding state and father attributes constant. The least protective regimes are states in which state databases of criminal records are available, and most protective regimes are in states which do not provide online databases of criminal records or current supervision status.



Error bars indicate the 95% confidence interval of the prediction.



Conclusion

As our work and that done by many other researchers has demonstrated, having a criminal record or history of incarceration has serious implications for fathers' employment. These fathers face significant disadvantages in the formal economy, despite the importance of stable, high-quality work for self-sufficiency; support for children; and desistance from criminal activity (Apel & Horney, 2017; Uggen, 2000).

States have adopted a variety of policies to address these potential barriers, with the goal of improving employment outcomes among individuals with criminal records. In this study, we considered two kinds of policies that scholars and advocates alike have identified as "barriers to reentry" (Legal Action Center, 2004; 2009): employment discrimination protections and the availability of official online records. Disappointingly, our findings indicate that these policies are not associated with greater economic opportunity and may even lead to broader discrimination against black fathers regardless of their criminal history. This pattern of employment disadvantage faced by black men both with and without records, while counter-intuitive and frustrating from a policy perspective, is not entirely unexpected. Rather, this pattern of racial discrimination is consistent with what prior studies evaluating similar ban-the-box policies have found (Agan & Starr, 2018; Doleac & Hasen, 2016; Vuolo, Lageson, & Uggen, 2017). Our study, thus, joins a growing body of evidence suggesting that these policies are not a panacea for addressing discrimination based on criminal records or ensuring access to the formal economy for vulnerable fathers.

Race and criminal justice involvement are inextricably linked, both because black men and their families are disproportionately involved in and affected by the criminal justice system (Uggen, Manza, & Thompson, 2006; Western & Wildeman, 2009) and because there is significant overlap between employers willing to discriminate on both fronts (Pager, Western, & Bonikowski, 2009; Pager, Western, & Sugie, 2009). Indeed, the disproportionate racial impact of policies against hiring individuals with criminal records motivated some of the first Equal Employment Opportunity Commission guidelines that criminal records be used only when directly relevant to a specific position rather than as a tool to exclude all applicants with records (EEOC, 1987, 2012). Addressing discrimination on one front without the other appears to backfire at worst or have little impact at best, suggesting that alternative policy approaches are needed to improve fair access to the formal economy.

Implications for Practice

- Addressing discrimination based on criminal record without addressing discrimination based on race can backfire. Individuals without records may benefit from being able to demonstrate their credentials, and all individuals should be able to correct inaccurate information on criminal records. Individuals with records may benefit from more targeted policies to seal old or irrelevant records, demonstrate skills and employability to employers, or support employment with employers willing to hire such individuals. Policies encouraging employers to hire individuals with records, such as tax incentives or addressing wrongful employment laws, and actively enforcing racial discrimination laws would support these efforts.
- The Legal Action Center provides a toolbox for dealing with the barriers to reentry discussed in this report and many others, including public housing, certificates of rehabilitation, driver's licenses, certificates of rehabilitation, and sealing/expungement of records. <https://lac.org/toolkits/Introduction.htm>
- Be aware of the policies in your state (see our Full Report and the Legal Action Center Website for detailed description of relevant state policies). Remember that policies prohibiting employers from considering criminal records in hiring decisions can have negative effects on black men, regardless of their criminal history.
- The Center for Employment Opportunities operates in nine states and specializes in securing employment for individuals with criminal records. <https://ceoworks.org/locations>



For more detailed information, see:

Allison Dwyer Emory, Alexandra Haralampoudis, Lenna & Nepomnyaschy. (2019). "Barriers to Reentry from Incarceration and Fathers' Employment." Full Report. Fatherhood Research and Practice Network.

Allison Dwyer Emory. working paper. "Protective State Policies and the Employment of Fathers with Criminal Records." Available: <https://fragilefamilies.princeton.edu/sites/fragilefamilies/files/wp19-04-ff.pdf>.

Allison Dwyer Emory, Lenna Nepomnyaschy, Daniel P. Miller, Maureen R. Waller, & Alex Haralampoudis. "Providing after Prison: Nonresident Fathers' Formal and Informal Contributions to Children" Abstract selected for Russell Sage Foundation Journal of the Social Sciences: The Criminal Justice System as a Labor Market Institution (2020).

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