

# Employment outcomes worse in states restricting criminal records-based discrimination

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Many states have enacted policies to prohibit employers from discriminating against people with criminal records. Yet fathers living in

states with more of these policy protections in place were less likely to be working than their counterparts in less regulated states, according to the results of a new study by a University at Buffalo sociologist.

The research published in the journal *Social Problems* contributes to a growing body of evidence suggesting that trying to address discrimination on the basis of criminal records without addressing parallel race-based discrimination typically fails to fix either problem, and could even worsen racial disparities.

"These policies are not associated with better employment outcomes for men with records," says Allison Dwyer Emory, Ph.D., the study's author and an assistant professor of sociology in the UB College of Arts and Sciences.

"In fact, they're associated with worse outcomes, not only for fathers with criminal records, but also for Black fathers who have never had criminal justice contact. White fathers with records faced some employment disadvantages, but the particular state policy was largely unrelated to their ability to find work."

The paper looked exclusively at how these state anti-discrimination policies affect fathers.

"It's appealing to put these broad policies on the books expecting a panacea to solve problems, but my study shows that establishing a policy to address criminal records-based discrimination is at best not going to solve the problem and, at worst, might end up contributing to further racial discrimination," says Dwyer Emory, an expert in criminology and social [policy](#). "The main explanations presented in this larger body of research point to employers' racial bias and structural racism rather than the qualifications of applicants."

"Employers could be responding to restrictions on their ability to use criminal [record](#) information by intentionally using race as a proxy for record status, or merely default to racial stereotypes about criminality the absence of evidence to the contrary like a clean record check."

Criminal justice involvement is pervasive in the United States. More than 6.5 million Americans are under the supervision of the criminal justice system on any given day, and nearly 1 out of every 3 adults in the U.S. has a criminal record. The figures include a disproportionate number of men from racial minorities, the majority of whom are fathers.

People with criminal records face legal barriers, stigma and limited [economic opportunities](#), which is why some states do not allow employers to access criminal records as part of the hiring process or as a condition for employment, although even states with the most protective policies leave room for exceptions.

The motivation for these policies is clear: Having a job makes criminal justice involvement and future criminal activity less likely, but criminal justice involvement makes it harder to find a job.

"When I see that kind of a cycle I see an opportunity for a disruptive intervention, but the policies we're putting in place are not disrupting that cycle," says Dwyer Emory. "Discrimination on the basis of criminal records is a problem. It's a problem for those with records. It's a problem for their families. It's a problem for individual communities and the larger society—it affects everyone."

Dwyer Emory merged two [data sets](#) for the study. The first set was from a previous research project created in collaboration with researchers from Rutgers, Boston University and Cornell that examined how state policies affect fathers' ability to engage with their families. That was combined with self-reported data from fathers in the Fragile Families

and Child Wellbeing Study (FFCWS), a [longitudinal study](#) following nearly 5,000 children born (1998–2000) in large U.S. cities and their parents over a decade with five waves of data collection.

"The FFCWS is one of the best longitudinal datasets for studying the implications of criminal justice involvement for hard-to-reach families. Only parents were sampled, although the findings likely generalize to men without children given how common parenthood is among criminal justice involved populations," says Dwyer Emory. "This data was not originally intended to study criminal justice contact, but the sampling strategy meant that many of the fathers in the study were at high risk. In my study nearly 40% had contact consistent with a criminal record."

The study examined six policies (in place from 1996–2014) identified by the Legal Action Center as barriers to employment for individuals with criminal records, including bans denying employment or obtaining a professional license to individuals with criminal records by private employers, public employers, licensing agencies and considering arrest records not leading to conviction in the same three categories.

"This study does not suggest that all legislation is doomed to failure," says Dwyer Emory. "Let's first consider enforcement. Let's be certain that anti-discrimination laws are accompanied by a robust infrastructure that's prepared to address complaints of discrimination."

Dwyer Emory also asks that policymakers consider the purpose of a criminal record.

"These records are obviously not all equal: They include a range of offenses from serious to trivial; they linger long after any official sanctioning or rehabilitation is complete; and they're not always correct, a problem made worse by the inherent difficulty of expunging or correcting records."

She also mentions that previous research suggests that old records and records of minor offenses are not particularly predictive of future behavior.

"If the purpose of a criminal record is to indicate the likelihood of committing a future crime or the likelihood of being a bad employee, then we need to be more critical of the kinds of information we're looking for in that history," she says.

**More information:** Allison Dwyer Emory, Protective State Policies and the Employment of Fathers with Criminal Records, *Social Problems* (2021). [DOI: 10.1093/socpro/spab069](https://doi.org/10.1093/socpro/spab069)

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