

Protective State Policies and the Employment of Fathers with Criminal Records

Allison Dwyer Emory 

University at Buffalo

ABSTRACT

A criminal record can be a serious impediment to securing stable employment, with negative implications for the economic stability of individuals and their families. State policies intended to address this issue have had mixed results, however. Using panel data from the Fragile Families study merged with longitudinal data on state-level policies, this study investigates the association between criminal record based employment discrimination policies and the employment of men both with and without criminal records. These state policies broadly regulate what kinds of records can be legally used for hiring and licensing decisions, but have received little attention in prior research. Findings indicate that men with criminal records were less likely to be working if they lived in states with more policies in place to regulate the legal use of those records. Consistent with research linking policies regulating access to records to racial discrimination, black men living in protective states reported this employment penalty even if they did not have criminal records themselves. Thus, these policies, at best, may fail to disrupt entrenched employment disparities and, at worst, may exacerbate racial discrimination.

KEYWORDS: fathers, criminal records, employment, racial discrimination, social policy.

Contact with the criminal justice system is pervasive in the United States, with serious collateral consequences for employment. As many as 65 million Americans have a criminal record that may endanger their ability to secure and retain work (Rodriguez and Emsellem 2011), with a disproportionate impact on black men (EEOC 2012; Pager 2003; The Pew Charitable Trusts 2010; Uggen et al. 2014). Due in part to concerns over inequality and racial bias, there has been a proliferation of state policies aimed at reducing barriers to employment over the last several decades. Some policy decisions have indeed been linked with better outcomes for individuals with criminal records (Finlay 2009). A growing body of research, however, has cautioned that policies regulating the use of records

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can inadvertently exacerbate racial disparities by decreasing the likelihood that employers will hire young men from racial minorities (Agan and Starr 2018; Doleac and Hansen 2020; Holzer, Raphael, and Stoll 2007; Vuolo, Lageson, and Uggen 2017). Few studies have considered whether criminal record-based employment discrimination policies, among the earliest and broadest policy solutions available to states, improve access to the employment or manifest similar patterns of discrimination.

The present study investigates associations between state-level policies regulating the legal use of criminal records for hiring or licensing decisions, and the employment of men both with and without criminal records. Longitudinal data on fathers' employment and criminal justice contact from the Fragile Families and Child Wellbeing Study were merged with data on state-level employment policies to create a unique panel well suited to address this research question. Findings indicated that black men in particular were less likely to be employed in states with more policies restricting the use of criminal records in place, regardless of their personal criminal history, adding to a growing body of research indicating that endemic racism may undermine attempts to address criminal record discrimination.

BACKGROUND

Over 6.5 million Americans are under the supervision of the criminal justice system on a typical day (Kaeble and Cowhig 2018), and nearly one-third of the adult population in the United States has a criminal record (Goggins and DeBacco 2018). Importantly, these figures include a disproportionate number of men from racial minorities (The Pew Charitable Trusts 2010; Uggen, Manza, and Thompson 2006), the majority of whom are likely fathers (Glaze and Maruschak 2010). Despite how common records have become in the United States, they remain an accepted justification for widespread and systematic social exclusion (Kohler-Hausmann 2013; Pager 2007; Wakefield and Uggen 2010). The legal barriers and widespread stigma faced by individuals with records limit their economic opportunities, social and civic engagement, and even their ability to engage with and provide for children long after supervision ends (Chin 2017; Dwyer Emory et al. 2020; Hagan and Dinovitzer 1999; Haskins and Jacobsen 2017; Wakefield and Uggen 2010). Thus, the lingering collateral consequences of criminal justice contact have contributed to the racial concentration of intergenerational socioeconomic disadvantage (Turney 2017; Wildeman 2009).

Employment and Criminal Justice Involvement

The tenuous attachment of men with criminal records to the labor market in the United States reflects a reciprocal relationship: while employment mitigates criminal justice involvement, criminal justice involvement undermines employment. Individuals without stable work are more likely to have encounters with the criminal justice system (Looney and Turner 2018; Sampson and Laub 1993; Uggen 2000). Early life-course studies linked employment to desistance from crime (Sampson and Laub 1993), an association later replicated using a wide range of data and robust methodological approaches (Apel and Horney 2017; Denver, Siwach, and Buschway 2017; Uggen 2000). A study by Denver and colleagues quantified this association, linking employment with an 8.4 percentage point decline in the likelihood of re-arrest (2017). This desistance, as well as the economic resources associated with employment, may also disrupt intergenerational cycles of disadvantage that put future generations at risk for criminal justice contact (Dwyer Emory 2018; Geller, Garfinkel, and Western 2011; The Pew Charitable Trusts 2010). Thus, securing employment is a key step to reducing criminal justice involvement for those with or at risk of acquiring a criminal record.

Having a criminal record undermines the likelihood of finding employment, however. Individuals with records are hired at lower rates and are less likely to be working in the formal economy (Pager 2003; Pager, Western, and Bonikowski 2009; Uggen et al. 2014). The magnitude of the criminal record penalty varies by the seriousness of the record, with smaller penalties for those with low-level or old offenses (Pager, Western, and Bonikowski 2009; Uggen et al. 2014) and larger penalties

associated with incarceration (Pettit and Lyons 2009). Hiring disparities are particularly stark for black applicants. In studies examining both axes of discrimination, black men with criminal records received approximately half as many responses to their applications as either black men without records or white men with records (Pager 2003; Pager and Quillian 2005; Pager, Western, and Sugie 2009). While some individuals with records have attributes that impair their employability (Pettit and Western 2004; Western, Kling, and Weiman 2001), a criminal record alone is not necessarily predictive of job performance or future criminality (Kurlychek, Brame, and Bushway 2007; Lundquist, Pager, and Strader 2018). Rather, these robust employment disparities reflect legal barriers and stigma as well as differences in individual attributes.

The legal barriers faced by people with records, often termed collateral consequences, can be more detrimental for individual outcomes than their official criminal justice sanction (Chin 2017). Collateral consequences for employment vary widely by state, but can include restrictions for specific offenses such as those involving drugs or sexual crimes (Chin 2017; Love 2011), bans from certain occupations like those including public safety or healthcare (Chin 2017; Holzer et al. 2007), or ineligibility for occupational licenses or governmental contracts (Chin 2017; Legal Action Center 2004; Love 2011). These restrictions may apply for a number of years or for a lifetime, often with few effective means of legal relief (Ispa-Landa and Loeffler 2016; Love 2011). Moreover, collateral consequences have expanded over time as background checks became a common requirement of job applications. While originally limited in scope and scale, individuals with minor records may now face exclusion from industries that provide a foothold to economic security such as civil service; growing industries, for example, healthcare; and self-employment opportunities such as barbering (Love 2011; Warner, Kaiser, and Houle 2020).

Employer preferences and biases also represent a significant barrier to employment above and beyond legal restrictions. Through both institutional policy and unstated preferences, employers systematically avoid hiring individuals with criminal records (Holzer, Raphael, and Stoll 2006; Holzer et al. 2007; Lageson, Vuolo, and Uggen 2015; Pager and Quillian 2005; Sugie, Zatz, and Augustine 2020; Vuolo et al. 2017). Some of this hesitancy reflects fear of legal liability (Lageson et al. 2015), but employer concerns over personal dishonesty (Bushway, Stoll, and Weiman 2007; Lageson et al. 2015) indicate stigma also plays a key role. Indeed, employers were more resistant to hiring those with records than those with irregular employment histories (Holzer et al. 2006) or with evidence of misbehavior from other sources (Sugie et al. 2020).

Policy Protections for Individuals with Records

Many policy approaches have been tried to improve access to employment. State policies have defined the use of records in certain contexts as employment discrimination (Legal Action Center 2004), regulated access to criminal records (Dwyer Emory et al. 2020; Finlay 2009; Legal Action Center 2004), banned asking about records on employment applications (Agan and Starr 2018; D'Alessio, Stolzenberg, and Flexon 2015), and incentivized hiring individuals with records through tax codes (Looney and Turner 2018). While some of these approaches have been well studied, less attention has been paid to the implications of policies restricting employers' or licensing agencies' authorization to legally consider criminal records when making decisions.

State employment discrimination and licensing policies, highlighted by organizations such as the Legal Action Center in its Barriers to Reentry project (2004, 2009a), regulate which records may be legally considered. State policies often echo federal Equal Employment Opportunity Commission guidelines, which caution that exclusions based on criminal records disproportionately impact other protected populations and should be limited to clear cases of business necessity (EEOC 1987, 2012). Nonetheless, there is significant variation in where states draw the legal line with respect to the type of record or position covered. States may restrict the legal consideration of records to certain kinds of violent or drug offenses, allow conviction but exclude arrest records, or provide exceptions for certain

kinds of positions such as those involving security or caregiving (Legal Action Center 2004). Recognizing valid employer and citizen concerns, no state bans the consideration of all types of criminal records and nearly all have exceptions for offenses deemed to have a direct relevance to the position (Legal Action Center 2004, 2009a). For example, Wisconsin provides relatively strong protections for workers with criminal records but explicitly allows certain offenses defined as being substantively related to positions to be considered and exempts jobs requiring a bond for which the applicant is ineligible due to their record from the discrimination laws (Legal Action Center 2009b). Finally, states often regulate public employers, private employers, and licensing agencies differently, typically applying the fewest restrictions to private employers (Legal Action Center 2004, 2009a). The implications of these broad policies for employment outcomes has not been tested, however.

There are three main pathways through which these policies may improve employment outcomes. First, policies protecting eligibility for professional licensure may expand employment opportunities, since nearly 35 percent of employees have jobs requiring a government issued license (Kleiner and Krueger 2013). Second, antidiscrimination policies can prevent employers from having internal policies banning the hiring of people with records. Such policies limit the discretion of hiring managers to consider applicants with records (Lageson et al. 2015) and deny applicants the important opportunity to explain their past and provide hiring managers with a chance to evaluate risk on a case-by-case basis (Pager, Western, and Sugie 2009). Thus, applicants with records may be more likely to receive fair consideration if these employer-specific barriers are removed. Third, awareness of legal protections may encourage those with records to apply for more positions. Individuals with records often engage in system avoidance, withdrawing from institutions such as the formal economy that may put them at risk for detection, biased treatment, or additional criminal justice contact (Brayne 2014; Haskins and Jacobsen 2017). The complementary theory of stereotype avoidance suggests individuals with records may submit fewer applications or accept lower-quality employment to avoid anticipated rejection (Naft and Downey 2019). Reducing explicit barriers may thus encourage individuals with records to apply, a key mechanism identified in positive evaluations of policies eliminating criminal record questions from applications (Atkinson and Lockwood 2014; Berracasa et al. 2016).

These pathways may be undermined if policies are not enforced, however. Anti-discrimination laws typically require the person discriminated against to file a civil lawsuit proving discrimination to ensure compliance rather than operating through criminal justice agencies or automatic processes (Jacobs 2015). These necessary steps may be beyond the means of individuals with records due to system avoidance or limited resources. Without rigorous enforcement, employers and applicants alike may be unaware of legal protections. The example of Wisconsin suggests that state employment discrimination policies may indeed suffer from limited enforcement. While state statutes have heavily regulated the consideration of arrest records or denial of employment due to past records outside of a handful of clearly defined cases since 1982 (Legal Action Center 2009b), several studies have nonetheless identified widespread racial and criminal record discrimination in the state since that time (Hlavka, Wheelock, and Cossyleon 2015; Pager 2003). Other states are likely to face similar issues of awareness and enforcement, meaning policies are unlikely to prove a panacea for addressing issues of discrimination.

Evaluations of other policies regulating criminal records have also raised concerns about racial discrimination. Specifically, studies have linked policies restricting the point at which employers can ask about records (Agan and Starr 2018; Doleac and Hansen 2020; Vuolo et al. 2017) and policies regulating record searches and background checks (Bushway 2004; Dwyer Emory et al. 2020; Holzer et al. 2006, 2007) to lower employment among black men. The mechanisms of statistical discrimination and racial stereotyping identified in these studies may also be relevant for employment discrimination policies. In the absence of information on criminal records, statistical discrimination suggests that employers instead discriminate against groups deemed likely to have records — namely black men — as a proxy for a criminal history. Employers may also default to racial stereotypes about criminality in the absence of contradictory evidence. Indeed, employers have been found to be more likely to hire

black applicants if they can actively disprove stereotypes through drug tests (Wozniak 2015) or personality assessments (Autor and Scarborough 2008). These patterns affirm the strong link between racial and record discrimination identified in studies of employer hiring behavior (Pager, Western, and Bonikowski 2009; Pager, Western, and Sugie 2009), and suggest that policies may fail to correct disparities if both types of discrimination are not addressed.

Current Study

This study considers two competing hypotheses for how state employment discrimination policies shape employment outcomes. First, by reducing structural or social barriers protective policies may improve employment outcomes for individuals with records. In this case, policies would a) be positively associated with employment among men with records and b) moderate the negative association between criminal records and employment. Second, policies may instead be unable to overcome, or may even exacerbate, racial discrimination. In this case, policies would be a) negatively associated with the employment of black men with records and b) negatively associated with the employment of similar black men without criminal records.

METHODS

Data

The Fragile Families and Child Wellbeing Study (FF) is a longitudinal study following the families of children born in 20 U.S. cities between 1998 and 2000 (Reichman et al. 2001). Importantly, FF both oversampled births to relatively disadvantaged unmarried parents and interviewed fathers as well as mothers when the child was one-, three-, five-, and nine- years old. The resulting presence of young, disadvantaged, urban men from racial minorities at high risk for criminal justice involvement in the sample has made FF a foundational data source for studying the implications of criminal justice involvement (Geller et al. 2011; Haskins and Jacobsen 2017; Turney 2017; Wildeman 2010). The present study used father interviews from waves 2 through 5, the only waves with self-reported data on fathers' criminal justice involvement. The response rates for fathers in these waves ranged from 74 percent at wave 2 to 59 percent at wave 5.

Data were organized as an unbalanced father-year panel and merged by interview year and the father's state of residence with longitudinal state-level data on employment policies, labor market conditions, demographic composition, and criminal justice context. The interview year varied within waves, shown in Table 1, and 6 observations where interviews from different waves occurred within the same year were dropped. Fathers were dropped from the panel if they were not interviewed in wave 2 (721 cases) or had missing information on race/ethnicity (3 cases). Observations were dropped at a particular wave if fathers were not interviewed (N=295 at wave 3; 513 at wave 4; 909 at wave 5) or did not respond to criminal history or employment questions (N=32). Fathers who were incarcerated at the time of the survey were excluded to ensure a consistent employment measure (N=361). Due to limitations in the policy data, observations were also dropped if fathers did not report or live in a U.S. state (N=104), or if the father lived in Massachusetts before 2001 (N=64). The final analytic sample includes 10,350 observations of 3,457 unique fathers who participated in one (4 percent), two (15 percent), three (27 percent) or four survey waves (54 percent). Chained equations were used to create 10 imputations to address item-specific missing data on control variables, as no variable had more than 10 percent missing.

Measures

State employment policies. This study examines six policies identified by the Legal Action Center (LAC) as barriers to employment for individuals with criminal records (2004), expanded by the author and colleagues into a longitudinal dataset of U.S. state policies for the period 1996–2014. These

Table 1. Number of Fathers in Sample by Year and Wave

<i>Survey Year</i>	<i>Wave 2</i>	<i>Wave 3</i>	<i>Wave 4</i>	<i>Wave 5</i>	<i>Total</i>
1999	387	0	0	0	387
2000	312	0	0	0	312
2001	2,246	332	0	0	2,578
2002	9	931	0	0	940
2003	0	1,451	280	0	1,731
2004	0	0	859	0	859
2005	0	0	1,310	0	1,310
2006	0	0	37	0	37
2007	0	0	0	148	148
2008	0	0	0	663	663
2009	0	0	0	1,283	1,283
2010	0	0	0	102	102
Total	2,954	2,714	2,486	2,196	10,350

policies include regulating blanket bans denying employment/licensure to individuals with records by (1) private employers, (2) public employers, or (3) licensing agencies; and regulating the consideration of arrest records not leading to conviction by (4) private employers, (5) public employers, or (6) licensing agencies. The details of these policies, notably the degree to which exceptions were allowed for relevant offenses or particular positions, vary by state. The LAC criteria for collapsing this variation were used to code each state as leaving the use of records to employer/agency discretion (0) or regulating the use of records (1) for each of these six policies.

States were coded as regulating private employers, public employers, or licensing agencies if consideration of records was banned outright, restricted to legislatively defined categories of relevance to the position or business necessity, or restricted to a limited set of legislatively defined positions such as caregiving, security, or public safety. These restrictions prohibit broad bans against hiring anyone with a record. States were coded as regulating the use of arrest records if the law prohibited employers or agencies from asking about or considering arrests that did not lead to conviction. As with the prior set of policies, states were coded as regulating the use of arrest records, even if the law allowed exceptions for specific positions, such as those with law enforcement or caregiving responsibilities or for pending and directly relevant criminal proceedings.¹ States were coded as having no regulation if the law explicitly allowed the consideration of criminal records or if no law existed to regulate their use. Overall, this coding represents a relatively low threshold for regulation that should balance relevant employer needs with protections against undue discrimination for individuals with records.

These six policies were collapsed into a policy index indicating the proportion of policies enacted in any given state-year to allow for a broad study of the relationship between the policy context and the employment of individuals with criminal records across the U.S. A score of zero indicated none of the policies were enacted, and a score of one indicated all six policies were in place. The policy index was then lagged by one year relative to the FF data to ensure that exposure to the policy occurred before the measurement of employment. Findings were robust to using categorical measure of policies distinguishing states that have no, some, or all the policies in place. While individual policies are examined as a robustness check, the policy index is preferred for both theoretical and statistical reasons. These policies often have a shared legislative history, reflect common political motivations, and rely on similar

¹ Two states had policies that were difficult to categorize using this protocol: Michigan allowed for the consideration of felony arrests only, while Montana had strict protective regulations on the context in which employers could ask about arrest records but did not explicitly regulate use. Findings were robust to coding these states as unregulated or regulated, or assigning them the score of 0.5 to indicate partial regulation (used in the findings presented).

enforcement and implementation mechanisms. Individuals seeking employment are thus likely to encounter these policies as part of a policy context rather than as individual policies. Methodologically, both the strong correlation between these policies and shared context means that distinguishing the effects of individual policies is often inappropriate due to concerns over spuriousness.

Criminal records. Fathers reported at wave 2 whether they had ever been stopped by police, booked or charged with breaking the law, convicted of a crime, or incarcerated. In subsequent waves, fathers reported whether these types of contact occurred since the last wave or interview. Fathers' criminal record status was approximated at each wave based on whether he reported a prior booking or charging, conviction, or incarceration. Those whose most serious criminal justice contact was a police stop were not coded as having a record. Fathers with missing reports at wave 2 were excluded from the panel since their full criminal justice history was undetermined. Models were robust to restricting the definition of criminal record to convictions or incarcerations to address over-reporting. As this measure of fathers' criminal records has not been used extensively in prior research, one sensitivity analysis instead measured whether either parent reported the father had ever been incarcerated consistent with prior studies using FF data (Geller et al. 2012; Haskins and Jacobsen 2017; Turney 2017).

Employment. Fathers reported at each wave whether they did any regular work for pay in the prior week, including work done for their own business or for a regular paycheck. To capture fathers who were formally self-employed, including professions that often require professional licensing, fathers were also coded as employed if they reported "having a job" or "owning a business." Findings were robust to excluding self-employment.

Control variables. Models adjusted for a set of father attributes, local area economic conditions, and state-level controls that may confound the associations between criminal records, employment, and protective policies. Baseline father-level measures included fathers' poverty level, substance use, race and ethnicity, marital status, self-reported impulsivity scale measured at wave 2 (Cronbach's alpha .84), and whether the father was incarcerated before wave 2 as a proxy for opportunity-limiting early criminal justice involvement. Time varying measures included father age, education, and whether he had moved states since wave 2. Given the importance of the local area context for discrimination (Doleac and Hansen 2020; Vuolo et al. 2017), models also included FF variables for the metropolitan statistical area unemployment rate six months before the interview and the proportion of fathers' census tract that was non-Hispanic black. Finally, state-level controls, lagged by one-year, adjusted for state economic, criminal justice, and political context. Models controlled for the unemployment rate (U.S. Bureau of Labor Statistics 2018), the Gini coefficient measuring income inequality (Frank 2015), and the proportion of the labor force comprised of black and white residents (U.S. Bureau of Labor Statistics 2019) as an indicator of the racial composition of the labor market. Models also included the imprisonment rate (Carson and Mulako-Wangota 2018) to capture the scale and prevalence of criminal justice sanctioning, and probation rate (Bonczar and Mulako-Wangota 2020) to capturing the prevalence of conditional supervision which may impose employment requirements (Seim and Harding 2020). Uniform crime reports of violent and property crime rates (FBI 2018) were used to adjust for differences in crime that may influence the likelihood of criminal justice contact and policy. Finally, models also controlled for the political ideology of the state legislature (Shor 2018) and census region.

Analytic Strategy

Associations between father employment, father criminal record status, and protective state policies were modeled using a series of multilevel mixed effects linear probability models. Findings were consistent when modeled with logistic regressions, but linear probability models are reported due to parsimony and ease of interpretation (Mood 2010). Models nested individuals within states, incorporating both individual and state random intercepts. Random effects models clustering at the

individual level produced consistent results. Robust standard errors were estimated, and all models included the control variables described above as well as an indicator variable for survey wave to adjust for variation in attrition and survey design.

While individual or state fixed effects model are typically preferred for this kind of analysis, there was an insufficient sample of fathers experiencing variation on either state policies or criminal records for this approach. Within the panel, only seventeen percent of fathers ($N=545$) experienced variation in the employment policy index due to either policy changes within states (4 states, $N=313$) or interstate mobility ($N=232$). Similarly, only nine percent of fathers report a new criminal record over the panel ($N=301$), and these fathers are likely to be outliers since acquiring a first record later in life is relatively uncommon (e.g. Farrington 1986). Nevertheless, variation observed on individual fathers' likelihood of employment across the panel still warrants a panel design. Supplemental models (not shown) indicated that the employment of individual fathers over time was sensitive to changes in attributes such as education and age, as well as changes in the state labor and political conditions, motivating the inclusion of these variables as time-varying controls. Thus, model identification rests primarily on between-father variation in record and policy exposure but includes time-varying measures to adjust for important within-father changes in employment opportunities over the course of the panel.

Two sets of main models were estimated. First, the association between the policy index and father employment was modeled for the subsample of fathers with criminal records to examine variation among criminal justice involved fathers. Second, the full sample of fathers, both with and without records, was used to test whether the policy index moderated the association between records and employment. These models first estimated the main effect of a criminal record on employment and next modeled moderation by introducing an interaction between criminal record and the policy index. To evaluate whether these policies were associated with racial disparities, white and black fathers were modeled separately. Fully stratifying the models addresses the fundamentally different ways in which men of different races in the United States encounter the criminal justice system and the labor market. To provide a direct comparison between white and black fathers, the main models were also fully interacted by race to test the statistical significance of observed differences in the race-stratified models.

Sensitivity Analyses

In addition to the alternative modeling strategies and variable constructions noted in the previous sections, four tests were conducted to ensure findings were robust to major validity threats. First, if fathers with criminal records selectively moved to more protective states, associations between policies and employment could erroneously reflect that disruption rather than a true effect. To address this possibility, models were estimated using a sample of fathers who did not move states ($N=9666$). Second, the 2008 recession that occurred during the panel was likely to have disproportionately affected the employment of people with records due to their vulnerability in the labor market. To guard against this confounding event, models were estimated using only interviews conducted before 2008 ($N=8302$). Third, fathers who participated in the FF survey throughout the panel were more select than the full FF sample due to differential attrition (Sassler, Roy, and Stasny 2014). To address this potential source of bias, models were estimated incorporating mother reports about fathers who were not interviewed ($N=11,346$). Since mothers were only asked about fathers' incarceration history, these analyses used the combined report of fathers' past incarceration as a proxy for criminal record. Finally, to test whether a single policy drove the observed associations, policies were modeled separately.

FINDINGS

Criminal justice contact is common in the sample, as shown in Table 2, even among those without criminal records. Most fathers did not have a criminal record (6,674 observations, 2,124 unique individuals), but over 40 percent of those without records reported having ever been stopped by police and 20 percent had been stopped recently. Approximately one-third of fathers (3,676 observations,

Table 2. Descriptive Statistics of Father Attributes

	<i>No Criminal Record Mean or %</i>	<i>Criminal Record Mean or %</i>	<i>Significance of Difference</i>
N	6674	3676	
Unique individuals	2124	1404	
Key variables			
Employment (%)	87.65	75.60	***
Criminal justice involvement (%)			
Any criminal justice contact ^a	40.04	100	***
Recent criminal justice contact ^a	20.89	58.00	***
Ever convicted	0	60.15	***
Ever incarcerated	0	51.57	***
Never convicted or incarcerated	0	36.26	***
Father attributes			
Father race (%)			
White, non-Hispanic	25.50	19.07	***
Black, non-Hispanic	40.65	55.77	***
Hispanic	29.14	21.87	***
Other, non-Hispanic	4.70	3.29	**
Poverty level at baseline (%)			
Deep (<.5x FPL)	9.51	14.54	***
Poverty (<1x FPL)	11.58	15.88	***
Near poor (<2x FPL)	21.18	24.96	***
Non poor (>2x FPL)	57.73	44.61	***
Age (time varying)	33.05	31.67	***
Education (time varying, %)			
Less than high school	23.43	26.40	**
High school or GED	28.00	36.56	***
Some college or more	48.57	37.04	***
Married at baseline (%)	40.17	14.93	***
Substance abuse at baseline (%)	4.86	12.29	***
Early incarceration (%)	0.00	43.19	***
Impulsivity at baseline (range 0-3)	0.88	1.09	***
Moved states since baseline (time varying, %)	6.71	6.42	
Born in the U.S. (%)	78.53	94.17	***
Proportion of census tract black (time varying %)	32.88	41.53	***
Local area unemployment rate (time varying, lagged 6 months)	5.10	5.17	+

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$, + $p < .10$. Significance tested using bivariate regressions. N=10350 observations.

^aIncludes stops by police not resulting in a conviction, charging or booking, or incarceration otherwise excluded from the definition of criminal records used in this study.

1,404 unique individuals) reported more serious criminal justice contact consistent with acquiring a criminal record. Of fathers with records, about half had a history of incarceration, 60 percent reported a past conviction, and 58 percent had recent criminal justice contact. This pattern suggests that the records of many fathers in the sample were old or relatively minor. Men with records were also more likely to have other risk factors, such as a history of poverty, lower levels of education, higher rates of substance use and impulsive behavior, and incarceration early in their lives. Importantly, black fathers

in the sample were more likely to have a record, while white fathers were more likely to not have a record. The vast majority of men were working, though those with records were less likely to be employed than those without records (88 percent v. 75 percent). A supplemental analysis indicated that most of those not currently employed reported looking for work (74 percent with records, 70 percent without records), rather than having left the labor force.

Fathers lived in 46 unique states across the panel, reflecting dispersion from the original 15 FF states. These states varied widely with respect to their policies, as summarized in Table 3, falling on average at .31 across 290 unique state-years on the employment policy index scale of zero (no protective policies) to one (all six policies). These laws governed the use of arrest information by employers (public employers in 30 percent of state-years, private employers in 24 percent of state years) and licensing agencies (34 percent of state years), and prohibited blanket bans on individuals with records by employers (public employers in 34 percent of state-years, private employers in 12 percent of state years) or licensing agencies (48 percent of state years). State contexts also varied substantially with respect to employment rates and labor force composition, inequality, imprisonment and probation rates, crime rates, and political ideologies.

Policy Protections and Employment

The models presented in Table 4 examine employment outcomes among fathers with criminal records. Contrary to expectations, these models indicate that living in a state with more protective policies in place was negatively associated with employment. As shown in the first model, fathers with records living in states with all six policies in place were 16 percentage points less likely to be

Table 3. Attributes of States in Analytic Sample

	<i>Mean</i>	<i>Standard Deviation</i>	<i>Min.</i>	<i>Max.</i>
Employment policy index	0.31	0.30	0	1
Public Employer Bans	0.35	0.48	0	1
Private Employer Bans	0.12	0.33	0	1
Licensing Bans	0.49	0.50	0	1
Public Employer Arrest Consideration	0.31	0.45	0	1
Private Employer Arrest Consideration	0.24	0.41	0	1
Licensing Arrest Consideration	0.34	0.47	0	1
State Attributes, Lagged by one year				
Proportion of civilian population Non-Hispanic White	0.82	.11	.20	.98
Proportion of civilian population Non-Hispanic Black	0.12	.09	.01	.35
Unemployment rate	5.04	1.42	2.40	10.50
Gini coefficient	0.59	.04	0.53	0.71
Violent crime rate	456.97	173.62	103.70	961.40
Property crime rate	3495.60	813.00	1932.00	5849.80
Imprisonment rate	460.88	163.15	126.00	901.00
Probation rate	1784.65	1014.18	387.00	6598.00
State legislature ideology	−0.04	.57	−1.44	1.07
Census region				
<i>Northeast</i>	.18	.38	0	1
<i>Midwest</i>	.22	.42	0	1
<i>South</i>	.42	.50	0	1
<i>West</i>	.18	.38	0	1

Note: N=290 unique state years contributed by 46 states

Table 4. Mixed Effects Model of Lagged State Policies on Fathers' Employment among Fathers with Criminal Records

	<i>All Fathers with Records</i>		<i>NH White Fathers with Records</i>		<i>NH Black Fathers with Records</i>	
	<i>Coefficient</i>	<i>SE</i>	<i>Coefficient</i>	<i>SE</i>	<i>Coefficient</i>	<i>SE</i>
Employment policy index	-0.16***	(0.03)	-0.04	(0.07)	-0.21*** ^a	(0.03)
Father race and ethnicity						
Black, non-Hispanic	-0.07*	(0.03)				
Hispanic	0.05	(0.03)				
Other, non-Hispanic	-0.08	(0.05)				
Father impulsivity score	-0.01	(0.02)	0.03	(0.04)	-0.01	(0.02)
Father age	0.00	(0.00)	-0.01 ⁺	(0.00)	0.00* ^a	(0.00)
Married at child's birth	0.02	(0.02)	0.06	(0.04)	0.05 ⁺	(0.03)
Father education						
High school or GED	0.11***	(0.03)	0.13 ⁺	(0.07)	0.13***	(0.03)
Some college or more	0.14***	(0.03)	0.13	(0.10)	0.18***	(0.02)
Father baseline poverty						
Poverty (50 - 99% FPL)	0.02	(0.03)	-0.01	(0.11)	0.01	(0.03)
Near poor (100 - 199% FPL)	0.08**	(0.03)	0.04	(0.08)	0.08**	(0.03)
Non poor (200% FPL and above)	0.10***	(0.03)	0.14	(0.09)	0.09**	(0.03)
Substance use at child's birth	-0.02	(0.03)	-0.03	(0.06)	-0.02	(0.04)
Father baseline incarceration	-0.05**	(0.02)	-0.08*	(0.03)	-0.05*	(0.02)
Father born in US	-0.10***	(0.03)	-0.08	(0.10)	-0.19*	(0.08)
Father moved states	0.04	(0.03)	-0.06	(0.07)	0.10* ^a	(0.05)
Proportion of census tract black	-0.05 ⁺	(0.03)	-0.07	(0.08)	-0.05	(0.03)
Local area unemployment rate (lagged)	-0.01*	(0.01)	-0.02	(0.01)	-0.02	(0.01)
State proportion labor force white (lagged)	0.21	(0.17)	0.96	(0.73)	0.25 ⁺	(0.14)
State proportion labor force black (lagged)	0.07	(0.26)	0.35	(0.93)	0.05	(0.27)
State unemployment rate (lagged)	-0.01	(0.01)	-0.02	(0.02)	-0.00	(0.02)
State Gini coefficient (lagged)	-0.65*	(0.31)	-0.57	(0.65)	-0.68*	(0.32)
State violent crime rate (lagged)	0.00	(0.00)	-0.00 ⁺	(0.00)	0.00 ⁺ ^a	(0.00)
State property crime rate (lagged)	-0.00	(0.00)	0.00	(0.00)	-0.00	(0.00)
State imprisonment rate (lagged)	0.00	(0.00)	0.00	(0.00)	0.00 ⁺	(0.00)
State probation rate (lagged)	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)
State legislature ideology (lagged)	0.00	(0.02)	-0.03	(0.04)	0.01	(0.03)
Census region						
Midwest	-0.01	(0.02)	-0.17**	(0.06)	-0.01 ^a	(0.03)
South	-0.05	(0.04)	-0.11	(0.09)	-0.07	(0.06)
West	-0.05	(0.03)	0.02	(0.09)	-0.08 ⁺	(0.05)
Observations	3,676		701		2,050	
Unique Individuals	1,404		254		784	

***p<0.001, **p<0.01, *p<0.05, ⁺p<.10. Robust standard errors. Multilevel models account for father-year and state random effects, and wave fixed effects.

^aDifferences between white and black fathers statistically significant at the .05 level or greater in fully interacted models.

employed than their counterparts in unregulated states. Race stratified models demonstrate that these findings are largely driven by the experiences of black fathers, who constitute the majority of the sample. Policies were not associated with the employment of white fathers with records. Models of black fathers with records, on the other hand, show those living in the most protective states were 21 percentage points less likely to be employed than those in the least protective states. The fully interacted models, indicated by subscripts in [Table 4](#), confirm that this racial difference in the association between employment and the policy index is statistically significant ($-.17, p=.015$). These models also suggest that the employment of black fathers with records was more sensitive to interstate moves but less sensitive to living in the Midwest than their white counterparts, though these differences may reflect limited statistical power in models of white fathers due to the smaller sample size.

The models presented in [Table 5](#) test the moderation hypotheses using the full sample of fathers both with and without criminal records. The first two models show that a criminal record was associated with a five percentage point employment penalty, and that this association was negatively moderated by employment policies. Rather than improving outcomes, the disparity between the employment of fathers with and without records was larger in states with more protective policies in place. As with the previous set of models, these associations differ significantly by race. For white fathers, the association between criminal records and employment fell short of statistical significance ($-.04, p<.10$) and was not moderated by employment policies. This was not the case for black fathers, however. Black fathers with records were four percentage points less likely to be employed than those without records, but the moderated models indicate all black fathers were sensitive to employment policies. Black fathers without records living in the most protective states were ten percentage points less likely to be employed than their counterparts in the least protective regimes. For black fathers with records, linear combinations of these coefficients indicated those living in the most protective states were 18 percentage points less likely to be employed than those in the least protective states. The non-significant interaction term indicates that the disparity between those with and without records was similar across policy regimes, however.

The fully interacted models of white and black fathers, noted with subscripts in [Table 5](#), provide a direct comparison of these racial differences. Black fathers were significantly less likely to be employed in states with more protective policies in place than their white counterparts ($-.11, p<.001$), regardless of their record status. To contextualize these findings, in these models the predicted probability of white fathers' employment was 83–89 percent and not statistically different, regardless of state policy or criminal record. For black fathers in unregulated states, the predicted probability of employment was a comparable 85 percent for those without records and 83 percent for those with records. In the most protective states, however, these models predicted employment for only 75 percent of black fathers without records and only 67 percent of those with records. These estimates are significantly lower than those of black fathers in the least protective states or white fathers in any policy regime. There are also some notable differences among the control variables, as being born in the United States and state income inequality are negatively associated only with the employment of black fathers. Together, these racial patterns suggest that black men's ability to find employment is particularly sensitive to the state context in which they live, while personal attributes, such as avoiding criminal justice contact, may have limited impact on employment outcomes.

Sensitivity Analyses

[Table 6](#) presents three sensitivity analyses testing the robustness of these findings. Models excluding fathers who moved states, presented in the first panel, are nearly identical to the main findings and indicate the findings are not driven by selective migration. The difference between black and white fathers falls just short of statistical significance ($p=.054$) in these models, likely reflecting the smaller sample size rather than a substantive difference in the findings. The consistency between the main findings and the second panel, excluding fathers interviewed after 2007, indicates that findings were

Table 5. Mixed Effects Model of Lagged State Policies on Employment

	All Fathers						NH White Fathers						NH Black Fathers					
	Main		Moderated		Main		Moderated		Main		Moderated		Main		Moderated			
	B	SE	B	SE	B	SE	B	SE	B	SE	B	SE	B	SE	B	SE		
Criminal record	-0.05***	(0.01)	-0.02	(0.02)	-0.04 ⁺	(0.02)	-0.05 ⁺	(0.03)	-0.04*	(0.02)	-0.02	(0.03)	-0.02	(0.03)	-0.10***a	(0.03)		
Employment policy index			-0.03	(0.02)			0.01	(0.03)										
Record/Policy interaction			-0.08***	(0.02)			0.03	(0.06)										
Father race and ethnicity																		
Black, non-Hispanic	-0.07***	(0.02)	-0.07***	(0.02)														
Hispanic	0.02	(0.02)	0.02	(0.02)														
Other, non-Hispanic	-0.10***	(0.02)	-0.11***	(0.02)														
Father impulsivity score	-0.02*	(0.01)	-0.02*	(0.01)	0.00	(0.02)	0.00	(0.02)	-0.03*	(0.01)	-0.03*	(0.01)	-0.03*	(0.01)				
Father age	-0.00*	(0.00)	-0.00*	(0.00)	-0.00***	(0.00)	-0.00***	(0.00)	-0.00 ^a	(0.00)	-0.00 ^a	(0.00)	-0.00 ^a	(0.00)	-0.00 ^a	(0.00)		
Married at child's birth	0.04**	(0.01)	0.04***	(0.01)	0.05***	(0.01)	0.05***	(0.01)	0.06*	(0.02)	0.06*	(0.02)	0.06*	(0.02)				
Father education																		
High school or GED	0.06**	(0.02)	0.06**	(0.02)	0.06	(0.04)	0.06	(0.04)	0.10***	(0.02)	0.10***	(0.02)	0.10***	(0.02)				
Some college or more	0.10***	(0.02)	0.10***	(0.02)	0.07	(0.05)	0.07	(0.05)	0.16***a	(0.02)	0.16***a	(0.02)	0.16***a	(0.02)				
Father baseline poverty																		
Poverty (50 - 99% FPL)	0.03	(0.02)	0.03	(0.02)	-0.02	(0.07)	-0.02	(0.07)	0.01	(0.03)	0.01	(0.03)	0.01	(0.03)				
Near poor (100 - 199% FPL)	0.09***	(0.02)	0.09***	(0.02)	0.04	(0.05)	0.04	(0.05)	0.08**	(0.03)	0.08**	(0.03)	0.08**	(0.03)				
Non poor (200% + FPL)	0.11***	(0.02)	0.11***	(0.02)	0.08	(0.05)	0.07	(0.05)	0.11***	(0.02)	0.11***	(0.02)	0.11***	(0.02)				
Substance use at child's birth	-0.01	(0.01)	-0.01	(0.01)	-0.04	(0.04)	-0.04	(0.04)	-0.01	(0.02)	-0.01	(0.02)	-0.01	(0.02)				
Father baseline incarceration	-0.05***	(0.02)	-0.05***	(0.02)	-0.09**	(0.03)	-0.09**	(0.03)	-0.05*	(0.02)	-0.05*	(0.02)	-0.05*	(0.02)				
Father born in US	-0.08***	(0.02)	-0.07***	(0.02)	0.04	(0.03)	0.05 ⁺	(0.03)	-0.10***a	(0.02)	-0.10***a	(0.02)	-0.10***a	(0.02)				
Father moved states	-0.01	(0.02)	-0.01	(0.02)	-0.04	(0.02)	-0.04	(0.02)	0.02	(0.03)	0.03	(0.03)	0.03	(0.03)				
Local area unemployment rate (lag)	-0.01***	(0.00)	-0.01***	(0.00)	-0.01 ⁺	(0.00)	-0.01	(0.00)	-0.01 ⁺	(0.01)	-0.01 ⁺	(0.01)	-0.01 ⁺	(0.01)				
Proportion of census tract black	-0.06*	(0.02)	-0.05*	(0.02)	-0.04	(0.04)	-0.04	(0.04)	-0.04	(0.03)	-0.04	(0.03)	-0.04	(0.03)				
State proportion labor force white (lag)	0.25 ⁺	(0.13)	0.15	(0.14)	0.20	(0.50)	0.24	(0.50)	0.50**	(0.17)	0.29	(0.17)	0.29	(0.16)				

(continued)

Table 5. Mixed Effects Model of Lagged State Policies on Employment (continued)

	All Fathers						NH White Fathers						NH Black Fathers					
	Main		Moderated		Main		Moderated		Main		Moderated		Main		Moderated			
	B	SE	B	SE	B	SE	B	SE	B	SE	B	SE	B	SE	B	SE		
State proportion labor force black (lag)	0.35*	(0.17)	0.16	(0.19)	0.19	(0.55)	0.25	(0.56)	0.47 ⁺	(0.25)	0.10	(0.26)						
State unemployment rate (lag)	-0.01	(0.00)	-0.00	(0.00)	-0.00	(0.01)	-0.00	(0.01)	-0.01	(0.01)	-0.01	(0.01)						
State Gini coefficient (lag)	-0.29	(0.21)	-0.26	(0.19)	0.15	(0.31)	0.15	(0.32)	-0.69* ^a	(0.28)	-0.60* ^a	(0.26)						
State violent crime rate (lag)	-0.00	(0.00)	-0.00	(0.00)	-0.00*	(0.00)	-0.00*	(0.00)	-0.00	(0.00)	0.00 ^a	(0.00)						
State property crime rate (lag)	0.00*	(0.00)	0.00	(0.00)	0.00	(0.00)	0.00	(0.00)	0.00	(0.00)	0.00	(0.00)						
State imprisonment rate (lag)	-0.00	(0.00)	0.00	(0.00)	0.00	(0.00)	0.00	(0.00)	0.00	(0.00)	0.00	(0.00)						
State probation rate (lag)	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)	-0.00	(0.00)						
State legislature ideology (lag)	-0.01	(0.01)	-0.00	(0.01)	-0.01	(0.01)	-0.01	(0.01)	-0.03	(0.02)	-0.02	(0.01)						
Census region																		
Midwest	-0.03 ⁺	(0.02)	-0.03*	(0.01)	-0.06*	(0.02)	-0.06*	(0.03)	-0.05	(0.03)	-0.04*	(0.03)						
South	-0.00	(0.02)	-0.02	(0.02)	-0.03	(0.04)	-0.02	(0.04)	-0.00	(0.04)	-0.04	(0.03)						
West	-0.02	(0.02)	-0.03	(0.02)	-0.01	(0.07)	-0.01	(0.06)	-0.06	(0.05)	-0.08*	(0.04)						
Observations		10,350		2,403		4,763		4,763		4,763		4,763						
Unique Individuals		3,457		784		1,604		1,604		1,604		1,604						

***p<0.001, **p<0.01, *p<0.05, +p<.10. Robust standard errors. Multilevel models account for father-year and state random effects, and wave fixed effects
^aDifferences between white and black fathers statistically significant at the .05 level or greater in fully interacted models.

Table 6. Sensitivity Models

		<i>All Fathers</i>	<i>NH White Fathers</i>	<i>NH Black Fathers</i>
Nonmoving Father Sample	Criminal record	−0.03 (0.02)	−0.07* (0.03)	−0.04 (0.03)
	Employment policy index	−0.05*** (0.02)	−0.03 (0.03)	−0.11*** ^b (0.03)
	Record/Policy interaction	−0.07*** (0.02)	0.05 (0.06)	−0.03 (0.04)
	Observations	9,666	2,180	4,482
	Unique Individuals	3,051	659	1,436
Pre-Recession Sample	Criminal record	−0.01 (0.02)	−0.06* (0.02)	−0.01 (0.03)
	Employment policy index	−0.03 (0.02)	−0.01 (0.03)	−0.09*** ^a (0.03)
	Record/Policy interaction	−0.09*** (0.02)	0.04 (0.05)	−0.06 (0.04)
	Observations	8,302	1,913	3,783
	Unique Individuals	3,316	754	1,532
Expanded Sample	Incarceration history	−0.11*** (0.02)	−0.10** (0.03)	−0.12*** (0.02)
	Employment policy index	−0.01 (0.03)	0.05 (0.03)	−0.09*** ^a (0.04)
	Incarceration/Policy interaction	−0.08* (0.04)	−0.12 (0.08)	−0.00 ^a (0.05)
	Observations	11,346	2,535	5,341
	Unique Individuals	4,055	857	1,952

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$, + $p < .10$.

^aDifferences between white and black fathers statistically significant at the $p < .05$ level in fully interacted models.

^bDifferences between white and black fathers statistically significant at the $p < .10$ level in fully interacted models.

Robust standard error in parentheses. Father controls include race/ethnicity, impulsivity, age, marital status, education, poverty level, substance abuse, early incarceration, born in the US, residential mobility, proportion of census tract that is non-Hispanic black, and unemployment rate of the metropolitan statistical area. Lagged state level controls include the unemployment rate, imprisonment rate, probation rate, Gini coefficient, violent and property crime rates, and the partisan composition of the state legislature. Models also control for survey wave, census region, state random effects, and father/year random effects.

not driven by the 2008 recession. The final panel included mother reports of fathers who were not interviewed to address selective attrition concerns. These models differ slightly since they rely on past incarceration, a starker measure of criminal justice contact than the record variable used elsewhere, but the policy index plays the same moderating role in these models as in the main models. Incarceration is consistently associated with worse employment outcomes, but black fathers fared significantly worse in the most protective states, regardless of their personal incarceration histories.

Each component of the policy index is modeled separately in Table 7, and the consistency in the findings largely supports the decision to model them as a common policy context. In models of fathers with criminal records paralleling Table 4, shown in the first panel, two policies performed slightly differently than the others. Policies restricting the exclusion of individuals with records from licensure were not significantly associated with employment, and policies similarly regulating public employers fell just short of statistical significance in models of black fathers. Similar discrepancies for these two policies were apparent in the moderated models, paralleling Table 5. Unlike findings in the main models, neither policy was significantly associated with the employment of black fathers. For white fathers, policies regulating both licensing agency and private employer bans of individuals with

Table 7. Multilevel Mixed Effects Models of Individual Policies

		<i>All Fathers</i>		<i>NH White Fathers</i>		<i>NH Black Fathers</i>	
		<i>B</i>	<i>SE</i>	<i>B</i>	<i>SE</i>	<i>B</i>	<i>SE</i>
Fathers with Criminal Records	Public Bans	−0.07*	(0.03)	−0.05	(0.04)	−0.06 ⁺	(0.04)
	Private Bans	−0.08**	(0.03)	0.01	(0.06)	−0.12**** ^a	(0.02)
	Licensing Bans	−0.03	(0.03)	−0.00	(0.03)	−0.05 ⁺	(0.03)
	Public Arrests	−0.09**	(0.03)	−0.03	(0.04)	−0.12**** ^a	(0.03)
	Private Arrests	−0.09**	(0.03)	−0.02	(0.04)	−0.11**** ^a	(0.03)
	Licensing Arrests	−0.06 ⁺	(0.03)	0.01	(0.05)	−0.12** ^a	(0.04)
Fathers with and without Criminal Records							
Public Employer Bans Prohibited	Criminal record	−0.04**	(0.01)	−0.05*	(0.02)	−0.03	(0.02)
	Policy	−0.03 ⁺	(0.01)	−0.01	(0.02)	−0.04	(0.03)
	Record/Policy interaction	−0.03	(0.02)	0.01	(0.06)	−0.02	(0.02)
Private Employer Bans Prohibited	Criminal record	−0.04***	(0.01)	−0.06*	(0.02)	−0.03	(0.02)
	Policy	−0.03 ⁺	(0.01)	−0.02	(0.02)	−0.06**** ^b	(0.02)
	Record/Policy interaction	−0.03	(0.02)	0.07	(0.05)	−0.04 ^{+b}	(0.02)
Licensing Bans Prohibited	Criminal record	−0.03 ⁺	(0.02)	−0.08**	(0.03)	−0.02	(0.03)
	Policy	0.01	(0.01)	−0.02	(0.02)	−0.00	(0.02)
	Record/Policy interaction	−0.03 ⁺	(0.02)	0.07 ⁺	(0.04)	−0.04 ^a	(0.02)
Public Arrest Use Prohibited	Criminal record	−0.03*	(0.01)	−0.03	(0.03)	−0.03	(0.02)
	Policy	−0.01	(0.02)	0.01	(0.02)	−0.06** ^a	(0.02)
	Record/Policy interaction	−0.06***	(0.01)	−0.03	(0.03)	−0.03	(0.03)
Private Arrest Use Prohibited	Criminal record	−0.03*	(0.01)	−0.03	(0.03)	−0.03	(0.02)
	Policy	−0.01	(0.02)	0.01	(0.02)	−0.06** ^a	(0.02)
	Record/Policy interaction	−0.06***	(0.01)	−0.03	(0.03)	−0.03	(0.03)
Licensing Arrest Use Prohibited	Criminal record	−0.03*	(0.01)	−0.05	(0.03)	−0.03	(0.02)
	Policy	0.00	(0.02)	0.03	(0.02)	−0.05** ^a	(0.02)
	Record/Policy interaction	−0.04*	(0.02)	0.01	(0.04)	−0.02	(0.03)

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$, + $p < .10$.

^aDifferences between white and black fathers statistically significant at the $p < .05$ level in fully interacted models.

^bDifferences between white and black fathers statistically significant at the $p < .10$ level in fully interacted models.

Robust standard error in parentheses. Father controls include race/ethnicity, impulsivity, age, marital status, education, poverty level, substance abuse, early incarceration, born in the US, residential mobility, proportion of census tract that is non-Hispanic black, and unemployment rate of the metropolitan statistical area. Lagged state level controls include the unemployment rate, imprisonment rate, probation rate, Gini coefficient, violent and property crime rates, racial composition, and the ideology of the state legislature. Models also control for survey wave, census region, state random effects, and father/year random effects. Each cell represents a separate model.

records were associated with smaller employment disparities between those with and without records. These are the only models in this study that suggest a policy benefit, though one that fell short of statistical significance in both cases so may not reflect real improvements. There were significant differences between white and black fathers in these models, however, indicating that black fathers did not share in even these cautiously optimistic findings.

DISCUSSION

This study considered whether policies defining certain uses of criminal records as employment discrimination were associated with better employment outcomes. Drawing on prior research, two competing hypotheses were posed. First, these policies could improve the likelihood that men with records found work by opening employment opportunities and removing barriers. Second, these

policies may be unable to overcome existing racial disparities or may even exacerbate racial discrimination in employment. Overall, findings were consistent with the second hypothesis but not the first. While data limitations mean this study cannot establish causation, these findings nevertheless contribute to a growing body of research warning that policies regulating the use of records without addressing underlying issues of racism in the criminal justice system and labor market may be ineffectual or even exacerbate existing disparities.

Contrary to the first hypothesis, fathers with records in the most protective policy regimes were less likely to find work than either their counterparts in less regulated states or those without records. Consistent with the second hypothesis, the negative associations between policies and employment appear to be driven by the experiences of black fathers. While white fathers with records faced some employment disadvantages, particularly if they had been incarcerated, their state context was largely unrelated to their ability to find work. Reflecting systemic racial disparities in both the criminal justice system and labor market, the employment of black fathers was linked as closely to the policy and economic context of the state in which they lived as to their own attributes. In the present study, this manifests in fathers reporting worse employment outcomes in states with more restrictions on the use of records, even if they had no criminal record themselves.

These findings may reflect a failure of these policies to fully address historical disparities rather than an exacerbation of discrimination. Employment discrimination policies, like those addressing racial discrimination, are typically enforced through cumbersome and often expensive legal action (Jacobs 2015). Individuals with records have particularly limited power to ensure compliance with the existing laws due to issues of awareness, resources, and perceptions of risk. People with records are more likely to engage in system avoidance (Brayne 2014) and tend to have more limited economic resources (Looney and Turner 2018; The Pew Charitable Trusts 2010). A qualitative study conducted in Wisconsin suggested applicants with records may also have little awareness of their rights. Hlavka and colleagues found job seekers with felony records reported experiencing widespread and often blatant discrimination (2015). Despite being among the most protective states in the present study, even applicants who framed their difficulty finding work as resulting from structural discrimination perceived themselves as having no recourse to push back against an unfair system (Hlavka et al. 2015). Thus, even if these findings reflect reverse causation, it is reasonable to conclude that putting employment discrimination policies on the books may be insufficient to overcome existing patterns of discrimination.

These findings are also consistent with the stronger interpretation that record discrimination policies exacerbate employment disparities by increasing racial discrimination. Similar patterns of racial discrimination have been found in causal studies of “ban the box” policies (Agan and Starr 2018; Doleac and Hansen 2020), restrictions on employer use of background checks (Bushway 2004; Holzer et al. 2006), and the availability of criminal records (Dwyer Emory et al. 2020; Finlay 2009). The main explanations presented in this research rest on racial bias in employer behavior and structural racism rather than the qualifications of individual applicants. The theory of statistical discrimination suggests that employers respond to restrictions on their ability to use criminal record information by intentionally using race as a proxy for record status (see Doleac and Hansen 2020). Regulating the use of records does not address the underlying reasons employers may seek to avoid hiring individuals with records, such as assumptions about employee risk (Bushway et al. 2007; Lageson et al. 2015; Sugie et al. 2020) or legal liability for employee behavior (Jacobs 2015; Lageson et al. 2015). Employers thus act on these unaddressed concerns by disregarding or circumventing policies intended to prevent criminal record discrimination, which may be particularly easy if enforcement is weak. A softer version of this theory posits that employers may merely default to racial stereotypes of criminality in the absence of evidence to the contrary (see Agan and Starr 2018), with similarly disparate results for black applicants. While this study is not a causal test of employer discrimination and cannot capture employer intent, the pattern of results is remarkably similar to previous studies establishing these mechanisms.

The present study adds to research demonstrating the significant overlap between discrimination on the basis of race and criminal records and indicates that policies attempting to decouple these issues may fall short or even exacerbate the problem. That is not to say that all regulation is doomed to failure, however. Approaches such as reforming criminal records to ensure they are accurate and relevant indicators of risk may balance employer concerns with the rights of individuals with past criminal justice involvement. Errors in criminal records are common but difficult to correct or expunge (Jacobs 2015:7; Lageson 2016), a problem compounded by the distribution of criminal records by private companies (Jacobs 2015:5; Lageson 2016). Even if records are correct, they are not sufficient indicators of future behavior on their own, despite employer assumptions to the contrary (Kurlychek et al. 2007; Lundquist et al. 2018; Sugie et al. 2020).

Ultimately, however, the mechanisms indicated by this study point to a flaw in the enforcement of antidiscrimination policies more broadly. The EEOC explicitly linked racial and record discrimination by stating that exclusions on the basis of records have a disproportionate impact on racial minorities (EEOC 1987, 2012). Despite federal and state protections, however, this study demonstrates that discrimination persists on both fronts. Active enforcement of existing antidiscrimination laws regulating the use of both race and criminal records could thus improve both individual outcomes and the effectiveness of policies such as those considered here (Spaulding et al. 2015; Stacy and Cohen 2017). While the present study was unable to capture variation in enforcement, this is a promising area for future research into how policies can shape employment outcomes.

Several data limitations restrict the generalizability of the findings. First, self-reported contact with the criminal justice system imperfectly approximates a criminal record. Self-reported measures may undercount contact by up to 20 percent (Geller, Jaeger, and Pace 2016) due to both social desirability bias and the ambiguity surrounding many criminal justice interactions. In practice, the line between a police stop and an arrest, or a charge and a conviction via plea is often opaque (Helm and Reyna 2017). Data also lack relevant details for the application of the policies studied. Specifically, data do not reliably capture offense type, and do not distinguish between felonies and misdemeanors, juvenile and adult offenses, or active and expunged records. Second, the available measure of employment is relatively narrow. Capturing employment in the week prior to the survey minimizes the risk of measurement error due to fathers' incarceration or incapacitation, but omits other relevant constructs such as underemployment, chronic unemployment, or earnings. Finally, FF includes only fathers of children born in cities in the early 2000s. While no studies have explicitly compared fathers and non-fathers with criminal justice contact, studies of incarcerated men suggest the majority have minor children (Glaze and Maruschak 2010). Having a child, however, can be a significant turning point in men's lives that increases the likelihood that they desist from crime (Edin, Nelson, and Paranal 2004; Sampson and Laub 1993). It is thus unclear to what extent these findings may generalize to all men, particularly those of different ages or who reside in rural areas.

The collateral consequences of criminal justice involvement for employment are serious, with far-reaching implications for racial inequality across generations. This study contributes to a growing body of literature warning that policies addressing record-based discrimination without considering the broader implications for racial discrimination may fail to mitigate either social problem. Despite the promise of broad policies protecting individuals with records from discrimination, these policies may fail to secure equal access to employment or even exacerbate existing racial inequality. Rather, the persistence of systemic racism in both the criminal justice systems and labor market of the United States necessitates effective and enforceable antidiscrimination policies to address the root causes of employment disparities.

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