

Redemption in the Face of Stale Criminal Records Used for Background Checks

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January 14, 2011

Partially supported by NIJ Grant No. 2007-IJ-CX-0041 and No. 2009-IJ-CX-0008.

Opinions or points of view expressed are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Motivation

- Technology has made background checking easy – and so very ubiquitous
 - Most large companies now do background checks
 - Statutes require background checks for many jobs and occupational licenses
- Criminal records are also ubiquitous
 - 14 million arrests a year
 - 81 million criminal records in state repositories
- As a result, many people can't get a job – all because of a crime that happened long ago
- Need to explore when relief from that prior mark of crime – “redemption” – is warranted

Recidivism

- Employers' unwillingness to hire people with criminal records stems from the concern about recidivism
 - Workplace violence, theft
 - Liability for negligent hiring
- Studies have consistently demonstrated that recidivism occurs relatively quickly
 - BJS studies (1997, 2002) on recidivism of prison releasees (felons)
 - 30% of released prisoners were re-arrested in the first six months
 - 44% within the first year
 - 68% within 3 years
- Little attention has been paid to the smaller population who stays arrest-free for a longer time
 - Recidivism studies usually involve short observation periods

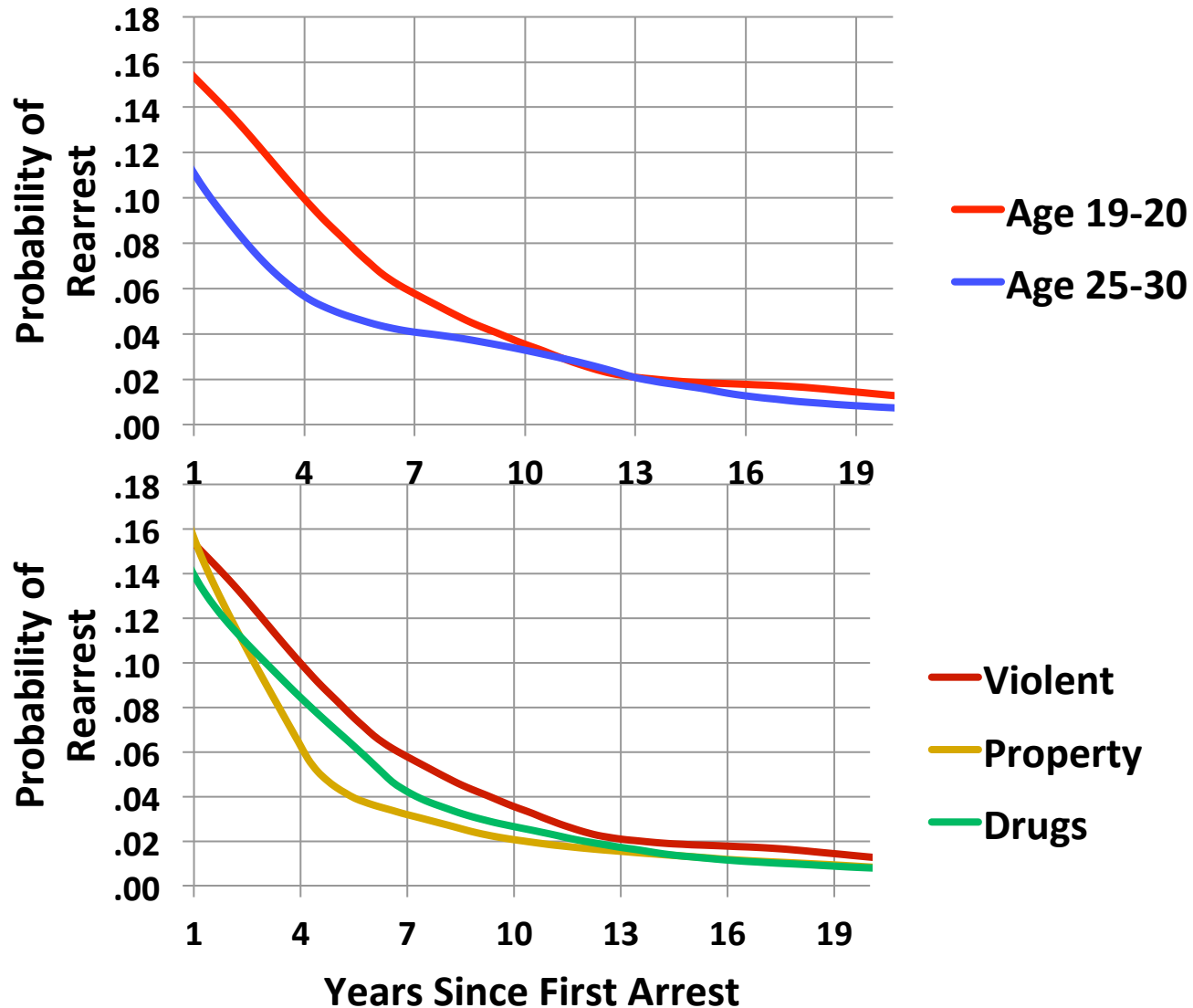
“Redemption”

- It is well established that recidivism probability declines with time clean after an arrest, conviction, or incarceration
- If a person with a criminal record remains crime-free sufficiently long, his risk becomes less than some appropriate comparison groups
 - That record is then “stale”
 - Need an empirical basis for establishing appropriate redemption times
- Now have some strong empirical estimates of when redemption is appropriate - “redemption time”

Research Approach

- **Data:** Arrest history records (rap sheets) from NY state criminal-history repository (DCJS)
 - All individuals who were arrested for the first time in **NY** as adults in **1980** ($\approx 88,000$)
 - Follow-up time > 25 years
 - Focus on a subset of arrestees who were convicted
 - Age at first arrest: **A1** = 19-20, 25-30
 - Crime type of first arrest: **C1** = Violent vs. Property vs. Drug
- **Measure of Recidivism Risk:** Hazard, $h(t)$
 - Probability of a new arrest at any particular time t for those who stayed clean until t
 - New arrest here could be for any crime type (**C2** = any)
 - Also considered concern about specific subsequent crime types ⁵

$h(t)$: Probability of a New Arrest



Two Comparison Criteria

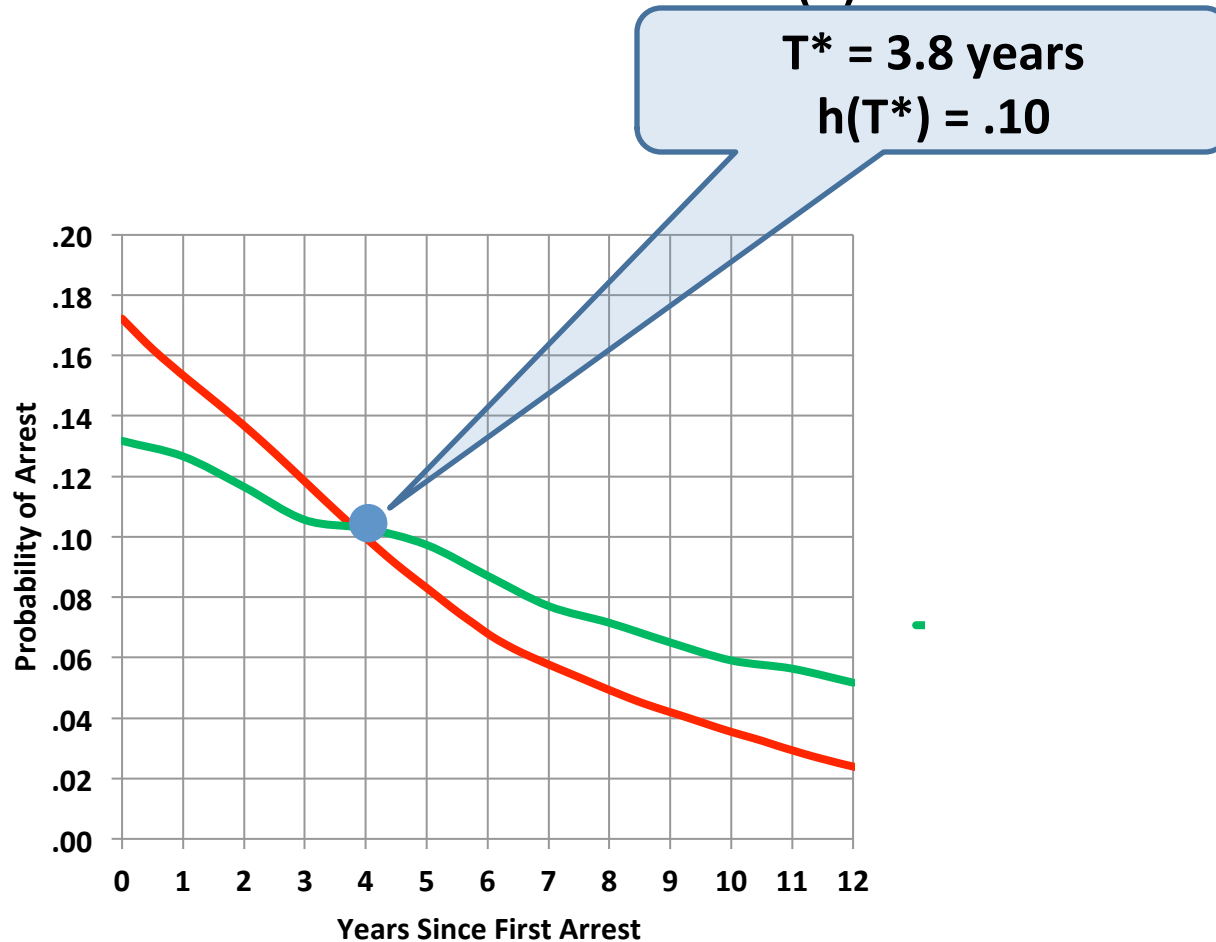
- Compare hazard of those with a prior to
 - 1) Risk of arrest for the **general population** of the same age: T^*
 - 2) Risk of arrest for **those with no prior arrest**: T^{**}

General Population

- Comparison based on the Age-Crime Curve:
 - $A(a)$ = rate of arrest at age a in the general pop'n
 - Calculated from :
 - Arrests by age (UCR)/Base pop'n by age (Census)
 - Redemption occurs when $h(t)$ crosses age-crime curve
- T^* = Time to redemption

T*: Comparison to General Population of the Same Age

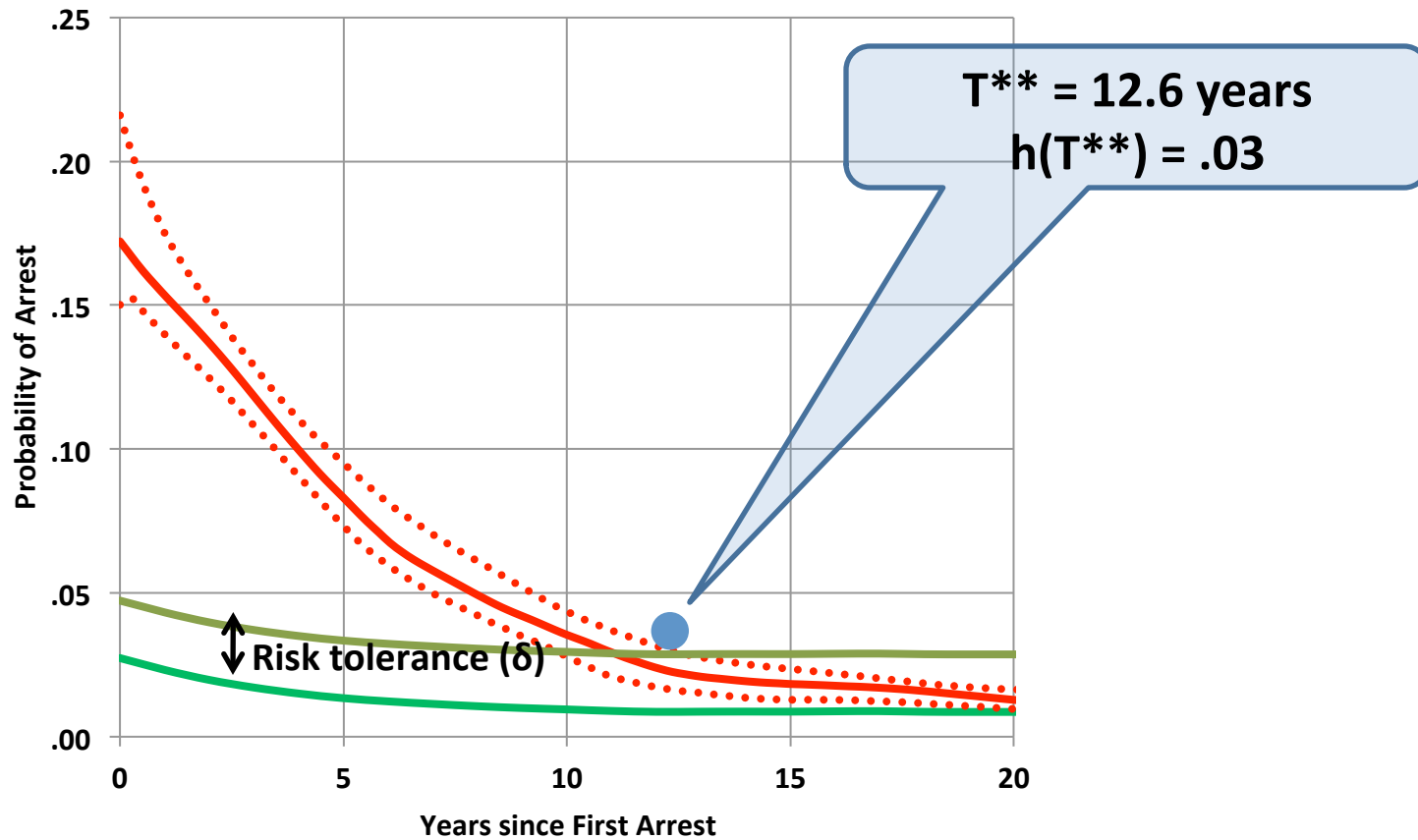
- T* is at the intersection of h(t) and the A-C curve



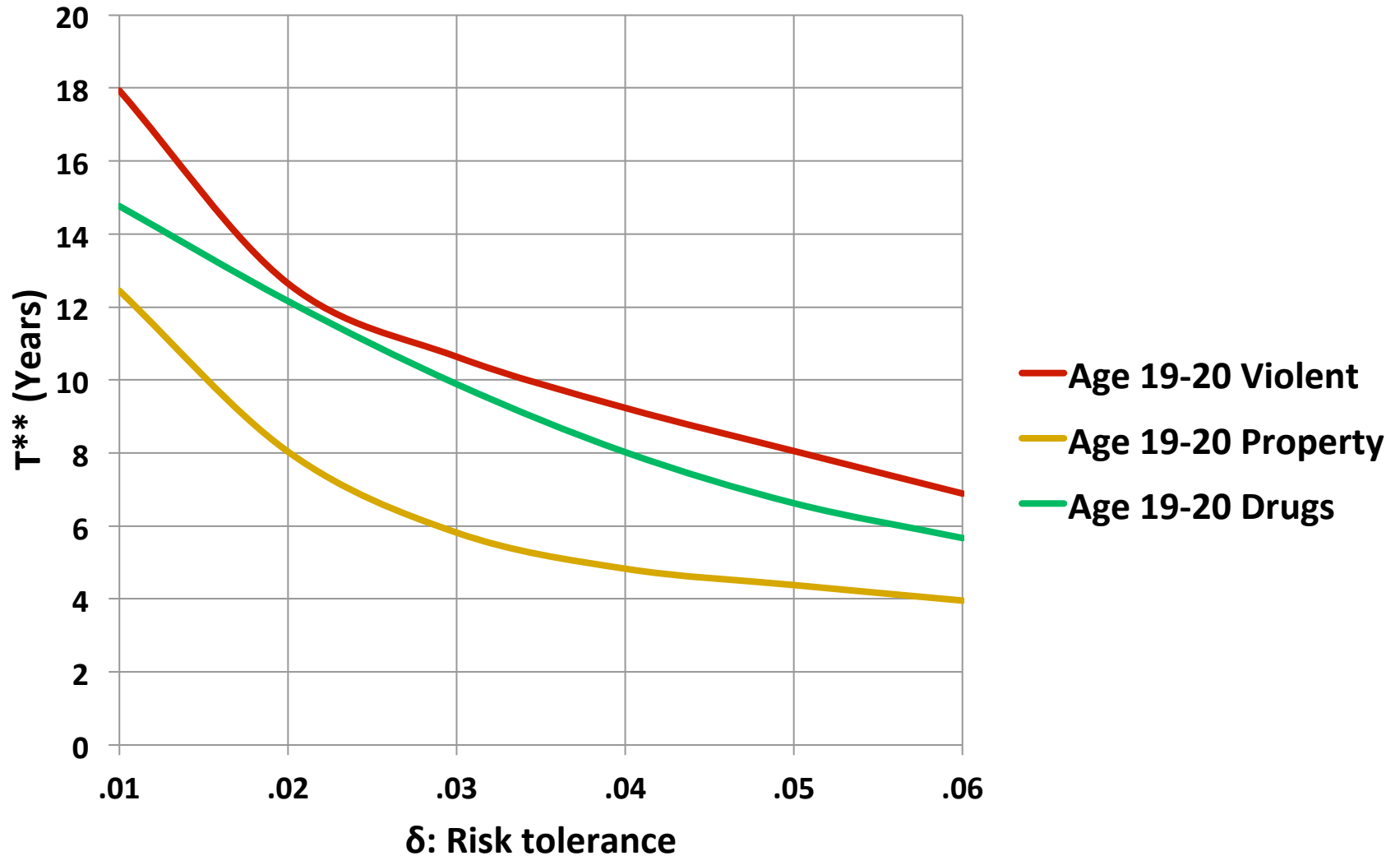
T** : Comparison to the Never Arrested

- Comparison between the risk for those *with* a prior ($h(t)$) vs. those *without* a prior arrest (*the never arrested*)
- Simple intersection method used for T^* won't work if *the never arrested* is consistently below $h(t)$
- Estimate time to redemption, T^{**} , when $h(t)$ and *the never arrested* are “close enough”
 - Introduce a risk tolerance, δ
 - How much extra risk an employer is willing to tolerate – perhaps to get a better employee
 - Also consider statistical variation (confidence interval) around $h(t)$

Estimation of T^{**}



Tradeoff of Risk Tolerance (δ) and T^{**}



Robustness of Estimates

- We started with data on first arrest in NY in 1980
- We compared the results:
 - With first arrests in NY in 1985 and 1990
 - With first arrests in 1980 in FL and IL
- It turns out that the recidivism patterns are different in the first five years
 - But impressively close in later years
 - Most recidivism occurs in the first few years, but those who survive that early period seem much more similar across time and place
- Redemption time estimates are reasonably robust to different sampling years and states

Employers' Concerns about Specific Crime Types (C_2)

- Employers differ in the crime types they care more about
 - Shop owners or banks care more about property crimes
 - Those dealing with vulnerable populations care more about violence
- EEOC requires employers to demonstrate “*business necessity*” to justify the use of criminal records
 - The future concern based on the prior record should be job related
- For any C_2 of concern:
 - Can estimate redemption times based on info on C_1

Redemption Policies

- Employers
 - Inform employers of the low relevance of stale records
 - Enact statutes to protect employers from “due-diligence liability” claims – trade-off if they accept reasonable δ
 - Redemption time should not interfere with reentry support – Employment should be facilitated as soon as possible
 - Especially with employment situations that are risk tolerant (e.g., construction)
 - Other information should be used to encourage employment (e.g., positive work history, experience with training and placement agencies)
- Repositories & commercial vendors
 - State repositories could withhold stale records
 - Could seal (or perhaps expunge) sufficiently stale records

Conclusions

- Recidivism risk declines with time clean
 - Important consideration to many employers
- Redemption times (T^* and T^{**}) identify key time points when the criminal record loses its value in predicting risk
 - Strong empirical estimates of redemption times
 - Based on a large set of official data
 - Tested for robustness over time and across states
 - Other researchers have produced similar estimates (Kurlychek, Brame, and Bushway, 2006, 2007)
 - Provides a basis for responsiveness to user criteria in assessing redemption
 - Redemption times can be generated based on the specifications (A_1 , C_1 , δ , C_2 , etc.) set by the users
 - Avoids inappropriately denying jobs to people with stale records

Thank you!

Questions & Suggestions?