

THE CRIMINAL RECORD: A PURSUIT OF A CLEAN RECORD FROM A
PHENOMENOLOGICAL PERSPECTIVE

The Criminal Record: The Pursuit of a Clean Record from a Phenomenological Perspective

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Purpose Statement:

The purpose of this phenomenological study will be to describe and interpret the lived experiences of a group of former offenders finding legal employment after the sealing of their criminal record under New York State new record closure law. This study will be examined using the disability inquiry perspective lens; the focus will be on former offenders and their lived experience within the labor market. Through the process of phenomenological reflection and interviews, former offenders will share their stories and memories of social and economic exclusion as a result of their criminal record and the experience after a clean record.

After an extensive literature review of this topic, there seems to be an uncharted investigation or a gap in the research regarding the experiences of former offenders after overcoming a criminal record. There are excellent in-depth research and studies on the need for ex-offenders to have their record clean and research on ex-offenders who have petitioned the court to have their records sealed or expunged but no research on the aftermath of the phenomenon.

Research Questions

The research questions of this investigation will help establish the agenda for this study and further drive the inquiry. In this study, the following two research questions are posed: (1) What are the lived experiences of former offenders who have had their criminal record sealed? Lived meaning refers to how a person perceived and understand critical aspects of the world based on their experiences. (2) How do the lived meaning of having their criminal record sealed influences ex-offenders transition to the labor market?

Literature Review:

Incarceration Population

The United States of America has one of the highest rates of incarceration when compared to other countries around the world. When compared to other western nations like France, the United Kingdom, Germany and Italy, the United States incarceration rate is between four and seven times higher (Hartney, 2016). The Bureau of Justice Statistics classifies and statistically tracks incarceration by inmates in local municipal jails and prisoners under the authority of state and federal correctional jurisdiction. Jails are facilities that are locally administered and typically house inmates that are pending arraignment, trial or sentencing and inmates sentenced to one year or less. In 2016, 10.6 million inmates spent time in United States jails, resulting in a 229 inmate per 100,000 U.S. resident according to statistician Zhen Zeng (Bureau of Justice Statistics, 2018b).

Prisons incarceration rates refer to the counts of prisoners with sentences longer than one year under the authority and supervision of state or federal correction jurisdiction. Statistician E. Ann Carson, Ph.D. reports that 1,505,400 prisoners made up the incarceration rate under state and federal jurisdiction in the United States in 2016 (Bureau of Justice Statistics, 2018a). The 2016 imprisonment rate as noted by Carson, was 450 prisoners per 100,000 resident (Bureau of Justice Statistics, 2018a). According to the American Psychological Association (2014), the United States of America makes up about five percent of the world's population but is responsible for nearly 25 percent of the world's incarceration population.

With such a larger incarceration population, the United States also has a significant number of prisoners released each year. An estimated nine million inmates return to communities each year from incarceration. While a projected 95 percent of prisoners in state penitentiary will

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This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit more crimes and return to prison...America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life. (Para. 63)

Life After Incarceration

A number of reports utter the sentiments of President George H.W. Bush that inmates are more likely to re-offend if they do not have access to natural and basic needs. While over 600,000 inmates are released from prison each year, an estimated 50 percent face reincarcerated within one year of release and 70 percent within three years (Ross & Richards, 2009). The stigma associated with incarceration affects those reentering society abilities to find sustainable housing, attain reliable transportation, affordable healthcare, and adequate employment (Visher & Travis, 2011; Visher, Debus-Sherrill & Yahner, 2011). This indelible stigma of incarceration ranks ex-offender low on the job candidates list due to trustworthiness, potential employer legal and financial liability and the ability for offenders to hold some professional licenses (Bushway, 2004; The Pew Charitable Trusts, 2010). Some states have licensure restrictions for some fields and restrict candidates with a criminal record from attaining employment as contractors, barbers, ambulance drivers, and healthcare and childcare workers (Ispe-Landa & Loeffler, 2016). Visher et al. (2011), goes on to report that often when ex-offenders do find employment, they are

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Ex-offender and the Labor Market

The United States labor market is affected by the one in thirty-three adult Americans under some control of the criminal justice system either supervised probation or parole or behind bars (The Pew Charitable Trusts, 2010). The incarcerated inmates are not available to work to contribute to the economy. While those who are on probation, parole, have felony convictions, a misdemeanor, or even an arrest record are significantly less employable. Some of the enduring and significant economic repercussions of incarceration include former inmates working fewer days in a year, earning less money, resulting in limited upward mobility (The Pew Charitable Trusts, 2010). The costs and repercussion of incarceration are not just felt by the offender but by the offenders' family, community and have a lasting echo for generations to come. According to Schmitt and Warner (2010), time spent incarcerated has an independent impact on ex-offenders employment perspective. Furthermore, the high levels of incarceration negatively affected the United States economy by resulting in the loss of between 1.5 and 1.7 million workers. In terms of employment rate, there is between a .8 and .9 percent reduction or between 57 and 65 billion dollars (Schmitt & Warner 2010). There is an 11 percent reduction in hourly wages earnings for those who have served time resulting in a 40 percent reduction annually (The Pew Charitable Trusts, 2010).

Technology and the Criminal Record

In the past individuals with a criminal record from arrest without a conviction, a misdemeanor or a felony conviction could avoid some of the stigma associated with their record of arrest and prosecution or RAP sheet. Avoiding the stigma could be done by not disclosing the

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criminal history as it would be unlikely that a third party would reveal the RAP sheet.

Furthermore, contact with the justice system was infrequently accessed as they were kept local (Ispa-Landa & Loeffler, 2016). Today, job applicants face an inquiry about their criminal history on job applications, followed up by verification of the information with low-cost background checks. Failure to disclose criminal history often result in the applicant being perceived as lying and not receiving the job. Ispa-Landa and Leoffler (2016), report that starting in the late 1990's searchable databases became available as criminal justice agencies created online databases. These databases make it easy to access information such as parole release data; daily inmate lookup, court dockets, and arrest logs for anyone with internet access (Ispa-Landa & Loeffler, 2016; Holzer et al., 2004). An example of an online database that is free and accessible to anyone interested in called Mobile Patrol. Mobile Patrol is an online application that provides up-to-date arrest data including a mugshot, date of arrest, charges, bail and release date for people in viewers local community.

Expungement and Sealing

Gradually policymakers, researchers, and members of the legal community are moving to address the burden linked to a criminal record that is placed on individuals reentering society (Ispa-Landa & Loeffler, 2016; Maruna, 2011; Collins & Shapiro, n.d). Two legal mechanisms or record closing laws that are used to allow individuals to ease the burden of a criminal record are expungement and sealing. Expungement is a court-ordered process or practice of erasing legal records of arrest or criminal convictions; an expunged record is inaccessible to government officials and police. Sealing a criminal record refers to removing public access to case-related information while allowing specific government entity or police/arresting agency to access the data (Collins & Shapiro, n.d; Ispa-Landa & Loeffler, 2016).

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The practice of expungement and sealing of criminal records started in the 1940's as an effort to give juveniles motivation to reform and complete the juvenile justice system rehabilitation process. Today, expungement and sealing is a widespread practice across most of the United States. All but nine states and the District of Columbia practice some form of expungement or record sealing. Each state and the federal government carry different eligibility criteria to utilize sealing or expunging a record such as waiting periods, type of charges, number of charges, prior record, cost, and accessibility (Love, Gaines & Osborne, 2018). Example of the broad range the of closure laws are the states of Illinois and California. In Illinois, only a few severe felonies are not able to be sealed. Sealing eligible crimes include but are not limited to trespassing, property damage, theft, possession of marijuana, disorderly conduct, resisting arrest, shoplifting, weapon possession, gambling, prostitution, participation in mob activities and other crime that does not include animal cruelty, assault, and sexual violence. The prior record is not considered in the application process in Illinois and the waiting period is a standard three years. California has a more restricted law, which allows just misdemeanors of an underage first-time offender to be sealed and certain marijuana-related crimes (Love et al., 2018). Conviction record are applicable to be sealed in 18 states, some of the 18 jurisdictions also allow first time offenders, convictions for nonviolent charges and misdemeanors to be expunged (Isapa-Landa & Loeffler, 2016). The remaining 23 states have more restrictive sealing laws (Love et al., 2018).

New York State Sealing Law

New York State has a new sealing law which is beneficial to explore as this research will take place in the great state of New York. Effective October 2017, New York first ever adult conviction sealing law went into effect. The law allows New Yorkers to seal up to two convictions, with only one being a felony. The only crimes that cannot be sealed are class A

The Criminal Record: The Pursuit of a Clean Record from a Phenomenological Perspective crimes, violent felonies, and sex offenses. There is also a ten year waiting period from the completion of sentencing before a record can be sealed. All charges that take place in one criminal act can be sealed as one crime no matter the number of charges (Love et al., 2018; Jacobs, 2017). New York also offers a conditional record sealing for certain drug-related offenses. A conditionally sealed record involves the sealing of up to three misdemeanor convictions after the completion of a drug diversion program (Love et al., 2018). An estimated 600,000 New Yorkers could be eligible to take advantage of the new law. Jacobs (2017), reports that the Office of Court Administration in New York determined that 300,000 New Yorkers has a single misdemeanor over ten years old.

Opposition to Clean Record

Steven Raphael (2006), propose there are potential unintended consequences of having ex-offenders record wiped clean resulting in the criminal history being unavailable to potential employers. With limited access to criminal history, employers may engage in other imperfect and indirect screening practices such as attempting to identifying ex-offender status based on age, gender, race, where candidates are from, education, use of public assistance, and gaps in employment history (Raphael, 2006; Stoll; 2009). According to Raphael (2006), “At worst, employers may systematically discriminate against workers from groups that they perceive to have a high propensity to offend.” For example, employers may assume that one group of people are more prone to criminal behavior, which may result in that group of people being excluded from the hiring process. This practice is called statistical discrimination and may have a substantial adverse impact on minority men without criminal records in the labor market (Raphael, 2006; Stoll; 2009).

Methodology

About the Author

The author of this research proposal chosen to study the lived experiences of former incarcerated after getting criminal record seal because the author is intrigued by the criminal justice system and labor relations within the United States. The author has a Bachelor's of Science Degree in Criminal Justice with a concentration in Intelligence Analysis and a Master's Degree in Public Administration with a concentration in Ethical Leadership. Apart from the author's formal education in criminal justice, the writer also has an extensive career in the field. The author's criminal justice work experience includes an internship with the Erie County District Attorney's Office, four years of employment as a residential and non-secure detention counselor at a juvenile justice detention center. This writer also labored for twenty months as a mental health care manager providing services to clients with a varying level of involvement in the criminal justice system.

Currently, this author occupation is a labor service representative at the New York State Department of Labor. As a labor service representative, this author must connect job seekers with employers, enforce state labor laws, and protect workers' rights. This author chose to investigate the lived experiences of former inmates and labor relations to build literary knowledge of the two fields and in the future, contribute to research that will improve these areas.

The researcher's father had a brief history with the criminal justice system. Over twenty-five years ago, he was arrested as a result of an altercation with a coworker. This writer's father pleaded guilty to misdemeanor assault due to an extenuating circumstance. Twenty plus years later, this writer's father discusses how he would like to have the encounter with the criminal

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justice system sealed because of the stigma associated with being arrested and having a criminal record. This writer has preunderstandings of the criminal justice system based on the academic history, employment the field and the involvement of the writer's father in the system. This writer will use bracketing and reflective practices to deal with the subjectivity and ensure transparency and trustworthiness through the data collection and interpretation process (Starks & Trinidad, 2007).

Philosophical Assumptions

This research will embrace the ideas of multiple realities or an ontological viewpoint. A phenomenological approach will be used to compile and report the different experiences and perspectives of ex-offenders. Actual words of the different subject will be used to convey different perspectives while forming similar themes regarding the lived experiences and the nature and characteristics of their realities.

As a means of minimize the separateness and objective distance between this researcher and the study participants, the data collection process will take place in the community where the subject live or work. The use of this epistemological assumption will require the researcher to get to know the subjects, what information they know first hand, and to allow the information gathered to be based on the views of the individual subjects. Conducting data collection in a familiar community to the subject will allow for a better contextual understanding of what the subject is saying and gain knowledge through the subjective experiences of people (Creswell & Poth, 2018).

The axiological aimed for this research is to provide a voice to the marginalized groups within the criminal justice system. Ex-offenders reentering community after incarceration will lack specific power and status including political, social and economical. The values that have

The Criminal Record: The Pursuit of a Clean Record from a Phenomenological Perspective shaped this researcher's interpretation and narrative regarding life after involvement in the criminal justice system is years of working in the field, and the writer's family involvement in the system. This researcher will be subjective to this investigation although separation from the topic is not possible because of existing biases (Creswell, 2018).

The methodological assumption of this research is that the research is living and breathing. During the data collection process and experiences in the field, the research questions are subjected to refocusing. By studying the topic within the context and using inductive logic, information gathered during data collection will be used to frame the theories used to support the findings. According to Creswell (2018), "During the data analysis, the researcher follows a path of analyzing the data to develop an increasing detail knowledge of the topic being studied" (p.21).

The interpretivism framework will guide this research. A flexible and more personal research structure will be undertaken to capture the meaning of human interaction during this phenomenological study. Although this writer is entering the field with previous knowledge regarding the subject matter, the information this writer has is not enough to develop a fix research design. This writer will be open to new knowledge during the study and will allow the research participants to be the experts and guide the understanding of this researcher.

Site, Population, and Sample

The anticipated site for the data collection phase of this research is a public location such a coffee shop or community center that is easily accessible and convenient for the subjects. Every effort will be made to meet with study participant in an area they are familiar and comfortable with, while still maintaining a sense of privacy. The coffee shop or community

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The population this researcher is seeking to participate in the study is both men and females with a history of criminal involvement but has taken advantage of getting their criminal record sealed under New York State criminal sealing law. Level of criminal involvement or offense may range from arrest, violations, misdemeanor or felonies (Jacobs, 2015). Age of target population will be 18 years and older but young enough to still be in the workforce. Target population's race should be representative of the incarceration population in New York State. According to Ashley Nellis (2016), New York State incarceration rate by race per 100,000 population for both male and female offenders are as follows; White 112, African American 896 and Hispanic 351.

This research will use purposeful sampling to reach the desired population. Purposeful sampling will intentionally sample a group of people to best inform the researcher about record sealing in New York. This researcher will reach out to gatekeepers such as The Legal Aid Society that has launched an endeavor called Cased Closed which help New Yorkers seal their convictions. The project has conducted community outreach to bring awareness to residence rights and is providing pro bono assistance to qualified applicants. Partnering with such an agency can further the agency goal of advocating for broader legal reform and expungement laws in New York (The legal aid society, n.d.).

Method

The phenomenological approach was chosen for this research study, which will focus on the lived experience and the meaning attached to the lives of ex-offenders who have had their criminal record sealed in New York State. Exploring this lived experience will allow participants

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To validate the information for this research, the investigator will implement strategies for validation in qualitative research such as corroborating evidence through triangulation of multiple source data (Creswell & Poth, 2018). The research will take into account multiple data sources for methodological triangulation such as asking open-ended interviews question, keeping records of observation in field notes, and conducting primary and secondary research at different times and locations to strengthen research. Triangulation of theory is another means of strengthening the investigation by using more than one theoretical approach to supporting and interpreting the data (Bekhet & Zauszniewski, 2012; Creswell & Poth, 2018).

Data Collection

The data collection process will include a sixty-minute long interview consisting of semi-structured open-ended questions. The designs of the questions will allow to elicit participants experiences and encouraging them to tell their stories. The semi-structured design allows room for the researcher to probe for better understanding of the information begin shared. Questions will pertain to perceptions and feelings regarding interaction with the criminal justice system, employment, access to resources and opportunity for advancement. The creating of the question is based on information gathered from the empirical literature on prisoner reentry and record

The Criminal Record: The Pursuit of a Clean Record from a Phenomenological Perspective expungement. Before questions are asked of participants, they will undergo a pilot or mock interviewing and then refinement. The sixty-minute interviews will be audiotaped and transcribed verbatim. The author will also produce field notes to capture observation and the nature of the environment during the interviews.

Data Analysis

Data analysis will begin by researcher reading all transcripts multiple time to ensure familiarity and understanding of the information. Reading the transcripts multiple time will keep participant's stories clear, recent and fresh in researcher's mind (Arditti & Pakman, 2011). This researcher intends to use the memoing process to gather and write down ideas about evolving theories to discover patterns (Creswell & Poth, 2018). Memoing will continue through the data analysis process until no new patterns or themes are found. The creation of provisional codes through open coding will occur to capture broad themes related to the experiences of the participants with the criminal record and employment. The researcher will transition the broad theme using axial coding. A visual model will be produced that will identify the central phenomenon and explore causal conditions (Creswell & Poth, 2018). The research will also use some data analysis tools such as Aquad or Nvivo.

Study Limitations

There is some possible data limitation in this proposed study. One possible study limitation includes accessibility of study participants. Criminal record sealing is a new law in New York, and the writer may have difficulty locating and identifying study participants. There are little or no incentives for participants to want to participate in this study. Other limitations may include ethical challenges and lack of generalizability of the research to a large population.

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The researcher is also new to research and runs the risk of making an error in any section of the research process, including biases regarding the subject matter.

Ethical Considerations

The potential risk to participants included transitory feelings of guilt, stress, embarrassment, and loss of self-esteem. These feelings may arise during the interview process from thinking or talking about attitudes and behavior related to criminal experiences. Risks will be minimized by following ethical research procedures and informing and ensuring participants understand what the study entails. Before the interview beginning, participants will be informed that they have the option not to answer any question that makes them feel uncomfortable or end the interview at any time. The researcher will also be able to provide participants with a list of services that can assist with managing emotional risk. Each participant will sign an informed consent document that will be reviewed and a copy given to subjects.

Summary of Review

With the United States significant incarceration population and subsequently substantial ex-offender population, measures need to be taken to aid this population in overcoming the disabling difficulties of reentering society. Ex-offenders face social and economic challenges as a result of their criminal history. The challenges faced by ex-offenders also impact the U.S. economy and labor market. Technology has allowed for criminal history of an offender to be readily available to a potential employer, increasing the challenges of reintegration. Using a motivation technique created by the juvenile justice system, many states have implemented expunging and sealing criminal record to give ex-offenders who have served their time a clean slate. The ability to expunge or seal a record very broadly from state to state, but all but nine state participate in these practices. With New York being the newest jurisdiction to implement a

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sealing law, valuable information can be gain from studying the lived experiences of those who have taken advantage of the law. Opposition to expungement and sealing identifies statistical discrimination as an adverse effect of record closing laws.

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