

Criminal Records as Predictors of Harm: Questioning Social Work's Reliance on Records for Gatekeeping

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Abstract: *The National Association of Social Work Code of Ethics requires advocacy on behalf of groups experiencing oppression, and yet it can be difficult to recognize when the oppression is emanating from the profession itself. Social work has enacted numerous barriers to entry for people with criminal records, a group that disproportionately includes people who are poor, Black, disabled, and or LGBTQ+. While previous articles have examined the role of criminal records in the social work admission process, scholars have not comprehensively examined the role criminal records play throughout the career of a social worker. This article provides an overview of how records are used in higher education admissions, licensing, and employment, highlighting the limitations of criminal records as future indicators of harm. We argue that the broad use of criminal record checks not only harms marginalized individuals with records but is a disservice to clients who would benefit from the unique strengths derived from their social work training and lived experience. We conclude with future policy directions informed by abolitionist practices including non-reformist reforms that can reduce barriers to entry into the profession and build upon the strengths of people with lived experience in the criminal legal system.*

Keywords: Criminal justice, gatekeeping, admission, collateral consequences, harm

In 1915, Abraham Flexner raised fundamental existential issues for the profession of social work by questioning whether it is a legitimate discipline. In the years that have followed, social work has responded to Flexner's challenge by instituting several gatekeeping and monitoring processes, seeking to develop rigor, and the ability to provide the best services to vulnerable clients (Hanesworth, 2017; Prescott, 2019). California was the first State to register social workers in 1945 (California Board of Behavioral Health Services, 2022), laying the foundation for what has become the modern licensure process, while the Council on Social Work Education (CSWE) was founded in 1952 to monitor the educational pathway to becoming a social worker (CSWE, 2021). However, the discipline has never quite shed the existential angst introduced by Flexner's challenge, with Sowbel (2012) arguing that gatekeeping is a "fundamental ethical obligation" (p. 27)

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of the discipline, and that selectivity measures should be made even more rigorous. Gatekeeping mechanisms have been established at all levels of the social work discipline, from academic admissions to professional licensure and accreditation (Bramley et al., 2021).

Criminal records have emerged as an important litmus test for fitness to practice social work and stand as significant barriers to entering educational programs and securing licensure (Curran et al., 2020; Custer, 2016). National Association of Social Workers (NASW, 2021b) membership is immediately revoked on conviction of a felony. However, social movements like Black Lives Matter have turned the spotlight on the structural racism that results in such convictions, with Black and marginalized communities being significantly more likely to be burdened with criminal records (Bennett, 2018; Blume & Helm, 2014; Davis, 2017; James, 2021). Social workers have been on the front lines of some of these movements and have increasingly begun to explore abolitionist orientations in their practice settings (Richie & Martensen, 2020). However, despite some efforts to reform the discipline's relationship with the carceral landscape, there is a noticeable absence of scholarship surrounding the application of abolitionist frameworks to institutional gatekeeping processes within the field. Addressing this gap in the literature, we re-envision inclusion in the social work profession by exploring: (a) the implications of a carceral orientation to disciplinary gatekeeping in social work, (b) the need for an abolitionist framework to include marginalized communities, and (c) solutions to instantiate such a framework for the discipline.

The Carceral Landscape and Gatekeeping

The U.S. has the largest incarcerated population of any nation in history, with one in three U.S. Americans burdened with a criminal record (Vallas & Dietrich, 2014). While Blacks comprise 14% of the US population, they represent 38% of the US prison system (Bureau of Prisons, 2021; US Census Bureau, 2021). Moreover, people who identify as gay, lesbian, bisexual, transgender, or queer (LGBTQ+) are three times more likely to be incarcerated as those who identify as cisgender and heterosexual, and about half of all Black trans people will experience incarceration at some point in their lives (Grant et al., 2011; Meyer et al., 2017). People in prison are also two and a half times more likely to have a disability than those in the general population (Bureau of Justice Statistics, 2019). Over the last half-century, with the criminal legal system's shift in focus from rehabilitation to punishment, criminal records have become increasingly utilized to restrict people from access to a range of opportunities such as housing, education and employment (American Bar Association, 2018; Corda, 2016; McTier et al., 2020). These forms of extra-legal punishments are known as collateral punishments. Across the U.S. there are currently over 40,000 restrictions placed on people with criminal records (Umez & Gaines, 2021). While the use of extra-legal penalties dates back to the concept of "civil death" imported from England to the colonies, they are of particular concern now given the large numbers of individuals with records (Pinard, 2010, p. 1214), the ease of accessibility of once private information, and the lasting impact of such sanctions (Corda, 2016).

In recent years, as a result of concerns over the growing prison population, disproportionate punishment of certain populations, and the use of collateral consequences to inhibit people's re-integration in society, groups across the political continuum have begun advocating for the restoration of rights and opportunities for people leaving jails and prisons. For example, in 2019 the American Legislative Exchange Council (ALEC), known for the writing and dissemination of conservative policies, wrote the Collateral Consequences Reduction Act as sample legislation for states to use to limit work-related regulations imposed on individuals with criminal records. The NASW names Criminal and Juvenile Justice as one of its five social justice priorities and The Grand Challenges for Social Work calls for an end to collateral consequences through "smart decarceration" (Epperson & Pettus-Davis, 2016, p. 4; NASW, 2021a). And yet, social work schools and employers continue to utilize criminal records resulting in the alienation of large numbers of individuals.

Gatekeeping in Social Work

The use of criminal background checks is part of a larger focus within the profession on gatekeeping, which has long been accepted as a necessary practice in ensuring academic program integrity, graduating competent social workers, and protecting clients from harm (Madden, 2000; Miller & Koerin, 1998; Sowbel, 2012; Zellmer & Knothe, 2011). Social work educators and practitioners take their gatekeeper roles seriously, implementing screening strategies across students' professional journeys, but at each stage of gatekeeping, social workers face complex ethical dilemmas, uncertainties, and contradictions. Despite pervasive inconsistencies, our commitment to screening out those deemed "unsuitable" remains intact (Sowbel, 2012, p. 31).

Across the academic and professional spectrum, there is a lack of empirical data and guidelines from accrediting bodies of social work informing effective techniques and criteria for predicting success or suitability for the profession (Curran et al., 2020; Madden, 2000; Miller & Koerin, 1998; Sowbel, 2012; Zellmer & Knothe, 2011). This is cause for concern. Given the ways that oppressions such as racism, classism, and ableism infiltrate all institutions, one must question whether it is even possible to create standardized metrics that do not inadvertently, or perhaps even intentionally, disproportionately exclude marginalized populations.

While gatekeeping is ostensibly about protecting clients from harm, social work professionals must also acknowledge the ways that gatekeeping intimately ties to concerns about the legitimacy of our profession. From the inception of social work, people like Abraham Flexner, in his famous 1915 speech to the National Conference of Charities and Corrections, have questioned whether social work is a real profession (Prescott, 2019). One way of authenticating disciplines is through specialized degree programs, which may selectivity as a means of separating professionals from the lower socioeconomic classes (Kunitz, 1974). Within the field of social work, processes of exclusion, such as licensing, accreditation, and gatekeeping have been used to elevate the profession's status and public image (Gushwa & Harriman, 2019; Weeden & Siegel, 2020; Vliek, 2018; Zellmer & Knothe, 2011). Because of this constant struggle for legitimacy, it is not always

clear when gatekeeping decisions are about prioritizing the safety and needs of clients or are driven by the goal of elevating the profession.

The Use of Criminal Records in Gatekeeping

While there are few standardized metrics used to assess a candidate's suitability for the profession or a specific social work position, criminal background checks, more than any other measure, have consistently been used for this screening purpose. The opportunity for individuals with criminal records to become social workers may technically exist, but those with records have to successfully pass "the gauntlet of supplemental requirements" (Rosenthal et al., 2015, p. 21) known to be barriers and deterrents to success. After Rosenthal and colleagues (2015) from the Center for Community Alternatives reported that merely having to respond to questions about criminal records potentially deterred over 60% of applicants with felonies from finishing their applications, many schools eliminated questions about criminal records (Curran et al., 2020). The US Department of Education (2016), through the *Beyond the Box* report, has urged schools to forgo these questions in admissions, citing potential violations of the Civil Rights Act of 1964, and yet these practices persist.

Surveys from universities over the past 20 years have found that close to 70% of colleges and universities, and perhaps not surprisingly nearly 65% of MSW programs which operate within these larger systems, ask questions about criminal backgrounds in their admissions processes. (Epperson et al., 2021; Weisman et al., 2010). In their research study, Curran et al. (2020) found field placement concerns to be the primary factor influencing MSW program's decisions to inquire about criminal record histories during the application process. Based on existing literature, it is unclear what scientific evidence informs screening policies and which procedures, if any, are most effective at enhancing public safety. In fact, researchers have highlighted the misalignment between recidivism research and dominant perceptions of social work professionals charged with decision-making and risk-assessment of individuals with criminal records (Brodersen et al., 2009; Curran et al., 2020).

Prior to the 1970s, prevailing practices supported the notion that widespread availability of criminal record histories was at odds with individuals' reintegration (Corda, 2016). A shift in focus from "rehabilitation" to prevention as well as over-criminalization contributed to a drastic increase in criminal background checks in employment settings (Corda, 2016; Jacobs, 2015). The emphasis on preventing harm occurred at the expense of the individual rights of those with criminal conviction records and in the absence of empirical data.

Jacobs (2015) states that courts have held that while employers have to do some due diligence in the hiring process, they are not necessarily required to conduct a background check. Presumably, agencies require background checks to reduce liability and potential harm. Research suggests that employers may also be concerned about the social implications of hiring candidates with records. Society for Human Resource Management (2018) found that while the majority of employees said they would not mind working with

someone with a record, managers, HR professionals, and other employees assumed that others would be less accepting than they were.

Requirements to apply for licensure have varied across states since their inception (Donaldson et al., 2014; Dyeson, 2004). Epperson and colleagues (2021) examined a sample of licensure policies across a range of locations in the U.S. and found that most states require background checks (Epperson et al., 2021) – with some states automatically denying those with certain convictions and others assessing on an individual basis (Association of Social Work Boards [ASWB], 2021). Resources have been developed to guide individuals interested in pursuing social work through expungement processes and navigating siloed systems, but the most frequently cited advice is to consult an attorney, presumably if one can afford to do so (Carnahan, n.d.). The need for an attorney to help someone with a record navigate the employment process reflects the complexities of the gatekeeping practices.

The Limits of Carceral Gatekeeping

Given the profession's over-reliance on criminal records as a means of gatekeeping, as well as the seeming lack of awareness among social workers regarding criminal justice research (Brodersen et al., 2009; Curran et al., 2020), it is important to examine the limitations of using criminal records in gatekeeping. Further, the fact that poor, Black, Brown, Disabled and/or LGBTQ+ people are more likely to have criminal records should cause social workers to question their content and meaning. It is also vital that we examine the recidivism data and research in our exploration of how criminal records are used.

Most employers conduct criminal background checks through private companies that use commercial databases with incomplete information (Corda, 2016; Department of Justice, 2006). These private search firms are huge businesses, generating nearly four billion dollars per year (Jacobs, 2015). Because of their profit motive, most private vendors do not spend the money to search criminal records in every state so they may miss criminal charges and convictions (Jacobs, 2015). Even state-run databases can have errors. For example, a review of New York's Division of Criminal Justice Services found that error rates on criminal histories exceeded 80% (Rosenthal et al., 2015). The Federal Bureau of Investigation maintains the most comprehensive database on criminal histories, known as the Interstate Identification Index (III), by pulling together information from all state databases. Still, the III database is missing final dispositions on up to 50% of its records (Department of Justice, 2006).

Missing data on criminal records means an employer might not know if charges were dropped or whether the person was found not guilty. Rates of conviction can range from 25-50% depending on the charges, and the conviction may be for a less serious crime than the initial charge (McElhattan, 2021). Without complete and correct data, employers may assume that arrest equals guilt. Even in cases where records are thorough, employers may have difficulty interpreting the details because of industry-specific abbreviations and jargon (Jacobs, 2015).

Other common problems with background checks include multiple entries for one arrest and cases of mistaken identity (Jacobs, 2015). Errors sometimes occur with what the National Consumer Law Center calls sub-sub-sub-contracting, where private screening companies contract with other companies who contract with third or fourth companies resulting in data loss or distortion (Yu & Dietrich, 2012). There is currently no federal oversight to ensure accurate reports about criminal histories and addressing errors on criminal history reports can be too complicated, expensive, and time-consuming for many people to navigate (Lageson, 2016).

Beyond limitations of the criminal record itself, there are systematic disadvantages some individuals, particularly those who are poor, face in the process leading up to a record. With the exception of murder charges, less than 6% of cases go to trial (Pastore & McGuire, 2003). Individuals who are economically disadvantaged have greater challenges posting bail, leading to pre-trial detention and incentivizing guilty pleas as a means of getting out of jail (Bennett, 2018; Rabuy & Kopf, 2016). Defendants who are incarcerated before trial plead guilty close to three times more quickly than those not being held (Petersen, 2020). While individuals pleading guilty include those who have engaged in the behavior for which they are charged, it can also include people who are innocent and want to avoid pre-trial detention or who are intimidated by prosecutorial threats of harsh sentences (Blume & Helm, 2014). As a practical matter, defense attorneys may encourage innocent clients to plead guilty (Helm et al., 2018).

Part of the logic of using criminal records is the belief that people charged with or convicted of behavior labeled as criminal will engage in similar behavior in the future. Recidivism data has been used to examine whether this is true, but there are many limitations to this research. One issue is with the definition of recidivism. Recidivism can refer to arrests, violation of probation or parole, convictions, or prison returns. Violations of probation and parole conditions often involve behaviors that are not otherwise considered criminal such as alcohol use, staying out too late at night, moving to another state or even crossing state lines. Probation officers have wide discretion on whether to violate someone for not following through with a condition, creating the possibility of further bias by race, gender or other factors (Ruhland & Scheibler, 2022). Additionally, once a person has a record, there is widespread bias, increasing rearrests when they encounter a police officer or interact with their parole officer (Stolzenberg et al., 2021).

One of the biggest limitations of recidivism data is that we have no way of conducting a study to control for the stigma and wide range collateral consequences people face when they leave jail or prison. How many people would actually harm others if their psychological, social and physical needs were met? Another problem with relying on recidivism data, or really any criminal records, to document previous instances of harm is that most cases of sexual assault, rape, and abuse are never reported (Mulder et al., 2021; Schwartz et al., 2017). Therefore, using records as a primary means of screening out individuals may create a false sense of safety.

Differentiating Crime From Harm

The concept of crime is often conflated with harm and assumed to be a predictor of future harm (Green & Pemberton, 2017). The term crime encompasses so many disparate acts that it is almost impossible to come up with one definition (Hillyard & Tombs, 2017). Essentially any action or lack of action a government deems illegal is considered a crime. While some crimes involve injury to other people, many others, such as full-service sex work, do not (Minichiello et al., 2018). In contrast, many harmful behaviors are not illegal. For example, a social worker engaging in sexual activities with an adult client, while unethical, is not unlawful. Similarly, disclosure of private information such as an affair or a trauma history could cause serious lasting harm with employment or intimate relationships but is unlikely to result in a criminal record (Reamer, 2014). An examination of some of the most common ethical violations committed by social workers, such as lack of commitment to clients, conflicts of interest, privacy and confidentiality abuses, and sexual relationships, indicates that many of these harmful behaviors would not be documented in a criminal record (NASW, 2021b).

As a result of neoliberal influences, the criminal legal system has shaped our thinking about harm as an individual rather than societal issue (Collins & Rothe, 2019). We can label an individual a “criminal,” remove them from society, and have the illusion that we are safer, ignoring the historical oppressions and contexts which contributed to the person’s actions. In doing so, we minimize the strengths and humanity of people caught up in the criminal legal system while neglecting to acknowledge the harms we all engage in (Scott & Brown, 2018). Governments and corporations often have the greatest abilities to produce harm through acts that are not considered illegal (Clark-Ginsberg & Petrun Sayers, 2020; Hyra et al., 2019). Similarly, the focus within the profession around gatekeeping and reducing risk of harm by individuals distracts from focusing on how organizations contribute to or even perpetuate harm (Astvik & Melin, 2013; Lewis, 2018). Harms such as racism, cisheterosexism, ableism and so many other forms of oppression are not captured in our criminal codes and are arguably some of the most damaging dynamics that can occur in a social work context.

Re-Visioning Disciplinary Inclusion: Developing Abolitionist Solutions

As awareness of the perversities of the criminal legal system has grown through increasingly widespread familiarity with concepts like mass incarceration, the prison industrial complex, and the egregiously disproportionate economic and racial impacts of these systems, discourses around abolition have begun to gain traction (Alexander, 2019; Davis, 2011). Abolition is a multifaceted framework – as Mariame Kaba, a leading abolitionist thinker and scholar defines it, abolition is “a political vision, a structural analysis of oppression, and a practical organizing strategy” (Kaba, 2020, para. 3). It is important to emphasize that while abolition argues for the need to end our systems of policing and mass incarceration – the stance for which it is perhaps best known – it is, at its core, a vision of inclusion (Rodriguez, 2019). This is in stark contrast to the orientation of our current incarceration system, which is built almost entirely on the premise of exclusion as the essential form of punishment – physical exclusion from loved ones and

communities, and ultimately, lifelong social exclusion from education, housing, employment, and other opportunities.

Our persistent reliance on these systems of exclusion is illogical given the overwhelming evidence that not only do they unfairly target people experiencing structural marginalization, they also do not make our communities safer (Clear, 2009). As previously discussed, these multiple forms of exclusion are inextricably linked to high recidivism rates, posing barriers to financial and social stability, and establishing ongoing levels of increased surveillance and bias through probation and permanent criminal records (Bureau of Justice Statistics, 2019; Bureau of Prisons, 2021; Grant et al., 2011; Myers et al., 2017; US Census Bureau, 2021). These conditions contribute to an endlessly revolving door of punishment and the development of virtually insurmountable forces of social oppression, ultimately resulting in reduced community safety and well-being.

The continued use of criminal background checks as a gatekeeping mechanism for social work requires a willful ignorance of the reality that these do not serve as an accurate or reliable tool in assessing a person's likelihood to cause harm. And given that the structural disadvantages that social work seeks to redress are the very same forces that increase one's likelihood to have a criminal record, there is a deep existential dilemma inherent in this practice within the field of social work. In addition to the false sense of security that we are successfully screening out those who may perpetrate harm, reliance on background checks perpetuates an inherently racist and classist system that upholds white supremacy. The profession's growing emphasis on anti-racist practices in social work further underscores the importance of correcting this ethical inconsistency (Grand Challenges, 2020).

The logic of inclusion tells us that everyone, regardless of their history, deserves a fair chance in social work. And a fair chance can never exist when there are oppressive gatekeeping mechanisms that include criminal record checks. The social work profession, including our educational institutions, licensing institutions, and our practitioners from individuals engaged in micro work to those engaged in policy practice should recognize that any processes that rely on or legitimize racist systems are, in and of themselves, racist. Existing systems of oppression (racism, poverty, homophobia, sexism, ableism, etc.) have disproportionately set marginalized people, such as those with criminal records, up to fail. Holding individual people, rather than these oppressive structures, responsible for the outcomes of this oppression—even when it results in harm or trauma perpetrated by community members—is oppressive. Exclusion, therefore, becomes oppression. Abolition, then, is an essential path to anti-oppressive practice for social workers (Choonara, 2021). The implications are, admittedly, fairly drastic. Not nearly as drastic, however, as the current harmful landscape of the growing prison industrial complex, which reaches well beyond the walls of the prisons into every nook and cranny of our society. Approximately one third of Americans have criminal records (Goggins & DeBacco, 2018), as many Black men have felony convictions, and people are systematically and permanently excluded from the very fabric of society (Davis, 2017).

Social workers have been engaging with abolition frameworks and grappling with how to translate them to social work practice for some time now (Brown & McGee, 2018;

Chandler, 2018; Willison & O'Brien, 2017). As the Black Lives Matter movement has gained traction in response to police killings of unarmed Black people, so too have the calls for police and prison abolition (James, 2021). Social workers, who are positioned in various capacities across the front lines of the mass incarceration system, have begun to take up this call (Richie & Martensen, 2020). From police stations to defender's and district attorney's offices, prisons, courts, reentry programs, and even child welfare settings, abolition has increasingly become a rallying cry for social workers across these settings (Clayton-Johnson et al., 2021; Rabuy & Kopf, 2016). With this growing interest in alternative ways of responding to harm has come a greater demand from social work students for relevant course content focusing on decolonization and abolition, and many social work programs have responded accordingly (Hutchison, 2021; Udah, 2020).

Inclusion of abolition, harm-reduction and anti-carceral strategies, restorative and transformative justice, and decolonizing and radical social work have become more prevalent in MSW programs across the country (Gregory, 2020). And yet, these same social work programs persist in their own institutionally carceral practices through ongoing use of criminal records as gatekeeping mechanisms. Social work programs appear to be responding more to the market-driven demand for course content, rather than substantively aligning with and implementing abolitionist orientations or practices. This neoliberalization of abolition, or selectively and publicly adopting strategies that translate to profit but not fully embracing less visible and meaningful work by institutions, is troubling (Martínez Herrero, 2021; Morley et al., 2017). Of course, we must critique systems of mass incarceration, but we must also interrogate ourselves as our profession continues to center whiteness, ableism and middle-class values. To simultaneously be part of upholding the conventions of prisons while also profiting from an abolition framework is in stark contrast to social work's increasingly explicit ethical commitment to social justice and anti-racism and underscores the urgency of the abolition movement.

Radical Re-Imagining

The abolition movement is committed to not only dismantling carceral systems, but also to imagining and building a new society in which sources of crime are minimized through ensuring that basic needs are met for all. Kaba discusses some of the challenges we face to this call to radically re-imagine, specifically our intense collective socialization around punishment and social control as the only acceptable responses to harm, as well as our inclination as a society to "turn away from any social concern that overwhelms us" (Kaba & Hayes, 2018, para. 9). As writer Erica Meiners once noted, "liberation under oppression is unthinkable by design" (Kaba & Hayes, 2018, para. 25). Of course, it is difficult to envision a new society, just as it was to imagine the end of slavery, or of segregation. But it is not impossible. Kaba (2021) refers to this ability to engage in radical re-imagining as "a jailbreak of the imagination" and challenges us to consider a world that "nurtures human growth and potential rather than incubating desperation" (para. 1).

Abolitionist scholars and activists have enunciated strategies for building this new society, including the eradication of poverty through access to quality education, affordable housing, a livable minimum wage, and access to healthcare and affordable

childcare (Critical Resistance, n.d.; Kaba, 2020). While this may sound implausible, it is important to consider that the annual cost to maintain the prison industrial complex is estimated at 182 billion dollars per year (Wagner & Rabuy, 2022). As abolitionists have argued, building this new world isn't about more resources, but rather about a reallocation of resources from punishment and social control to infrastructure and support.

Just as there have not always been prisons, there has not always been easy access to criminal records. While the United States made the conscious decision to make records more publicly available in the 1960's, most of Europe did not. In Europe, criminal records are generally not considered public (Jacobs, 2015). In the United Kingdom (UK), researchers found using criminal histories to vet employees is costly, ineffective, and produces disparate impacts (Appleton, 2014). The UK Supreme Court ruled disclosing an excessively broad criminal history to employers infringes on one's human rights (Gallagher v. Secretary of State, 2019). In Europe, there is a greater investment in individuals' privacy and rights to move forward after making mistakes, as evidenced through laws such as the *right to be forgotten* (Bramley et al., 2021) and *spent* and *unspent* crimes.

Many crimes in the UK, after a certain period of time, are considered "spent" and permanently removed from the person's record. Even so, there is a 34-page list of crimes that never get unspent. The list comprises crimes such as murder and rape, but also includes things like "Procure or attempt to procure homosexual act between two other males" (p. 9) and "furious driving" (p. 20) (Gov.UK, 2018), providing an illustration of how oppression shows up in law. These examples of unspent crimes demonstrate the ways that cisheterosexism, as well as something as simple as a momentary lapse in judgment ("furious driving"), particularly if the driver belongs to a demographic that is disproportionately targeted by policing, could result in a person being labeled for life. These laws could be more expansive, yet they are examples of how to reduce the availability of criminal background information in a systematic fashion.

For social workers, this is also about fully embracing our stated commitments to anti-oppressive practice through recognizing the strengths of people who have experiences in the incarceration system, and the unique and necessary contributions they can offer to the field. Rather than replicating the carceral system's strategy of keeping people with lived experience in the system out, we should be embracing an abolitionist orientation of inclusion, and inviting them in. While these arguments are certainly relevant to other professions, social work is both well positioned, and also obligated to take the lead in changing the culture around the use of criminal background checks. Rather than creating a professional and disciplinary enclosure through boundaries that exclude, this is an opportunity for radical inclusion of marginalized communities, and for social work to become an abolitionist model for the helping disciplines.

Reformist vs. Non-Reformist Reforms

While efforts to reform (rather than eliminate) the use of criminal background checks in employment and college admissions have gained steam in recent years – particularly "ban the box" initiatives– this reformist approach is problematic. As Kaba discusses, "the limit of prison reform is that it validates the institution of prisons overall" (as cited by

Madden et al., 2020, para. 6). In other words, by reforming when or how we use criminal records in screening (i.e., admissions, employment, licensure), we reinforce the idea that criminal records are necessary in the first place, and the goal should be to use them more strategically or efficiently. Given the evidence that race, disability status, and poverty are the best predictors of whether a person will have a criminal record (Davis, 2017), to argue the legitimacy of using background checks at any stage of a social work hiring or admissions process is an inherently oppressive endeavor.

“Banning the Box” prohibits employers from asking about people’s criminal records in their initial hiring paperwork, but they still allow employers to do background checks later in the process (Agan & Starr, 2018). As an alternative to such reformist approaches that reinforce existing structures, non-reformist reforms seek to shrink harmful systems and create pathways for broad and sweeping change (Gorz, 1968/1987). In the example of criminal records, a non-reformist reform solution eliminates background checks in the hiring and admission process. Several of these authors were involved in a successful non-reformist reform effort at their university to abolish questions about criminal records on admissions applications. This approach differs from the “ban the box” in the employment context because it removed all questions about criminal records from the admissions process.

Another recent example of a non-reformist reform related to criminal records is Senate Bill 637, enacted in Pennsylvania in 2020. The bill makes it easier for people with criminal records to obtain occupational licenses in all fields, including social work. Under the new law licensing boards cannot consider expunged crimes or those considered part of juvenile records (S.B. 637, 2020). Additionally, it removed language regarding “moral character” and “moral turpitude” as vague terms used to restrict people with criminal records from gaining licenses (S.B. 637, 2020). However, the bill also contained reformist elements that reinforce reliance on criminal records. For example, the bill retains very complicated processes for obtaining a license for those with an adult criminal record and excludes all people with sex offenses from getting health care licenses, including those charged with prostitution (S.B. 637, 2020).

Given the challenging nature of identifying and implementing non-reformist reforms, several scholars and activists have proposed criteria to assist in determining whether a proposed reform is truly non-reformist. When exploring strategies to reduce discrimination against people with criminal records, social work schools and practice settings are encouraged to consider the following questions:

- “Does it legitimize or expand a system we are trying to dismantle?” (Spade, 2020, p. 133)
- “Does it mobilize people, especially those most directly impacted, for ongoing struggle?” (Spade, 2020, p. 133)
- “Does it improve material conditions?” (Critical Resistance, 2020, 1:08)
- “Are we able to try something new or different as a result?” (Critical Resistance, 2020, 1:08)
- “Does it advocate for MORE police and policing?” (Kaba, 2014)

At the heart of the abolitionist framework and non-reformist reform initiatives is a desire to invite people in rather than keep people out. This paradigm shift towards inclusion is why reform initiatives, which are still fundamentally about exclusion, fall short.

Radical Inclusion

While some reforms must happen at the state and national level, perhaps even more importantly, we also need to make policy and cultural changes within the profession. For example, what if instead of academic programs focusing on screening out, we looked to screen people into the discipline (Madden, 2000)? What if we spent more time examining ways to attract more individuals that come from the same communities as the clients they serve? What if we spent less energy validating the profession as defined by white supremacist standards and more time examining and ameliorating the barriers to entrance into the profession, such as criminal records?

The social work profession believes in change, growth and that individuals can heal; thus, a criminal conviction does not equate to poor moral character or practice negligence (Carnahan, n.d.). Rather than replicating the carceral system's strategy of keeping people with lived experience in the system out, we should be embracing an abolitionist orientation of inclusion, and inviting them in. An MSW is the most sought-after degree for returning citizens (Vliek, 2018). Research suggests that returning citizens provide a unique set of skills, strengths for the helping profession due to their lived experiences (Robins, 2012; Rosenthal et al., 2015). Individuals with criminal records are likely to have an intimate knowledge of complex systems and have the skills to bridge relationships between communities and academic institutions (Halkovic & Greene, 2015). Individuals with criminal records may have unique mentorship skills, experiences with reentry, social enterprise, creative ways to engage in post-traumatic growth, and distinctive coping skills, and the social work profession can only be enhanced and made stronger by calling in these resilient credible messengers (Baskaran, 2018; Kenemore & In, 2020; Vanhooren et al., 2018).

Efforts to make social work a more welcoming field for people with criminal records must go beyond removing background checks in college applications. For individuals with criminal records, who do enter the BSW or MSW classroom or placement they must navigate rampant discrimination and stigma in order to graduate (Halkovic & Greene, 2015). Vliek's (2018) research shows that returning citizens graduate at lower rates due to these challenges. Field directors have little guidance on how to navigate placing students with records (Dottin, 2018). Truly, social work practitioners, administrators and faculty need to partner to advocate for change in criminal record requirements within agencies.

Unchained Scholars, a student interest group at University of South California (USC), that arose out of a group of students with records having trouble finding field placements, serves as a model program for helping people navigate the current system (Lipinski, 2020). Clinical Assistant Professor Susan Hess brought this group of students together to navigate the field placement process and develop narratives that highlighted the strengths of their lived experience. According to Genevieve Rimmer, a recent graduate of the DSW program and a member of Unchained Scholars, the group moved on to also work on

advocating for policy change within their university as well as within the social work profession as a whole (Personal Communication, May 13, 2021). They serve as a model for other social work programs to support and build upon the strengths of people with prior criminal convictions.

Conclusion

It is time for a radical culture shift in the way we think about people with criminal records, and how we think about harm. Social work is a profession that believes in the inherent worth of all individuals and in everyone's ability to change. We understand that an individual's behavior does not occur in a vacuum and that various forms of oppression influence the choices people have as well as how they are treated once they make certain choices. We also understand that well-intentioned policies can have unintended consequences, and often those consequences fall on the backs of those who are most marginalized by our society.

We also acknowledge that a shift in philosophy and practice varies in complexity depending on the social work setting. For example, in schools, child welfare, shelters, or long-term care facilities, there are laws outside of the profession requiring background checks. We also recognize that there are understandable concerns and risks associated with an adult who has a documented history of repeated violence against children, or a range of other concerning behaviors, working with vulnerable individuals. Further, we recognize that in this current climate where there are significant restrictions in licensure and employment, social work programs have an ethical obligation to be transparent about the barriers, allowing students with records the choice about whether to invest their time and money in a social work degree. Admissions staff, faculty, and others who support students ideally would advocate these requirements be based in science and simultaneously understand these barriers, particularly how these dynamics function within their local agencies and state licensing board.

At time of this writing, we found limited research on securing social work employment or licensure for those with criminal records. While criminal records still play a role in licensure in the United States, there is a need for greater transparency around how criminal background checks are used in licensure in all fifty states. There is also a need to survey social work employers to see how many utilize criminal background checks and whether those background checks are mandated by the government or by agency policy. Future research could help us to understand how people with criminal records are navigating the challenges of higher education, licensure and employment so that we can better target non-reformist reforms. Scholarship in this area could also help us understand how to enact non-reformist reforms and which are most effective in moving towards a socially just society.

As the social work profession moves toward creating a "just society," we challenge our regulatory bodies such as the NASW, CSWE, ASWB, and state licensing boards to recognize the rampant white supremacy and respectability politics tied up in the use of criminal records as a gatekeeping mechanism and predictor of harm (de Bie et al., 2020; Haley, 2020). Since the Flexner report was written, over one hundred years ago, the social

work profession has been chasing legitimacy from America's elite classes, perhaps at the cost of legitimacy from the people and communities we serve.

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