

Alternative Strategies to Criminal Background Checks for Reducing Risk to Organizations

Michael A. Campion, Ph.D.

Daniels School of Business, Purdue University

Emily D. Campion, Ph.D.

Department of Management and Entrepreneurship, University of Iowa

Abstract

The purpose of this chapter is to summarize the research literature on the factors that predict risk and the alternatives organizations can use over traditional criminal background checks to reduce the types of risk criminal history is supposed to predict (e.g., theft, workplace violence, etc.). This includes (1) a brief review of criminal background checks in hiring, including the mitigating factors that reduce risk such as factors regarding the crime and criminal behavior, job relatedness of the crime, incarceration history and number of past crimes; (2) factors regarding the person's background such as employment history, education history, age at the time of the crime, years since the crime was committed, and rehabilitation efforts; (3) other selection procedures that predict risk such as personality tests, integrity tests, structured interviews, reference checks, and drug testing; and (4) alternatives to selection procedures to reduce risk such as physical security measures, surveillance, computer systems that monitor for unusual activity, clear and well-communicated company policies and procedures, internal control work procedures, employee incentive systems, workplace violence prevention programs, ensuring organizational justice, reducing workplace stress, and reducing workplace incivility and harassment.

Keywords: Background checks, criminal history, hiring, employment, adverse impact, discrimination, minority, equal employment

Introduction

The primary assumption that past behavior predicts future behavior motivates the use of the criminal background check in personnel selection (Ryan & Lasser, 1991). Yet this selection procedure has demonstrated significant adverse impact against racial minority candidates where they are rejected at a higher rate than non-racial minority candidates, leading the Equal Employment Opportunity Commission (EEOC) to issue guidelines to regulate the use of criminal background checks (EEOC, 2012) and to pursue litigation against several organizations (e.g., EEOC, 2015, 2019). As a result, researchers have sought other ways to help organizations screen for applicants' risk of criminal behavior. The purpose of this chapter is to summarize the research literature on the factors that predict risk and the alternatives organizations can use over traditional criminal background checks to reduce the types of risk criminal history is supposed to predict (e.g., theft, workplace violence, etc.).¹ We provide a summary of this chapter in Table 1. This chapter does not imply that such checks should not be conducted but instead that research might also explore alternatives.

 Insert Table 1 about here

Criminal Background Checks in Hiring: A Brief Overview

Criminal background checks refer to a review of an applicant's criminal convictions and related background to determine whether the applicant creates a risk in terms of theft, violence, or other counterproductive behavior on the job. Criminal background checks are just one part of most employment background checks. Others include verification of social security number, citizenship, past employment, education, drug testing, and sometimes credit history. Criminal background checks are often considered routine and thought to be most useful when the crime is relevant to the position (e.g., a past shoplifting conviction when applying to a retail management position), though research from academic and non-academic institutions suggests this procedure can be problematic for several reasons (Levashina & Campion, 2009).

¹ The first author of this chapter has been involved as an expert witness in several court cases on the use of criminal background checks for hiring, and the research conducted for those cases underlay the content of this chapter.

First, criminal background checks may show adverse impact against some racial minority subgroups in some applicant populations, especially Black candidates. Meaning, they are hired at a substantially lower rate because they are more likely to have a criminal history (e.g., Bushway, Nieuwbeerta, & Blokland, 2011; Mauer & King, 2007). According to the Bureau of Justice Statistics of the U.S. Department of Justice (Bonczar, 2003), one in three African American men will be incarcerated at some point compared to one in 17 White men. Second, nearly all of those who are incarcerated are eventually released from incarceration and employment is a primary mechanism to prevent recidivism (e.g., Kethineni & Falcone, 2007; Uggen, 1996; Visser, Winterfield, & Coggeshall, 2005; Wilson et al., 1999, 2000). Criminal background checks have a substantial negative influence on the employment prospects of former offenders and radically reduces their economic progress (e.g., Lukies, Graffam, & Shinkfield, 2011; Stoll & Bushway, 2008; Western, Kling, & Weiman, 2001). Employers may also have negative attitudes about hiring former offenders, which can influence employment decisions (e.g., Graffam, Shinkfield, & Hardcastle, 2008; Swanson, Langfitt-Reese, & Bond, 2012; Varghese, Hardin, Bauer, & Morgan, 2010). If all organizations chose to never hire candidates with any criminal convictions, the more than 700,000 persons who are annually released from incarceration (Guerino, Harrison, & Sabol, 2012) will be permanently unemployed. Being unable to obtain a job not only puts them at greater risk of recidivism, but could also potentially increase the welfare burden on taxpayers.

The Equal Employment Opportunity Commission provides comprehensive guidance for employers on the use of criminal background checks per Title VII of the Civil Rights Act of 1964, which can be summarized in two points. First, if two candidates have the same criminal records, employers are not allowed to evaluate them differently based on their race or national origin (or other protected characteristics such as gender). Second, if the criminal background check disproportionately excludes candidates based on their protected characteristic—such as race—then the employer is duty-bound to demonstrate “job relatedness with business necessity” (EEOC, 2012). Job relatedness is evidenced by validity, which is demonstrated in accordance with the Uniform Guidelines on Employee Selection Procedures (Section 3A, Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, & Department of Justice, 1978). This is typically accomplished through a validation study, but this is a highly complex process that is costly and beyond the capability of many organizations, and it may not be of sufficient quality to offer a defense if legally challenged.

Regardless of the sufficiency of validation evidence, the Uniform Guidelines and professional standards for selection procedures (Principles for the Validation and Use of Personnel Selection Procedures, Society for Industrial and Organizational Psychology, 2018, p. 62) require a search for alternative selection procedures that may have equal validity for predicting criteria of legitimate concern to the organization but less adverse impact. Specifically, Section 3B of the Uniform Guidelines states:

B. Consideration of suitable alternative selection procedures.

Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency.

Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with the guidelines.

In the following sections, we describe three potentially fruitful sets of alternatives to criminal background checks (also see Doyle chapter). We should note, however, that nothing in this chapter should be taken to imply that any specific suggested alternatives here would be sufficient to justify business necessity (job relatedness). Rather, they are merely offered as equally or more effective, and less discriminatory, alternatives to criminal background checks, which often cannot be shown to be consistent with business necessity. The three sets of alternatives with less adverse impact that we describe in this chapter include 1) mitigating factors that reduce risk, 2) other selection procedures that predict crime risk, and 3) alternatives to selection procedures that might be more effective than using criminal background checks. Importantly, these may also be used in conjunction with criminal history check to further mitigate employers' risk.

Mitigating Factors that Reduce Risk

Many mitigating factors—or “circumstance[s] that lessen the severity or culpability of a criminal act”—have been shown to improve the prediction of future criminal risk more accurately than sole reliance on criminal history alone. Thus,

these factors should have equal or greater validity because adding valid predictors to a composite generally improves validity (e.g., Schmitt, Rogers, Chan, Sheppard, & Jennings, 1997). Further, adverse impact will likely be reduced because fewer candidates will be rejected if mitigating factors are considered, and higher passing rates usually reduce adverse impact as a statistical certainty because the denominator of the adverse impact ratio will be greater (e.g., Schmitt et al., 1997). These factors are also administratively feasible in that they could be easily collected and considered at the time of the employment decision. Below, we review nine mitigating factors shown to reduce risk. Some of these factors flow from the EEOC's Guidance on Criminal Background Checks (2012) to include the nature and gravity of the offense, time that has passed since the offense, and the nature of the job held, but others are based on the broader recidivism and selection research literatures. They can be divided into three types of mitigating factors: (1) Those regarding the crime and criminal behavior, (2) Those regarding the person's background, and (3) Those regarding behavior since incarceration.

1. Factors regarding the crime and criminal behavior

Job Relatedness of the Crime

Of particular importance to employers and the EEOC is whether the crime was related to the job. Research suggests this is another mitigating factor (e.g., Andrews & Bonta, 2000; Blumstein & Nakamura, 2009; Harris, Rice, & Quinsey, 1993). For example, crimes involving theft might be more relevant to jobs with exposure to money or merchandise, and crimes involving violence might be more relevant to jobs involving interactions with customers. In addition to considering the job duties, the EEOC Guidance on Criminal Background Checks (EEOC, 2012) also suggests considering the circumstances under which the job is performed (e.g., the amount of supervision, exposure to vulnerable individuals like children or elderly), and the work environment (e.g., outdoors, in a factory, or in people's homes) as these may provide different opportunities for the criminal behavior to be repeated.

Incarceration History and Number of Past Crimes

Expectedly, incarceration history meaningfully predicts future offenses, which is relevant to organizations (e.g., Blitz, 2006; Harris et al., 1993; Hoffman, 1994; Needles, 1996). For example, in her study of female inmates ($N = 908$), Blitz

(2006) found that those serving time for a first conviction were more likely to be employed for one year or longer afterwards (though, not if the crime was drug-related) than those serving for additional convictions beyond their first. In another study, Harris et al., (1993) found that those who had repeated criminal behaviors had significantly shorter subsequent employment than those who had not repeated criminal behaviors in two samples of nearly 700 men. A Bureau of Labor Statistics (2019) survey of 8,984 young men found that incarceration longer than 6 months was followed by lower levels of employment. Finally, in their research on “years to redemption,” Bushway et al. (2011) show that those with “extensive criminal histories” (defined as four or more offenses in an overall sample of 3,243) may never have the same conviction risk as their non-offending counterparts or may only have the same level after 20 years of not committing a crime.

2. Factors regarding the person’s background

Employment History

Research shows that employment is one of the best ways to prevent recidivism (e.g., Andrews & Bonta, 2000; Andrews, Bonta, & Wormith, 2006; Harris et al., 1993; Kethineni & Falcone, 2007; Tripodi, Kim, & Bender, 2010; Uggen, 1996; Visser et al., 2005; Wilson et al., 1999, 2000; Webster et al., 1997). For example, one study of more than 6,600 individuals with criminal records in New York State showed that being able to work decreases the likelihood of arrest by 2.2 percentage points over the course of 1 year and 4.2 percentage points over three years (Denver, Siwach, & Bushway, 2017). Employment is particularly protective against recidivism when it is stable and at a higher occupational level (Remakers, Nieuwbeerta, Van Wilsem, & Dirkzwager, 2017). The implication is that if a person has worked for a different company for some period of time since conviction, he or she should be considered less risky for the next employer.

Education History

Similarly, educational level has been shown to be a mitigating factor for criminal behavior (e.g., Andrews & Bonta, 2000; Andrews et al., 2006; Blitz, 2006; Borum et al., 2003; Harris et al., 1993; Needles, 1996; Wikoff et al., 2012; Wilson et al., 1999, 2000). For example, Andrews and Bonta (2010) frame education (and employment) as types of social achievements that those with criminal records can

reach and internalize to improve their self-efficacy toward personal success. In addition to these proximal outcomes (social achievements), research suggests that higher levels of education typically improve future economic prospects (Bell, Costa, & Machin, 2018; Lochner, 2007). As such, you would expect someone with more education to be less risky than a similar offender with less education.

Age at the Time of the Crime

Research has consistently shown that age at the time of the crime predicts future criminal behavior such that the older a person is at the time of the crime, the less risk of future crime (e.g., Andrews & Bonta, 2000; Blumstein & Nakamura, 2009; Borum et al., 2003; Bushway et al., 2011; Eke, Seto, & Williams, 2011; Gendreau, Little, & Goggin, 1996; Harris et al., 1993; Hoffman, 1994; Soothill & Francis, 2009; Webster, Douglas, Eaves, & Hart, 1997). For example, in his research on work and recidivism using the National Supported Work Demonstration Project, Uggen (2000) found that participants who were 26-years-old or older with “marginal employment opportunities” reported fewer repeated crimes and arrests than those who were not provided employment opportunities (p. 542). Uggen argues that this phenomenon aligns with the parsimonious view that work acts as a catalyst to adulthood and that the interaction of age and employment for those with criminal backgrounds characterize a normative transition between juvenile and adult.

3. Factors regarding behavior since incarceration

Years since the Crime was Committed

The number of years since the crime was committed is an important mitigating factor (e.g., Andrews & Bonta, 2000; Blumstein & Nakamura, 2009, 2012; Borum, Bartel, & Forth, 2003; Bushway et al., 2011; Hoffman, 1994; Kurlychek, Brame, & Bushway, 2006, 2007; Soothill & Francis, 2009). Extensive research shows that the risk of new offenses peaks within 1 or 2 years and declines thereafter (e.g., Blumstein and Nakamura, 2009, 2012; Bushway et al., 2011; DeWitt, Bushway, Siwach, & Kurlychek, 2017; Greenberg, 1978; Harris & Moitra, 1978; Kurlychek et al., 2006, 2007; Lattimore & Baker, 1992; Soothill & Francis, 2009; Visher, Lattimore, & Linster, 1991). When the number of years before the likelihood of recidivism is the same as someone who was never convicted, sometimes called the “years to redemption,” depends on many factors, such as the person’s age when the

crime was committed, the type of crime, the number of crimes, and so on. Nevertheless, it is not an extensively long period. For example, Bushway et al. (2011) found that it may take up to 10 years for younger offenders, but two to six for older offenders.

A study by Blumstein and Nakamura (2012) demonstrates that after the passage of a certain amount of time (the redemption time), an offender's odds of being rearrested are no greater than those of the general public. It is important to note that this research covers the odds of rearrest only. Not every individual who is arrested has engaged in improper conduct nor will they necessarily be convicted. Therefore, the odds of conviction are always lower than the odds of rearrest. The odds of a member of the general public being arrested in a given year are 10%. The redemption times in Table 2 are based on the research by Blumstein and Nakamura (2012, Table 8). Overall, this research might recommend a waiting period of no more than 4-7 years for serious crimes (like violence) and 3-4 years for less serious crimes (like drugs and property).

 Insert Table 2 about here

Rehabilitation Efforts

One's efforts toward rehabilitation is a significant mitigating factor (e.g., Belenko, Foltz, Lang, & Sung, 2005; Borum et al., 2003; Harris et al., 1993; Hoffman, 1994; Wikoff, Linhorst, & Morani, 2012; Wilson et al., 1999; Wilson et al., 2000; Webster et al., 1997). In addition to gaining employment and education as forms of rehabilitation (discussed above), researchers have found a number of interventions that may help reduce the risk of future criminal behavior including improving social connections ("family affection"), improving one's emotional awareness ("anger/antisocial feelings" and "antisocial attitudes"), and enhancing their vocational skills (Borum, 2003; Dowden & Andrews, 1999; also see Wikoff et al., 2012). Although it may not be proper to inquire about social connections, emotional awareness and vocational skills might be evaluated in preemployment interviews.

Multiple Mitigating Factors

Note that risk factors are additive and classifying candidates as too risky to hire should be based on exhibiting multiple risk factors (Harris & Keller, 2005).

Many instruments have been developed that measure a range of these risk predictors, such as the Level of Service Inventory (Andrews & Bonta, 2000), the Salient Factor Score (Hoffman, 1994), the Structured Assessment of Violence Risk in Youth (Borum et al., 2003), and the Historical/Clinical/Risk Management Scheme (Webster et al., 1997). These instruments factor in a large number of predictors such as those listed above based on both logical/theoretical grounds and empirical relationships to optimally predict future recidivism. There are several review articles and meta-analyses summarizing the validity evidence supporting these instruments (e.g., Andrews et al., 2006; Catchpole & Gretton, 2003; Hoffman, 1994; Smith, Cullen, & Latessa, 2009; Vose, Cullen, & Smith, 2008). Tools such as these or the development of tools like these tailored to a particular employment setting could help organizations evaluate these alternative risk factors in a systematic way to help inform hiring decisions.

Other Selection Procedures that Predict Risk

While criminal background checks may appear to be accurate and comprehensive histories of candidates' criminal behavior, there are many noteworthy limitations of this method for which other selection procedures may be able to compensate. Some of these include:

- Whether the individual is caught. Most people who commit crimes are not caught, so criminal background checks are hugely deficient as a measure of criminal involvement. For example, according to the Federal Bureau of Investigation's 2009 Cleared Cases Report (Table 26), only 18.6% of property crimes and only 47.1% of violent crimes are cleared by arrest or other means. The rest are never resolved.
- There is wide variation in whether crimes are prosecuted versus dropped, negotiated to lesser crimes (i.e., plea bargained), or otherwise not pursued to the full extent allowed by the law (e.g., Bibas, 2004; Bowers, 2010; King, Soulé, Steen, & Weidner, 2005; Roberts, Harms, Caspi, & Moffitt, 2007; Stuntz, 2004).
- Furthermore, some records are expunged or sealed for various reasons and not available to be considered in a criminal background check (SEARCH Group, 2003).
- Most records are only maintained in the jurisdiction (e.g., county) where the crime was prosecuted and thus may not be accessed. A person may have a crime in a different state, county, or jurisdiction that is not discovered during a routine criminal background check.
- Records may be incomplete or inaccurate for a variety of reasons (e.g., Jacobs, 2006). For example, states vary with respect to the information that must be maintained and the time between a crime and when it must be

recorded (SEARCH Group, 2003). Also, even when people try to be honest, research shows that retrospective reports of past criminal behavior can be incomplete or inaccurate (Henry, Moffitt, Caspi, Langley, & Silva, 1994). In a review of the research on criminal background checks for hiring procedures, Harris and Keller (2005) state, “Although state systems are improving, record accuracy and completeness continue to be the most serious problems affecting criminal history databases” (p. 16).

Taken together, these limitations challenge how predictive criminal background checks can be of negative employee behavior. As such, organizations might also consider more familiar selection procedures with evidence of validity that have been used to assess traits similar to those presumed to be measured by criminal background (e.g., honesty, aggression, conscientiousness, agreeableness, emotional maturity, stability, conformity, impulsivity, thrill seeking, psychopathic personality traits, etc.). These alternatives may be able to meet the requirement in the Uniform Guidelines for equal or better validity, but doing so with very lower adverse impact. The current evidence of the validity and adverse impact are documented by the citations below. Since the validity outcomes were not criminal history but the related constructs, that would have to be evaluated by future research. All of these alternatives could be administratively feasible as evidenced by their common use for personnel selection in organizations.

Personality Tests

Some personality traits may be related to the likelihood of crime. Moreover, past studies have shown that personality traits can act as mitigating factors reducing recidivism (e.g., Andrews & Bonta, 2000; Borum et al., 2003; Flannery, 1995; Gendreau et al., 1996; Jockin, Arvey, & McGue, 2001; Parker & Bagby, 1997). Personality tests have a record of low but positive validity with job performance (e.g., Barrick & Mount, 1991) and low adverse impact (e.g., Hough, Oswald & Ployhart, 2001). While personality tests have lower validity than mental ability tests (e.g., Morgeson, Campion, Dipboye, Hollenbeck, Murphy, & Schmitt, 2007), they may have higher validity than criminal background checks, although the literature on the latter is very limited. Personality testing has been researched and recommended in the context of predicting violence (e.g., Bush & O'Shea, 1996; Borum et al., 2003; Jockin et al., 2001; Parker & Bagby, 1997) and other types of counterproductive workplace behavior (CWB) (e.g., Borofsky & Smith, 1993; Bolton, Becker, & Barber, 2010; Cullen & Sackett, 2003; Gonzalez-Mulé, Mount, & Oh, 2014; Mount, Ilies, & Johnson, 2006; Penney, Hunter, & Perry, 2011; Penney & Spector, 2002; Salgado, 2002; Spector, 2011; Wu & LeBreton, 2011). Recent research on psychopathy and aggression may be helpful in further understanding personality traits that are disruptive at work (e.g., Baysinger, LeBreton, & Scherer,

2014; Baysinger, LeBreton, & Campion, 2021). Of course, not all crimes are violent (e.g., stealing from a retailer is not a violent crime) nor have all individuals with criminal convictions demonstrated aggression. However, it is worth noting that such workplace disruptions can manifest in more aggressive forms and personality tests may predict these behaviors. For example, a systematic review on workplace aggressions showed that several personality traits, including narcissism, trait anger, and hostile personality correlate with workplace aggression along with attitudes such as believing that revenge is an appropriate behavioral response (Barling, Dupre, & Kelloway, 2009). Additional research suggests that aggression is a stable behavior (Huesmann, Eron, Lefkowitz, & Walder, 1984) and it is theoretically reasonable to expect that a history of aggression would predict workplace aggression and violence (Barling, 1996).

In addition to traditional personality assessments, psychological screening using personality-based instruments have often been used in employment selection to evaluate psychological maladjustment (e.g., Cardona & Ritchie, 2006; Sellbom, Fischler, & Ben-Porath, 2007). For example, in their study on police officer misconduct, Sellbom et al. (2007) assessed the validity of the Minnesota Multiphasic Personality Inventory (MMPI-2) and found that it predicted problematic behaviors. However, it is important to recognize the line between assessing a personality trait and a clinically diagnosable personality disorder because the latter would be considered a medical test and cannot be administered until after a job offer is made, according to the Americans with Disabilities (ADA) Act.²

Integrity Tests

Integrity tests have been shown to predict honesty-related behavior in the work setting to some degree (e.g., Ones, Viswesvaran, & Schmidt, 1993). Integrity is often assessed using personality-based measures and generally yields low adverse impact (Berry, Sackett, & Wiemann, 2007). However, “overt” measures of integrity are also used, which assesses candidates’ thoughts around theft and asks candidates to admit engaging in theft or similar wrongdoings (Berry et al., 2007). In all, there is some supportive evidence that integrity tests may predict theft and other CWBs, but the validity is low and similar to personality. Further, there is little research actually predicting theft in organizational settings, and Berry et al. (2007) astutely observe that studies using theft as the criterion can be biased such that it is unclear whether the theft assessed in the laboratory studies is representative of other theft.

Further, the role of integrity may be not be straightforward. For example, a recent experimental study by Bazzzy and Woehr (2017) showed that when self-control (referred to as “ego depletion”) is entered into a model with integrity predicting off-task behavior (e.g., a misuse of time and resources dimension of CWBs),

² <https://beta.ada.gov/law-and-regs/ada/> (Sec.12112(d))

integrity no longer predicts. Such a resource-based view of CWBs suggests its remediation through other mechanisms such as training. Moreover, Yam, Reynolds, Wiltermuth, and Zhang (2020) found that the relationship between signaling integrity (morality) during selection interviews is more complex than “more integrity is always good.” Instead, there is a person-organization and person-industry effect that influences how integrity is valued by an organization.

Structured Interviews

Structured interviews have an excellent record of predicting job performance (e.g., Huffcutt & Arthur, 1994; McDaniel, Whetzel, Schmidt, & Maurer, 1994; Sackett, Zhang, Berry, & Lievens, 2021; Wiesner & Cronshaw, 1988) and can be used to measure a wide range of skills and traits, including personality, social skills, and organizational fit (Huffcutt, Conway, Roth, & Stone, 2001). They also tend to have lower adverse impact than many common selection procedures such as knowledge, skill, or other mental ability employment tests (e.g., McCarthy, Van Iddekinge, & Campion, 2010; Ployhart & Holtz, 2008). Because structured interviews can be developed to assess a variety of characteristics relevant to employment, interview protocols could be generated to capture past risk-taking behavior, risk-taking in situational contexts applicable to the position, conflict management skills, honesty-related behavior, reliability, and the like. Structured interviews are a relatively straightforward method with well-known procedures (Campion, Palmer, & Campion, 1997) that even smaller organizations with lower hiring budgets could develop.

Reference Checks

Reference checks are a commonly used employment screening tool (Piotrowski & Armstrong, 2006). There is some evidence showing they predict job performance (Schmidt & Hunter, 1998) and tend to be rated favorably on fairness by applicants (Hausknecht, Day, & Thomas, 2004). Among other factors, they tend to emphasize stability and dependability as it relates to employment (see review in Levashina & Campion, 2009, p. 237). Legal battles around employee misbehavior show that courts may determine that overlooking reference checks is negligent hiring (Levashina & Campion, 2009, p. 237) suggesting that reference checks are viewed as reasonable, appropriate, and an expected means to assess risk. Whether they actually predict risk is uncertain as there is little research on the topic. Further, the value of reference checks in regards to assessing risk is only possible if the references are honest about employee behavior. Some former employers refrain from speaking openly about employees for fear of inviting legal troubles over defamation

of character (Matejkovic & Matejkovic, 2006), though defamation suits are quite rare (Heneman & Judge 2006).

Drug Testing

Drug testing, rather than past crime information about drugs, better predicts whether someone uses drugs currently and will be a risk on the job. For example, Normand, Salyards, and Mahoney (1990) found that employees who tested positive for illicit drugs in the U.S. Postal Service had higher absenteeism and involuntary turnover. In another study of postal workers, Zwerling, Ryan, and Orav (1990) found that marijuana users had a higher risk of absenteeism, turnover, accidents, injuries, and discipline. Finally, in a review of the validity of six studies on urinalysis screening, Harris and Heft (1993) concluded that the cumulative evidence suggested pre-employment drug screening correlates with some important work-related outcomes, especially absenteeism and involuntary turnover. However, these studies were conducted when marijuana was not a legal recreational drug as it is in many states now (see “Future Trends” section below). This may challenge the generalizability of these early findings because those who used marijuana when it was illegal may be more inclined to engage in counterproductive behavior, thus explaining the relationship with absenteeism and other outcomes, whereas the broader population who would not typically engage in counterproductive behavior are now also using marijuana recreationally and legally.

Alternatives to Selection Procedures to Reduce Risk

These are not alternative selection procedures that address the requirements of the Uniform Guidelines, but are instead other ways of minimizing risk of unwanted workplace behavior that maintain legal compliance. These alternatives are instead crime prevention procedures enacted in the workplace might be more effective than using criminal background checks for selection (Harris & Keller, 2005). The literature suggests at least eight categories of onsite crime deterrents:

1. **Physical security measures** such as badges, alarms, locks, physical barriers, lighting, etc. (e.g., Bush & O'Shea, 1996; Boba & Santos, 2008; Flannery, 1995; Harris & Keller, 2005; National Center for the Analysis of Violent Crime, 2003; Traub, 1996).
2. **Surveillance** such as security camera monitoring (e.g., Boba & Santos, 2008; Flannery, 1995; Harris & Keller, 2005; Mishra & Prasad, 2006; Traub, 1996).
3. **Computer systems that monitor for unusual activity**, such as point-of-sale terminals that track extraordinary sales and refunds (e.g., Harris & Keller, 2005; Traub, 1996), equipment that automatically dispenses products to prevent

shrinkage (e.g., automated pill counters in drug stores; Goundrey-Smith, 2013), tracking systems to prevent theft (e.g., merchandise, tools, vehicles, etc.; Boba & Santos, 2008), and simple cash register counts and comparisons to sales to prevent the direct theft of cash.

4. **Clear and well-communicated company policies and procedures** proscribing counterproductive behaviors at work such as violence, theft, etc. (e.g., Boba & Santos, 2008; Hollinger & Clark, 1983; National Center for the Analysis of Violent Crime, 2003; Tyler & Blader, 2005). Many companies institute such explicit policies, and they are typically included in the employee handbook.

5. **Internal control work procedures** and training of employees on theft prevention (e.g., Bressler, 2009; Harris & Keller, 2005; Hollinger & Clark, 1983; Traub, 1996; Tyler & Blader, 2005). Internal control procedures might include not opening a door after being locked for the day, not opening the back door after dark, all employees leaving at same time, requests versus authorization of expenditures by different employees, independent checks on work by management or other employees, etc. Ordinary employee trainings for employees on theft prevention include safe cash handling procedures, correct opening and closing procedures, how to spot potential theft, etc.

6. **Employee incentive systems**, such as employee monitoring of fellow employees and whistleblowing hotlines. In addition, organizations may develop and implement formal corporate incentive programs that provide rewards for preventing theft (e.g., Boba & Santos, 2008; Bressler, 2009; Harris & Keller, 2005; Traub, 1996).

7. **Workplace violence prevention programs** such as employee assistance programs, conflict management programs, violence risk audits, threat management teams, grievance processes, stress management programs, substance abuse treatment, termination guidelines, and other techniques for reducing the potential for violence (e.g., Aquino, 2000; Bush & O'Shea, 1996; Braverman, 2000; Flannery, 1995; King & Alexander, 1996; Kinney, 1996; Kurutz, Johnson, & Sugden, 1996; National Center for the Analysis of Violent Crime, 2003; Nicoletti & Spooner, 1996; Reich & Dear, 1996).

8. **Ensuring organizational justice, reducing workplace stress, and reducing workplace incivility and harassment**, all of which have been found to be associated with less counterproductive work behavior (e.g., Bowling & Beehr, 2006; Cohen-Charash & Mueller, 2007; Cohen-Charash & Spector, 2001; Flaherty & Moss, 2007; Fox & Spector, 2006; Greenberg & Barling, 1999; Jockin et al., 2001; Jones, 2009; Penney & Spector, 2005). Also, **reducing abusive supervision** can be helpful because it has been found to be associated with workplace deviance (e.g., Mitchell & Ambrose, 2007; Tepper, Henle, Lambert, Giacalone, & Duffy, 2008; Tepper, Carr, Breaux, Geider, Hu, & Hua, 2009; Thau, Bennett, Mitchell, & Marrs, 2009). The aforementioned policies on expected employee behavior should help here as well. Finally, the literature on organizational climate would suggest that managers should make great efforts to help **build strong ethical work climates** to operate as social mechanisms for reducing risk. For example, in their research on

organizational ethical climate and unit deviance, Kuenzi, Mayer, and Greenbaum (2020) found that unit deviance—a supervisor rating of how frequently people in their unit engaged in deviant behavior (e.g., took something from work) in the past year—was lowest when organizational ethical climate and collective moral identity were both high.

Future Trends

There are several current trends that increase the need for alternatives to criminal background checks. First, after about 15 years in practice, we have sufficient research to assess the efficacy of the “ban-the-box” program. This initiative refers to eliminating the common historical practice of having a box on applications indicating a criminal history and automatically rejecting all candidates who checked the box. The initiative has been widely implemented with 34 states and 150 cities requiring employers to eliminate criminal history questions (Stacy & Cohen, 2017). However, a recent review of the ban-the-box research over the last 15 years yielded counterintuitive findings. Raphael (2021) found that banning the box did not improve employment opportunities in the private sector, although some evidence suggested it helped in the public sector. As such, simply banning the box may not be sufficient and the alternatives described in this chapter may be needed.

Second, there is an increasing trend to include credit checks as part of background checks for employment, potentially exacerbating the problems of adverse impact (Nielsen & Kuhn, 2009; Nissim, 2010). The logic is that bad credit not only indicates past irresponsible behavior, but it may increase the likelihood of theft. However, a recently published Monte Carlo simulation found that using credit checks may increase the hiring gap between Blacks and Whites (Volpone, Tonidandel, Avery, & Castel, 2015). This is particularly troubling because bad credit may itself be a result of past discrimination in employment (Nissim, 2010), and there is little evidence of the validity for predicting job performance (Nielsen & Kuhn, 2009). This trend again increases the importance of the alternatives described in this chapter.

Third, the laws around what constitutes criminal activity are also changing. The most obvious change is that related to the illegalization of marijuana. California was the first state to legalize marijuana for medical purposes in 1996 (“Marijuana Timeline”), and in 2012, Colorado legalized the dispensing of marijuana for recreational use (Hansen & Alas, 2021). Since then, many states have followed suit, with 19 states, Washington, D. C., and Guam legalizing the recreational use of marijuana by mid-2022 (Hansen, Alas, & Davis, 2022). Given these changes, it will be particularly important for organizations to consider the details and the circumstances of past crimes. For example, should convictions before marijuana became legal still

be considered crimes and should convictions in states where it is illegal be considered as crimes in states where it is legal? These changing laws make the consideration of illegal drug use more complicated and alternatives more important.

Fourth, the increasing availability of information on past criminal records as automation enables more efficient and accessible information across states and counties will likely make criminal background checks easier to use, less expensive, and thus more common. This will likely exacerbate the adverse impact and make the alternatives discussed in this chapter more important.

Conclusion

Criminal background checks remain a popular selection tool, despite some controversy. In this chapter, we reviewed research on mitigating factors that reduce risk, selection procedures to assess risk other than criminal background checks, and alternatives to selection procedures to reduce risk. We show that scholars and practitioners have generated a number of potentially effective alternatives to background checks, and that several current trends such as ban-the-box legislation, the increased legalization of recreational marijuana, increased credit history checks, and increased availability of information on criminal records adds to the need for such alternatives. Table 1 provides a summary of this chapter's contents.

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Table 1. Chapter Summary

Mitigating Factors that Reduce Risk	
1.	Years since the crime was committed: Risk of new offenses declines after 2 years of the previous crime.
2.	Job relatedness of the crime: A shoplifting conviction is perhaps more relevant to some occupations (e.g., retail work) than others.
3.	Incarceration history and number of past crimes: The greater the number of past crimes, the longer it takes for individuals to have the same conviction risk as someone who has never been convicted of a crime.
4.	Rehabilitation efforts: Improved social connections, emotional awareness, and vocational skills reduce the risk of future criminal behavior.
5.	Employment history: Stable employment significantly reduces recidivism and the likelihood of future criminal behavior.
6.	Education history: Education offers opportunities to experience social achievements that reduce the risk of criminal behavior.

7.	Age at the time of the crime: The older a person is at the time of the crime, the lower their risk of future criminal behavior.
Other Selection Procedures that Predict Risk	
1.	Personality tests: Personality assessments have a record of low but positive validity and low adverse impact and can be used to measure traits such as psychopathy and aggression that predict counterproductive workplace behavior.
2.	Integrity tests: Some research suggests integrity tests can predict honesty-related workplace behaviors.
3.	Structured interviews: Interview protocols could be developed to measure past risk-taking behavior, risk-taking in situational contexts applicable to the position, honesty-related behavior, etc.
4.	Reference checks: Reference checks are a common screening tool with some evidence of job relatedness that can show a candidate's dependability.
5.	Drug testing: Drug testing better captures current drug use and future risk than criminal background checks and shows some evidence of predicting counterproductive workplace behaviors (e.g., absenteeism).
Alternatives to Selection Procedures to Reduce Risk	
1.	Physical security measures such as badges, alarms, locks, lighting, etc.
2.	Surveillance such as security camera monitoring.
3.	Computer systems that monitor for unusual activity such as point-of-sale terminals that track extraordinary sales and refunds, equipment that automatically dispenses products to prevent shrinkage, and tracking systems to prevent theft.
4.	Clear and well-communicated company policies and procedures around counterproductive work behaviors.
5.	Internal control work procedures (e.g., all employees leaving at the same time) and employee trainings on theft prevention.
6.	Employee incentive systems such as whistleblowing hotlines and rewarding theft prevention.
7.	Workplace violence prevention programs.
8.	Ensuring organizational justice, reducing workplace stress, and reducing workplace incivility and harassment.
Future Trends Making Alternatives More Important	
1.	"Ban-the-box" legislation —eliminating the box on applications where candidates indicate they have a criminal history that have been historically used to automatically reject candidates—has shown some evidence for improving employment opportunities for those with a criminal history in the public sector, but not in the private sector.
2.	Credit checks are increasingly used as a part of employment background checks, which are likely to have adverse impact.
3.	Recreational use of marijuana is legal in 19 states, Washington, D. C., and Guam at the present time, making the consideration of illegal drug use more complicated.
4.	Increased availability of information on criminal records will make criminal background checks easier, which could exacerbate adverse impact.

Table 2. Redemption Times According to Blumstein and Nakamura (2012)

Redemption Times	
Previous Crime Type	Probability of Arrest Reaches 0.10 (Same as General Public)
Violence	4 - 7 years
Drugs	4 years
Property	3 - 4 years