

Invisible bars; The impact of having a criminal record on young adults' position in the labour market

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Invisible bars

The impact of having a criminal record on young adults' position in the labour market

Onzichtbare tralies. De impact van het hebben van een strafblad op de arbeidsmarktpositie van jongvolwassenen
(met een samenvatting in het Nederlands)

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geboren op 16 juli 1985
te Arnhem

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Elina van ’t Zand-Kurtovic
Utrecht, October 2017

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Chapter 1

Introduction

1 Research topic

“Although my case has finally been dismissed, it still troubles me when looking for jobs. I can leave the criminal procedure behind me, but I cannot leave the case behind me when looking for a job, because employers will require a criminal record screening. When my case was not yet dealt with, I couldn’t pass this screening. [...] I started thinking: ‘I cannot apply for jobs, because most companies will require a criminal record screening’. [...] At a certain point you create a kind of fear, you don’t dare to apply for jobs because you think nobody wants you” (Sabia).

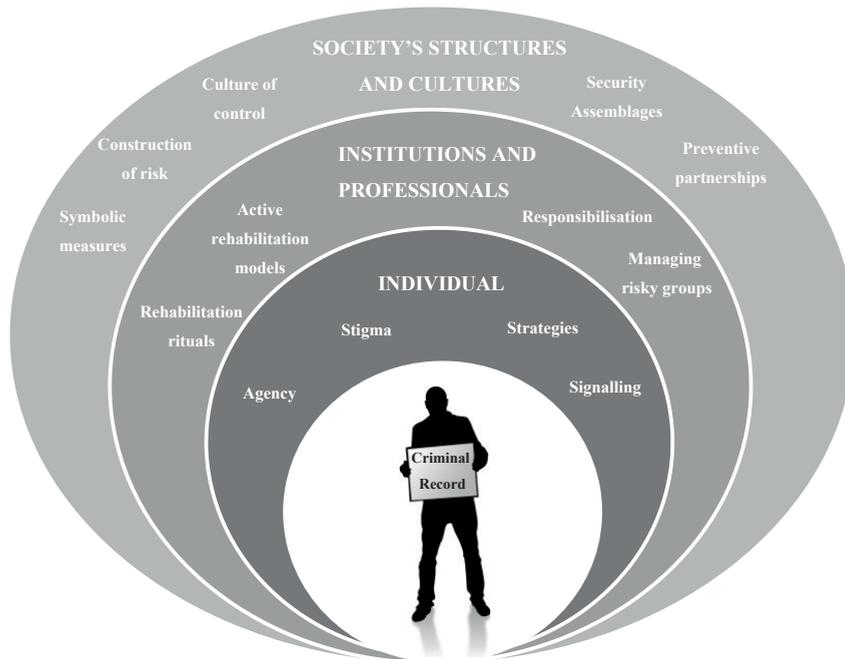
This example shows what collateral (or: additional) consequences an individual with a criminal record may face in the labour market. Sabia had been suspected of embezzling money from a shop where she had worked. She explains that even before her case was dealt with, her being suspected already constituted an obstacle to employment. After her case had been dismissed, she was clueless about whether she could now pass a criminal background screening. Hence, her having a criminal record creates so-called invisible bars to employment, which cause her to feel afraid and internalise low self-esteem. The story of Sabia demonstrates the impact of having a criminal record on the daily life of a young woman trying to find employment, preferably stable employment. Her story is a good introduction to the main research question in this book:

What is the impact of having a criminal record on young adults’ process of re-entry into society, particularly into the labour market?

To ascertain this impact, this study uses a qualitative approach, which consists of interviewing and following young adult offenders and ex-offenders over a one to two-year period of time, as well as interviewing persons directly involved in their reintegration process – mainly professionals and sometimes parents. Although this study’s focus is on how *individuals* deal with having a criminal record, it utilises a multilevel approach to create a comprehensive understanding of how criminal records influence ex-offenders’ process of re-entry, particularly into the labour market. To create such a comprehensive picture, several topics

have been addressed at different levels, as Figure 1.1 shows. The macro-level deals with structures and cultures of society at large, which shape policies regarding criminal record screening. The meso-level addresses the decisions and interactions of institutions and professionals involved in ex-offenders' reintegration process. The micro-level describes individuals' lived experiences of dealing with (the stigma of) a criminal record.

Figure 1.1. Mechanisms that explain the impact of a criminal record on ex-offenders' lives from multiple levels.



Source: Adapted from “Contrast between Spain and the Netherlands in the hidden obstacles to re-entry into the labour market due to a criminal record,” by E.G. Kurtovic and M. Rovira, 2016, *European Journal of Criminology*, p. 3. Copyright 2016 by SAGE.

2 Dearth of empirical data

The impact of having a criminal record on ex-offenders' re-integration into society has long been, to a large degree, understudied, at least in a European context (Jacobs & Larrauri 2011). Attention for this topic of criminologists' and legal scholars' started to increase only since the last decade (Herzog-Evans 2011a). In the Netherlands, an important study on the employment opportunities for applicants with a criminal record stems from 1971 (Buikhuisen & Dijksterhuis) and two important dissertations on the legal framework regarding criminal records stem from 1955 (Mulder) and 1980 (Singer-Dekker). Consequently, the

practice of criminal background screening in hiring procedures seems to have been taken for granted for a long time; so much so that real-life consequences of such measures for ex-offenders' re-entry process have not been examined. Although extensive studies have been carried out on the relationship between employment and crime (Uggen & Staff 2001; Uggen 2008; Pager 2003; Holzer, Raphael, & Stoll 2003), little is known about the impact of (the stigma of) a criminal record on the daily lives and activities of those possessing such a record. This especially holds true for countries within Europe.

So far, many quantitative empirical studies on the crime-employment relationship have demonstrated how unemployment increases the chance of subsequent criminal behaviour and how being employed reduces criminal activity, at least if it involves specific jobs (Ramakers 2014) or specific sub-groups of offenders (Uggen & Staff 2001). However, it remains complex to establish a clear connection between crime and employment. Many of these studies focus on how being employed reduces involvement in crime, based on theories of rational choice, control, social bonds, social learning, strain, etc. Yet, opposite relationship is far less accounted for in empirical research – i.e. the counterproductive effects of criminal record screening on previously convicted persons' employability, based on labelling theories (Harding 2003; LeBel 2012).

Overall, there are four major gaps in the body of empirical research on criminal records and employment restrictions. First, many studies have explored the association between employment and crime as such, without studying specifically the intermediating mechanism of criminal background screening and its effects on both employment and crime. For example, studies that have demonstrated a relationship between stable employment and reduced criminal activity often suggest that employment levels among ex-offenders should be improved. Yet, further research is required to deepen our understanding of how employment might contribute to desistance from crime and how being unemployed might cause secondary deviance, taking into account the influence of criminal record screening and employment exclusion. The current study aims at filling this gap: it is designed to grasp ex-offenders' experiences of stigmatisation and exclusion from the labour market and their impact on either reintegration or continued offending. According to Maruna (2014: 126): "There has been remarkably little empirical literature, internationally, about the effects (either in terms of recidivism or else softer identity measures such as self-esteem or self-efficacy) of sealing or expunging criminal convictions." Hence, he calls this a 'tremendous blind spot': while many researchers try to establish the effectiveness of re-entry programmes on lowering recidivism, counterproductive measures, such as employment restrictions, are not being examined. This study, therefore, intends to contribute to the current body of knowledge by revealing the impact of a criminal record on ex-offenders' position in the labour market.

A second gap in the empirical research on criminal records is that the research carried out up to now is mostly quantitative in nature (e.g. Petersilia 1999; Holzer, Raphael, & Stoll 2004; Pager 2007). It, thus, lacks insight into the subjective accounts of how crime, employment and reintegration are related. The social mechanisms that underlie this dynamic relationship can be better understood through qualitative research. LeBel (2012) argues that there is very little empirical knowledge of the extent to which ex-offenders experience stigmatisation in the labour market based on their a criminal record, and how they deal with the ‘ex-convict’ stigma. Harding, Wyse, Dobson, & Morenoff (2014) claim that few studies have addressed ex-prisoners’ survival strategies of attaining economic independence and long-term job stability. In other words, a subjective perspective is largely absent.

A third gap is that “most of the analysis on the issue has taken the form of normative, rights-based argumentation” (Maruna 2014: 126). It are primarily legal scholars who have recently demonstrated increased attention for criminal record-based policies. Only recently has a study been carried out (Adams, Chen, & Chapman 2016) on ex-offenders’ *experiences* with an official record clearance procedure. The current study aims at combining a normative, legal approach with empirical evidence of ex-offenders’ lived experiences. A purely normative approach towards criminal records moreover lacks an overarching theoretical and criminological perspective that can explain the developments and practices in this field, particularly in a Western-European context. To fill this gap, this study drafts a multilevel framework in order to explore notions that account for developments concerning risk and prevention in society at large, as well as the way in which institutions and professionals responsible for reintegration deal with criminal records and their interactions and impact on the lives of individual ex-offenders.

A fourth research gap is that most of the current research findings are from the United States (Ramakers 2014), whereas research from a European context is largely non-existent (Herzog-Evans 2011a). Jacobs and Larrauri (2011: 3) call it “surprising that conviction-based employment discrimination is not a more salient penological topic in Europe.” In the US, criminal record information is to a large extent publicly accessible, so it could be expected that its impact is very different from that in European countries, where criminal record information is generally considered to fall under the scope of privacy provisions and is thus not as easily available to employers (Jacobs & Larrauri 2012). Criminal records have only recently caught the attention of European scholars. In 2011, legal scholars made a first exploration of this topic in a special issue of the *European Journal of Probation* on *Judicial Rehabilitation*. They explored this topic by focussing on the regulations regarding access to criminal record information in five European countries (France, Germany, Spain, Belgium and the Netherlands). In the editorial it was concluded that: “Indeed, we have just uncovered part of the legal and theoretical background of judicial rehabilitation, expunging techniques, and more generally of access

to criminal records and offenders' employment" (Herzog-Evans 2011a: 3). As these papers mainly described the different legal frameworks, empirical evidence on the effects of using criminal record information for employment screening – at least in continental Europe – is still absent.

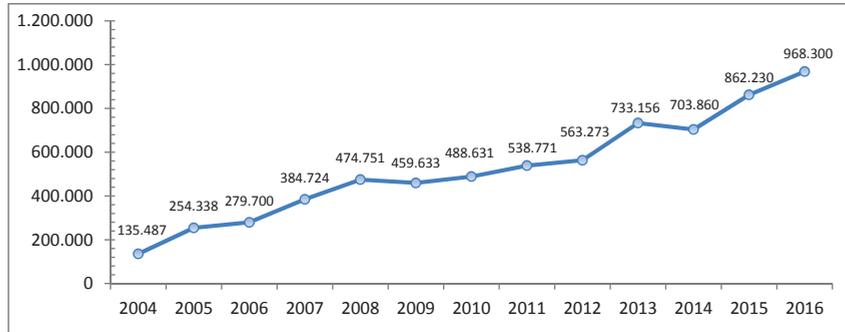
3 Criminal records' rising popularity

For the last two decades, the use of criminal record information is increasing sharply in the Netherlands. This rise could be explained by several developments that took place in Western societies. Firstly, with reference to developments that are often described as the globalisation, individualisation and fragmentation of society. These developments have to a large extent impaired social cohesion and coherent communities (Boutellier 2011). In an individualised society, criminal records serve as 'important markers of character' (Jacobs 2015: 4). Whereas previously, community-based references were used to establish trust, such as symbols or letters of recommendation (Mulder 1955). Another development that can account for the expansion of using criminal record information is the rise in digitalisation and information technologies. By creating one national, computerised criminal record database, criminal record information became very easily accessible, whereas prior to the 1950s criminal records were papers listing a person's convictions written by the clerks of local courts (Singer-Dekker 1980). As a result of such digitalisation processes, criminal records became quickly and widely available for officials outside the criminal justice system. It became an attractive solution to use such highly-accessible, 'hard' information for safety issues. Especially since developments that have been referred to as a culture of control have simultaneously started to influence Dutch penal policies during the 1990s (De Graaf 2013). It can be considered this has contributed to a strong focus on crime prevention, as well as to a serious decline of rehabilitative ideals (Garland 2001). In turn, this may have contributed to a widely expanding use of criminal-record information. It can thus be concluded that the sharp increase in criminal-record screening for purposes of risk-prevention, has been the result of digitalisation processes that made criminal records straightforwardly available, boosted by a strong orientation to crime control at the cost of social ideals, such as rehabilitation.

Figure 1.2 below illustrates to what extent criminal record screening has become a popular and ever-increasing instrument of risk-prevention in the Netherlands since 2004. If employers in the Netherlands want to check a potential employees' criminal background, they can require the employee to submit a *Certificate of Conduct*. The employee can ask the State to issue such a certificate for the occupation desired. This certificate is a document by which the State Secretary for Security and Justice declares that the applicant did not commit any criminal offences that are relevant to the performance of his or her duties. If it is issued, the applicant is considered 'fit' for the job. Over the last decade, the number of requests for a certificate of conduct has rocketed, as the

figure below shows. Between 2004 and 2016 the number of requests has seven folded: from 135,487 to 968,300.

Figure 1.2. Requests for a certificate of conduct between 2004 and 2016.



Source: Justis (www.justis.nl).

Thus, as the use of criminal record screening for employment purposes became much more popular throughout the last decade, it is striking that criminological research has not yet provided empirical data on the effects of such preventive measures. Even though the popularisation of this preventive instrument has been manifest, neither in the Netherlands, nor elsewhere in Europe have criminologists provided evidence on the question to what extent the use of criminal background screening truly prevents work-related crime.

Researchers have only recently (Kruize & Gruter 2016) started researching the nexus between integrity instruments and the prevention of crime in the Netherlands (De Graaf 2015). While already in 2013 it was concluded in a brief policy audit on preventive instruments carried out by the Dutch Ministry of Security and Justice¹ that the preventive nature of the certificate of conduct is based only on rudimentary theoretical assumptions and needs to be examined empirically. So, there is both a lack of overall vision on how this instrument should contribute – in theory – to integrity and crime-prevention in working environments and a lack of solid social scientific evidence of its current effects. The lack of vision plus the lack of evidence might have given rise to a net-widening effect and thus to the vast expansion of this risk-prevention instrument. Its impact on ex-offenders' reintegration process from an individual perspective has yet to be explored.

1 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* ('Policy Audit on Preventive Measures'), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

4 Punishment upon punishment?

The lack of a comprehensive vision, as well as a clear, theoretically underpinned approach leaves important normative issues unaddressed. This became manifest when studying the phenomenon of criminal record-based employment restrictions in practice. My first encounter with the consequences of this policy took place in 2010, while working as a legal adviser at a law firm. One of our clients was convicted for committing assault. After a while, he had to renew his certificate of conduct according to the security policy of the company he worked for, namely the district court of Amsterdam. As he worked as an official court security officer, his being convicted for assault was considered to pose a risk to his job, therefore the certificate was not issued to him. Although his employer did not consider this one-off offence a risk to his employee's excellent performance, the employer was nevertheless required to dismiss him in order to comply with the court's strict security policy. However, our client made objections to the refusal to issue the certificate of conduct, and his employer wrote a letter of recommendation that went with it. Primarily due to his employer's letter, the decision was reversed and the certificate has been issued.

The previous example illustrates how a conviction may be accompanied with *collateral consequences* due to criminal record screening (Demleitner 1999; Travis 2002; Chesney-Lind & Mauer 2003; Lafolette 2005; Pinard 2010b; Jacobs & Larrauri 2011). For our client, these consequences would have been that he was dismissed from his employment and, most likely, would have been considered ineligible to work elsewhere in security services. So these collateral consequences might hinder this ex-offender not only to work as a security officer; also he was afraid they would hinder him to be gainfully employed, since he had no education or working expertise in another area. The punishment itself amounted to only 50 hours of community sentence, yet these collateral consequences were much more significant. This leads to the normative question in which situations employment restrictions are justified. Especially since they are in practice experienced as punishment upon punishment. This question has been addressed by legal scholars, mostly from the US, yet an in-depth study of real-life examples is still absent, which would establish the value of legal principles in a particular national context. This is important since – although in the Netherlands criminal background checks are not as prevalent as in the US – the popularisation of this risk-prevention instrument has led to a seven-fold increase in the number of requests for a certificate of conduct since 2004. It is thus important to establish how to apply legal justifications and limitations to employment restrictions in – Dutch – practice. It should be established whether legal notions from the US – where access to criminal records is not as restricted as in Europe – offer sufficient legal protection to ex-offenders in European societies (Jacobs & Larrauri 2012).

Yet, even in the US, where criminal records are likely to have a much stronger impact on the lives of ex-offenders, there is hardly any critical debate on employment restrictions. Jacobs states in his book *The eternal criminal record*, “Except for the juvenile justice area, criminal justice scholars have treated criminal record policies as unproblematic and inevitable” (2015: xi). The same holds true for the Netherlands, where political debates on criminal record screening only take place on an *ad hoc* basis. Like the US, the attention of media and politicians is mainly focussed on minors and young adults, who are considered to deserve a second chance after having committed so-called sins of their youth (Kurtovic 2012; Barendsen & Kurtovic 2017). Thus, the widespread use of criminal record screening for the prevention of reoffending, particularly at the work place, seems to be widely accepted. Policies on criminal record screening are considered largely underdeveloped (Jacobs & Larrari 2011). One of the topics of this study, therefore, is what justifications and limitations should be applied to restrictions of young adults’ opportunities on the labour market.

5 Research framework

From the above it is clear that we know little of the consequences of criminal record screening in practice. In the Netherlands, there is no comprehensive vision on how this screening *should* function, no evidence on how it *actually* functions and no account of its impact on the *lived realities* of those bearing the stigma of a criminal record. The current study tries to provide a deep understanding of the full practice of criminal record screening in the Netherlands: from political and social developments, to strategies of reintegration professionals, to the impact of background screening on the daily lives of young adult ex-offenders in particular. A qualitative research design is used (in-depth interviews, as well as informal conversations and observations) to uncover social processes and unravel the complex, reciprocal relationship between criminal records, employment restrictions and successful re-entry. This study aims at narrowing the gap in (social scientific) evidence and is, therefore, explorative in nature. It intends to provide an empirically valid and individualised account of the impact of having a criminal record on the lives of young adult offenders and ex-offenders, in particular their position in the labour market.

The next chapter (Chapter 2) first provides a brief overview of the state-of-the-art of empirical research addressing the crime-employment relationship. How is being convicted found to influence employment opportunities, and how is being employed found to influence criminal involvement? These findings may create a fundamental understanding of how these two aspects mutually influence each other. The second chapter, therefore, aims to answer the following research question:

- What do we know from empirical studies on the crime-employment relationship and what findings are particularly relevant concerning young adults in a Dutch context?
(Chapter 2)

To explain and analyse findings from Dutch practice regarding criminal record-based employment restrictions, theories from criminology, penology and law (including the philosophy of law) are used. This study contains both a normative, legal track and a theoretical, criminological track. The legal track is addressed first. It aims to describe laws and policies on *collateral consequences*, i.e. the regulation of the use of conviction information for employment purposes. This legal framework is described from a broad perspective, followed by an in-depth analysis of the Dutch system in particular, which is compared to that of other countries in Europe, as well as the United States. Based on this normative framework it can be established to what extent principles that flow from legal theories on collateral consequences are met in Dutch practice when imposing employment restrictions. Therefore, Chapter 3 should answer the following research questions:

- How does the legal framework of criminal record screening for employment purposes look like in Western European countries and in the United States, and what characterises the Dutch system in particular? What justifications and limitations follow from notions on collateral consequences?
(Chapter 3)

Alongside this normative track, the theoretical track describes criminological notions which help to understand and explain the impact of having a criminal record on the daily lives of offenders and ex-offenders. As shown in Figure 1.1, the theoretical framework addresses this impact on several levels in order to create a comprehensive understanding. Firstly, it addresses structures and cultures of society, instigated by for example policy makers, the media or public opinion (macro-level). Secondly, it describes interactions and strategies of institutions and professionals involved in ex-offenders' reintegration process (meso-level). And finally, it explores the lived experiences of individuals in dealing with (the stigma of) a criminal record (micro-level). Chapter 4 thus aims at answering the following research question:

- What mechanisms – at a micro, meso and macro-level – can explain the impact of having a criminal record on young adults' position in society, particularly in the labour market?
(Chapter 4)

In the following chapter the research methodology is described in order to explain how this qualitative and explorative study is carried out. This chapter

also describes the process of selecting respondents, as well as the respondents' characteristics. Chapter 5, therefore, answers the question:

- What research design and methods allows for gaining a deep understanding of the impact of having a criminal record and how did the process of selecting respondents evolve?
(Chapter 5)

The following three chapters describe the empirical findings of the impact the stigma of a criminal record on an individual level, based on the respondents' stories. First, Chapter 6 describes the practical obstacles to employment (or education) encountered by young adults with a criminal record. Chapter 6, therefore, intends to clarify:

- What types of employment and education are young adult ex-offenders excluded from, due to criminal record screening, and to what extent and under what circumstances does this exclusion take place?
(Chapter 6)

The subsequent chapter (Chapter 7) elaborates on the different (subjective) experiences of stigmatisation following upon having a criminal record as well as the respondents' way of dealing with it, i.e. their options, choices and strategies:

- How do young adults describe their experiences of stigmatisation due to their having a criminal record and how do they deal with the stigma?
(Chapter 7)

The final chapter of this series of three (Chapter 8) describes from an individual (micro-level) perspective how the respondents' way of dealing with the stigma of a criminal record determines their position in society. Chapter 8 thus aims to explain:

- How and to what extent does the stigma of a criminal record limit young adults' position in society, particularly in the labour market?
(Chapter 8)

The following two chapters move away from the individual perspective in order to describe the Dutch practice of criminal record screening from a broader point-of-view. As Figure 1.1 demonstrates, the collateral consequences attached to a criminal record are eventually influenced by social developments and attitudes on a macro and meso-level. On these two levels, demands of public safety and control need to be balanced against ex-offenders' re-integration opportunities. Chapter 9, therefore, explores notions of risk management and securitisation

of society, in order to explain the developments of criminal record screening policies and practices on a macro-level. This chapter, moreover, describes the actual decision-making processes regarding requests for certificates of conduct and analyses it in light of the justifications and limitations set out in the legal framework (Chapter 3). In so doing, Chapter 9 should answer the following research questions:

- How did criminal record screening develop and what can explain its vast expansion? How is the screening for issuing certificates of conduct carried out in practice and to what extent does this practice meet the requirements set out in legal literature?
(Chapter 9)

The last empirical chapter (Chapter 10) adopts a meso-level perspective in order to explain the roles and interactions of institutions and professionals dealing with ex-offender reintegration – such as professionals from the criminal justice system. It describes how these so-called agents of reintegration mediate between macro-level developments and the reintegration processes of individual ex-offenders. Criminological concepts concerning new penology and responsabilisation strategies are used to explain the attitudes of different agents on a meso-level and their way of translating macro-level policies into their daily actions and interactions. In so doing, Chapter 10 should answer the following question:

- How do institutions and agents involved in ex-offenders' reintegration process deal with the stigma of a criminal record and how does their way of dealing with this influence the outcome of reintegration processes?
(Chapter 10)

Having described and analysed all findings that emerged from this study's data collection, the concluding chapter (Chapter 11) firstly summarises the main findings and subsequently applies the ideas that flow from legal and criminological theories to these findings, in order to provide a comprehensive overview of how having a criminal record impacts the re-entry process and employment prospects of young adult offenders and ex-offenders.

6 Summary

Despite the longstanding tradition in researching the relationship between employment and crime, it remains complex to establish a connection between these two aspects. This is partly due to the serious lack of empirical knowledge of the impact of employment restrictions based on a criminal record on ex-offenders' daily lives. A subjective account is particularly absent, thus there is little knowledge of how being convicted influences ex-offenders' re-entry

process and their position in the labour market. Central to this explorative study are, therefore, the experiences of young adults in dealing with the stigma of a criminal record. Their lived experiences constitute evidence to test the normative (rights-based) notions that flow from legal theory on collateral consequences. Furthermore, the multi-level framework that is developed in this book aims to fill in the gaps in overarching theoretical and criminological perspectives that can explain the popularisation of criminal record screening on the European continent and in particular the sharp increase in certificate of conduct screening in the Netherlands.

The crime-employment relationship

Are idle hands the devil's workshop?

1 Introduction

In order to explore the impact of criminal record screening on young adults' labour market position, this chapter describes the state-of-the-art of research on the crime-employment relationship. It thus explores how crime influences employment opportunities and how both employment and unemployment influences criminal activity. Therefore, the characteristics of the crime-employment relationship are described, specifically as found in empirical studies from the Netherlands. By describing the current body of knowledge on the crime-employment association, a fundamental understanding can be created of how these two aspects mutually influence each other, thereby helping to explain this study's empirical findings.

2 The effect of crime on work

Labelling theory presumes that contacts with the criminal justice system, especially when followed by an official punishment, cause a stigma that limits labour market opportunities. These limitations are the result of convictions being generally considered to signal untrustworthiness, for example to employers (Holzer 1996). Exclusion from employment may then negatively affect job stability and earnings, thereby creating "a powerful form of 'status degradation'" (Schwartz & Skolnick 1962). The more state-imposed employment restrictions there are, the more ex-offenders are dependent of the secondary labour market (Nagin & Waldfogel 1995).

If conventional opportunities are blocked, a conviction can lead to secondary deviance (Bushway, Nieuwebeerta, & Blokland 2011), thereby further impairing the employment prospects of the offender (Mesters, van der Geest, & Bijleveld 2015), which, in turn, can be a 'push' towards generating illegal income. Similarly, in a recent qualitative study on the negative (social) effects of being stigmatised as an 'ex-convict', Adams, Chen and Chapman (2016) found that official criminal record clearance procedures benefit ex-offenders in multiple ways, for example by removing barriers to employment (i.e. an

external effect) whilst also facilitating transformation into a new identity (i.e. an internal effect).

Many empirical studies that deal with the question to what extent criminal involvement, in particular having a criminal record, influences employment opportunities, confirm that being convicted results in lower income and increased job instability (Western 2002; Bushway 2004). Apel concludes in an examination of 25 empirical studies on this topic that have been carried out from the 1980s onwards, that convictions indeed hamper employment prospects: “A criminal record reduces employment, increases unemployment, lowers earnings, slows wage growth, diminishes job tenure, and exacerbates job turnover” (2009: 123). However, Nagin and Waldfogel (1995) found that only for persons aged 30 and above convictions lead to lower income; before reaching 25 the income of convicted persons was higher. The explanation for the high legitimate income of convicted persons up to age 30 is that “conviction bars access to stable but initially low-paying career jobs with rising wage profiles and thus may relegate convicted young workers to unstable, but relatively high-paying spot market jobs” (Nagin & Waldfogel 1995: 111). It is thus presumed that young ex-convicts are referred to short-term jobs rather than to ‘career jobs’, because of conviction-based employment restrictions. Although these temporary jobs may initially pay more, on the long term they pay less. This explanation also underscores the idea of ‘aging out’ of a criminal lifestyle; adolescents and young adults may be satisfied with occasional, short-term proceeds, whereas adults want to start investing in their career.

Experimental audit studies from the United States have, nevertheless, made clear that a criminal record reduces the chances of being hired (Uggen, Vuolo, Lageson, Ruhland, & Witham 2014). Pager found in her experimental audit that a criminal record is viewed as a “negative credential” in 50% of all job applications of equally qualified applicants. She moreover found with regard to job interviews that: “Often testers reported seeing employers’ levels of responsiveness change dramatically once they had glanced down at the criminal record question” (2003: 956). Then, employers did not “probe deeper into the possible context or complexities of the situation” during the interview (2003: 956). Decker, Ortiz, Spohn, & Hedberg (2015) reported the same negative experiences of ex-prisoners during job interviews. They too found that when applying for jobs in-person, a criminal record has a significantly negative effect; applicants with a prison record were 22% less likely to receive a ‘favourable response’. Conversely, they found that a prison record had *no* effect on *online* job applications. Still, they argue, these online applications are often followed by an in-person interview where a negative effect does occur.

These experimental audit studies furthermore demonstrated that it is hard to distinguish between different types of stigma, in particular the criminal stigma versus the race stigma. Pager argues with regard to the US that, “given the high rates of incarceration among blacks [...] there is good reason to suspect that employers may respond differently to applicants with criminal records

depending on their race” (2003: 943). As expected, Pager found that employers favour white applicants with criminal records (17% call-backs) over black applicants with criminal records (5% call-backs). Remarkably, she also found that even black applicants *without* criminal records received fewer call-backs (14%) than white applicants *with* a criminal background (2003: 958). In addition, black applicants had generally been asked three times *before* submitting an application whether they had criminal records, while this had never been asked of white applicants in advance. The effect of race, therefore, makes the effect of having a criminal record even stronger. Also Decker *et al.* found an additional negative effect of race/ethnicity on employment prospects, alongside having a prison record. They conclude that, “the challenges ex-offenders face in the job market may be particularly salient for racial minorities” (2015: 116).

In the Netherlands, two similar experiments have recently been carried out, with similar results. In 2015, Dirkzwager, Blokland, Nannes and Vroonland published the results of an experiment in which they had applied to 384 job vacancies for low-skilled jobs, such as a cleaner, dishwasher, warehouse assistant, production worker, chauffeur and catering staff. To each job, three different applications were sent, resulting in a total of 1,152 online job applications. The applicants differed in two aspects: 1) prison *versus* non-prison background, 2) and Western-European *versus* non-Western-European background. A non-Western-European background means that the applicant, although he had been born and raised in the Netherlands, had a Turkish or Moroccan first name and surname. The researchers concluded that that having been imprisoned has no significant effect on the chances of being rejected after an online job application. So, applicants that mentioned they had been detained did not receive significantly more negative responses. This was found for applicants both with and without a Western-European background. However, it was also found that applicants with a non-Western-European background (both with and without a prison background) received more negative responses to their applications than Western-European applicants (Dirkzwager *et al.* 2015). In 2017, Van den Berg, Blommaert, Bijleveld & Ruiters published a study in which they submitted 520 ‘fictitious’ online job applications. These applications differed with regard to (1) offences (no offence, a violent offence, a property offence or a sexual offence), (2) the time elapsed between the offence and the application, (3) the type of industry, and (4) the applicant’s ethnic background. Firstly, with regard to the type of offence they concluded this had no significant effect on the call-back rate. Even when comparing applicants with no offences to applicants who did mention having committed an offence (either violence, theft or a sexual offence), no significant differences with regard to the number of positive responses from employers were noted. Secondly, the time elapsed since committing the offence (which was either one or three years) also shows no significantly different outcomes. Van den Berg *et al.*, nevertheless, concluded from evaluating all the experimental audit studies carried out up to now (only 11 in total) that the more serious the offences or the punishment,

the lower the chances of receiving a positive reaction seems to be. Thirdly, with regard to the type of industry (construction, engineering or logistics) they did find significant effects. The chances of a call-back are highest for people applying in the construction industry, which significantly differ from the call-back rate for people applying for a engineering job. In logistics the chances of receiving a positive reaction are lowest. Finally, regarding ethnicity (which was only observable in the applicant's name), significant effects were also noted. Regarding applicants who did not mention a criminal record, it was found that Western-European applicants received 3.5 times more positive reactions (32.1%) than non-Western-European applicants (9.1%). For applicants with different kind of offences, the same differences were found, i.e. Western-European applicants received three to four times more call-backs than non-Western-European applicants. What is more, the researchers found that ethnicity had more of an effect than having been convicted. They strikingly note that applicants with a non-European ethnic background *without* convictions have even fewer opportunities in the labour market than Dutch applicants *with* a criminal record (Van den Berg *et al.* 2017).

In contrast to these two recent studies, a much older Dutch experimental study from the 1960s (Buikhuisen & Dijksterhuis 1969) showed that job applicants who mentioned having a criminal record received significantly more rejections. Consequently, it seems that at the end of the 1960s, ex-convicts were being stigmatised more during job selection processes based on their criminal records than nowadays. While the results of the recent correspondence tests suggest that ethnicity is a important factor for employment discrimination which supersedes the stigma of a criminal record.

Recently, the same sort of 'correspondence test' has been carried out in two other European countries, namely Belgium and Spain. In Belgium, Baerts and Verhofstadt (2015) sent two similar CVs to 486 job vacancies; one that mentions a year of confinement in a juvenile detention facility (as a minor) and another that does not. The applicants mentioning this detention period received 22% fewer call-backs. In Spain, a similar experiment was conducted (Rovira 2016), which also indicated that people with a criminal record have a smaller chance of a call-back: their chances were reduced by 25% to 33%, depending on the quality of their CV.

In 1971, Buikhuisen and Dijksterhuis expectantly recommended that employers need to be convinced of hiring ex-offenders, by providing concrete information and hard facts on ex-offenders' low recidivism risks. They argued that research is seriously needed to proof that "employing ex-delinquents involves little or no risk for the companies" (1971: 187). As of today, this type of research is nevertheless non-existent in the Netherlands.

3 The longstanding faith in work

In the previous section, studies on the employment-crime relationship are described that deal with the question whether criminal behaviour effects (chances of obtaining) employment. This relationship is, however, not influenced in only one direction as crime and work mutually influence each other; not being able to find a job can be a direct result of being previously convicted, at the same time criminal participation may increase due to not being able to find a good job. Uggen and Wakefield (2008: 191) describe the generalised belief that employment prevents crime and reduces recidivism as the “longstanding faith in work”. The impact of crime on employment has been long-studied, mainly by quantitative research that focusses on an individual level and assesses whether individuals – both with and without employment, as well as with different qualities of employment – are more likely to be involved in crime. A great deal of research has demonstrated how unemployment, as well as being employed in ‘lowly occupations’ increases involvement in crime (e.g. Quetelet 1831, Grogger 1998, Uggen 2000; Bushway & Reuter 2002; Uggen & Thompson 2003; Tripodi, Kim, & Bender 2010; Raphael & Weiman 2007). Apel describes in his overview paper that most “empirical studies confirm the expectation [...] that having a job is associated with less crime than not having a job and that being unemployed is associated with more crime than being employed or out of the labor force” (Apel 2009: 120).

Although a great deal of research has confirmed the preventive effect of employment on crime, there are many other studies that claim that the relationship between employment and crime is not as straightforward, but is essentially quite weak (Kurlycheck, Bushway, & Denver 2016) or at least “not routinely and convincingly demonstrated” (Piquero 2012: 51). For example, Tripodi, Kim and Bender (2010) argue that employment does not lower the *chances* of reincarceration, yet it does increase the *time* to reincarceration – meaning that ex-prisoners who are employed have significantly more crime-free time before they return to prison.

At least researchers agree about the preventive effect of employment when it concerns a *good* job, for example a job of high quality, high income or stability. Thus, there is proof for the ‘faith in work’, yet only in particular circumstances (Bushway & Reuter 2002). Alongside the quality of the job, researchers agree that the employment effect is strongly defined by two other special features, namely the age of the offender and whether the offender is at ‘high risk’ for crime (Uggen & Wakefield 2008; Apel 2009). Important empirical evidence for these three features is explored below.

3.1 Not just any job will do

Sampson and Laub (1995) argue that employment in and of itself does not lead to a decrease in crime. In order to better understand the effect of employment

on crime, researchers have taken different job characteristics into account, such as job duration and stability, work intensity, earnings, and job satisfaction. Uggen (1999: 144) found a “strong and robust job quality effect” on crime. Wadsworth (2006) found that for reducing the level of crime, job quality is even more important than job stability or income. Overall, many researchers agree found that “work quality is more salient than the mere presence of work” (Apel 2009: 119). This could mean that reintegration programmes that only provide ex-offenders with jobs of low quality – which are neither personally satisfying nor financially rewarding – have no positive effect on desistance from crime (Uggen 1999). Therefore, Uggen concludes: “it has become increasingly clear that marginal increases in human capital do little to reduce crime among offenders in the absence of quality employment” (1999: 145). Other characteristics, such as job duration or stability, have not convincingly demonstrated a crime-reducing effect. A longitudinal research by Van der Geest, Bijleveld and Blokland (2011) comparing the effects of temporary versus stable jobs for male high-risk offenders in the Netherlands, showed no effect of working in a stable job, while research on female offenders did show a protective effect of job stability (Verbruggen, Blokland, & Van der Geest 2012). According to this study, job stability only has an extra crime-reducing effect with respect to females.

Ramakers, Nieuwbeerta, Van Wilsem and Dirkzwager (2016) found a relationship between job quality and reduced recidivism of ex-prisoners in the Netherlands. Their longitudinal study is based on data from 714 men who had spent a maximum of six months in pre-trial detention. They found that “not just any job will do”, meaning that higher quality employment – a job that is stable and has a higher occupational level – is an important crime-reducing factor for this group of offenders. They thus found that for high-risk offenders stable, as well as high-quality employment is essential to prevent re-offending. In general, they conclude that for serious offenders only a good job – measured by its occupational level and stability – has a crime-reducing effect.

One of the limitations of the studies mentioned above is that they use objective measures of job characteristics rather than subjective accounts (Wensveen, Palmen, Blokland, & Meeus 2016). Therefore, Wensveen *et al.* measured the relationship between crime and the *individuals' job perceptions*. Based on their recent longitudinal self-report study involving 669 young adults (aged between 18 and 24 at the onset of the study), they conclude that *job commitment* does not reduce crime. Unexpectedly, they found that respondents' positive *future possibilities* in their current job, such as opportunities for personal development, are related to *increased* levels of crime (Wensveen *et al.* 2016: 11). Nevertheless, it should be borne in mind that this was a general population study, involving relatively few young people from lower educational backgrounds.

3.2 High-risk individuals

When comparing the research of Ramakers *et al.* (2016) and Verbruggen *et al.* (2012) to that of Wensveen *et al.* (2016) it becomes clear that the preventive effect of employment is found for high-risk individuals who had been previously imprisoned, but not for the general population. In the sample of Wensveen *et al.*, the women had particularly low delinquency rates, which could explain why a relationship between employment and delinquency was not found (2016: 13). In general, research has indeed proven that employment has a stronger crime-reducing effect among high-risk offenders than among low-risk offenders (Uggen & Wakefield 2008: 206; Apel 2009: 120). Thornberry and Christensen (1984: 405) found that the relationship between employment and crime is much stronger for “less socially advantaged groups”, than it is for “more-advantaged groups”. Also Farrington (1986) found that unemployment leading to increased offending to be particularly true for ‘most delinquent-prone youths’. As a result, it could be argued that employment seems to be particularly beneficial for those at a ‘high risk’ for committing crime.

3.3 Emerging adulthood

Thornberry and Christensen (1984) moreover found that the effect of employment on crime “grew stronger with age”. Uggen (2000) discovered that work opportunity constitutes a ‘turning point’ in the lives of high-risk ex-offenders and that these effects are significant only for offenders above the age of 26. It can thus be argued that older offenders, especially from their late twenties onwards, seem to benefit (more) from the ability to secure employment and create work experience. Grogger (1998), however, argues that the effect of employment on crime growing stronger with age is mainly caused by the growth in social capital, which increases opportunities in the job market. And Apel considers these age-specific findings to be related to the ‘age-earnings profile’, meaning the general increase of income over time. Apel thus relates the preventive effect of a strong attachment to work from a certain moment during emerging adulthood to the quality of the job, resulting from increased job opportunities and, subsequently, increased earnings. Yet, Uggen (2000) found that even marginal employment led to a decline in criminal behaviour, and concludes that desistance from crime is not – solely – dependent on increased earnings, but also on age as independent factor.

Wensveen, Palmen, Blokland and Meeus (2016) concluded from the longitudinal self-report study among young Dutch adults that having a paid job indeed lowers the level of crime, but only for men from age 24 onwards. The life stage of ‘emerging adulthood’ can explain why they found no effect of employment before the respondents reach their mid-twenties. These results seem consistent with earlier findings by Van der Geest, Bijleveld and Blokland (2011) that employment does not decrease, but rather increases crime among

emerging adults (aged 18 to 22). From these studies it can be concluded that the positive impact of being employed seems to be age-related, in a sense that employment has a preventive effect only after the transitional stage of emerging adulthood, i.e. from about age 22 to 24, and above. From this age onwards, young adults are more likely to be oriented towards settling down and taking on adult responsibilities, so they may be more motivated or “ready to desist” (Paternoster & Bushway 2009).

4 Summary and what’s next

Research on the crime-employment relationship has demonstrated, although not conclusively, that crime and employment mutually influence each other. Not only does a poor labour market position – in some circumstances – lead to increased criminal activity, being convicted also worsens the chance of acquiring employment. Maruna (2011a:5) refers to this dynamic relationship as a both tragic and predictable “cycle of stigma and recidivism”. The ‘faith in work’ principle seems to hold true only with respect to a ‘good job’ (high quality and stable employment), high-risk offenders, and young adults who have reached their mid-twenties. Consequently, “work is important for some groups, at particular life stages”, therefore “when and where work opportunities occur in the lives of [...] former offenders [...] is of most consequence” (Uggen & Wakefield 2008: 207).

This should be borne in mind by policy-makers if it were to be avoided that conviction based employment restrictions structurally impede ex-offenders’ opportunities for acquiring a stable ‘career job’ and relegate them to temporary, secondary jobs. While those most at-risk will benefit most from being granted access to (gainful) employment, in practice employment restrictions are lifted only for ex-offenders that are considered a ‘low-risk’. And although research shows that high-risk offenders are most benefited whenever they obtain a satisfying job, employers may see a severe criminal record as negative credential and may not be willing to hire them. This constitutes an important, but hugely counterintuitive challenge for policy-making on criminal background screening.

Furthermore, obtaining a good job becomes particularly important when young people reach their mid-twenties (Uggen 2000). Therefore, criminal background-screening policies should create a special position not only for minors and young people in their early-twenties, but also for young adults throughout their twenties. Because when young adults reach their mid-twenties – after a period of emerging adulthood – employment could clearly create a turning point and, thus, seems crucial to support desistance from crime.

Still, most of the results from the quantitative research discussed above are based on samples of ex-prisoners and do not involve less-serious offenders. Moreover, the findings are often based on interviews held only a short period after their release, so these findings lack thorough insights in the long-term impact of crime and having a criminal record on employment, and vice versa.

To fill these gaps, the qualitative design of this study takes into account (a) petty, as well as serious offenders, as well as (b) persons who are in their early, as well as their late twenties. Capturing their lived experiences over a longer period of time is moreover crucial, since both longitudinal research and subjective measures of job satisfaction are still scarce in the Netherlands (cf. Ramakers *et al.* 2016; Wensveen *et al.* 2016). The subjective perceptions of young adults who are daily faced with the challenges of reintegrating into the labour market could offer true social understanding of the complexities of the work-crime relationship.

In the next chapter (Chapter 3) policies on criminal record screening are described, taking into account whether, and to what extent, these can be supported by the empirical evidence on the crime-employment relationship as demonstrated in this chapter. Subsequently, the empirical chapters (Chapters 6 to 8) investigate the influence of crime on work and vice versa by analysing the research data of the current study. To do so, the practical obstacles to employment and education that young adult ex-offenders face due to their having a criminal record will be examined (Chapter 6). Next, an analysis will be provided of how they experience stigmatisation in the labour market, and what are their emotions and reactions to it (Chapter 7). Finally, attention will be paid to how this determines the respondents' position in the labour market and whether this – in the end – might increase their involvement in crime (Chapter 8).

Chapter 3

Legal framework

“Laws requiring discrimination against ex-offenders [...] signal to society generally that ex-offenders represent a disreputable and dangerous caste.”
J. Jacobs, 2015, p. 309.

1 Introduction

This chapter describes the legal framework of criminal records, particularly criminal record-based employment restrictions. First, a ‘criminal record’ is defined. Next, the laws and regulations are described on storing and disseminating criminal record information, in particular their dissemination for employment purposes. The Dutch policy rules and decision-making criteria for issuing certificates of conduct are described and discussed in light of the legal systems of other European countries, as well as the United States of America (hereinafter, the US). Furthermore, theories deriving from the field of penology and legal philosophy are explored that address normative questions on using criminal background information for imposing *collateral consequences* after conviction. Based on these theories it can be established which justifications and limitations of such consequences are acceptable. The resulting framework is used later on in this study to analyse the characteristics, aims, and limitations of criminal record-screening policies in Dutch practice.

2 Defining the criminal record

It is often considered important in job selection processes to be able to be informed about an applicant’s criminal background.¹ This information can be provided informally, for example when there already is a connection with the prospective employee via the employer’s social network. When the employer has no relationship with the applicant, hiring decisions can be based on criminal background information from official sources. Moreover, for certain

¹ In the Netherlands, about 968,300 criminal record screenings for issuing certificates of conduct took place in 2016. This number is quite high compared to the number of job vacancies filled that year, which is more than 600,000 (<http://statline.cbs.nl>).

jobs employers are even required by law to have prospective employees pass an official criminal record screening before hiring them.

Official criminal background information is generally held by the State in a database, which can be referred to as the criminal record registration system. Basically, a criminal record could be defined by the information that is stored in this official repository. Yet, in literature there is no single definition that covers the full extent of what a criminal record consists of, as countries differ with regard to the kind of information that is kept in the criminal record registration system. In continental Europe, a criminal record generally contains only information on *convictions* (Jacobs & Larrauri 2015). In Spain, for example, it only includes final sentences of criminal courts (Jacobs & Larrauri 2015). In the United States, however, criminal record information could also refer to information on *arrests* (e.g. mugshots), or prison and probation records. A US ‘criminal record’ is thus defined more broadly, as it could consist of court, *as well as* police information (Jacobs & Larrauri 2015).

In the Netherlands, various types of information on criminal cases – registered in an official database – has become popularly known as a ‘criminal record’, although this is not an official definition. The so-called criminal record consists of information that is officially registered in the Dutch *Judicial Documentation System* (JDS). This systems registers information on criminal cases as soon as the police submit the case to the public prosecutor’s office. So, when the public prosecutor registers a case, it will be registered on the alleged offender’s name in the judicial documentation system, and he or she will have – in popular terms – a *criminal record*. This means a person already has a criminal record when he or she is only suspected of having committed an offence, but has not yet been prosecuted for the offence. Contrary to other European countries, the Dutch ‘criminal record’ also contains information on accusations, dismissals (i.e. decisions not to prosecute) and out-of-court settlements offered by the public prosecutor. Different to the US, criminal record information contains no police information.² Dutch criminal records can thus be defined as criminal cases that are being processed, i.e. alleged crimes, or have been processed by the public prosecution service. After criminal cases are dealt with, information remains stored in this judicial documentation system in general for 20 years, or for 30 years with respect to more severe offences. Sexual offences remain stored for 80 years.

2 Information on arrests and other police reports are processed according to the Dutch Police Data Act (*Wet politiegegevens*).

3 Storage and confidentiality

3.1 Privacy considerations

After establishing to what type of information a ‘criminal record’ refers, rules on storage (periods) and confidentiality are important to consider, as these determine the extent of the dissemination of this information. In many European countries, national conviction registers are secured by the State. Although this generally holds true for European countries, it does not apply to the US. This could be explained by the different value attached to the notion of privacy. In the US, privacy is mainly seen as *liberty*. In general this means freedom against State intrusions in the private sovereignty within one’s own home (Whitman 2004: 1164). The emphasis on privacy as *liberty against the State* is based on suspicions against State authority, for example the police, and hostility towards the social welfare State (Whitman 2004: 1161, 1163). Due to these underlying ideas, it is argued that criminal record information should be freely accessible to citizens. Liberty against the State means that the State should not be the sole institution entitled to decide on dissemination and use of this information (Whitman 2004: 1163).

Whereas in the US, criminal records – although formally private – are easily accessible to the general public, in a European context the State is considered the main actor responsible for keeping criminal record information ‘private’. In the European context, privacy generally means the right to respect one’s personal dignity and honour and to control one’s public image. Therefore, citizens should be able to control their position in society and should be shielded from unwanted public exposure, causing public shame, humiliation, embarrassment or loss of dignity (Whitman 2004: 1162). The European interpretation of the notion of privacy thus entails an “informational self-determination” (Whitman 2004: 1163). For that reason, citizens should be able to control the criminal record information that is disclosed concerning them. Citizens rely on the State to control their criminal record information and keep it sealed to third parties. Disclosure, in general, cannot take place without the consent of the individual involved. The Dutch system of disseminating criminal record information conforms to this approach, as, for example, employers cannot review any of this information themselves. Instead, the State carries out a criminal record screening for them.

The notion of privacy could thus be explained as *liberty* in a US-context and as *dignity* in a European context, although this contrast is not absolute (Whitman 2004: 1162). The European emphasis on privacy as public dignity is generally linked to the importance of rehabilitation ideals, whereas the US is considered to be less-oriented towards ex-offender rehabilitation and more towards preserving rights of transparency and a public ‘right to know’ (Jacobs & Larrauri 2015: 2). As the US can be considered to uphold a *right to know*, European countries can be considered to uphold a *right to be forgotten* (Herzog-

Evans 2011a; Jacobs & Larrauri 2015), except for the United Kingdom, where criminal record policies are considered to be more related to the those of the US (Jacobs & Larrauri 2015: 2).

It has been argued that the Netherlands is an exception to this classical dichotomy and is positioned between these two extremes, having “one foot” in the Anglosphere and “one foot” in classical European traditions (Herzog-Evans 2011: 2). Given the popular and widespread practice of criminal record screening, it seems that the Netherlands is upholding a right to know. Moreover, crime-prevention measures seems to have gained ground at the cost of rehabilitation ideals (i.e. a right to be forgotten). Still, privacy values are very high in the Netherlands. The policy regarding the certificate of conduct explicitly aims to balance the interests of the person involved (his public image) with the interests of public safety. Although every employer can demand a criminal record screening, it is the government who performs the certificate of conduct screening and declares whether someone is fit for the job. In so doing, no criminal background information is disseminated to the employer. It, therefore, could be stated that in general the Netherlands does not disseminate criminal record information to third parties for employment purposes, due to the value attached to ex-offenders’ privacy rights.

3.2 *Storage periods*

The storage periods for criminal record information differ per country. Most countries apply periods after which criminal record information is expunged, sealed, cancelled or spent (Larrauri 2014a). This does not necessarily mean that information on previous offences is erased from the registration system, rather it can no longer be used by third parties for pre-employment screening. For example in Spain, an ex-convict can apply for cancelation of a conviction after a pre-determined period, varying between six months for minor violations to ten years for severe offences (Rovira 2016). In the Anglosphere (England, Wales and Ireland), which is generally considered to uphold a ‘right to know’, most convictions become spent automatically after the passage of time; after five years for a fine or other sentence, after seven years for a prison sentence not exceeding six months, and ten years for a prison sentence between six and thirty months (Carr, Dwyer, & Larrauri 2015: 24). Longer terms of imprisonment never become spent. For most jobs, spent convictions are not disclosed to an employer on a basic criminal record check, but will be disclosed on standard and enhanced criminal record checks.³

In the Netherlands, storage periods are much longer: 20 years in general, 30 years for severe offences, and 80 years for sexual offences. Although these storage periods are quite long compared to other countries, the policy rules on

3 <http://hub.unlock.org.uk/knowledgebase/differences-unspent-spent-convictions/>. Last visited June 8, 2017.

certificates of conduct set strict periods for using criminal record information for screening. In general, an offence can be taken into account for four years. This means that after four years, a request for a certificate of conduct cannot be refused due to that conviction. For juveniles up to 22 years old, a conviction can be taken into account for only two years, as long as it is not a violent or sexual offence. A conviction for homicide can be taken into account for twenty years and a sexual offence for the rest of a person's life. It can be concluded that although criminal record information remains stored for a very lengthy period in the Netherlands, the periods in which a conviction can raise an obstacle to employment are rather restricted, at least compared to other European countries.

4 Criminal record-based employment restrictions

Criminal background checks are a common phenomenon in the job market, for example in the US (Jacobs 2015), the Netherlands (Boone & Kurtovic 2015), Sweden (Backman 2012), and Australia (Saliba 2013). If a potential employee poses a threat, for example to customers, clients, colleagues, or valuable goods or information, he or she could be denied a job. Criminal background screening can be performed in many ways. For example by asking the potential employee directly, by consulting former employers, via social networks, or by requesting information from the official criminal record repository. The rules on criminal record-based employment restrictions are examined below.

4.1 The certificate screening

The Netherlands – unlike the US and other European countries – does not allow individuals to obtain an extract of their criminal record. This prevents ‘enforced subject access’ (Loucks, Lyner, & Sullivan 1998: 200), meaning that third parties, such as employers, may demand a copy of a criminal record before hiring someone, although they do not have access to the criminal record repository themselves. Criminal record disclosure has always been highly restricted in the Netherlands due to the weight given to the protection of privacy (Boone 2012a). Great emphasis on privacy protection combined with a strong inclination of employers to obtain criminal background knowledge of potential employees, led to the creation of a new legal system in 2004. This legal framework aims to respect ex-offenders’ privacy rights, as well as to meet the concerns of employers who want to know whether a potential employee has a (relevant) criminal history. Therefore, the only way for most employers to acquire information on criminal backgrounds is by means of an official request for a certificate of conduct.

The certificate of conduct is issued by a central administrative screening authority of the Ministry of Security and Justice, called *Justis*. This certificate is a document in which the State Secretary for Security and Justice declares that the applicant did not commit any criminal offences that are relevant to the

performance of his or her duties. Once issued, the certificate does not reveal any criminal record information. When the applicant has convictions that are considered relevant to the performance of his or her duties, the application will be refused and the certificate of conduct denied. When a potential employee cannot hand over the certificate, because it has not been issued, this is a clear-cut signal to the employer that the administrative agency has judged that the applicant has a criminal conviction relevant to the occupation proposed; when no risk is observed, the applicant would have received the certificate of conduct. This particular instrument for disseminating criminal record information ensures that the actual criminal history of convicted persons remains concealed and, therefore, a private matter. Only the State can assess the applicant's fitness for performing the job desired based on his or her criminal records.

According to the Ministry of Security and Justice, there are three types of certificate of conduct screening in the Netherlands: onset screening, repeating screening and continuous screening.⁴ The onset screening requires a potential employee to submit a certificate before or at the beginning of being employed. The repeating screening requires a new screening after a certain period of being employed, for example after two or five years. The employee then has to re-submit a certificate of conduct, for which he has to apply again to screening authority Justis. The continuous screening requires all employees in a particular industry, e.g. child care or taxi business, to be registered in a special database that is connected to the Judicial Documentation System. As soon as a new information on an (alleged) offence is registered in this documentation system, the employer receives a signal. Based on that 'warning', the employer can require his employee to re-submit a certificate of conduct, who then has to apply for a new certificate. If it is not issued to him, due to the alleged offence, the employer can choose to dismiss him.

4.2 Mandatory restrictions

When someone is refused a certificate or denied employment, this is referred to as criminal record-based employment restrictions. Jacobs and Larrauri (2011) distinguish between *de jure* and *de facto* employment discrimination; the former being based on legal provisions, and thus foreseeable, the latter being discretionary, e.g. based on employers motives for hiring ex-offenders. In other words, *de facto* discrimination is based on the employer's *own choice* whether to hire someone with a criminal background, while *de jure* discrimination is *mandatory*, i.e. required by law. According to the Dutch legal framework, *de facto* discrimination does not mean that people with a criminal record are *a priori* excluded from specific jobs. The decision-making process always allows for discretion when carrying out a criminal record screening. The risk an ex-

4 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* ('Policy Audit on Preventive Measures'), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

offender may pose to a specific occupation is always balanced against his or her personal interests and developments. Thus, the interests of society as a whole and the interests of the individual ex-offender are weighed up before reaching a decision.

In the Netherlands, mandatory restrictions apply for licensed occupations, such as lawyer, security guard, taxi-driver, and working in financial services or at Schiphol Airport. In the US these mandatory restrictions are more common and are referred to as employment bans, which prohibit individuals with certain convictions from working in, for example, civil and military service and from obtaining occupational licences (Jacobs 2015: 261). In continental European countries ex-offenders are generally banned from working in government employment (Jacobs 2015). Jacobs considers this problematic, as the government should 'lead by example' rather than initiating mandatory employment restrictions and discriminating against ex-offenders (Jacobs 2015: 274). Mandatory restrictions can, moreover, follow from EU-law. The European Union has created extensive provisions for its Member States on criminal record checks in at least two specific areas of employment: passenger transport and occupations involving contact with children.⁵

In between employment restrictions that are required by law and discretionary restrictions (discussed below), a third form of restrictions could be distinguished, namely restrictions based on *self-regulation*. These restrictions are neither prescribed by law, nor dependent on the discretion of the individual employer responsible for selecting new employees. If employment restrictions are based on self-regulation, they are prescribed by the official policy rules of a specific industry, company or organisation. For example, large healthcare institutions, as a general policy, require a certificate of conduct of all employees and do not make exceptions to this rule in individual circumstances. Employment restrictions that are based on an industry's self-regulation, i.e. formal policy rules, often leave no room for discretion in individual cases. So, if the screening authority decides not to issue a certificate to a prospective employee, general policy prescribes the company has to let that person go.

4.3 Discretionary restrictions

Discretionary or *de facto* employment restrictions refer to employers' choices to either accept or refuse ex-offenders for the job. Employers are allowed to make these decisions themselves whenever the State is not responsible for 'guaranteeing' public safety or an industry's integrity. In most European countries, hiring decisions are left to the employer with regard to *private sector* jobs. This is based on the idea that in the private sector, employment restrictions are considered to be in the interest of private organisations (their financial or

5 Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children, and child pornography.

reputational interest) rather than protecting public safety (Jacobs 2015: 263). So in these cases, it is the private entrepreneur who bears the risks, not the State.

The Dutch legislative framework, however, makes no distinction between public and private sector jobs. For every kind of occupation (both paid and unpaid), a criminal background screening is performed when a request for a certificate of conduct is submitted to Justis. As employers – both private and (most) public sectors ones – cannot obtain information from the criminal record register directly, the only option is to request the government to assess whether a potential employee has been convicted for offences that pose a risk to the job. As a result, the Dutch system leaves employers with no room for a case-by-case assessment with regard to the relevance of an employee's criminal record. They can only depend on Justis' decision whether to issue a certificate. This screening instrument is designed to guarantee the privacy rights of ex-offenders, while at the same time meeting the demands for a safe society in general and risk-aversion from employers in particular.

Dutch employers indeed base their hiring decisions mainly on whether the certificate of conduct has been issued. In a survey amongst managers, 79% responded they would not hire an individual without a certificate, while 17% said the decision would be based on the circumstances of each particular case (Valk, Roth, Haak, & Sam-Sin 2006).⁶ The number of hiring decisions based on whether the certificate is issued, is higher for occupations for which the certificate is required by law (*de jure* restrictions), for example 89% for passenger transport.⁷ Whenever the choice is left to the employer (*de facto* restrictions), persons without an official certificate are less likely to be refused, for example 55% in the retail and catering sector. These numbers demonstrate that employment restrictions prescribed by law largely determine hiring decisions. Jacobs (2015), quoted at the beginning of this chapter, says: "laws that require employment discrimination are a 'signal' to society". As employers are inclined to meet the official requirements, it seems they do not 'dare' to make different choices, i.e. give an ex-offender a chance, based on their personal assessment of the circumstances of that particular case. Yet, also when criminal record screening is not mandatory, employers seem reluctant to hire ex-offenders if their request for a certificate has been refused.

6 This survey enrolled 875 officials who had been involved in the procedure of applying for a certificate of conduct as a third party. These officials are from several trades of industry; education, child care, civil service, passenger and goods transport, care and welfare, financial services, catering and retail sector.

7 The certificate of conduct is necessary to obtain a chauffeur permit, which is obligatory to carry out passenger transport.

5 Collateral consequences

In literature, criminal background screening and employment restrictions are referred to as additional punishment, and in particular – using a military metaphor (Larrauri & Rovira 2017) – as *collateral consequences* of punishment. Theories on the use of criminal record information for imposing employment restrictions have mainly originated from penology and philosophy of law. This section explores the definition of collateral consequences and the justifications and limitations to imposing such consequences.

5.1 Types and variations

In the US, a collateral consequence is defined in the 2010 Uniform Collateral Consequences of Conviction Act⁸ as a “penalty, disability, or disadvantage”, imposed on an individual as a result of, or relating to the individual’s conviction of an offense. When this ‘penalty, disability, or disadvantage’ applies by operation of law (regardless of whether it is included in the judgment or sentence), it is called a ‘collateral sanction’. When an administrative agency, governmental official, or court in a civil proceeding is authorised, yet not required, to impose such a consequence it is called a ‘disqualification’.

Contrary to the clear definition provided in this US Act, scholars from various countries have not (yet) established a single definition of collateral consequences. This is surprising, given the widespread and ever-increasing use of criminal background screening. Then again, there is an extremely wide scope of additional consequences that can be applied after a conviction, therefore it is extremely challenging to encompass such an array of differences in one clear definition. Disqualifications can range from, for example, employment, public housing, the right to vote, possessing firearms, welfare assistance, student grants and loans, immigration status, and parental rights (Uggen, Manza, & Thompson 2006) to owning a dangerous dog (Larrauri & Rovira 2017). All of these additional penalties or disqualifications are based on different legal frameworks, for example State or federal law (US), national or municipal level (EU), formal law or policy rules, automatic or discretionary application, et cetera. As there are so many different varieties of collateral consequences, a comprehensive overview per country – let alone a comparison between countries – has not yet been provided in academic literature. To be able to do so, a comparative framework has to be established first (Kurtovic & Rovira 2016; Larrauri & Rovira 2017). The definitions given below are based on various notions on the characteristics of collateral consequences.

8 [Http://www.uniformlaws.org/shared/docs/collateral_consequences/uccca_final_10.pdf](http://www.uniformlaws.org/shared/docs/collateral_consequences/uccca_final_10.pdf) (last visited 13 December 2016).

5.2 Definitions

In literature, collateral consequences are characterised as *civil disqualifications*, *disabilities* or *restrictions* (Von Hirsch & Wasik 1997: 599), which are “frequently leaving former offenders excluded from participation in important aspects of life” (Demleitner 1999: 153). Although there are many characteristics and descriptions, collateral consequences can be broadly defined as *additional consequences that flow from a criminal conviction, which restrict a person to fully participate in society*. The restrictions are often the result of a conviction, whether imprisonment, a community sentence or a fine, but can also be based on an alleged crime. Sometimes these will follow automatically after a conviction (Pinard 2010a: 1215). Such additional or post-sentence legal penalties can be “either mandated by law as automatic consequences of his conviction, or imposed more selectively by legal authorities” (Duff 2012: 13). The legal authorities that can impose such post-sentence consequences can be positioned both within and outside the criminal justice system.

Given the almost infinite variety of types of collateral consequences plus the wide array of numerous rules and policies regulating them, these consequences are often not ‘foreseeable’ as they operate largely beyond public knowledge and public view. And as they are not a part of the criminal sanction, but are often imposed by additional, administrative decisions (Pinard 2010a: 1215) they can be considered ‘invisible punishment’ (Travis 2002: 16; Thomas & Heberton 2013: 238). Indeed, “despite their impact on individuals who cycle through the criminal justice system, they are not considered part of this system. [...] [They] for the most part are ignored throughout the criminal process. Defense attorneys, prosecutors and judges do not incorporate collateral consequences into their advocacy and sentence practices” (Pinard 2010a: 1215). So, after the punishment, the “powerfully effective stigma” of ‘ex-convict’ can follow convicted persons beyond the realm of the criminal justice system, “in the guise of collateral, or non-penal, sanctions” (Roberts 2008). In other words, these formal collateral consequences, “although not formally part of the offender’s punishment” [...], “are burdens imposed on him as a result of his conviction and punishment” (Duff 2012: 13). Alongside such formal burdens that impact several aspects of civic life, convictions can also lead to all kinds of social exclusions (Damaska 1968). Collateral consequences can thus be social (informal) or legal (formal) in nature and impact not only individuals, but families and communities as well (Pinard 2010a: 1215).

5.3 Justifications and limitations

The theoretical ideas on collateral consequences also provide several justifications and limitations. The aim of imposing such consequences should, in a strict sense, be purely preventive. The preventive aim is achieved by incapacitation; the ex-offender is denied full citizenship rights and thus restricted to perform

certain duties of citizenship (Uggen, Manza, & Thompson 2006). By restricting ex-offenders to fulfil certain tasks or duties, society's safety should be enhanced or at least governmental integrity guaranteed. If a partly punitive aim would also be accepted, this means that collateral consequences should be considered part of the penal response, thus imposing such consequences may impair the proportionality of the punishment.

Yet, such preventive restrictions can only be justified when "the case for them is strong" (Von Hirsch & Wasik 1997: 608). With regard to employment restrictions, three conditions have to be met. First, there has to be a (*close*) *connection between the offence and the occupation*. So there has to be a (manifest) relationship, meaning that the offence poses a – more or less direct – risk to the job at hand. Second, imposing such incapacitating consequences can only be justified when the job or task involves a "*risk of serious harm*" (Duff 2012: 16) or a "*significant risk of significant harm*" (Jacobs 2015: 309). In other words, it is about "*the specially vulnerable character*" (Von Hirsch & Wasik 1997: 608) of the occupation at hand. It could, for example, be questioned whether employment restrictions are justified for the job of gardener, since there is no serious harm at stake. Still, the task of gardener at or near children's playgrounds could be considered to have a 'specially vulnerable character' and involve a 'risk of serious harm'. Accordingly, there may be a 'strong case' for restricting a paedophile sex-offender to acquire such a job, as was ruled by the Dutch Council of State (*Raad van State*).⁹ Although it could be questioned whether the job of gardener indeed involves an especially vulnerable character, and whether the first condition – a (close) connection between offence and occupation – was met. After all, in a strict sense, gardening does not at all require having one-on-one contact with children. Larrauri already noted that if the State would encourage criminal record checks for persons working 'in close relation' with children in order to exclude sex-offenders, this might lead to a proliferation of criminal record checks and an expansion of the scope of that particular provision (Larrauri 2014a: 56).

The third condition is that collateral consequences have to be based on an *individualised assessment*. Scholars agree that the excluding measures should not be permanent and should be subject to review by a judicial authority (Damaska 1968; Demleitner 1999). This authority should have room for *discretion* when deciding on cases, allowing for an individual assessment. By providing for judicial review and making an individualised assessment, it is examined in each particular case whether the case for imposing collateral consequences is strong. If the individual's interest to re-enter the labour market supersedes society's interest to be protected from any risk, employment restrictions should be lifted.

9 Council of State, 9 July 2014, ECLI:NL:RVS:2014:2484.

Although in theory the aim of collateral consequences is primarily preventive, they can also be punishing, or at least experienced as such (Boone 2012a: 204). Several scholars claim that prevention is not the only goal and exclusive measures can also be intended to be punishing, deterrent or shaming (Demleitner 1999; Lafollette 2005; Roberts 2008; Naylor 2011; Jacobs & Larrauri 2012). This raises the question whether the legal, as well as the social consequences following upon punishment should also be considered to be part of that punishment. Duff argues that “if we accept the modest retributive claim [...] we must ask whether the burdens that such provisions impose could be appropriate as punishments” (2012:15). If punishment were to be understood as ‘an objective evil’ that will be considered as ‘suffering’ (Jonkers 1991), it could be argued that principles of imposing penal sanctions, such as proportionality and subsidiarity, also apply to imposing collateral consequences, as these can clearly be considered as ‘suffering’ (Boone & Kurtovic 2016). Also Malsch & Duker (2017) argue in this regard that although disqualifications are primarily aimed to have a preventive effect, whenever they lack a ‘mirroring relation’ to the crime committed they also have a punitive effect. Overall, it can be concluded that many scholars agree that sentencing principles, at least proportionality, should also apply to imposing employment restrictions. Saliba (2013: 30) noted in this regard that if preventive measures imposed after punishment are not bound by proportionality principles, this may in fact lead to “a broadening of punishment into an indefinite future subsequent to the offender’s release from incarceration.”

6 Justifications and limitations of the Dutch system

6.1 Aims

The Dutch legal framework regarding the registration and use of criminal records that was in place before the current one, is the 1955 *Judicial Documentation Act*. This Act was introduced to respond to new developments in society and solve three problems in particular. First, as society became more anonymous, surveillance became more difficult. An accurate registration system of convictions and other judicial information had to provide more opportunities for surveillance. Second, the registration of criminal record information was widely scattered between several authorities, which weakened the reliability of this information. For that reason, a single authority was introduced that would be responsible for guaranteeing the data’s quality. Third, resocialisation ideals became more prominent in the criminal justice system in order to counterbalance mere retributive aims. In order to serve rehabilitative goals, the 1955 Act had to guarantee that information would not remain accessible indefinitely (Helsloot, Schmidt, Tholen, Vries, & Vries, 2013: 22).

However, as a result of developments starting in the 1980s, which were characterised by a hardening of the penal climate and a moving away from

rehabilitative goals (Maruna 2014: 126), criminal-record stigma's could no longer be easily removed as they became an important element of preventive policies. Indeed, the successor of the 1955 Act in the Netherlands – the 2004 *Judicial Data and Criminal Records Act* – no longer contains clear rehabilitative goals. What follows from the parliamentary documents is that, at the end of the 20th Century, digitalisation and computerisation processes required a new legal framework. The main reason to introduce the new Act, therefore, was to create a cost-reducing, less labour-intensive computerised storage system of judicial data. In the meantime, digitalisation processes had created almost unlimited storage facilities, so this new Act had to provide proper safeguards for the use and dissemination of criminal record information. In so doing, it responded to the public claim for more privacy and to European standards on this matter.¹⁰ Yet, it could be argued that the right to respect for one's private life was a goal in itself rather than being related to the idea that stigmatisation processes should be actively avoided in order to promote resocialisation. In general, the 2004 Act provided a new, digitalised system for storing and disseminating criminal record information and, at the same time, responded to the need for protecting privacy rights by introducing strict criteria for the dissemination of criminal record information to third parties.¹¹ Thus, the act aims at balancing two (seemingly) opposite interests, crime prevention, on the one hand, and privacy protection, on the other.

To do so, a central administrative screening authority (*Justis*) was introduced to issue certificates of conduct. Since 2004, *Justis* carries out many criminal record checks each year, and public and private employers depend on its decision of whether to issue a certificate. This screening authority was introduced particularly to respond to a growing need of private organisations during the 1990s to check criminal backgrounds of potential employees, business partners or tenants. At the same time, private parties had lost their trust in the instrument of certificates of conduct, because the conviction information on which it was based too often appeared to be incomplete or incorrect (Kralingen & Prins 1996; Brok 1999). One of the policy changes that had to make the certificate of conduct a strong risk-prevention instrument that would be popular with employers, is that they are now allowed to request a certificate for *every* occupation, both paid and unpaid. This means *Justis* also assesses requests for voluntary work, internships and education. Prior to 2004, however, it first had to be established – before handling the request – whether the nature of the activity or occupation demanded a criminal background check, which would be based on the level of integrity or vulnerability of the position in question. So, it was first decided whether a *serious societal interest* was at stake that justified the

10 These standards were set out in the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which rendered into force in the Netherlands in 1993.

11 Parliamentary Documents 1995/96, 24 797, No. 3, p. 3.

State to carry out a criminal background screening and thus assess the integrity of the applicant. Prior to 2004, it was thus tested whether a ‘risk of serious harm’ or a ‘special vulnerability’ was involved, while currently a lack of those characteristics can no longer lead to refusing to handle a request. According to Parliamentary Documents, the Minister of Justice who introduced the current regime, has stated that he strongly believed that requesting a certificate would not be taken lightly and would only be done if there is a legitimate reason for requesting an integrity screening.¹²

It can be argued that since the founding of the central screening authority, the certificate has indeed become a strong and popular instrument for the prevention of crime, given the sharp rise in requests each year. At the same time, by setting clear restrictions on the dissemination of criminal background information to third parties, privacy rights are also guaranteed. Justis will either issue or refuse the certificate. This means that even if it is issued in spite of the applicant’s criminal record, the employer will not find out, because once issued, the certificate contains no information on convictions whatsoever. If it is refused, the employer will not be informed; only the applicant himself will receive a letter of refusal – then he himself can decide what to tell his employer about the reasons of the refusal.

Although in the 1990s, the Minister assumed that requests for a certificate would not be submitted lightly, there is an ever-growing number of criminal background screening. This is first of all due to the policy rules allowing screening for *every kind* of occupation. Yet, another important underlying mechanism of this growth is that the popularity of this risk-prevention instrument seems to increase after high-impact cases. For example, due to the heavy impact of large-scale sexual scandals involving children at the beginning of the 21st Century, e.g. in child-care institutions and the Catholic Church, the call for prevention by expanding the use of criminal background screening increased. As a result, the retention periods of convictions for sexual crimes were extended. This demonstrates how, since the beginning of the 21st Century, the focus of prevention policies seems to be increasingly shifting from ex-offenders’ rights towards victims’ rights and effective control (Helsloot *et al.* 2013: 27). Moreover, promoting the use of criminal record screening combined with prolonging storage periods seems to shift focus away from rehabilitative ideals (Helsloot *et al.* 2013: 3).

6.2 *Decision-making framework*

When the screening authority receives a request for a certificate of conduct, the first step is to examine whether the applicant is registered in the judicial documentation system and whether any registered offence has already

12 Parliamentary Documents 1995-96, 24 797, No. 3, p. 10.

‘expired’. The general expiry period is four years, but longer periods apply for jobs demanding a higher level of integrity (ten years), for very serious violent offences (twenty years), or for sexual offences (which never expire). For juveniles up to 22 years old, who have not committed a sexual or serious violent offence, the expiry period is two years. When an ‘unexpired’ offence is found to be registered in the judicial documentation system, its relevance will be assessed. Firstly, it is considered whether there is a *connection* between the offence and the occupation. According to the policy rules it should be established “whether the offence, if repeated, in view of the risk for society, will hinder the proper performance of the position, task or occupation”. For example, drunk driving – if repeated – obstructs working properly as a courier, but not working properly as a cashier. Thus, this offence is considered to pose a risk to society, i.e. passengers and other road users, only when the occupation involves working as a driver.

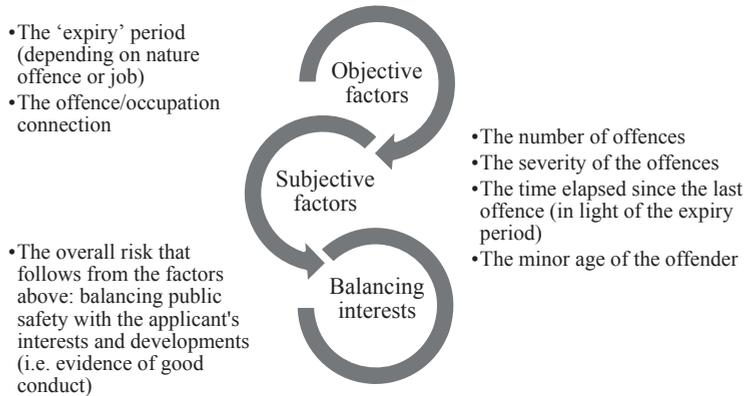
So, to refuse the certificate of conduct, there first has to be a relationship between the applicant’s convictions and the occupation in question. The policy rules, however, do not strictly define which offences pose a risk to which occupations, so every offence can – potentially – be detrimental to a job. Boone (2011: 73) notes that the risks previous offences pose to an occupation are described in “such wide terms [...] that it is hard to imagine an offence that won’t be a threat to one of them.” For taxi drivers, for example, *all* offences are considered to hinder the proper performance of their task.¹³

If a connection is established between the offence and the occupation, four aspects are balanced: (1) the number of offences, (2) the severity of the offences, (3) the time elapsed since the last offence (in light of the expiry period), and (4) whether the offences were committed as a minor. If balancing these individual aspects benefits the applicant beyond question, the certificate will be issued despite the fact that the offence(s) had not yet expired. Yet, if weighing these aspects do not benefit the applicant, the certificate will be refused. During several phases of the (administrative) proceedings, the applicant has the opportunity to provide evidence of ‘good conduct’, which proves that he or she (currently) does not pose a risk to the job desired. The applicant thus has to provide as many arguments as possible in favour of his request. At the end, the interests of the applicant (what is at stake for him) are weighed against the interest of public safety (the level of risk). So the final decision can be based on the ‘full picture’ of the applicant only if he has submitted evidence of ‘good conduct’. Then, it is established whether the risk to public safety is *low enough* to issue a certificate. The figure below shows what factors are considered

13 This is partly related to the work of taxi drivers involving direct customer contact. Once a customer gets into the taxi, all kinds of offences (e.g. theft, violence, selling drugs) could pose a threat to their safety. Also the safety of other road users could be impeded by traffic offences. Moreover, other kinds of risks, such as not meeting administrative requirements thereby impeding fair competition, are also considered to be related to the job of taxi driver.

consecutively if the decision-makers detect a registration of an offence in the judicial documentation system:

Figure 3.1. Decision-making framework for the issuing of certificates of conduct



These decision-making criteria seem to correspond with the criteria that follow from the literature on collateral consequences. Moreover, other countries that have provided literature on this topic seem to apply similar criteria, although with some variations. For example, in Ireland the criteria that are reviewed are: the offender’s age, the seriousness of the crime, reoffending, and the time elapsed (Carr, Dwyer, & Larrauri 2015: 49). Another example is the New York Correction Law on *Licensure and employment of persons previously convicted of one or more criminal offenses*, which lays down several factors to be considered prior to making a hiring decision. First of all, the policy’s aim to encourage the employment of persons previously convicted. Furthermore, the specific duties and responsibilities related to the employment and the bearing (if any) the criminal offence will have on the person’s fitness or ability to perform one or more such duties or responsibilities (Article 23-A NY Correction Law). Other factors to be taken into account are: the time elapsed, the offender’s age and the seriousness of the offence. Also information produced by the person with respect to his or her rehabilitation and good conduct should be considered, and, lastly, the legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public. This New York State decision-making framework thus looks very similar to the Dutch framework, as the factors that are taken into account to decide on the ex-offender’s ‘fitness’ to perform the job desired, are essentially the same.

Yet, although the decision-making criteria appear to be quite similar, their application in practice can vary significantly among different jurisdictions (Herzog-Evens 2011a). For example, collateral consequences can be widespread in one country, but rarely enforced in others (Larrauri & Rovira 2017). Later on in this book (Chapter 9), attention is, therefore, paid to how the different aspects

of the Dutch decision-making framework are applied and weighed in practice. It is important to observe, for example, how evidence of ‘good conduct’ is weighed in the decision-making process. Only then can the real impact of criminal record screening practices be understood.

7 Summary

As follows from studying different national legal systems, there is no single definition of what it means to have a ‘criminal record’. Contrary to the US, European countries generally apply a rather strict definition by incorporating only conviction information in the criminal record. Nevertheless, the Netherlands fits between these two extremes, as it also involves other types of disposals, such as dismissals, out-of-court settlements and even alleged crimes. So, Dutch criminal record-based employment restrictions are based on several types of criminal background information and not merely on court rulings.

Still, information from the Dutch Judicial Documentation System is considered to be strictly confidential and access is limited. Non-disclosure is the underlying principle, so neither employers¹⁴ nor individuals are allowed to access the judicial documentation system, or receive copies of (their) criminal records. Employers can only request the government to assess whether a potential employee has been convicted for offences that pose a risk to the job. Once a certificate of conduct is issued, this guarantees the employer that no (recent) offences were considered to pose a threat to the proper performance of the applicant’s duties. Since the 1990s, the Dutch Government became increasingly responsible for criminal record screening and, as a result, the certificate became a strong risk-prevention instrument that is popular with employers. Moreover, the certificate became a political instrument, as that current events, incidents, and political pressure evidently influence the use of the certificate screening.¹⁵

In many other European countries, such as Germany, France and Spain, employers can either access criminal record registers directly or job applicants can receive an extract to submit. Although other European countries allow for disclosure to third parties, they still attach a great deal of value to privacy rights, in particular protection against unwanted public disclosure. In the US, on the contrary, public access and a public right to know is considered necessary to protect citizens against ‘paternalistic’ State concealment of criminal record information.

Similar to the Netherlands, most European countries apply fixed periods after which convictions become spent, cancelled or expunged. In the Netherlands, convictions get expunged after a very long time – at least 20 years –

14 With the exception of some institutions, such as the Dutch Child Care and Protection Board (*RvdK*), which can access criminal record information of prospected foster parents.

15 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* (‘Policy Audit on Preventive Measures’), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

yet the periods for allowing criminal record information to be used for pre-employment screening are limited – four years in general and two years for juveniles up to age 22. These periods are – in a broad sense – in line with the expungement periods in other countries; the Dutch expiry periods seem quite favourable to ex-offenders.

Nevertheless, as *all* employers are allowed to require potential employees to submit a certificate, criminal background screening is carried out for public, as well as private sector occupations and for occupations both with and without a specifically vulnerable character. In principle, a significant risk of serious harm is not necessary to impose employment restrictions. Moreover, the legal framework does not clearly define how *risks* are observed, rather it is up to the decision-makers to decide in each individual case whether an offence poses a risk to the proper performance of the task at hand. Consequently, there are no limitations to establishing a connection between the offence and the occupation.

As a final point, it could be argued that the impeding nature of criminal background screening and collateral consequences require a clear normative foundation. This is particularly true with regard to the Netherlands, where the certificate of conduct is essentially a political instrument and – given its explosive rise during the last decade – a strong and popularised risk-prevention measure. As academics, as well as policy-makers have paid limited attention to this topic internationally, a comprehensive normative framework, establishing justifications and limitations to imposing collateral consequences, is still absent.

This is necessary to guarantee that the widespread and ever-increasing practice of criminal record screening will not create a ‘inherent contradiction’ in our system, meaning that laws that raise legal barriers to employment should not contradict laws that aim to rehabilitate ex-offenders (Petersilia 1999: 511). Moreover, the quote at the beginning of this chapter illustrates a critical aspect of widespread legal employment restrictions: “Laws requiring discrimination against ex-offenders [...] signal to society generally that ex-offenders represent a disreputable and dangerous caste” (Jacobs 2015: 309). This means that the State’s promotion of criminal record screening may shape employers’ attitudes towards excluding ex-offenders. Laws that require or allow for employment restrictions may, therefore, “reinforce the public perception that individuals with prior criminal records are irredeemably flawed and likely to commit future crimes” (Jacobs 2015: 312). The following chapter describes criminological notions that help understand and explain the real impact of having a criminal record in the lives of ex-offenders.

Chapter 4

Theoretical framework

“... the process of desistance is one that is produced through an interplay between individual choices, and a range of wider social forces, institutional and societal practices which are beyond the control of the individual”

S. Farrall and B. Bowling, 1999, p. 261.

“It is not enough to build capacities for change where change depends on opportunities to exercise capacities”

F. McNeill, 2006, p. 50.

1 Introduction

The previous chapter dealt with the legal framework underlying criminal record-based employment restrictions; this chapter explores criminological theories in order to explain how these evolve in practice. From the legal literature, it follows that most scholars argue that clear conditions have to be fulfilled before the imposition of collateral consequences – which restrict ex-offenders’ reintegration – can be justified, especially since criminal law principles, such as proportionality, do not apply. In this chapter, criminological theories are described that explain the empirical findings of this study and that should lead to an answer to this study’s main research question, namely what is the impact of having a criminal record on young adult’s position in the labour market. This chapter uses a multi-level approach in order to explore criminological notions at three levels: the development of structures and cultures of society at large with regard to criminal record screening (macro-level), the roles, attitudes and interactions of institutions and agents involved in ex-offenders’ reintegration process (meso-level), and the lived experiences of individuals having a criminal record who try to reintegrate into society, particularly into the labour market (micro-level).

Farrall, Bottoms and Shapland (2010: 546) have pointed out that: “Desistance studies [...] have said less about the meso- and macro-level structural issues that might facilitate or impede the transition of ex-offenders to the status of more mainstream members of civil society.” Therefore, it is important to study how social context and social structures impact opportunities and processes of re-entry and desistance from crime. For example, the structure and culture of society with regard to risk-prevention and dissemination of criminal record

information determine the scope of criminal background screening at a macro-level. Subsequently, at a meso-level, the *use* of such criminal record checks by employers determines the consequences and restrictions of having a criminal record. The way in which an ex-offender deals with the stigma of a criminal-record (agency *vs* withdrawal) subsequently illustrates the real impact of having a criminal record on the individual's position in society (micro-level).

2 Macro-level

Mechanisms, processes and developments in society at large have an impact on the lives of individuals with a conviction history. This section, therefore, focusses on macro-level dynamics, such as culture, social structures, policies, public opinion and media representation with regard to risk, security and prevention, in particular in the labour market. Subsequently, these notions on risk and security are used (in Chapter 9) to explain important developments in preventive policies regarding the use of criminal record screening for employment purposes.

2.1 Fuzzy law and jazzy structures

Given the high recidivism rates, there is a general awareness that penal policies generally fail at reducing risk and cannot guarantee public safety. In other words, the existing policies “are no longer adequate and coherent enough to make crime management really feasible” (Boutellier 2005: 7). This places penal policies in “a permanent state of crisis” (Garland 2001). As the criminal justice system cannot in and of itself create the level of safety desired, private parties are increasingly playing a role, in this field as well as that of safety and prevention. Boutellier (2005: ix) notes in this regard that, “crime has become a much larger complex than the judicial system—a complex organized mentally and institutionally around this one concept of safety.” He refers, therefore, to this development as the “*growing infrastructure of crime prevention*.” New parties are becoming involved and new forms of crime management emerge outside the traditional criminal justice system, which can be referred to as “*preventive partnerships at the local level*” (Boutellier 2005: 6). Schuilenburg also notes that “new actors, visions, relations, and a dynamism of its own” have risen, whereby the State's exclusive role (at the national level) in creating security is shifting towards different (local, commercial, citizen) actors, using new risk-management tools (2015: 286). Crime is, therefore, no longer only dealt with by the criminal justice system, but is part of an *institutional complex* which also involves local authorities, for example municipalities, retailer organisations and schools.

An important characteristic of preventive policies is that they are oftentimes not founded in the field of criminal law, but instead find their basis in administrative law. Administrative agencies, such a screening authority *Justis*,

function as institutes that monitor and control risky individuals alongside the criminal justice system. According to Hartmann (2011) this shifting responsibility leads to ‘*fuzzy law*’, as no clear normative frameworks apply to the intertwined functions of criminal and administrative law. Boutellier expects that it will be difficult to create an integrated safety policy; instead he believes the institutional complex of crime-prevention remains based on so-called ‘*jazzy structures*’ (2011: 70).

However, relegating preventive measures outside of criminal law is likely to diminish legal protection. The interests of administrative or private actors may differ from the State’s normative goals, such as protecting civil rights and equal treatment. If the State disseminates criminal background information to administrative authorities or private parties for crime prevention, the procedures followed by those institutions will likely provide *fewer legal safeguards* than procedures based on classical criminal law. Consequently, citizens will have “a somewhat second-rate opportunity to claim their rights” (Schuilenburg 2015: 300). As a result, *fuzzy law* can circumvent the procedural safeguards and substantive limitations of classical criminal law (Ashworth, Zedner, & Tomlin 2013; Malsch & Duker 2017; Meijer 2017) and, thus, leads to ‘*quasi-criminal law*’ (Schuilenburg 2015: 300).

2.2 Security assemblages

Schuilenburg argues that since “parties with various different backgrounds collaborate in the tackling of security issues”, a *dynamic* perspective is required to analyse security as a whole (2015: 286). Since the organisation of security shifted from a monopoly to a hybrid construction, and from the State to constantly changing, fluid public-private alliances, a static framework with a fixed outcome no longer exists. Despite this fluid and changing nature of security, research shows “insufficient consideration of the interactions and significances that the authorities ascribe to their own and one another’s actions in the execution of security tasks” (Schuilenburg 2015: 288). By focussing on a manifest or static order, researchers can easily lose sight of the reality, which consists of complex relationships and “network-like organizational structures”. Accordingly, Schuilenburg introduces the concept of *security assemblages*, which consists of self-organising relations that are always in motion (2015: 293).

In the Netherlands, security assemblages can be considered to be present since responsibility for security issues has been distributed to various actors, and is therefore no longer regarded as a task for the criminal justice system alone. On a theoretical level, security programmes, agreements, actions and decisions still seem to have a “large degree of predictability” (Schuilenburg 2015: 294). For example, when introducing the current certificate of conduct screening in 2004, the Minister of Justice argued that he was convinced employers would only require a screening if there is a serious public need for it,

i.e. the occupation demands a high level of integrity.¹ Yet, practice is likely to be “muddier and messier” as non-structured processes, activities and interactions take place with their own dynamics, “without the authorities having much grip on them” (Schuilenburg 2015: 294). For example, the number of certificate of conduct requests has increased sevenfold since 2004, so it is questionable whether it is only being requested when a strong societal interest is at stake. Schuilenburg claims that such dynamics or interactions “have the potential to disrupt a security assemblage, which means that an existing order is broken open and dispersed in directions that have not been agreed to in advance or specified in official documents” (2015: 296). A lack in security research ensures that these kinds of interactions are “often scarcely visible or noticeable” (2015: 296). Therefore, the current study explores the practice of criminal background screening for employment purposes from various levels of interaction (from macro to micro) in order to grasp their dynamics.

Schuilenburg furthermore argues that the State often omits to set clear limits and envisioned outcomes, and to improve responsibility and transparency in the cooperation between State and private actors, so that each party can be held publicly accountable for the measures it imposes to create security. Similar to Garland, Schuilenburg argues that exclusionary risk-management measures – in the Netherlands – can be considered not only to be preventive, but also partly punitive in nature. These are only partly aimed at improving public safety; another aim is that the people excluded “are encouraged to desist from any deviant behaviors in which they may engage” (Beckett & Herbert 2009: 105). This is also stressed by Boone: “Measures can be justified in terms of prevention, but actually also serve a retributive goal, or at least can be experienced as such” (2012: 156). In other words, such preventive measures can be considered “formally administrative” yet “concretely penal” (De Giorgi 2006: 133).²

To conclude, Schuilenburg points out that “it is striking how little interest the government is displaying in the issue of what the new parties are doing with the responsibility in security. Not only do the parties scarcely accept public accountability at all, also the government is also doing nothing to prevent abuse of responsibilities” (2015: 301). Accordingly, this study intends to establish whether the shifting of responsibilities from criminal to administrative law and from the State to third parties regarding the imposition of conviction-based employment restrictions indeed leads to outcomes that have not been previously agreed to nor specified in official policies.

2.3 *Managing risk*

Many scholars (among others Beck 1986, Garland 2001, Boutellier 2005) have pointed to a shift in security policy towards *risk management*. This notion

1 Parliamentary Documents 1995-96, 24 797, No. 3, p. 10.

2 He refers to the treatment of immigrants by using ‘administrative detention’.

refers to the complex interplay of decision-making mechanisms and processes focussed on taming risks, reducing vulnerabilities and managing insecurities. One of the aspects of this shift is a ‘decline of the rehabilitative ideal’ and the ‘re-emerge of punitive sanctions’, as well as ‘an explicitly retributive discourse’ (Garland 2001: 8). Garland argues that precisely because of their punitive character, measures of public shaming and humiliation have been re-established (2001: 9). The introduction of an easily accessible system for pre-employment screening as a risk management tool in the interest of public safety, can be considered to be such a measure.

This focus on risk management unfolded in several Western European countries during the 1980s, and in the Netherlands about a decade later, however the roots of this change date back to the beginning of the eighteenth century (De Graaf 2013: 157). Before that time, the object of safety policies was to regulate *personal relationships*, for example by using a *Geleitbriefe* – a letter that medieval travellers had to carry with them to guarantee their immunity and safety. However, since the eighteenth century, the focus of safety policies has shifted towards the *community* and *society at large* – at least in a Western European context (De Graaf 2015). In addition, when communities grow weaker – due to the rise of a network society and individualisation processes (Schuilenburg 2015: 290) – the State becomes more dominant by introducing penal policies aimed at establishing the norm or general will (Boutellier 2005: 95), which “central goal is not to correct the individual but to monitor the population” (Boutellier 2005: 96).

This has increasingly displaced the focus on protection of citizens *from* the State (i.e. abuse of coercive State powers) by protection of vulnerable citizens *by* the State (i.e. monitoring dangerous populations) (Garland 2001: 12). It is, therefore, the community as a whole – and not the individual – that requires protection from risks. Moreover, concerns about the State as a threat to individual rights (such as the right to privacy) are being reduced as absolute priority is given to the idea of the State as the provider of public safety (Garland 2001: 180). The sacrifice of privacy rights for the greater good of public safety easily translates into the development of ever-increasing criminal background screening. Moving away from regulating interpersonal contacts towards monitoring populations may result in more far-reaching criminal background-screening policies, permeating several aspects of social life, as well as citizenship rights.

McAlinden argues that the development of penal policies from the 1990s onwards led to the prominence of a risk-based logic and to new approaches of crime control targeting “at risk” groups (2012: 167). She analysed European legal systems and concluded that different *constructions of risk* lead to different official discourses on crime. These discourses become the “structuring principles” of penal politics (Sparks 2001: 169). The construction of risk and subsequent penal policies are “shaped by a complex interplay of social, political and cultural factors” (McAlinden 2012: 169). It is, therefore, important to study

the *construction of risk* in Dutch society in order to understand the underlying dynamics of the legal framework on criminal record-based employment restrictions.

According to De Graaf, who studies security from an historical perspective, serious incidents in the 1990s became a general and collective safety issue, for which the Dutch State was held responsible. In the same period, allocating responsibility to the State went hand-in-hand with a new major role for the media in visualising serious incidents and risks. This resulted in the need for a scapegoat and increased pressure of the media and so-called ‘brokers of unrest’ (politicians, activists and lobbyists) to instigate political ‘claims for damages’ (De Graaf 2013: 164). The State, being deemed responsible, wanted to regain public trust by proclaiming to be able to manage risks effectively. As a result, the State started acting as a *business* specialised in reducing risk and in collective prevention, and focussed on satisfying its customers, i.e. the citizens (De Graaf 2013: 165).

Although politicians claimed that the State was responsible for the damages, this did not lead to a claim-culture similar to that of the United States, where citizens *en masse* file claims for damages (Jacobs 2006). Up to now such practices have not occurred in the Netherlands (De Graaf 2013: 169). Still, serious consideration should be given to whether the *fear* for such claims keeps the need for risk management measures growing.

The complex construction of risk can be unravelled by examining media representations of high impact cases, as these shape public attitudes, as well as the opinions of politicians and professionals. McAlinden notes that high impact cases may ultimately lead to a “*punitive policy cycle*”. In the Netherlands, politicians refer to this particular phenomenon as the “*risk-rule reflex*”. This means that when a particular risk (e.g. a risk of re-offending) becomes reality, the reflex of politicians is to demand more preventive measures. By creating new policies or legislation after serious incidents, the government tries to meet the public claim for more control and risk-prevention.

The following example illustrates this risk-rule reflex with regard to criminal record screening. A teacher who had previously been convicted for a sexual offence with a minor (online sex-chatting) repeated this criminal behaviour after he was employed at a different school.³ This ‘high impact’ crime, combined with disturbing newspaper headlines,⁴ resulted in a tightening of the rules for sex-offenders who apply for a job involving direct, one-on-one contact with people. It was stipulated that in these situations a certificate of

3 Algemeen Dagblad, 6 July 2006, “*Seks-chatter toch leraar – Inspectie voor het Onderwijs reageert geschokt, school vroeg nooit door*”.

4 Headlines such as (in Dutch): “*Seksuele intimidatie blijft vaak onder de pet*”, “*Scholen trekken verleden docent onvoldoende na*”, “*School laks met controle*” en “*Pedofiele leraar heeft vrij spel*”, “*Pretpark geeft pedofiel ruim baan - Zedendelinquenten vinden gemakkelijk werk in kinderrijke omgeving*”, “*Seksdader werd baas op school, justitie gaf groen licht*”.

conduct will always be refused, unless it is ‘manifestly disproportionate’. The decision-makers’ discretionary powers are accordingly highly restricted, whilst the ability of this previously convicted sex-offender being able to obtain a new teaching position at another school was in no way related to a policy deficiency. Actually, he had been *refused* a certificate of conduct, yet the school has decided to hire him nonetheless. Therefore, the tightening of the policy rules will not prevent this incident from happening again, since it was the school that had been too lenient, rather than the policy rules for issuing certificates being too weak. Therefore, the only reasonable explanation for such a response is that “hyped” media representations, attitudes of politicians’ and public opinion seem to have resulted in a ‘punitive policy cycle’ or ‘risk-rule reflex’.

2.4 Symbolic policies

The growing need for prevention and management of risk works in two directions. There is a public claim for security to be provided by the State, while at the same time, “security has become the master narrative through which the state shapes our lives and imaginations” (Neocleous 2008: 5). Preventive partnerships are, therefore, susceptible to producing symbolic measures. Garland speaks, in this regard, of politicisation and popularisation of combating crime. Boutellier explains: “Instead of cautious and detached analyses, policy is now largely made and defended with short statements and sound bites” (2005: 6). De Graaf notes with regard to the Netherlands that the risk of crime is increasingly being dealt with by *symbolic measures*, rather than *evidence-based* measures or measures based on expert knowledge or objective calculations of their effectiveness (2013: 168). An approach can be termed symbolic if its effectiveness is not questioned, or – if the approach turns out to be unsuccessful – is continued or even intensified. Malsch & Duker (2017) refer to this as the *self-fulfilling* or *self-enforcing* effect of interventions. In order to avoid this effect, *ad hoc* policy changes need to be evaluated in order to establish whether they are *actually effective*. Yet, until recently, the Dutch policy rules regarding the certificate of conduct have not been tested empirically, so their preventive nature is based only on rudimentary theoretical assumptions and lack solid empirical evidence.⁵

This populist orientation of preventive policies seems problematic with regard to conviction-based employment restrictions, as these can – normatively – *only be justified* when there is a strong preventive necessity (see Chapter 3). There thus has to be a close connection between the offence and the occupation in question. Up to now, no empirical research has been carried out to examine whether preventive employment restrictions – in individual cases – indeed lower the incidence of crime at the workplace. Thus, the symbolic value of

5 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* (‘Policy Audit on Preventive Measures’), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

these measures seems manifest, while it still has to be established whether and to what extent they are effective in practice.

De Graaf sees this as a way of the State to “*feign control over the uncontrollable*” (2013: 159). Security policies are intended to manage not only primary risk – trying to tame the original threat – but also secondary risk: in other words, to cover the risks of failing governance. This new way of risk management “holds out the promise of manageability in new areas” (Power 2004: 10). The prevention of secondary risk through symbolic measures moreover shapes public opinion by focussing on *imaginary threats*. For this to be possible, risk governance should no longer be based on predictable ideas of threat, but rather on unpredictable yet imaginable “worst case” scenarios (De Graaf 2013: 155). In that way, imagination has become the active force rather than realistic or calculated threats.

The State’s main concern then seems to be the *appearance* of safety and effective risk management, since “there is a functional and political need to maintain myths of control and manageability, because this is what various interested constituencies and stakeholders seem to demand” (Power 2004: 10). Likewise, preventive employment restrictions can be seen as an issue of *credibility*: the State tries to win or regain public trust by the management of risks concerning work-related crime. However, *secondary* risk management paradoxically claims to be ‘taming the future’, while the primary risk have not been controlled any better. Therefore, the State only *appears* to be in control and has itself better covered (De Graaf 2013: 159).

2.5 *Stigma vis-à-vis prevention*

The changes in society that are supposed to originate from what is described as a ‘culture of control’ resulted in a decline of the respect for ex-offenders’ rights. Garland notes: “If the choice is between subjecting offenders to greater restriction or else exposing the public to increased risk, today’s common sense recommends the safe choice every time” (2001: 180). Offenders’ rights are furthermore considered to be “fundamentally opposed” to public safety (Garland 2001). It could be argued that the tightening of the policy rules for issuing certificates in 2004, which coincided with a stronger orientation at pushing back recidivism, leaves ex-offenders with fewer opportunities to reintegrate, thereby increasing the risk of recidivism. Boone pointed out that, “in the parliamentary debates concerning these changes, the consequences for re-socialisation are rarely discussed” (2011: 65). Thus, a shortcoming of a (swift) promise of control and manageability is that its counterproductive effects on reintegration, inclusion and desistance from crime are not taken into account. On the contrary, the current culture of control seems to renew the value of *stigma*. Previously, the stigma of a criminal record was seen as counterproductive to successful reintegration, whereas today “stigma has become useful again”

(Garland 2001: 181). According to Garland, penal policies now deliberately stigmatise ex-offenders in order to protect public safety.

This could explain why there has been no political urgency to test the (counterproductive) effects of criminal background screening during the last decade. While in 2011 Boone already urged that, “much more empirical evidence is needed concerning the effects of these recent alterations on the rehabilitation chances of offenders” (2011: 65). The lack of urgency to collect empirical evidence can be attributed to both the decline of the rehabilitation ideal and the appearance of safety and control, which these measures aim to create. The risk that ex-offenders might pose to certain jobs or positions is not based on actuarial risk-assessment tools, rather it is based on the imaginary threat that flows from their being an “ex-convict”. Later on in Chapter 9 it is explained how various types of offences are considered to pose a risk to several positions and how these ‘risks’ are constructed.

3 Meso-level

At the meso-level, the role of agents involved in ex-offenders’ reintegration process is discussed, such as officials of the criminal justice system, municipalities, probation and reintegration professionals, and employers. These agents of reintegration – both institutions and professionals – deal with policies shaped at the macro-level. Furthermore, they translate the construction of risk into the relational realities of the ex-offenders they deal with professionally. Saliba points out that, “the need to consider and address the impact of societal actions on an ex-offender’s efforts to reintegrate is essential if recidivism rates are to be lowered” (2013: 29). Harding (2003: 581) notes in this regard that “the ex-convict’s attempts to manage his identity are impeded by institutions of social control, such as state and federal record-keeping agencies.” For example, some employers are bound by law only to hire people who have passed a criminal record screening, therefore they cannot – in individual cases – give priority to the overall quality of an ex-offender. Other important agents of reintegration are probation officers, who operate in a broader context of public safety policy and who have the ambivalent task of controlling ex-offenders on the one hand, and supporting their reintegration process on the other (Van de Bunt 2012).

Studying the role of institutions and so-called ‘agents of reintegration’ is, therefore, important for analysing the outcome of reintegration processes. The impact of having a criminal record in ex-offenders’ daily lives cannot be fully explained without understanding the dynamics between the macro-level and the meso-level, and the interactions between the ex-offender at the micro-level and public and private actors at the meso-level. The theories that explain choices, strategies and actions of agents of reintegration that impact ex-offenders’ position in the labour market are described in the following sections.

3.1 *Responsibilisation*

Garland describes the process that developed since crime control is considered “beyond the state” as *responsibilisation* (Garland 2001: 123). Current risk-prevention policies increasingly commit the management of risk from the State to private agents and the wider community. According to Garland, “the community has become the all-purpose solution to every criminal justice problem” (2001: 123). This shift of risk-management from the State to the private sector and the community is what Garland calls a *responsibilisation strategy*. This strategy promotes “a new kind of indirect action, in which state agencies activate action by non-state organizations and actors. [...] They seek to build broader alliances, enlisting the ‘governmental’ powers of private actors, and shaping them to the ends of crime control” (Garland 2001: 124). McNeill and Beyens (2013) also speak of *mass supervision in the community*. Criminal background screening for employment purposes is also a supervising measure that takes place *in* the community and can – due to responsibilisation strategies – as well be perceived as a method of supervision *by* the community (Rovira 2014). For example, schools or employers initiate a background screening in order to prevent customers, clients, or the company itself from possible risks. Such risk-management measures take place *by* the community, and their application is becoming more and more widespread.

According to the idea of responsibilisation, the actions of private parties are still guided by the criminal justice system, but the *drive* for safety measures is based on how safety issues are experienced by these parties. Safety is thus largely *subjectified*. Responsibilisation means in this regard that subjective experiences of safety are increasingly functioning as starting point for safety policies (Boutellier 2011: 76). As responsibility is shifting from the State to society, safety will increasingly become a matter of individual orientation (Boutellier 2011: 77). When private actors share the responsibility for risk management with the State, and their subjective experiences of safety become an important drive for policies, this is likely to increase the use of criminal background screening.

Moreover, Schuilenburg (2015) concludes that the distribution of responsibilities from the national State to various *security assemblages* leads to a weakening of democratic control, which allows for *selective exclusion* of certain citizens. This selective exclusion impacts specific groups in society, based on their socioeconomic position or ethnic background, which he refers to as *margizens*.

3.2 *Managing risky groups*

In 1992, Feeley and Simon pointed to a process of change known as a shift towards a ‘*new penology*’. This new penology is also considered to be related to the processes of marginalisation that create an underclass, which is

“permanently excluded from social mobility and economic integration” (Feeley & Simon 1992: 467). This “permanently marginal population” is seen as “a high-risk group that must be managed for the protection of the rest of society” (1992: 467).

Although their analysis is more than two decades old, it is still highly relevant to understand why and how professionals’ risk-prevention strategies are aimed at managing risky groups. An important development that is supposed to originate from what is called the *new penology* is that it “shifts focus away from the traditional concerns of the criminal law and criminology, which have focused on the individual, and redirects it to actuarial consideration of aggregates” (1992: 449). With regard to Netherlands, it has indeed been noted that the idea of a criminal justice as *the ultimum remedium* in trying to target and resocialise the individual, transformed to focus more on prevention and deterrence aimed at society as a whole (Boutellier 2005). According to Feeley and Simon penal policies shifted from punishing and reforming individuals to *managing risky groups* (1992: 449).

Since risk-prevention is being shifted from criminal law to administrative law, thereby creating fluid *security assemblages* operating in a field of *fuzzy law*, this new penology is likely to have consequences not only for the criminal justice system, but also for administrative, preventive policies. Based on this notion, it could be examined to what extent these *preventive partnerships* have become more oriented towards managing dangerous groups, instead of transforming individual offenders. Additionally, it could be analysed to what extent new penology discourses are prevalent in criminal record screening in particular, and whether such risk-averse discourses are given primacy to exclusion (of at-risk groups) over rehabilitative goals.

Feeley and Simon distinguish three important aspects of the shift towards a new penology (1992: 449):

1. New discourses of risk increasingly replace discourses of clinical diagnosis.
2. Traditional (external and social) values of crime control and rehabilitation are increasingly diminishing in favour of efficient internal system processes.
3. New techniques target offenders “as an aggregate” instead of individually.

The overall shift towards *managing dangerous groups* could explain, for example, the 2007 policy change regarding sex-offenders in the Netherlands, who from that moment onwards have been treated as an *at-risk-group* which ought to be prevented from working in a position involving authority and direct contact with people – and for which rehabilitative ideals hardly play a role. In addition, meso-level actors have adopted risk-averse discourses, for example a probation officer who was very positive about one of his clients finding a great job as volunteer at a holiday park, yet struggled with the question of whether to

inform the employer about the client's criminal past – since he was a convicted sex-offender and is working at a location nearby young children.⁶

It should thus be examined whether individualised responses become less important in criminal record screening and whether systemic approaches are instead prevailing. According to the policy rules on the certificate of conduct, there is ample room for an individual assessment and for giving serious weight to ex-offenders' interests over the interests of public safety. Therefore, it should be established how this discretion is used in practice and how often decision-makers use their discretionary power to provide an ex-offender a 'second chance', instead of 'playing it safe'.

According to Feeley and Simon, the orientation of the new penology on managing techniques moreover weakens the "close interpersonal relationship between agent and offender". Such a development can, for example, be seen in the standardisation and bureaucratisation of certificate-of-conduct proceedings. Since 2004, certificates are being issued by a central screening authority instead of the mayor of an individual's place of residence. As a result, the connection between the applicant and the decision-maker is likely to be weaker. While the mayor used an advisory committee involving experts such as probation officers, nowadays no experts are involved in the decision-making process to provide evidence on behalf of the applicant. These developments could, indeed, be related to a focus on at-risk groups rather than the individual and on the checking of risk-factors and probabilities rather than personal conversations and clinical diagnoses.

An individualised response is considered to support traditional values of crime control and rehabilitation, whereas the management of risky groups is likely to be concerned with imaginary threats. It can be observed that the current use of criminal background checks for employment purposes moved away from determining the actual risk of reoffending on an individual level and, instead, uses objectified risk-assessments based on aggregates. According to the policy rules, the decision to impose employment restrictions is based simply on the risk that exists *if* the offence is repeated during the performance of a task, regardless of whether *it is likely* that the offence will be repeated. This raises the question whether these criminal background screening are being solely used for preventing primary risks (i.e. crimes in the workplace) or also for secondary risks (i.e. failing governance). In the absence of evidence that real risks are being prevented, this could merely be a way for the government to 'feign control over the uncontrollable'. In other words, the increased use of preventive measures, such as the certificate of conduct, may be the result of the State's or employers' need to be 'covered' for (political) claims for damages.

Feeley and Simon moreover note that, "one measure of the shift away from trying to normalize offenders and toward trying to manage them is seen

6 This case was discussed during a brainstorming session at the Dutch Probation Organisation, July 2014.

in the declining significance of recidivism” (1992: 452). High recidivism rates are no longer being regarded as a failure of the current preventive approach, but instead as “evidence of efficiency and effectiveness” of this approach. Moreover, the importance of external, social objectives, such as public safety, reducing recidivism, or successful reintegration, is declining. Consequently, external norms are being decoupled from performance evaluation: “Instead [...], institutions begin to measure their own outputs as indicators of performance” (Feeley & Simon 1992: 456). Due to this so-called self-fulfilling or self-enforcing effect (Malsch & Duker 2017), the approach could be even intensified when it turns out to be ineffective, evidenced by high recidivism rates. With regard to criminal record screening, it could also be questioned whether this approach has become more internally, systematically driven, while external social referents have become less important. As was concluded in 2013 in the policy audit of the certificate of conduct, the outcomes of certificates of conduct as an instrument for risk-prevention cannot be quantified in terms of a general or specific decrease in criminal activity.⁷ For that reason, no clear targets have been set that quantify its risk-preventive effects.

This approach (i.e. measuring a preventive instrument’s effectiveness only by its own output) provides more ‘hard data’ than the messy demands of the outside social context, such as rehabilitation ideals and balancing ex-offenders’ interests to actual risks being posed to society (Feeley & Simon 1992: 456). Feeley and Simon conclude that, “the inclination of the system to measure its success against its own production processes helps lock the system into a mode of operation that has only an attenuated connection with the social purposes of punishment. In the long term it becomes more difficult to evaluate an institution critically if there are no references to substantive social ends” (1992: 456).

3.3 *De-labelling rituals*

Above, it is argued that risk management has been emerging since the 1990s at the detriment of external social norms. Feeley and Simon (1992: 468) have noted that, “norms such as rehabilitation can only survive if public confidence in the viability and appropriateness of such norms endures”. Moreover, “rehabilitating offenders, or any kind of reintegration strategy, can only make sense if the larger community from which offenders come is viewed as sharing a common normative universe with the communities of the middle classes – especially those values and expectations derived from the labor market” (Feeley & Simon 1992: 468). In practice, however, common norms, such as rehabilitation, are increasingly being replaced by management of a dangerous underclass that is considered to be a threat to social order. So, instead of avoiding stigma because of its counterproductive effects on ex-offenders’ reintegration,

7 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* (‘Policy Audit on Preventive Measures’), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

stigma is revalued because of its function to alert the public to ex-offenders' dangerousness (Garland 2001: 181).

While punitiveness and risk-averse attitudes became more manifest, the belief in *evidence-based* methods to reintegrate ex-offenders seems still vast (Ward & Maruna 2007: 175). Rehabilitation may be best facilitated if ex-offenders' interactions with their social environment contribute to a 'de-labelling' process or if it is possible to label them as 'rehabilitated'. Maruna, Lebel, Mitchell and Naples argue in this regard "that an additional, under-researched aspect of maintaining successful desistance from crime might involve the negotiation of a reformed identity through a process of pro-social labelling. Without some concrete external recognition of their reform (i.e. some 'certification'), many individuals might not be able to maintain the difficult process of 'recovery' and desistance" (2004: 279). Hence, Maruna distinguishes five elements of rehabilitation (or: de-labelling) rituals that should be present in order for rehabilitation to be effective. However, these have neither been recognised in policy, nor in practice.

First, rehabilitation rituals should involve community. According to Maruna, reintegration requires a "two-way process" in which there is a role for both the ex-offender (making good) and the wider community (forgiving and accepting). The possibility of official forgiveness and re-acceptance is an important prospect to promote active rehabilitation (Maruna 2011a: 16). Successful rehabilitation thus requires a 'mutual effort at reconciliation' from both the offender and society (Maruna 2011a: 15). Consequently, rehabilitation rituals should be open and accessible to the public in order to create inclusion. Agents of the criminal justice system should have an essential role in promoting the interaction between the returning offender and the wider audiences.

Second, rehabilitation rituals should focus on challenge and achievement, not only on risk. Inclusive rituals need some kind of challenge and should require efforts of the ex-offender to "make good", such as overcoming addiction, volunteering or being employed, rather than the mere completion of a prison sentence or compliance with reintegration programmes (Maruna 2011a: 19). However, accomplishing personal change and assuming responsibility by making good are generally not considered to be as valuable as the abstract notion of posing a low risk to society, based on risk assessment tools. Yet, these often rely on static factors, based on their past, which ex-offenders cannot control (2011a: 20).

Third, rehabilitation rituals might involve "*wiping the slate clean*", i.e. remove or seal the official label of a criminal record. Ex-offenders' re-entry achievements should be evidenced by 'certificates of good conduct' or 'certificates of rehabilitation' that demonstrate the new status acquired, thereby stating that "they have paid their debt to society and earned the right to have statutory obstacles to employment and civic participation lifted" (Maruna 2011a: 21).

A fourth element of a successful rehabilitation process is that it should involve emotions – such as enthusiasm, excitement, hope, confidence, faith and energy – as well as symbolic aspects – such as "handshaking, the putting of

signatures side by side on an agreement, and most importantly, apology and its acceptance” (Maruna 2011a: 15). Demleitner (1999: 162) promotes in this regard the opportunity for a ceremony for ex-offenders “marking their official reintegration into the community and the end of their exclusion and degradation”.

Lastly, the emotional powerful experiences of rehabilitation rituals have to be sustained by repeating or reinforcing them. Moreover, “consistency of message” is crucial. Maruna, therefore, argues that “reintegration rituals would need perceived legitimacy outside of small, therapeutic pockets inside the criminal justice system. This could be facilitated, for example, by including law enforcement officials (as well as more treatment-oriented professionals) in rituals of reintegration” (2011a: 17).

So, how do these ideas on rituals of de-labelling or rehabilitation translate into the practice of issuing of certificates of conduct? It could be argued that this practice is primarily focussed on assessing risks, while – in theory – it has great potential to function as a ritual of rehabilitation for the ex-offenders who’s proceedings end successfully and to whom a certificate is issued. Currently, a positive decision does not primarily follow upon personal achievements, but rather on an assessment of static factors, such as the time passed since the last offence and the amount and severity of the offences committed. Issuing a certificate is certainly not aimed at – publicly – celebrating the successful completion of the reintegration process, rather it is the outcome of a distancing bureaucratic procedure that results in a letter stating nothing more than that the State Secretary has ‘no objections’ to the applicant fulfilling specific tasks. Boone (2011) concludes that the current proceedings lack all the characteristics of Maruna’s rehabilitation rituals: they are not publicly accessible and do not follow upon personal challenge and achievement. She argues that the official terminology that there are ‘no objections’ is not at all “a positive reinforcement of the efforts of the ex-prisoner not to re-offend” (2011: 75).

3.4 Labelling without de-labelling

To issue a certificate of conduct as a symbol of rehabilitation may be “particularly meaningful in a redefinition of the self” (Kurlycheck, Bushway, & Denver 2016: 24). For example, by changing the almost irreversible label of ‘ex-offender’ to ‘employee’. The powerful effect of such de-labelling ritual would be even stronger if done by an official of the criminal justice system who previously assigned the label of offender. To support the process of identity change, the timing of such rituals is important. Ideally, “the developmental transition follows rather than precedes the ritualization” (Maruna 2011a: 8). De-labelling rituals should thus come *before* personal changes and accomplishments, rather than follow upon them, in order to enhance the ex-offender’s trust and motivation regarding his or her re-entry process. As Boone puts it: “The essential aspect of the ritual is the unexpected testimony of the conventional part of society, who imputes normality on the ex-offender” (2011: 63).

Despite the growing use of criminal records for risk-management purposes, the possibilities of de-labelling or de-stigmatisation have not received much attention from legal scholars or criminologists. Therefore, Maruna (Maruna 2012: 75) addressed this important question, “what is the point of ‘challenging criminal thinking’ or assessing lowest criminal propensity, if, when released, ex-prisoners will be prohibited from finding legitimate means of self-support as a result of their involvement with the system meant to ‘correct’ them?”. Based on a comparison of judicial rehabilitation practices in European countries, Maruna concluded that criminal records are often expunged, sealed or erased on an ‘automatic’ rather than a ‘merit-based’ policy. Automatic rehabilitation means that there is no active rehabilitation process in place and ex-offenders are “primarily rehabilitated by the mere passage of time” (Boone 2011: 71). For example, after five or ten years. That way, rehabilitation is not a privilege ex-offenders can earn. Oftentimes, the period of automatic expungement is too lengthy “to promote rehabilitation in any meaningful way” (Maruna 2011b: 101). It can be concluded that, in general, there is a lack of merit-based policies that require the offender to demonstrate evidence of rehabilitation. As Maruna notes, “whereas in ‘passive’ models, a person is redeemed through the passive avoidance of crime, in ‘active’ models, redemption is ‘earned’ through positive actions” (2014: 128).

Maruna (2014: 128) describes these automatic expungement models as a sort of “catch 22”, since the offender has to demonstrate good behaviour, but all the while he is not yet rehabilitated so all kinds of restrictions to demonstrate such behaviour (both legal and otherwise) are still present, for example obstacles to education, employment, loans or housing. Since exclusionary measures are increasing, it may thus become more difficult to actually desist from a life of crime. When ex-offenders finally do qualify for rehabilitation after a certain period of time has elapsed, “they most likely have already been fully reintegrated and are comfortably employed”, so then “the opportunity to expunge one’s criminal conviction may be symbolically meaningful, but have little impact on recidivism” (Maruna 2014: 128). Maruna believes that holding out “the carrot of expungement” is an incentive necessary to go through the considerable efforts of desistance (2014: 130). This is also referred to as *incentivised* rehabilitation or expungement (Carr, Dwyer, & Larrauri 2015: 49). So, if rehabilitation were to encourage and reward desistance right from the first stages after release, it should not be dependent of the mere lapse of time.

4 Micro-level

At the micro-level, notions on labelling and stigma are discussed, in light of theories on rehabilitation and desistance. It could be argued that, “the stigma of a conviction has become increasingly powerful in recent decades thanks to the rise in communication technology” (Maruna 2011a: 22). Likewise, Farrall and Sparks argue, “Larger numbers of people face their futures carrying the

legacies of a criminal conviction. In some instances [...] it would seem that the social consequences of conviction have become not just more widespread but also weightier and 'stickier' than in the preceding decades" (2006: 7). Indeed, information on convictions can now be accessed digitally and thus – potentially – play a role for the rest of an ex-offender's life. Much of the theories on stigma, however, date back to the 1970s, i.e. before such fundamental technological changes took place. It should, therefore, be examined how labelling processes can be viewed in light of the current digitalised, individualised, globalised and securitised society. Scholars seem to agree on the stigmatising effects of criminal records, since they can result in disqualifications which affect many social interactions (Petersilia 2003), thereby reducing ex-convicts' opportunities (Goffman 1963). The current study examines this topic empirically, in order to understand the real impact of the 'ex-con' stigma in the lived realities of individuals with a criminal conviction history. To do so, this section describes theories that can assist in explaining how ex-offenders experience their having a criminal record and how they deal with the stigma a criminal record.

4.1 Labelling processes

According to labelling theory, which was first formulated in the 1950s and popular – at least in the Netherlands – during the 1970s, criminal behaviour can be reinforced by the reactions of society, in particular society's 'social control agents' or 'significant others'. Interaction processes, such as criminal proceedings, are therefore considered of vital importance. In 1963, Becker published his ground-breaking study *Outsiders* in which he describes deviancy as the outcome of social processes: "social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders" (1963: 9). Thus, the role of society is of crucial importance. If reactions of social control agents to minor rule-breaking result in negative socialisation, i.e. negatively impacting the offender's self-worth and social commitments, then those reactions magnify the deviant identity. In 1951, Lemert first described this as a two-stage process: when initial, minor rule-breaking (*primary deviance*) results in official labelling by the criminal justice system, this can lead to '*secondary deviance*'. Secondary deviance refers to the situation in which the offender adjusts his behaviour according to this label. Hence, societal reactions can lead to secondary deviance if those reactions change a person's social roles fundamentally.

Both Becker and Lemert have stressed that stigmatisation leads to altered self-worth, identity, social roles and commitments. Self-identity is shaped through how we see ourselves reflected in the responses of others. Their reactions function as a mirror or 'looking glass self' (Cooley 1998). This simply means that we see ourselves as others see us. Self-identity is thus shaped by social processes and in particular by meaningful encounters with officials, such

as agents of the criminal justice system. Criminal behaviour could then be considered the result of a self-fulfilling prophecy.

Labelling theory is, however, criticised for not taking account of primary deviance and because (first) offenders are seen as a 'powerless victim' of the labels others apply to them. Once the label has been applied successfully, the label seems almost irreversible, and the development of a criminal career seems manifest (Erikson 1962: 311). Nevertheless, its ideas have made a major contribution to criminological theory by focussing not only on the offender, but also on the social responses to deviant behaviour. Nowadays, notions of stigma and labelling have once again become highly relevant for explaining the impact of criminal record-based employment restrictions, as their use became widespread due to the strong progress of digital information and communication technologies since the 1990s. These notions are particularly useful for uncovering the consequences resulting from convictions for ex-offenders' position in society in general, and the labour market in particular.

4.2 *Levels of stigma and coping strategies*

LeBel (2012: 91) operationalised 'stigma' by distinguishing three scales of stigma: "What an individual thinks most people think about the stigmatized group in general; How an individual believes society views him or her personally because he or she is a member of the group; and Actual instances of stigmatization and discrimination due to one's status as a member of the group". He thus distinguishes three types of stigma. Firstly, *perceived stigma* is about how the individual thinks the group to which he belongs is viewed by society in general or by 'most people'. It is about stereotype awareness: "individuals' recognition of the general public's negative view of the group as a whole" (LeBel 2012: 91). Perceived stigma may cause an ex-detainee to state: "All people around me say it's impossible to find a job after prison". Perceived stigma thus deals with the mere awareness of stigma against one's group ("ex-cons") in general. Secondly, *self-stigma* is about how "the individual personally feels he/she is viewed due to being identified as a member of the group" (LeBel 2012: 91). Self-stigma is about applying the stigma of one's group to him or her personally or internalising it. It is not mere awareness, but rather 'self-concurrence' or 'stereotype agreement', i.e. endorsing the same stereotypes perceived to be common in society. For example, if an ex-detainee would argue: "I'll never get a job, nobody wants me." Thirdly, *enacted stigma* applies to actual, directly experienced instances of stigmatisation, discrimination or rejection. For stigma to be 'enacted', the individual thus has to be exposed to actual stigmatising reactions. For example, if an ex-offender was hired for a job, but then dismissed after it became clear he or she did not pass the criminal record screening.

It could be expected that self-stigma influences the experiences of enacted stigma, as ex-offenders may opt for self-exclusion from (specific types of)

employment in order to avoid situations where rejection can occur. LeBel (2012: 102) found in this regard that more than one-third of the ex-detainees in his study reported that they had often or very often avoided disclosure of their criminal background for fear that this information would be used against them. In addition, the effects of stigmatisation can be aggravated by stigmatisation of other aspects of an individual's social identity. Alongside stereo typing based on past criminal convictions, people can face stereo typing based on other social characteristics, such as having dropped out of school, or being an addict or immigrant. Ex-offenders from a marginalised social background generally accumulate stigmas, for example both an ethnic and a criminal stigma. LeBel has argued that the race stigma doubles the criminal stigma (2012). He refers to this phenomenon as *simultaneous* or *multiple stigmas* (2008), Sampson and Laub (1997) have described this as *cumulative disadvantage*.

Alongside different types and levels of stigma, different strategies of dealing with the stigma of a criminal record are relevant for understanding ex-offenders' position in the labour market. Three common strategies can be distinguished. Firstly, ex-offenders may opt for *pro-active disclosure* if they anticipate that their criminal past will eventually be revealed to an employer or if they think their past is not relevant. Disclosing their previous convictions often happens without telling the most negative details of it. As trust is fundamental in opting for this strategy, this option would only appear to be favourable if trust has already been established. For example, if the job is found through one's the social network. LeBel (2008: 422) has found that proactive strategies are more beneficial than reactive strategies (concealment or withdrawal).

Secondly, *concealment* or *covering* strategies are also very common amongst ex-offenders. Research in the UK (Metcalfe, Anderson, & Rolfe 2001), the United States (Harding 2003) and Hong Kong (Chui & Cheng 2013) has shown that the majority of people having a criminal record opt for covering strategies when they believe they will not be asked about their criminal record. They may avoid mentioning their criminal record during a job interview and fill in the empty spaces on their resume with fake work experience.

Lastly, ex-offenders may also choose a *withdrawal* strategy and opt for *self-exclusion* if they predict to face conviction-based employment discrimination (Harding 2003; LeBel 2012). Forecasting rejection, ex-offenders may decide either not to apply for a specific job or exclude themselves from the labour market completely. The strategy of self-exclusion can explain a negative effect of having a criminal record, even without having faced actual instances of stigmatisation or rejection.

4.3 Agency and narratives of desistance

Apart from labelling theory, focussing on processes of stigmatisation, desistance theories focus on processes of desisting from crime, also using interactionist theories that pay attention to the symbolic interaction between an ex-offender

and his social environment. Desistance moreover uses a 'strengths-based approach' (Lewis 2005: 122), which focusses on personal strengths (i.e. agency) and rehabilitation opportunities, whereas labelling theories have a rather one-sided focus on deviants as passive receivers of the label others apply to them. While labelling theories thus focus on the process of negative social reactions only, desistance theories also take into account the individual's self-concepts, attitudes, choices, and motivations along with the interaction of significant others. Therefore, along with the impact of societal reactions, research on desistance takes into account the 'agentic subjectivity' of the desister, as offenders are not merely the product of external labelling reactions. *Agency* means that the individual acts "as his or her own change agent" (Adams 1997: 335). Maruna explains, in this regard, that "as in the well-known aphorism among offenders that 'You rehabilitate yourself' (Meisenhelder, 1977), families, jobs, age, or time cannot change a person who does not make a personal effort to change on the inside" (Maruna 2001: 32).

Consequently, it is crucial to examine how desisters integrate the stigma of criminal that has been applied to them into a restructured identity or a new self-understanding that alleviates this stigma. Maruna (1999) points at 'redemption scripts', as he found among desisters a "prototypical reform story that integrates a person's past mistakes into a generative script for the future". He calls these stories: "narratives of desistance and change". These narratives are constructed individually and are at the same time shaped by interactions with social control agents, consequently the individual and the community both have a role to play in creating narratives of desistance.

Narratives capture the individual's '*theory of reality*', which explains a person's behaviour. Their narratives can be categorised by different '*explanatory styles*' (Maruna 2004: 191-192). To explain events, three general dimensions are distinguished: 1) internal/external, 2) stable/unstable, and 3) global/specific. In labelling as well as desistance research, the internal/external dimension is often used to explain to which causes people attribute life events (e.g. "I'm a bad person" or "They did it to me"). Yet, it is also important to take into account the other dimensions of explanations, e.g. "the persistence or chronicity of an event's cause" (stable/unstable) and "the extent to which a cause affects many aspects of a person's life or just a few" (global/specific) (Maruna 2004: 192). Based on these three dimensions, Maruna (2004: 187) formulated the following hypothesis: "offenders might view positive events in their lives as being the product of external, unstable, and specific causes (i.e., "lucky breaks") and view negative events as the product of internal, stable, and global causes (e.g., "That's just the type of person I am," "Bad to the bone," "Born to lose," etc.)". Likewise, desistance from crime may be promoted by an optimistic believe that "bad events tend to be external, temporary, and specific, but good events are personal, permanent and pervasive" (Seligman 2006: 110).

These dimensions of 'causal beliefs' or 'explanatory styles' shift attention away from explaining criminal behaviour and desistance in terms of inter-

nalisation versus externalisation. Maruna concludes in his study that, “the dimensions of stability and globality seem to be better stronger correlates than internality.” It could thus be argued that the internal-external dimension is not as powerful a predictor of future behaviour than globality or stability explanations. Therefore, using these three dimensions of explanatory style may help to explain how experiences of stigmatisation and exclusion influence the lives of young adult ex-offenders. Their perceptions of the employment restrictions imposed to them can be categorised within these dimensions of explanations, to see whether they attribute these restrictions to internal (“I’m useless”), stable (“Stigmatised for the rest of my life”) or global (“It’s impossible to find employment”) causes. Then, these ‘negative’ self-stories may be linked to subsequent actions and impediments of their reintegration process. Ex-offenders’ attributions can thus be used to explain how they think and act, over time, upon interactions with their social environment, in particular with agents of reintegration.

4.4 Signalling desistance

This section deals with the question in which way interactions from ex-offenders (micro-level) with agents of reintegration (meso-level) may contribute to their rehabilitation process. In 2012, Bushway and Apel introduced a *signalling* perspective (Spence 1973) on desistance and labour market re-entry. Maruna stresses: “The idea of ‘desistance signaling’ should be a revelation and, I hope, a revolution for criminology, as it represents a subtle but substantial challenge for the reigning paradigm of risk assessment and program evaluation monopolizing the field of rehabilitation” (2012: 73). This ‘reigning paradigm’ sees rehabilitation as ‘treatment’ and searches for ‘signs of desistance’. The signalling perspective, in contrast, views rehabilitation as ‘credentialing’, which requires an active role of the ex-offender. Maruna explains: “a ‘signal’ differs from a ‘sign’ in that a signal requires a purposive agent – it is something a person does intentionally [...]. The risk paradigm in rehabilitation instead focuses on ‘signs’ of risk, putting the expert in control, and leaving prisoners feeling powerless and frustrated” (2012: 74).

This has several implications for practice, as “the logical extension of the signaling approach is that those individuals who actively seek out and complete various treatment programs are signaling they are ‘going straight’ and are therefore good candidates for renewed opportunities. It thus gives the process of desistance and rehabilitation back to the desister out of the expert’s hands” (Kurlycheck, Bushway, & Denver 2016). Ideally, purposeful desisters can initiate change by asking what they should do to get a second chance in society and then go through the efforts required to prove that they are changed indeed.

Given the different focus of ‘signals of desistance’, on the one hand, and ‘signs of risk’, on the other, it can indeed be argued that the current paradigm of risk assessment in rehabilitation leaves ex-offenders frustrated and disempowered as these put the expert or decision-maker in control. While

external risk assessment processes focus on signs – which are outside of the ex-offender’s control, credentialing and signalling stresses the ‘agentic’ role of the ex-offender – who can demonstrate his intention and efforts to go straight and get his life back on track. In the current approach – which searches for ‘signs’ – it is difficult for ex-offenders to get rid of the prejudice and stigma of their past and to prove or make a substantiated claim that they are no longer the person they were before. According to Maruna, they “do not feel that they can do anything to change the expert portrait of them” (2012: 75), which consolidates the stigma of ex-convict. The idea of *signalling desistance* is radically different since it “gives the ‘rehabilitation’ process back to the desister, not to the expert” (Maruna 2012: 75). Desistance signallers can be offered benefits or opportunities that serve their rehabilitation process, instead of being locked out of opportunities and being relegated into second class citizenship – or even the continuance of a criminal lifestyle.

For signals to have a strong ‘symbolic capital’ they must be ‘costly’ (Spence 1973; Maruna 2012: 76-78). Costly signals could involve obtaining a qualification, completing a rehabilitation programme successfully, doing voluntary work, and maintaining employment – actions that individuals themselves could determine to do. Kurlycheck *et al.* argue that “those individuals who actively seek out and complete various treatment programs are signaling they are “going straight” and are therefore good candidates for renewed opportunities” (2016: 10). So for the signal to be ‘valid’ to policy makers, it should be given exclusively by those ex-offenders who made the choice to desist. Kurlycheck *et al.* argue that going through legal proceedings to obtain a document of rehabilitation could be considered a costly signal of desistance (2016: 22). Likewise, ex-offenders may signal desistance if they are going through the efforts of submitting a written opinion or making objections and participate in an oral hearing in order to obtain a certificate of conduct. In sum, a signalling approach of desistance and rehabilitation allows ex-offenders to actively signal that they have decided to desist from crime instead of them having to wait for the mere passage of time – i.e. passive or automatic rehabilitation – to be labelled as desister by experts.

4.5 Policy timing

Kurlycheck, Bushway and Denver (2016) argue that *policy timing* is of crucial importance when it comes to removing stigma and opening up employment opportunities. Policies could either contribute to the process of desistance (i.e. if the ex-offender already initiated it), or could be too early (i.e. the offender may think his offending is without consequence), or they could come too late (i.e. the offender is already fully reintegrated). Kurlycheck *et al.* describe the European policies regarding judicial rehabilitation as typically ‘*reactive policies*’, since the offender is offered a second chance only after the lapse of a certain period of time without reoffending. According to such time-mandated

policies, it is the mere passage of time that demarks rehabilitation. However, judicial rehabilitation based on a reactive policy may come *too late* for ex-offenders: after five or ten years have lapsed, they are likely to already have found a way to overcome obstacles to reintegration. Subsequently, the official removing of the stigma of a criminal record may come too late to actually contribute to a process of forming a new identity.

Kurlycheck *et al.* (2016: 21), therefore, argue, that “in this context, what is needed is a positive response from the system earlier in the process, when the identity may not be well established”. They refer to such responsive policies as ‘*individual initiated*’: people who demonstrate that they have made the decision to change should be supported in their desistance process. The signalling approach can thus be used to provide opportunities and resources only to a small segment of people with a criminal record that signal that they are truly motivated to cease with their criminal lifestyle. As signals should be *costly* in order to be valid, policymakers can – after receiving a clear signal – “be more confident that the benefits or services that correspond to the signal will benefit the individual (Kurlycheck *et al.* 2016: 22). Since such *individual initiated* policies require ex-offenders to put considerable effort in their rehabilitation process, they can be considered ‘*active redemption models*’ as they ‘promote’ rehabilitation (Maruna 2013: 128). If, on the contrary, a passive model applies, ex-offenders can be rehabilitated only by the passive avoidance of crime. The reactive nature of most current (European) policies is, however, “of serious concern”, as these models have “the least potential to positively impact desistance” (Kurlycheck *et al.* 2016: 29).

5 Summary

The multi-level approach described above addresses the question of the impact of having a criminal record in the lives of young adult offenders and ex-offenders from a dynamic perspective. At the individual level, different types and levels of *stigmatisation* and different *strategies* to deal with stigma could explain this impact. This can be supplemented by examining three different dimensions of *explanatory styles*. It could be expected that negative circumstances that are believed to be internal, global and stable (rather than external, specific and temporary) are detrimental to the process of desistance. If rehabilitation policies were to support the desistance process, their *timing* is of crucial importance. The more *responsive* and *individual initiated* rehabilitation policies are, the more the stigma of a criminal record will be removed at the right time. Responsive policies should take into account the extent to which ex-offenders actively *signal* desistance.

Consequently, policies at the meso-level should allow for *active* (or: *incentivised*) rehabilitation (in other words: holding out the carrot of expungement) rather than passive or automatic rehabilitation (i.e. merely awaiting the passage of time). To understand how young adults experience the stigma

of a criminal record, it is furthermore important to examine to what extent efforts of desistance are encouraged and rewarded by agents of reintegration. It should be considered to what extent Maruna's *Rituals of rehabilitation* are taken into account in practice, in order to facilitate effective de-labelling or destigmatisation processes.

Yet, all the while influences that can be related to the *new penology* have shifted the focus of risk-prevention policies from an individual approach to the management of *risky groups*, characterised by discourses of risk, targeting 'aggregates', and a weakened focus on social ends. Moreover, *responsibilisation strategies* have shifted risk-management from the monopoly of the State to different public and private actors, which allow for supervision of risky groups *in and by* the community. This focus on risk furthermore moved away from rehabilitation ideals and may therefore lead to an increase of *selective exclusion* of certain (groups of) citizens (i.e. *margizens*).

These choices and strategies of agents of reintegration at the meso-level can be explained by macro-level developments that shape the structure and culture of society. Individualisation processes in society increased the need of establishing *norms*, while at the same time the State proclaims to be able to prevent risks effectively – through primary as well as secondary risk management. Therefore, the aim of preventive instruments changed from managing individual relationships to *monitoring populations*. Characteristics of a so-called *risk society* and a *culture of control* that started to emerge during the 1990s, and resulted in the development of a *growing infrastructure of crime prevention*, led to risk-management by *preventive partnerships* or *security assemblages*. Yet, security assemblages are fluid in nature, so the State does not have much grip on them. Consequently, the outcome of security policies may not have been agreed to in advance or specified in official policies. The resulting lack of regulation, clear limits and envisioned outcomes could explain the massive expansion of preventive measures, such as the certificate of conduct.

Research methods

*“Maybe stories are just data with a soul”
B. Brown, 2010.*

1 A qualitative approach

The previous chapters explained that knowledge of the impact of a criminal record on ex-offenders’ position in the labour market is still limited. Based on the very low percentage of refusals of a certificate of conduct (between 0.35% and 0.81% since 2010¹), the government has argued that individuals with criminal records are only minimally restricted in obtaining employment.² Professionals working with ‘at risk’ youth are, however, often alarmed by the negative effects of the certificate of conduct on their clients’ reintegration (Hilhorst 2011; Kurtovic 2012b; Gosliga 2015). The discrepancy between these claims can be clarified only by creating a deep understanding by means of a qualitative, empirical analysis. By detailed descriptions of the lived experiences of individuals with a criminal conviction history common myths and stereotypes can be exposed. By using a qualitative design, the current study aims to answer the following research question: *What is the impact of having a criminal record on the lives of young adult (ex-)offenders, in particular their position in the labour market?*

This study thus aims to unravel the complex, reciprocal relationship between having a criminal record, employment opportunities, stigmatisation and reintegration into society. A qualitative method is considered “the most fruitful methodological strategy” (Adams, Chen, & Chapman 2016: 8) to uncover such “diverse and social processes” (Harding, Wyse, Dobson, & Morenoff 2014) and to ensure a true social understanding. A positivistic approach, such as studying the official numbers of certificate requests and refusals, can be considered insufficient, because of the inevitable part of the population that will not be included in the analysis (Young 2004). As these official numbers do not produce a representative sample, the claim that only few ex-offenders are hindered to obtain employment is hard to substantiate. It could be expected that

1 [Http://jaarverslagjustis.nl/2016/factsheet_vog.html](http://jaarverslagjustis.nl/2016/factsheet_vog.html).

2 Parliamentary Documents 2016-17, 34 550 VI, no. 98.

ex-offenders who fear stigmatisation because of their having a criminal record, avoid even applying for a certificate, thereby impairing their labour market status (Kurtovic 2015).³ Moreover, the group of people who do apply for a certificate is likely to involve mostly people who think they have a chance, at least a small chance of acquiring it. As there may be a significant group of ex-offenders who do not apply for a certificate, it is unknown what the real impact of this preventive measure is on the entire population of people having a criminal record.

To fully address the impact of the stigma of a criminal record in ex-offenders' daily realities, an inside-perspective is crucial. Research carried out so far – mostly quantitative – has not provided clear insight into the mechanisms underlying the reciprocal crime-employment relationship from an individual perspective (Verbruggen, Blokland, & van der Geest 2011, 2012). Therefore, the very essence of this study is to understand – from an inside point-of-view – how young adult ex-offenders, as well as people involved in their reintegration process, deal with the stigma of a criminal record and how this influences their position in society, particularly in the labour market.

To provide inside-knowledge of the underlying dynamics of this topic, this study adopts an ethnographic approach, i.e. a “long-term, in-depth participation with those under study” (Ferrell, Hayward, & Young 2008, 2015: 211). In order to uncover the dynamics of widespread criminal record checks and employment restrictions, it also pays attention to the cultural and structural characteristics of our society, in particular the construction of risk (macro-level), and the way in which agents of reintegration deal with the management of risk (meso-level).

According to *symbolic interactionism*, people's experiences and understanding of reality are a *social construction*. This construction can be understood by closely examining the social interactions between persons and the symbols they use. Rooted in this tradition of studying crime as a social construct is the 21st Century school of *cultural criminology*. Cultural criminologists, for example, ask the question: What does crime and crime control tell us about our present age and culture? (Schuilenburg, Siegel, Staring, & van Swaaningen 2011: 3, 7). It thus goes beyond the perspective of controlling crime and poses more *fundamental* questions about society and social processes.

From a cultural criminological perspective it is important to address this study's topic by using a bottom-up approach – also referred to as an *emic* perspective (Schuilenburg *et al.* 2011: 8) – which means the perspective of the respondents is paramount. The researcher gets close to his or her respondents and is directly involved to grasp their understanding of social processes, which can assist in explaining their actions. Cherney and Fritzgerald (2016: 34) explained in this regard, relating to their study on parolees, that “although this raises questions about the authenticity of the accounts provided, it must

3 This is also recognised by the Ministry of Security and Justice, which commissioned a so-called Dark Number research, see Parliamentary Documents 2015-16, 34300 IV, No. 78.

be recognised that the results reflect active attempts by parolees to make sense of their experiences, which in turn will influence their decisions and actions.” Cultural criminology is thus committed “to bring human agency back into the discipline” (Siegel & Zaitch 2015: 152). Young (2004: 23) moreover argued: “To move from, say, unemployment to crime [...] you need narratives; correlation alone cannot assure causality, it is only the narratives which link factors to outcomes that can do this.” So, the reciprocal relationship between employment, exclusion and crime cannot be captured without understanding the stories of the persons enduring processes of stigmatisation.

These inside perspectives can be understood and explained within their social and emotional context by an ethnographic research design (Siegel 2010). Through open in-depth interviewing and also through being present at the moment when these experiences take shape (i.e. observations), a deep emotional knowledge can be gained (Ferrell, Hayward, & Young 2015: 211). To capture the dynamics of dealing with having a criminal record and the interactions of ex-offenders’ with their social environments, it is needed to “enter in to the real world” and seek to understand their uncertainties, doubts and fears (Young 2004: 25).

2 Choosing respondents

2.1 Selection issues

After considering *how* to answer the research question, i.e. which methods will be used, it should be established *who* (people) or *what* (cases) should be included. With regard to selecting respondents, Yin (2013) stated that qualitative research selection is not about achieving ‘statistical generalisability’, but rather ‘analytical generalisability’, meaning this generalisation “is posed at a conceptual level higher than that of the specific case”. Moreover, Gentles, Charles, Ploeg, and McKibbin (2015: 1782) – who wrote a systematic overview of sampling methods in qualitative research – argued: “the general aim of sampling in qualitative research is to acquire information that is useful for understanding the complexity, depth, variation, or context surrounding a phenomenon, rather than to represent populations as in quantitative research”. For these reasons, the generalisability of this study’s selection of respondents does not apply to the group of ex-offenders as a whole, but to answering the underlying theoretical questions (Decorte & Zaitch 2010: 100). Although this selection process does not intend to create a representative sample of the total population of young adults with a criminal history, it is important to use diverse selection strategies in order to avoid selection bias as much as possible in answering the question how having a criminal record can impact the life of young offenders and ex-offenders. As a result, the selection of respondents is stratified by age, gender, ethnic background, educational or employment background, place of residence and severity of the offences.

However, the respondents are not selected *a priori*, as there was no ‘pool of respondents’ from which a selection could simply be made. Therefore, a purposeful selection strategy is not used, which requires that selection decisions are made prior to gathering the data (Gentles *et al.* 2015: 1778) by way of “selecting information-rich cases for in-depth study” (Patton 2015: 264). In the beginning of my fieldwork, I did not know prior to my first contacts with the respondents whether they would provide rich information, because I did not know their personal backgrounds and experiences before interviewing them. Rather, an ongoing process was adopted, in which selection decisions had to be made continually during the research process, based on different characteristics that should account for a varied selection. For example, whether to involve more young adults with a minor or serious criminal record. Furthermore, as more convicted persons tend to be male, attention was paid to include as many females as possible. In sum, random selection methods and – in few cases – snowballing have been used in order to avoid selection bias as much as possible, moreover it was an ongoing process, keeping in mind that the group of respondents had to be varied.

I started off by making contacts at different locations where I could meet respondents, primarily in three major Dutch cities: Amsterdam, Utrecht and The Hague. These contacts involved professionals, such as probation officers, reintegration workers, job coaches, counsellors, mentors, and street corner workers, who were working for organisations aimed at supervising or reintegrating ex-offenders. The strategy of selecting various locations and settings is aimed at creating diversity in order to avoid ‘convenience sampling’, i.e. “doing what’s fast and convenient” (Patton 2002: 241) or accepting the next qualifying participant who becomes available (Gentles *et al.* 2015: 1785). Yet, this way of selecting respondents is not aimed at achieving representativeness, rather it is about “selecting heterogeneous examples throughout the possible range” (Patton 2015: 283).

In sum, the selection process is neither driven by ‘maximum variation’, nor by ‘convenience’. Moreover, selection took place randomly instead of purposefully, because personal information about the respondents was not available beforehand. The only strategy that was used for the selection of respondents is to create a diverse group (i.e. diversity in age and gender, as well as in ethnical, educational, employment, criminal and local background). The choice of respondents was made in an ongoing selection process, sometimes also utilising snowballing. The only criterion was to create diversity at the several levels. As a result, the selection is not “representative of the whole population” of young adults with a criminal background, yet it does ensure that “theoretically important categories are present and conclusions drawn are not particular to the largest group” of this population (Harding *et al.* 2014: 445).

An important criterion for determining the number of respondents is “the intensity of the contact needed to gather sufficient data regarding a phenomenon or experience. This intensity is measured in both length of time it takes for an

event to occur...and how often a participant should be contacted to understand the changes undergone” (Gentles *et al.* 2015: 1782). At the start of the selection process, I decided to follow approximately 40 juveniles and young adults, as these respondents had to be followed for a relatively long period of 1-2 years during their reintegration process. Enrolment of 40 respondents is in line with literature on the average sample size, which suggests to include at least 30 participants if following them less intensely (Gentles *et al.* 2015: 1782). Likewise, after having followed about 30 respondents, a point of saturation was reached (Glaser & Strauss 1967), so a sufficient number of respondents were involved to be able to answer this study’s underlying research questions.

2.2 Introducing the respondents

Participants and drop-outs

Initially, I tried to involve 39 respondents in my research, of which 3 were female and the other 36 male. A total of eight of them have dropped out at some point during the fieldwork period. Regarding these respondents, I had only collected field notes, based on informal conversations and observations, but I had not yet held an in-depth interview with them. Therefore, I have not involved their stories in my description of the empirical findings in the subsequent chapters. These chapters thus involve the interview data of 31 respondents.

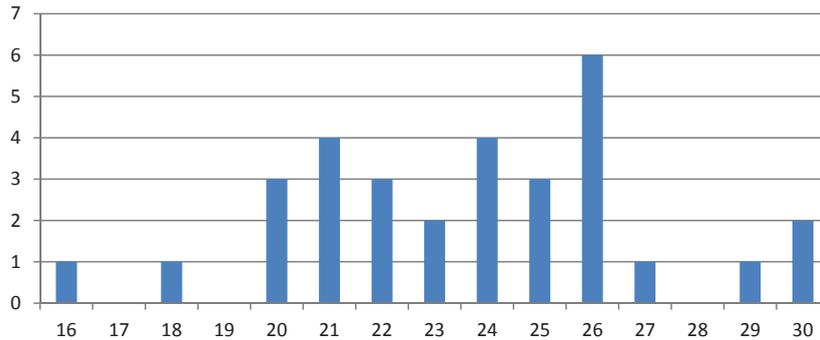
The reason some of the respondents dropped out of the research was basically because I was no longer able to get in touch with them. Their telephone number was no longer available and I had no other way to contact them since they also dropped out of the reintegration programmes they were involved in, and where I was meeting them. Some other respondents apparently wanted to continue their old (perhaps criminal) way of life, so they did not want me to interfere and bother them with questions about their process of re-entry, as they were not at all focussed on building up a new life after prison. Two of them did not want to participate any further in my research, due to what appeared to be a distrusting attitude. Consequently, they did not want to have an in-depth interview with me. With respect to one of them, it turned out he did not have a criminal record at all. With the eight respondents who dropped out, I had only held informal conversations.

Consequently, 31 respondents (28 male and 3 female) were willing to participate in my research. I attempted to held two in-depth interviews with each of them – one at the beginning and one at the end of the research period. I have succeeded in following 29 of them over a longer period of time and conduct at least two interviews with them. Their general characteristics are described below. In Appendix 1 very short introductions to the respondents are provided, with regard to their past and current life circumstances, their criminal background and their labour market status and prospects (i.e. education and employment).

Characteristics

The age of the respondents, at the onset of the period under study, varies from 16 to 30 years old. The number of respondents per age category are indicated in Figure 2.1 below. On average, the respondents were 23.6 years of age.

Figure 5.1. The age of the respondents



Also their place of residence varies: 9 respondents come from Amsterdam, 7 come from Utrecht and the other 15 respondents come from a variety of places in the Netherlands. A total of 16 respondents thus come from two major cities in the Netherlands (Amsterdam and Utrecht), where I had most contacts with local organisations involved in ex-offenders' reintegration process. Moreover, because I lived and worked there, it was easy for me to just 'be there'. Still, the respondents' places of residence are largely diverse, since the other 15 come from various other cities, towns, or villages in the Netherlands.

I met the respondents via different organisations or events. Some of them (11) were clients of the law firm I was working for and – upon request – appeared willing to participate in my research. Others (7) I met via the Dutch probation service. Another 6 of them were following a one-year re-entry course at a housing facility for ex-detainees. I met the other 7 via various other professionals or events (4) or via snowballing (3).

The respondents come from various ethnic backgrounds. The majority of them (26) were born in the Netherlands. The others (5) come from either the Caribbean, Suriname, Eastern Europe, Africa or the Middle-East. Although many are born in the Netherlands, the respondents' parents were often born outside the Netherlands: 23 of the 31 have parents from abroad. The ethnic background of their parent is primarily Moroccan (10), another 6 of them have parents who come from the Caribbean or Suriname. Consequently, only a few of the respondents (8 of the 31) have parents with 'Dutch roots'. The majority of the respondents thus have a non-Dutch ethnic background, which is observable not only in their physical appearance, but also in their manner of speaking. The proportion of Dutch/non-Dutch ethnic background of the respondents and their parents is illustrated by the figures below.

Figure 5.2. The country of origin of the respondents

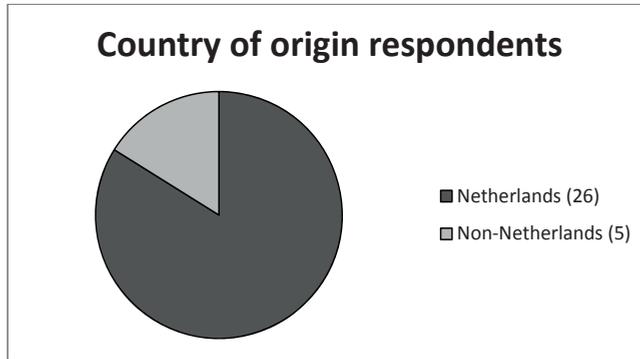
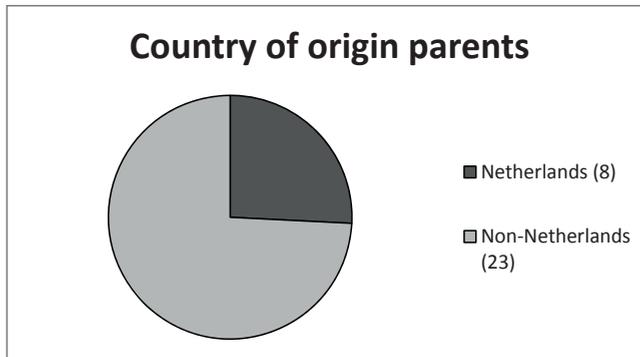


Figure 5.3. The country of origin of the respondents' parents



3 Collecting data

3.1 Primary data

My primary data collection consists of interviews and informal conversations, and in some cases observations of the respondents' (formal and informal) interactions with agents of reintegration.

Interviewing the respondents

Semi-structured, in-depth interviews can reveal *detailed* information on the respondents' interpretation of experiences (Harding, Wyse, Dobson, & Morenoff 2014) since "it seeks to start from where people are at" (Noaks & Wincup 2004: 75). It, moreover, requires "a particularly patient, cautious and attentive methodology to chart such a delicate and complicated process as social life" (Downes, Rock, & McLaughlin 2016: 162). In that way, *rappport* is created and lived realities can be reconstructed.

In my interviews, I adopted a semi-open or semi-structured interview approach, leaving as much room as possible to the interviewee to bring forward

issues and elaborate on aspects he or she thinks relevant. These in-depth interviews generally took between 60 to 120 minutes. To cover all relevant issues, I made use of a topic list (see Appendix 2). When one topic was explored, I brought up the next topic. At the same time, I let the story evolve naturally, as the interviewee could talk about topics which appeared relevant to him or her and explore these, which should generally provide for a more in-depth information. I told the respondents at the beginning of the interview that I would like to hear about the impact of having a criminal record on their daily lives, particularly on finding employment. They thus knew this would be the main topic of the conversation, still other topics are also important to explore in order to obtain a full, vivid picture of the respondent's life. So I tried not to interfere in the reconstruction of the respondent's experiences. Instead, I left it to them *when* to bring up their experiences concerning having a criminal record, so they could unfold their life stories without prompting from me. This approach allows for making a distinction between responses that were volunteered and responses that were probed (Noaks & Wincup 2004: 77).

First, I asked about neutral, non-sensitive topics, such as demographic data, how and where they grew up (Oude Breuil 2013), in order to ensure that the start of the interview was as easy and comfortable as possible. Consequently, I asked about past education and jobs. Then, the topic of their criminal record and barriers they have faced as a result was raised. As this was the most sensitive issue, it was embedded in heart of the interview (Oude Breuil 2013). At the end, I asked about less emotive topics, such as their social life, who are of help to them during their reintegration process, how they spend their leisure time, what their future dreams are and how they would see themselves in five or ten years. Almost all of the young adults I met were willing to share their life story with me. Only one respondent appeared unwilling to share any details of his life, and he wanted to stop the interview after the first few questions (I did not include him in this study). After the first couple of interviews, I learned that the respondents would keep on talking without me continually asking follow-up questions; I only needed to be attentive and empathic, and provide non-verbal cues for them to continue talking about their lives.

In the beginning, the interviews mostly took place at the institutes where I met the respondents, for example at the probation service, at a reintegration organisation, or in the consulting room of my law firm. Later on, I met the respondents in public places, such as coffee bars. Some respondents I met in their homes, and if they did not live on their own yet, I also met their parents' house. The interviews were recorded using my telephone and were transcribed afterwards, as I wanted to stay close to the respondents' original expression of their experiences and emotions. This way, the details of their answers were preserved, whereas when trying to *remember* quotes and expressions, parts would inevitably be lost when reconstructing the interview. Recording also allowed me to listen actively to their stories and to keep eye contact with the respondents without slowing down the interaction or being distracted by

writing down their expressions. So, as I used my notebook only for writing down keywords – which I would use for probing later on, I could continue to listen dedicatedly without having to intervene immediately while they were sharing their thoughts and feelings.

Following the respondents

In addition, I wanted to follow my respondents over a period of 1-2 years to capture their process of reintegrating into society and into the labour market, and their dealing with the consequences of having a criminal background. My aim was to follow the development of their labour market status and processes of reintegration as much as possible during the entire research period. For that reason, I intended to observe informal discussions and group sessions at rehabilitation programs, as well as hearings and court sessions in certificate of conduct cases. These observations would provide systematic information on different stages of the reintegration process. Such a longitudinal design is considered important for three reasons: (1) because of the “rapidly changing nature of their lives”, in other words a “period of significant flux”, (2) “for the observation of outcomes that take time to develop”, and (3) “to capture the processes driving change over time” (Harding *et al.* 2014: 445). This study – instead of having a retrospective character – thus focusses on the on-going re-entry processes of young adult ex-offenders while facing possible obstacles due to their criminal past. The period over which the respondents have been followed is rather diverse, i.e. from three months to more than three years. The general number of months that I have followed the respondents is outlined in Figure 5.4 below. These are categorised into four ranges: (a) less than 6 months, (b) between 6 and 12 months, (c) between 12 and 18 months, and (d) more than 18 months.

Figure 5.4. The general number of months of following the respondents



I interviewed the respondents at the beginning, as well as the end, of the observation period. In the meantime, we would keep in contact by means of informal conversations, for example by telephone or text messages. In addition, I would meet some of the respondents at the places where they were residing. I spent time twice a week at a local reintegration facility for approximately 22 months. Once a week I was present at another local reintegration facility for a total of 14 months. With the respondents who were clients of the law firm I worked for, I additionally had contacts with regard to their certificate of conduct proceedings. When a court hearing took place – in appeal proceedings – I attended the hearing and one of my colleagues would represent the client in the court. When a hearing at the screening authority Justis took place – in objection proceedings – I would sometimes participate in the hearing by representing the respondent myself. I took notes on all of these informal conversations and (participant) observations.

The respondents' social network

Alongside interviewing the respondents, I interviewed people in their social network on how they see the respondent's criminal history might hinder him or her to fully participate in society. Creating contacts with, among others, probation officers, social workers and parents has also turned out to be a good strategy to keep in contact with the respondents – for example if they changed their telephone number. For every respondent, I tried to find at least two persons in their social network who were closely involved in the respondent's reintegration process. This will allow for thick description (Geertz 1973).

I only interviewed a person in their social network with the respondents' permission, in order not to jeopardise the relationship of trust I had built with the respondents; I considered the relationship with the respondents most valuable in order to answer my research question. The respondents often seemed reluctant to let me do so; some of them did not want me to speak to their parents, and some did not want me to interfere in the relationship with their social worker. Moreover, the reintegration professionals would not share any information with me without the respondent's explicit permission (i.e. informed consent), except for some who knew me better.

For the social network interviews, I tried to select – as far as possible – persons involved in the respondents' reintegration process within different categories: (1) reintegration professionals, such as probation officers, social workers and job coaches, (2) parents, and (3) employers (actual or potential) or school representatives. Conducting semi-structured interviews with these so-called 'agents of reintegration' is important to construct ex-offenders' reintegration stories in a precise and genuine way. Furthermore, this also reveals the attitudes of reintegration professionals towards rehabilitation ideals and how they translate these into reintegration efforts in practice.

I conducted in-depth interviews with the following persons in the respondents' social network: 12 probation officers, 9 reintegration or social workers, 6 parents,

5 representatives of school or work, 4 job coaches, 1 municipal officer and 1 police officer. In total, I spoke to 38 persons who have been involved – either professionally or as parent – in the respondent’s reintegration process. On eight occasions, I visited a (court) hearing of a respondent who made objections or lodged an appeal against the refusal of his or her certificate of conduct. The professionals or parents I interviewed are outlined per respondent in Figure 5.5 below. Appendix 3 shows an overview of these informants (P1 to P38); their specific profession or relationship to a respondent and the date on which I interviewed them. Whenever their statements are described in the subsequent empirical chapters, these informants are referred to as (P). Also their specific profession or relationship to the respondent is referred to.

Figure 5.5. The number of interviews with professionals/parents per respondent

	Alouad	Delano	Tariq	Davy	Yushua	Regilio	Lucas	Zaid	Vincent	Murat	Mitchell	Daniel	Soufyan	Aziz	Shanice	Glenn	Precious	Patrick	Abdel	Fadel	Jeremy	Darryl	Youssef	Oussama	Bryan	Denzell	Millad	Riccardo	Samet	Sabia	Jeroen		
Probation officer			x		x				x			x	x	x	x																		
Reintegration or social worker	x	x							x	x			x				x		x							x	x						
Parent(s)	x						x		x			x																	x			x	
School / employer												x														x		x				x	
(Court) hearing	x												x					x			x											x	
Job coach							x											x	x														
Municipal or police officer		x											x																				

3.2 Secondary data

File study

The ethnographic research methods of in-depth interviewing and following the respondents allow to acquire a deep understanding of the respondents’ lived realities. To improve this understanding, an additional analysis of relevant documents has been carried out. With these additional data, I was able to support the information resulting from, *inter alia*, interviews and informal conversations. For example, I could compare the information provided by the respondents on their criminal background to an extract of their judicial documentation or the information provided by Justis in the decision to refuse their request for a certificate of conduct, which also summarises their convictions. In certificate cases, I moreover had access to various types of relevant information on a respondent’s personal developments and his or her process of reintegration, which was provided by, for example, previous employers, probation officers or social workers. Particularly the risk-analyses of the probation services often provided detailed information on a respondent’s past, criminal activities, risk of reoffending, protective factors, and positive developments. Altogether, this file study allowed for understanding the research topic from different points-of-view and increased the validity of the results (Noaks & Wincup 2004: 107).

Meetings

Furthermore, I attended several meetings with policy makers and reintegration professionals which focussed on the certificate of conduct. For example, conferences organised by the Ministry of Security and Justice,⁴ several meetings of policy makers and practitioners of the probation organisations⁵, and a roundtable meeting with multiple local authorities (e.g. politicians, reintegration workers, employers, and policy makers) in Amsterdam.⁶ Also, I joined round table sessions with professionals (both reintegration workers and policy makers), organised by the Ministry of Security and Justice, during which we analysed and discussed the results of a quick scan of the experiences of ‘risk-youth’ and youth workers regarding the certificate of conduct in practice (Gosliga 2015).⁷ Furthermore, I was a member of the committee of the Research and Documentation Centre (‘WODC’) of the Ministry of Security and Justice that supervised a study aimed at measuring the effectiveness of the certificate of conduct.⁸ These, and several other meetings, as well as many informal conversations with professionals, have increased my understanding of the difficulties and conflicting interests underlying the issue of criminal record-based employment restrictions.

In addition

Additionally, I draw from my experiences as a legal assistant in over 300 certificate of conduct cases from 2011 onwards. For more than six years, I was responsible for drafting many written opinions, letters of objection, and notices of appeal, which provides a thorough understanding of ex-offenders’ opportunities and obstacles (both legal and otherwise) to employment. Moreover, our law firm receives about 20 requests (on average) for information regarding the certificate of conduct on a weekly basis. These people call to inquire about whether they are eligible for a job or a certificate given their criminal record. Together with their questions, they also share their hopes, fears and frustrations and explain the problems they have already faced or expect to face in the near future regarding their position in the labour market. These first-hand stories have not been written down in field notes, nevertheless they have shaped my understanding of numerous practical issues and, on top of this, of the impact

4 Conference of the Ministry of Security and Justice on the ‘Certificate of Conduct’, 22 May 2014, The Hague; College Tour of the Ministry of Security on ‘Integrity’, 16 June 2014, The Hague.

5 Brainstorming meeting of the Dutch Probation Service, 28 July 2014, Utrecht; Meeting with policy makers of the Dutch Probation Service, 21 November 2014, Utrecht; Brainstorming meeting with the probation organisation for addictions, 13 February 2015, Utrecht.

6 Meeting with several local authorities at the official residence of the Mayor of Amsterdam (‘*Ambtswoningoverleg*’), 8 March 2016, Amsterdam.

7 Round table sessions organised by researchers of the Ministry of Security and Justice to analyse the findings of a quick scan, 17 September 2015 and 13 October 2015, The Hague.

8 Member of the Supervisory Committee of the Research and Documentation Centre (‘WODC’) of the Ministry of Security and Justice regarding a study on ‘The effectiveness of the certificate of conduct’, several meetings in 2016, Amsterdam.

of having a criminal record in the daily lives of hundreds of persons with a criminal conviction history.

4 Fieldwork in progress

4.1 *Negotiating access*

The first step of gathering data is gaining access to respondents (Noaks & Wincup 2004: 62). I tried to gain access to groups of ex-offenders via specific settings in which I could be 'present'. As these settings were often facilitated by institutions, access had to be negotiated first. I first enrolled respondents through the law firm I was working for since no access had to be negotiated. Here, I found many respondents with a record of relatively petty offences. The respondents already knew me as I was working as a paralegal on their certificate of conduct cases. Access to this group was relatively easy and all but one were willing to cooperate. Additionally, I contacted two organisations that worked with serious offenders. The first provides special housing for prisoners upon their release. Prisoners' participation in this re-entry program is often a precondition for their early release. The second organisation provides re-integration services on location – on behalf of the municipal authorities – for people disconnected from the labour market, thus including different type of offenders as well as non-offenders.

In negotiating access to these institutions, I faced some difficulties. To conduct observations at the local re-integration facility, I had to gain access through the municipality's policy staff worker, who gave me permission subject to the condition of being updated on my research every six to twelve months. Twice I received an e-mail with the request to provide an update on my research, which I – both times – did not provide, as I had no results to demonstrate yet. Accordingly, in practice it turned out I did not have to negotiate my results.

At the other organisation, providing special housing, I enrolled myself as a volunteer and I joined the group programme for young adult residents every week, which often consisted of cooking and eating together. Here, it was more difficult to gain access to these young adults for research purposes. After negotiation, I was allowed to interview and follow only one ex-detainee. Yet, this reintegration organisation did not allow me to carry out further research among the young adults. One of the reasons for refusing me to include their residents in my research is that when I would meet with their residents outside the accommodation, they could not guarantee my safety, while – as a volunteer – I was working under their umbrella. They argued that if anything bad would happen to me, the media would link this incident to their organisation, as I was working for them as a volunteer. Access is, however, "renewable and renegotiable", therefore the relationship with the so-called gatekeepers remains important and "gaining access should be perceived as a relationship rather than a one-off event" (Noaks & Wincup 2004: 60). This statement proved correct for

my relationship with this organisation. After working there as a volunteer for at least 14 months, and having organised a workshop for their residents twice, the professionals were willing to participate in my research and I could interview them about former residents that had become ultimately become participants in my research after they had left the facility.

Negotiation access was considerably less difficult with one of the local divisions of the Dutch Probation Service. They wanted to be informed on the certificate of conduct screening and the chances their clients would have of finding employment in spite of their criminal record. We agreed that I would run a monthly workshop for their clients during which I could share my knowledge on this topic, i.e. the legal framework and its practical implications. Moreover, I would organise a presentation on this topic to probation officers and I would participate in some of their organisation's meetings for policy development. Thus, I negotiated access to their clients by giving something back to their organisation.

Moreover, I enrolled respondents at two job fairs (or career events). At one job fair, I was present on behalf of the Ministry of Security and Justice. I joined the Ministry's policy officers who were represented at the job fair to provide information on job restrictions and possibilities for juveniles with a criminal record. I met one respondent at this job fair and he introduced me to two of his friends, who also wanted to participate in my research (snowballing). At the other job fair, I was present on behalf of the Dutch Probation Service, which had its own booth so they could support their clients who were attending to look for jobs. One of their clients became a respondent and he introduced me to one of his friends, whom I met when he was visiting the respondent's court hearing – just as I was.

4.2 Trust

After gaining access, trust has to be secured, as “physical access is a prerequisite of social access but does not guarantee it” (Noaks & Wincup 2004: 63). This *social access* is necessary when the researcher wants to collect sensitive information. For respondents to be willing to share their deepest thoughts and emotions with me, building up trust or establishing *rapport* is very important. In particular since I wanted to become involved in their lives for a longer period and wanted them to share their negative, sometimes very negative experiences with me. When I told my colleagues about my research, they often warned me for difficulties regarding gaining access and securing trust for in-depth interviewing and following ex-offenders. Luckily, this warning proved unwarranted.

The respondents seemed very willing to participate in my research, for several reasons. First, respondents appeared to be eager to share their life stories with me. This is best illustrated by what the respondents themselves have said about it. Milad, for example, said: “It's so much, you know, so much memories

and stuff, so much negativity. Talking about it is rather heavy, but it also helps me dealing with it a little. That feels really good.” Zaid said in this regard: “I haven’t told this to many people, I can tell you that. I don’t know, it feels like a sort of relief. [...] I don’t dare to trust people anymore because of my past [...] I never go this deep with people. You’re the only one with whom I’ve had such a conversation.” For Zaid, his openness was related with having ‘nothing to lose’, as I was not part of his social network. Respondents seemed relieved to share their experiences of stigmatisation and exclusion with me, as an independent researcher. It appeared the accompanying emotions were weighing heavily on them. As a result, emotions such as frustration, anger, disappointment, fear and shame were all shared. Harding (2003: 578) described the same reason for ex-offenders’ willingness to share sensitive information: “ex-convicts rarely have the opportunity to discuss their stories with a sympathetic listener in a context in which there are no consequences, and some reported afterwards that the interview was somewhat therapeutic.”

A second reason for respondents’ willingness to participate is that they wanted to inform me about their struggles in order to help others, by sharing the lessons they have learnt. Harding (2003) also described this as helping by sharing their ‘expert’ knowledge. Some respondents explicitly expressed the hope that their information would lead policy makers to improve their situation. Tariq, for example, told me: “Look, I’m telling you this, cause I know you can do something with it. [...] so you might change people’s opinion. Or you can show them: these are the problems, this should be tackled. [...] If I can help people in such way, though not directly, I just do it. [...] If you talk to a serious number of people, you can just make a point of it, like: this really doesn’t work – and then you’ll try to change it. Cause I know: you’re not gonna keep it to yourself, right?” Bryan had called me and said: “I just felt I want to stress certain things. Maybe not for myself, but more for others.”

Last but by no means least, their participation was facilitated as there was also something in it for them to remain in contact with me. I positioned myself as a lawyer specialised in certificates of conduct cases, so they could ask me all the questions they had about criminal background screening at any time – for example for which jobs they could apply and after what time they would be eligible for a certificate. Accordingly, many of them called me with their questions and shared their concerns. This allowed for a *mutual* interaction, as the respondents would voluntarily provide me with information on their job-search processes. Not only did they entrust me with information about their personal lives, I also provided the information they needed to improve their position in the labour market, or at least to enhance their possibilities (both legal and otherwise) to deal with employment restrictions. This way, trust was built. This special reciprocity thus enriched the relationship I had with the respondents.

In sum, securing trust has not been an issue in most situations. First of all, because of being seriously interested in my respondents’ life stories and the

emotions and struggles that go hand-in-hand with it. Additionally, by providing them with useful information concerning their future, which allowed for a special mutuality or reciprocity. At the same time, they hoped their information would improve the re-entry process of others. Also, some respondents even appeared relieved to be able to talk about the issue of their criminal background with me.

4.3 *Informed consent*

All respondents were able to decide autonomously whether to participate in my research. However, for gathering data through their social network, I first asked for their consent. Some of the respondents did not consent, for example because they were afraid the professional would share all the negative details of their lives, e.g. on offences or psychological issues or vice versa. Although they had told me before about their offences, it would appear they did not want me to be told the exact details of such offences. Still, most of the respondents provided me with permission to contact their reintegration workers and talk about their specific circumstances. Due to ethical codes regarding privacy and trust, most reintegration workers also needed to ask the respondents for permission themselves before sharing sensitive information with me.

Confidentiality is another important feature of informed consent. I guaranteed all of my respondents that I would not reveal their identity or any sensitive information that readers could link to them. Therefore, during this study, I will not mention the places where the respondents or professionals come from. Nor will I discuss the details of, for example, a specific offence or a specific profession if it could be linked a particular respondent. Also, all of their names are fictitious, yet I did take into account the ethnical background of their real names when fashioning their fictitious names. I also guaranteed them that information on any current criminal activities would not be disclosed. Fortunately, I never was in the position to know about any serious (violent) crimes that a respondent had recently committed or was about to commit. The offences they confessed to me primarily related to selling drugs, stealing and fraudulent activity. Zaid explicitly mentioned that he trusted me on this: “I know that with what I tell you, you cannot harm me. But other people could, because I know them in another way.”

4.4 *Letting go*

The moment of ‘leaving the field’, in the final stage of the data collection, is an important aspect of qualitative research. This moment arrived when the conversations became familiar and the data collected became repetitive (Noaks & Wincup 2004: 70). However, I did not focus much on this so-called point of *saturation*, since I had determined the sample size of my study and set the number of interviews I wanted to conduct in advance. Still, there was a certain

level of non-response, so it was important to bear in mind that, “the study is complete when the researcher had gained an understanding of the setting or aspect of social life that they set out to examine” (Noaks & Wincup 2004: 70). Subsequently, conducting more interviews, by way of involving more respondents, would not necessarily add more weight to the results. As research of social processes and social interactions can never be ‘complete’, so the question then is whether the data can offer a ‘good enough understanding’ of the research topic (Noaks & Wincup 2004: 70).

In any case, I followed my respondents as long as my fieldwork period lasted, which took about two years in total. Saturation was moreover hard to determine as the life of my respondents was typically characterised by “significant flux” – which was one of the main reasons to create a longitudinal design. It transpired to be useful to keep in contact with all of my respondents informally, mainly by telephone, throughout the whole fieldwork period. So, even if consecutive conversations did not reveal any new information, a saturation point was not definitely reached, as I wanted to capture the dynamics of their reintegration process over time. Indeed, changes seem to occur unexpectedly, also at the end – and long after – my period of data collection. A respondent, living a seemingly stable life, could at some point become concerned about the possibility of exclusion due to his or her background when looking for a new job.

For example, one of the respondents called me when I am almost finished writing this book; she has been out of prison for almost 3.5 years, and we have known each other since then. She has only recently returned to school and started a training programme in elderly care. The certificate, required to do her internships has, however, been refused and she asked me to help her with making objections. She explained: “I hope that by now they’ll find me worthy of a second chance. I did my best all these years. I’d be unfair if I still won’t get it” (Precious). As follows from this example, after a period of months of stability or rather unchanged circumstances, the lives of the respondents can suddenly be turned totally upside down when trying to find a new, stable position in the labour market. So, although after finishing my fieldwork period, the relationships with the respondents could not endure, I was glad I could still offer them my future commitment whenever they would face obstacles in finding employment. I told them they could always draw on my expertise on certificate of conduct matters – and some of them have done so.

5 Data quality

To assure the quality of the data, I used data triangulation. With regard to qualitative research, data triangulation means using different data sources in order to discover different perspectives, which reveal reality (Decorte & Zaitch 2010: 134). In the current study, the interviews and informal conversations were – from time to time – complemented by observations. These primary data were complemented by file study, as well as meetings with professionals

on this topic and experiences from legal practice (secondary data). This increases the validity of the results. The validity is not about causal claims, but about the credibility of the outcomes. As described above, the selection of respondents was not aimed at making generalised claims about the population in general. Rather, the conclusions from this in-depth study have been aimed at understanding the processes involved from a dynamic inside-perspective. Adam *et al.* (2016: 11) refer to this as “crystallization”, meaning “a deepened, complex, and partial understanding” of the lived experiences of the research population. At best, the validity of the results can contribute to analytical or theoretical generalisation or the development of theory (Decorte & Zaitch 2010: 131). The interviews and informal conversations with both the respondents and persons in their social network (i.e. professionals and sometimes parents), combined with observations and secondary data, allows for thick description.

After the data collection was completed, the transcripts of the interviews and field notes have been analysed by using qualitative data analysis software (NVivo). By reviewing and coding the data I was able to find “the regularity with which particular events, emotions or feelings are reported” as well as special “meanings and understandings” (Noaks & Wincup 2004: 130). Coding the data also allowed for the notions described in the theoretical framework to be linked to the raw material. Although I had created a theoretical framework in advance, I also let several topics emerge from the data itself, and – consequently – searched for relevant theories and concepts that could be related to these themes. Various topics that had not seemed very important to me in advance did, however, appear to be essential after listening intently to the messages of the respondents and professionals. In so doing, I used a ‘bottom up’ approach that also allowed for codes to evolve from the data itself (Noaks & Wincup 2004: 131). The codebook I used to code the data in NVivo is included in Appendix 4.

Moreover, using codes to structure and analyse empirical data prevents ‘anecdotalism’, meaning the researcher is likely to report on the most striking examples that illustrate his or her hypotheses, while paying less attention to the empirical data that could falsify them, the so-called ‘outliers’ (Decorte & Zaitch 2010: 139-140). This can be avoided by systematic analytical induction, which required the coding of raw data. As a result, I was able to examine every part of the data that refers to a specific notion, so ‘deviant’ cases could also be identified and examined. By involving these as much as possible in the analysis and discussion I tried to increase this study’s reliability.

The research data and analyses thereof are presented in the following five chapters (Chapter 6 –10). As much as possible I used the respondents’ own words to explain their experiences, feelings and actions. Because after all, as Brown (2010) already noted, “stories are just data with a soul”.

Invisible obstacles

*“Can you look up for me how long before I’ve served my time?
How long before I can get a certificate of conduct?” (Ajouad)*

1 Introduction

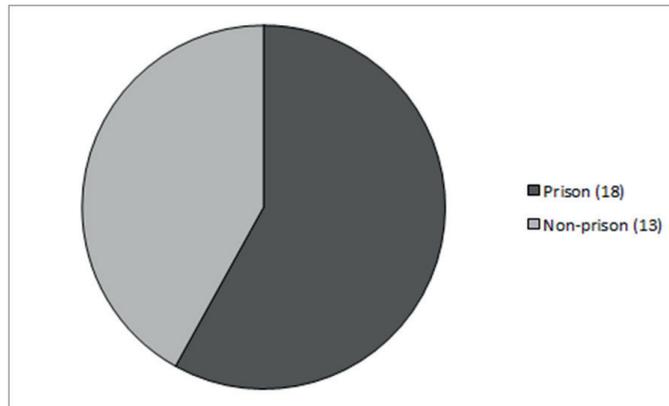
This chapter deals with the practical consequences of having a criminal record in young adults’ daily lives. It attempts to provide an answer to the question in what situations and to what extent young adults encounter practical obstacles to obtaining employment or education due to their having a criminal record. To achieve this aim, this chapter describes the various ways in which, for example, an employer can obtain knowledge on an applicant’s criminal background, as well as the consequences of such criminal background knowledge of third parties. It also describes the options and choices ex-offenders have to prevent their criminal histories from posing an obstacle to their employment. Different strategies to deal with stigmatisation have been distinguished in the theoretical framework. This chapter addresses the strategies of *concealment* and *pro-active disclosure*. Adopting a strategy of concealment or covering of a criminal background means that ex-offenders avoid mentioning a criminal record during a job interview or filling gaps on their CV with fake work experience. Ex-offenders may, on the contrary, opt for pro-active disclosure if they anticipate that their criminal past will eventually be revealed to an employer or if they think their past will not be considered relevant.

2 Criminal histories

The criminal backgrounds of the respondents of this study vary greatly with regard to the number, nature and severity of the offences. Regarding the number of offences, thirteen of the thirty-one respondents have only minor criminal records. This means they have not been imprisoned. In general, they only have one, two or three offences registered on their record, and their offences are relatively non-severe. The respondents in the other group – eighteen in total – can be considered severe offenders, as they have spent time in prison and generally have many more than three offences registered on their criminal

record. The number of respondents both with and without prison sentences is displayed in Figure 6.1.

Figure 6.1. The number of respondents with and without prison sentence.



The nature of the offences also varies considerably as the respondents have been convicted for different types of offences: crimes against property, violent crimes, selling drugs, and traffic violations. Only one of them has been convicted of a sexual offence. This sexual offence had been committed when he was twelve years old; this being his first and only conviction.

Twenty-five of the thirty-one respondents have been convicted of crimes against property, e.g. shoplifting, burglary, street robbery or armed robbery. Traffic offences, such as speeding and driving under influence or driving without a driving licence are also quite common. Almost all respondents have committed violent offences. All but four have been convicted of threatening behaviour, overt use of force, resisting a public servant, assault, violent robbery, attempted homicide or homicide. The four respondents that have not resorted to violence belong to the group of petty offenders, as all four only have a single conviction: either employee embezzlement, cannabis topping, participating in a burglary, or sexual abuse. Nevertheless, the other respondents – twenty-seven in total – have all been convicted of violent behaviour. For some of them these violent offences are particularly one-off incidents, for example one respondent was convicted twice for assaulting his girlfriend and another was convicted for threatening and stalking his girlfriend. These crimes both took place in a very specific intimate relationship situation.

At least one third of the respondents have also committed drug related offences. Others confessed that they have sold drugs, but without getting caught. The respondents generally view dealing drugs as an easy way to get ‘fast cash’ without much risk of apprehension. One respondent claims: “It’s normal. Drugs also happened. Of course: you have to make ends meet” (Ajouad). Another one states: “Well, the welfare agency was making things difficult, especially right after my release. At least you got to do something to get your money. Better

than robbing people. You sell some, you earn some. Right after the welfare agency started to give me a benefit, I gave it away.” (Regilio).

It can be concluded that the respondents have varying criminal backgrounds. However, it should be noted that not all crime is being reported to the police, let alone solved and punished. Consequently, the crimes on their official criminal record could provide an incomplete picture. Also, they may not have told me about all of their criminal activities and convictions during the interviews. Nevertheless, the current picture shows that thirteen of thirty-one respondents only have a minor criminal record; the other eighteen have been convicted for various kinds of (severe) offences. Some admit having been involved in more criminal activities than the ones registered on their criminal record; this mostly relates to the sale of drugs. Still, violent offences are the most common kind.

3 Definition of a criminal record

When talking with young adults about the impact of having a criminal record, it is important to see how they understand and define a ‘criminal record’. A common mistake is that they tend to think it covers only the most severe offences. They believe, for example, that petty offences are not registered, or that criminal records contain only violent offences. One respondent claimed he would pass a criminal background screening, because his wrongdoings are only minor (Aziz). His probation officer believed exactly the same thing:

“He doesn’t have an extensive criminal record: small cases of assault or stealing a bottle of liquor. That won’t be an obstacle to receiving a certificate of conduct” (P17).

However, theft and assault, no matter how minor, are often considered a risk in many occupations, so it is questionable whether a certificate would be issued. Another respondent believed that only a burglary – for which he was sentenced to prison – is registered on his criminal record. When asked whether burglary is the only thing registered on his criminal record, he responded:

“Well, in fact it is. At least, the only serious thing. The rest has been a long time ago and these weren’t really big crimes or serious offences. For example it was a bike we...you know?” (Bryan).

He thus believed that a house robbery (which he committed at the age of 16), or buying a stolen bike (offences he has also committed according to his probation officer (P29)) no longer play a role in his criminal record. Another respondent was surprised to discover that a previous suspicion of criminal conduct, which he thought had been dismissed by the police, had popped up when he has asked his probation officer to investigate what was on his criminal record:

“They can see small stuff for which I’ve not been convicted. They can still retrieve it. I think that’s really ridiculous; I had absolutely nothing to do with that case [...] I think it’s been dismissed, yet it remains registered, so people can easily find it. I don’t like at all that people can look it up. [...] I don’t like that they’re able to see these things. [...] I mean, I rather have no registrations at all. I rather have a clean slate” (Vincent).

Another widespread expectation with regard to criminal records is that a conviction will disappear after a certain time – at least after a much shorter period than is officially prescribed by law, which is 20, 30 or 80 years. Patrick was asked how he reacted after he had received the message he would not get a certificate of conduct: “First I figured out why, because I thought I didn’t have a criminal record anymore”. Patrick had committed a sexual offence fourteen years ago (at the age of 12) and had never been confronted with his having a criminal record, until he requested a certificate to become a taxi driver (at the age of 26).

Based on the respondents’ stories, it could generally be argued that whether an ex-convict is aware of having a ‘criminal record’ depends on both the severity of the punishment and the time elapsed. Petty offences, as well as offences committed a long time ago, are considered to be no longer registered on their criminal record. Recent and severe offences, on the contrary, are often considered to play a big role. Zaid, for example, who was released seven months ago, after being imprisoned for five years, stresses: “One thing I know for sure: once you have a criminal record, you’ll never get rid of it”. Yet, whether respondents are aware of their having a criminal record also depends on whether they have been confronted with the collateral consequences of being convicted before. Although young adults with minor offences that were committed some time ago tend to think they no longer have a criminal record, once they have – unexpectedly – been excluded from work because of their past, they generally believe their criminal record will pose an obstacle to employment.

So, it can be concluded that respondents generally lack knowledge of what constitutes a criminal record. This can be explained by the fact that *the* criminal record does not exist, as it not an official legal term, it is only used colloquially. All criminal cases are registered in the Dutch Judicial Documentation System (JDS). This is, however, not common knowledge and most laypeople are unaware which cases are registered in this system. They, for example, do not know that alleged crimes are already registered, as registration occurs as soon as the police submit the case to the public prosecutor’s office. The only way for people to find out what is registered in the judicial documentation system is to request to inspect their records at a district court (after paying €4.54). In the Netherlands, individuals cannot obtain an extract of their judicial documentation. However, even after inspection, it is still unclear to those possessing such a record how the information will be assessed in an employment screening. This holds true not only with regard to laypeople, but also with regard to professionals involved

in the criminal justice system. Even these professionals often do not know what (specific) consequences may be attached to different types of offences and different types of sentences – and for how long.

As a result, criminal records can be viewed as ‘invisible bars’ or invisible obstacles to re-entry. This is the result of a general lack of knowledge of the judicial documentation system. From my experience as a legal assistant in hundreds of certificate cases, I learned that people convicted of only minor convictions sometimes indeed become aware that they have a so-called criminal record only after they have been refused a certificate of conduct. In addition, criminal records can also be referred to as ‘invisible bars’ as it is often unclear during job application procedures whether an employer would require a certificate, whether a certificate would be issued for the occupation at hand, and whether there are opportunities for being hired despite one’s criminal history. Such practical obstacles to employment, as well as in education, faced by ex-offenders are described below.

4 Obstacles to employment

Being in contact with the criminal justice system can cause problems in a variety of ways. First of all in a direct manner: being arrested poses a direct obstacle to employment or education, as being absent from work or school can be a reason to be dismissed or expelled. However, an alleged crime, as well as a conviction, can also create problems when applying for a job or education in the future. Information concerning an applicant’s criminal record can be either asked for directly, during a job interview, or it can be asked for indirectly, by requiring the applicant to submit a certificate of conduct or to undergo another kind of criminal background screening.

So, in general there are two ways to obtain information about an employee’s criminal background. First, through *direct* knowledge, i.e. when the employer knows about contacts with the criminal justice system. For example through their social network or if a job applicant or employee openly informs his employer about his (former) criminal behaviour. Second, through *indirect* knowledge, i.e. when the employer requires a certificate of conduct in order to be affirmed of the fact that the applicant has not (recently) committed offences that are considered relevant to the job. An employer can also choose to obtain both direct and indirect knowledge. In the following example, a respondent explains how indirect knowledge followed from an employer’s direct knowledge:

“I’ve told him about my past, so he knows. [...] It’s a standard question he has to put during the conversation. [...] That’s why he handed me the application form [to request a certificate of conduct]” (Regilio).

At least nineteen respondents explicitly recall they have been refused a job because they could not pass a criminal background screening. Fifteen of

them have been refused a certificate of conduct. One did not pass a criminal background screening carried out by the local authorities, which was required for working as a manager of a catering establishment. Three respondents did not pass a so-called ‘security screening’, which is required for working at Schiphol Airport. This screening is carried out by the General Intelligence and Security Service for positions involving a high level of confidentiality. Therefore, this type of screening invests a person’s criminal background in greater depth than the certificate-of-conduct screening. However, this screening is not as common as the certificate screening, as it is only used for specific occupations.¹

Of the nineteen respondents who were denied employment after a background screening, eight belong to the group of severe offenders – who have been imprisoned at least once – whereas eleven belong to the group of non-severe offenders – who have not been imprisoned and have committed only two or three offences in general. It can, therefore, be argued that criminal background screening does not only target more severe offenders, as seems to be suggested by policy makers.² It should, moreover, be noted that some offenders have opted for withdrawal strategies, as they expect to be ineligible for a certificate, and in so doing have avoided exclusion (this strategy is further explored in Chapter 8). It should also be noted that six of the ‘non-severe’ offenders eventually did receive a certificate of conduct, for example after successfully completing objection proceedings. Furthermore, two of the ‘severe’ offenders who had previously been refused a certificate, appeared to be eligible for a certificate when they applied for it a second or third time, since some more years had passed.

Of the fifteen respondents who did not ‘pass’ the screening for a certificate, seven had requested the certificate for taxi driver or passenger transport. The overrepresentation of these sorts of occupations in certificate requests is likely to be the result of the certificate being required by law for this occupation (Kurtovic 2012b), in addition to this being a highly desired occupation amongst ex-offenders (Morgenstern 2011; Boone 2012a). The other respondents requested the certificate for a variety of occupations, for example for working at Schiphol Airport, for working as a door-to-door seller, or for working as a parcel courier or shop assistant. For some positions that involve working in the secured areas of Schiphol Airport, such as working in large depots, a certificate is required by law.

1 In 2016, 35,000 security screenings have been carried out, whereas 968,300 certificate screenings have been carried out. See: https://www.aivd.nl/binaries/aivd_nl/documenten/jaarverslagen/2017/04/04/jaarverslag-2016/AIVD+Jaarbeeld+2016.pdf; http://jaarverslag.justis.nl/2016/factsheet_vog.html.

2 The State Secretary for Security and Justice has stated in this regard: “Occasionally, the idea still exists that the certificate is often refused based on petty offences only. This is however based on wrong perceptions of the certificate”. Press article, 2 February 2017, retrieved from: <https://www.rijksoverheid.nl/actueel/nieuws/2017/02/01/onderzoeken-tonen-aan-vog-draagt-bij-aan-succesvol-integriteitsbeleid>.

As every employer in the Netherlands can require a certificate, it is unclear for young ex-offenders seeking employment for what sort of jobs they qualify if they are unable to meet the requirement of submitting a certificate. Yet they certainly want to be able to anticipate this, in order to avoid rejection afterwards. This seems rather difficult since it regularly occurs that *after* they are hired – or after they have already started working – an employer mentions that a criminal record screening has to be completed. In the following example, the respondent was subjected to a security screening *after* she was hired to work at customs:

“I was offered a job at Schiphol Airport as security officer, so everything was alright. At some point they cancelled my job. They told me: ‘We cannot hire you because of circumstances in your personal life’” (Shanice).

It can be observed that, in general, it is unclear to ex-offenders what type of work, if any, they are allowed to perform. In other words, they are often unaware and apprehensive about which *collateral consequences* may be imposed on them after they have completed their sentence. This can be explained with reference to several facts. Firstly, a criminal record screening is a preventive, administrative instrument, therefore it is not part of the criminal procedure and the sentence that is imposed. Secondly, since such preventive measures are not part of the punishment itself, they are not scrutinised with regard to principles of proportionality and subsidiarity. On the contrary, such measures are aimed at protecting society against the risks that ex-offenders pose to a particular occupation. Thirdly, there are various types of collateral consequences resulting from different types of criminal background screening – all having their own decision-making framework with different possible outcomes. Lastly, *every employer* is entitled to subject his or her employee to a criminal background screening for *every type of job*. This creates serious insecurities since a screening is often raised *after* the applicant has already been hired. For these reasons, it could be argued that collateral consequences can be considered to operate largely beyond the sphere of public knowledge and view and can, therefore, be labelled as ‘invisible punishment’ (Travis 2002), or at least ‘invisible bars’ to re-entry into the labour market.

In addition, the decision-making criteria for issuing certificates of conduct are generally unknown and unclear to young adult ex-offenders. Consequently, they do not know after which period they may be eligible for receiving a certificate. The expiry periods can differ per job, as well as per offence. As no general rules apply, the criminal courts that issue the verdict inform offenders neither with respect to the length of time nor with respect to what types of jobs could be affected by the negative consequences attached to their conviction. Unawareness of the decision-making criteria was also a common theme in the interviews I have held with the reintegration professionals and parents of the respondents (thirty-eight persons in total). They basically had no idea of the

criteria that apply for determining a request for a certificate of conduct. As one of the many examples, a municipal officer stated:

“I have no idea which guidelines are used for deciding whether to issue a certificate: how the offence is weighed, as well as the tasks the employee has to do. It is rather complicated and not very transparent. It means that no-one really knows exactly how they judge that” (P4).

The fact that the decision-making criteria are unknown and unclear to young adult ex-offenders, but also to persons involved in their reintegration process, creates deep insecurities during any job application process, as ex-offenders are worried that they may have to apply for a certificate *after* being accepted for a job. There is no way to know in advance whether a certificate will be issued, since it is the employer who is required to fill in the application form. Their worries will last throughout the period between being hired and having to await the outcome of their request for a certificate. This can take anywhere from two to five months if objections are made against the initial refusal. Consequently, the practical implications of the current policy is that there is a serious lack of clarity, resulting in insecurity and even fear – which already starts during the job searching process and could remain up to the first period of being employed. This is illustrated by the following example:

“I started working as a door-to-door seller of energy contracts, and then I had to request it [a certificate of conduct]. Yet they allowed me to already start learning the job, by job shadowing. After one month they asked me about it and I told them it’ll be fine. But they replied that I had to submit it before a certain date. I thought it’d work out just fine, but then I got the message: ‘You are not going to get it’” (Jeremy).

The requirement of a certificate can also appear after a career move. Regilio has experienced this and is now trying to anticipate it in his next job selection procedure. He had worked at Schiphol Airport as a warehouse assistant and forklift driver. He subsequently obtained a new position as a security guard working for customs, yet he was dismissed from this position because he was not ‘clean’. He explains: “You have to be hundred percent clean to work at Schiphol Airport, so you shouldn’t have done anything or been in contact with the criminal justice system.” He had been ‘cleared’ for his previous job at Schiphol Airport after the initial screening. Yet, after being promoted to a higher level of responsibility, he had to be screened again and a problem appeared, probably – he recalls – because of something he did when he sixteen years old. Consequently, he was dismissed:

“It is all about your particular position: when you’re moving up higher, you’ll be screened in greater depth, I think. So they’ve screened me before, when I

was working in a warehouse, but then it apparently wasn't relevant. But when I started working in the 'clean' area, at a more responsible position, I was screened in more detail" (Regilio).

Alongside working at Schiphol Airport, the certificate is required by law in order to become a taxi driver – which is a rather popular job among the respondents. Some are extremely determined to become a taxi driver, and so attempt to obtain this position, even though they have a recent *and* severe criminal record. Some keep repeating their request for a certificate. Soufyan explains:

"I've requested a certificate for taxi driver before. That was before I was caught and imprisoned for fifteen months. What I've done before I was imprisoned must have already sounded like a criminal record because it was rejected – while I had only two convictions at that time. So, when I requested a certificate for taxi driver again, I thought: 'Let's not take my taxi exams, let's first try to obtain the certificate'. I already had the feeling it'd be rejected, but I thought: nothing ventured, nothing gained" (Soufyan).

This 'nothing ventured, nothing gained' attitude seems to be common amongst young ex-offenders who want to become a taxi driver. This attitude is relatively easy to adopt as taxi drivers are often self-employed, so when a certificate is not issued to them, no-one will dismiss them as a result of it. This way, they do not risk having to face personal rejection by an employer – only a rejection put down in writing by an administrative agency. This may explain why becoming a taxi driver is so popular amongst ex-offenders, and why they remain persistent in pursuing this occupation. The costs of applying for a certificate seem to be irrelevant in this regard; at least none of the respondents mention this to be a reason not to apply for it. On the contrary, they are eager to take their chances, as many of them say they expect to be making money very quickly as soon as they can start working as a taxi driver. They expect, for example, that they can accomplish as many journeys as they want, particularly by working weekends and overnight, and thus ensure long working hours.

Still, respondents do not seem to be aware that a certificate for taxi driver is difficult to obtain with almost *any kind* of criminal background, as – unlike other jobs – *all types of offences* are considered relevant. Some respondents react surprised when they find out:

"The thing is: I've already made investments. I got my taxi diploma, but now I'm not allowed to work. That's irritating, you know. [...] This is the first time I'm confronted with my past; I didn't really need my certificate before" (Ajouad).

"What happened is this: I was searching for a job, I saw an advertisement to make money, I had to request a certificate, but it was rejected: for something that happened when I was twelve!" (Patrick).

The last example of Patrick concerns a situation in which he (now aged 26) had been refused a certificate for an offence he committed once at the age of 12. However, since it was a sexual offence and he wanted to work in passenger transport – which involves direct contact with people, including vulnerable people – this conviction still posed an obstacle fourteen years later.

5 Obstacles to education

Alongside obtaining a job, a criminal record can also hinder the commencement or completion of a study or training programme. At least eight respondents have been hindered in following a training or study programme. In one case, this decision was based on *direct* knowledge. Daniel was following a study programme when he was convicted for threatening and stalking his girlfriend. The school knew about this, as his girlfriend was a fellow student. According to Daniel, as well as his probation officer (P13), the school decided to expel him in order to provide his ex-girlfriend with a safe place to study.

In other cases, respondents have been hindered in following a training programme because the school either asked the potential student about his or her criminal background directly, or discovered it after checking the potential student's educational history, prior to accepting him or her into the programme. Jeremy tells me that he was not admitted to a study programme four years ago, despite the fact that he had the highest scores for the entrance examination. He explains that the school had straightforward information concerning his background:

“I guess I must have told them during the intake interview, because they asked about my previous education and I told them I had completed a training course in prison. But I was best qualified! They told me their rejection had to do with my age, that I would not fit in there, but I think it was mainly because of my background” (Jeremy).

Another respondent assumes he has been refused because his previous school provided information related to his background. When he got arrested and had to serve time in prison, he was expelled from his former training programme. He perceives that his former mentor is causing him further problems when applying for another training programme at a new school:

“I had an evil mentor, who was acting really annoying. He didn't want to give me a second chance, so I got kicked out of school. Then I applied for a new study, but I was refused because of my past. [...] They knew of it as the training is provided by the same national institution and these schools contacted each other to check where you have... They knew about it because they'd contacted my previous mentor. So my new school contacted my old school. This new school wanted to ask them who I was. [...] I don't know how many things my mentor has told them, but because of that I was turned down” (Abdel).

His probation officer also recalls that Abdel had been refused, but, she argues, they “could not find out what the real reason behind this decision was” (P22). Furthermore, she explains: “These schools have very strict pre-entry selections. It has to do with the fact that they will not get any money if a student drops out. So they apply very strict selection criteria. Especially for young adults who already had some breakdowns in their lives. They are not happy to accept them” (P22).

The three stories mentioned above all deal with young adults who either have been expelled from school or denied the ability to participate in a training programme due to *direct* information about their criminal background, provided either by the victim, by themselves, or by a previous school. The following two stories describe situations in which the ex-offender was expelled from school due to being unable to provide a certificate of conduct, thereby as the result of *indirect* knowledge of their criminal background.

Jeroen was following a training programme in social work. He was required to provide a certificate to enter this programme, although he could already start with the programme during the processing of his certificate request. He had been refused at first, so he had to go through the objection proceedings. However, the school decided at some point not to await the outcome of this procedure but to expel him instead. The educational manager of his school told me in an interview that he was being expelled only temporary: “As soon as he has all the papers required, he will be able to start again with a ‘clean slate’” (P38). Moreover, she argued that the certificate was not the only problem: “He also seems to be ill or absent for about sixty percent of the time. So, he first had to ‘get his act together’ before he can come back” (P38). Jeroen finds this decision rather questionable. He argues that, as his request for a certificate was still being processed and no final decision had been reached yet, the school would not be allowed to refuse him education. He thus disapproves of the decision to expel him and concludes: “They misused their powers, they were not entitled to do so” (Jeroen).

Another respondent – Riccardo – was refused entry into a training programme for the armed forces since he had to submit a certificate, yet it was not issued to him because he was suspected of theft. Also this school did not want to take the risk of awaiting the outcome of the complaint proceedings and, therefore, did not let him start with the training. The team manager of his school explains:

“We want to keep our arrangements with the Defence Organisation. Recently, they stressed during a meeting the requirements that the candidates have to meet. [...] Accordingly, we have set this condition: whoever wants to start this training programme, needs to have a certificate. We will not depart from this condition as we have made these arrangements with the Defence Organisation” (P36).

Riccardo, in this regard, argues:

“The only thing I needed was the certificate, so I could be allowed on military territory. But I didn’t get it right away. The school couldn’t accept me and let me start with this training programme since I couldn’t be allowed on the military base. So I wouldn’t be able to complete the programme”.

Riccardo did not understand why they could not await the outcome of his objection proceedings before denying him entry onto the training programme. After all, he had explained to the school that he had a good chance of success during the proceedings. Therefore, he believed that the school has another reason. He presumes they did not want to take the risk of accepting him before the decision was reached in order to avoid responsibility. They would be held responsible for providing alternative education:

“They didn’t want to accept me and then await the decision. If they accept me onto the programme, they’d be obliged to keep me. Cause I’m still a minor. And if I’d start there, they cannot easily shift me to another programme or school. It’d be their responsibility to give me education. That’d be the problem. Because they cannot kick me off the school; they have to provide another training programme for me, which is difficult. [...] It’d be impossible for me to start another programme by then, after I’ve already taken classes. Still they’d have to arrange a new programme for me. They’d rather say: we reject him now, so we don’t run into trouble later” (Riccardo).

This section and the previous section have provided examples of the obstacles ex-offenders face in their search for a job or education. From the examples above, it becomes clear that the certificate of conduct is required not only for employment, but also for being accepted onto a study or training programme. If a school requires a certificate, young adult ex-offenders may be seriously hindered in entering tertiary education. With regard to obstacles to employment, it can be concluded that it is difficult for young ex-offenders to know beforehand whether a certificate will be required, and whether it will be issued upon request. It is often unclear which offences are registered on their criminal record and whether they (depending on their type, severity and expiry period) will pose an obstacle to entering education or obtaining employment. This lack of clarity can result in feelings of insecurity throughout the job searching process. This is explored in detail in the next chapter (Chapter 8), in which young adults’ experiences, i.e. their subjective accounts, of *stigmatisation* are described. In the following sections, cases are described in which a criminal record did not pose an obstacle, often after using a strategy of concealment, or if that was not likely to work: pro-active disclosure.

6 No obstacles?

6.1 *Don't ask, don't tell*

In some situations respondents' criminal background did not pose an obstacle, because the employer or school did not ask any questions about it and they did not mention it themselves. Concealment of or covering up a criminal record seems a logical strategy to adopt during job application processes, as many respondents assume that they will face stigmatising responses or even exclusion when opening up about their criminal past. Jeremy, for example, says he did not tell a prospective employer anything about his criminal record, because he was afraid he would not be hired. He believed his secrecy was a precondition for being hired. Darryl put it this way: "If I'd talk freely about it, I ain't gonna get nowhere". Also Sabia claimed: "You'll be labelled right away. There's a big chance that you'll have to leave". Accordingly, if a criminal record screening is not mandatory (either by law or by internal regulations) and if employers 'don't ask' and employees 'don't tell', a criminal background does not seem to be burdensome.

Yushua found a job in a storeroom, yet his probation officer argued: "He just has been lucky, cause if his employer would have asked for a certificate, this guy wouldn't have a job right now" (P6). Yushua also saw it this way:

"I didn't expect to be hired. I thought that maybe they'd ask for my certificate; fortunately they didn't. I had a bit of luck. [...] They didn't ask for it, not at all. It's rather strange, when working in a storeroom all day, carrying around tablets, laptops, mobile phones. So I really had some luck. [...] it's just coincidence I think" (Yushua).

Daniel, who was expelled from school after stalking his ex-girlfriend, was able to enter another study programme for which he did not have to be screened. Daniel was nonetheless negative about telling a prospective employer about past convictions because he believes it reduces the chances of being hired significantly. As he put it: "They won't hire you if you tell them you've been convicted. That's standard practice". Previously he had been rejected for working at Schiphol Airport, but he had since found a job on the side at a leasing company, for which a criminal background check was not necessary. He explained that he had scrutinised all vacancies on whether a background check was required before applying for a job.

Soufyan found a job rather quickly after his release from prison with the help of a reintegration agency. He was instructed in the strategy of 'don't ask, don't tell' by a reintegration worker. When I asked Soufyan whether his employer knew about his criminal background, he replied: "No! And he still doesn't know. I was just very lucky they didn't ask for a certificate". He explains how

he had been instructed not to say a word about his past if the employer would not asked for it:

“This guy from the reintegration organisation even advised me: ‘If they don’t ask for it, don’t tell them’. [...] Look, he wanted me to have a job or at least he wanted me back on the right track. So of course I can tell the company all that’s happened, but... The reintegration worker told me that [...] the company would probably, maybe, not hire me because of their first impression. But after I’ve worked there for a year, or a month, or whatever, they’ve also seen the good part of me. Cause as a heating mechanic, I visit people at home, on my own. So then they’d trust me” (Soufyan).

The previous story shows that the reintegration worker, as well as the respondent believes that after having worked somewhere for a while, and having built a relationship of trust during that time, exclusion would be less likely if the employer eventually finds out about the employee’s criminal past.

Accordingly, the question of a criminal background is not often brought up during a job application if the respondent finds a job through his or her social network, as in that situation there is already a basic level of trust. For example, Vincent – who started working in the restaurant of his girlfriend’s parents – believes they did not ask about his criminal background as he obtained the job through close relatives who knew and trusted him. He claims: “This a little bit ‘inside’; inside my social network, so to say. I got it through my girlfriend. I didn’t start to work just anywhere” (Vincent).

Delano, on the contrary, had to submit a certificate after he had already been employed, yet he did not feel there was enough trust to open up about his past. He recalls that he was very worried and had talked about it with his probation workers. They had told him he should not worry about it, because it was just a one-off mistake. He says that they told him the only thing he could now do is be honest about what happened and how it had happened – after all, he was only sentenced to a small community sentence. He recalls: “But that’s hard to do when I don’t even fully realise it myself”. He referred to the fact that he did not fully come to terms with his having a criminal record and being rejected for a certificate. Delano explained that has felt very ashamed after being rejected for a certificate, and therefore he did not mention his conviction in his subsequent applications, even after he was explicitly asked about it. After the refusal of his certificate, he started to believe that others would see him as a “bad person” and he started feeling this way about himself too. This story demonstrates that, although the professionals he had asked for advice told him to be open and honest, he himself claimed he was not “ready for it”, mainly due to feelings of shame and anticipated stigmatisation by others.

6.2 Filling up the *résumé* gap

Alongside the concealment of a criminal past by simply not mentioning it, some respondents adopt a more active method of concealment by filling the gaps on their CV. Denzell explains that when he started looking for a job, at first he honestly talked about what caused the gap on his CV, i.e. that he had been detained. Then, prospective employers responded he would hear from them soon, yet he never heard from them again. Consequently, he assumed his *résumé* gap had probably caused him some difficulties. As a result, he claimed to have changed his strategy by filling the gaps in his CV. He had written down all kinds of activities to fill these gaps and made up things that he supposedly had been doing all these years. However, he is still pessimistic about his chances of truly being able to conceal his past:

“I did have problems finding a job. A second chance, that’s how they call it. But when I’m outside, I don’t see any of it. Then it’s like: I’ve been inside for a while, so my *résumé* is blank. Then you can either tell you’ve been detained a while or you can say that you didn’t work for a while. Or you can just lie, you can fill it yourself, but then they’ll make a call and find out that you didn’t work there. So, no matter which of these three options I choose, I won’t be hired. So that’s the problem I run into” (Denzell).

Yushua also claimed that he cannot work because of his *résumé* gap. So, when he started applying for jobs, he explained that he chose to fill the six years he spent in prison:

“I just filled the gaps. I didn’t really lie though. Well, just a little, but it was a white lie. So I filled it with previous work experience spread out over the years. [...] Yes, I filled it, the entire six years. But if I didn’t do it, I’d have very little chance of being hired” (Yushua).

6.3 *Pro-active disclosure*

Alongside concealing a criminal past, by remaining silent about it or by actively filling the *résumé* gap, another strategy is sometimes adopted: *pro-active disclosure*. Ex-offenders may opt for *pro-active disclosure* if they anticipate that their criminal past will eventually be revealed to an employer or if they think this past is irrelevant – often when there is a relationship of trust. Since the most ‘tactical’ way of dealing with the stigma of a criminal record seems to be to conceal the past, there need to be specific reasons to choose *not* to cover it up. A reason for the applicant to *pro-actively* disclose his or her status as a previously convicted person may be that he wants to be open and honest, as he believes the criminal activity belongs to his past and is a closed chapter.

From the respondents' stories, three (different) conditions can be distinguished for adopting the strategy of pro-active disclosure. First, if the respondent does *not feel ashamed* about his past, for example if only minor offences had been committed or if the offences were committed when the respondent was young, or even very young. Second, if during the application process the respondent is confident of being granted a '*second chance*' would the prospective employer be informed of his criminal past. So, if the respondent is already employed and chooses to pro-actively disclose his criminal background at some point, he is at least confident that his employer *trusts* him enough to retain his employment. Third, pro-active disclosure may be opted for if the respondent believes he is required (either by law or by company policy) to submit a *certificate*. By being honest before the truth comes out, an employer can choose beforehand whether to hire him, regardless of whether the certificate will be issued to him. These three conditions for pro-active disclosure are explored below.

A second chance

Oussama was very optimistic about his chances while having a criminal record, as long as he can convince the employer he is important to him and "the right man for the job":

"Then he's not going to ask for a piece of paper first. In that situation, he doesn't mind. I'm a marketing man, I love sales. For sales jobs they're most of the time just looking for someone who know how to sell stuff. If you're good at it, they won't bother about a criminal record. Some do, of course, but then you can say: 'Look, I have a criminal record, but give me a trail period, like three months or so, in which I can prove to you to be a good employee. After that, you can still decide not to continue with me'" (Oussama).

Milad said he had informed his employer because he has a close relationship with him. He called him "one of the best managers I've ever had" and "a very cool guy". Consequently, he has informed him about his past: "He knows what kind of person I am. It's nice if someone understands you. Then you really feel at ease". His reintegration worker confirmed that his boss is really fond of Milad and truly cares for him. Yet, she claims Milad has told him only about the non-severe (traffic) offences, but not about his charges for threatening and the street ban for which he has been sentenced, because, she argues: "Then his boss will think: Dangerous!" (P33).

Also Bryan was positive about his chances when he had already worked some time for his employer and had to take time off to serve a community sentence. He says he openly told him about his sentence, although he did not mention for what crime it exactly had been imposed [house robbery]. He reasons:

"I did tell my employer about my sentence when I was working as a traffic controller. He had asked me: 'How do you mean, you cannot come to work?'"

I said: ‘I’ve to perform community service’. ‘Oh, what did you do?’ I said: ‘It doesn’t matter much, what I’ve done’. He should decide for himself whether he wants to trust me or not. But he did renew my contract” (Bryan).

This example and the previous ones show that direct knowledge, because of opting for pro-active disclosure, did not lead to exclusion from employment. Although in these examples the respondents has been honest about being involved in the criminal justice system, they did not share the details of the offences committed.

Not ashamed

Riccardo – suspected of theft – has had a positive experience when applying for a job in a supermarket. He had to answer a questionnaire, containing a question on whether he had been in contact with the police. Although he ticked “yes”, they have not asked any further questions about it. Later on, when he applied for a job at a motor shop, he confidently told his prospective employer about his pending case. He briefly told what had happened, as he considered it to be only a minor offence, for which he had not (yet) been summoned to appear in court, even though already two years had passed since the alleged offence. Riccardo explains: “Obviously they didn’t see any danger in hiring me. [...] I’ve a smooth talk. A quick chat also helps. It works miracles”. Still, his case is rather unique, since he was only *suspected* of committing theft, but not yet *convicted* for it.

Certificate required

Fadel wanted to work as a courier for the Netherland’s leading provider of postal and logistic services, for which he was required to provide a certificate of conduct. The certificate was not issued right away, which he had told his employer. The employer allowed Fadel to work for him once in a while and help him out with small jobs, in anticipation of the outcome of the objections proceedings. When he finally obtained his certificate, Fadel was able the work as a fulltime employee and could immediately start his job. In this case, the employer allowed his prospective employee to already start working in anticipation of his certificate, albeit on an on-call basis. Fadel explains that he was still required to demonstrate a certificate before receiving an employment contract; the requirement of a certificate was related to couriers being allowed to enter private property for delivering or collecting parcels.

Soufyan also pro-actively disclosed his being ineligible for receiving a certificate, since he was desperately looking for a new job and did not want to waste time and effort on a job application if a problem might appear later on. He did not encounter any negative responses of employment agencies upon his disclosure, as they all told him to just send in his CV. However, after some time he started doubting these welcoming reactions, since he had not been offered a job.

Regilio pro-actively disclosed his being ineligible for a certificate in order to explore other options available at a particular company. At first, he wanted to work as a chauffeur. During the job application process, he provided upfront answers when he was asked about criminal antecedents, as he believes it had no use lying about it, since he probably would not obtain the certificate, which is required for working as a chauffeur. By being honest about it, he argues, he got the chance to negotiate other possibilities. He arranged that he could fulfil another position at the same company if the certificate for chauffeur would not be issued to him: "I have talked with my manager about other options, otherwise being hired would be pointless". This way, he was assured he could continue to work there. After all, Regilio already had experienced being fired after a criminal record screening. As a result, he reasons:

"Some employers just require a certificate. [...] You could lie about having a criminal record if asked so, but what's the use? Then you'll get the same problem I had: you're doing a very good job and at once: you're out. That'll only work for you if you're okay with doing short-term jobs" (Regilio).

From the stories in this section and the ones above, it can be concluded that if ex-offenders expect employers to exclude people with a criminal record, the most strategic reaction would be to keep them uninformed. Still, they opt for pro-active disclosure if respondents anticipate they need to submit a certificate, so that the employer will discover their criminal background sooner or later. So, pro-actively disclosing criminal record information could indeed be a relevant option if they know the certificate will – eventually – be required and they do not want to be hired only to be dismissed a number of months later. Pro-active disclosure, moreover, seems a good strategy if they, in the first place, do not feel ashamed, and in the second place, expect to be considered worthy of another chance. So, to open up they have to overcome feelings of shame and fear of being rejected, in the hope of being given a second chance. Even if they do not feel ashamed to disclose that they have been convicted, they do not tell all the details of the offences. With regard to this tension, Yushua said: "They can either ask how you get this résumé hole, or they can ask for a certificate of conduct. So if you lie, you could get into trouble, because sooner or later they may find out. But, if you're too honest; you may scare them off".

Some believe that the mere fact of 'being in contact with the criminal justice system' will not lead to being excluded and they will, therefore, be considered worthy of receiving a second chance. Only when it concerns less-serious offences – such as traffic violations, offences punished by only a conditional sentence or a community service, or crimes committed during adolescence – do ex-convicts believe that they may still have a chance of being hired if they tell their (prospective) employer the truth. For example, because the employer does not consider the offence to cause problems to the job, or because the employer just wants the 'right man for the job' and is, therefore, willing to give an ex-

offender a chance to prove himself during a few months of trial period. During a trial period, an ex-offender can build *trust*, which seems to be a prerequisite for the continuation of the employment relationship.

Yet, this optimistic perception of themselves (self-esteem), as well as how others perceive them is not common among the respondents. This is demonstrated in the previous sections on reasons for concealment. Many respondents have difficulty opening up about their past because they either feel ashamed about it, or they believe others will think negatively about them and exclude them if they find out about their criminal past. Even if criminal background knowledge does not automatically lead to being dismissed, the respondents still want to avoid the stigma that is associated with it. As a result, there are several reasons for concealing their criminal past. Concealment is, therefore, most of the time considered the best strategy to deal with the stigma of a criminal record. However, this strategy only applies if chances are small that the employer will eventually ask to produce a certificate of conduct – and will thus find out about their past anyway.

7 Certificate required (by law)

The examples above demonstrate how respondents have still been hired for the job after information about their criminal background had been disclosed to their employer. Yet, even if employers are favourably disposed towards hiring ex-offenders, this may in the end be difficult whenever a certificate is absolutely required for the job. About a third of the respondents refer to the certificate as being more-or-less essential. Often it is either required by law or by self-regulation, i.e. by the broad policy of an umbrella organisation or by the general agreements of an organisation.

Three respondents, for example, wanted to work at Schiphol Airport, but could not do so as a certificate was required by law. Daniel had registered at an employment agency specialised in jobs at Schiphol Airport. He was required to sign a form that declared he had not been convicted of a crime. He figured out he could not lie about it, as he was also required to submit to a criminal background screening, and this screening would reveal the truth anyway. Consequently, he pro-actively informed them about his convictions. He claims they responded as follows: ‘There are people who’ve done wrong more than you did and yet they were cleared, so you should just try to pass the screening and inform us of the results’. Although they did not exclude him in advance, they decided not to hire him after the criminal background screening, which he did not pass. A manager of the employment agency explained:

“It’s simple, if you have a criminal record, you won’t pass the screening and you cannot work for us. This is a guideline of the Dutch Defence Organisation, and we’ll comply with it. If you want to work at Schiphol, you have to pass the screening” (P14).

A certificate is also legally required to be able to work as a taxi driver. This was, therefore, relevant for nine respondents, who said they are interested in becoming a taxi driver. Bryan argued, after being refused a certificate for taxi driver: “It’s too bad cause now I cannot do any kind of work in this branch”. He believes he cannot get a job as parcel courier either. Once he had been hired for a job as courier, yet he never applied for a certificate, even though his employer required it, because he was sure he would not get one. Instead, he opted to leave the job after several weeks.

Tariq worked at a bar and in order to become a manager, he was required by law to obtain a catering establishment licence. As he was unable to obtain this, due to his criminal record, he could no longer work there as a manager and, consequently, he lost his job. Although the bar owner was a friend and was very satisfied with his skills, he nevertheless could not hire him since Tariq was legally not allowed to manage the place by himself. He told Tariq he could always come back after he was in possession of the official documents.

Another example is Precious, who is working as a volunteer at an elderly home. After she worked there for a while, she applied for a certificate, however she was not considered fit for the job. Although her employer informed her that she was not going to be dismissed, she was only able to work on an occasional basis, because – as laid down in general policy – every volunteer needs to have a certificate.

Denzell applied for a job via an employment agency. This was arranged by a reintegration organisation, at which he had worked as part of his reintegration programme:

“The interview went well. Today I’ve heard they only need to check whether I need a certificate of conduct. I don’t think it’s gonna be a problem. Of all three applicants, they want to hire me! That’s positive. [...] As far as they are concerned, they want to have me. I hope it’ll work out” (Denzell).

Denzell explained that his current employer, the manager of this reintegration organisation, had instructed him – like all the others taking part in the programme – not to mention his past to a prospective employer at all. This employer explained their strategy during an interview as follows:

“We don’t provide companies with any details of our candidates’ past, due to privacy considerations. But they all know we’re working with people with a criminal background. [...] One of our clients [a company] for example requires them to go through the standard selection procedure, therefore they have to meet all the requirements, among which a certificate. If they do not, they’ll drop out. [...] So our candidate’s chances depend on which of our clients require a certificate” (P32).

It transpired that the company where Denzell would be placed – a large warehouse – indeed demanded a certificate, and would not make an exception for him. Denzell – who was out of prison for about two years after having committed serious violent offences – did not try to apply for the certificate, as he expected it would not be issued to him. The manager of the staff agency also seemed to confirm this:

“We have all kinds of candidates. I always ask them during the initial interview whether they would be able to produce a certificate: yes or no? Then we know: okay, we cannot place him at certain companies. But there are still enough companies where he could work, which do not require a certificate. [...] With regard to Denzell, we knew it was impossible. [...] There’s a group that doesn’t have a criminal record. There’s group we’re not sure about – then we know something happened but not whether that’s blocking the certificate. It depends on whether three or five years have already passed, or it depends on what they did. And then you have a group like Denzell: a long period of imprisonment and also rather recent. I mean, he was released six months ago or something. So then the certificate is not available yet, I suppose” (P32).

In some other cases, it was not the employer but the school that could or would not waive the requirement of a certificate – regardless of how willing the school was to give the respondent another chance. Some respondents, who were required to submit a certificate of conduct to enter education (Riccardo and Lucas for the armed forces, Jeroen for social work), have chosen to proactively inform the school about their problems with obtaining a certificate. As they knew the institution required them to submit this official document, they anticipated the refusal. They did not feel ashamed about their past and considered themselves worthy to be given an opportunity to start education – although none of them had committed severe offences. However, with regard to the training programme for the armed forces, the certificate appeared to be not only a condition laid down by the school, but also a requirement of the Dutch Defence Organisation, on whose territory large parts of the students’ training would take place (P36). Also for a training programme in social work the certificate is often compulsory since students have to be able to do various internships that involve direct contact with vulnerable groups. As a result, even if employers or schools are willing to accept ex-offenders for the job or for education, this turns out to be almost impossible if a certificate is absolutely required, either by law or by an organisation’s internal policy.

8 Conclusion

In this chapter, the practical obstacles to employment or education experienced by young adults with a criminal record have been discussed. After asking the respondents how they define a ‘criminal record’, it appeared that many young

adult ex-offenders do not exactly know what information is involved and for how long it is stored in the judicial documentation system. They tend to think that only severe offences are registered, and that relatively short expiry periods apply, after which their criminal record will be erased. Yet, many of them were – at some point – confronted with a negative outcome of a criminal record screening. This made them aware of the fact that they – still – have a criminal record (in official terms: a registration in the Judicial Documentation System). Consequently, this experience makes them reluctant to apply for jobs that require a certificate of conduct. The great lack of knowledge of what a criminal record entails, combined with an utter unawareness of how this information is used in criminal record screening, creates deep insecurities among young adult offenders and ex-offenders who are trying to obtain employment, both temporary and stable employment, as well as education. The respondents' subjective experiences and reactions to processes of stigmatisation are further explored in the following chapter (Chapter 7).

These insecurities, however, also remain *after* being hired, because at the commencement of the work the employer often brings up the requirement to submit to a criminal record screening and produce an official certificate. It may well be that this requirement is neither mentioned in the job vacancy, nor during the hiring process. Consequently, ex-offenders often cannot know in advance whether they would qualify for a job – given they cannot submit a certificate if they would be required to do so. These insecurities are increased by the fact that every employer can choose to require a certificate for every type of job. Even so, making a next step in their career could result in a requirement to submit a certificate, since the new position may involve more responsibilities. Ex-offenders, moreover, cannot know in advance whether a certificate will be issued to them for a particular job, since only the employer can complete and file the official application form. Not knowing whether a certificate will be required and, if requested, will be issued to them, thus compounds the insecurities that young adults ex-offenders face during the job searching process. As a result, it can indeed be argued that collateral consequences resulting from criminal record screening operate largely beyond the sphere of public knowledge and view (as they are not part of the criminal proceedings) and can, therefore, be labelled as invisible punishment or bars to re-entry into the labour market.

Indeed, having to face personal rejection – after respondents already started their new job – is what they want to avoid at all costs (this is described in greater detail in Chapter 8). This may explain why relatively many ex-offenders apply for a certificate to become a taxi driver. Since taxi drivers are often self-employed and, consequently, do not risk personal rejection by an employer, it is relatively easy to adopt a 'nothing ventured, nothing gained' attitude and keep trying their luck by persistently pursuing a certificate for this occupation.

Some respondents, however, do not face any obstacles when applying for employment. They have, for example, pro-actively informed their future employer about their past during the job application process. In other cases,

the employer did not ask any questions about a criminal history and they did not mention it themselves either ('don't ask, don't tell'). However, these two options seem to be successful only if a criminal record screening is not required by law or by laid down in rigid, internal policies. A fair number of young adults involved in this study – at least nineteen of thirty-one – mentioned they have faced restrictions to employment due to a criminal record screening (indirect knowledge). Moreover, eight of thirty-one respondents were rejected or expelled from a study or training programme due to either direct or indirect knowledge of their criminal behaviour. It can be concluded that, over and above direct knowledge of the employer, indirect knowledge based on a certificate-of-conduct screening is most frequently leading to exclusion from employment or education. Even if employers are in favour of hiring an ex-offender, this may turn out to be impossible if formal law or self-regulation makes submitting a certificate obligatory.

Chapter 7

Stigma

“One of the most difficult tasks facing those wishing to leave behind a criminal past is proving to those around them that they are ‘more than just the sum of their crimes’.”

Farrall, Hough, Maruna & Sparks, 2011, p. 1.

1 Introduction

This chapter explores perceptions, experiences and feelings of young adult ex-offenders concerning being stigmatised because of their criminal background. Stigma is defined by Goffman (1963: 9) as “the situation of the individual who is disqualified from full social acceptance.” Although stigma theories are several decades old, they are still highly relevant to study the hidden bars to re-entry. Since the 1990s, the use of criminal record information for employment purposes has become extremely widespread, enabled by the digitalisation of society. While these ‘hidden’ collateral consequences of conviction are not a part of the criminal proceedings, they can appear at any time during ex-offenders’ reintegration process. It is, therefore, important to understand the stigmatisation that comes with having a criminal record, particularly since: “Larger numbers of people face their futures carrying the legacies of a criminal conviction. In some instances [...] it would seem that the social consequences of conviction have become not just more widespread but also weightier and ‘stickier’ than in the preceding decades” (Farrall & Sparks 2006: 7).

Below, the many aspects of stigma are addressed in order to understand in which ways respondents experience processes of stigmatisation. This chapter thus elaborates on the previous chapter with regard to practical obstacles to employment, by describing the various (subjective) experiences of stigmatisation. This chapter, therefore, aims to answer the following questions: In what types of situations do ex-offenders feel stigmatised? How do they experience the stigma? Where does stigma originate? What emotions are involved?

2 Perceived stigma

Many respondents report feeling stigmatised when they are considered ineligible to particular tasks – either as employee or as student. The stigma can be related to a particular position or any type of job. Many respondents expect that a

certificate will not be issued, and as a result they deem themselves ineligible for (specific) jobs. This perceived stigma is often based on their *expectation* of being unable to obtain employment, which is, in turn, based on their *expectation* of being ineligible for a certificate. Soufyan, for example, is convinced he would not be able to get a certificate, so when he visits employment agencies to look for jobs, he immediately tells them: “I’m looking for a job, but if you need a certificate of conduct; I cannot get one”. Tariq, moreover, said: “If they’d ask for it [a certificate], I’ll never get a job”. He explains he has contacted various employment agencies in order to find work: “But they ask – after a good conversation: ‘Can you also provide a certificate of conduct?’ I tell them I’ll arrange it. But I already know I’m not gonna get one” (Tariq). Darryl anticipated that education might be problematic. His criminal history, he expected: “Could become a problem the moment I’m applying for education. If I want to start a training in retail and logistics, I’ll have to work at large warehouses, that kind of shops. I’ll never be allowed to join such shops. Maybe a small clothing store, there’s a tiny chance. [...] How I see it, everywhere it’s difficult to get in” (Darryl).

Denzell tells a similar story. He says he has been asked to submit a certificate several times during job application processes and perceives to be stigmatised due to his the gap in his CV:

“People say we should get a second chance, but I’ve hardly seen any of it since I’m outside. The way I see it: because I’ve been inside for some time, I have an empty space in my CV. [...] No matter what you do, you won’t be hired. [...] At several occasions I explained that I’d been in prison. Then they’ll say: ‘You’ll hear from us soon’. But I didn’t hear anything” (Denzell).

Precious, in this regard, said warily: “I expect it to be refused. Cause when I anticipate to not get it, I’ll not raise any expectations. If I will get it after all, I’d be very happy. So, if I anticipate to not get it, it can only be better than I expected”.

Some of the respondents mentioned above did not *actually* apply for a certificate for a particular job. Oussama stated in particular that he once had applied for a job in sales, and as the application procedure went well, he was hired for the job. Then, however, they requested that he would apply for a certificate: “I told them: Sure, I will. But, of course I knew: I’m not gonna get it” (Oussama). Although he did not try to apply for a certificate to see the official response, he nonetheless described this situation as an instance of stigmatisation. This so-called *perceived stigma* is also mentioned by many other respondents. Daniel says he was looking for jobs with his parents, and constantly asked himself: “Do I have a chance for this job; do I have to tell that I’ve been convicted – or not?” He argues: “That’s how we considered different jobs. Cause mostly they won’t hire you if you tell them you’ve been convicted”. He has not told a

potential employer that he had been convicted because “then chances are really little you’ll qualify for the job at all” (Daniel).

Zaid argued that one of his friends did find a job, but only because he had a lot of luck. His friend works at a gas station, but, he argues, you are normally never allowed to work there if you have a criminal record. He believed, in general, that once you have a criminal record, you are never able to get rid of it. His friend was real lucky, because his uncle is the manager. Zaid claimed that he faces employment restrictions himself as a result of his criminal record. He said that he can never own a business, because the bank probably will not provide him with a personal loan. Maybe this would still be possible for offenders who have only three or four offences on their criminal record, but not for him, having fourteen offences registered over the past five years:

“Really, the road ahead is harder for you than for someone who’s just clean, so to say. And even once you have built up something, they’re gonna be difficult about granting you licences if you have a criminal record” (Zaid).

He moreover believed that people are being screened for previous convictions everywhere nowadays:

“Especially when you work via an employment agency. Most of the work you can do nowadays, that you’ll have a chance for, is via an employment agency. But they have to, let’s say, guarantee their clients – the clients are the companies and so on – they thus have to guarantee them that they’ll send someone who’s reliable. If they send someone who just got released...that’ll be a bit difficult. Look, if there are five people, four normal and one with a criminal record, believe me: you’ll be the last one laughing...” (Zaid).

Zaid informed he had worked on Schiphol Airport once, although it was off-the-books work (i.e. work that is lawful regarding its nature, but not declared to public fiscal authorities). He believed that he would have never passed the security screening that is carried out for working at the airport, as it is extremely strict. He claimed: “you cannot even work in a grocery store as a stock boy nowadays” (Zaid).

Yushua also believed there are several jobs he cannot obtain because of the certificate requirement: “Garbage collector, working at the municipal authority, cleaning – because a cleaner may have to enter buildings with computers or so – public servant, teacher, and youth worker. Even for an internship they ask for a certificate nowadays”. He recalled that even his friend required a certificate for a ‘simple’ factory job. Thus he concluded that for almost every job, one needs to show this official document.

With regard to being eligible for a job, respondents considered it difficult to make other people believe they had turned their lives around. Tariq explained this by stating two well-known sayings: “Once a thief, always a thief” and

“The way a person is at age seven is the way he is at age seventy”. Yushua also believed this to be true: “It may well be that you’ve changed completely in all these years, but people see you as the same person you were before you entered prison. This could be an obstacle when you’re meeting an employer”.

It can be concluded that most of the respondents quoted above believe they cannot obtain a job if a certificate is required. Moreover, they believe they would not be issued a certificate if they applied for it. Although they may have changed, other people still perceive them to be a threat or risk because of the criminal activities they once were involved in. This *anticipated* or *perceived* stigmatisation with regard to employment or education makes respondents feel powerless, as they assume that they cannot make people see them for the person they are now, rather than the person they used to be. They believe that being a transformed person is not enough to do away with the stigma, as others will continue to judge them based on their criminal conviction history. This, in turn, can lead to negative feelings towards themselves and negative expectations of the opportunities they will be offered in their daily lives. As this stigma is mostly related to jobs for which they need to pass a criminal record screening, the certificate of conduct is particularly perceived as an obstacle they cannot surmount. This is explored in more detail below.

3 The ‘ex-con’ label

3.1 *A weighty and sticky stigma*

As described above, perceptions of stigmatisation involve low expectations with regard to the outcome of the procedure of applying for a certificate. When confronted with this obstacle, different feelings associated with the stigma seem to emerge, for example shame and hopelessness. Due to these feelings, many respondents react defeated and drop out of the job searching process.

Ajouad believed that for other people all doors are open – and even stay open after committing an offence – while for him all doors remain closed as he was refused a certificate to become a taxi driver on two occasions. He felt as though he was being forced to stay put and was unable to move:

“I know guys who are at university, drive taxi *and* steal. You see what a future he has: all doors are open – and still he is doing bad things. And for me, the doors are closed, yes, all doors are being closed. You understand: no taxi, no school, no... So on a certain point, you’ll get desperate. [...] Especially when you’re young, you have lots of ambitions and you want to move. And when you’re being stopped, it feels like your arm is cut off. You understand, you cannot do anything anymore. [...] I felt I was stopped right after they refused me. [...] So now, if they’ll stop me again, then I’d really...aargh, sometimes I feel like I’m forty!” (Ajouad)

Another respondent told of the story of how he acted and felt when he was refused a certificate for his job as a door-to-door seller of energy contracts, since he was convicted once for assaulting his girlfriend and the job involved direct contact with people (Delano). After being refused, he strongly held onto the idea that the rest of his life was ‘cancelled’ because of a single mistake. After he applied for the certificate, he received a letter stating his request had been rejected: “The moment I saw that letter, it was the first time it really hit me: I cannot even work! I have a criminal record!”. It really bothered him, he recalled, and he thought he must have done something wrong again, as he perceived the rejection as being punished twice for his wrongdoing. Moreover, he started to doubt whether he deserved a second chance at all, to make something good of his life. Consequently Delano started to doubt *himself* and this triggered him – as he called it – to wallow in self-pity. It took him a lot of time to recover, he recalled, and as a consequence he did not use the opportunity to raise objections against the refusal of the certificate; instead he gave up.

As he had started his job as a door-to-door vendor, he withdrew from the job as he believed his manager was not favourable towards hiring ex-offenders. His manager had told him that if he had not done anything “really bad”, he would be issued a certificate:

“I thought: ‘Wow, do you really mean that?’ Because I knew I had already received a letter stating I would not get my certificate. So when I looked at that letter, it was a twisted reality, because he said I should get it, but the letter said I’ll not get it. That was... painful! I didn’t discuss it any further with my manager, cause the way he said that to me was very offensive. And I was just recovering; I was in a recovery phase...it was too soon for me” (Delano).

When asked why he did not discuss the refusal of his certificate with his manager and show him that he had not committed any serious offences, he replied:

“No! No! I was very ashamed. Really! I first had to let it sink in: I’m having a criminal record. [...] And there’s nothing you can do about it. [...] Right now, it’s clear to see that people who know me better say: ‘Come on, it’s nothing you did’! But people who hardly know me: they seem startled” (Delano).

Here, Delano explains how important a relationship of trust is before opening up about a criminal past; people who know him told him not to be ashamed about his past, because he had only committed two minor offences. Yet, Delano perceived the reaction of the manager to be extremely stigmatising, as this manager suggested that the certificate would only be refused in the case of serious offences.

Also Bryan had once applied for a certificate (to become a taxi driver), but had been refused. He believed he was therefore ineligible for a certificate,

which is the reason he did not apply a second time. When asked which jobs he thought would be difficult to obtain for him without a certificate, he responded:

“Every type of job. If they want to know whether I’m trustworthy; I’ll just be untrustworthy to them. While in fact I have a lot of goodwill. I’m not someone who... [...] So, I’m having problems because of this all the time. You’re walking around knowing you’re not gonna be hired. And – if you’re hired – you won’t get a certificate. That’s a problem in itself. A big problem. [...] It is a great problem, because basically you cannot take part in society. You cannot be a complete person. On the contrary, you just drop out, everywhere you’ll drop out. All you encounter are setbacks, instead of things getting better” (Bryan).

Thus, Bryan experienced a high level of stigmatisation, based on being unable to obtain a certificate. He perceived that others would regard him to be ‘untrustworthy’, because he does not have a certificate, consequently he does not feel like a ‘complete person’. His probation officer also mentioned that Bryan has a general lack of self-confidence: “I think the main reason for Bryan to have difficulties in obtaining a job is his appearance. He appears to be insecure and self-doubting” (P29).

As explained in the beginning of this paragraph, the experience of being stigmatised involves feelings of shame, fear, hopelessness and defeat. This leads to being passive and avoiding situations, instead of giving all it takes to obtain a job or a certificate. This strategy of avoidance or self-exclusion is explored in greater detail in Chapter 8.

3.2 A ‘bad name’

Many respondents fear being truthful about their past, because they expect to be labelled as an ex-criminal. They expect their employer or colleagues to see them for the person they used to be, rather than the (transformed) person they have become. They expect to be treated as not much more ‘than just the sum of their crimes’. Vincent’s father explained how he expects this labelling could take place while his son is searching for internships:

“Of course you rather not mention it to a future employer. [...] If you have to negotiate about having a criminal record, it’s as if you’re thrown back into that past. I mean, you’re being confronted with it again. While you could also argue that when you have finished your punishment, it should be over and done. You should be able to make a new start. You should get the chance to close the book on that period of your life. Yet in social life, you may be hindered because a mistake you made several years ago. Especially when you’re such a young boy... [...] It’s always nasty. I mean, you’re forced to talk to people [who want to hire you] about something you don’t want to talk about. [...] If you have to tell people about your past, you’ll be treated like that once more, like the person you used to be” (P8).

A similar story is shared by Lucas's parents, who attempted to negotiate access to a training programme for the armed forces, all the while the objections they made against the refusal of their son's certificate were pending. They expected prejudice against their son after informing his school about his criminal record:

“Because it took him so long to submit the certificate, some people [of his school] should have thought: ‘what is happening here’? So then people started to look askance at him. [...] Subsequently, we tried to negotiate with the school about letting him start with the training programme. So, then the people of his school of course knew: ‘there’s an issue with the certificate, he might not get it’. They’d have all kinds of prejudices. [...]” (P7).

Also Precious pointed out that she was afraid that her inability to obtain a certificate would give her a ‘bad name’ at the school she is attending. She said: “I just want to be able to tell to school that I have a certificate. It really bothers me that I have to tell to everyone that I do not have it. I really want to make a fresh start and leave it all behind me. Now, school has created a special position for me, so can still do an internship somewhere [while awaiting the outcome of her complaint proceedings], but I don’t want to do my work in such a ‘sneaky’ way” (Precious).

The stories above demonstrate how the label of ex-offender is often experienced to be considerably heavy and sticky. Not only by respondents, but by their parents too. Below, the story of one respondent is explored in detail, as it is exemplary of how the stigmatisation process evolves and how exactly feelings of shame and fear, and a passive attitude, are the result. It is the story of Sabia, who had once been caught for embezzlement of about €15,000. She paid everything back to the owner of the shop and the public prosecutor apparently did not consider it a matter of urgency to follow up with prosecution. After an – abnormally – long period of six years, Sabia received a letter from the public prosecutor stating the case had been dropped, so she would not receive any sentence for the offence. The reason for the dismissal was that a very long period of time had elapsed. Sabia explained that this case had caused a lot of stress in her life, as she had to wait for six years before it was finally dealt with. All this time she was not able to put her past behind her, because she was still awaiting summons to appear in court. She claimed that although she is very happy that it is all over, it still causes trouble regarding employment:

“You can never really put it behind you, because employers will ask for a certificate of conduct. Previously, I’ve applied for one, but because the case wasn’t closed, they couldn’t give it to me. Now I’m not sure whether they’d give me one” (Sabia).

Although she had not been required by an employer to submit a certificate in the last few years, her previous experience of being refused weighed heavy on her. All the time – at least during the six years that elapsed since she was charged with embezzlement – she felt as if her past mistake was catching up with her. She explained that she became scared and did not dare to apply for jobs anymore:

“I thought nobody wanted to have me. [...] Now I don’t dare to apply for all sorts of jobs. First you check whether they want a certificate. Even once you’re in the job application process, you’re afraid they’ll bring it up and ask for one after all. It remains a very big obstacle in the way of job applications” (Sabia).

Sabia went on to explain that in the past three to four years she finished her study programme, during which she worked for the same employer – one who did not require a certificate. She had nevertheless been searching for other jobs, yet could not find one without this requirement. The same problem had occurred when searching for internships that were compulsory for her study programme in social work. She ‘solved’ this problem by applying for internships at organisations she did not really like, but did not require a certificate, which – according to her – was the only option she had. Thus, she selected not only her jobs, but also her internships based on this requirement. Currently she works as a legal assistant at a public institution. She recently started this job and after she accepted the job it appeared she is required to submit a certificate. Sabia explains how this process took place in practice:

“When you’re filling in your contracts and other papers, you think: what if they’ll ask for a certificate too? I was glad that didn’t happen, until two weeks later, then I received an e-mail stating I had to submit it. I was scared, because all those years I could avoid it, until now. Now my past is catching up with me. You just want to continue with your life, but there are obstacles that make things really difficult for you. Like this new employer asking for a certificate. [...] Most of the times they suppose you’ll just get one, so they don’t refer to it during the application process. [...] Up to now, I’ve avoided positions that require one. I’ve always inspected vacancies, websites, cover pages and job requirements. But these don’t always mention this requirement, so later on you may discover you’re obliged to produce this document.”

As she only recently received the public prosecutor’s notice of dismissal, she was afraid the case may still hinder the certificate being issued to her. Given her previous refusal, this made her hesitant to apply for the certificate for her current job as a legal assistant:

“I still haven’t sent in the application form. I don’t dare to, cause I’m afraid it’ll be refused. So I try to delay it, until they’re really gonna push it – then I

must apply. I really love this job, that's the worst of all. I like it here, like my colleagues."

So, Sabia keeps avoiding having to apply for a certificate, and as the months pass, it seems to her that the human recourse department has forgotten about it. She wants to ensure at all costs that her employer does not discover her past, so if they are going to push for the certificate, she is afraid that she will have to leave her job:

"I'd rather leave the job myself than tell them honestly what has happened and then be forced to leave. [...] I think they will label you as a sort of criminal. [...] I once told a colleague – who did not know I cannot get a certificate – that I still had to apply for it. She replied: 'Oh, I didn't yet apply for it either, not because I'm a criminal or something, it just didn't cross my mind'. So, people often think that if you don't get it, you're a criminal."

This example clearly demonstrates how the perceived stigma is based on how others label persons who are refused a certificate. Despite her fear, Sabia eventually – almost six months after she started working as a legal assistant – applied for the certificate and it had been issued to her. Her case constitutes a comprehensive, real-life example of the shame and fear of being labelled a criminal, which goes with having a criminal record. Her story demonstrates that as a result of such feelings, ex-offenders would rather avoid applying for a certificate than try to keep their job and risk facing personal rejection (as is explored in the next chapter). This story as well as all the other examples described above demonstrate that perceptions and experiences of stigmatisation have an essentially negative impact on the job searching process.

4 Responses from officials

The previous section deals with experiences of stigma by which respondents are or perceive to be restricted to *do* something, due to their having a criminal record. Another, although less prevalent, type of stigmatisation are responses of (local) government officials, which are explored below.

4.1 Placed on a 'most notorious' list

Another type of stigmatising experience of young adult offenders and ex-offenders is being placed on a list of most notorious, young repeat offenders. At least four respondents mentioned being placed on such a list. This is a list of offenders that is defined by the local authorities aimed at distinguished a group of mostly young offenders who commit 'high impact' crimes. Such lists are developed in order to be able to adopt a comprehensive approach, based on cooperation of all relevant institutions in order to help young high risk offenders

back on the right track again.¹ Youssef, however, experiences being placed on a local list of most-notorious offenders as stigmatising, because he is being checked – in his words ‘bullied’ – by the police every time he is out on the streets with friends. He claimed that they constantly demand him to show his identity papers without a valid reason. He believed that whenever he walks down the street, there is almost a hundred percent chance that the police will stop him for control. He believed that this approach is not proportional; “I’m not a notorious or serial offender; the police blew up the whole story” (Youssef).

Being listed as one of the ‘most notorious’ offenders can be regarded as aggravating or complementing stigma (LeBel 2012), over and above the stigma associated with the criminal record itself. Youssef’s first concern was to get his name off the list – rather than worrying about the criminal record stigma. In order not to be listed as a ‘most notorious’ offender, he had to stop committing crime, as well as stop smoking marihuana. Youssef finds it frustrating that while he has changed – he has become ‘clean’ – he remains on the list for a while. He said: “But I’m changed now. Half a year it’s going okay now. Yet this ‘most notorious’ label will stay fixed on me for another year. You can’t drop it that quick. You need to do good over a longer period” (Youssef). His job coach confirmed that the first goal Youssef wanted to work on was to remove his name from this list, yet his job coach expected it would take approximately a year to be officially removed from the list: “It is easy to get this label, but it is difficult to get rid of it” (P27).

This period of being ‘stuck’ on the list is also a concern for Darryl. He hoped that at a certain point his name would be removed from the list, although he had no idea when that would be. He explained that he had heard that the list is updated twice a year and presumed that he would automatically be eligible to be removed from it based on a ‘First-in, First-out’ principle. Nevertheless, he claimed he is doing better than the others on the list and, therefore, should be removed from it as quickly as possible. The fact that he was placed on the list of most-notorious offenders led to feeling stigmatised at various occasions. Due to the stigma experienced, the special approach adopted by the local authorities to assist him in moving away from a life of crime was precarious. He sees these official responses, for example the reintegration programme he has to participate in, as particularly stigmatising. In his view, this programme is full of boys with the same kind of ‘bad’ attitude, therefore he is hesitant to do participate. Darryl thus experiences his contacts with formal institutions, such as the criminal justice system and reintegration programmes, negatively as these re-affirm the stigma of being defined as one of the ‘most notorious’ offenders. For example, due to this special approach it had been arranged for him to go back to school. Yet, Darryl has felt stigmatised because of only being

1 For example in Amsterdam this list is referred to as ‘Top 600’, and in Utrecht this special category of offenders is referred to as ‘Top X’.

granted access to a specific school, which he believes is generally considered a school for ‘problem youth’:

“I behave normally, I work normally, I’m just normal, so I don’t have to go there. And why would I go there if I can also go to the normal school? [...] I don’t want to be put in the box of going to *that* school – with only problem youth. But my counsellors told me to go there, because there I’d have a chance of being accepted with a criminal record” (Darryl).

So, Darryl’s perception of stigma is based on being placed at a school he claims is generally known as catering to ‘problem youth’. He expects to be stigmatised by others, as the general public generally views this particular school for ‘problem youth’ negatively.

Also for other reasons being registered on a list of most notorious offenders is experienced as stigmatising, for example when a fight takes place and the police need to find the suspect, there is a higher chance that the person registered on such a list will be investigated. Tariq recalls a situation in which he had a conflict in traffic with another driver and both were physically aggressive towards each other, yet the police only took him into custody. He believes the reason for this was that he is on the ‘most-notorious list’, as a result of which the police were quick to suspect him and use coercive measures. He also finds it stigmatising that many officials of local authorities can see that he is registered on this list. For example when he had been in a meeting with a public servant regarding his welfare benefit: “all of a sudden, after the guy typed my name on the computer: boom! The name of this list appeared” (Tariq). The municipal officer, responsible for his reintegration into the labour market said in this regard: “In fact, when you’re on this list, you’re being labelled.” (P4). Tariq clearly considers this to be negative: “At some point my probation officer told me clearly: ‘You’re no longer on the most notorious list’. Yet, the same municipal officer continued to be assigned to me [someone specialised in most-notorious, repeat offenders].” The municipal officer confirmed that Tariq, after he had been removed from the list, continued to take part in an intensified reintegration programme for high-risk offenders (P4).

It can be concluded that being registered on a list of ‘most notorious’ or ‘high risk’ offenders is generally experienced as stigmatising in itself. Respondents believe that other persons who know they have been put on that list will automatically see them as one of the most severe criminals. What seems to be particularly stigmatising is that they neither know for how long they will remain on the list, nor what they have to do in order to be removed from the list. Both Youssef and Tariq find it frustrating that they remain on the list after having stopped committing crime. As follows from the stories above, respondents perceive that being on the list is at the discretion of the reintegration professionals who are involved in this local, comprehensive approach and that

they have little power to have themselves removed from the list, even whilst doing their best to demonstrate that they have been changed.

4.2 *Police interference*

Other respondents experienced – similar – stigmatising reactions that are non-related to being placed on a ‘most notorious’ list, such as being constantly pursued, stopped and questioned by the police. Soufyan claimed: “I do have this mark right now. If I’m being stopped by the police, it takes ten minutes before they give me back my driving licence because they’re busy running my name and stuff. Although that [committing offences] belongs to my past, that’s how they still judge me”. Also Fadel claimed the police use a much harsher approach on him after he is stopped, because they hold his past against him. He was driving with his friend on their way back from a visit to a local snack bar, when the police forced him to stop the car. He guessed it was because of his past conviction. The police officer who checked his identity papers started to talk out loud to her colleague about the fact that he had been convicted, she even mentioned the offence for which he had been convicted, and finally she said she was going to body-search him for drugs. Fadel’s friend knew absolutely nothing about his previous conviction, which made Fadel feel really embarrassed. Fadel argued that it is inappropriate for the police to just start talking about what happened in his past. Luckily his friend did not mind, but if someone would be sitting next to him who *did* mind, the police would make him look like a complete fool.

Milad told a similar story:

“The toughest part is how other people look at you and how other people judge you. When you’re trying to get your life back on track, have a normal place in society, in some way you feel judged, no matter what. For example if I’d be stopped by the police and they run my name, or if they’d body search me or search the car I’m in – that’s really stupid. Imagine I’m in a car with my boss and his car is being searched because of that; he wouldn’t be happy with it... Somehow I want to do something about it, but there nothing you can do, you cannot change it” (Milad).

The stories above show that ex-offenders’ experiences of stigmatisation are also based on being dealt with more harshly by the police, e.g. facing extra controls. Alongside being placed on a most-notorious list, being stopped and searched by the police makes offenders feel that the way government officials think and behave towards them is based on their past behaviour and – since it is outside of their control – they cannot change it. They receive these stigmatising responses not only from the police, but also from probation officers and reintegration workers. They feel that they are subject to the discretion of an official, who

assesses them based on what they did in the past, and that they are unable to change the officials' attitude towards them.

5 Stigma's origin

This paragraph aims at establishing where ex-offenders' perceived stigma originates, in particular the perceived stigma of being ineligible for a certificate of conduct. In a quick scan (Gosluga 2015) it has been concluded that juveniles and young adults base their idea of whether they are eligible for receiving a certificate primarily on what their friends say. However, contrary to the conclusions drawn in this quick scan, the stories of this study's respondents provide a different answer to the question where the perceived stigma of being ineligible for a job or for receiving a certificate originates. The stigma experienced by the respondents is almost always based on their own (prior) experiences. They have either been asked about their criminal background when applying for a job or education programme, or they have tried to obtain a certificate before, but failed.

Ajouad wants to become a taxi driver, so he applied for a certificate, but he did not obtain one. He subsequently decided he would first try to qualify for his taxi diploma – which would cost him a serious amount of money – in the hope this would convince the screening authority of his deep urge to become a taxi driver. When he was going through the second application procedure, he heard that his friend was unable to obtain the certificate even *after* he acquired a taxi diploma. Ajouad clarified: “In the same period he was rejected, I was busy obtaining my taxi diploma, just as he had done... You get it? So yeah, it's fucked up men. Really!” (Ajouad). So, from his friend's story, Ajouad believed that the outcome would still be negative – with or without taxi diploma. His perceived stigma is, however, not based on his friend's story, as he himself had also previously been refused a certificate. Moreover, neither his friend's experience, nor his own experience of being refused twice, kept him from applying for a certificate for a third time after another year had passed. This example demonstrates that although the stigma ex-offenders' experience may be increased by a friends' negative story, it is often not based on such (second-hand) stories.

Although talking about employment restrictions is common among ex-offenders, the following quote perfectly illustrates that the stigmatising experiences respondents encounter are mostly based on their own experiences. When asked about his experiences with the certificate, Soufyan answered:

“There's a lot you hear about it of course. Look, obviously I won't get the certificate. There's no point hoping, I just know that. Just like my taxi... I've asked a certificate for taxi before [...]. It was rejected. Because of two small cases. [...] So that's how it went. If I'd apply for a certificate now, I'll definitely not get it. I just know that” (Soufyan).

Also Delano, who is required to submit a certificate for an internship at a large mental health institute, is very afraid he will not obtain one, as he had previously (about a year before) been refused a certificate for a position as a door-to-door salesman. The same holds true for Bryan. When asked whether he had ever applied for a certificate, he responded: “Yes, I had to, of course, for taxi. Wasn’t refused right away. They had sent me a letter stating they intended to refuse my application. I think it’s too bad [...]. I didn’t apply for it again.” Denzell, who is currently looking for a job, explained that he had also dealt with the refusal of a certificate before. Although he already expected not to obtain the certificate, he says he nevertheless made the effort to submit a written opinion after he received an intended decision of refusal. So, in a new job application process – several years later – he believes that will still be stigmatised: “This is not the first time I won’t get it. I know I’m not gonna get it. If I’ll apply for it, I think there an eighty-percent chance I won’t get it” (Denzell). In anticipating this stigma, he took into account that he had been imprisoned after his first refusal and is barely two years out of prison now.

As follows from respondents’ stories, the knowledge of the stigmatising consequences of having a criminal record is primarily based on their own direct experiences. Their expectations (or: perceived stigma) often seem to be quite realistic. Although sometimes they refer to what they have learned about it from their friends, they never mention that this information has determined their actions. In other words, they will not make choices regarding their own job searching process based solely on their friends’ second-hand stories. For example, Oussama claimed that it is hard to find a job with a criminal record as he had heard this from other ex-detainees: “So I’ve heard: it’s what all the boys say, everybody tells these stories: ‘all employers want a certificate’” (Oussama). He himself is nevertheless very optimistic about his job opportunities while having a criminal record: “I’m sure that if you can convince the employer that you’re important to him, that you’re the man he needs for the job, he’s not going to ask for a piece of paper first.”

Thus, many respondents’ anticipated stigma is strongly dependent on their own previous experiences of being refused a certificate. Interesting to note is that the criminal justice system is not mentioned as a source of information regarding employment restrictions. This could be the result of the great lack of information on the consequences of being convicted during the criminal proceedings. Only one respondent referred to information he received during his trial, yet only because he perceived this information to be no longer accurate. He claimed that he was told that his juvenile criminal record would be expunged after his eighteenth birthday, yet as his criminal record poses an obstacle to becoming a taxi driver, he argued: “So that’s no longer the way it is now” (Patrick).

Professionals who are supervising ex-offenders during their reintegration process are likely to play a role in informing ex-offenders about possible stigmatising responses based on their having a criminal record, as well as ways

to deal with it. Yet, this was not raised during the interviews. Only Soufyan mentions explicitly that his reintegration worker expected he might not get a certificate and for that reason has set out a strategy for him nonetheless to be able to acquire gainful employment. Soufyan recalled that his reintegration worker had told him:

“Imagine someone, later on, will ask for a certificate of conduct. When you’re already working there for a while, it may well be that although you cannot provide the certificate required, you can keep working there anyway, because they know you already”.

From the respondents’ stories it can be concluded that professionals rarely discuss such strategies of dealing with stigma during their reintegration process. As a result, the respondents’ perceived stigma, as well as their way of dealing with it are largely based on their own experiences.

6 Emotional responses

The respondents’ emotional responses to instances of rejection are explored below, in order to gain a deeper understanding of the impact of the criminal record stigma on the daily life of young adults. About one-third of the thirty-one respondents express negative emotions when reflecting on their being refused a job or a certificate. These emotions differ from anger, shock, and disappointment to discouragement and self-pity. The seriousness of their emotional responses indicates the impact of such an official rejection. It also demonstrates the weight, or perhaps better burden, a criminal record poses when it comes to the process of reintegration and jobs searches. Yet, the feelings related to stigma seem to not only impact their opportunities on the labour market; they also negatively influence offenders’ and ex-offenders’ self-esteem and self-worth. Below, these different emotions are described.

Fear

Yushua explains that he was afraid during the job application process: “I was very afraid: they might ask for my certificate or something. Happily they didn’t. I’ve been lucky”. He was particularly afraid of being asked to submit a certificate after he passed the job interview so he would already be hired. Also Sabia was afraid of being rejected, which resulted in her delaying the application for a certificate. She clarified: “This fear of not getting the certificate is all-pervading”.

Frustration

Ajouad explained: “I think it really sucks – I wanna work. This is the third time it’s been refused. I really did my best. Financially it hurts, you know. My nephew – we applied for it together – did get the certificate and now he enjoys

working as a taxi driver. He already made about 6,000 to 7,000 euro, while I'm still stuck in this hotel, doing stupid night shifts for 50 euro's per night". Also Daniel – refused employment at Schiphol Airport after being convicted for stalking his girlfriend – explained he has felt frustrated and disappointed: "Well, it really sucks, because I want something very badly but am hindered because of my criminal record. Yes, for me it's very disappointing". His probation officer remembered his response: "He was seriously disappointed. And next to that, it truly bothered him that he was being hindered to do what he really liked to do. But he was primarily disappointed" (P14).

Shock

Patrick, convicted for sexual abuse at the age of twelve, was twenty-six years old when he was confronted with a refusal to work in the passenger transport sector: "I was shocked when I got refused. How could that be possible? Cause it happened such a long time ago". After it struck him that he was being refused a certificate because of his misconduct as a child, he also became frustrated: "Basically, I've lost all hope, because of this whole certificate-thing. I mean: to ruin someone's life while, back then, I was only a twelve-year-old kid who wasn't able to change anything, even if I'd wished to." He felt as though he was being punished twice: "And now, you'll be punished severely. Really severely. And you think: 'have I not been punished enough?'" (Patrick).

Confusion

Milad experienced various emotions throughout the whole process of trying to obtain a certificate. He stated that the refusal of his certificate felt really "fucked up", yet it would appear that he did not allow himself to really feel angry about it. His reintegration worker stated that he was really distraught after the decision: "Crying, crying, sobbing, sobbing. It just had to come out. Basically he was very sad. Because he had disappointed himself, disappointed his parents, and he lost that job. [...] He also lost all hope. And faith in himself" (P33). Since Milad encountered many setbacks in his life, he later on stated he did not want this situation to bring him down again. He has more-or-less tried to repress the negative feelings: "Not receiving my certificate felt like a bitter pill. I had quietly hoped for it. It's not like I really deserved it, though. I cannot be angry knowing that I'm the one who made the mistakes. After all, I'm the only one responsible, and I accept that responsibility. My whole life I've been blaming other people. I can't stand that, I'm not gonna do that anymore" (Milad). In the beginning of the proceedings he was willing to challenge the refusal and go to court, as he felt that this was within his rights. Yet, after he lost his appeal, this attitude was replaced with resignation, passiveness and hopelessness. He said that it no longer matters to him anymore whether he is within his rights: "Everything comes to an end, I guess. I don't know what else I could do. I don't see another solution. [...] I live my life one day at a time now. Not knowing what I want to do. Confused and everything..." (Milad).

Self-pity

Samet sighs after being refused a certificate: "It's hard for me, really. But, well, never mind. After bad times come good times, so they say...". Delano was shocked and eventually started to blame himself: "After receiving that letter, stating it was rejected, I said to myself: 'What did I do wrong this time? Do I even deserve to have a second chance and make the best out of my life again'? It really cost me a lot of time to get over it. [...] It made me wallow in self-pity even more. It made me feel insecure, really confused [...]. I can remember well that back in that time, there was nobody who could understand what I was going through. That was bothering me most. The only thing I could think of was that I did something wrong, that I was a bad person" (Delano).

Discouragement

Abdel, who was expelled from a training programme during his imprisonment, tried to apply for a new training programme after he was released, but was refused because of his background. He says he did not try to start a training programme again: "You become discouraged and think: I'll never be accepted" (Abdel).

Jeremy remembers that stigmatisation caused him to feel defeated and made him not stand up for himself. He recalled being rejected for a training programme: "If it'd happen now", he says, "I stand up to it and say: 'Hell no, you're not gonna send me away'. But, back then, I didn't do so because I was ignorant and I wanted to stay out of conflict" (Jeremy).

Shame

Several respondents, Delano and Sabia for example, indicated that they felt ashamed of their background. Samet explained that he did not want any help from the local authorities, for example by participating in an reintegration programme, because he did not want to be open about his past: "I don't want anyone to know about all my criminal convictions, even if that means I have to pay for a training programme myself. [...] I'm afraid they'll ask questions: how and why it happened, etcetera. Then I have to tell them all that I've done, again. It's none of their business. It's something that belongs to me, I don't want others to know about it, you understand?" (Samet).

Feeling ashamed, discouraged, defeated and all the other emotions that respondents have expressed, demonstrate that processes of stigmatisation have serious consequences. Actual instances of rejection, based on not being eligible for a certificate of conduct are followed by various negative emotions, some of them very intense. This has a serious impact on the lives of these young adult ex-offenders, who become demotivated and passive, and avoid searching for a job or education programme. Here, also the well-known Thomas theorem seems relevant: "If men define situations as real, they are real in their consequences" (Thomas & Thomas 1928: 572). The consequences of the stigma of a criminal

record with respect to the respondents' labour market position, as well as the withdrawal strategies related to it, will be explored further in the next chapter.

7 Conclusion

In this chapter, the many aspects of stigmatisation, based on the respondents' criminal background, have been explored. The respondents' expectations of stigmatisation in the labour market mainly depend on their own – direct – experiences of being previously refused a certificate. Stories of friends and others only play a minor role; this contact would appear relevant only to discuss whether jobs would or would not be available to them in general terms. However, as most of the respondents faced actual instances of stigmatisation and rejection themselves, the stigmatisation would appear to be based more on personal experience. Officials of the criminal justice system and reintegration workers do not seem to play a role in discussing possible stigmatising consequences of being convicted and in proposing strategies to deal with them. The role of these so-called 'agents of reintegration' is discussed in greater detail in Chapter 10.

The actions of reintegration professionals may, on the contrary, amplify the criminal-record stigma. Respondents report they sometimes feel as if they are powerless and have no control over how government officials picture them. This is particularly true if the local government places them on a list of 'most notorious' repeat offenders or if they are subjected to increased police controls. So, above and beyond the stigma of 'ex-con', some respondents find it very stigmatising to be placed on such a list, which allows the local authorities to adopt a comprehensive, intensified approach to help them desist from crime. They feel powerless towards these particular government responses, as they cannot know in advance for how long they will be registered as 'high risk' offenders and what is needed in order to be removed from the list. Ex-offenders also feel that they are subject to the discretion of the government officials involved in their reintegration process and that they themselves are unable to change the stigmatising attitudes towards them. So, their experiences of stigmatisation seem to be caused by others (e.g. government officials) still 'labelling' them as a risk or a threat due to the criminal acts they committed at some point in the past – whereas they themselves are motivated to move on with their lives and leave the past behind. Thus, their stigma consists of feeling powerless to make people in their social network see them for the person they are now, instead of the person they used to be. They believe that being a transformed person is not enough to do away with the stigma, as others will continue to judge them based on their criminal history. This feeling of being disempowered and frustrated is likely to consolidate the ex-convict stigma.

The respondents' intense emotional responses after receiving an official refusal of their certificate reveal that this has a serious negative impact on them personally. Being faced with these collateral consequences of a conviction

can cause feelings of shock, shame, frustration, anger, disappointment, as well as hopelessness, discouragement, fear and defeat. The weight of having a criminal record has a negative impact on their self-esteem and self-efficacy. As a result, stigmatising responses may lead to a self-fulfilling prophecy due to which offenders may indeed start to see themselves as nothing more than “just the sum of their crimes” (Farrall *et al.* 2011: 1). This is likely to result in *passiveness* and *avoidance*, instead of trying their best to qualify for a job or a certificate. Moreover, it could lead to secondary deviance. The strategy of avoiding the risk of personal rejection and its implications for possible re-offending are explored in greater detail in the next chapter (Chapter 8).

Here, the idea of *signalling desistance*, as noted in the theoretical framework, is relevant. It is radically different from the current paradigm of *risk assessment*, as it is less concerned with ‘signs’ of risk (which put the expert in control), but instead focusses on whether the offender ‘signals’ that he or she is motivated to desist from crime (which requires an active role of the ex-offender). Offenders who ‘signal’ desistance should be offered opportunities that support their rehabilitation process. As follows from the stories above, opportunities can indeed be considered to be crucial since respondents experience that the most pressing aspect of the stigma of a criminal record is that it restricts them to perform certain tasks or occupations. The certificate is now often considered a hurdle they cannot surmount. It can be concluded that the respondents generally consider it to be stigmatising that, although they have served their punishment, they are still obstructed in their entry process onto the labour market, which some of them even experience as being punished twice. The signalling approach, therefore, proposes *responsive, individual initiated policies*. This means that individuals who demonstrate that they made the decision to ‘go straight’ should be supported in their desistance process, instead of being locked out of opportunities and thus relegated to search and opt for second-rate jobs – or maybe even to the continuance of a criminal lifestyle. These consequences of the stigma are addressed in the next chapter.

Self-exclusion and job prospects

Is a criminal record “an all-purpose negative résumé”?
Jacobs, 2015, p. 47.

1 Introduction

The previous chapter described the various aspects of stigmatisation experienced by the respondents, in particular what types of stigmatising reactions have been experienced, what feelings are involved and where the stigma originates. This chapter discusses the *consequences* of this stigma for the position of young adult ex-offenders on the labour market, as well as their employment prospects. Whereas Chapter Six discussed the strategies for dealing with stigma concerning either concealing or pro-actively disclosing one’s criminal past, this chapter discusses a third strategy, namely *self-exclusion*. If an ex-offender predicts facing conviction-based employment restrictions, he or she may choose to withdraw from a job application, as well as job seeking in general. Forecasting rejection, ex-offenders may decide either not to apply for a specific job, or self-exclude from the labour market completely. After discussing this strategy, this chapter explores the job prospects of young adult ex-offenders to see how their having a criminal record, the stigma that comes with it and their coping mechanisms, eventually influence their current position on the labour market.

As theories on stigma and labelling have a rather one-sided focus on deviants as passive receivers of the label others apply to them, a *strengths-based approach* from desistance theory is used to fully comprehend the consequences of the criminal-record stigma. Labelling focuses on the process of stigmatisation due to negative social reactions, while desistance also takes into account the individual’s attitudes, choices, motivations and agency, based on the idea that the individual “acts as his or her own change agent” (Adams 1997: 335). Hence, as well as the impact of societal reactions, this study also takes into account the *agentic subjectivity* of the desister.

To do so, this chapter explores the *narratives of change* of young-adult ex-offenders that capture their *causal beliefs* or *explanatory styles*, which in turn explains their behaviour (Maruna 1999). This causal belief can be described using three dimensions (Maruna 2004): (1) internal/external, (2) stable/unstable, and (3) global/specific. These three dimensions are used to explain to which

causes the respondents attribute life events, i.e. how they explain these events, in particular events concerning their job searching process. These attributions or explanations can be used to analyse ex-offenders' narratives of change, which are constructed personally and – at the same time –shaped by interactions with their social environment.

2 Self-exclusion

Alongside the strategies of concealing one's past and pro-active disclosure (as discussed in Chapter 6), the strategy of self-exclusion dominates to a large extent the choices of young adult ex-offenders in their job searching process. This sections analyses the perceptions of respondents who believe that they are ineligible for a certificate and therefore avoid applying for it and thus withdraw themselves from the job application process. By excluding themselves from a job or education before another person can do so, they try to avoid the exclusionary or stigmatising attitudes that they predict to encounter and the shame they associate with it.

2.1 *No certificate, no chance*

Respondents generally believe that without a certificate, opportunities in the labour market are small. A probation officer stated in this regard: "I notice that many of our clients do not apply for jobs because they believe they won't make it. They say: 'Because I have a criminal record, I will never pass the selection procedure'" (P19).

For example Soufyan, who considered it to be hopeless to apply for a certificate, "If I'd apply for a certificate now, I'll definitely not get it. [...] So I never applied for taxi. I have no faith in it". Yet, eight months later he applied for a certificate – hoping that the lapse of time would be to his advantage – yet it is, again, refused. Based on this experience, he believed it is would always be difficult to find a job with a criminal record: "I was only lucky to have found another job. Many companies just want a certificate. Cleaner, all sorts of jobs. I was really lucky they didn't ask me to submit a certificate. Seriously, I was lucky. They could've asked for it easily. Then what? I would've been put on hold" (Soufyan).

Murat followed a training programme in resort management, yet he said that he would not apply for a job in that business, because he needed a certificate: "I cannot work in a hotel or something, because they will ask for a certificate. So now I have to wait a couple of years before I can do something". By 'waiting' he meant that he was rather comfortable with receiving a so-called 'invalidity insurance', which is granted to young disabled persons. His reintegration officer also recalled: "He was pointing to this special insurance and said: 'See, I'm a disabled person, so I don't have to work that hard'" (P11). Both Murat and

Soufyan seem to consider it a matter of time before they may be eligible for a certificate.

Daniel was looking for a job, but would not apply for one unless he was sure the company would not want him to undergo a criminal background screening. As a result, he had applied only once; for a job at a leasing company, for which he was immediately hired. He claims he was successful only because the certificate was not required. Moreover, if it would have been required, he would not have applied for the job, as he had been denied employment due to his criminal record before. Yushua, who also expected not to be able to receive a certificate, argued that the certificate limits his job opportunities: “Because you already know you won’t get it, you’re only gonna seek particular jobs, for which they don’t ask it”. He explained that a year ago he wanted to start a training programme in social work, but his reintegration worker had told him that would not be a good idea, as this training programme requires a certificate (P5). Yushua recalled:

“It really sucks that they might ask for it. [...] At least that was what my job coach told me; we talked about it back then, cause I wanted to go in that direction. [...] But since that seemed impossible, I stopped thinking it” (Yushua).

His probation officer also recalled in this regard, “He was well-aware of the fact that although he really wanted to do that [become a social worker], with his criminal record, he would not be able to” (P6).

Fadel had planned to apply for a training programme to join the police the year following his arrest for chopping up cannabis. After being arrested, however, he abandoned his plans: “When I was caught, it was definitively over. I thought: now it’s no longer possible”.

With regard to these ‘causal beliefs’, it could be argued that all five respondents attribute their being restricted in obtaining employment primarily to ‘specific’ rather than ‘global’ causes. They all have a specific job in mind for which they would like to apply, but expect to be unsuccessful. Still, they also believe that their employment opportunities – without having a certificate – are generally very limited. Daniel believed that many jobs are out of reach, but he at the same time is motivated to find a job that does not require a criminal background screening. Soufyan believed he was “seriously lucky” to have found another job. And Yushua believed that since he did not meet the requirements to study social work, he needed to alter his ‘career path’. Yet he also believed that many jobs are outside of his reach. These respondents thus have faith in finding a job for which they will eventually qualify, but – at the same time – they expect this will be very difficult, as they believe they are ineligible for many or most jobs. Moreover, they had to abandon their hopes of doing what they love most (respectively working at an airport and working as a social worker with problem youth). Soufyan and Murat, moreover, explicitly stated that they believed their being ineligible for a certificate – and thus for

the job – is caused by a ‘temporary’ rather than a ‘stable’ event, as they expect they have to simply wait a one or more years before they would be eligible for a certificate. This means that they perceive the restrictions to employment to be temporary, although they still expect them to continue in the near future.

Still, there are more stories of respondents who do not believe they have a chance of keeping their job due to the certificate requirement. Sabia, for example, did not consider negotiating with her employer so that she may keep her new job if her certificate was denied:

“Look, my chances are little, since I’m working here just a few months now. It’ll be a different situation of you’re already working there for one or two years. Then, they have a complete picture of you and they know what you’re made of. But if you just started your job – especially in bad labour market times, when one hundred people apply for one position – then you’ll be easily discarded because you have a history”.

Bryan believed that – without official qualifications – he hardly had a chance on the labour market: “Basically, without the certificate, without a contract, you have almost nothing. I’ve found a temporary solution now. And I’m a person who lives one day at a time, I don’t think days ahead. But actually I do want to make long-term plans”. Bryan attributed the fact that he was hardly able to obtain employment, and at the most could only obtain temporary jobs, to a ‘global’ rather than a ‘specific’ cause, as he considers himself – without education and without a certificate – unable to find stable employment.

The common factor in the respondents’ answers is that it is hard for them to remain motivated to find employment. They either think they have to wait for a certain period of time before their criminal background will no longer hinder them in obtaining a job desired, or they ultimately have to wait until a job appears for which the certificate is not required. Accordingly, some young adult ex-offenders, such as Bryan, have limited hopes and plans for the future in general.

2.2 *Losing prospects*

Due to the limited opportunities for ex-offenders on the labour market, their ambition and motivation for a particular career decreases, as do their general job prospects. One social worker explained that many young adults wish to work as a security guard or in a caring profession. She tries to coach them towards obtaining a different profession, and tries to explain to them that they can even apply for the same job again after few years have elapsed. But, she says, “their response is: ‘When I’m finally on the right track, I’m being obstructed again. I want to do this *now*’. They also say, ‘Okay, so you know what, I’ll just stick to receiving social assistance. It’s of no use to do my best. They can have it their way. Whatever’”. The social worker adds: “Maybe that’s

a little overstated, but it is a stigma. This is how they often respond” (P2). Her experience demonstrates that young adult ex-offenders, when finally being motivated to do their best, oftentimes become demotivated if job opportunities remain blocked.

Patrick, for example, waited for four months for a decision on the objections he had raised against the refusal of his certificate; during this time the position he applied for was already given to someone else. When asked whether he would apply again for the same job – if his objections are successful – he answered:

“Maybe yes, maybe no. I could give it a try, but... I wonder whether the company would seriously consider a new application. [...] And, honestly, I more or less gave up hope, because of this whole certificate-issue”.

Sabia explained with regard to her job prospects: “It’s still a nasty thing. It’s as if I can’t move on, as if I’m constantly restricted. Now I found something nice, something I want to do because it fits me, but I’m hindered because of the certificate”.

Milad claimed that the rejection of his certificate does not bother him anymore, as he has decided to no longer let this get him down and make him feel negative about himself. Some months earlier, he seemed ready to appeal the negative decision on his request, but now he seems to have more-or-less given up hope: “I can try again and again, but that’ll cost me money again. [...] I’ll probably be disappointed again”.

It can be concluded that these respondents explain their experiences of rejection to be the result of an ‘internal’ rather than an ‘external’ cause. Milad started doubting himself and Sabia thought “nobody wants to have me”. Abdel described his being rejected for education as discouraging, after which he started doubting whether he would ever be accepted. Theories on stigma have stressed that stigmatisation leads to altered self-esteem and self-identity, as these are shaped through how we see ourselves reflected in the responses of others (looking-glass self). We simply see ourselves as others see us. Thus, if ex-offenders internalise the stigma that is shaped by meaningful encounters with significant others, this is likely to result in negative socialisation. Moreover, the reactions of respondents illustrate that they would rather avoid such stigmatising responses and the accompanying negative feelings – which is explored in further detail below.

2.3 Taking the honourable way out

Some respondents would opt to ‘take the honourable way out’, instead of facing rejection by their employer or colleagues and being sent away from the job. This choice is often based on feelings of shame, which they try to avoid by dropping out. A manager of a staff agency stated in this regard: “Of course it is very nasty if you’re already employed. We have a company at which we

outsource our candidates, then they have to demonstrate a certificate within six months. So there's first a six months trial period. So it really sucks if you're not able to make it at the end" (P32).

Tariq explained that he made appointments with several employment agencies in order to find a job. However, after he had a good interview, they would ask him whether he could obtain a certificate and he replied: "Yeah sure, I will fix that". "But", he stated, "I'm sure I won't get it, so I just leave it that way, I never got back in touch with them again". Jeremy was rejected for a study programme in marketing and communication four years ago. Looking back, he thinks he should have said something about it and stand up for himself, instead he was ignorant back then and wanted to avoid conflict.

Oussama recalled the time he had applied for a job in sales. After he had passed two rounds of interviews, they offered him the job. At that point the firm requested he submit a certificate. "I responded: 'Sure, I will'. But of course I knew: I'm not gonna get it. I just never got back in touch with them again, cause I knew it wouldn't work out, I'll not get it". Particularly interesting to note is that this respondent referred to this situation as "being rejected", although it was primarily his own expectation of not being eligible for a certificate, as well as the job that made him decide to leave the job himself. So although he never actually applied for the certificate, he nevertheless felt 'rejected': "I don't mean specifically by that employer, but I mean; I just couldn't get that job" (Oussama).

This story, as well as the previous ones, reveals that ex-offenders' self-exclusion is based on negative expectations of their rights and chances in hiring procedures. This results in feeling defeated, as well as feeling rejected in advance, without actually following through. None of the respondents, for example, tried to negotiate the result with their employer in order to see whether they would be hired without having this official document. Their dropping out is thus often the result of feeling hopeless, discouraged and defeated, combined with ignorance about their rights and opportunities. They attribute the stigma that is (likely to be) applied to them, as well as the rejection that will be the result of it to 'internal' rather than 'external' causes, after which they start to think negatively about themselves and their self-esteem seems to lower.

This also follows from the story of Bryan, who had once applied for a certificate to become a taxi driver and now believed that he could not obtain any job in that sector: "After that, I've never applied for it [the certificate] again, because I knew it actually wouldn't work out for me". Later on, he obtained a job as a courier and his employer required him to submit a certificate, yet he never applied for it:

"I tried to stretch my time working there by telling them I was pushing for it and it'd be coming their way soon. That way, I could still work there a few weeks and earn some money. I've tried to delay handing in the certificate as long as possible. I made them wait for about three weeks, then, at some point, it

stopped. It was over. [...] I didn't talk about it with my employer, I just left my job and never came back. Cause I knew it wouldn't work out. [...] Of course, I could have told them I made a mistake once, but I knew in advance it wouldn't work out."

What contributes to Bryan's choice to exclude himself from the job was that it was only a temporary, low-paid job with irregular working hours. "I had nothing to lose. There was no job stability, I worked irregularly, the employer did not mean a lot to me, and he also didn't do a lot for me. [...] The contract I had just really sucked. So I just had nothing to lose, nothing at all to be honest". So Bryan left the job primarily because of his (perceived) ineligibility to receive the certificate required, yet what made this choice easy was that the job was of poor quality.

Delano felt very ashamed when he discovered that the certificate was not issued to him, because he thought he had only committed a minor offence, yet his manager seemed to think differently. So after a few weeks he left the job out of embarrassment. Delano recalled: "It was painful. My income – gone. [...] I continued to work there for some weeks [...]. I didn't raise objections, cause I didn't know how that worked".

Sabia also explained about having a job a couple of years ago for which she had to submit a certificate (which was refused). She did not want to make objections against this refusal because she was afraid she had to tell her employer in the meantime what took her so long to submit the certificate. Instead, she chose to exclude herself from the job:

"I'd rather take the honourable way out. [...] I really had a negative perception back then. [...] Somehow I had some hope that I'd get it. However, when I received the refusal, I no longer believed that things would work out fine. [...] Of course you start looking for information and examine your possibilities, but you don't believe in it anymore. And I guess I was also too late; the final date to make objections had already passed. [...] So I had quit my job. My employer said: 'Can't you come back with us in three months?', because I had told her the reason I left was that I needed time for my study. So she offered me to come back after some time... But how are you supposed to tell your employer about it?! Now she's at least a good reference for me when I'll apply for a new job later on – you always need good references, you know. So I had to let go of that job back then. It was a real nice job, I really liked it there. I've worked there quite some years" (Sabia).

Although this incident took place three years ago, she is still afraid: "You develop fear; you don't dare to apply for a job anymore cause you think nobody wants you." She is still afraid of being rejected up to the point that if she has to apply for the certificate, and it would be refused, she rather leave her job than be 'forced to leave' by her employer.

2.4 A strong self-selection effect

Also other researchers have hinted to a strong self-selection effect regarding applying for jobs or for a certificate. For example, Kruize and Gruter (2016) conclude from a research on the certificate's effectiveness, that in real life people seem to avoid applying for jobs that require a certificate, either because they are not interested in such jobs, or because they subject themselves to rigorous 'self-censorship' (Kruize & Gruter 2016: 122).

Such strong self-excluding attitudes are also reported in a quick scan among 54 juveniles and young adults who were considered to be 'at risk' of offending¹ (Gosluga 2015).² The conclusion of the quick scan was that the respondents generally are afraid of being either rejected or disappointed – even if they only have minor transgressions. Consequently, they avoid applying for education or employment that requires a certificate (Gosluga 2015: 31). Interesting to note is that this quick scan determined that a criminal background was a particular hindrance to young adults to enter education. From the very short conversations that were held with 54 juveniles 'at risk',³ it became clear that many had been asked about contact with the criminal justice system – either with or without having to submit a certificate – not only by employers, but also quite often by schools⁴ or by internship organisations. As follows from their stories, self-exclusion, which is mainly based on feelings of shame and embarrassment, seems to be an important mechanism that prevents juveniles from applying for a certificate, and consequently for a job or education programme.

For this quick scan also professionals, who are working with youth of a 'risk group', were requested to fill in a survey, accompanied by a description of examples from their daily practice. These professionals (78 in total) were asked for the reason why juveniles did not apply for a certificate or had been refused. Many professionals (29 of 48) who have dealt with the certificate mentioned that juveniles did not apply for a certificate, because they had 'dropped-out' due to self-exclusion. Thus, a serious number of professionals report exclusionary attitudes to be the reason juveniles do not apply for a certificate. The professionals believe that juveniles will self-exclude because they expect or fear to be refused, as they think the decision-makers will look at their past rather than their current, positive attitude to make the best of their

1 In this survey, the definition 'at risk of offending' is used for juveniles who either have a criminal record, or are likely to get in contact with the criminal justice system.

2 The full report is retrievable from: http://www.vogprobleem.nl/uploads/vanoosten/files/vogprobleem/De_stem_van_de_uitvoering_in_perspectief_-_VOG_aanvragen_door_risicojongeren.pdf.

3 The data of the very short interviews that had been held (often 1 to 2 minutes) are not described in the report but were handed over to the author for further analysis.

4 The respondents mention this question had been asked for all kinds of education: tourism, finance, administration, security, armed forces, sports, human resource management, and facility management.

lives. The professionals moreover believe that juveniles want to avoid feelings of being ashamed. Some also believe that juveniles fear that if they will be rejected now, they will not be provided another opportunity at the same school (or company) in the future. They fear a bad reputation on the labour market and, consequently, rather withdraw themselves from the selection procedure. The professionals also report that sometimes employers themselves anticipate that – given a juvenile’s past offences – he or she will not be eligible for a certificate and consequently terminate the application process. Furthermore, according to the professionals, even schools – if they have direct knowledge of a juveniles’ criminal history – are likely to not accept juveniles, and often tell them this is because they will not be eligible for a certificate.

The State Secretary for Security and Justice has responded to the findings of this quick scan after questions from Parliament. He argues that in tertiary education students are always obliged to do internships, so for that reason schools can decide that a certificate is one of the mandatory conditions for being accepted to enter a training programme.⁵ He considered more research to be necessary, therefore, he commissioned a study on the so-called ‘dark number’ of juveniles who do not apply for a certificate to enter tertiary education out of fear of rejection (results are expected in 2018).⁶

What can be concluded from this quick scan (Gosliga 2015) is that self-exclusion appeared to be an important reason for juveniles not to apply for a certificate and to withdraw from the process of entering education or employment. Juveniles’ ‘dropping out’ early in the selection process, as well as ‘a priori’ rejection by officials (both employers and schools), results in their not trying to apply for a certificate in the end. Moreover, the juveniles who participated in this quick scan seem to have often experienced actual instances of rejection, based on which they now anticipate rejection.

2.5 *Self-exclusion in sum*

Also the stories of the respondents of the current study demonstrate that self-exclusion occurs often, which is based on several negative perceptions and feelings, in particular fear, shame, hopelessness, discouragement and defeat. Several respondents have illustrated this fear of rejection by phrases such as “Nobody wants you” or “I’ll never be accepted”. These feelings are often coupled with negative expectations, resulting in being ignorant of their opportunities and being ill-informed of the legal options they have after the refusal (or intended refusal) of a certificate of conduct. Sabia, for example, said she started searching for information on her (legal) possibilities, however as she felt defeated she did not follow through. Overall, the consequences of self-exclusive attitudes vary from losing ambitions and motivations for specific jobs

5 ‘Aanhangsel Handelingen’ II 2015/16, No. 1516.

6 Parliamentary Documents 2015/16, 34 300 VI, No. 101.

(‘no certificate, no chance’), to leaving the job themselves before an employer might dismiss them (‘taking the honourable way out’), and to losing prospects for a good job in general.

The respondents’ stories above have demonstrated how negative feelings can result in negative perceptions of a respondent’s ‘self’, which can, in turn, result in self-exclusion. This is illustrated by phrases such as: “I more or less gave up hope” and “I’ll probably be disappointed again”. Maruna (2004: 187) has hypothesised that, “offenders might view positive events in their lives as being the product of external, unstable, and specific causes (i.e., “lucky breaks”) and view negative events as the product of internal, stable, and global causes.” The stories of self-exclusion that are described above seem to reveal similar patterns, as the respondents’ causal beliefs are predominantly based on internal (“I’m a bad person”) explanations regarding stigmatisation. Instead of ‘fighting’ the external, stigmatising responses, they internalise the rejection, which results in feelings of being ashamed, leading them to withdraw themselves before an employer – or Justis’ decision-makers – could reject them.

Similar findings have been reported in a study on ex-convicts’ expectations and experiences with criminal record clearances in the United States. Adams, Chen, & Chapman (2016: 14-15) have found, that the “stigma attached to the ex-offender status, and its limiting impact on job prospects, was so transfixed in ex-offenders’ minds that it became a debilitating self-fulfilling prophecy [...]. Some refused to apply for work fearing the rejection they ‘knew’ they would experience. [...] Whether self-inflicted [...], or based on failed attempts to gain employment, fear of rejection limited the growth potential of ex-offenders and contributed to their diminished employability.”

Following Maruna, the suggestion is that if ex-offenders would believe these consequences are external, i.e. if they do not internalise the stigma of ‘ex-offender’, and that the restrictions are specific and temporary, this may be far less detrimental to the process of desistance and reintegration. Some respondents, however, explain the labour market consequences of being convicted as global (“It’s hard to find employment”) and indeed view their having a job as a ‘lucky break’. Although most respondents do not consider these consequences to be stable (“Excluded for the rest of my life”), they at least expect them to be present in the near future (“I have to wait a couple of years”).

3 Secondary deviance?

This raises the question what happens after the respondents become discouraged and lose their hope for the future. Whenever they limit themselves in the types of jobs they search and apply for, or whenever they withdraw themselves from the labour market, this raises suspicions as to whether they would return to a life of crime. Although none of them argue that feeling stigmatised and being excluded triggered them to start re-offending, they do share ideas and thoughts that hint there could be some relationship between exclusion and secondary deviance.

Regilio, for example, viewed the moment he had to leave his job due to a criminal background screening – which was conducted only after he had been promoted to a higher level of responsibility – as a negative turning point in his life: “I wasn’t allowed to work at Schiphol Airport anymore and they took away my access card. My life has gone downhill from there”. His dismissal from the job and subsequent loss of daytime activity resulted in him hanging out on the streets a lot and, consequently, committing crime.

Lucas mentioned that similar consequences might have followed if he would have been refused. He, therefore, believed that the certificate was issued because he would otherwise have fallen back into a criminal lifestyle:

“Otherwise I’d been put on hold. Cause you want to do something, but you’re not allowed to. [...] Otherwise, they’d be stuck with a boy who *wants to* but who *can’t* work – guess what will happen then? Then you’re even worse off. [...] I mean, the reason why you didn’t get it in the first place [a criminal lifestyle], is what you’d fall right back into, so refusing it would be of no help” (Lucas).

Soufyan is also frustrated about the certificate being required for many jobs, as well as the consequences that may have:

“I think it’s unfair for these boys, really unfair. So you have to change something. You have to arrange a programme that already starts in prison. There are such programmes already, but I honestly think they should also arrange employment before people get out of prison. So they’ll have an income as soon as they are released. Cause these guys are released but have no money at all. [...] I am lucky to have my parents who are giving me food and who are giving me money – that’s how I was able to live. But what if I had no-one to count on? You *have* to eat, you *have* to drink. The most simple thing to do is to get back to your old ways. That’s where it goes wrong. It already starts there” (Soufyan).

Although only one of the three respondents quoted above referred to criminal behaviour as a result of being fired after a criminal background screening, the others do refer generally to the connection between exclusion and secondary deviance. Since most respondents do not refer to their own specific situation, but only speak about possible secondary deviance in general terms, there is no evidence for a direct connection. This could be explained by the fact that many factors seem to play in reoffending, such as having no daytime activity, hanging out on the streets at night with the ‘wrong’ friends, using a lot of drugs, etc. Yet one aspect is mentioned particularly often as a reason to commit crime: the ‘call of fast money’. The result of having no job, no job prospects and no plans for the future, is that the pull of fast money becomes stronger and warps their thoughts and feelings in a particular direction (i.e. the criminal lifestyle they used to live).

Milad stated in this regard: “I had no job, no income, it is really terrible. For months I’ve lived without any income. That is extremely hard. Especially to choose not to go back to crime, where you could easily have big bags of money, easily earned, not having to work hard for it. But it didn’t feel good, I’m not that kind of person”.

Tariq, who had been refused an official licence required to work as a manager in a catering establishment due to his criminal record, could no longer work at the cafe and he continued to live on social assistance benefits. He stated that this was not enough to cover his monthly expenses, so he is currently selling drugs and other illegal things to supplement his income and to be able to “live a good life”.

Oussama explained that he left his job after he was asked to present a certificate of conduct. He believed he could not get one and would be rejected by his employer. “Back then I was the kind of person who thought: ‘Okay, if I face any frustration in finding a job, I’ll easily choose the other way’”.

Yushua explained how – generally – the call of fast money works:

“Boom! No salary, no social assistance benefits, and he cannot find a job. Guess what he will do? He knows only one way out. And there he starts again, he goes back. Most criminals – except the ones that really have the ambition to become a rich criminal – only do it [committing crime] to get by. Most people who are locked up did it in order to manage to get by. And most of them, after they’re out, come back – also for very small things, just for stupid things. For very stupid things they’re returning to prison. You think: ‘How can you be that stupid? But he thinks: ‘I cannot work, how do I have to live my life?’ [...] Cause, hey, what else can you do? Not that it is an excuse to rob or something. But again, the State gives people almost no other choice” (Yushua).

Bryan argued that without a certificate and without qualification, it is only possible to find jobs in construction. This he perceives to be a job “you really have to like – it’s not suited for just anyone”. Thereafter, he referred to the ‘pull of fast money’:

“The way it is right now doesn’t work, it’s hopeless. In fact they are restricting me to the extent that I start thinking about doing other things than work to get by. Those opportunities are plenty. Really, there are more opportunities to earn money fast and easily than opportunities for finding a job. [...] So, basically I’m thinking that if you don’t give me a certificate... Well, you are put on the spot and you may want to do something else to earn money. [...] I think the government is mistaken about this. They are very much mistaken. Instead of thinking about solutions they are restricting people to do what they want. [...] In fact, it is a pity that you put people on the spot so they may choose the wrong track. Still you are responsible for your own choices, that’s for sure, but for people who have no grip at all on their own situation, who don’t see a way out,

it is very easy to start doing something to make fast money. [...] so you have to at least offer them something better” (Bryan).

As a result, he assured that, “crime is only sustained this way, rather than giving people the opportunity to participate in the normal social society. [...] Everyone wants to achieve something in his life, but instead of being able to realise their goals, it is taken away from them”. Bryan, just as the previous respondents, described the difficulties of finding employment. They importantly note that the hardship of being unemployed starts immediately after a detainee is released from prison. So, in this early phase it seems crucial to have something to hold on to, e.g. social assistance benefits, a job (or at least the prospect of a job), a motivation or a dream. Otherwise the ‘pull’ of their former lifestyle might become stronger, as the ‘call of fast money’ is likely to pull them back to the life they knew before. Especially if they have no reason to make a determined effort for a new future. For that reason incentivised, merit-based rehabilitation policies seem to be crucial. Ex-offenders have to be offered the possibility to ‘earn’ rehabilitation by demonstrating ‘evidence of good conduct’.

Regilio explained this process as follows:

“Prison doesn’t help, it makes people worse. Like me – I’ve lost everything. And if I didn’t have my mom and sisters who stood behind me, I’d have done something stupid to get some money. [...] So you don’t get better. Something has to change. [...] There are already courses or training programmes you can do while being imprisoned – that’s a good thing. But if you have completed this course, there should also be a job for you. The probation service should force you to go to your work, and if you don’t go – you’ll be locked up again. Then those boys have money and a task to do, so at some point they will think: ‘It’d be stupid to give up this job and what I’ve learned by getting locked up again.’ This is how you create a better society – absolutely” (Regilio).

Regilio argued that because there was no job available after his release, he had to take the risk of selling drugs: “So it is true what I said: if you educate someone, make sure that employment is directly available too – the day after release. If you’re released tomorrow, you start next Monday. If you’re not there on Monday, you go back to spend the remaining time in prison. That way, I’d have never needed to resort to dealing” (Regilio). A reintegration worker claimed in this regard:

“It is a very difficult environment for people who are for the first time really without supervision of the justice system. Who are without control, all on their own. It’s a hard reality; little income and a society that doesn’t provide many chances. And then the temptations of a criminal lifestyle... That’s the situation we should aim at; by creating more opportunities for juveniles. Because the temptations of the criminal environment are too strong, but the damage they can cause is also very big. I am convinced that the damage they may cause,

will cost us more money than implementing measures that offer these kind of youngsters possibilities in a legal way” (P11).

Another job coach claimed that some of the most difficult juveniles – such as Youssef – should be offered more opportunities to become employed:

“Wherever he’d start working, one-on-one counselling would be necessary. There has to be someone that will always be by his side to coach him. For example, to tell him when to shut up and when he could speak up in a group. He needs stable structures, and a future perspective as well. [...] I would like to say to the municipality: ‘Go arrange at least something! Some work that he could do.’ Now they spend about 1,000 euro’s a month on his social assistance benefits. The same amount of money you could offer an employer who would be willing to keep him off the streets. Then he no longer cause serious trouble” (P27).

Regardless of these recommendations of professionals, many ex-offenders seem to experience frustrations regarding their limited possibilities in society. Respondents were particularly frustrated about exclusionary attitudes of officials, as well as the fact that the Government does not provide any possibilities for them. The following quotes all express this frustration, which may act as a trigger to resort to (secondary) deviance.

Murat explained: “If you want to help people, you need to come up with something substantial, something concrete. Why do people get involved in crime? They have no basis; no home, no money. So arrange these things”. Zaid exclaims: “There are only few people who really do better after their release, [...] but most of them fall right back. [...] Cause when they come out, they have even more problems and think: ‘fuck all that! They’re trying to fuck me, I’ll fuck them even harder!’ But you are going to fuck no one, except yourself. [...] For me, that was why I did it [committing crimes], and for my friends as well, cause they also chanted these things all the time”. Jeremy said that he sometimes meets boys who are still into crime: “I offer to listen to them, so I constantly hear guys who are saying: ‘I want to live a normal life, I want to do something. But if people constantly say “no”, if I’m constantly frustrated, if people continue to talk about my past – I don’t get a chance.’ So that is really counterproductive”.

Ajouad hinted at possible secondary deviance when asked what he would do if his request for a certificate is refused:

“If they’d say no to me, if they’d refuse me? Then I say: ‘Thank you, see you soon’. That’s what I *should* think. Of course, in fact I think: ‘Stupid bitch, I want to throw that vase at you’. But I’m not gonna say that of course. [...] What I would do if I’ll not get it? Commit a robbery... Just joking. Then I’ll make objections again, what else can I do? [...] We don’t want to do these things [commit crimes], you understand? But they leave us no choice. If I’d be refused again today, then I’ll apply again tomorrow, and it’ll be refused *again*. Get it?

Then I think like: ‘Fuck y ’all! I’d better go stealing’. And: ‘Fuck off, cause you’re not gonna pay my rent’. But I’m not gonna do that, that’s not who I am – get it? So yeah....and...if they catch me then, and I stand before the judge, I’ll say: ‘Dude, it’s not your fault, but it’s your colleague’s fault; he didn’t want to give me a permit. Yeah, so it’s *your* problem’. Get it? You can make someone go this crazy...” (Ajouad).

Ajouad, like other respondents, admitted that these kind of thoughts – of committing crime again – at least ran through his mind. Especially after he applied for a second time for a certificate, which he desperately needed to be able to work as a taxi driver. The threat of being refused again seemed almost unbearable for him; it would cause him a great deal of frustration, while he is unsure of being able to deal with those feelings. In general, this frustration can act as a trigger for committing crime in two ways: by trying to make ‘fast money’ instead of awaiting a lawful income, and by taking these frustrations ‘out on society’. As Ajouad explained, the main reason for him to commit burglaries is not to make money, but to demonstrate that he ‘doesn’t give a shit’: “So it is not about making a lot of money – though that also plays a role of course. It rather is about: ‘Hey, you hit me – I’ll hit you back!’ It’s that kinda thought” (Ajouad).

With regard to the consequences of facing exclusions and drawbacks, a probation officer told of an exemplary story of a boy who wanted to work at a community centre, but who could not hand in a certificate, and consequently had to leave. “This was obviously a terrible blow to him. [...] I did not know about his plans to work there, otherwise I would have prevented him from attempting to do so, of course. [...] So now we’ve lost that boy. Yes, he went back into a life of crime. The certificate wasn’t the only reason, but it had left him deeply disappointed” (P3).

In conclusion, this paragraph has demonstrated the feelings of frustration and thoughts of secondary deviance that several respondents seem to have due to a lack of possibilities to earn a lawful income, as well as a lack of assistance from the Government in acquiring lawful employment. Still, the respondents do not make a direct link between being rejected for employment or education and committing crime. Nevertheless, many do make a link between previous experiences of rejection, anticipated stigmatisation and self-exclusion. As a result, their expectations regarding their labour market position are basically low. These expectations are explored below.

4 Job prospects

The stigma generally experienced and perceived by the respondents leads them to only expect to find only low-skilled employment – at least not the job they really desire. In anticipation of being rejected, they direct their job searching process specifically towards jobs that do not require a certificate. In so doing,

self-exclusion reinforces their low expectations, as it becomes a self-fulfilling prophecy. For example, Daniel believed he had no other options than to keep to his secondary job. He claimed, “Actually I had to stick to Ikea, cause a lot of other companies ask for a certificate of conduct”. As often the job desired is largely out of their reach, many respondents have no hope, other than obtaining second-rate employment. Below, young adult ex-offenders’ position in the labour market is described in more detail.

4.1 Not doing what they love most

Vincent, who wished to become a high school teacher wondered whether that would be possible, given he had been sentenced to two years of imprisonment and was recently released. Although he has to finish two study programmes first – and is not likely to start a job soon – he is worried about the compulsory internships that are required for becoming a teacher. He wanted to be sure his dream would not be impossible to achieve before he starts making arrangements. He explained:

“I mean, this is a government position. Will my criminal record be a problem? Otherwise I wouldn’t even start this course, cause once I’ve finished this study programme, there’s nothing else I can do with my qualification than becoming a math teacher. [...] If you want to work for the government and you don’t have a certificate, you’ve no chance of getting this job. [...] So you need to have it. Private companies are free to make their own choices, but the government has strict policies, I suppose. No matter how much they like you” (Vincent).

His reintegration worker explained that one of his colleagues, a job coach, conducted some serious negotiation to get his school to allow him to continue his former study programme as soon as he was out of prison (P9). Both his dad and his probation officer said that Vincent has shared his worries about his criminal record when searching for internships. His probation officer explained: “I thought: You’re still on conditional release and being supervised by the probation service, so it’s a very ‘active’ criminal record – it has not been closed yet. You cannot say: ‘it belongs to my past’. So, he is still experiencing the after-effects, and he was worried about them” (P10). His father said: “It’s clear that he is not done with it yet, his past will play a role in his future. [...] You never know when you’ll be confronted with it. [...] It’s not only when seeking employment, but also when choosing a study programme, and trying to find an internship” (P8).

Riccardo has been hindered to enter a training programme for the armed forces because of his criminal record. He argues: “Of course I think it’s too bad I can’t join the army, or start a training for the army. I wanted this since I was eight years old. At once that became impossible because of the things I’ve done in the past. And I think it’s unfair, because I haven’t been summoned

or anything, so I don't have a verdict. My case file doesn't yet say that I've been found guilty" (Riccardo). Also Lucas was very eager to start a training programme for the armed forces. His parents explained that after things were going really bad in his life and he had been placed in a youth care facility, he was obliged to participate in a disciplinary training run by former Marines, which turned out to work very well. His parents stated: "They could really get through to him, he truly respected them. Since then, things have been going better" (P7). So, he decided to do a training programme for the armed forces, but his certificate was refused. According to his parents, Lucas had said that he thought it was 'too bad', because after he eventually had been ready to make the best out of his life, he was seriously hindered to do so. His parents noted:

"When we heard it was refused, we thought like: 'But... Wait a minute! He has completed his punishment and now he finally wants to do something, something that he *can* do'... We thought it was the ideal training programme for him. And then you're being hindered to continue with your life, because you don't have a certificate. Because...I mean, what else could he do? [...] As society you then have to deal with a very discouraged young guy...someone who is eager to do a training programme but who is not allowed to do so. I think that's quite the opposite of what you want." (P7)

Accordingly, Lucas felt very happy when the certificate was eventually issued to him after objection proceedings: "Cause you've just figured out what you want to do with your life, when an obstacle appears. I've overcome that obstacle, that's nice".

Another respondent answered, when being asked about what he would do if he could choose anything: "I'd love most... If I could do anything I want... I'd love most to be in security services" (Mitchell). He furthermore likes to work with people, however – based on his negative experiences – he argued: "I tried to volunteer, but even that was already impossible. [...] I can't volunteer because I'm not allowed to work with vulnerable groups." (Mitchell). He only wants to work with people; other voluntary work, such as cleaning or gardening, is not at all appealing to him: "What I really like to do is taking elderly people for a walk or something. But I'm absolutely not gonna clean without payment. I mean, I'm a boy right, so I'm not gonna clean without getting paid. I won't even do that at home, you know what I mean?" This respondent anticipates employment restrictions since a certificate seems required for all the jobs he has an interest for: "It's the first thing they ask for. [...] They ask for it all the time. For all kinds of jobs. For me, that's fucked up; I've been locked up several times" (Mitchell).

Another respondent wondered whether – by any chance – she would be able to work as a security guard (Shanice). She had been convicted for shoplifting a few times and wants to know whether these cases play a role when she would be screened for working as a security guard – and if so, whether she would still

have any chance to pass the screening and do the work she likes most. Also Bryan aspires a job in security: “If I had a certificate at this very moment, I’d be in security. Then I could have obtained my security qualifications” (Bryan).

From the respondent’s stories, it can be concluded that the stigma of a criminal record not only implies difficulties during the job-searching process, it particularly hinders them to obtain the kind of job they desire most. This can also create general difficulties in choosing a career path, as they often do not know beforehand which education or jobs are barred when having a criminal record. Likewise, many of them only expect to be able to obtain marginal jobs, which is described below.

4.2 *Expecting marginal jobs*

The following respondents seem tired of having second-rate jobs, meaning they are working hard, making long shifts, and still earn little. They are also tired of hopping from one temporary job to another, while their hard efforts to find permanent employment in order to provide a good living remain unsuccessful. This has also been found in a study from the United States: “Respondents, at times, expressed frustration with their inability to gain employment, noting that the limited jobs open to them predominantly involved poor working conditions and low pay” (Adams *et al.* 2016: 11).

Ajouad, in this regard, claimed to be tired of working very hard, mainly doing night shifts in a hotel and doing some work on the side for family and friends, while still earning very little. He has applied several times for the certificate and hopes it will be issued to him this time so he can “seriously start working”, by being self-employed:

“Then I stop with the hotel, then I stop with...Once in a while I go help family members with their own little businesses. Just helping a little bit and stuff. But then I’ll stop with that, then I’ll stop with the hotel, then I’ll stop with everything around me. You understand, just take my chances and get to work. Done. It’s that simple. You understand, just a new chapter. I’m tired, you see?” (Ajouad).

Ajouad claimed that his only possibility to make real money depends on being issued a certificate for taxi driver:

“But if I finally get my certificate, then I can seriously start working. You understand, earn my own salary? Cause now I’m working my ass off and still earn nothing. [...] You understand, so sometimes you do get this urge to go... But then you think: ‘Aaargh, better not, I better wait for five years now.’ Get it? This is what we all run up against” (Ajouad).

Also Milad wanted to become a taxi driver, but he has been refused the certificate. When asked whether he still wants that job if he would be eligible for a certificate at some point, he answered:

“Yes, you can earn a very good living as a taxi driver. Though the taxi business is in a financial crisis, my friends earn a lot of money. [...] One friend said: ‘You only need a certificate, then you can start earning money.’ I just want to earn money. I don’t want to run around on a terrace the whole night, sweating, for only seven euro’s an hour. It’s a nice job, but you earn little, you know. I could earn much more” (Milad).

Also Samet was focussed on becoming a taxi driver. “I truly need that certificate, because I really want to become qualified as a taxi driver. Otherwise I keep getting these “sucky jobs” all the time. One moment I get a temporary job, the next moment I’m without. It drives me totally crazy”.

Regilio, who had been dismissed based on his criminal record before, anticipated the rejection of his current request for a certificate for a job as a chauffeur since it involves customer contact. He believed he would only be allowed to work in a warehouse, which is not the job he really likes, although he said he is okay with it:

“He [the employer] knows that I cannot get that certificate, because I told him I have been in contact with the criminal justice system, but I can still work for him as a warehouse assistant. I can also work as a forklift driver. [...] But I cannot do transport, be a driver. I cannot have customer interaction, just work in a warehouse. I talked to him about it. I said: ‘If that’s the only thing I can do, it’s of no use hiring me, cause I think I’ll not get that certificate. So, at this moment I’m still driving, but later on I’ll end up in the warehouse. I don’t mind; it’s okay” (Regilio).

Other respondents claim it to be a structural problem that they are only able to obtain marginal jobs. Jeremy, for example, argued that generally young ex-offenders are consigned to “places out of sight, in which the clock is their only company”. He argues they constantly look at the clock to see what time it is and whether they can already go home, hence “the motivational aspect is missing”. Bryan, who is busy looking for job opportunities, also desperately longs for some improvement of his situation of having only contemporary jobs:

“Once in a while I get some work through an employment agency. But that’s nothing, cause it’s only one or two days of work and you only get a few bucks, you know. Often underpaid. I also did some undeclared work as courier. I have worked as pizza deliverer, extremely underpaid” (Bryan).

The way he sees it, many jobs with long-term prospects are unavailable without having a certificate. When asked what he would like to improve most he says:

“I want a certificate of conduct, because than I can just start working, right? Then you’ll just get a job, with or without qualification, you’ll easily find a job then” (Bryan). He suggested that not having a certificate is impeding to obtaining a job over and above having no qualifications. Therefore, as an ex-convict, he considers himself consigned to low-paid jobs that bear no risk, i.e. marginal jobs. He referred to a situation in which he has received a certificate for the position of parking crew. The reason he had received a certificate was, according to him, that “You can hardly harm anyone in that position, hardly anyone”. At the same time, “It’s not a job to make a living – that’s just not gonna work” (Bryan). He furthermore claims that his life is on hold, even if he has committed only a one-off offence. He feels as if he is being ‘punished continuously’:

“If an ex-offender wants to achieve something, they re-open the book and look two or three years back. They’ll say: ‘See what you have done back then? I didn’t forget about it, so be careful.’ Even though you’ve executed your sentence, you’re still being punished for what you did. You can’t start building up a new life. You just can’t. Everything else carries on, only you are standing still” (Bryan).

Sabia – who had been refused a certificate due to an *alleged* offence – has felt restricted during her study programme in social legal services; she could only apply for internships that do not require a certificate:

“I did my internship at an organisation that I actually didn’t like, but I had no other options because of the certificate. I had to select the internships based on that; I couldn’t work at for example the Child Care and Protection Board or the Youth Care Office.” (Sabia).

Moreover she explained that during her job searching process she only looked for jobs via employment agencies, as she believed this way she had the least chance of being required to submit a certificate. Consequently, she had taken several temporary jobs, all for which a certificate was not required, such as receptionist, school lunchtime helper, and home care worker:

“I cannot apply for certain jobs. Cause back then, when I worked in the financial area, it was refused. So I thought: ‘If that doesn’t work, maybe I can move towards social work’. But it’s exactly the same; there they also ask for a certificate. [...] Every time I find something nice, something I want to do because it makes me feel good, it is restricted because of that certificate” (Sabia).

Likewise, a municipal officer stated that employment is particularly limited with regard to high-skilled jobs: “It is very difficult to find employment if you need a certificate for every kind of job. Especially for people that have a good educational background. Unexpectedly, they have to start working in the construction industry or something. Although that’s not a complete disaster” (P4).

Also Zaid explained that, without having a certificate, only low-skilled jobs seem to be available and even these can be hard to obtain if a criminal background screening is required:

“When I worked at Schiphol Airport, it was off-the-books; I could never work there legally. You’ll be screened and everything. So I had to work off-the-books. Even there I couldn’t work, while it is a simple job for which you need no qualification. It’s just a shitty job, just loading and unloading. But it has to do with the location, you can’t work at that particular place. But you also can’t work in warehouses in general, because these store valuable goods. Currently, you can’t even work at supermarkets, not even be stacking shelves. The only thing you’re offered is to work as garbage collecting or something, you know, cleaning the garbage trucks. Or you can have temporary jobs, like working at a mail distribution centre, sorting postcards. But all of that is nothing for me, because I won’t develop myself by doing that. You know, it’s of no use, those little shitty things” (Zaid).

A manager of a staff agency confirmed that ex-offenders need to be willing to accept all available jobs: “A certificate surely increases your chances, but if you don’t have one, you’re not hindered to find a job. There are many job vacancies currently. But you have to be willing to accept every kind of job. You have to be willing to work at a sorting company [...] or be willing to do physically hard work” (P32).

With regard to the training programmes that are still possible with a criminal record, an educational expert argued: “Logistics is already tricky. With a financial offence, you won’t be allowed to work in warehouses or storerooms. With a violent robbery, you won’t be allowed to work anywhere. The only thing this person become is gardener, doing something outdoors. For customs or financial jobs he surely will not be eligible. Basically he won’t be eligible for anything. Only for manual labour. Maybe electrician would still be possible, or the catering sector” (P26). Also a municipal officer noted in this regard:

“Retail industry or the defence organisation, forget it. Schiphol Airport, where there are many jobs available, forget it. It’s all out of the question. What’s left? Cleaning staff in the construction industry. Or possibly scaffolding construction, asbestos remover, or the flower auction. These things would be possible. But, yeah, that’s often crappy work. It’s physically hard labour. Pays minimum wages and you’ll have to start extremely early in the morning” (P4).

Yushua also expressed his frustrations about the structural lack of opportunities for ex-convicts in general, especially for ex-prisoners, and how they are relegated into second-rate employment that “nobody else want to do”:

“The State pushes ex-detainees to start working, to take up their lives again and to reintegrate – or else they’ll be put back in prison. But how? If there’s no

opportunity to do so? Then they would say: ‘But you can work, at least you can go pick strawberries’. But that boy might have the ambition to do something more than just picking strawberries. Not that there’s something wrong with that. But the thing is, they can only get the jobs that almost nobody else wants to do. If you have the ambition to have a better job, then you need a certificate, you need this, you need that. For example, my brothers are taxi drivers, so I can start driving taxi right away...but I’m not able to. [...] Even if I’d want to, I can’t – because I need a certificate. [...] It’s just really hard. If I’d start looking for a serious job now, I won’t find one. I’m sure. I mean, I can find a job, but it’ll be very difficult and I won’t find a job I really want, a job that fulfils my ambitions” (Yushua).

Several months after we had this conversation, Yushua did find a job, for which a certificate was not required. Yet, according to his probation officer, an ex-offender may be lucky at the beginning of his job, but they might require a certificate later on: “He is working under temporary contracts now. But what will happen if they’ll convert it into a permanent contract of employment? Would they want him to produce a certificate then? (P6).

From the above it becomes clear that for ex-convicts, and ex-detainees in particular, who often have no qualification due to spending time in prison, the only options left seem to be the lowermost jobs. This is also found in the study of Adams *et al.* (2016: 13) who noted that “ex-offenders’ limited access to jobs in multiple arenas narrows the pool of available jobs that could offer a living wage”. Similar to the stories of the respondents of the current study, they found that their respondents “refused to look for work believing they could not get jobs that would sustain their standard of living” (2016: 15).

5 Conclusion

This chapter has focussed mainly on the practical consequences of processes of stigmatisation: self-exclusion, secondary deviance and low prospects regarding the labour market position. Many respondents recall having made self-exclusionary choices due to their criminal record stigma, which negatively impacted their labour market position. Self-exclusion is, therefore, a particularly important, yet largely unrecognised mechanism, shaped by more than a decade of sharply increasing certificate screenings.

With regard to ex-offenders’ causal beliefs, it can be concluded that most are aware of the fact that the employment restrictions based on their criminal record are a *temporary*, rather than a *stable*, concern. Yet, they do not know exactly *how long* these restrictions will be present and how long they have to wait before they are eligible for a certificate. Besides, some explain these consequences to be *global*, as they consider it very difficult to find employment in general, and view their success in gaining a job as a ‘lucky break’. Some ex-offenders are, in addition, very vulnerable to negative social responses and tend

to internalise these, resulting in self-doubt. For example, they seem to believe that they are underserving or unworthy ('Nobody wants me', 'Nobody accepts me'), as they have been rejected for important social roles such as 'worker', and that they will not be given another chance in life ('I gave up hope', 'I'll probably be disappointed again'). These attitudes are the result of internalising stigmatising societal reactions, both experienced and anticipated.

Self-exclusion means, next to leaving their job in order to avoid being sent away, that ex-offenders give up their hopes and ambitions to do what they love to do most. This often concerns jobs for which a certificate is required, such as security officer, taxi driver, the armed forces or working with (vulnerable) people. It may seem that their fear of facing exclusion from these specific jobs could be 'solved' if they do not apply for jobs that require a certificate. However, these jobs appear to be very appealing to ex-convicts in general. In security business and the armed forces, for example, it could even be beneficial to have an attitude of being 'tough', not afraid, and capable of using violence. Moreover, these jobs come with a certain 'status', oftentimes attributed to wearing a uniform. The taxi driving business is appealing because most chauffeurs are self-employed, which involves certain freedoms that many ex-offenders seem to desire. It means, among other things: not spending whole days behind a desk, no nine-to-five job, determining their own working hours, and not being ordered around or yelled at by a boss. Some admit they cannot work under the supervision of a boss, and some are aware that disagreements at the work floor could easily result in the display of threatening or aggressive behaviour. Not working for a boss is also one of the reasons why many ex-offenders have the ambition to start their own enterprise – regardless what kind of business.

Then, there is a group of respondents who want to work in a caring occupation. Social work seems appealing to ex-offenders who have been helped themselves by social or reintegration workers with getting their lives back on track. Once they have their life back together, they become passionate about helping others who are in the same 'mess' they were in, preventing them from making the same mistakes (i.e. being a role model). However, these jobs also seem out of reach without a certificate.

So exclusion, as well as self-exclusion, impacts ex-offenders' position in the labour market as they are not able to do what they love most, and instead opt for work they are not motivated for. Without exception, the respondents found it difficult to stay motivated about finding employment. Due to the stigma of a criminal record, their ambition and motivation for a particular career fades away, as well as their general prospects to find a satisfying, stable job. Oftentimes they are relegated into second-rate jobs, which means (physically) hard work, irregular working hours (night shifts) or only temporary contracts with no job certainty. Thus, the jobs at the bottom of the labour market, or – in the respondents' own words – 'shitty jobs' and 'jobs nobody else wants to do'. Although all respondents have faced difficulties regarding their labour market position, for some the restrictions did not last for long as they succeeded

in obtaining (alternative) employment. Some – eventually – succeeded in obtaining a certificate and could, therefore, perform the job they desired. Others, however, continue to experience hardship and encounter difficulties gaining a job at all. At the end of the two years of fieldwork, only a few respondents had eventually found a job they really enjoyed. Recent other Dutch, qualitative research among ex-offenders’ confirms their difficulties in finding employment other than just temporary jobs (Roks 2016; Van Drie 2017).

Moreover, the temporary nature of their jobs ensured that they continued not only to worry about obtaining employment, but also about repeatedly encountering problems due to their criminal background. For example, they often do not know beforehand which jobs (or training programmes) are unavailable for those with a criminal record. This leads to difficulties in choosing a career path as well. The primary concern of most was to find a stable job that would allow them to think confidently about their future and make long-term plans. Many have given already up their dream job, and now all they hope for is to be able to settle down, specifically to leave their parents’ house, find a spouse and – eventually – have children. And so, it could be concluded that processes of stigmatisation, as well as self-exclusion resulting from it, relegates young adult ex-offenders into second-class citizens.

As a final point, the stories of the respondents reveal that this does not necessarily mean that the stigma of ‘ex-offender’ keeps them ‘stuck’ in a life of crime, i.e. leads to secondary deviance. Once they are ready to ‘get serious’, ‘move on’, or ‘settle down’, they eventually manage to do so, despite several setbacks. In other words, they demonstrate sufficient *agency* to act as their own *change agent*, despite various negative, stigmatising social reactions. Still, respondents found it crucially important to have something to hold on to in order to avoid a relapse into criminal behaviour, such as motivation, a dream, or the prospect of a job. This is considered especially important in the early phase of desisting from crime (e.g. immediately after their release).

If they see no possibilities for a hopeful future, they are less likely to be motivated to make a determined effort to create a new life, and more likely to be drawn back to their former lifestyle. Moreover, they often seem frustrated when encountering exclusionary attitudes of agents of reintegration, in particular government officials who seem to fail at or are unable to provide them with any options. These frustrations may become a trigger for recidivism, i.e. secondary deviance. It is, therefore, crucial to have incentivised judicial rehabilitation policies that give a chance for ex-offenders who demonstrate their willingness to work hard and make the effort required to earn rehabilitation. Who are signalling desistance by demonstrating ‘evidence of good conduct’ or ‘evidence of rehabilitation’. Based on the respondents’ perceptions it can at least be argued that automatic rehabilitation policies – such as the certificate of conduct that is issued after a certain lapse of time – do not “promote rehabilitation in any meaningful way” (Maruna 2014: 128).

Chapter 9

Criminal record screening in a risk society

“While the individual man is an insoluble puzzle, in the aggregate he becomes a mathematical certainty.”
A.C. Doyle, 2010.

1 A macro-level perspective

This study attempts to establish the impact of having a criminal record on the lives of young adult ex-offenders, in particular their position on the labour market. In the previous chapters, this question has been addressed from an individual perspective. To further understand these micro-level dynamics, one must also consider the broader context of structures and cultures of society, as well as roles and attitudes of agents of reintegration, which contribute to the influence of the criminal-record stigma on the daily lives of ex-offenders. This chapter examines policy developments that lead to particular structures and cultures in Dutch society on a macro-level, which in turn lead to particular attitudes and strategies of agents of reintegration at a meso-level (discussed the following chapter). To give an example of this, policy entrepreneurs have advocated for creating a safer taxi industry after a policy evaluation estimated that one out of four taxi drivers has a criminal record. Now, a higher level of integrity is required of taxi drivers and, for that reason, every type of offence is deemed to pose a risk in certificate of conduct screening. This led to reduced opportunities for ex-offenders in the taxi business, as they are often refused a certificate. This is particularly salient since taxi driving has traditionally been a job that is easily accessible for ex-offenders.

This example demonstrates the multi-level dynamics in the field of employment restrictions. To better understand such dynamics, this chapter elaborates on the development of policies and practices regarding criminal background screening from a macro-level perspective. It attempts to answer the following research questions: How did criminal record screening develop and what can explain its massive expansion? How is certificate-of-conduct screening carried out in practice and what are its effects? To what extent does this practice meet the justifications and limitations set out in legal literature?

2 Security assemblages and risk-governance

The certificate of conduct can be considered an ever-increasing, populist instrument, at least since 2004, when *Justis* became the central screening authority and requests were no longer dealt with at the local level. Since then, the number of applications has increased significantly each year. This result was, however, anticipated by the legislature, as *Justis* had to improve the image of the certificate and increase the instrument's 'low value'.¹ During the 1990s, (private) companies figured that certificates were issued too easily because mayors were too lenient and focused too much on reintegration of ex-offenders. This led to a low level of trust in the instrument's value and subsequently companies began engaging private detectives or calling upon personal relationships with the police or public prosecutor's office for pre-employment screening, including information on criminal records (Kralingen & Prins 1996; Brok 1999). A survey from the 1990s among 531 municipal authorities indicated that of 95,000 requests for a certificate of conduct less than 0.5% was refused (Kralingen & Prins 1996). Strikingly, nowadays the refusal rates are approximately the same (ranging from 0.81% in 2010 to 0.35% in 2015).² So, although the current refusal rate is similar to the refusal rate more than two decades ago, the general trust in the instrument currently seems very high, as the number of requests had increased almost tenfold in the same timeframe. So, as the use of this popular, preventive instrument has skyrocketed, the government seems to have regained the general public's trust in this instrument.

Of course this can also be attributed to the instrument being an easily accessible and relatively low-cost measure for companies to avoid claims for damages. Every employer can ask an employee to submit to a background screening, which only costs €41.35. Freeman (2008: 408) noted in this regard: "The flow of cheap information about past criminal behaviour is not a genie that can be readily put back into Aladdin's lamp". The increasing need for a reliable criminal background-screening instrument in the 1990s coincided with the emergence of elements of a 'culture of control'. The Dutch State was increasingly held responsible for serious criminal incidents, which had become a collective safety issue (De Graaf 2013). The State, wanting to regain public trust, started proclaiming to be able to 'manage risks' effectively by adopting a business-like approach to collective prevention and reducing risk (De Graaf 2013). The establishment of a central screening authority for issuing certificates of conduct can be considered one of these preventive measures, focused on satisfying its 'customers', i.e. the citizens. Moreover, a threat of political 'claims for damages' fuelled by policy entrepreneurs (De Graaf 2013)

1 Parliamentary Documents 1995-96, 24 797, No. 3.

2 www.justis.nl

seems to keep stirring the need for better risk-management and the expansion of certificates for more and more businesses.

Thus, with the introduction of the new legal system in 2004, the certificate of conduct became accessible for *every* employer that wished for a potential employee's criminal background to be tested. Before 2004, when the mayor decided on requests for a certificate, he or she first had to decide whether to *accept* a request for processing. If there was no substantial societal interest at stake, the mayor could decide to refuse the request without considering it. The current policy guidelines prescribe that *every* request concerning paid or unpaid work shall be processed and decided upon, regardless of whether a s-called *serious risk of serious harm* is at stake. A policy officer of Justis admitted that, by allowing a screening for every type of job, every small business risk is being transformed into an issue of public safety (Kurtovic 2012b).

Schuilenburg has argued that since the organisation of security shifted from a State monopoly to fluid public-private alliances, this resulted in *security assemblages*, which are characterised by complex and dynamic self-organising relationships. Since the State waived its influence to decide which occupations involve a serious risk to society, the economic interests of employers seem to regulate the nature and number of criminal background screenings. As Schuilenburg has argued, in these security assemblages, the government neither strictly supervises how private parties use their responsibility, nor does it attempt to prevent abuse of responsibility. This leads to a situation in which a static framework with a fixed outcome no longer exists, meaning that the government does not have much grip on the dynamic processes and interactions that take place within the assemblages. The needs of private parties to conduct a criminal background screening may, therefore, lead to outcomes "that have not been agreed to in advance or specified in official documents" (Schuilenburg 2015: 296).

Another development contributing to the instrument's popularity is that a certificate is required, either by national law or organisational self-regulation, for an increasing number of occupations. For example, since 2016 a certificate became required for working in long-term healthcare facilities. In 2015, the Ministry of Security and Justice released a campaign that made an appeal to sport clubs and other organisations (e.g. hobby clubs and churches) that use staff working with children to require a certificate of all of their staff, including volunteers. The certificate is promoted as a powerful instrument to prevent improper sexual behaviour at sport clubs. For that reason, a certificate of conduct became free of charge for many voluntary positions involving contact with children. Since 2015, this 'free certificate' arrangement involves approximately 4,000 clubs, with mostly limited financial means.³ In 2016, the government issued 120,000 certificates to these clubs free of charge. The campaign also

3 <https://www.justis.nl/nieuws/Archief2016/regeling-vog-voor-vrijwilligers-weer-verlengd.aspx>.

contained a competitive element as clubs could win a reward for their efforts to promote this campaign amongst their members.

In 2008, the scope of this preventive instrument was taken to a new level when Justis introduced a *continuous screening* for taxi drivers. This could also be called an ‘infinity’ or ‘post-hiring’ screening, which allows for an ongoing check of all taxi drivers’ criminal records. This continuous screening was expanded to childcare workers in 2013, after a large-scale child abuse case at an Amsterdam childcare centre in 2010. In addition, the State Secretary for Security and Justice explicitly promotes Justis’ screening expertise to third parties: “Justis has acquired considerable screening expertise in the last decade and can therefore play an important role”.⁴ He emphasises the willingness to explore new possibilities for continuous screening if a particular branch or industry requires it. New technical possibilities allow for new measures, according to the State Secretary, so “if public or private parties are in need of additional screening expertise, I will gladly offer it”.⁵ Public and private sector actors are thus explicitly encouraged to enlist the screening expertise of Justis.

These statements demonstrate how security assemblages (or public-private alliances) in security create an ‘institutional complex’ with its own dynamics, non-structured and fluid processes, as well as unpredictable outcomes. It has been demonstrated that, firstly, the State shifted responsibility to third parties, by allowing not only all employers, but also schools, sport and hobby clubs, churches and immigration and visa authorities in other countries, to require a criminal record check. Secondly, the government continues to enact new legislation that makes the certificate of conduct mandatory for particular occupations. Lastly, continuous screening is being introduced and private parties are encouraged to make use of this particular screening expertise. Therefore, it can indeed be argued that the State has shifted responsibilities to private non-state actors. Government officials involved in certificate of conduct policy-making refer to this as a so-called ‘Your wish is our command’ attitude.⁶

In 2015, De Graaf conducted a study, commissioned by the Ministry of Security and Justice, on the role of the government in guaranteeing *integrity*. She notes that integrity had long been related to the state’s responsibility to prevent corruption and fraud (of government officials), yet after the large-scale child abuse incident in 2010, integrity was transformed into a responsibility to protect vulnerable citizens (2015: 4). She argues that after this incident, media and political pressure rose to arrange for continuous screening of employees. Since that moment, integrity policy and measures have received a high ‘performative power’, i.e. a strong visibility and mobilising power (De Graaf 2015: 27). A high *performativity* means that the State is successfully mobilising

4 Parliamentary Documents, 2015-2016, 34 300 VI, No. 78, p. 4.

5 Ibid.

6 Conference of the Ministry of Security and Justice on the ‘Certificate of Conduct’, 22 May 2014, The Hague.

public opinion and public support for implementing new measures to solve an issue or threat that is perceived as such by the public. The Ministry of Security and Justice recognised in a policy audit of preventive measures that the use of the certificate is being influenced by current events, incidents and political pressure.⁷ In so doing, the State wants to regain the public's trust by proclaiming to be able to manage risks effectively. Yet, this performativity runs the risk of resulting in symbolic policies and reputation management, whereby the use of a quick, swift and available screening instrument – such as the certificate of conduct – will easily be extended. De Graaf concludes that integrity should be considered less threatening, less urgent and less performative as is it nowadays. To do so, responsibilities should be better regulated and clear limits should be imposed on the use of such screening (Schuilenburg 2015).

Nonetheless, the State Secretary is currently lobbying to convey its screening expertise at an international level. At Interpol, he proposed to develop an 'International Certificate of Character', similar to the Dutch certificate. According to the State Secretary there is an increasing need to exchange information between European countries and with countries outside Europe, in particular to prevent child sex tourism. He emphasises that the Netherlands has learned a painful lesson after a large-scale child abuse case at a childcare centre; it subsequently transpired that the perpetrator had been previously convicted – although not in the Netherlands. In 2003, the perpetrator had received a conditional sentence of one-year imprisonment in Germany for possessing and distributing child pornography.⁸ Yet, once he moved to the Netherlands, he was issued a certificate of conduct for working at a childcare centre, as the Dutch authorities were not aware of his German conviction. The State Secretary is now investigating – together with Interpol – the establishment of an international coordination centre responsible for issuing international certificates of character.

At the EU-level, the Dutch Government has already initiated Directive 2011/93/EU on *Combating the sexual abuse and sexual exploitation of children and child pornography*. This directive prescribes that all Member States shall take the necessary measures to ensure that information concerning the existence of criminal convictions or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, is communicated with other countries when requested. Based on this Directive Member States are now obliged to ensure that persons convicted of sexual offences may be temporarily or permanently prevented from exercising professional activities involving direct and regular contacts with children.

7 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* ('Policy Audit on Preventive Measures'), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

8 *NRC Handelsblad*, 'Duitsland strafte M. in 2003 voor kinderporno', 17 December 2010.

Alongside the approaches aimed at combatting crime in working environments, the certificate's popularity has also pervaded other national policies. A proposal for a legislative change would allow for the certificate's use to be extended towards discriminative housing policies aimed at preventing problems in public spaces.⁹ People with criminal records who are likely to cause social problems – in particular nuisance and criminality – in an already disadvantaged neighbourhood can be requested to submit a certificate of conduct before a rented house will be allocated to them.¹⁰ If the certificate is refused, they can be excluded from a particular housing complex, street or area, in order to improve the quality of life and safety of these areas.

This is an example of how developments in criminal justice that are described as a shift towards a *culture of control* – emerging in the Netherlands during the 1990s – have given birth to a new form of *risk-governance* or *management of insecurities*. Security policies have shifted from managing individual relationships towards society at large (De Graaf 2013), and are now, due to processes of further individualisation, transforming into a societal project (Schuilenburg 2015), aimed to establish general norms, such as the prevention of social problems in public spaces. Then, focus is no longer on the individual, but on monitoring populations (Boutellier 2005), by avoiding high territorial concentration of people with a low socioeconomic status in disadvantaged neighbourhoods. As a result, the focus of risk-prevention instruments shifted slowly from protection of citizens *from* the State (i.e. abuse of coercive state powers) towards protection of vulnerable citizens *by* the State, by monitoring populations (Garland 2001).

In light of this development it is particularly interesting that in the near future information other than criminal-record information may already lead to the refusal of a certificate. The State Secretary lobbied for administrative fines to be included.¹¹ Recently, he created a legislative proposal that allows for refusing a certificate based on 'soft' information from police records only.¹² In so doing, people with a 'questionable' background can be constrained from obtaining a vulnerable position that demands a high level of integrity, for example at the public prosecution service or as prison guard. The applicant can then be denied a job based on such 'soft' background information only, for example if he turns out to be a member of an 'outlaw motorcycle gang' or is deeply embedded in a friendship group in a problem area that is perhaps considered a 'youth gang'. So, an official conviction or alleged crime will no longer be required in order to refuse a certificate if this legislative proposal is adopted.

9 Parliamentary Documents 2014-15, 34 314, No. 2.

10 <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/brochures/2015/04/01/factsheet-wet-bijzondere-maatregelen-grootstedelijke-problematiek/Factsheet+Wbmgp.pdf>.

11 Parliamentary Documents 2015-16, 34 300 VI, No. 78.

12 <https://www.internetconsultatie.nl/vogpolitiegegevens/details>.

The examples above demonstrate how the so-called *state of crisis* of the criminal justice system (e.g. high recidivism rates, failing penal policies etc) has resulted in a *growing infrastructure of crime prevention* (Garland 2001). Administrative agencies, such as the screening authority Justis, have become important actors in so-called preventive partnerships. Since the application of administrative law instruments for crime prevention purposes is not bound by a clear normative framework, this intertwined functioning of criminal law and administrative law is referred to as *fuzzy law* (Hartman 2011). In fuzzy law, legal protection that follows from classical criminal law (e.g. procedural safeguards, legal principles) can be circumvented. For example, the presumption of innocence or the principle of proportionality may be at stake when applying employment restrictions based only on ‘soft’ information from police files. As legal safeguards continue to be diminished, this leads to a so-called *quasi-criminal law* (Schuilenburg 2015). Still, in theory the collateral consequences of convictions are considered to be purely preventive and, therefore, not aimed to serve penal goals. In the following sections, attention is devoted to the analysis of whether the nature of such measures, in practice, may have shifted towards more punitive goals, such as deterrence.

3 Prevention: from incapacitation to deterrence

The dynamic and self-organising nature of security assemblages has led to a situation in which there is no fixed outcome, specified in official policies and without the government having much grip on these processes (Schuilenburg 2015). However, to provide sufficient legal protection, the envisioned outcomes of security policy, in particular the outcomes of criminal record screening need to be transparent and clear. Like Garland, Schuilenburg argues that exclusionary risk-management measures are not purely preventive but also partly punitive in nature – thereby falling under the scope of criminal law. Although such restrictive measures are in theory purely preventive, in practice they are experienced as punitive (Boone 2012a). In other words, they are “*formally administrative*”, yet “*concretely penal*” (De Giorgi 2006). It could be argued that their practical aim is to *discourage* those excluded from committing deviant behaviour (Beckett & Herbert 2009), which means these measures are deterrent in nature as well.

Malsch and Duker (2016: 5) argue with regard to prevention that it is an umbrella concept that can be divided into sub-goals. The explicit sub-goal of prevention aimed at by refusing a certificate of conduct is ‘incapacitation’. Its incapacitation effect is that the applicant cannot obtain the job for which he or she is considered to pose a risk. Malsch and Duker (2016) define incapacitation as *disabling* or *disqualifying* people, in order to make it impossible for them to repeat unwanted behaviour. By removing capacities, opportunities or freedom, people are rendered harmless (Malsch & Duker 2017). Therefore, people with a criminal record are incapacitated as a result of disabling or disqualifying them from employment by refusing to issue a certificate of conduct. Malsch and

Duker (2017), however, argue that although incapacitation, in a strict sense, is not focused on *changing* behaviour, in practice it nonetheless may have wider consequences than just *restricting* an individual's behaviour. Measures aimed at capacitation, such as the certificate of conduct, probably also have highly negative side effects. Therefore, it can be argued they are deterrent in nature as well.

In this regard, the State Secretary for Security and Justice recently, for the first time, presented the argument that the certificate has a strong preventive effect that is caused by something else than incapacitation, namely that people with convictions do not apply for jobs that require a certificate.¹³ Based on the findings of this study it can be argued that this preventive side effect of the certificate screening results from ex-offenders being *deterred* by a potential refusal. They, sometimes, experience a refusal as punishment that is harsher than the criminal sanction itself. As a result of this deterrent effect, ex-offenders opt for self-exclusion. Consequently, the preventive effect of the instrument is not only effectuated by means of incapacitation, but also by means of deterrence. It could, therefore, be argued that the certificate-of-conduct screening has a *counterproductive deterrent effect*: people with a criminal record withdraw from applying for specific jobs or from the labour market completely. The previous chapters have shown that self-exclusion takes place on a wide scale, so it is arguable that the instrument's aim to create safer, more integer businesses is already being reached by the fact that ex-offenders simply do not apply for particular jobs out of fear for being rejected or stigmatised. Counterproductive deterrence, in this respect, means that the fear of refusal of a certificate, resulting in personal rejection and shame, deters ex-offenders, as they wish to avoid it. As a result, criminal-record screening – in practice – has a preventive effect not only through incapacitation; it has an additional effect that seems to add to the instrument's preventive effect. It can be concluded that integrity breaches in particular branches or businesses are not only prevented by incapacitation, but also by deterrence. Yet, from parliamentary documents it follows that this effect, which can be referred to as a *counterproductive deterrent effect*, has not been envisioned when developing this instrument.

This effect has only recently been acknowledged by policymakers. In 2016, the Ministry of Security and Justice launched educational campaigns to improve knowledge of the certificate amongst the general public, in particular among juveniles with a criminal record and reintegration professionals.¹⁴ This was a response to parliamentary questions concerning a lack of knowledge of the certificate among high school students.¹⁵ Two high school students conducted a survey among 635 fellow students and concluded that 54% of the students who had been in contact with the criminal justice system claimed they

13 Parliamentary Documents 2016-17, 34550 VI, No. 98.

14 <https://www.justis.nl/overjustis/themadossiers/index.aspx>.

15 Annex to Parliamentary Documents 2012-13, 2987.

would think twice before committing crime in the future now they are aware it may cause problems for obtaining a certificate. Moreover, 60% of the students believed that knowledge of the certificate could help them to be better aware of the consequences of criminal behaviour and prevent them from committing crime. Based on these findings, politicians requested the State Secretary to start education campaigns to increase the certificate's preventive (i.e. deterrent) effect.¹⁶ Regardless of whether this survey carried out by high school students did indeed measure a deterrent effect, the responses indicate that politicians now aim to prevent crime through deterrence, based on the suggestion of the survey that knowledge of the certificate would reduce criminal activity. The educational campaigns resulting from this are thus based on an anticipated deterrence rather than incapacitation effect.

To conclude, the certificate of conduct screening has several effects that go beyond incapacitation. A deterrent effect could lead to reduced involvement in crime, although this hypothesis has not yet been empirically tested. Nevertheless, the current study has demonstrated that there is also a serious *counterproductive* deterrent effect, namely self-exclusion. This effect is likely to be triggered by the ever-increasing number of certificates required in social life; not only for jobs, but also for internships, education, volunteering, working abroad (visa), and – in the future – for renting a house. It should be noted that this counterproductive effect may even be increased by educating juveniles with a conviction history about the consequences their criminal record may have on obtaining a certificate. This followed from a policy evaluation of the continuous screening in the childcare sector. Professionals in this field evaluated the preventive effects of this measure positively. They argued it not only bars people from working in childcare after (allegedly) committing a crime, it also ensures that people do not even *attempt* to obtain a job in child care and instead ensures that they apply for jobs elsewhere. Childcare professionals believe the latter effect may be an even stronger preventive effect of the continuous screening than the mere effect of people being refused a certificate after applying (Van Mourik, Daamen, Groen, & van Driel 2016: 38). Similarly, the current study shows that mere threat of rejection is often sufficient to prevent ex-offenders from applying for a certificate or a job. Several aspects of the certificate screening in practice are discussed below, which underpin this self-excluding effect.

16 *Ibid.*

4 The instrument's effectiveness

4.1 *Symbolic measures?*

The growing public need for risk-management that began to emerge in the 1990s, contributed to the rise of preventive partnerships. The politicisation and popularisation of combating crime (Garland 2001), however, makes these so-called security assemblages susceptible to producing symbolic measures. Symbolic measures are opposed to evidence-based measures or measures that rely on expert knowledge, as well as objective calculations of their effectiveness (De Graaf 2013). An approach can be referred to as symbolic if its effectiveness is not questioned, or if it is continued or even intensified after the approach turns out to be unsuccessful. In this regard, Malsch & Duker (2017) refer to the self-fulfilling or self-enforcing effect of interventions.

Regarding the effectiveness of the certificate instrument, an explorative, quantitative research was conducted in 2016. This was initiated by the Ministry of Security and Justice after in 2013 in a policy audit of preventive measures it was revealed that the preventive effect of the certificate of conduct had never been empirically tested and is based on rudimentary theoretical assumptions only.¹⁷ This instrument – apparently – has a strong symbolic power, which is problematic since preventive measures can – normatively – only be justified when there is a strong preventive necessity (Boone 2012a; Boone & Kurtovic 2016; Meijer 2017). Therefore, it has to be established whether preventive employment restrictions indeed lower the incidence of crime in the workplace. However, as symbolic measures are a method for the State to ‘feign control over the uncontrollable’ (De Graaf 2013), security policies can easily shift their focus from primary risk-management (trying to tame the original threat) to secondary risk-management (covering the risk of failing governance). De Graaf noted that integrity is easily converted into a hyped concept and has become a “catch-all” concept, subjected to symbolic policies (2015: 4).

4.2 *Safer businesses but no safer society*

In 2016, researchers designed and tested quantitative methods to measure the instrument's effects. Until then, this type of research had not been performed, yet it is highly relevant to establish the instrument's real impact in the lives of ex-offenders. The effects of criminal background screening on subsequent criminal behaviour has only recently become a topic of interest among desistance researchers in the United States (Denver, Siwach, & Bushway 2017; Siwach 2017).

17 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* ('Policy Audit on Preventive Measures'), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

With regard to the Netherlands, Kruize and Gruter (2016) developed an experimental design to compare people who were refused a certificate of conduct to people who were issued one (control group 1) and people, with offences comparable to the ‘refused’ group, who never applied for a certificate (control group 2). The point of reference was 2011. By using criminal record data of the subsequent five years, the crime rates for these three groups have been established. Two types of occupations have been taken into account: taxi driving and education¹⁸ – a certificate is legally required for both occupations.

As was expected by the researchers, people who were ‘refused’ commit significantly more offences in the subsequent five years compared to those who were ‘cleared’ for the job. Regarding education, 39% of the persons ‘refused’ had committed a relevant offence after 2011 (the point of reference), while only 2% of the persons ‘cleared’ had. Regarding taxi drivers, 56% of the persons who had been refused subsequently committed a relevant offence, compared to 27% of the persons who had been cleared.

When comparing the group of people who had been refused with people with criminal records who did not apply for a certificate (control group 2), it becomes clear that people who requested a certificate for education display a significant drop in offending after being refused: 39% of those refused a certificate subsequently committed offences, whereas 58% did so of the people with a comparable criminal record who did not apply for a certificate. For taxi drivers, however, there was no significant difference between these two groups; 56% committed offences after the certificate was refused, whereas 61% of comparable offenders who did not apply for a certificate did so. This is illustrated in Table 9.1 below.

Table 9.1. Percentage of each group with one or more relevant offences in the subsequent 5 years after a request in 2011.

	Certificate refused	Certificate issued	No application for a certificate
Education			
– One or more relevant offences	39%	2%	58%
Taxi driving			
– One or more relevant offences	56%	27%	61%

Source: Kruize & Gruter 2016

There are, however, major limitations in establishing the effectiveness of the instrument based on these numbers. These numbers show only crime that took place generally, but do not take into account whether an offence was committed

¹⁸ The screening profile ‘education’ is not only applied to teachers, but also to interns, volunteers, concierges and technical and administrative staff.

during or at work.¹⁹ The actual prevention of crime in the workplace, which is the instrument's main goal, is still not established. While crime committed in the work place is only a very small part of all crimes committed.

Another major limitation is that this experimental method does not measure causal relationships. Therefore, the recidivism rates of the group that has been refused a certificate can be interpreted in two ways. Firstly, they may have been 'rightly' refused, as they have subsequently committed crimes. Secondly, being refused keeps them 'stuck' in a life of crime (Kruize & Gruter 2016: 123). As follows from Table 9.1 above, being refused a certificate does not prevent further crime from taking place, which raises doubt about the instrument's contribution to the prevention of crime. In 39% (education) to 56% (taxi) of the cases, the refusal of a certificate did not lead to a safer society as a whole, as offences were committed after the refusal. This could even point towards secondary deviance. What the researches, therefore, could – and did – conclude based on these outcomes, is that only the integrity of a particular business, branch or sector could be argued to be increased by refusing a certificate. Yet, it cannot be claimed that society in general is protected.

Nonetheless, the State Secretary claims, based on these outcomes, that the certificate is successful in reducing recidivism.²⁰ Although this hypothesis could be supported by the research data, the data do not allow for conclusive, causal explanations. The outcomes also allow for other explanations, such as a refusal causing the ex-offender to commit more crime than would have been the case *had* he or she been provided with the certificate, and subsequently obtained the job desired. Consequently, the State Secretary's claim of creating a safer society seems to point to *secondary risk* management, which is aimed at covering secondary risk, i.e. the risk of failing governance to assure integer businesses. These very optimistic claims about the instruments' effectiveness – which in fact refer to secondary risk management – paradoxically claim to create a safer society, while it cannot be concluded that the primary risks have been controlled any better (De Graaf 2013).

This is even more relevant since the final conclusion, based on the experimental design, is that the *net effect* of the certificate is (very) limited (Kruize & Gruter). When extrapolating from the percentages of the experimental design (the sample of people with relevant offences after the certificate had been either refused or issued) and applying these to the *actual number* of requests in 2011, the outcomes are rather different, as Table 9.2 shows.

19 The researchers acknowledge that this model only shows whether offences have been committed in general, however these offences cannot be directly related to the specific industry. (Kruize & Gruter 2016: 119).

20 Parliamentary Documents 2016-17, 34 550 VI, No. 98. See also: <https://www.rijksoverheid.nl/actueel/nieuws/2017/02/01/onderzoeken-tonen-aan-vog-draagt-bij-aan-succesvol-integriteitsbeleid>.

Table 9.2. Estimated number of persons that have relevant offences in the subsequent 5 years after request in 2011.

	Total number of requests in 2011	Percentage with subsequent offences	Estimated number of persons with relevant offences	Percentage division of estimated number
Education				
Refused	89	39%	35	2%
Cleared	99,717	2%	1,994	98%
Total requests	99,806		2,029	100%
Taxi drivers				
Refused	792	56%	444	9%
Cleared	16,637	27%	4,492	91%
Total requests	17,429		4,936	100%

Source: Kruize & Gruter 2016

It follows that refusing a certificate is estimated to have ‘correctly’ prevented only 2% of the persons who wanted to work in education and 9% of persons who applied for taxi driver (Kruize & Gruter 2016: 86). This means that only a *very small* percentage of people committing an offence relevant to the job *after* requesting a certificate are actually refused for employment. Based on this extrapolation, the researchers thus conclude that the certificate screening – at least for jobs in education or taxi driving – has only limited to very limited effect on the safety of that particular sector or business (Kruize & Gruter 2016: 86). To conclude, the preventive effect of this instrument seems to be not much more than a so-called drop in the ocean.

4.3 Signalling desistance

Another interesting finding of this experimental design is that the people who are refused a certificate reduce their offending; each subsequent year the number of offences decreases. According to the researchers, this points to a positive effect of being refused. They, therefore, interpret a refusal as an ‘encouragement to do better’, as the person refused may hope to qualify for a certificate in the future (Kruize & Gruter 2016). The researchers, on the contrary, explain that it might as well be that the person has decided to improve his life prior to applying for a certificate. Still they consider the first hypothesis to best account for the fact that the level of criminal activity drops considerably after being refused (Kruize & Gruter 2016: 87).

Based on these outcomes, the State Secretary claims that the certificate not only reduces recidivism, but also contributes to ex-offenders' reintegration.²¹ This claim, however, cannot be based on the outcomes of this research and seems to be entirely unfounded. Nevertheless, the decrease in criminal activity of the people refused leads the State Secretary to conclude that there are no disadvantages to the certificate screening since those refused seem to interpret the refusal as an encouragement to improve their lives. Therefore, the State Secretary argues, that "the certificate should no longer be seen as an obstacle".²² He concluded from the research outcomes that since the certificate does not seem to hamper the reintegration of ex-offenders at all, the screening policy does not need to be amended. Although persons refused might perceive the refusal at first as an obstacle, the State Secretary argues that by providing better education on the certificate, the instrument can encourage offenders to improve their lives.²³

The experimental research design, however, does not allow for causal claims. Therefore, the instrument's effects on subsequent offending should be interpreted very carefully, as it cannot be concluded whether this effect is actually *caused* by the refusal. It may as well be that the decline in offending indicates that people who apply for a certificate are already committed (cognitively and emotionally) to a law-abiding life. Then, requesting a certificate may be preceded by a personal decision to desist from committing crime. Searching for a job, and consequently requesting a certificate, may thus be a final step in the process of desistance from crime. This leads to another hypothesis, contrary to that of a refusal serving as 'encouragement to do better'. Based on these outcomes it could as well be argued that applying for a certificate functions as a 'signal of desistance'.

The hypothesis of applying for a certificate as a signal of desistance could account for the fact that the persons who are refused a certificate do not increase their offending. Based on this hypothesis it could be argued that once ex-offenders are motivated to refrain from committing crime, a refusal will not be a trigger to increase criminal activity (secondary deviance). Yet, although the number of offences committed by a person who has been refused a certificate decreases every subsequent year, persons who are refused still re-offend to some degree. Maybe the re-offending rate would have dropped even more sharply if the certificate had been issued and they had obtained the job they desired. If they have not (immediately) found another job after the refusal, they might have one foot in their new way of life, but one foot still in their old life. Based on the signalling perspective, it could be argued that offenders

21 Parliamentary Documents 2016-17, 34 550 VI, No. 98. See also: <https://www.rijksoverheid.nl/actueel/nieuws/2017/02/01/onderzoeken-tonen-aan-vog-draagt-bij-aan-succesvol-integriteitsbeleid>.

22 *Ibid.*

23 *Ibid.*

who actively signal they have changed their lives by applying for a certificate, should be offered employment opportunities – which Maruna (2014) refers to as the ‘active redemption model’. This would serve reintegration better than having to wait passively for the mere passage of time before ex-offenders are eligible for a certificate, and thus a job.

5 Justifications and limitations

This last section deals with the question to what extent policy and practice of the certificate of conduct screening meet the justifications and limitations set out in literature (both legal and otherwise) on collateral consequences. Firstly, there has to be a sufficiently close connection between the offence and the occupation. Secondly, the task or occupation has to involve a serious risk of serious harm, meaning it has to have a particularly vulnerable character. Third, employment restrictions have to be based on an individualised assessment, in other words there should be room for discretion in the decision-making. In addition, these decisions should be subjected to review by a judicial authority.

5.1 *The offence-occupation connection*

Employment restrictions and, therefore, the refusal of a certificate of conduct can be justified if there is a sufficiently close connection between the offence and the occupation. However, researchers indicate that in practice only a weak connection seems to be required (Boone 2011, Kurtovic 2012a, Kruize & Gruter 2016). Kruize and Gruter (2016: 7) note that the policy rules do not prescribe which offences are considered relevant to the job. Boone argues that since this relationship is interpreted very broadly, it is hard to conceive of an offence that will not be considered a threat to a certain occupation (2011: 73). As the policy rules do not strictly define which offences pose a risk to which occupations, there are no restrictions to establish a connection between an offence and an occupation. Consequently, every offence could be detrimental to a specific job. For example, theft could be repeated almost everywhere, therefore a connection is already established if some (invaluable) assets that a company owns could be misappropriated. Another example is that persons who want to work in IT services are refused to do so if they have been convicted for downloading child pornography. Here, a connection between the offence and the occupation is recognised based on the argument that this occupation provides access to IT infrastructures – computer systems, servers and data – which can be misused for collecting and distributing child pornography.

5.2 *Serious risk of serious harm?*

Since the state started acting as a business partner in risk prevention, the demands of its ‘customers’ (mainly employers) became more important. One

of the main results is that for every working relationship, either paid or unpaid, a certificate can be requested. Given the fluid and dynamic nature of security assemblages, it has been argued that the State has little grip on the actions of private parties and that clear envisioned outcomes are lacking (Schuilenburg 2015). This seems to hold true with regard to criminal-record screening, as the State no longer determines for what types of occupations this screening is performed. However, according to legal theory, the State should clearly determine the outcome regarding the ‘risk of harm’ that the certificate ought to prevent. Employment restrictions can only be justified if a *serious risk of serious harm* is at stake. In Dutch practice, this criterion is not always met, as requests for certificates are simply being processed for every kind of occupation, for example garbage collector, cleaner, gardener, bicycle mechanic, and supermarket stocker. Although in these occupations repeated crimes such as theft or assault could pose a risk to customers, colleagues, or the company’s assets, it does not necessarily mean that there is a *serious harm* at stake if the applicant would obtain such position. Such occupations do not have a ‘specially vulnerable character’. Moreover, the risk that ex-offenders may pose to certain jobs or positions is not based on actuarial risk-assessment tools, rather it is based on the imaginary threat that flows from their being previously convicted. As Garland (2001) has argued, in a culture of control the value of stigma is renewed, so the stigma of a criminal record has become useful again for the protection of public safety.

Based on the official numbers of refusals, it could be argued that the certificate is only refused if a serious risk is at stake, since of all people with a criminal record, it is only refused in approximately 5% of cases. These numbers, however, do not indicate whether the offences of the 95% who are issued a certificate had already *expired*. After all, the policy rules do not allow for expired offences to be taken into account. In this case, the certificate *has* to be issued, regardless of the past offences.

Remarkably, an evaluation of continuous background screening in childcare (carried out between March 2013 and June 2016) showed exactly the opposite percentages. Here, 95% of the requests for a certificate were refused and only 5% had been issued (Van Mourik, Daamen, Groen, & van Driel 2016: 67). The evaluation showed that – due to continuous screening over a three-year period – 186 people found their certificate had been ‘cancelled’, so they were ordered to apply for a new one. In these 186 cases a new offence had been registered recently, as the certificate could only be ‘cancelled’ due to a ‘signal’ of a new offence. The outcome shows that having committed an offence recently, while working in a ‘vulnerable’ occupation (e.g. childcare), resulted in 95% being refused a new certificate and being unable to continue their work in the childcare sector. The high refusal rate is most likely due to the fact that the (alleged) offence was committed very *recently* – assuming there are no fundamental differences between offenders in the total group of applicants for a certificate and the group of applicants who have been selected by the

continuous screening in the childcare sector. This thus leaves only the *lapse of time* since the offence to be a reasonable explanation for this very high refusal rate. Thus, a recent offence, combined with a vulnerable occupation, helps to explain these completely reversed percentages: 95% being refused in childcare versus 95% being issued a certificate in general. Moreover, the researchers of this policy evaluation note that a serious number of the people who were ordered to apply for a new certificate (186 in total) had not done so – probably because they did not expect to obtain one (van Mourik, Daamen, Groen & van Driel 2016: 67). This could mean that if those people would not have excluded themselves from applying for a new certificate, the refusal rate might have been even higher.

This very high refusal rate could be an indicator of *secondary risk management* underlying these decisions, since the continuous screening was introduced after the large-scale child abuse case that was considered to be the result of a failing criminal background screening instrument. It has become clear that Justis had not known of the perpetrator's earlier conviction in Germany, hence issued the certificate based on his 'clean' Dutch criminal record. Consequently, the policy evaluation indicates that the childcare sector is now almost inaccessible to people with a recent criminal conviction (Van Mourik, Daamen, Groen, & van Driel 2016: 67). The very high refusal rate indicates that this screening is not only concerned with taming 'serious threats' to the safety of children (i.e. primary risk management), but is also aimed at avoiding risks of failing governance (i.e. secondary risk management).

5.3 Individualised decisions

Another important aspect of imposing collateral consequences, according to legal theory, is that an individualised decision is reached in every case. The policy rules on the certificate of conduct prescribe that if a connection between the offence and the occupation is established, particular 'circumstances of the case' have to be weighed before reaching a final decision. The circumstances of the case consist of the number of offences, the seriousness of the offences and the time elapsed. The policy rules do not make clear how these circumstances have to be weighed in the decision-making process. Therefore, the decision-makers have to determine in each individual case to what extent these particular elements should result in a decision, whether positive or negative. Kruize and Gruter (2016) note in this regard that professionals are generally critical about the circumstances of the case being interpreted too strictly. Moreover, they argue that it remains unclear to what extent other personal information (concerning good conduct) is taken into account in the screening process. They concluded that while the decision-makers can in theory take the personal circumstances of the applicant into account, this does not often happen in practice (Kruize & Gruter 2016).

5.4 Judicial review

According to Justis, judicial review by administrative courts should guarantee scrutiny of the way the offence-occupation connection is established and whether there is indeed a serious risk at stake (Kruize & Gruter 2016: 7). However, Dutch administrative courts respect the discretionary powers of administrative agencies, therefore they only test the reasonableness of Justis' decisions. This means they do not carry out a *substantive* check on the *merits* of the case, but examine cases only marginally. Moreover, only few cases will be reviewed by an administrative court. Kruize and Gruter calculated that of the 3,030 persons refused in 2015 only 93 took their case to an administrative court – which amounts to 3% of all persons refused. There are some thresholds on appealing to a court. Applicants are obliged to pay court fees, and generally it can take between 12 to 18 months before a case is dealt with by the appellate court. By that time, the employer is likely to have hired someone else for the job.

Kruize & Gruter (2016) have provided an overview of the percentages that follow through each successive stage of the proceedings in during a five year period, namely 2010-2015. This illustrates that – on average – one in five persons refused (20%) raise objections against the refusal decision. About one in four (24%), of the persons whose objections were rejected, appeal to a court for judicial review of the decision on their objections. About one in five (21%), of the persons whose appeal was rejected by the administrative court, subsequently appeal to the Council of State – the highest administrative court in the Netherlands. This means that only approximately 5% of the people refused actually appeal to a court. Therefore, judicial review only applies if the applicant – eventually – chooses to appeal against a decision, which only happens occasionally. Consequently, the influence of judicial review is rather limited.

Besides, not more than 10% of the appeal cases result in an annulment of Justis' decision. This could be partly explained by the fact that administrative courts only perform a 'reasonableness test'. Moreover, the influence of judicial review is limited since case law of the administrative courts only applies to *individual* cases, as it is based on the merits of a particular case. Therefore, an individual case does rarely lead to a change of policy that affects decision-making in general. For example, even after the Council of State had ruled that the strict rules regarding sex-offenders do not meet the principle of reasonableness²⁴ or exclude too many ex-offenders²⁵, this did not cause Justis to change the policy rules on this matter – although in practice decision-makers now apply less strict interpretations of these rules based on this case law. It can, nonetheless, be concluded that judicial review, aimed at counterbalancing the risk that a refusal is not ill-founded, only has a limited effect on the policy rules for decision-making in certificate cases.

24 Dutch Council of State 5 September 2012, ECLI:NL:RVS:2012:BX6537.

25 Dutch Council of State 9 March 2016, ECLI:NL:RVS:2016:620.

6 Conclusion

This chapter has examined policy developments from a macro-level perspective, which have resulted in particular structures and cultures in Dutch society regarding criminal-record screening. Through the choices and attitudes of agents of reintegration, these structures and cultures eventually influence the impact of the stigma of a criminal record in young adults' daily lives. This chapter first explained which political developments account for the skyrocketing expansion of criminal record screening. Furthermore, it discussed how this screening functions in practice, by discussing research on its effectiveness and by examining the decision-making criteria in light of the justifications and limitations set out in legal literature.

It has furthermore been argued that since the serious large-scale child abuse incident in 2010, the State's integrity policies were no longer primarily aimed at protection *from* the State (against corrupt officials), but protection of vulnerable citizens *by* the State (De Graaf 2015). The State started acting as a business specialised in collective prevention, which can be related to the need for a scapegoat and increasing pressure from media and politicians to instigate political claims for damages (De Graaf 2013). The threat of political claims for damages keeps stirring the need for risk-governance and the expansion of certificates for ever more businesses.

It has been argued that in the public-private preventive partners or *security assemblages* that emerged as a result of these developments, the State often neither strictly supervises how private parties use their responsibility, nor deliberately attempts to prevent abuse of responsibility. The certificate can be considered, in this regard, a rather cheap and easily accessible instrument by which *every* prospective employer can shift responsibility to the State for deciding whether a potential employee is fit for the job. Even if there is no substantial societal interest at stake, the State still carries out a criminal record screening. This is even more problematic since the offence-occupation connection is interpreted very broadly, so many types of offences could be detrimental to a specific job. Consequently, every small business risk is being transformed into an issue of public safety (Kurtovic 2012b).

In addition, a certificate is now mandatory, either by law or general policy, for an increasing number of occupations. Moreover, the State Secretary for Security and Justice explicitly states to "gladly offer" private parties to make use of the "additional screening expertise" of Justis. This demonstrates the dynamic and fluid nature of security assemblages: the State can refer to private sector actors requiring more screening, while private actors can refer to the State making background screening increasingly mandatory. Government officials have referred to this as a 'Your wish is our command' attitude, as the State does not regulate responsibilities nor does it impose clear limits on the use of this screening instrument. As already established in a policy audit in

2013,²⁶ there is still no overall vision of how this preventive instrument might really contribute to greater integrity in working environments.

In practice, the ever-increasing number of certificates being legally required – not only for jobs, but also for internships, education, working abroad, visas, and public housing – is likely to result in ex-offenders excluding themselves from occupations and other social roles that require such certificate. The preventive goals of this screening instrument are, therefore, being reached not only by incapacitation (disqualifying someone for a job), but also through *counterproductive deterrence* (people avoid applying for a job due to fear of rejection).

To end with, research on the instrument's effectiveness demonstrated that the *net effect* of the certificate is limited (Kruize & Gruter 2016). Therefore, it could be concluded that the instrument only slightly contributes to the integrity of a particular business or sector. Yet, it cannot be claimed that society in general is protected. Overall, the preventive effect seems to be not much more than a drop in the ocean. It could, therefore, be argued that it is chiefly a symbolic measure used by the State to 'feign control over the uncontrollable' (De Graaf 2013). Therefore, the certificate of conduct screening – particularly with respect to vulnerable occupations, for example in education, childcare and the taxi business – is intended to manage not only primary risk – trying to tame the original threat – but also secondary risk: in other words, to cover the risk of failing governance (De Graaf 2013). Paradoxically, even though the primary risks to society may not have been controlled any better, the State thus claims to be 'taming the future' (De Graaf 2013).

26 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* ('Policy Audit on Preventive Measures'), annex to Parliamentary Documents 2012-13, 33 199, No. 2.

Agents of rehabilitation

“They have to offer you at least something at the end of your programme.[...] It’s like they first tried hard to lift him out of the pit, but now they’re letting him fall right back into it.”

P1, mother ex-convict.

1 Rehabilitation as two-way process

In the theoretical framework (Chapter Four), the role of various ‘agents of reintegration’ has been discussed. Their role is important since rehabilitation can be considered as a “two-way process”, meaning it involves “not just changes and adjustments on the part of the person returning from prison, but also on the part of the community and society welcoming him or her” (Maruna 2013: 128). Agents of reintegration, including officials of the criminal justice system, reintegration professionals, local governments, employers and other community members, act within structures and policies shaped at the macro-level. They translate the ‘construction of risk’ and ‘management of risky groups’ into their relationships with previously convicted persons. Understanding the way these agents deal with the risk or stigma of a criminal background is, therefore, important to answer this study’s research question as to the impact of having a criminal record in young adult ex-offenders’ daily lives. To fully understand this impact, it is necessary to understand the dynamics between legal structures and a culture of control (macro-level) and the choices of agents of reintegration (meso-level). Moreover, this aids the process of understanding the interactions between society and individual ex-offenders (micro-level).

Symbolic interaction theories suggest that both the stigma of ‘ex-convict’ and the pro-social label following personal reform are shaped within the interaction with significant others. Therefore, this chapter explores the actual role that agents of reintegration play in ex-offenders’ lives and how they influence the outcome of the rehabilitation processes, both in judicial and non-judicial terms. It focuses in particular on the role these agents have in ex-offenders’ processes of obtaining a certificate of conduct. To do so, this chapter uses the meso-level notions as explored in the theoretical framework (Chapter 4). First, the extent to which *responsibilisation strategies* encourage ever more employers and industries to use the certificate of conduct as a preventive tool for creating

a safer society will be explored. Thereafter, attention will shift to an analysis of the extent to which goals that are considered to emerge for the *new penology* have been translated into the policy rules and decision-making process of the certificate of conduct. For example, issues such as whether offenders are being targeted as aggregates instead of individually, whether policy is focussing on efficiency of internal processes rather than external social values, and whether discourses of risk are replacing clinical diagnosis. Attention will also be paid to what extent the *management of risky groups* leads to diminished legal protection and a diminished role for reintegration professionals in the administrative certificate proceedings. Finally, it is established to what extent these practices allow for active – rather than passive – rehabilitation and to what extent agents of reintegration play a role in active rehabilitation processes.

2 Experts' key role

Farrall and Bowling note that, “the process of desistance is one that is produced through an interplay between individual choices, and a range of wider social forces, institutional and societal practices which are beyond the control of the individual” (1999: 261). They pointed to the ongoing interaction between *agency* and *structure*, meaning that the motivation of the offender to ‘go straight’ and the opportunities his social setting offers him mutually influence each other (Farrall, Bottoms, & Shapland 2010: 546). Still, very little research has been done on the impact of different social structures that create either opportunities or constraints for desistance (Farrall *et al.* 2010). It could thus be argued that the criminal justice system’s interventions should aim not only at “developing the capacities and skills of people who have offended”, but also at creating “opportunities to apply these skills, or to practice newly forming identities” (McNeill, Farrall, Lightowler, & Maruna, 2012: 9). Similarly, re-integration programmes should focus not only on building ex-offender’s capacities, but also on creating opportunities to put these capacities into practice (Maruna 2011b, Cherney, & Fitzgerald 2016: 34). This is illustrated by the story of the mother of Ajourad, who is quoted at the beginning of this chapter and claimed: “They have to offer you at least something at the end of your programme”.

In an interview she told the following. Her son was kicked out of school at age fifteen and started hanging out on the streets, doing all kinds of deviant things. In those days, she already saw trouble coming, so she tried to get help from childcare, but her call for help “fell on deaf ears”. Only after her son had been convicted and had to spend time in prison, he finally got all kinds of assistance from the probation service and the local authorities to help him reintegrate. These programmes had been a success; he even completed a special training course in accountancy that was offered to him by the local authorities. However, when he wanted to do a follow-up training, there were no financial means to pay for this training programme since he was no longer considered a ‘high-risk

case'. All the while, he struggled hard to find a stable job, because – as his mother explained – many jobs require a certificate of conduct. At age 19, he was eager to earn his own living, and – when he would have enough savings – find a place to live on his own. As his family members earned their living as a taxi driver, Ajouad has – also – set his mind on becoming a taxi driver and starting his own business. He started saving money so he could buy his own taxi and he completed the taxi drivers exam. He worked extremely hard, although off-the-books, by helping out friends and family members with their businesses. In the meantime, he applied twice for a certificate of conduct but it was refused both times – even after following all possible proceedings. His mother argues that they should have given him a chance after his second application, since he is doing good for a long time now (about 2.5 years) and he has successfully completed his taxi drivers exams – which demonstrates that he is doing his best. Because of this, she is extremely disappointed in the government: “It’s like they stimulate someone to do bad things again”. Moreover, she stated, “Investments should be rewarded. He did everything he could to find a job, but it’s a “no” everywhere. I’m afraid this will cause him to relapse into old behaviour. You’ll almost start to think: ‘If I do something wrong again, then I’ll be assigned to people who will do all they can to help me get my life together’. [...] However, now it’s like: first they’ve tried hard to lift him out of the pit, but now they’re letting him fall right back into it” (P1).

This example shows the tension between social structures at the macro-level (certificates being required by law for taxi drivers), actions of agents on the meso-level (Justis’ decision-makers refusing the certificate two times and reintegration professionals offering limited help) and personal motivations and achievements (micro-level). Already in the 1970s, it has been concluded that, “no systematic effort has been made to specify the social mechanisms which might operate to ‘return’ the stigmatized secondary deviant to a ‘normal’ and acceptable role in the community” (Trice & Roman 1970: 539). Nowadays, societal reactions on reintegration efforts are still understudied and constitute an important ‘blind spot’ (Maruna 2011b). Therefore, the role of rehabilitation professionals is explored in detail below based on interviews and informal conversations with professionals (and parents) and observations of their interactions with young adult (ex-)offenders.

So, to answer the research question regarding the impact of having a criminal record, the efforts of agents of reintegration – who either alleviate or aggravate the consequences of the stigma of a criminal record – should also be examined. Maruna argued that: “Treatment (or reform) efforts that do not address the collateral consequences of conviction (e.g., the social stigma and considerable handicaps of a criminal record) do not deserve to go by the name ‘rehabilitation’ and will surely fail” (2011b: 98). This chapter, therefore, explores the pivotal role of Dutch professionals involved in ex-offenders’ reintegration process, in particular their way of dealing with the criminal-record stigma and employment restrictions that result from it.

3 Responsibilisation

Garland has described the strategy that took crime control “beyond the state” as *responsibilisation*, by which “the community’ has become the all-purpose solution to every criminal justice problem” (Garland 2001: 123). Responsibilisation strategies which seek to build broad alliances in crime prevention, have urged public and private parties to both play a role in management of risk. The more the certificate was promoted to third parties, the more this screening instrument became incorporated in organisations’ safety policies. For example religious, sport and recreational organisations with whom the government has made an arrangement to issue certificates free of charge for all their volunteers working with children. In an evaluation of this ‘free certificate’ arrangement (Van der Klein, Los, & Verwijns 2013) some of the representatives of these organisations argue that although the final effect on the safety of their organisations is very small – as the refusal rates are very low – they can at least show to the public that they did everything they could to keep their organisations safe. In this evaluation the Dutch Scouting Organisation for example argued: “We should ask a certificate from everyone. That way, you show the parents you’re taking safety serious, and you’re making your organisation less vulnerable to accusations of negligence” (Van der Klein *et al.* 2013: 35).

The result of *responsibilisation strategies* thus seems to be that parties can easily shift responsibility to one another. In this example the Scouting Organisation argued that the parents who bring their children require them to take sound safety measures. The parents, on their part, could easily require hobby and sport clubs to do so, since the certificate is free of charge for these clubs. The Ministry of Security and Justice, on the other hand, which promotes these ‘free certificates’ for volunteers, is easily able to refer to political demands for increased safety measures for people working with children, which policy entrepreneurs starting advocating after the large-scale child abuse case in 2010 (De Graaf 2015). Nevertheless, the State Secretary argued that the responsibility for using this screening instrument rests primarily with the branches and employers themselves.¹ Still, in the end it remains unclear who is responsible for the ever-increasing use of criminal background screening.

The shifting responsibility from the government to public-private alliances, and the resulting lack of a clear allocation of responsibility was also mentioned by the professionals interviewed for this study. A manager of staff agency for airport personnel explained that the integrity screening that has to be performed for their clients have – up to now – been paid by the State, yet the State was now shifting financial responsibility to the employers:

“But now, the State has proposed that companies should pay for these screenings. I don’t like that at all. I think this arrangement is rather strange, because *the*

1 Parliamentary Documents 2016-17, 34550 VI, No. 98.

State enforces us to apply these safety measures, but now we have to pay for these measure. I think that's really strange. [...] I don't think our approach will essentially change because of this. But I do think we will ask potential employees in advance: 'Are you sure you can pass the screening?' And, we will say: "If you're not sure, don't do it'. Look, if it's about a small offence, we will try to do what's good [give the applicant a chance]. I say 'try', because eventually all that matters is whether he or she passes the screening. [...] So, eventually I do think our strategy will change if we are obliged to pay for the screenings ourselves. I used to say: 'Nothing ventured, nothing gained'. But something life is hard..." (P14).

This manager thus suggested that if his company has to pay for the screenings themselves, they will not be as easily as before provide previously convicted persons with a chance ('if you're not sure, don't do it'). Whereas, up to now they had been willing to take their chances with people who claim to have a criminal record. Furthermore, the manager argued that the State determines the rules and he has to uphold them:

"In some cases we truly wondered: 'How could this offence be a problem to the job?' But the outcome of the background screening was negative and the applicant was not cleared for the job. We have to adhere to these decisions. [...] Don't get me wrong, I do think that screening is important, I'm supporting these measures. Because at an airport, you have to work with goods as well as with people. You have to check who can deal with this and who can't. But I thinks it is too severe a punishment if someone who has been convicted for shoplifting once, cannot pass the screening. [...] But, in the end it's simple: if you won't pass the screening, you cannot work for us. This is a guideline of the Dutch Defence Organisation, and we comply with it. [...] But sometimes I think the screening is too strict. But what can I do, it's a one-way relationship. We have to obey their requirements" (P14).

The phenomenon of shifting (or sometimes: evading) responsibilities is what Žižek referred to as *interpassivity*. He defines interpassivity as: "being active through another subject who does the job for me" (Žižek 1998: 143). This is demonstrated by the previous examples of background screening for sport and hobby clubs and for working at an airport: the State asks organisations to take responsibility in creating a safer society, in particular in branches that require high levels of integrity, subsequently these organisations feel urged to do so in order to avoid public blame if anything goes wrong. Consequently, the number of criminal background checks continues to rise, all the while the relationship between the State and public or private parties could be considered to be characterised by *interpassivity*. In other words, the State can refer to the companies who are making the actual requests, whereas companies can refer to the State, which promotes criminal background screening and reaches a decision on whether an applicant is fit for the job. The policy rules on certificates of

conduct allow for interpassivity, as these indicate that it is necessary to perform a background screening for *every* kind of task or occupation and, consequently, for every public or private party requesting it. So, Justis, on the one hand, is obliged to go through the screening process whenever the request concerns an employment relationship – regardless of whether it is paid or unpaid. Employers, on the other hand, can claim to be bound by the law (external), self-regulation (internal) or contracting parties (external) to require a certificate of each of their employees. This way, employers can – easily – shift responsibility to the State or third parties demanding them to take preventive measures. Moreover, as it is the State that decides whether someone is fit for the job, employers themselves do not have to bear the risk of granting a job to an ex-convict and being held accountable when the decision turns out to have been a mistake. This is illustrated by the following example of an educational manager (of a school for senior secondary vocational education) who was asked why she had strictly adhered to the school’s policy of asking a certificate of conduct from one of this study’s respondents:

“It happens very often that a young adult, together with his parents, tries to negotiate access to a training programme by claiming: ‘It wasn’t a big thing’. But we are not the judge. We don’t want to get involved. We follow the judge’s verdict. [...] Everybody says in a personal conversation, that what they did was just an act of mischief. But when does it stop to be mischief? Can you call it that when you’re not a child anymore? To everyone it means something different. [...] It is so difficult, since we have so many different cases. Once we had a boy who had been detained in a forensic mental hospital because he had committed a murder... so many crazy cases. That’s why we say: the certificate is the determining factor. Even if we *would* allow a student to negotiate access after explaining us about his past, he nevertheless has to tell an internship organisation what’s on his record, since *we* know it. So if we don’t tell it and something happens during this internship: who’s to blame? For example, if a student is having difficulty keeping his hands off somebody else’s stuff (or having problems with alcohol, drugs or aggression): who is responsible? So even if the internship organisation knows the student and knows of his criminal past, and is still willing to hire him, we will ask for a certificate. At the end, students get qualified for social work *in general*. They do not get a diploma for working in a specific company, with people who know them; they can apply for jobs everywhere. [...] We deliver standard qualifications which give them access to the entire job market in social work. Therefore we require a certificate. [...] If a student has found a job after finishing his education and something goes wrong, we don’t want the media to report: ‘He has obtained his qualification at College X: how could that have been possible in the first place?’ We feel responsible for what we deliver” (P38).

This example illustrates the extent to which interpassivity plays a role: the educational manager was not willing to make any exceptions since the certificate

is *the* determining factor. She related this to being responsible if a serious incident would happen in the future – maybe even after the student has obtained his diploma – after which she anticipates the media to blame the school for allowing him to obtain his diploma in the first place. Also at another school for senior secondary vocational education, the team manager did not want to make exceptions for students who have not (yet) passed a criminal record screening (P36). Firstly, the team manager argued that he has to keep to the agreements with the Defence Organisation, as they train juveniles for the armed forces. Second, he shifted responsibility to the Defence Organisation, arguing there is a risk that they may not offer a student with a criminal record a job after graduation. The team manager explained:

“We will not depart from this requirement, because it is a requirement of the Defence Organisation. [...] We also cannot wait for the outcome of the complaint proceedings. We have made our arrangements with the Defence Organisation. [...] We cannot create a special position for all of our students. [...] Moreover, I wonder: we can train someone, but will he eventually be eligible to work for the armed forces? They require another kind of background screening and I don't know for how long his past will be an obstacle, I have no idea. We don't want to make fake promises by offering a training, while it might turn out he cannot obtain a job later” (P36).

As a result, one of the respondents (Riccardo) could not negotiate access to a training programme for the armed forces while awaiting the outcome of his complaint proceeding against the refusal of a certificate. The way Riccardo's mother perceived it was that the only reason for the school to do so was to not get into trouble with the Defence Organisation (P35).

From the previous two examples it follows that interpassivity can be seen as shifting responsibilities to another party, i.e. the screening authority. Yet, it can also mean that professionals in general evade playing an active role in arranging employment opportunities for ex-offenders. They often seem to rather remain passive, than trying to find a way to actively deal with this issue. Instead of taking on responsibility for ex-offenders' successful re-entry, they expect other parties to assume responsibility. This can be observed in the following quote of a probation officer:

“I've noticed that I know little about requesting a certificate, like how much years should have passed between the end of the punishment and the moment of requesting, and what the possibilities are. I've read an article lately that said it would become easier to request a certificate. If it's relevant, for example for Vincent [who is uncertain about which internships he is eligible for with his criminal record], I'll actively search for information. Up to now, I've referred him to the internship office of his school to see what they can do for him. I told him he should ask them what they could do for him and whether they could coach him in this process” (P10).

Another probation officer told the following story:

“Recently, I supervised a boy and he was suspected of three crimes: assault, dealing drugs and street robbery. He denied all of it, but I thought he was an evil boy. At some point he wanted to do an internship at a local community centre. The internship coordinator called me to ask: ‘Can he submit a certificate?’ Then I responded: ‘No!’ But afterwards I thought: ‘is that even true? Because he wasn’t convicted yet...’” (P3).

After she learned that the certificate of conduct could also be refused based only on alleged crime, she stated to be relieved: “Oh, so fortunately I gave the right answer” (P3).

Another – rather striking – example is the case of Tariq. His supervisor, a municipal officer, explained to me that Tariq has been placed – by one of his colleagues – in the position of manager of a catering establishment, which was owned by a friend of Tariq’s. The municipal officer explained that this job came to an end, “because of a criminal background screening he could not continue to work there” (P4). Yet, what makes this story a striking example of interpassivity is that the background screening was performed by officials of the same municipality. Firstly, Tariq was placed at the catering establishment by a municipal officer who was responsible for supervising Tariq’s reintegration into the labour market. Subsequently, he was refused a licence to manage a catering establishment by another municipal officer of the same local authority, who performed the municipality’s integrity screening. His supervisor, however, did neither know that his own organisation was responsible for this background screening, neither did he think that he, as Tariq’s supervisor, should play any role in this procedure:

“Because of the background screening his job had to be cancelled, that was such a shame. [...] The background screening is performed by the public prosecution service. We do not play any role in it. The municipality cannot do anything, because they don’t have access to criminal record information, or to other information on contacts with the criminal justice system. The only organisation that can perform this check, is the public prosecution service” (P4).

During this interview, in which Tariq was also a participant, the following conversation took place between Tariq and his supervisor:

Tariq: “Why do you say that you don’t play a role: you are my supervisor. You work at the municipality, so... At least my probation officer had been so kind to me: she had written a letter on my behalf. She *did* take the effort to help me. [...] You could at least have tried to give your opinion and say: ‘This boy is trying to do his best’”. Municipal officer: “But during that screening procedure they never ask municipal officers to give their opinion.” Tariq: “Didn’t I ask you to do so?” Municipal officer: “There’s no way we can..” Tariq: “Nothing

has been done. You know how often I have asked them.” Municipal officer: “With this screening, we never can..” Tariq: [...] You haven’t helped my with anything. I asked for it many times.” Municipal officer: “You should know, you need to have realistic expectations. The public prosecution service is doing the screening”. [...] Tariq: “But I’ve not been helped at all by your organisation. I do not get any help of this organisation, while I’d expect that they can at least show me some jobs to which I can apply. Cause I want to work”.

This example illustrates that the municipal officer is not aware of *which screening* has been performed by *which authority* (i.e. the same authority he is working for) and that he could have given his expert opinion that might have influenced the outcome, as Tariq’s probation officer did. Tariq clearly expected all of his supervisors to submit written statements on his behalf so he might pass the background screening since he considers it their task to help him reintegrate into the labour market.

It can be concluded that the examples above demonstrate that responsibility strategies, resulting in public-private alliances of crime prevention, have enabled parties to shift responsibility for actions of crime prevention to one another. Moreover, these stories demonstrate that such fluid relationships can be considered to be defined by *interpassivity*, i.e. “being active through another subject who does the job for me”. The professionals involved in ex-offenders’ reintegration process seem to play a rather passive role in the so-called preventive partnerships or security assemblages. In concrete situations they regularly seem to refer the respondents to other parties and easily shift their responsibility to another actor (either the screening authority, or the organisation that requires the background screening), who then does the job for them.

4 Managing risky groups

4.1 Declining role of experts

It has been argued that security assemblages are dynamic and fluid in nature and that there are no fixed outcomes. This section explores the official role of reintegration professionals with regard to the certificate-of-conduct proceedings in particular. In the policy rules on the certificate of conduct, no official role is defined for any professionals other than Justis’ decision-makers. Consequently, the expert opinion of professionals who are actively supervising ex-offenders is not an essential element in the decision-making process. Since the main task of reintegration professionals is to contribute to ex-offenders’ successful re-entry, it is striking that do they not routinely provide input in this process.

The official role of experts was removed from the decision-making process in 2004, when the decision-making became centrally organised and no longer took place by the mayor at the local level. Before 2004, the mayor could call upon the assistance of an advisory committee involving experts, such as

probation officers, who were able to provide evidence on behalf of the applicant. This development can be well understood in light of the *new penology* that emerged in the 1990s, which Feeley and Simon describe as a shift from the tradition of transforming individual offenders to *managing dangerous groups*. In the Netherlands, characteristics of the new penology can be observed in the shift of combating crime from criminal law to administrative law (preventive measures). Whereas criminal law is traditionally focused on punishing and rehabilitating the *individual* offender, preventive measures are – more broadly – applied in order to create a safer society as-a-whole.

The developments of the certificate of conduct during the last decade could also be considered to be characterised by a shift away from focus on the individual, to “managing segments of the ‘population’” (Feeley & Simon 1992: 450). Since certificates are being issued by one central agency, it has become easier to deal with large numbers of requests, and thus to ‘manage risky groups’. Moreover, the decision-making process has changed from an individualised approach to a more standardised process, meaning that there is no longer a role for an expert committee, whereas traditionally professionals or citizens had been able to vouch for the applicant and provide evidence of his or her good conduct. Currently, information from the probation services or the public prosecutor’s office will only be involved in the decision-making process, if a balanced judgement cannot be reached otherwise.

The current approach, in which no official role has been assigned to reintegration professionals, has two drawbacks. Firstly, as reintegration information is not a standard element in the process of decision-making, the applicant himself is responsible for submitting documents that could render his application successful. Secondly, decision-makers decide on a case-by-case basis *if* and *how* written evidence of the applicant’s good conduct will be weighed. Consequently, the expert’s assessment is not given serious weight *per se*. So, even if straightforward rehabilitation evidence is provided, it is not considered *decisive* evidence, but it will be weighed against all other merits of the case. This can be illustrated by one of the certificate cases that was dealt with by the law firm I worked for:

In the case of Amanda (age 35) all experts that had been involved in her rehabilitation process had testified of her exceptional drive, perseverance and personal developments. Amanda had been convicted a number of times for shoplifting, including the use of violence. These criminal acts were the result of her sincere addiction to hard drugs combined with serious mental health problems. After she had voluntarily committed to a mental hospital and followed intensive treatment programmes, she decided to do all it takes to get her life back on track. Consequently, she worked hard to change many problematic aspects of her life, among which addiction, mental issues, homelessness, and debts. After getting her life back on track, she was even able start a training programme that would enable her to work in a mental health institution as a ‘lay

expert'. Yet, to find an internship at such institution, she first needed a certificate of conduct. The certificate was, however, refused to her because of her (violent) offences, which were considered to pose a risk to working with vulnerable patients. Finally, she found a mental health institution she could work for. This institution knew of her criminal past but considers her to be an excellent lay expert, yet they do not want to waive the requirement of a certificate, which is laid down in official policy rules of this large, national organisation. As Amanda is extremely motivated to do everything it takes to make her life succeed, she has appealed twice against the refusal of the certificate – both times without success. Although many professionals had vouched for her and had provided evidence of her rehabilitation, this was not considered *decisive* evidence of the fact that she no longer poses a threat to other (vulnerable) people.

This case illustrates that evidence provided by reintegration experts is given only as much weight as all the other merits of the case. The State Secretary for Security and Justice generally argues that the certificate, as an instrument of its own accord, differs from the risk analysis that is performed (e.g. by probation service) to render a verdict in criminal cases. The State Secretary has his own responsibility that differs from the responsibilities of the public prosecutor and criminal judges: his responsibility is primarily to protect society, therefore risks are not assessed in the same manner as in criminal proceedings. According to the State Secretary, the decision-makers should not assess the risk of re-offending in general, but should establish – based on the merits of the case – whether the risk is *low enough* to issue the certificate. Each case will thus be judged on its own merits. In the case of Amanda, this led to the conclusion that, although all experts considered the risk of re-offending to be extremely low, more weight was given to the fact that she had committed violence and that relatively little time had elapsed since the last conviction. It seems that, in general, an expert's assessment of a low recidivism risk will be disregarded if only a short period of time has elapsed. Then, the assessments of the experts do not (yet) provide a sufficient basis to conclude that the risk of re-offending is low enough to issue a certificate. In this case, Justis requires more guarantees, i.e. a few more years without re-offending, to be able to conclude a risk is no longer present or low enough for the certificate to be issued.²

The diminished role for expert's risk analysis can also be explained in light of the development of a *new penology*. Feeley and Simon (1992: 450) noted in particular that, "the language of probability and risk increasingly replaces earlier discourses of clinical diagnosis". Without official room for experts' risk analysis in certificate-of-conduct proceedings, the observation of the risk related to obtaining a specific occupation is – at least in theory – based purely on objectified rather than individualised risk assessments. Given that rehabilitation information of experts is regularly absent, risk-assessments

2 See *inter alia* Council of State 13 April 2012, ECLI:NL:RVS:2012:BW3037.

are thus being made by decision-makers with no background in psychology. It could thus indeed be observed that the focus has shifted (gradually) from the individual towards ‘risky groups’ and from personal assessment towards checking (objective) risk factors and probabilities.

However, this has serious consequences for how much ‘evidence’ is required to establish a risk and consequently impose employment restrictions. Zedner noted in this regard: “Whereas agents of criminal justice are required to satisfy tests as to the sufficiency of evidence before they seek to prosecute, the logic of precaution licenses action even when evidence is not available” (2009: 45). Schuilenburg (2015) also noted that the so-called *quasi-criminal law* that is created offers citizens a second-rate protection of their rights.

4.2 Objectified risk assessment

It could be argued that the role of expert knowledge is already on the decline since the beginning of this century. Boone observed that the probation service was asked to provide information 658 times in 2002, 7 times in 2009 and only once in 2010 (Boone 2011: 74). Currently, decision-makers *never* request information from the probation service in order to reach a balanced decision in a particular case.³ It is, however, unclear whether the applicant himself or herself provides probation information more often, for example in the form of a letter from the probation officer.

Since 2014, the Dutch Probation Service has called for more involvement in the decision-making process. They have argued that probation professionals are specialised in making accurate and up-to-date risk-assessments and that such risk-assessments should be the foundation of decision-making in certificate cases. Taking into account *actual* risks, instead of probabilities, should lead to *customised decisions*. Therefore, the Probation Service promotes that, in order to create an accurate and up-to-date risk-assessment, the following aspects should be considered with more scrutiny: the (special) circumstances that caused the offence, personal circumstances and developments of the applicant, his or her current behaviour, and the actual risk of reoffending.⁴

In June 2014, these recommendations were discussed in Parliament,⁵ although they have not yet led to official policy changes. Unofficially, however, arrangements had been made to improve the communication and collaboration between Justis and the Probation Service, so that knowledge could be shared between those two parties.⁶ Nevertheless, no official role has yet been negotiated for probation experts in assessing *actual* risks. The current methods

3 Department Manager of the Central Agency for Certificates of Conduct (*Justis*), 20 April 2017, presentation at the Court of Appeal in The Hague.

4 Parliamentary Documents 2013-2014, 33 750 VI, No. 124.

5 *Ibid.*

6 Parliamentary Documents 2015-16, 24 587, No. 623.

for risk-assessment have two drawbacks. Probation officers most probably only provide relevant information whenever one of their clients asks them to do so, as the decision-makers in Justis are no longer requesting their advice. Secondly, only applicants who are under the supervision of the probation service can request their probation officer to provide an up-to-date risk analysis or positive recommendations on their behalf. So, ex-convicts that were not considered a risk in the first place and were, therefore, not sentenced to probation supervision cannot call in these professionals to reach a risk assessment.

5 Leniency for youthful sins?

5.1 Short expiry periods

Despite the improved contacts between Justis and the probation service, a considerable number of probation officers is still critical of the constraints the certificate imposes on their client's reintegration. Back in 2011, their negative opinions were compiled in a *black book* (Hilhorst 2011) that led to political debates regarding leniency for young ex-offenders.⁷ Their main criticism was that Justis only takes into account the previous convictions and the risks that these create, while sometimes the (current) circumstances demonstrate the applicant is no longer a risk. They argued that in order for the certificate not to hamper their reintegration efforts, youthful transgressions should not lead to a several-year employment ban.

A few months after this critique, the policy rules were changed. Since 2011, decision-makers have to *explicitly* take into account that the applicant was a minor at the time of the offence.⁸ As a result, decision-makers now have to make clear whether they have weighed the age of the offender in his or her favour given the circumstances of the case. Thus, the minor age *can*, but not necessarily *must*, be weighed in the young ex-offender's favour.

However, since the political debate leading to this somewhat futile change in policy, young offenders' reintegration opportunities regularly became a topic of discussion on the Dutch political agenda. Ultimately, this led to more radical policy change in 2013:⁹ for juveniles up to 22 years old the expiry periods of offences were reduced from four to two years. Now, non-severe offences committed by young adults can only constitute a barrier to receive a certificate for two years. This shorter expiry period does not apply to sexual offences and violent offences punishable by imprisonment of six years or more, nor for applications to become a taxi driver or other jobs demanding a high level of integrity.

7 Parliamentary Documents 2011-12, 33 000 VI, No. 6.

8 Parliamentary Documents 2011-12, 33 000 VI, No. 54.

9 Stcrt. 2013, 5409. See also: https://www.justis.nl/binaries/1.uit-de-praktijk-verkorting-terug-kijktermijn-vog-voor-jongeren-tcm104-518156_tcm34-85273.pdf.

5.2 Dropouts and too negative expectations

According to the State Secretary for Security and Justice this policy change has been “the result of a lengthy debate on the impact of the certificate of conduct screening on juveniles”.¹⁰ Yet, the debate on this topic did not subside. In 2015, 73 youth professionals from various institutions completed a quick scan survey (Gosliga 2015). According to the survey, most of the professionals (36 out of 73) were negative about the certificate – whereas only 17 were positive and 20 had a neutral point of view. The three foremost emotions these 73 youth professionals expressed with respect to the certificate were: disappointment, frustration and concern. Given these negative viewpoints and emotions, it is remarkable that only 12 out of 73 professionals claim to have discussed Justis’ official response with a juvenile. A further 12 professionals claim to have been involved in submitting a written opinion against the intended refusal (Gosliga 2015). This seems to – again – point to a discrepancy between the opinions and emotions of youth professionals and their actions in practice, thereby indicating interpassivity. Many of them are critical about the current system, as it does not sufficiently take into account the personal developments of the ex-offender, while only a few of them had actually taken action to help a young ex-offender in his or her application process. As a result, decision-makers are often not provided with information from the professional’s point-of-view. So, while – in theory – a shared responsibility for the outcome of certificate proceedings is advocated, practice is “muddier and messier” (Schuilenburg 2015). Even though their expert opinion could be considered crucial for reaching customised decisions on whether to restrain ex-offenders’ from their re-entry into the labour market, in practice their involvement is still limited.

Despite the ongoing debate on involving expert opinion versus objectified risk assessment, the instrument remained the way it was designed. The finding that many reintegration professionals are too negative about the certificate, while only few of them have actually been involved in the proceedings (Gosliga 2015), led the State Secretary for Security and Justice to start educating professionals in order to take away their “too negative expectations on the certificate”.¹¹ For that purpose, ‘certificate ambassadors’ are being trained, who are responsible for informing their organisations. These educational campaigns thus have been the result of the 2015 quick scan (Gosliga 2015), which was aimed at understanding the discrepancy between the Ministry’s viewpoint – based on official numbers – and the ‘buzz’ of the certificate hindering too many young ex-offenders – based on stories from practice.¹² The quick scan

10 https://www.justis.nl/binaries/1.uit-de-praktijk-verkorting-terugkijktermijn-vog-voor-jongeren-tcm104-518156_tcm34-85273.pdf.

11 Parliamentary Documents 2016-17, 34 550 VI, No. 98.

12 The full report is accessible via: http://www.vogprobleem.nl/uploads/vanoosten/files/vogprobleem/De_stem_van_de_uitvoering_in_perspectief_-_VOG_aanvragen_door_risicjongeren.pdf.

indeed uncovered a discrepancy between the perceptions of youth of a 'risk group' and youth professionals, on the one hand, and the optimistic information provided by Justis, indicating that only less than 2.5% (of young persons having a criminal record) is refused, on the other.

From the quick scan it was concluded that the juveniles' *negative expectations* were the result of receiving unreliable or wrong information from their social network. Furthermore, it was concluded that if information would instead be retrieved directly from the Government's official website, juveniles would be better informed of their opportunities and would discover that of all young applicants with a criminal record more than 97.5% will receive a certificate. As a result, a special website for youngsters has been developed.¹³ The State Secretary concluded, that "Occasionally, the idea still exists that the certificate is often refused based on petty offences only. This is however based on wrong perceptions of the certificate."¹⁴ Based on the very low refusal rates, the official position of the Ministry of Security and Justice remains that the certificate of conduct does not pose a serious obstacle to young ex-offenders' re-entry to the employment market.¹⁵ Moreover, the State Secretary concluded that since the percentage of refused certificates is declining each year, the idea of reintegration professionals that juveniles with a criminal record are ineligible for certificate is based on a misunderstanding.¹⁶

Still, these conclusions drawn from the quick scan can be criticised for several reasons. First, the group of respondents – so-called 'risk' youth – had been very diverse, as very broad selection criteria were applied. Respondents could either have a criminal background or be at risk of coming into contact with the criminal justice system, in which case they may not yet have a criminal record. Secondly, it remains unclear whether the respondents would be issued a certificate if they had asked for it, which is presumed by the policy-makers. This is, however, based on the unfounded assumption that the official numbers capture the whole picture. These numbers, however, do not take into account the dark number, which consists of the group of juveniles who avoid to apply for a certificate because they (correctly) predict they will not obtain one. The previous chapters have demonstrated how young adults, both with a serious or a minor criminal record, choose to self-exclude at many occasions. It could be argued that the more serious the offender, the more he or she attempts to avoid applying for a certificate. Consequently, it is safe to assume that the refusal rate will rise if the so-called dropouts would actually apply for a certificate (Kurtovic 2015; Kruize & Gruter 2016).

13 <https://watdevog.nl>.

14 Press article published on 2 February 2017, retrieved from: <https://www.rijksoverheid.nl/actueel/nieuws/2017/02/01/onderzoeken-tonen-aan-vog-draagt-bij-aan-succesvol-integriteitsbeleid>.

15 Parliamentary Documents 2016-17, 34 550 VI, No. 98.

16 <https://www.justis.nl/nieuws/Archief2015/vog-jongeren-steeds-minder-geweigerd.aspx>

6 Active rehabilitation

The sections above have analysed how responsabilisation and objectified risk assessment has led to interpassivity between different agents, involved in ex-offenders' reintegration processes. This final section will deal with the question of whether the certificate screening allows for active – rather than mere passive – rehabilitation and how this functions in practice. It can be concluded that the Netherlands applies an automatic (or passive) redemption model since it primarily depends on the mere passage of time. Maruna argued that passive rehabilitation models do not stimulate offenders to demonstrate evidence of rehabilitation, as there seems to be nothing the ex-offender can do except wait for the mere passage of time. This waiting for time to pass is expressed by Ajouad as follows (as quoted at the beginning of Chapter 5): “Can you look up for me how long before I’ve served my time?”

Active models, on the contrary, allow for rehabilitation to be ‘earned’. This is demonstrated in the case of Lucas, who is positive about how his personal developments were weighed as evidence of rehabilitation in the certificate proceedings: “During the hearing of the criminal court, I made my sincere apologies to the other guy [whom he has extorted, according to the accusations]. That had an impact on the public prosecutor so she said during my trial: ‘Well, he truly has got his life back on track – or at least improved, so we should give him the opportunities to continue with that and make the best out of it’” (Lucas). As this criminal case was being dealt with while the certificate of conduct case was pending, the former influenced the latter. The public prosecutor wrote a letter in support of the objections Lucas had made against the refusal of his certificate. He was furthermore able to produce all sorts of evidence of good conduct, for example from various institutions where he had followed treatment programmes, and from the neighbourhood police officer who confirmed that he had not been in contact with the police since the last offence which dated over sixteen months ago. This was considered to be important evidence of rehabilitation, hence the certificate was issued. This example illustrates how personal developments can be rewarded and how juvenile ex-offenders could thus be encouraged to go through the efforts of personal transformation. Moreover, it illustrates how agents of reintegration (e.g. social workers, police officers, the public prosecutor and decision-makers) cooperated to support this 18-year-old boy who wished to – eventually – become a marine. It is a perfect example of how interpassivity between agents of reintegration, both involved in criminal proceedings and in certificate proceedings, can be dissolved.

Yet, from the stories of the young adults in this study it appears that they often think their positive developments are not seriously taken into account in certificate proceedings. They mention that one of the positive developments that should be given serious weight in the decision-making process, is that they are finally hired for a job after a long time of unemployment (i.e. a signal of desistance). According to the policy rules, however, this is not a factor that

should be taken into account, as it is inherent in the instrument's preventive nature to exclude someone from employment if a risk is perceived. Most young adults are, as a result, disappointed that they are not given a chance based on their effort to seriously change their way of life and, as a result, obtain employment. The following story illustrates this.

Soufyan is very motivated to become a taxi driver. During our first conversation, I explained to him the expiry period that applies for taxi drivers as well as the opportunities for successfully requesting a certificate when only two years of the five-year expiry period have elapsed. Yet, despite being only two years out of prison, Soufyan wanted to try his luck and applied for a certificate. In first instance as well as after making objections, his certificate was refused. Next, he had lodged an appeal against this refusal to the court. He believes that both the lapse of time and his positive developments should make him eligible for a certificate: "I wouldn't understand it if they don't agree to give it to me now! I'm already clean for 2.5 years. No contacts with the police or the criminal justice system at all. Once you're done with it – you're done with it! [...] I found a new job, warehouse assistant, mostly nightshifts, until three o'clock in the morning. It's not what I really want to do, but at least it's something. To me, it's important that I can show the judge [deciding on his certificate case] that I am doing my best. That I'm working hard instead of being stuck at home. That'll look good in court, right?" (Soufyan).

From this example it becomes clear that primarily the short period of time that had elapsed since the crime, rather than his positive attitude and effort to reintegrate – signals of desistance – determined the outcome of his request; the court also upheld the refusal of the certificate. Since he had spent time in prison, he was – still – considered too dangerous to work as a taxi driver. Besides, the professionals involved in his reintegration process could not support his application for a certificate. He had been involved with a local reintegration organisation, which had helped him enter a training programme for one day a week combined with working for four days a week. This organisation, however, no longer existed, so he could not get in touch with the reintegration professionals who had helped him right after his detention. Moreover, his probation officer had only supervised him for twelve months after his detention and had now not been in contact with him for approximately eighteen months. Therefore, she argued, she could not provide an accurate and up-to-date risk assessment (P16). The neighbourhood police officer also said he had not been in close contact with Soufyan and – therefore – was not sure whether Soufyan had really changed his life. He moreover argued that Soufyan should have stayed in contact with him if he knew he might need his help for a future certificate request (P15). Soufyan reacted with disbelief, as well as disappointment when he heard that the neighbourhood police officer did not want to support him: "I'm really doing my best. [...] I can't believe he's expecting me to drop by,

drink coffee and do some small talk all the time – it’s not like since I’m out of prison he suddenly became my best friend or something.”

It could be argued that the current judicial rehabilitation model does not explicitly encourage young ex-offenders to do their best to refrain from crime, as it is unclear how evidence of good conduct is weighed. Maruna has argued that in passive rehabilitation models – which allow for automatic rehabilitation after a fixed period without re-offending – judicial rehabilitation will mostly come too late. This is because after a certain period of time without re-offending – four years in general – the ex-offender may already be fully reintegrated or, on the contrary, have become demotivated and lost his hope for successfully reintegrating into society. As a result, the possibility to receive a certificate of conduct would not function as an *incentive* for desistance since the offender should first demonstrate to have already desisted from crime. Incentivised rehabilitation, on the contrary, requires ex-offenders to be able to control their own process (so their transformations and accomplishments should be given serious weight). Instead of being the passive subject of objectified risk assessment that is primarily based on what happened in their past (Maruna 2011: 20). So, in order for judicial rehabilitation policies to support the process of desistance, they should focussing more on challenges and achievements rather than risk.

7 Conclusion

It has been argued in this chapter that the role of reintegration professionals is key in understanding the actual outcome of re-entry processes. Hence, reintegration programmes that help ex-offenders increase their capacities are only of little effect if these capacities cannot be put into practice. Various agents of rehabilitation thus have an imperative role in creating either opportunities or constraints in the reintegration process.

Employers, for example, can choose to hire someone with a criminal background. On a macro-level, it has been demonstrated that responsabilisation strategies have shifted responsibility for public safety from the State to public and private parties, which are encouraged by the State to increasingly apply background screening to guarantee the integrity of their businesses. From the examples above, it becomes clear that employers – or schools – are not likely to renounce their requirement of a certificate of conduct, if their organisation’s integrity policy (self-regulation) or expectations of third parties (public opinion) limit them to do so. Alongside internal policies, the government continues to enact new laws that make criminal record screening, also continuous screening compulsory.

Justis’ decision-makers determine whether to issue a certificate, primarily based on objective criteria such as the number and severity of the offences, as well as the time elapsed. These objective aspects are given supremacy – according to the policy guidelines – over subjective evidence of the ex-offender’s ‘good

conduct'. This does not encourage or reward active rehabilitation, especially not for severe offenders, who feel as if they are 'doing time' by waiting for the expiry periods of their convictions to lapse. Moreover, there is no way for ex-offenders to know in advance if and how certain personal developments and achievements will be weighed. The certificate of conduct instrument is, therefore, at the very least acting as "the carrot of expungement", and is thereby not providing an incentive essential to make "the considerable efforts required to desist" (Maruna 2013: 130).

Also for reintegration professionals, the certificate proceedings often remain a 'black box'. Consequently, they are not involved in these proceedings on a regular basis. The role of probation officers in certificate proceedings remains unclear and even seems to be ambivalent. Although probation officers and other reintegration professionals have criticised the negative effects of this preventive instrument on their clients' reintegration, at the same time they seem hesitant to actively participate in the proceedings their clients are in and use their expert opinion to support a positive outcome.

These reactive attitudes of professionals and the shifting of responsibilities between various partners in crime prevention seems to be best described by Žižek's notion of *interpassivity*. All parties assume that another party will be responsible for the outcome. The interpassivity of agents of reintegration, combined with an automatic, rather passive model of judicial rehabilitation, creates a catch 22 for young ex-offenders. While criminal background screening is becoming more widespread, more extensive and more difficult to circumvent, they have to make sure that this does not discourage or demotivate, or ensure that they revert to their old lifestyles. In the current model, ex-offenders are required to go to considerable lengths to provide evidence of good conduct (education, volunteering, or employment), all without any way of knowing beforehand whether this evidence will result in the outcome they desire – job, internship or education. Moreover, they do not know whether to expect any support during this process, as reintegration professionals seem to be ambivalent about supporting ex-offenders by providing evidence of rehabilitation from their professional perspective.

Conclusion

“Next year my criminal past will finally be over and done with. I’ll then be able to get a certificate of conduct again, so my background will no longer give me all kinds of trouble. At last I’ll no longer have to tell anyone about it, so I can start my next training and find a job without people knowing anything about it!” (Precious).

1 Invisible bars

This concluding chapter aims to analyse the most important findings on how a criminal record impacts young adults’ process of re-entry into society, particularly into the labour market. This thesis has explored this topic based on the lived experiences of 31 young adult offenders and ex-offenders aged between 16 and 30, who were followed during their process of reintegration into the labour market for average periods of six to eighteen months.

To describe young adults’ strategies of dealing with the stigma of a criminal record and its influence on their position in the labour market, I have primarily drawn on theories of stigma that date back several decades (Lemert 1951; Goffman 1963). Labelling theory has been applied in earlier research on the impact of past involvement in the criminal justice system (including Schwartz & Skolnick 1962; Pager 2003; LeBel 2008, 2012; Maruna 2014). Quantitative studies have shown that employers discriminate against ex-offenders on the basis of the label of a criminal record (Schwartz & Skolnick 1962; Buikhuisen & Dijksterhuis 1969; Pager 2003, 2007; Baert & Verhofstadt 2013; Decker, Ortiz, Spohn, & Hedberg 2014; Dirkzwager, Blokland, Nannes, & Vroonland 2015; Rovira 2016). This study now provides a subjective account in a Dutch context of the stigma of having a criminal record and of bars to re-entry into the labour market.

With regard to its use of criminal record information for employment restrictions, the Dutch system is very different to those in neighbouring Western-European countries; it does not allow employers access to the criminal record database, and individuals cannot obtain an extract from their criminal record to provide a prospective employer. Instead, criminal records in the Netherlands are mainly screened by *Justis*, a specialised administrative screening authority, which determines whether someone is fit for the job in question. *Justis* was

established to meet a need increasingly expressed by employers in the 1990s, namely to check potential employees' criminal background. The growing need for such a preventive instrument can be related to developments that have been referred to as a *culture of control* (Garland 2001). The preventive policy that was shaped at the beginning of the 21st Century had to make the certificate of conduct a strong risk-prevention instrument that would be popular with employers. The increased focus on risk management led to rapid growth in the use of criminal-record screening. Over the last decade, the number of requests for a certificate of conduct has skyrocketed.¹ Since criminal-record screening has now become widespread, more ex-convicts are likely to face a future of uncertainty as to whether their conviction will have collateral consequences.

2 Consequences of a criminal record

To establish the impact of a criminal record in young adults' daily lives, I first recapitulate important aspects of the process of being registered in the judicial documentation system (i.e. having a so-called 'criminal record'), including its influence in the job-search process. To provide a full picture of what ex-offenders experience, I described this process – from the moment they first fall under suspicion, to their reintegration into the labour market and their attempts to secure a good job.

2.1 Being labelled

The stories of young offenders and ex-offenders clearly demonstrated that many of them were unaware that they were 'labelled' from the moment they became a suspect. When the public prosecution service registers an alleged offence in the Judicial Documentation System, the alleged offender has a so-called criminal record; a status upon which employment restrictions can be based. However, many suspects only become aware of this if they apply for a job and then have their request for a certificate of conduct refused due to their criminal record. It is typical of the Dutch system that preventive measures, such as employment restrictions, can already be imposed on the basis of *alleged* crimes.

During the criminal proceedings, it is also the case that most suspects are not explicitly informed about what it means to have a so-called criminal record. Due partly to the complexity of the Dutch Judicial Data and Criminal Records Act, suspects remain uninformed about the consequences of a conviction in the years ahead, i.e. after they have completed their sentence. As a result, they tend to be unaware of the particularities and implications of being registered in the judicial documentation system. For example, if they accept an out-of-court settlement offered by the public prosecutor – such as a fine, community

¹ From 135,000 in 2004 to 968,000 in 2016.

sentence, or conditional sentence – or even a decision not to prosecute, they are generally unaware that this, too, will be registered on their criminal record, and may thus lead to exclusion from employment.

2.2 Collateral consequences

As collateral consequences are not officially considered as punishments, they are not generally considered or addressed by criminal court judges or public prosecutors. They can nonetheless be raised at any time during an ex-offender's reintegration process. During a criminal trial, judges and public prosecutors do not in principle have to take account of the collateral consequences of being refused a certificate of conduct, as these are imposed by an administrative agency *after* the trial.

It has been argued that, by not considering the post-sentence consequences of conviction, criminal judges wish to avoid taking the place of administrative judges (Schoutsen 2015; Anker 2016). However, it could also be argued that account should be taken of the fact that employment restrictions add to the severity of the punishment, as this would serve the interest of establishing a *proportional* punishment (Boone & Kurtovic 2015). Some judges do indeed do so, referring explicitly during sentencing to anticipated collateral consequences. Some, for example, refer to this as a ground for reducing the sentence (Boone & Kurtovic 2015; Kurtovic & Rijnsburger 2016). Every year since 2010 there has been an increase in the number of verdicts in which the certificate of conduct is mentioned as a ground for reducing a sentence (Kurtovic & Rijnsburger 2016) – a development that may be linked to the ever-increasing number of certificate screenings.

Criminal record screening can indeed be viewed as 'invisible punishment' (Travis 2002); it follows conviction and adds to the sentence, but it is not generally regarded as part of the conviction. Accordingly, some respondents perceived the restrictions on employment as a double punishment; once they were done with their criminal lifestyle and tried to make a living through official employment, they might suddenly be confronted with collateral consequences resulting from past convictions. Uncertainties among ex-offenders are likely to be increased by any inconsistency between judges; some judges view the restrictions that a criminal record may impose on employment as punishment, while others do not. Legal inequalities may also arise. The intertwined functions of criminal law (with its focus on punishment), and administrative law (with its focus on prevention), may thus lead to *fuzzy law* (Hartmann 2011) or *quasi-criminal law* (Schuilenburg 2015), to which fewer safeguards apply than in classical criminal law, such as the principle of proportionality.

Overall, the young adults in this study had very little knowledge of criminal record-screening policies, and were therefore largely unaware of the consequences their conviction had on obtaining employment or access to education. Thus, employment restrictions based on having a criminal record

create invisible barriers to re-entry. The following section describes how young adult ex-offenders navigate a pathway through a landscape filled with these invisible bars to their process of reintegration into the labour market.

3 Stigma of a criminal record

3.1 *Unanticipated stigma*

Two-thirds of the respondents (21 of the 31) explicitly stated that, at some point, their criminal record had led to restrictions in obtaining employment or education. This was the case not only with young adults with a severe criminal record (i.e. those with at least one prison sentence (9)), but also with those who had a relatively non-severe record (12). The restrictions they faced counter the claim promoted by the government that the certificate of conduct screening excludes only serious offenders from employment.² It also belies the government's assumption that non-severe young offenders 'wrongly' anticipate rejection on the basis of negative hearsay.³

First of all, some young adults who had not been punished severely – such as those who had been fined or had done forty to sixty hours of community service, but were unaware that these sentences will already be registered on their criminal record – were shocked to discover they would be refused a certificate. However also young adults who had been punished severely – with several years of imprisonment, for example, and had expected barriers on all sorts of employment – expected to be offered new opportunities after having demonstrably decided to turn their lives around and leave their pasts behind them. After all, they believed that the express purpose of a prison sentence is to deter an offender from committing further crimes. Similarly, during their time in prison, detainees can demonstrate behaviour that expedites their rehabilitation – by taking treatment or undertaking training, by doing voluntary work, or by meeting the commitments required for temporary leave.⁴ Yet, once they are out, they discover that this does not increase their opportunities for judicial rehabilitation and thus for obtaining employment.

2 In this regard, the State Secretary for Security and Justice has stated, "Occasionally, the idea persists that the certificate is often refused only on the basis of petty offences. But this is based on mistaken perceptions of the certificate". Press article, 2 February 2017, retrieved from: <https://www.rijksoverheid.nl/actueel/nieuws/2017/02/01/onderzoeken-tonen-aan-vog-draagt-bij-aan-succesvol-integriteitsbeleid>.

3 Parliamentary Documents 2016-17, 34 550 VI, No. 98.

4 In 2015, the State Secretary for Security and Justice introduced a so-called '*Statement of demonstrated behaviour*', which prison governors could write to support detainees' applications for a certificate of conduct later on (Parliamentary Documents 2015-16, 24 587, No. 627). However, there is no evidence to show how many of these statements have already been provided.

Towards the end of their time in prison, detainees are supervised by several reintegration professionals (e.g. probation officers, municipal officers, job coaches and psychologists), and are seriously prepared for their reintegration process. Yet stories of the respondents reveal that their reintegration workers were unable to provide concrete help with searching and securing employment. The lack of such opportunities leaves many ex-offenders frustrated and in despair. It thus seems that young adult ex-offenders are not the only ones who have to deal with invisible bars to re-entry, but that reintegration professionals themselves also seem to have difficulty anticipating stigmatisation and advising young adults on the best ways of dealing with it. They often adopt a reactive attitude that is characterised by a tendency to shift responsibility to other parties involved in crime prevention; a process referred to as *interpassivity*.

3.2 'Doing time'

As well as not knowing precisely which information would be disclosed on their criminal record, many respondents were unaware how much time had to elapse before they would be issued with a certificate of conduct. Ajouad expressed this waiting for time to pass as follows: "Can you look up for me how long before I've served my time?". Their unawareness is partly because the policy rules on issuing certificates provide for different periods after which account is no longer taken of a conviction. These periods range from two years (for juveniles up to 22 years old who have not committed a severe violent offence) to indefinite (for sex offenders). The expiry period for young adults aged 23 and older is generally four years.

However, four years would appear to be regarded as a very long period. If, for example, a young adult is released from prison at the age of 23 and is motivated to do all it takes to get his or her life back together, it can mean waiting until the age of 27 before certain employment options open up. Respondents generally expected that they would be offered a new chance earlier in their rehabilitation process – sometimes much earlier. The discovery that employment restrictions still applied was accompanied by a sense of resignation that the restrictions were likely to last a long time and that the expiry date was not fixed.

As it often takes one or two years before the court issues a judgment, they also expected that the expiry period would be calculated from the date the offence was committed. This, however, is not the case: the expiry periods for imposing employment restrictions start after a sentence has been imposed. Consequently, although a young offender – even a one-off offender – may already have demonstrated that he or she did not fall back throughout the entire pre-trial period, employment restrictions can still be imposed for several years post-sentence.

3.3 *Anticipated stigma*

For young adults trying to create a 'normal' life after conviction, deep insecurities can be created by not knowing what information is registered on a criminal record, how long it will apply, what its expiry date will be, and how offences (including alleged offences) are weighed in the decision whether to issue a certificate of conduct.

In their job-search process, young adults generally try to avoid jobs for which a certificate is required. However, this requirement is not always apparent in a job vacancy. In many cases, it is mentioned during the hiring process, or even when an ex-offender has already been hired and the certificate is treated as a formality that has to be completed before an employment contract is drafted. This leaves many young ex-offenders very afraid of being labelled as ex-criminals and of being dismissed when an employer discovers that they cannot provide the certificate required. As usually, people are hired first, and the certificate is requested later, these insecurities thus remain after ex-offenders have been hired, and sometimes after they have already started the job.

Almost all of the respondents recall the shame they felt during the job search process. Such shame often goes hand-in-hand with the fear of rejection, which is based less on official refusal of their certificate than on having to face an employer and announcing that they did not qualify for a certificate of conduct. The respondents expected many job rejections. Moreover, even if they were allowed to retain their job, they would still have to deal with the stigma of being an ex-convict, as the employer and possibly some co-workers would be aware of their past. This is why Precious, who was quoted at the start of this chapter, longs for the four years since her release from prison to pass, so she will qualify for a certificate. Her quote illustrates how much of a relief it would be if she no longer has to inform people of her past. Only then will she truly be able to leave her past behind her and start with a clean slate.

3.4 *Self-exclusion*

This study showed that many young adults adopt self-exclusion as a strategy for avoiding rejection on the basis of the stigma of a criminal record. A consequence of this strategy is that it impacts ex-offenders' position in the labour market in a way that relegates them to second-rate jobs, i.e. hard, physical work, irregular hours and temporary contracts with no job security. Due to their criminal record, all the young adult offenders and ex-offenders in this study had experienced difficulties in the labour market. Hence, they found it difficult to stay motivated about finding employment. The primary concern of most was to find a stable job that would allow them to think confidently about their future and make long-term plans. The temporary nature of their jobs ensured that they continued not only to worry about obtaining employment, but also about repeatedly encountering problems due to their criminal background.

This study has thus shown how processes of stigmatisation, as well as the self-exclusion resulting from it, generally turn young adult ex-offenders into second-class citizens. Moreover, it showed that even the anticipated stigma of being ineligible for work or education – not to mention the resulting self-exclusion – were mainly based on earlier experiences of rejection in the labour market.

4 Justifications and limitations

4.1 (In)eligible for a certificate

If striking instances of self-exclusion are to be avoided, ex-offenders should know beforehand whether their request for a certificate will be refused. A difficulty for many of them is that the current certificate policy provides no opportunities for knowing in advance – before accepting a job, for example – whether a certificate will be issued for that specific job. In some cases, this leads to a complicated balancing act, in which ex-offenders who have already accepted a new job, are afraid they will not pass the background screening and may eventually be unable to keep the job, and therefore doubt when, if at all, they should terminate the employment contract in their current job.

Currently, only employers are allowed to complete and sign the application form for a certificate. As job-seekers cannot do this by themselves, they first need to have an employer who is willing to offer them a job, as he or she is the one who must tick the boxes of the risks for which the applicant needs to be screened. Being unable to request a certificate themselves before entering a job-selection process, job-seekers cannot know in advance whether they will qualify for a certificate. Applicants with a criminal record thus have no choice, but to await the decision after they have already been hired – and then to withdraw from the job to avoid the personal rejection that will follow if their certificate is refused.

What adds to their fear of having to face personal rejection is that many applicants are afraid that the answer to their certificate request will be sent directly to the employer. As it is the employer who completes and signs the form, they mistakenly believe that he or she will be notified of the outcome of the procedure. In fact, refusals are sent only to ex-offenders. In sum, a significant reason many ex-offenders exclude themselves from employment seems to be their uncertainties about the invisible barriers to a certificate, i.e. not knowing when they will run into one.

What also adds to their insecurities, is that every employer can oblige a prospective employee to undergo criminal-record screening. Nineteen of the thirty-one respondents in this study stated explicitly that they had been rejected by an employer on the basis of indirect knowledge (i.e. after screening). Some others reported that they had been dismissed on the basis of direct knowledge, for example because they told their employer about their past. Eight respon-

dents mentioned that, due to their criminal record, they had either been denied access to school or had been expelled. While strategies of concealing or proactively disclosing your background can be successful at times, young adult ex-offenders' attempts to find work seem restricted most by the certificate requirements. Even if an employer is in favour of hiring an ex-offender, this may be made impossible if the law or a company's internal policy makes a certificate of conduct obligatory. Moreover, this would appear to be happening on an increasing scale.

4.2 Judicial review

If an ex-offender applies for a certificate of conduct, which is subsequently refused, he or she can start administrative proceedings. Typically however, these are bureaucratic procedures with a very lengthy processing time. After the request for a certificate is submitted, it takes about four weeks before the applicant receives an *intended refusal decision*. He then has two weeks to submit a *written opinion* and provide evidence of 'good conduct'. Two weeks after submitting his written opinion, a final decision is made. It can thus take up to eight weeks to receive a decision. If the applicant is unable to start his job without a certificate, or has to submit it within a few weeks of starting work for his new employer, this is too long. If they do not want to be open about their past in order to avoid being labelled as an ex-convict, ex-offenders therefore have to create excuses about why it is taking them so long to provide the certificate required.

If the certificate is refused despite the submission of a written opinion, applicants can make formal objections. After doing so, they are invited to *Justis* for an oral hearing in which they can personally explain their objections to the decision-makers. It takes approximately two months for a decision on an objection to be reached. This means that about four months will pass between the start of the application process to the decision on an objection. Applicants should nonetheless use both procedures, as objection proceedings have a higher success rate than the submission of written opinions (Kruize & Gruter 2016).

After the objection proceedings, which are dealt with by *Justis*, applicants can choose to appeal to an administrative court. After the court's decision, they can also appeal to the highest administrative court, the Dutch Council of State. It generally takes six to twelve months before a case is dealt with by a court, and one to two years before a case is finally dealt with by the Council of State (Kruize & Gruter 2016).⁵

The consequences of these lengthy bureaucratic proceedings is that once a case has been brought before a court, the job is unlikely to still be available. Applicants who appeal to court must, therefore, be extremely motivated to

5 Kruize and Gruter have noted that processing times of one year or (much) more are currently the rule rather than the exception (2016: 68).

take matters that far, as they have probably lost the job in the meantime. They also have to invest financially for a court to arrive at a decision that may no longer serve them. Furthermore, as certificate screening is a measure founded in administrative law, a great deal of scope is left to the screening authority's discretionary powers. As the administrative courts only test the reasonableness of Justis' decisions, judicial review does not take place to its full extent. And as very few people appeal to a court for review of their case, the influence of judicial review on the policy rules relating to issuing certificates of conduct is very limited.

5 One million and beyond

5.1 Managing risky groups

It is clear from the experiences of young adult ex-offenders that the stigma of a criminal record has various significant impacts on their daily reality. Since the number of requests for a certificate continues to rise each year – in 2017, it is expected to be more than *one million* – this is particularly salient.⁶ One development that triggered this growing number of requests is the government's increased focus on risk management; a product of increased media pressure on politicians to instigate political 'claims for damages' and the need for a scapegoat (De Graaf 2013). As a result, the State started acting as a business specialised in collective prevention. This has caused the focus of risk-prevention instruments to shift slowly from protection of citizens *from* the State towards protection of vulnerable citizens *by* the State (Garland 2001).

This increasing focus on managing risky groups is evident in several areas of public life. Not only has there been an extension of the list of jobs for which a certificate is required by law (e.g. long-term healthcare), but continuous screening has also been introduced (e.g. for jobs in childcare and as taxi-driver, and, in future, possibly for jobs in aviation). The increasing number of certificate applications also suggests that certificates are now required for all sorts of other jobs, including low-skilled work as cleaners, gardeners, call-centre staff, stock boys, cycle mechanics and garbage collectors. In addition, a legislative proposal has been introduced to extend the type of criminal background information that is used in certificate screening, such that it will be possible to draw not only on criminal record information, but also police file information. In the near future, another act may be adopted which allows for the discriminative allocation of public housing, whereby prospective tenants will be obliged to provide a certificate of conduct.

The extension of certificates as an instrument for risk prevention is being promoted by the Secretary of State for Security and Justice – who “offers

6 The Dutch labour force currently consists of approximately nine million people. Information retrieved from: <https://www.cbs.nl/nl-nl/achtergrond/2017/06/bevolking-15-tot-75-jaar>.

private parties seeking additional screening expertise the highly specialised expertise developed by Justis”.⁷ Thus, while the State would appear, on the one hand, to transfer powers to private sector actors – often large institutions, such as public housing associations or airports (who require more background screening) – it also promotes and extends screening practices, e.g. by making them increasingly required by law. Schuilenburg (2015) considers these dynamics to be the result of the growth of fluid public-private alliances, which he calls *security assemblages*. He has argued that while the government does not strictly supervise private parties’ responsibilities in these assemblages, neither does it attempt to prevent the abuse of those responsibilities. This has led to a situation in which a static framework no longer applies and predictable outcomes are highly undefined. Consequently, the government has little grip on the dynamic processes and interactions that take place within the assemblages.

Regarding certificate screening, the State has waived its influence over decisions on which occupations involve a (serious) risk to society: a certificate can now be requested for *every* occupation. As the State has transferred its responsibility to private actors, the nature and number of criminal-record screenings now seem to be determined on the basis of the overall interests and economic interests of employers and even schools. Certificates have become a fairly cheap, easily accessible instrument that enables all prospective employers – even if there is no substantial societal interest at stake – to shift responsibility to the State for performing a background screening and subsequently deciding whether a potential employee is fit for the job. If the State intends to avoid an attitude of ‘your wish is our command,’ responsibilities should be better regulated and clear limits should be imposed on the use of such screening.

5.2 *A very slight effect*

As was established in 2013 in a policy audit of preventive measures⁸, there is still no overall vision of how this preventive instrument might really contribute to greater integrity in working environments. It was also established that the outcomes of certificates of conduct as an instrument for risk-prevention cannot be quantified in terms of a general or specific decrease in criminal activity. Nonetheless, to measure the true effectiveness of certificates, hypotheses should be formulated on the concrete effects they are expected to have. After all, if potential offenders are kept out of specific jobs, it does not necessarily mean that society as a whole will become safer. On the contrary, the respondents in this study have explained how the pull of fast money becomes stronger after they have experienced the drawbacks inherent to employment restrictions and stigmatisation.

7 Parliamentary Documents 2016-17, 34 550 VI, No. 98.

8 Ministry of Security and Justice (2013). *Beleidsdoorlichting Preventiemaatregelen* (‘Policy Audit on Preventive Measures’), annex to Parliamentary Documents 2012-13, 33199, No. 2.

A recent study on the effectiveness of certificates concluded that, since the number of people who are ‘rightly’ refused a certificate is much smaller than the number who are ‘wrongly’ issued one, the *net effect* of certificates is very limited (Kruize & Gruter 2016). On the basis of this outcome, it could, therefore, be argued that while certificates increase the integrity of a particular business or sector only slightly, they do not protect society overall.

Overall, the preventive effect of certificates thus seems to be very slight. It could, therefore, be argued that they are chiefly a symbolic measure used by the State to ‘feign control over the uncontrollable’ (De Graaf 2013). Certificate screening is intended to manage not only primary risk – trying to tame the original threat – but also secondary risk: in other words, to cover the risks of failing governance (De Graaf 2013). Paradoxically, even though the primary risks to society have not been controlled any better, the State thus claims to be ‘taming the future’ (De Graaf 2013).

6 Towards incentivised rehabilitation

Another aspect of the current features of a culture of control is that it renews the value of stigma (Garland 2001). This study has demonstrated the various ways in which the stigma of a criminal record can impact young adult ex-offenders’ process of reintegration of into society, and particularly into the labour market. It has also highlighted the crucial role of interactions between ex-offenders and different types of reintegration agents, as these determine the actual outcome of reintegration processes.

This study has argued that reintegration programmes intended to increase ex-offenders’ capacities and skills have little effect if these capacities and skills cannot be deployed. Agents of reintegration play a key role in creating opportunities or constraints in reintegration processes. Yet, in practice, they seem to demonstrate their interpassivity, adopting re-active attitudes and shifting responsibilities easily to other parties, such as the decision-makers in certificate proceedings or the organisation requiring criminal background screening.

To make successful rehabilitation processes possible, reintegration agents should therefore take responsibility for the outcome of these processes. At the beginning of criminal proceedings that are likely to result in the establishment of a criminal record, this should include actors of the criminal justice system – including police officers, public prosecutors and judges in criminal court. During the period of reintegration, after punishment has been completed, it should also include probation officers, reintegration workers, employers and decision-makers in certificate cases.

To make successful rehabilitation processes possible, *incentivised* or *merit-based* rehabilitation policies are needed – a need, in Maruna’s words, to hold out ‘the carrot of expungement’ required for going through the considerable efforts of desistance (2013: 130). As desistance is a two-way process, it requires considerable effort not only on the part of the desister, but also on the part

of society through the offer of renewed opportunities. Maruna's rituals of rehabilitation, which are described in Chapter 4, offer great insight into how policies on criminal-record screening can be more effective in promoting desistance rather than obstructing it. The main point is that an opportunity should be offered for wiping the slate clean or for qualifying for a certificate of rehabilitation. Rather than merely awaiting the passage of time that must elapse before a certificate of conduct is issued (i.e. passive model), an ex-offender can then 'earn' rehabilitation (i.e. active model).

In effect, the current policy on issuing certificates is an automatic expungement model. In contrast, merit-based models require an offender to demonstrate evidence of rehabilitation. In current practice, as there is no standard procedure for weighing the evidence, account is often only taken of static factors, such as the number and severity of the offences and the time elapsed. It would, however, be of enormous importance if *signals of desistance* on the part of offenders were met with a positive response from officials at an early point in their reintegration process, and if this response contributed to establishing a reformed identity (Kurlycheck, Bushway, & Denver 2016).

The opposite is a passive (i.e. automatic) model of judicial rehabilitation, which, combined with attitudes of interpassivity on the part reintegration agents, is likely to create a catch 22 situation for young ex-offenders. While criminal-background screening is becoming more widespread – i.e. 'heavier and stickier' (Farrall & Sparks 2006: 7) – young ex-offenders have to make sure drawbacks do not discourage or demotivate them, inadvertently pushing them back into their old lives. In the current model, ex-offenders are required to go to considerable lengths to provide evidence of rehabilitation (education, volunteering, or employment), all without any way of knowing beforehand whether this evidence will result in the outcome they desire – job, internship or education.

The policy on certificates of conduct does not in principle allow for rehabilitation to be earned through demonstrations of positive behaviour. Especially in the early phase of desisting from crime (e.g. immediately after their release), the young adults in this study found it crucially important to have something to hold on to, such as motivation, a dream or the prospect of a job. If they see no possibilities for a hopeful future, they are less likely to be motivated to make a determined effort to create a new life, and more likely to be drawn back to their former lifestyle. It is, therefore, essential to have incentivised judicial rehabilitation policies that give a chance for ex-offenders who demonstrate their willingness to work hard and make the effort required to *earn* rehabilitation. At present, however, these young adult ex-offenders often seem to be frustrated by the interpassive attitudes of reintegration agents and by government's failure or inability to provide them with any options. If these frustrations are to be prevented from becoming a trigger for recidivism – i.e. secondary deviance – judicial rehabilitation policies such as the certificate of conduct should focus on promoting rehabilitation in a meaningful way.

Summary

This study deals with the collateral consequences of convictions that individuals may face in the labour market due to criminal record-based employment restrictions. It attempts to answer the question how having a criminal record impacts processes of re-entry into society – particularly into the labour market – for young adults. Since 2004, criminal-record screening has become a popular and ever-increasing instrument of risk-prevention in the Netherlands. If employers in the Netherlands want to check a potential employees' criminal background, they can require the employee to submit a *Certificate of Conduct*. The employee can ask the State to issue such a certificate for the occupation desired. This certificate is a document by which the State Secretary for Security and Justice declares that the applicant did not commit any criminal offences that are relevant to the performance of his or her duties. If it is issued, the applicant is considered fit for the job. Over the last decade, the number of requests for a certificate of conduct has skyrocketed; between 2004 and 2016 the number of requests has multiplied sevenfold from 135,487 to 968,300.

To ascertain the impact of criminal-record screening on processes of re-entry, this study uses an explorative, qualitative approach (in-depth interviews, as well as informal conversations and observations) to uncover social processes and unravel the complex, reciprocal relationship between criminal records, employment restrictions and successful re-entry. The findings of this study are based on the lived experiences of 31 young adults having a criminal record, aged between 16 and 30, who were followed during their process of reintegration into the labour market for average periods of six to eighteen months. In addition, interviews with professionals, as well as parents involved in their re-entry process provide in-depth insight in this process. This study thus intends to provide an empirically valid and individualised account of the impact of having a criminal record on the lives – particularly on the labour market position – of young adult offenders and ex-offenders. Although this study's focus is on how *individuals* deal with having a criminal record, it also utilises a multilevel approach to create a comprehensive understanding of how criminal records influence ex-offenders' processes of re-entry. The macro-level deals with structures and cultures of society at large, which shape preventive policies such as criminal-record screening. The meso-level addresses the decisions and interactions of institutions and professionals involved in ex-offenders' reintegration process.

The micro-level describes individuals' lived experiences of dealing with the stigma of a criminal record.

The impact of having a criminal record on ex-offenders' re-integration into society has long been, to a large degree, understudied. Jacobs and Larrauri (2011: 3) consider it surprising that "conviction-based employment discrimination is not a more salient penological topic in Europe." Indeed, most of the research findings on this topic are from the United States (Ramakers 2014), whereas research from a European context is largely non-existent (Herzog-Evans 2011a). Moreover, the empirical research on criminal records carried out up to now is mostly quantitative in nature. In addition, many studies have explored the association between employment and crime as such, without specifically studying the intermediate mechanism of criminal background screening and its effects on both employment and crime. These studies, thus, lack insight into subjective accounts of how crime, employment and reintegration are related. The social mechanisms that underlie this dynamic relationship can be better understood through qualitative research. However, "most of the analysis on the issue has taken the form of normative, rights-based argumentation" (Maruna 2014: 126). The current study aims at combining a normative, legal approach with empirical evidence of ex-offenders' lived experiences. A purely normative approach towards criminal records moreover lacks an overarching theoretical and criminological perspective that can explain the developments and practices concerning risk-prevention in society at large.

Consequently, it is clear that we know little of the consequences of criminal record screening in practice. In the Netherlands, there is no comprehensive vision on how this preventive instrument *should* function, no evidence on how it *actually* functions and no account of its impact on the *lived realities* of those bearing the stigma of a criminal record. With regard to its use of criminal record information for employment restrictions, the Dutch system is very different to those in neighbouring Western-European countries. Individuals cannot obtain an extract from their criminal record to provide a prospective employer. Instead criminal records in the Netherlands are mainly screened by *Justis*, a specialised administrative screening authority, which determines whether someone is fit for the job in question.

The growing need for this risk-preventive instrument can be related to developments that have been referred to as a *culture of control* (Garland 2001), which seemed to emerge in the Netherlands in the 1990s. The preventive policy that was shaped at the beginning of the 21st Century had to make the certificate of conduct a strong risk-prevention instrument that would be popular with employers. Since criminal-record screening has now become widespread, more ex-convicts are likely to face a future of uncertainty as to whether their conviction will have collateral consequences.

Two-thirds of the young adults (21 of the 31) explicitly stated that, at some point, their criminal record had led to restrictions in obtaining employment or education. This was the case not only with young adults with a severe criminal

record (i.e. those with at least one prison sentence (9)), but also with those who had a relatively non-severe record (12). Their stories further demonstrated that many of them were unaware that they were 'labelled' from the moment they had become a suspect. When the public prosecution service registers an alleged offence in the Judicial Documentation System, the alleged offender has a so-called criminal record; a status upon which employment restrictions can be based. The restrictions the young adults faced counter the claim promoted by the government that the certificate of conduct screening excludes only *serious* offenders from employment. It also belies the government's assumption that non-severe young offenders 'wrongly' anticipate rejection on the basis of negative hearsay.

Some young adults who had not been punished severely – e.g. those who had been fined or had done sixty hours of community service, but were unaware that these sentences will already be registered on their criminal record – were shocked to discover they would be refused a certificate. Still, also young adults who had been punished severely – with several years of imprisonment, for example, and had expected barriers on all sorts of employment – expected to be offered new opportunities after having demonstrably decided to turn their lives around and leave their pasts behind them. Towards the end of their time in prison, detainees are supervised by several reintegration professionals, and are seriously prepared for their re-entry. Yet, stories of the young adults reveal that their reintegration workers were unable to provide concrete help with searching and securing employment. The lack of such opportunities leaves many ex-offenders frustrated and in despair. It thus seems that not only young adult ex-offenders have to deal with 'invisible bars' to re-entry, but that reintegration professionals themselves also seem to have difficulty anticipating stigmatisation and advising young adults on the best ways of dealing with it. They often adopt a reactive attitude that is characterised by a tendency to shift responsibility to other parties involved in crime prevention; a process referred to as *interpassivity* (Zizek 2006).

As well as not knowing precisely which information would be disclosed on their criminal record, many young adults were unaware how much time had to elapse before they would be issued with a certificate of conduct. One of them expressed this waiting for time to pass as follows: "Can you look up for me how long before I've served my time?". Their unawareness is partly because the policy rules on issuing certificates provide for different periods after which account is no longer taken of a conviction. These periods range from two years (for juveniles up to 22 years old who have not committed a severe violent offence) to indefinite (for sex offenders). The general expiry period for young adults aged 23 and older is four years. However, four years would appear to be regarded as a very long period. If, for example, a young adult is released from prison at the age of 23 and is motivated to do all it takes to get his or her life back together, it can mean waiting until the age of 27 before certain employment options open up. Young adults generally expected that they would

be offered a new chance earlier in their rehabilitation process – sometimes much earlier. The discovery that employment restrictions still applied was accompanied by a sense of resignation that the restrictions were likely to last a long time and that the expiry date was not fixed.

As it often takes one or two years before the court issues a judgment, they also expected that the expiry period would be calculated from the date the offence was committed. This, however, is not the case: the expiry periods for imposing employment restrictions start after a sentence has been imposed. Consequently, employment restrictions can still be imposed for several years post-sentence. For young adults trying to create a ‘serious’ life after conviction, deep insecurities can be created by not knowing what information is registered on a criminal record, how long it will apply, what its expiry date will be, and how offences (including alleged offences) are weighed in the decision whether to issue a certificate of conduct.

In their job-search process, young adults generally try to avoid jobs for which a certificate is required. However, this requirement is not always apparent in a job vacancy. In many cases, it is mentioned during the hiring process, or even when an ex-offender has already been hired and the certificate is treated as a formality that has to be completed before an employment contract is drafted. This leaves many young ex-offenders very afraid of being labelled as ex-criminals and of being dismissed when an employer discovers that they cannot provide the certificate required.

Almost all of the young adults recall the shame they felt during the job search process. Such shame often goes hand-in-hand with the fear of rejection, which is based less on official refusal of their certificate than on having to face an employer and announcing that they did not qualify for a certificate of conduct. Even if they were allowed to retain their job, they would still have to deal with the stigma of being an ex-convict, as the employer and possibly some co-workers would be aware of their past. Young adults’ stories illustrate how much of a relief it would be if they are truly able to leave their past behind them and no longer have to inform people of their past, and start with a clean slate.

An important finding of this study is that many young adults adopt self-exclusion as a strategy for avoiding rejection on the basis of the stigma of a criminal record. A consequence of this strategy is that it impacts their position in the labour market in a way that relegates them to second-rate jobs, i.e. hard, physical work, irregular hours and temporary contracts with no job security. Hence, they found it difficult to stay motivated about finding employment. The primary concern of most was to find a stable job that would allow them to think confidently about their future and make long-term plans. The temporary nature of their jobs ensured that they continued to worry not only about obtaining employment, but also about repeatedly encountering problems due to their criminal background.

It is clear from the experiences of young adult ex-offenders that the stigma of a criminal record has various significant impacts on their daily reality. Since

the number of requests for a certificate of conduct continues to rise each year – in 2017, it is expected to be more than one million – this is particularly salient. One development that triggered this growing number of requests is the government's increased focus on risk-management; a product of increased media pressure on politicians to instigate political 'claims for damages' and the need for a scapegoat (De Graaf 2013). Serious incidents became a collective safety issue, for which the State was held responsible. This has caused the focus of risk-prevention instruments to shift slowly from protection of citizens *from* the State (i.e. abuse of coercive State powers) towards protection of vulnerable citizens *by* the State (i.e. monitoring dangerous populations) (Garland 2001).

While the State would appear, on the one hand, to transfer powers to public or private sector actors (who require more background screening), it also promotes and extends screening practices, e.g. by making them increasingly required by law. Schuilenburg (2015) considered these dynamics to be the result of the growth of fluid public-private alliances, which he referred to as *security assemblages*. He argued that while the government does not strictly supervise private parties' responsibilities in these assemblages, neither does it attempt to prevent the abuse of those responsibilities. This has led to a situation in which a static framework no longer applies and predictable outcomes are highly undefined. For example, the State has waived its influence over decisions on which occupations involve a 'serious risk of serious harm' to society: a certificate can now be requested for *every* occupation, both paid and unpaid. As the State has transferred its responsibility to private actors, the nature and number of criminal-record screenings now seem to be determined on the basis of the overall interests and economic interests of employers and even schools. If the State intends to avoid an attitude of 'your wish is our command,' responsibilities should be better regulated and clear limits should be imposed on the use of such screening.

A recent study on the effectiveness of certificates concluded that, since the number of people who are 'rightly' refused a certificate is much smaller than the number who are 'wrongly' issued one, the *net effect* of certificates is very limited (Kruize & Gruter 2016). Moreover, it could be argued that while the certificate screening increases the integrity of a particular business or sector only slightly, it cannot be claimed it protects society overall. It could, therefore, be argued that it is chiefly a symbolic measure. Certificate screening is intended to manage not only primary risk – trying to tame the original threat – but also secondary risk: in other words, to cover the risks of failing governance (De Graaf 2013).

As a final point, it could be argued that reintegration programmes intended to increase ex-offenders' capacities and skills have little effect if these capacities and skills cannot be deployed. Agents of reintegration play a key role in creating opportunities or constraints in reintegration processes. Yet, in practice, they seem to demonstrate their interpassivity, adopting re-active attitudes and shifting responsibilities easily to other parties, such as the decision-makers

in certificate proceedings or the organisation requiring criminal background screening.

To make successful rehabilitation processes possible, *incentivised* or *merit-based* rehabilitation policies are needed – a need, in Maruna’s words, to hold out ‘the carrot of expungement’ required for going through the considerable efforts of desistance (2013: 130). An opportunity should be offered for wiping the slate clean or for qualifying for a certificate of rehabilitation. Rather than merely awaiting the passage of time that must elapse before a certificate of conduct is issued (i.e. passive model), an ex-offender can then ‘earn’ rehabilitation (i.e. active model). In effect, the current policy on issuing certificates can be considered an automatic expungement model. As there is no standard procedure for weighing *evidence of rehabilitation*, account is often only taken of static factors, such as the number and severity of the offences and the time elapsed. In the current model, ex-offenders are required to go to considerable lengths to provide evidence of rehabilitation (education, volunteering, or employment), all without any way of knowing beforehand whether this evidence will result in the outcome they desire – job, internship or education. It would, however, be of enormous importance if *signals of desistance* on the part of offenders were met with a positive response from officials at an early point in their reintegration process (Maruna 2012). If this response contributed to establishing a reformed identity (Kurlycheck, Bushway, & Denver 2016), judicial rehabilitation policies would promote rehabilitation in a meaningful way.

Samenvatting

Onzichtbare tralies; De impact van het hebben van een strafblad op de arbeidsmarktpositie van jongvolwassenen

Doel van het onderzoek

Dit onderzoek richt zich op de vraag welke impact het hebben van een strafblad heeft op het re-integratieproces van jongvolwassenen, in het bijzonder hun re-integratie in de arbeidsmarkt. Aan dit vraagstuk is tot op heden nauwelijks aandacht besteed, althans niet aan de hand van kwalitatief empirisch onderzoek. Ook in andere Europese landen ontbreekt het aan dergelijk onderzoek (Herzog-Evans 2011a), zodat er weinig bekend is over de consequenties die ex-veroordeelden vanwege het hebben van een strafblad ervaren tijdens hun proces van re-integratie in de samenleving, met name in de arbeidsmarkt. Evenmin is bekend welke gevolgen zij hier vervolgens zelf aan verbinden en hoe dit hun strategie en handelwijze bepaalt.

Toenemende preventiemaatregelen zijn niet alleen van invloed op de arbeidsmarktkansen van ex-veroordeelden, maar ook op hun positie in de samenleving in het algemeen. Vanwege het stigma dat aan ex-veroordeelden kleeft, kunnen zij te maken krijgen met uitsluiting, wat vervolgens crimineel gedrag kan versterken (secundaire deviantie). Volgens Maruna (2014: 126) vormt deze dynamiek een evidente blinde vlek van veel onderzoek: weliswaar wordt in het kader van recidivevermindering veel aandacht besteed aan het evalueren van de effectiviteit van re-integratieprogramma's, echter contraproductieve preventiemaatregelen, die bijvoorbeeld tot uitsluiting van werk leiden, zijn doorgaans geen onderdeel van studie. Dit onderzoek tracht de invloed van processen van uitsluiting te begrijpen door ervaringen van jongvolwassen ex-veroordeelden in kaart te brengen die hiermee in hun dagelijks leven te kampen hebben. Er is namelijk een groot gebrek aan empirische kennis vanuit een subjectief perspectief omtrent de mate waarin ex-veroordeelden daadwerkelijk stigmatisering op de arbeidsmarkt ervaren en welke 'overlevingsstrategieën' zij vervolgens toepassen (LeBel 2012; Harding, Wyse, Dobson, & Morenoff 2014). Met name ervaringen van ex-veroordeelden die zijn uitgesloten na het ondergaan van een antecedentscreening zijn tot nog toe nagenoeg buiten beeld gebleven (Adams, Chen, & Chapman 2016).

Relevantie van het onderzoek

De urgentie van dit onderzoek is gelegen in het feit dat in de afgelopen twee decennia het aantal antecedentscreeningen in de vorm van aanvragen voor een Verklaring Omtrent het Gedrag zeer sterk is toegenomen. In 2004 werden er 135.487 aanvragen gedaan, in 2016 is dit aantal toegenomen tot 968.300: een verzevenvoudiging dus in iets meer dan tien jaar tijd. Deze toename kan als het gevolg worden gezien van een aantal ontwikkelingen die zich over een langere periode hebben voltrokken in Westerse samenlevingen, waaronder de Nederlandse, zoals globalisering, informatisering en individualisering (Boutellier 2011; Schuilenburg 2015). Mede als gevolg hiervan is de sociale cohesie van gemeenschappen afgenomen. Het strafblad heeft zich in deze context, waarin onderling vertrouwen in belangrijke mate aan betekenis heeft ingeboet, kunnen ontwikkelen tot een belangrijk ‘bewijs van gedrag’ (Jacobs 2015: 4). Daarnaast heeft het gebruik van strafbladen zich sterk kunnen ontwikkelen door de opkomst van de informatie- en communicatietechnologie, waardoor justitiële gegevens niet langer handmatig worden geregistreerd en bewaard in archieven bij rechtbanken, maar met een klik op de knop digitaal raadpleegbaar zijn. Ten slotte hebben ontwikkelingen in de jaren 1990 die binnen de criminologie bekend staan als een verschuiving richting een ‘risicosamenleving’ of ‘risicocultuur’ ruim baan gegeven aan instrumenten die niet zozeer zijn gekoppeld aan het strafrecht (dat als *ultimum remedium* geldt), maar die preventief bestuurlijk ingrijpen rechtvaardigen (De Graaf 2013). Door de sterke focus op het voorkomen van risico’s en het daaraan gekoppelde verval van rehabilitatie-idealen (Garland 2001), is het strafblad – mede vanwege de eenvoudige, digitale toegang en de ‘harde data’ die het bevat – verworpen tot een aantrekkelijke oplossing voor veiligheidsproblemen.

Vanwege de zeer sterke toename van het aantal Verklaring Omtrent het Gedrag-aanvragen is het opmerkelijk dat er niet meer empirisch onderzoek is verricht naar de effecten van dit instrument in de praktijk. In een beleidsdoorlichting van preventiemaatregelen, verricht door het ministerie van Veiligheid en Justitie in 2013, werd eenzelfde constatering gedaan: “Het stelsel van de VOG voor natuurlijke personen berust op een breed gedeelde, maar niet nader onderzochte, vooronderstelling dat bepaalde ex-delinquenten een risico voor de integriteit van organisaties en bedrijven vormen. Behalve aan wetenschappelijk onderzoek ontbreekt het tot dusverre aan een expliciete visie op de functie van de verschillende integriteitsinstrumenten, waaronder de VOG natuurlijke personen, binnen het preventiebeleid.” Nu een expliciete beleidsvisie vanuit het ministerie van Veiligheid en Justitie nog steeds lijkt te ontbreken en bovendien de effectiviteit van deze preventieve maatregel niet aan de praktijk is getoetst, lijkt dit gelegenheid te hebben geschapen voor een steeds meer uitdijend gebruik van het instrument VOG. De verwachting is dat in het jaar van afronding van het voorliggende onderzoek het aantal aanvragen tot boven de miljoen zal

zijn gestegen. Onderzoek naar de impact hiervan op het re-integratieproces van ex-veroordeelden, vanuit een individueel perspectief, is dus van groot belang.

De relatie tussen werk en criminaliteit

Om de vraag naar de impact van het strafblad op de arbeidsmarktpositie van ex-veroordeelden te beantwoorden, is eerst stilgestaan bij het vele, met name kwantitatieve, onderzoek dat is verricht naar de relatie tussen werk en criminaliteit (Uggen & Staff 2001; Western 2002; Pager 2003; Holzer, Raphael, & Stoll 2003; Bushway 2004; Uggen 2008; Apel 2009; Verbruggen, Blokland, & Van der Geest 2012; Ramakers, Nieuwbeerta, Van Wilsem, & Dirkzwager 2016). Dit betreft een dynamische relatie die twee kanten op werkt: werkloosheid kan niet alleen een risicofactor vormen voor het plegen van criminaliteit, maar criminaliteit – met name het hebben van een strafblad – kan ook de kans op werk verminderen. Door Maruna wordt dit ook wel bestempeld als een tragische en tevens voorspelbare cirkel van ‘stigma en recidive’ (Maruna 2011a: 5). Dat werk een belangrijke recidiveverminderende factor vormt, wordt in veel onderzoek bevestigd, hoewel de resultaten niet eenduidig zijn en het simpelweg vaststellen van een dergelijke relatie een lastige opgave blijft. Diverse onderzoeken hebben een aantal aspecten van deze relatie weten te ontrafelen.

Ten eerste is het beschermende effect van het hebben van werk het sterkst waar het een kwalitatief goede en stabiele baan betreft. Ten tweede is dit preventieve effect vooral gevonden voor hoog-risicogroepen. Dit zou betekenen dat – hoewel het contra-intuïtief lijkt – aan met name delinquenten met een hoog recidiverisico baankansen moeten worden geboden, vanwege het beschermende effect van werk op recidive. Juist voor deze groep zou het dus contraproductief werken om preventieve maatregelen toe te passen die hen beperken in het aangaan van bepaalde arbeidsrelaties. Ten slotte geldt het preventieve effect van werk vooral bij jongvolwassenen die halverwege hun twintiger jaren zijn, omdat de rol van ‘werknemer’ in deze levensfase van groter belang is dan in de fase ervoor; die van de zogeheten ‘onluikende volwassenheid’ (*emerging adulthood*). In de huidige tijd en cultuur experimenteren jongvolwassenen zeker nog tot halverwege hun twintiger jaren met verschillende rollen, zodat voor jongeren in deze leeftijdsfase het hebben van een stabiele baan en het opbouwen van een bestendige toekomst minder cruciaal is dan voor jongeren die het einde van hun twintiger jaren naderen.

Er kan dus worden geconcludeerd dat werk belangrijk is voor bepaalde groepen, in bepaalde levensfasen. Derhalve is het van wezenlijk belang jonge ex-veroordeelden op bepaalde momenten in hun leven mogelijkheden aan te reiken en daarmee de weg naar werk niet onnodig af te snijden (Uggen & Wakefield 2008). In de praktijk echter wordt doorgaans alleen een Verklaring Omtrent het Gedrag afgegeven als het risico voldoende laag wordt geschat op basis van de hoeveelheid en ernst van de delicten. Bovendien geldt in de praktijk alleen een uitzonderingspositie voor minderjarigen en jongeren die voor

hun 23^e jaar een VOG aanvragen. Uit de literatuur volgt echter dat juist het bieden van kansen aan jongvolwassenen vanaf de leeftijd van 25 jaar een groot effect kan hebben op recidive. Juist op deze leeftijd kan het hebben van een goede baan een keerpunt vormen dat jongvolwassenen kunnen aangrijpen om hun criminele gedrag voorgoed achter zich te laten.

Methoden van onderzoek

Om de dynamische relatie tussen werk, criminaliteit, stigma en re-integratie te begrijpen, is dit onderzoek als volgt opgezet. In totaal zijn 31 jongvolwassenen (28 mannen en 3 vrouwen) met een strafblad gedurende een periode van gemiddeld zes tot achttien maanden gevolgd. Zij zijn tussen de 16 en 31 jaar, met een gemiddelde leeftijd van 23,6 jaar. Het betreft zowel jongeren met een licht strafblad (een of twee delicten die op lichte wijze zijn afgedaan), als jongeren met een zwaar strafblad (in ieder geval een detentiestraf). Wat hun afkomst betreft zijn 26 jongvolwassenen in Nederland geboren en 5 in het buitenland. Wanneer de afkomst van hun ouders wordt bekeken is echter een omgekeerde verhouding zichtbaar: van 8 jongvolwassen zijn beide ouders in Nederland geboren en van 23 is tenminste een ouder in het buitenland geboren. Een groot deel van de jongeren heeft zodoende een niet-Nederlandse etnische achtergrond, hetgeen naast hun uiterlijk ook blijkt uit hun vaak gebrekkige Nederlands.

Aan het begin van de periode waarin deze jongvolwassen werden gevolgd is er een diepte-interview afgenomen, evenals aan het einde van deze periode. In de tussenliggende tijd is er contact geweest door middel van informele gesprekken, soms per telefoon, mail of korte tekstberichten. In deze periode zijn er eveneens interviews afgenomen bij degenen die bij het re-integratieproces van de jongeren waren betrokken, dat zijn voornamelijk professionals en soms ouders (38 in totaal).

Met deze kwalitatieve, exploratieve onderzoeksopzet is beoogd sociale processen bloot te leggen en diepgaand begrip te creëren van de belevingen van ex-veroordeelden, waarmee meer inzicht wordt verkregen in de complexe relatie tussen criminaliteit, een strafblad, uitsluiting van werk en succesvolle re-integratie. Met behulp van etnografische onderzoeksmethoden is zodoende getracht individuele en empirisch onderbouwde verklaringen te geven voor de wijze waarop het hebben van een strafblad het re-integratieproces van jongvolwassen, in het bijzonder hun kansen op de arbeidsmarkt beïnvloedt.

Theoretisch kader

Om de vraag te kunnen beantwoorden hoe het hebben van een strafblad het proces van re-integratie op de arbeidsmarkt beïnvloedt, worden verschillende thema's op verschillende niveaus behandeld. Voor de analyse van de onderzoeksbevindingen is een multidimensionaal theoretisch kader ontwikkeld

waarin drie niveaus worden onderscheiden die elkaar wederzijds beïnvloeden. Ten eerste het macroniveau waarop de cultuur en structuur van de samenleving als geheel wordt beschreven, waaruit het beleid en de uitvoering van preventie-maatregelen – zoals de VOG-screening – voortvloeien. Op mesoniveau worden de handelwijzen, beslissingen en interacties besproken van instituties en professionals die betrokken zijn bij het re-integratieproces van ex-veroordeelden. Op microniveau staan ten slotte de ervaringen van jongvolwassenen centraal die aan den lijve ondervinden hoe het is om met een strafblad en het stigma dat daaraan verbonden is hun weg te vinden in de samenleving. De belangrijkste criminologische noties die op deze drie niveaus van belang zijn, worden hieronder kort uiteengezet.

Microniveau. Op dit niveau komen verschillende vormen van stigma aan bod, namelijk geanticipeerd stigma, zelf-stigma en ervaren stigma (LeBel 2012). Ook de reacties hierop, ofwel strategieën om met stigma om te gaan worden besproken, te weten verhulling, proactieve onthulling en zelfuitsluiting (Goffman 1963). Daarnaast wordt gekeken naar de wijze waarop ex-veroordeelden processen van stigmatisering uitleggen en welke oorzaken zij hieraan toekennen: interne vs. externe, permanente vs. tijdelijke en globale vs. specifieke oorzaken (Maruna 2004). Ten slotte wordt besproken op welke wijze de timing van rehabilitatiemogelijkheden en, daarmee, het bieden van kansen op de arbeidsmarkt een rol spelen bij het proces van succesvolle re-integratie. De verwachting is dat hoe meer responsief en individueel-georiënteerd het rehabilitatiebeleid is, des te minder belemmeringen het strafblad veroorzaakt in het re-integratieproces (Maruna 2012). Dergelijk beleid zou kunnen worden gebaseerd op *signalen* die ex-veroordeelden afgeven, waarmee zij laten zien gemotiveerd te zijn te stoppen met criminaliteit, ook wel *desistance signalling* genoemd (Bushway & Apel 2012; Kurlycheck, Bushway, & Denver 2016).

Mesoniveau. Op dit niveau is vervolgens de vraag relevant in hoeverre beleidsmakers responsief rehabilitatiebeleid ontwikkelen, op basis waarvan actieve en beloning-georiënteerde rehabilitatie mogelijk is (Maruna 2012). Indien rehabilitatie afhankelijk is van het passief afwachten van voldoende tijdsverloop sinds het laatstgepleegde delict (zoals het VOG-beleid in strikte zin voorschrijft), zal dit onvoldoende stimulans vormen tijdens het re-integratieproces (Boone 2011). Op mesoniveau is bestudeerd in hoeverre re-integratieprofessionals jongeren actief motiveren in het zoeken naar werk, hiertoe mogelijkheden aanreiken, en ten slotte daadwerkelijk kansen creëren voor deze jonge ex-veroordeelden. Op mesoniveau zijn tevens ontwikkelingen relevant die door Simon en Feeley gebracht zijn onder de noemer ‘*new penology*’. Deze stroming heeft sinds de jaren 1990 veel terrein gewonnen, niet enkel op het gebied van het strafrecht, maar ook – en misschien nog wel meer – op het terrein van preventieve, bestuursrechtelijke maatregelen, zoals de VOG. De *new penology* (Feeley & Simon 1992) wordt gekenmerkt door drie belangrijke verschuivingen in de uitvoering van risicopreventiebeleid: 1) van een individuele aanpak naar het managen van risicogroepen, 2) van klinische diagnoses naar een nieuw

risicodiscours, en 3) van traditionele (externe en sociale) doelen van criminaliteitsbestrijding – zoals rehabilitatie – naar systeemgeoriënteerde, interne doelen. Ten slotte is op mesoniveau tevens een verschuiving in gang gezet van risicopreventie op centraal niveau, dat willen zeggen door de overheid, naar risicopreventie door verscheidene publieke en private actoren, hetgeen door Garland (2001) een *responsabiliseringsstrategie* wordt genoemd. Het is dus van belang dergelijke ontwikkelingen en de impact daarvan op de re-integratiekansen van ex-veroordeelden te bestuderen in de praktijk.

Macroniveau. Het handelen van actoren op mesoniveau wordt, op zijn beurt, weer bepaald door ontwikkelingen op macroniveau, die de cultuur en structuur van de samenleving als geheel vormgeven. Ontwikkelingen die worden geduid als een risicocultuur of risicosamenleving hebben eraan bijgedragen dat de focus van het preventiebeleid is verschoven van het managen van individuele relaties, naar het monitoren van populaties in zijn geheel (Garland 2001), zoals personen met een strafblad op de arbeidsmarkt. De overheid wordt tevens steeds meer – door politiek en media – aansprakelijk gesteld voor incidenten, waarna nieuwe preventiemaatregelen worden opgetuigd of de bestaande worden uitgebreid (De Graaf 2013). Een voorbeeld dat dit duidelijk maakt is de Amsterdamse zedenzaak uit 2010: sinds uitkwam dat één medewerker van een kinderdagverblijf tientallen kinderen had kunnen misbruiken geldt voor alle medewerkers in de kinderopvang dat zij onderworpen worden aan een continue screening. De overheid dekt zich op die manier niet alleen in tegen primaire risico's – dat wil zeggen directe bedreiging van de veiligheid – maar ook tegen secundaire risico's – dat wil zeggen falend overheidsoptreden, dat de belofte om incidenten te voorkomen niet waarmaakt (De Graaf 2013). Tot slot kan worden gezegd dat de verschuiving in verantwoordelijkheden (responsabilisering) van het niveau van de overheid naar actoren en belanghebbenden op lager niveau (bijvoorbeeld brancheorganisaties) samenwerkingsverbanden heeft doen ontstaan die door Schuilenburg (2015) worden gekarakteriseerd als *veiligheidsassemblages*. Deze assemblages worden bij uitstek gekenmerkt door fluïde en dynamische relaties tussen de verschillende lagen. Bijgevolg kan het zo zijn dat veiligheidsbeleid tot onvoorspelbare uitkomsten leidt, omdat deze niet waren voorzien of vastgelegd in officieel beleid. De onderlinge relaties binnen een assemblage kenmerken zich vaak door een gebrek aan een heldere visie, duidelijke regulering en begrenzing van bevoegdheden. Vornoemde ontwikkelingen hebben mogelijk een bijdrage geleverd aan, dan wel de omstandigheden geschapen voor de sterke popularisering en proliferatie van preventieve screeningsinstrumenten als de Verklaring Omtrent het Gedrag.

Juridisch kader

Binnen het juridisch kader is het van belang het begrip 'strafblad' nader te definiëren, waarbij wet- en regelgeving omtrent het registreren, bewaren en verspreiden van justitiële gegevens relevant zijn. Interessant is het Nederlandse

regime daarbij af te zetten tegen dat van andere landen in continentaal Europa en dat van de Verenigde Staten. Wat allereerst opvalt is dat het Nederlandse Justitiële Documentatie Systeem (JDS) een veelheid aan informatie omvat – die tevens wordt betrokken bij antecedentenonderzoek. In tegenstelling tot andere landen gaat het niet alleen om veroordelingen, maar ook om transacties, septs en zelfs verdenkingen. Het Nederlandse systeem verschilt daarnaast van dat van andere landen doordat het aantal externe partijen dat toegestaan is informatie hieruit op te vragen zeer beperkt is. In veel landen kan de betrokkene zelf een kopie van zijn strafblad opvragen, terwijl dit in Nederland niet kan teneinde te voorkomen dat werkgevers zichzelf (via de betrokkene) alsnog direct inzicht kunnen verschaffen in de justitiële documentatie van potentiële werknemers.

Uniek aan het Nederlandse systeem is dat in de meeste gevallen dus alleen de overheid deze informatie kan inzien en als zodanig voor de werkgever een inschatting maakt of iemand wel of niet geschikt is voor een specifieke functie. Het is tevens uniek dat deze screening wordt uitgevoerd door een bestuursorgaan – te weten screeningsautoriteit Justis – dat onderdeel uitmaakt van het ministerie van Veiligheid en Justitie. Een voordeel van dit systeem is dat de persoonlijke levenssfeer van ex-veroordeelden zeer sterk wordt gewaarborgd. Een nadeel is dat afgifte van VOG's aan politieke gevoeligheid en druk onderhevig is, aangezien het een onderdeel vormt van het preventiebeleid van het ministerie van Veiligheid en Justitie. Ten slotte is uniek aan het Nederlandse systeem dat vanwege het sterk preventieve oogmerk van dit instrument geen beperkingen worden gesteld aan welke partijen hiervan gebruik mogen maken; een VOG-aanvraag wordt in behandeling genomen voor iedere al dan niet betaalde werkrelatie. Mede als gevolg hiervan heeft de VOG zich tot een ongebreideld screeningsinstrument kunnen ontwikkelen, zoals blijkt uit het feit dat het aantal VOG-aanvragen sinds 2004 ieder jaar fors toeneemt.

Waarin Nederland ten opzichte van andere Europese landen weer gunstig afsteekt, is dat relatief korte terugkijktermijnen gelden. Voor jongeren onder de 23 die geen zeden- of ernstig geweldsdelict hebben begaan bedraagt die termijn twee jaar. In overige gevallen bedraagt de terug te kijken periode meestal vier jaar. Dit betekent dat op het moment van aanvraag slechts vier jaar wordt teruggekeken op het strafblad. Een veroordeling of andere registratie in de justitiële documentatie van meer dan vier jaar geleden kan dan niet tot afwijzing van de VOG leiden. Voor zedendelicten, waaronder verkrachting, ontucht, aanranding en bezit van kinderpornografie, wordt echter een uitzondering gemaakt; hierbij wordt de terugkijktermijn niet in duur beperkt. Ook voor functies waarbij een hogere integriteit is vereist is de terugkijktermijn soms langer. Ten slotte moet hierbij wel worden opgemerkt dat ook al gelden relatief korte terugkijktermijnen in Nederland, dit niet betekent dat ex-veroordeelden er relatief gunstig vanaf komen. De VOG wordt immers voor bijzonder veel functies (zowel in de publieke als de private sector) aangevraagd, terwijl in andere landen een antecedentenonderzoek slechts voor bijzonder gevoelige functies wordt uitge-

voerd. De reikwijdte van de beperkende maatregelen die Nederlandse ex-veroordeelden kunnen treffen bij hun re-integratie op de arbeidsmarkt, lijkt op het eerste gezicht dus aanzienlijk.

Integriteitsscreening in een risicosamenleving

Het zich steeds verder uitbreidende gebruik van de VOG-screening kan door een aantal ontwikkelingen op macroniveau worden verklaard. Zo wordt in de 21^e eeuw de overheid steeds meer verantwoordelijk gehouden voor incidenten, waardoor de focus van het integriteitsbeleid is verschoven. Het was niet langer gericht op bescherming *tegen* de overheid (tegen o.a. corrupte ambtenaren) maar op bescherming *door* de overheid (van kwetsbare groepen in de samenleving). Het risicodenken dat volgens De Graaf begin deze eeuw zijn intrede deed in Nederland, leidde tot een nieuwe risicocultuur en nieuwe praktijken, die “veel meer dan voorheen rekening hielden met ‘schuldvraag’ en politieke ‘schadeclaims’” (De Graaf 2013: 164). Verschillende ontwikkelingen binnen het preventiebeleid wijzen erop dat de overheid zich steeds meer profileert als een onderneming die succesvol risico’s managet.

Tegelijkertijd worden verantwoordelijkheden gedeeld met andere (private) partijen, zodat de veiligheidsassemblages die hiermee ontstaan zichzelf in rap tempo ontwikkelen zonder dat duidelijk kaders, richtlijnen en doelen gelden ten aanzien van gewenste uitkomsten in termen van voorkomen van criminaliteit dan wel rehabilitatie-idealen. We zien dit terug in het gegeven dat de overheid de inzet van het VOG-instrument heeft vrijgegeven, waardoor iedere werkgever screeningsautoriteit Justis kan verzoeken een integriteitsscreening te verrichten. Voor iedere (on)betaalde werkrelatie wordt een onderzoek naar het gedrag van een persoon volgens de beleidsregels noodzakelijk geacht, waar eerst nog gold dat er een zeker maatschappelijk risico aan de functie verbonden moest zijn. Er wordt dus geen drempel opgeworpen in de zin van dat er een ‘serieus risico op serieuze schade’ moet zijn, het criterium dat in de penologische literatuur wordt aangelegd om dergelijke beperkende maatregelen te rechtvaardigen (Boone 2012). Door geen grenzen te stellen aan de inzet van dit instrument is elk bedrijfsrisico – hoe beperkt ook – verworpen tot een maatschappelijk risico, waarvoor een antecedentenonderzoek moet worden opgetuigd (Kurtovic 2012b).

Dit geldt eens te meer nu de VOG – vaak als gevolg van serieuze incidenten – voor een toenemend aantal beroepen wettelijk verplicht wordt gesteld en daarnaast een nieuwe vorm van ‘continu screenen’ is geïntroduceerd, die allereerst gold voor de taxibranche (2011) en vervolgens ook voor de kinderopvang (2013). Door beleidsmedewerkers van het ministerie is de vraag opgeworpen in hoeverre de overheid een “U vraagt, wij draaien”-beleid voert. Deze tot zelfreflectie aanmoedigende vraag lijkt echter tot op heden niet te hebben geleid tot enige begrenzing van de reikwijdte van het instrument. De staatssecretaris heeft juist recentelijk voorstellen gedaan tot nieuwe toepassingen hiervan, bij-

voorbeeld om bij functies waarin iemand van ‘onbesproken gedrag’ moet zijn, de VOG te kunnen weigeren op basis van uitsluitend politiegegevens. Ook kan het instrument in de toekomst worden ingezet om de integriteit van potentiële huurders te beoordelen; kunnen zij geen VOG overleggen, dan mag de gemeente hen weren uit bepaalde probleemgebieden. Tot slot lobbyt de staatssecretaris op internationaal niveau om naar Nederlands voorbeeld een internationaal coördinatiepunt op te richten voor het afgeven van een ‘*International Certificate of Character*’.

Recent onderzoek heeft echter aangetoond dat het netto effect van de VOG (de mate waarin door weigering van de VOG toekomstige delictplegers worden geweerd uit bepaalde banen) beperkt tot zeer beperkt is (Kruize & Gruter 2016). Dit wordt gedeeltelijk toegeschreven aan het effect van zelfselectie, wat inhoudt dat mensen die verwachten niet voor een VOG in aanmerking te komen, vermijden deze aan te vragen. Al met al lijkt het effect van de zo goed als één miljoen aanvragen per jaar dus slechts een spreekwoordelijke druppel op een gloeiende plaat te vormen. Bovendien geldt dat hoewel de VOG weliswaar ex-delinquenten weert uit bepaalde sectoren, daarmee niet vaststaat dat na een VOG-weigering helemaal geen delicten meer (kunnen) worden gepleegd. In ieder geval kan niet worden geclaimd dat hiermee daadwerkelijk een veiliger samenleving wordt bewerkstelligd. De omvangrijke inzet en promotie van dit screeningsinstrument op tal van nieuwe terreinen lijkt zodoende naast primair risicomanagement (het bestrijden van het eigenlijke risico) vooral opgetuigd te worden vanwege secundair risicomanagement (het afdekken van bestuurlijk falen). Om met de woorden van De Graaf te spreken zijn hiermee “alleen de schijn van beheersing en de bestuurlijke dekking beter geregeld”, terwijl “daarmee het primaire risico natuurlijk geenszins beter onder controle is gebracht” (2013: 159).

Rol van re-integratieprofessionals

Op mesoniveau staat de rol van re-integratieprofessionals centraal. Zij opereren binnen de structuren van het beleid dat op macroniveau wordt vormgegeven en geven hieraan uitvoering binnen de re-integratietrajecten die zij doorlopen met ex-veroordeelden. Hun interactie met individuele ex-veroordeelden is dus van belang voor het beantwoorden van de vraag welke impact het hebben van een strafblad heeft op re-integratie van ex-veroordeelden. Allereerst kan worden gesteld dat het vergroten van vaardigheden (cognitieve of arbeidsvaardigheden) weinig zinvol is indien er geen mogelijkheden worden gecreëerd deze vaardigheden om te zetten in praktijk (McNeill, Farrall, Lightowler, & Maruna, 2012: 9).

Gebleken is dat re-integratieprofessionals, waaronder reclasseerders en maatschappelijk werkers, de VOG-procedure echter vaak als een ‘black box’ ervaren en – bijgevolg – niet op structurele basis een rol van betekenis hierin spelen. In de VOG-procedure is geen vaste rol aan deze professionals toe-

bedeeld, maar zij eigenen zich deze dus ook niet standaard toe, bijvoorbeeld door het inbrengen van deskundigenadviezen of onderbouwde risicotaxaties. De houding van re-integratieprofessionals – die uit de interviews met hen naar voren kwam maar die ook in de door de jongvolwassenen geuite frustraties te horen was – lijkt zich met name te kenmerken door ambivalentie en soms passiviteit. Deze houding kan het best worden beschreven als *interpassiviteit* (Zizek 2006), wat inhoudt dat zij hun verantwoordelijkheden niet actief oppakken maar overlaten aan andere partners op het gebied van criminaliteitspreventie.

Deze interpassiviteit bleek bijvoorbeeld uit interviews met werkgevers en scholen. De redenen die dergelijke partijen gaven voor het niet toelaten van jongvolwassenen tot een baan of opleiding indien zij niet over een VOG beschikten, bleken zij opvallend vaak buiten hun eigen verantwoordelijkheid te leggen. Behalve dat de VOG steeds vaker wettelijk verplicht is gesteld – waar zij niet onderuit kunnen – kan deze verplichting eveneens voortkomen uit afspraken met ‘stakeholders’ (bijvoorbeeld Defensie of Luchthaven Schiphol) dan wel uit overkoepelend intern beleid. Soms werd echter ook stug vastgehouden aan het VOG-vereiste vanwege het risico dat men loopt om aansprakelijk te worden gehouden op het moment dat er iets ‘misgaat’ en de media een schuldige zoeken.

De beoordelaars van Justis, tot slot, kijken vaak slechts naar statische factoren als de hoeveelheid en ernst van de delicten en de tijd die is verstreken, omdat dit de meest harde criteria zijn om een beslissing op te baseren. Daardoor blijft het voor aanvragers echter onzeker of en hoe hun ‘bewijzen van goed gedrag’ zullen worden meegewogen. De huidige procedure is weinig responsief en houdt geen rekening met de symbolische waarde van rehabilitatierituelen (Maruna 2011), waarbij het van belang is dat na het succesvol doorlopen van een re-integratietraject (zoals het afronden van een opleiding, het verrichten van vrijwilligerswerk of het verzamelen van positieve referenties van werkgevers) een ‘schoon strafblad’ in combinatie met een baan aan de horizon gloort.

Onzichtbare obstakels

Vervolgens is het van belang te bestuderen welke praktische obstakels jongvolwassenen tegenkomen bij het aangaan van een werkrelatie of het volgen van een opleiding. Het is allereerst opvallend te noemen dat jongvolwassenen niet goed weten welke informatie hun ‘strafblad’ omvat. Een veelvoorkomend misverstand is dat alleen ernstige delicten (waarbij sprake was van geweld of waarop detentie is gevolgd) worden geregistreerd. Ook denken zij dat dit strafblad maar beperkt bewaard blijft – in ieder geval veel korter dan de officiële bewaartermijnen en soms ook korter dan de terugkijktermijnen die gelden voor afgifte van de VOG. Als ze eenmaal zijn geconfronteerd met het feit dat zij nog steeds een strafblad hebben, doordat dit na het aanvragen van een VOG tot een afwijzing leidde, veronderstellen zij vervolgens dat zij hier nog lange tijd last van zullen houden. De onbekendheid met wat er wanneer in het justitiële

documentatiesysteem wordt geregistreerd en op welke wijze en voor hoelang dit vervolgens een rol speelt in een VOG-procedure leidt tot het ervaren van een diepe onzekerheid met betrekking tot de bijkomende gevolgen van straf die op de loer liggen.

Deze gevolgen kunnen namelijk onverwacht de kop opsteken nadat de jongvolwassenen reeds een werkrelatie zijn aangegaan. Het VOG-beleid sluit de mogelijkheid uit dat iemand op voorhand een VOG kan aanvragen: de werkgever moet het aanvraagformulier invullen, aangeven op welke functieaspecten iemand gescreend moet worden, en het vervolgens ondertekenen. Potentiële werknemers zullen dus doorgaans eerst zijn aangenomen voor de baan – en met enig regelmaat ook al aan het werk zijn – voordat het aanvraagformulier dient te worden ingeleverd en vervolgens de VOG dient te worden overgelegd.

Van de jongvolwassenen geeft een aanzienlijk deel (19 van de 31) te kennen te maken te hebben gehad met uitsluiting van werk naar aanleiding van een antecedentenonderzoek. Een kleiner deel (8 van de 31) had te maken met uitsluiting van een opleiding. De jongvolwassenen komen daarnaast echter ook met voorbeelden waarbij een eventuele strafrechtelijke achtergrond niet ter sprake is gekomen tijdens een sollicitatieprocedure (en geen VOG werd gevraagd). In enkele gevallen vertelden jongvolwassenen zelf proactief over hun verleden, weliswaar zonder daarbij alle details te vermelden. Voor deze strategie wordt enkel gekozen als zij zich niet schamen voor hun (vaak beperkte) strafrechtelijke verleden en zij verwachten dat hun ondanks dat verleden een tweede kans zal worden geboden. Ook opteren zij hier soms voor als zij weten dat een VOG-screening in het verschiet ligt en zij niet later – als blijkt dat ze de VOG niet kunnen overhandigen – alsnog de laan uit willen worden gestuurd.

De onzekerheid die dit proces teweegbrengt wordt vergroot doordat iedere werkgever in beginsel een integriteitsscreening kan laten uitvoeren. Hierdoor is het voor hen onmogelijk op voorhand uit te sluiten dat (na het aangaan van de baan) het VOG-vereiste ineens om de hoek komt kijken. Nu het voor jongvolwassenen vaak onbekend is of en, zo ja, welke bijkomende gevolgen er kleven aan een eerdere veroordeling, kan worden gesteld dat sprake is van onzichtbare obstakels in hun re-integratieproces, ofwel van ‘onzichtbare tralies’. Immers, de onzekerheid die dit creëert, belemmert hen zeer in hun bewegingsvrijheid op de arbeidsmarkt.

Stigma

Vervolgens is van belang te bestuderen in welke situaties jongvolwassenen een stigma ervaren, hoe zij dit persoonlijk beleven en welke gevoelens daarbij een rol spelen. Het blijkt vaak niet alleen om een geanticipeerd stigma te gaan, aangezien veel jongeren zelf reacties van uitsluiting hebben ervaren tijdens hun re-integratieproces. Vooral de VOG wordt veelal als een onoverkomelijk obstakel beschouwd. Zij noemen dan ook geregeld dat zij hierdoor dubbel gestraft worden.

Uit de verhalen van de jongvolwassenen blijkt bovendien dat zij de rol van re-integratieprofessionals als ambivalent beschouwen. In ieder geval ervaren zij niet altijd voldoende steun van hun begeleiders als het gaat om het managen van verwachtingen en hoe zij kunnen omgaan met processen van stigmatisering. Sommigen benoemen expliciet dat zij het gegeven dat zij op een lijst van ernstige veelplegers zijn geplaatst als bijzonder stigmatiserend ervaren. Net als bij VOG-procedures ervaren zij de consequenties die dit met zich brengt (scherper in de gaten worden gehouden door de politie of meer intensieve en verplichte deelname aan re-integratietrajecten) als ‘onzichtbare’ bijkomende gevolgen van hun justitiële verleden, welke hen onverwacht boven het hoofd blijken te hangen. Zij ervaren dat zij in dit proces zijn overgeleverd aan het oordeel van professionals en dat zij zelf nauwelijks invloed kunnen uitoefenen op verwijdering van een dergelijke lijst.

Hetzelfde wordt ervaren in het kader van de VOG-procedure, waarbij het voor hen evenzeer onduidelijk is wanneer er voldoende tijd is verstreken op basis waarvan het door hen getoonde positieve gedrag op waarde zal worden geschat. Deze procedure kan om die reden worden gekenmerkt als passief (in plaats van actief en beloning-georiënteerd) rehabilitatiebeleid. Responsief beleid, daarentegen, biedt ruimte aan individuele verworvenheden en treedt signalen van actieve re-integratie (*desistance signalling*) tegemoet met het creëren van mogelijkheden ten aanzien van het verkrijgen van een baan of opleiding. Op deze wijze wordt ervoor zorggedragen dat jongvolwassenen niet onnodig worden belemmerd in het succesvol re-integreren in de samenleving.

Zelfuitsluiting en arbeidsmarktpositie

Dit onderzoek heeft voorts een belangrijke dynamiek blootgelegd die het gevolg is van een steeds meer uitdijend systeem van preventief screenen voor toegang tot banen – en zelfs voor toelating tot opleidingen. Veel jongeren vertellen dat zij er weleens voor hebben gekozen zichzelf – op voorhand – uit te sluiten van werk of opleiding, uit angst door de werkgever of school persoonlijk de deur te zullen worden gewezen. Persoonlijke afwijzing is wat zij koste wat kost willen voorkomen.

Uit hun verhalen blijkt dat zij zich ervan bewust zijn dat de beperkingen op de arbeidsmarkt hooguit voor een bepaalde periode gelden, maar zij weten doorgaans niet hoe lang dit exact duurt en kunnen dus onverwacht tegen beperkingen aanlopen. Zo weten zij bijvoorbeeld niet dat de terugkijktermijn van vier jaar pas gaat lopen vanaf het moment van veroordeling en niet reeds vanaf het moment van het plegen van een delict. Voorts geldt dat, ook al begrijpen zij dat een VOG-vereiste niet voor alle beroepen geldt, zij toch grote moeilijkheden ervaren tijdens het proces van zoeken naar werk, bijvoorbeeld omdat dit vereiste niet altijd al in de vacature of tijdens het sollicitatiegesprek wordt vermeld.

Zij vermijden daarom nog liever te solliciteren naar een baan dan dat zij naderhand geconfronteerd worden met persoonlijke afwijzing en hun baan noodgedwongen moeten verlaten. Als zij wel een baan hebben gevonden waarbij het strafblad of de VOG niet aan de orde kwam, beschouwen zij dit als ‘geluk hebben’. Een deel van jongvolwassenen blijkt erg gevoelig te zijn voor negatieve, stigmatiserende sociale reacties en internaliseert deze, waarna zij negatief over zichzelf gaan denken (“niemand wil me hebben”, “ik word nergens geaccepteerd”). En soms menen zij dat zij geen nieuwe kans verdienen, waardoor hun motivatie en hoop voor de toekomst verdwijnen (“ik heb de hoop min of meer opgegeven”, “ik word toch weer teleurgesteld”).

Zelfuitsluiting blijkt van toepassing te zijn op bepaalde ‘droombanen’ die de jongvolwassenen het liefst zouden willen najagen, maar waarop zij de hoop hebben opgegeven vanwege de VOG-verplichting. Hierbij komt opvallend vaak het werken als taxichauffeur, als beveiligers, bij defensie of in de zorg voor – banen waarvoor een VOG ofwel wettelijk verplicht is ofwel onderdeel vormt van overkoepelend, vaststaand beleid (dit geldt bijvoorbeeld voor de meeste zorginstellingen). Vanwege hun ervaringen met uitsluiting van werk en ook vanwege zelfuitsluiting, blijkt het voor veel jongvolwassenen een strijd om gemotiveerd te blijven in het proces van werk zoeken. Zij ervaren vaak dat de enige banen die zij kunnen krijgen banen zijn die ‘niemand anders wil’. Dit zijn tweederangsbanen, die bestaan uit zwaar fysiek werk, lange shifts of nachtwerk en die geen toekomstperspectief bieden omdat alleen tijdelijke contracten worden geboden. Zij komen dus wel ergens aan de bak, maar zeker niet op een positie die hun voldoening geeft dan wel de stabiliteit biedt die zij zo hard nodig hebben om een bestendige toekomst op te bouwen.

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Appendix 1

Short introduction to the respondents

This information is primarily based on the respondent's personal accounts of their personal and criminal background, as well as information provided by reintegration professionals.

Abdel (20) had been convicted for several types of offences, including robbery, burglary, assault and many cases of driving without licence. He had been hanging out on the streets a lot and participated in a delinquent youth group. His parents had forced him to leave home because of the trouble he caused them, so he had also lived on the streets for some time. The local authorities had placed him on a list of 'most notorious' young repeat offenders. After spending time in prison, he married and had a baby. He is trying to make ends meet by accepting two temporary jobs at the same time, as supermarket stocker and as kitchen staff. His dream job is to start his own business as a car or scooter salesman. He said he just loves cars, especially driving cars, that is sheer pleasure to him. Therefore, he also attempted to start his own enterprise as a courier for the Dutch Postal Service or to work as chauffeur, yet he was unable to pass the criminal background screening that is required for these jobs.

Ajouad (21) is a young adult with a Moroccan background. His father died when Ajouad was young. At approximately 14 he was expelled from school and started hanging out on the streets, meeting with delinquent youth who uses to hang out there as well – in their disadvantaged neighbourhood – and starting to display deviant behaviour (e.g. driving without a licence etc.). He never finished school, and his behaviour worsened, until he was ultimately sentenced to imprisonment for several instances of theft. After that, he started to change his life, and moved out of his old neighbourhood, no longer seeing his old friends. At age 18, the only thing he wants to do (in order to make a living) is to become a taxi driver. At age 20 he applies for a certificate for the first time. His first and second request have been refused, even after several appeals. At age 23 he applied for a third time and – due to lapse of time – it was issued to him.

Aziz (24) is severely addicted to alcohol and drugs. He is homeless and lives either on the streets or in shelter homes. He has been convicted of small crimes, such as theft (of bottles of liquor) and assaults, which were probably related to his being under the influence of alcohol or drugs. He does not want to accept any form of social support that is offered to him, such as psychological help, medicine and social assistance benefits. He instead opts to continue his current way of living.

Bryan (27) had been convicted once for participating in a burglary and was sentenced to community service. Hence, he has difficulty finding a job. According to his probation officer he is very positive and motivated to find a job, but he is also somewhat insecure. Bryan has been excluded from several jobs, among which a job in passenger transport, because he could not pass a criminal record screening. Since he has only short-term, low-paid jobs, he cannot afford to live on his own, so he lives with his mother. He has three children, but is unable to sustain them.

Daniel (24) was following a study programme to become an air traffic controller (his dream job) when he was convicted for threatening and stalking his girlfriend (which resulted in two short community services). The girlfriend he had stalked happened to be his classmate, as they both followed the same study programme. He was expelled after school became aware of the conviction. The criminal record shattered his dream of working at Schiphol Airport. He once applied for a job at the airport through an employment agency, but he could not pass the background screening. As a result he felt conspicuous, so he started seeking only jobs that would not require a certificate – which took him some time. Eventually, he obtained a job at a car leasing company for which a background check was not required.

Darryl (25) had been imprisoned several times for several offences: burglary, robbery, bribery etc. The local authorities had placed him on a list of ‘most notorious’ young repeat offenders. During the research period he was re-arrested and placed in pre-trial detention on suspicion of involvement in sexual exploitation of women. He has had a few temporary jobs during the time he was out of prison. In this period, his supervisors were very positive about his developments. They thought he was going to make it and would really move forward in his life. He had been offered employment, housing and even education. Darryl claimed that, despite the help he got, his financial situation had still been bad. He had worked hard, but something went wrong with payment of his salary. Because his job was arranged by the municipal authorities, they had to provide him with his earnings. The municipal officers acknowledged that something went wrong with the payments back then, which had a negative impact on him.

Delano’s (22) parents divorced during his teenage years, and they both went back to their country of origin, leaving him alone, without a place to come home to. He suffered from serious addictions and was homeless for several periods of his life. He has been convicted for assaulting his girlfriend on two occasions. Both times resulted in a short community service sentence. At some point, he started to build up a relationship of trust with a street corner worker, who has helped him get his life back on track. He has followed several treatment and reintegration programmes. He stopped smoking joints. With the help of the municipality he started a training programme to become a so-called ‘lay expert’ in, for example, a mental health institution. As he had been refused a certificate before, he was afraid it would not be issued to him. Yet, with the help of several professionals he managed to submit a written opinion and, as a result, the certificate had been issued to him for working with people suffering from severe mental health problems.

Denzell (30) had spent time in prison for robbery. Already in his childhood he has learned to sell drugs, because it was stocked in his mother’s home. As he has two young children, he has been willing to participate in several reintegration programmes after

being released from prison to get his life back on track. Nevertheless, it is difficult for him to live a disciplined life of working five days a week and he struggles to maintain employment. His possibilities are furthermore restricted, because for some jobs he applies for a criminal record screening is mandatory and only two years have passed since he was released from prison.

Fadel (23) had been convicted once for chopping hemp plants. Due to this conviction he was unable to pass the criminal background screening required for becoming a security officer (for which he was qualified). He let go of his ambition to become security officer and instead obtained a temporary job as a courier, yet again he faced problems since he could not provide a certificate of conduct due to his conviction. Nevertheless, he managed to work for different companies as a parcel courier, for which he is working days and nights. His ambition is to start his own enterprise as a driving instructor, for which a certificate is not required. After a year he qualified for driving instructor and succeeded in starting his own enterprise.

Glenn (24) had been convicted for several cases of burglary and assault. After an attempted homicide, he had to spend time in prison. There he decided he wanted to settle down after his release. Now, he is living with his wife and their young child. After following a special reintegration programme offered by the municipal authorities, and with their financial support, he had been able to start his own enterprise, together with other boys who had previously lived on the streets. Their task is now to intermediate between local institutions that offer social support and youngsters living on the streets.

Jeremy (30) had been imprisoned several years for armed robbery. After his time in prison, he turned his life around. He currently has two children. He did several kinds of temporary, low-paid jobs. He had once been refused to start a training programme due to his criminal background. Nevertheless, he was very motivated so he managed to start his own enterprise. Nonetheless as it is hard for him to sustain his family this way, so they mostly depend on his wife's earnings.

Jeroen (25) been sentenced to 66 hours of community service for three cases of theft. Moreover, he has been sentenced to a community sentence of 64 hours because of possessing a weapon and drugs. Due to these two convictions he could not pass a criminal record screening that is required for his study programme in social work. Consequently he was expelled from school. With help of his parents and a lawyer he made objections against the refusal and consequently he passed the screening, so he was able to continue his study.

Lucas (18) was convicted of theft and bribery and sentenced to short community services. He is also suspected of hemp cultivation and possessing weapons. He had a difficult childhood, due to the fact that he was placed in a foster care institution. There he met other boys with behavioural problems with whom he committed offences. At age 18, he moved back to live with his parents and to build up his life from there. First, he wanted to start a training programme to join the armed forces but that turned out to be difficult due to the background screening that was required to enter this training. Subsequently, he started a training programme to become a car salesman, which he is very enthusiastic about. He also obtained a part-time job at a car dealer.

Milad (21) had been convicted three times – ones for a traffic offence and two times for threatening – which resulted in only very small sentences. He had also been homeless for a long period and suffered from serious depression. During this period he lived with people who maintained a criminal lifestyle. Eventually, he accepted help of a reintegration organisation and now is trying to get his life back on track. He is working at a bar, making long (night) shifts, while receiving only little earnings. He is also struggling to find long-term housing. His boss knows of his past, but is willing to help him out and support him throughout his struggles. Milad's dream job is to become a taxi driver, yet this turned out to be impossible, as he could not pass a criminal record screening.

Mitchell (20) has been imprisoned for approximately ten charges of theft. His father has also spent parts of his life in prison, as has the new boyfriend of his mother. He lives with his mother and her boyfriend and spends most of the days smoking joints, playing video games and hanging out with (deviant) friends. He is not very motivated to find employment, or to turn his life around in general.

Mo (21) has been imprisoned for robbery. During his time in prison and after that, his family has paid for his expenses. Currently, his family is making him work hard for them – by working in the shops they own – in order to pay back what he has cost them. His strong family control seems to make him stressed, as it makes it difficult for him to meet with his old friends. He is not looking for a job to sustain himself, as he is receiving social assistance benefits.

Murat (23) has been in prison for approximately three years for having committed armed robbery. At a young age, his mother threw him out of the house, so he had to live with his father, who was seriously addicted. He grew up surrounded by drug addicts and men from the streets. He himself is addicted to smoking joint too. After his imprisonment, he was not motivated to participate in reintegration programmes. After his supervision ended, he moved back to his old neighbourhood, where he could still rely on his former network and his 'reputation'. As he receives social assistance benefits from the Government, he is not looking for a job, but instead he has reverted to his old habit of selling drugs.

Oussama (29) has served a prison sentence and has several kinds of convictions registered on his criminal record: burglary, robbery, fraud and forgery of money. He has not finished tertiary education, but he is convinced he is a talented salesman and is determined to start his own enterprise. According to his reintegration worker, he is very motivated, as well as disciplined. He follows online courses and, with financial help of the municipality, he is able to start his own online enterprise.

Patrick (26) has been convicted of sexual assault of a young girl when he was twelve years of age. He had been sentenced with a conditional sentence of three months juvenile detention. The assaults date from 15 years ago, yet the conviction 'popped up' when he accepted a job in passenger transport. He could not pass the criminal record screening that is required for this job, because a sexual offence generally bars jobs with one-on-one contact with people for twenty years. After making objections, he eventually passed the screening, but the job was no longer available. He kept struggling with finding stable employment and he and his girlfriend had to live at her parents' house since they were not able to make ends meet.

Precious (24) had been homeless for a short period of her early adult life and during that period she committed shoplifting and assault. Once she had to defend herself which resulted in being convicted for attempted homicide. After spending almost a year in prison, she slowly started to build a new life. Currently, she is living together with her boyfriend and child, and they are expecting a second one. First, she wanted to work as a volunteer in a home for elderly people, but she did not pass the criminal record screening. After waiting for more time to elapse, she started a training programme in order to be able to work in the care sector. At first, her criminal history seemed to hinder her to continue doing so. After making objections against the refusal of her certificate of conduct, with the help of several (reintegration) professionals, it had been issued to her.

Regillio (26) has lived parts of his childhood in his mother's country of origin. At the beginning of his teenage years his older brother brought him back to the Netherlands. Soon after, his brother died. Already at a young age he started committing crime. Once, he had to leave his job at the airport due to a criminal background screening, which he considered to be a negative turning point in and he claimed his life has gone downhill from that moment onward. Not only did he lose his job, but also his daytime activity, which resulted in him hanging out on the streets a lot and, consequently, committing crime. He has been convicted of several kinds of offences, among which violence, robberies, burglaries, drugs, fraud, and forgery and he had been imprisoned for a relatively long time after a shooting.

Riccardo (16) has a pending case in which he is suspected of theft. Another case, in which he was suspected of assault, had been dismissed. His dream is to be part of the armed forces, therefore he wants to participate in a training programme that allows him to work at the Defence Organisation. Yet, due to this pending case, he could not pass the criminal background screening. He has instead chosen to enter a training program in motor engineering.

Sabia (26) had been suspected of embezzling money (€15,000) from the shop where she had worked. After an – abnormally – long period of six years, the public prosecutor dropped the case. The reason for the dismissal of the case was that a (very) long period of time had elapsed. This pending case prevented her from obtaining different types of employment and also different types internships for her study programme, because she could not pass a criminal record screening.

Samet (26) has been convicted for two cases of speeding (for which he had to pay fines) and one case of money laundering (for which he was sentenced to a community sentence of 80 hours) in the last five years. More than five years ago, he was also convicted for assault and theft. As he has not finished tertiary education, he is able to obtain only temporary, low-skilled jobs, such as cleaner. His dream is to become a taxi driver. Yet, due to these three convictions he cannot pass the criminal background screening which is required for becoming a taxi driver. He applied for a certificate three times. At his third request, after one conviction had already 'expired' and another had almost expired, the certificate had been issued to him, and he started working as a taxi driver right away.

Shanice (25) is a mother of a two children (aged 4 and 5), convicted for assault and several cases of shoplifting. She wants to stop stealing, because she is afraid she will have to go to jail next time, while she has two young children to take care of.

However, she also has great debts. She accepted to participate in the statutory debt management scheme. She has not worked for about six or seven years. She could not work when her children were still little, so she hoped to find a job as soon as her youngest child starts attending primary school, yet this turned out to be difficult. Her dream job – security officer – would not be possible to achieve because of her criminal record.

Soufyan (22) was convicted to 32 months of imprisonment for a large-scale burglary that he committed together with his fellow perpetrators. As a young boy (14-15 years of age) he dropped out of school, saw no future for himself, and started to commit all sorts of offences. Once out of prison, he immediately accepted help from a re-integration programme that helped him enrol in a training programme (one day school, four days employment). He moved back in with his parents and still sees his old (deviant) friends who are living in the same neighbourhood, yet he is motivated to work hard to make a living. His dream job is to become a taxi driver, yet his certificate was refused, as too little time has elapsed since he was released from prison.

Tariq (21) has committed a very serious crime at a young age and was convicted for homicide. Since this time, he has also been convicted for several cases of robbery, assault, possession of a firearm, as well as traffic violations. He is currently trying to finish tertiary education and finding employment. Although he is noted as one of the ‘most notorious’ young repeat offenders and, therefore, receives extra supervision and support of reintegration workers, he severely struggles to start creating a stable life. He receives social assistance benefits, yet he also earns money illegally.

Vincent (20) has been detained for about one year due to bribery. During the time in which he committed the offence he was seriously addicted, as a result of which he has accumulated debts. After his release, he is motivated to make the best of his life and to participate in his re-entry programme. He was able to continue with his study programme. Also he moved back in with his parents. He has a girlfriend and a part-time job, which he found through his social network. He worries about the consequences of having a criminal record for obtaining an internship.

Youssef (22) had been convicted of several thefts, street robbery, threatening and selling drugs, after which the local authorities have noted him as one of the ‘most notorious’ young repeat offenders. Due to possible limited cognitive and emotional abilities, as well as behavioural problems, combined with smoking joints on a daily basis, it is very difficult for him to maintain employment. His reintegration worker is not sure he will ever be able to work without intense supervision.

Yushua (26) had spent five years in prison on the basis of an armed robbery conviction. After prison, he is determined to leave his life of crime behind him. Instead he has decided to do his best to finish the reintegration programmes in which he has been placed. In the eighteen months after his release, he has since found himself a wife and a job with which he is content. He first was motivated to become a social worker and start a training programme in social work. Since he heard from his reintegration worker that this would be impossible due to his background, he tried hard to find a job for which a certificate of conduct would not be required – in which he succeeded.

Zaid (21) had been released seven months ago after almost five years of imprisonment. He has had a troublesome youth as his dad used to molest him. At age 14, he was placed in a foster care facility and expelled from school. After that, things went downhill, as he started living on the streets and committing crime with other boys from his disadvantaged neighbourhood. He has committed all sorts of offences, including bribery, robbery, fraud and many assaults. Currently, he tries to generate money illegally by means of fraud. He has accumulated huge debts and sees no other way to tackle them.

Appendix 2

Topic list

<p>Personal background</p> <ul style="list-style-type: none">• Name• Age• Situation at home (partner, children)• Situation at home as a child• Background parents <p>Education</p> <ul style="list-style-type: none">• Secondary education• Tertiary education• Courses (via probation service or municipality) <p>Work experience</p> <ul style="list-style-type: none">• First job• Previous jobs• Part-time jobs• Internships• Volunteering <p>Financial situation</p> <ul style="list-style-type: none">• Current source of income• Debts <p>Job prospects</p> <ul style="list-style-type: none">• Satisfaction current job• Dream job• Concrete future plans• Action steps / how to get there <p>Contacts criminal justice system</p> <ul style="list-style-type: none">• First contacts• Types of offences• Types of punishments• Last contact	<p>Responses of employer(s)</p> <ul style="list-style-type: none">• Knowledge criminal background• Communication• Problems (types of jobs / education)• Reasons• Responses <p>Respondent's way of dealing</p> <ul style="list-style-type: none">• Experiences• How do other people see you• What other people think of you• Internal/External causes• Agency / motivation• Demotivating experiences• Encouraging experiences <p>Role social network</p> <ul style="list-style-type: none">• Family• Old friends• New friends• Professionals (reintegration) <p>Leisure time</p> <ul style="list-style-type: none">• Hobbies• Other interests• Habits (drugs, alcohol, going out, etc.)• Parenting?• What an ordinary day looks like• Happiness?
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Appendix 3

Interviews with professionals and/or parents

Respondent	Profession / Relation	Date
P1	Mother	28-04-2016
P2	Social worker	17-06-2015
P3	Probation officer	20-03-2014
P4	Municipal officer	20-05-2014
P5	Job coach	09-04-2014
P6	Probation officer	12-10-2015
P7	Parents	24-06-2015
P8	Father	07-10-2015
P9	Reintegration worker	15-10-2015
P10	Probation officer	29-10-2015
P11	Reintegration worker	14-10-2015
P12	Parents	26-09-2014
P13	Probation officer	14-08-2015
P14	Manager staff agency	14-08-2015
P15	Community police officer	07-04-2016
P16	Probation officer	02-03-2016
P17	Probation officer	11-04-2016
P18	Social worker	11-04-2016
P19	Probation officer	20-05-2015
P20	Reintegration worker	16-12-2015
P21	Job coach	26-04-2016
P22	Probation officer	14-08-2015
P23	Social worker	14-08-2015
P24	Probation officer	10-08-2016
P25	Reintegration worker	25-04-2016
P26	Educational expert	25-04-2016
P27	Job coach	14-12-2015

P28	Reintegration worker	16-12-2016
P29	Probation officer	04-02-2016
P30	Probation officer	18-04-2016
P31	Reintegration worker	16-12-2016
P32	Manager staff agency	29-02-2016
P33	Reintegration worker	20-10-2015
P34	Job coach	30-09-2015
P35	Mother	04-01-2016
P36	Team manager of a school	26-08-2015
P37	Parents	29-10-2016
P38	Education manager of a school	02-02-2016

Appendix 4

Codebook used for coding the interviews with the young adults

Characteristics	
	Gender
	Age
	Home situation
	Parents and siblings
	Children
	Country of birth
	Country of birth father
	Country of birth mother
	Education
	Part-time job
	Full-time job
	Previous jobs
	Seeking jobs
	Professional help in job seeking
	Dream job
	Source of income
	Volunteering
	Reintegration programme
	Offence: violence
	Offence: property
	Offence: drugs
	Offence: sexual
	Offence: traffic
	Amount of offences
	First offence as minor
	Imprisoned
	Time elapsed since last offence

	Addiction
	Debts
	Sports
	Hobbies
Obstacles	
	Definition criminal record
	Obstacle job:
	Obstacle job: certificate
	Obstacle education: knowledge criminal record
	Obstacle education: certificate
	No obstacle despite knowledge
	No obstacle, no knowledge
	Way of obtaining knowledge
	Reasons for exclusion from work
	Reason for exclusion from education
	Reason no exclusion
	Certificate required by law
	Other obstacles due to criminal record
	Found other job
	Found no other (qualitative) job
	Dream job – concrete action steps
	No dream job – only make a living
	Off-the-books work
	Actively searching jobs
	Unsatisfied with current situation
	Expectations: (in)eligible for certificate
	Expectations: second-rate jobs
	What friends say
	Offence committed during work
	Objections or appeal
	Offence-occupation connection
	Weighing of offence(s)
	Lapse of time
	Weighing of positive developments
	Weighing of references
	Role of reintegration experts

	Oral hearing
Stigma	
	Perceived stigma (group)
	Self-stigma
	Enacted stigma (actual rejection)
	Double stigma (ethnicity)
	Emotions
Consequences (position in society)	
	Explanation – Extern (NEG)
	Explanation – Extern (POS)
	Explanation – Global (NEG)
	Explanation – Global (POS)
	Explanation – Intern (NEG)
	Explanation – Intern (POS)
	Explanation – Specific (NEG)
	Explanation – Specific (POS)
	Explanation – Stable (NEG)
	Explanation – Stable (POS)
	Explanation – Temporary (NEG)
	Explanation – Temporary (POS)
	Protective factors
	Criminogenic factors
	Social capital
	Concealment
	Pro-active disclosure
	Self-exclusion
	Secondary deviance
	Deviancy amplification
	Motivation
	Agency
	Strain
	Network – professionals not supporting
	Network – professionals supporting
	Network – parents not supporting
	Network – parents supporting
	Network – role new friends

	Network – role old friends
	Network – helped to obtain job
	Cooperation among institutions, professionals
Rehabilitation	
	Recommendations – improvements
	Role models
	‘Statement of Demonstrated Behaviour’
	Clean slate
	Chances
	Perspective
	Rehabilitation ideals
	Credentials – Certificate of rehabilitation
	Re-naming
	Rituals – ceremonies
	Shorter ‘expiry’ periods
	Conditional certificate
Agents of reintegration	
	Managing Techniques <i>vs.</i> Close Interpersonal Relationship
	Performance indicated by System Output <i>vs.</i> External Social Norms
	Control of Internal Processes <i>vs.</i> Crime Control
	Techniques target Aggregates <i>vs.</i> Individuals
	Managing Dangerous Populations <i>vs.</i> Personal Transformation
	Evidence Based <i>vs.</i> Symbolic Measures
	Imaginary Threats
	‘Margizens’ (dangerous underclass)

Curriculum vitae

Elina van 't Zand-Kurtovic (1985) is both a criminologist and a lawyer. She received a Master's degree in Legal Research (*cum laude*) and in Criminology from Utrecht University. During her Master's programmes she obtained experience in different fields and practices of law. As Research Assistant at Utrecht University she was involved in qualitative research. As Assistant to the Public Prosecutor she was responsible for dealing with criminal cases. As Trainee at the Advisory Division of the Dutch Council of State she was involved in advising the Government on legislative proposals. From 2010 to 2017 she was employed as a paralegal at Van Oosten Lawyers in Amsterdam. She worked in both criminal and administrative cases, specialising in certificate of conduct cases. From 2013 to 2017 she carried out her PhD-research at the Willem Pompe Institute for Criminal Law and Criminology at Utrecht University, where she also taught advanced courses in criminological theories. Currently she works as Assistant Professor in Criminology at the Institute of Criminal Law and Criminology at Leiden University.

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