

Does Past Criminal Behavior Predict Future Criminal Behavior?

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Past behavior does not always predict future behavior, and all candidates with criminal histories should not be automatically denied licensure or employment as nurses. Instead, such candidates should undergo standardized psychological assessment, and a trained clinical professional should interpret the results. Integrating psychological theory and assessment into the licensure and employment decision-making process could benefit certain ex-offenders, potential employers, and society as a whole.

The notion that past behavior is a reliable predictor of future behavior seems to be widely accepted as fact. But trying to predict human behavior is complicated business, and this notion should not simply be accepted. It should be assessed and analyzed.

This article reviews a sample of the psychological literature available on this subject. The review is not intended to include everything written on the subject. Rather, it discusses key issues from a psychological perspective that may be helpful to nurse regulators as they consider licensure, reports of misconduct and disciplinary actions and to nurse managers regarding potential employment.

An understanding of the future implications of past criminal behavior from a psychological perspective can be useful to the nursing profession in that it offers a systematic, objective approach to decision making with regard to these issues. Regulators in particular can use psychological data and practices to base and substantiate their decisions for suitability on objective data and relevant research in the field. The literature clearly indicates that past behavior does not always predict future behavior, which suggests that under certain circumstances, individuals with criminal histories could be considered as candidates for a successful career in nursing.

Limitations of Predicting

Kurlychek, Brame, and Bushway (2006) point out that many organizations base their practices on the notion that past behavior predicts future behavior, citing examples from the fields of education, finance, and insurance. Specifically, Kurlychek et al. (2006) remind us that the field of education relies on an evaluation of past academic performance and standardized testing when granting entrance to college. The field of finance relies on bill-paying history and credit scores to grant a loan. The auto insurance industry keeps track of traffic tickets and accidents to

determine premium rates. The authors also point out that the criminal justice system has been guided by this notion at every stage of its process, from arrest, to sentencing, to determination of parole (Kurlychek et al., 2006).

However, many factors should be considered when attempting to predict behavior, particularly criminal behavior. These factors, which interact with each other, include personality, cognition, mental illness, and general risk. Even when one considers all the factors, predicting behavior with 100% accuracy is not possible. A person may be at risk for certain behaviors, but whether or not they are acted out depends on several influences. As Andrews and Bonta (2006, p. 782) suggest:

At any given moment, one's environment consists of a myriad of situations and ensuing choices. There may be temptations for crime in one's immediate situation as well as barriers to crime, events with emotional significance and access to non-criminal routes to obtain the same rewards as would be provided by a criminal act. The act that occurs in any given situation is a function of how the situation is defined and interpreted by the individual and the self-regulation that follows.

Role of Personality

All criminals are not alike. As Daley (1992, 1994) points out, each offender has his or her own distinct trajectory into the criminal justice system. For some, engaging in criminal acts is neither a reflection of criminal intent nor a desire to affiliate with a criminal lifestyle, but a result of a particularly distressing circumstance or mental state. By legal definition, anyone who breaks the law is considered criminal, but from a psychological perspective, not all people who have been arrested or convicted possess criminal-thinking processes or criminal personality traits. Thus, the question becomes a matter of distinguishing criminal thinkers, who have broken the law and will do so again if given

the opportunity, from noncriminal thinkers, who have broken the law but have no intention or desire to do so again.

People who will break the law again if given the opportunity likely possess traits of or the full-blown condition known as antisocial personality disorder (APD). The link between APD and criminal behavior is well established. Specifically, the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (*DSM IV-TR*) (American Psychological Association, 2000), a widely used manual for diagnosing mental disorders, defines APD with these criteria:

A) A pervasive pattern of disregard for the rights of others occurring since age 15, as indicated by three or more of the following:

1. failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest
2. deceitfulness, as indicated by repeatedly lying, use of aliases, or conning others for personal profit or pleasure
3. impulsivity or failure to plan ahead
4. irritability and aggressiveness, as indicated by repeated physical fights or assaults
5. reckless disregard for safety of self or others
6. consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations
7. lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.

B) The individual is at least 18 years of age.

C) There is evidence of Conduct disorder with onset before age 15.

D) The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or a manic episode.

People with APD are sometimes mistakenly referred to as psychopaths, but research shows that APD and psychopathy are distinct conditions (Gondolf & White, 2001). Psychopathy is a more severe form of APD. To be considered a psychopath, a person must experience a lack of remorse or guilt about his or her actions and demonstrate antisocial behaviors. According to Salekin, Rogers, Ustad, and Sewell (1998), only 15% to 30% of incarcerated offenders are psychopathic.

Still, APD is serious and accounts for a large portion of criminal offender types (Rogers, Sewell, & Cruise, 1998). In fact, studies confirm that antisocial personality traits, particularly chronic, negative affect and poor impulse control, can significantly and negatively impact the way a person perceives and interacts with the world, resulting in poor judgment and inappropriate behavior (Sevecke, Lehmkuhl, & Krischer, 2009). These people feel compelled to act out when angry, anxious, or irritable; they meet others and the world at large with tension and hostility. Furthermore, Gendreau, Little, and Goggin (1996) assert that

antisocial personality traits along with a history of substance abuse and mental illness, such as schizophrenia, bipolar disorder, or major depression, increase the chance of criminal activity.

Criminal Thinking

In addition to recognizing the role of affective states, impulse control, and mental illness, cognitive content or thinking process needs to be considered. Yochelson and Samenow (1976) suggest that criminal thinking is riddled with distortions and rationalizations made during the process of engaging in criminal behavior. Furthermore, research has found that violent criminals maintain cognitions of the world as a hostile place where violence is an accepted and necessary part of life that can, over time, be perceived as having positive benefits, such as increasing one's social status (Collie, Vess, & Smith, 2007). Some of the thinking errors made by criminals include pride, failure to consider injury to others, and lack of empathy (see Yochelson & Samenow, 1976, for a complete review). Of particular interest is Gonsalvez, Scalora, and Huss's finding (2009) that in addition to believing that violence is necessary and even beneficial at times, criminals tend to be highly confident about their ability to avoid the negative consequences of their behavior, even if they have been caught before. Thus, those who are confident about avoiding consequences and consistently fail to learn from past experiences are at greater risk for criminal behavior and recidivism (Gonsalvez, Scalora, & Huss, 2009).

These findings support what is known about personality disorders, confirming the idea that criminal behavior and criminal thinking are chronic and pervasive. By definition, personality disorders are a group of mental disturbances defined by *DSM-IV-TR* as "enduring pattern[s] of inner experience and behavior" that are sufficiently rigid and deep-seated to bring a person into repeated conflicts with his or her social and occupational environment. *DSM-IV-TR* specifies that these dysfunctional patterns are regarded as nonconforming or deviant by the person's culture and cause significant emotional pain and difficulties in relationships and occupational performance. Despite the problems caused by the disorder, the thoughts and related behaviors persist. Those who meet criteria for APD or psychopathy have enduring patterns of thoughts and behaviors that cause conflicts with their environment. These people are categorized as criminal thinkers.

Predicting Recidivism and Assessing Criminality

Though recent research by Elbogen and Johnson (2009) concluded that mental illness alone does not increase the risk of violence, they found that mental illness—such as schizophrenia, bipolar disorder, or major depression—combined with substance abuse does create an increased risk. These findings are particularly relevant when considering the compromising impact an underlying

mental illness has on an offender's ability to avoid recidivism. When APD is compounded by substance abuse and the symptoms and related conditions of mental illness, an offender's ability to avoid recidivism, consciously or unconsciously, is even more severely compromised. However, not all ex-offenders suffer from a personality disorder, substance abuse, or symptoms of mental illness and psychological assessment tools can help distinguish among types of ex-offenders and assess the risk of recidivism.

The ability to assess risk for future violence and criminal acts is vitally important to society as a whole and to potential licensors and employers as they attempt to assess risk involved with ex-offenders. The field of psychology has developed tools that assess psychopathology and related cognitions and behaviors with a significant reliability and validity. Among the many assessment tools developed, a small group stands out as exceptional for assessing criminality:

- Psychological Inventory of Criminal Thinking Styles (PICTS; Walters, 1995, 2002)
- Psychopathy Checklist-Revised (PCL-R; Hare, 1991, 2003)
- Historical, Clinical and Risk Management Scales (HCR-20; Webster, Eaves, Douglas, & Wintrup, 1995; see Table 1)

Clearly, data garnered from the PICTS, PCL-R, and HCR-20 would be exceptionally helpful to nurse regulators. Other tools used to assess potential behavior include integrity tests to evaluate conscientiousness, trustworthiness, and dependability and clinical personality tests, such as the Minnesota Multiphasic Personality Inventory (MMPI), to check for serious emotional instability. All psychological tests must be administered and interpreted by a trained professional, such as a licensed clinical psychologist. Candidates also can be asked to undergo a follow-up interview during which the psychologist can elicit more information, if necessary. The cost of these tests varies, depending on the fees of the psychologist. Some organizations hire a psychologist from a private firm or testing company; others have trained clinical personnel on staff.

Legal Issues Related to Testing and Employment Decisions

The tests mentioned above, including the PICTS, PCL-R, HCR-20, and MMPI, have been validated and are considered scientifically sound, and their results can be used as evidence in court proceedings (Moss, 2008). However, a host of legal issues must be considered when testing potential or current students or employees. The most significant arise from Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990. The Civil Rights Act clearly states that it is unlawful for employers to use any pre-employment tool that has a substantially negative impact on a protected subgroup, such as an individual of a particular race or gender, unless the tool can be shown to be job-related and consistent with business necessity. Tools that do have an adverse impact must be justified by validity evidence.

TABLE 1

Best Tools for Assessing Criminality

The **Psychological Inventory of Criminal Thinking Styles (PICTS)** is a well-researched instrument designed to examine criminal thinking styles considered "instrumental in protecting and maintaining a criminal lifestyle" (Walters, 2002, p. 278). Gonsalvez, Scalora, and Huss (2009) point out that this instrument is particularly useful because it "taps into different cognitive processes associated with criminal behavior" (p. 742). Further research has shown that the PICTS is also useful in predicting recidivism (Gonsalvez, Scalora & Huss, 2009; Walters, 2010), indicating a strong link between criminal thinking patterns and the outcome of criminal behavior.

However, when the PICTS is used alone to predict recidivism, it does have limitations. Specifically, "the PICTS does not incorporate any behavioral items and therefore, to improve the prediction of recidivism, a combination of cognitive and behavioral measures may be more useful" (Gonsalvez et al., 2009, p. 743). Consequently, the authors recommend using the PICTS with the **Psychopathy Checklist-Revised (PCL-R; Hare, 2003)** to improve prediction capabilities. The PCL-R is also a well-researched, widely used tool designed to measure the two components of psychopathy: personality and behavior. Numerous studies have found it to be a strong predictor of recidivism (Salekin, Rogers, Ustad, & Sewell, 1998; Walters, 2006). Gonsalvez et al. (2009) found that, when used together, the PICTS and the PCL-R are reliable tools for identifying criminal thinking and predicting recidivism.

The usefulness of the **Historical, Clinical and Risk Management Scales (HCR-20)** as a predictor of violent behavior has been demonstrated in a number of studies (Douglas, Ogloff, Nicholls, & Grant, 1999; Douglas & Webster, 1999; Grann, Belfrage, & Tengstrom, 2000; Strand, Belfrage, Fransson, & Levander, 1998). The HCR-20 was designed to evaluate clinical state as well as effectiveness of risk management strategies. Research revealed that the tool has a significant predictive ability, specifically in determining violent recidivism with mentally disordered populations (Gray et al., 2003).

Courts will judge on a case-by-case basis whether tests with a disparate impact can be used for employment purposes. They will weigh whether an invasive test is justified by appropriate business or societal interests in a given situation. According to the National Association of Professional Background Screeners (Moss, 2008), as a general rule, invasive instruments such as clinical personality tests are most likely to be justified when screening for safety-sensitive positions such as nursing. Clinical personality and integrity tests have consistently been shown not to have an adverse impact on a particular subgroup. In fact, personality and integrity tests have had an excellent record when subjected to civil rights claims.

Well-developed personality and integrity tests can be effective, objective, and fair in helping regulators handle misconduct,

determine disciplinary actions and develop policy. Should the nursing profession adopt the use of testing, the tests must be used appropriately and in a manner consistent with legal standards.

Collateral Consequence

Although people with criminal histories are more likely to offend in the future, the risk of re-offending declines as time passes. For example, Schmidt and Witte (1988) found with their forensic sample that recidivism rates began to approach zero after 5 years of follow-up. Furthermore, analysis of data on offenders from adolescence to age 70 shows that most offenders do desist, with the bulk of offenders not experiencing additional arrests after age 40 (Blokland, Nagin, & Nieuwebeerta, 2005; Laub & Sampson, 2003). The literature clearly suggests that the longer a person goes without re-offending, the more likely it is that he or she will not re-offend.

With that being said, the issue of *collateral consequence* needs to be raised. This legal term is used to describe legal restrictions placed on employing ex-offenders in certain types of jobs. Kurlychek et al. (2006) express concern for the ethics of collateral consequence, suggesting “they amplify punishment beyond the sanctions imposed by the criminal justice system” (p. 1102). This issue is particularly relevant to nursing because nurses are entrusted with the duty of taking care of people when they are often at their most vulnerable. And so the general question must be asked: Should people with criminal histories of any type be banned for life from careers in nursing? More specifically, if a person has a criminal history but does not suffer from a personality disorder, use criminal thinking, or have any risk factors, should he or she not be banned from a career in nursing?

Summary

The data presented suggest that the nursing profession should approach these questions in a manner similar to that used by the court system: Decisions should be made on a case-by-case basis. Further, decisions about hiring, misconduct, discipline, and policy should be based on objective, standardized data garnered from results of reliable and valid psychological testing that is recognized by the courts as such. Interpreting criminal justice information and determining its relevance without experienced assistance from trained professionals can be problematic and unfair. Instead, trained professionals should be used to assess ex-offenders. Along with considering the results from psychological tests, additional information should be considered, such as the length of time since the last offense on record and the nature and gravity of the offense, to aid their decision-making processes (SEARCH, 2005).

This article illustrates that past behavior does not always predict future behavior. Nurse regulators and managers can be given wide discretion to make decisions about the relevance of the criminal justice record, but they do not have to automatically

deny licensure or employment because a record exists. Instead, interested candidates with criminal histories should undergo standardized psychological assessment and, under the scrutiny of a trained clinical professional, the objective results of the tests should be used to determine an individual's appropriateness for nursing duty. Much could be gained by ex-offenders, potential employers, and society at large, if psychological theory and assessment were integrated into the decision-making process in an effort to give those who sincerely want it, a second chance in life.

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