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Banning the Box in West Virginia: Giving Workers with Criminal Records a Fair Chance

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When people leave the criminal justice system, a combination of family support, community assistance, and economic opportunity is needed to help them stay out. Having access to employment opportunities is key, providing not just financial resources, but also connections to society that help those with criminal records reintegrate successfully.

Unfortunately, people with a criminal record are often turned away from jobs despite their skills and qualifications, with a criminal record acting as a barrier that cuts off employment opportunities before the hiring process even begins. This strains critical family supports and provides financial incentives to engage in illegal behaviors.

35 states and over 150 cities and counties have adopted what are widely known as “Ban the Box” policies. These policies provide applicants a fair chance at employment by removing the conviction history question from job applications and delaying background checks until later in the hiring process. This allows employers to judge applicants on their qualifications first, without the stigma of a record.

Employers Are Not Hiring People with Records

There are an estimated 492,000 adults in West Virginia with arrests or criminal convictions, more than one-third of West Virginia's adult population.¹ Nationally, the unemployment rate for formerly incarcerated people is estimated to be nearly five times higher than that of the general United States population. Among working-age individuals (25-44), the unemployment rate for formerly incarcerated people was estimated to be 27.3% in 2008, compared with just 5.2% unemployment for the general public.²

While a conviction history question on a job application can create a chilling effect, and discourage those with a criminal record from applying, the fact that such a large percentage of prime working-age formerly incarcerated people are without jobs but wish to work shows there is more to the story. The “checked box” on a job application also artificially narrows the applicant pool of qualified workers, regardless of the applicant's merits or the relevancy of the conviction to the job.

Hiring discrimination is most likely to take place at the submission of a job application. Applicants who indicate a criminal record on their applications are nearly 50 percent less likely to get a call-back from prospective employers.³

Employing Those with Records

Prevents Recidivism and Improves Public Safety

Finding employment is one of the single- most important influences on decreasing recidivism. A three-year recidivism study in Illinois found that formerly incarcerated persons with one year of employment had a 16 percent recidivism rate over three years as compared to a 52.3 percent recidivism rate for all Illinois Department of Correction releases. Even just 30 days of employment lowered the three-year recidivism rate to 20 percent.⁴

Getting people working, particularly those with criminal records, not only reduces recidivism, but can lower overall crime rates and improve public safety. A one-percent drop in the unemployment rate can cause a two-percent decline

in burglary, a 1.5-percent decrease in larceny, and a one-percent decrease in auto theft.⁵

Removing Job Barriers is Good for the Economy

When people who are otherwise willing and able to work aren't hired because of their criminal record, it hurts the economy. Economists estimate that because people with felony records and the formerly incarcerated have poor prospects in the labor market, the nation's gross domestic product in 2014 was reduced by \$78 to \$87 billion.⁶

Putting formerly incarcerated persons back to work increases their earnings and boosts tax revenue. A 2011 study found that by entering the workforce 100 formerly incarcerated persons would increase their lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, all while saving more the state budget more than \$2 million annually in incarcerations costs.⁷

In addition, formerly incarcerated individuals are known to be dependable employees. A growing body of research is finding favorable experiences of employers who have hired people with a criminal record. According to a recent survey of human resources professionals and managers, the quality of their hires of people with a criminal record was equal to or better than the quality of individuals hired without a record.⁸ Employees with a criminal record are also less likely to leave the job voluntarily, more likely to have a longer tenure, and no more likely than people without records to be terminated involuntarily.⁹

Ban the Box Policies are Popular and Effective

Nationwide, 35 states and over 150 cities have adopted Ban the Box policies for state government jobs, providing applicants with a criminal record a fair chance at employment. Overall, more than 258 million people in the United States—more than three-fourths of the U.S. population—live in a jurisdiction with some form of Ban the Box or Fair Chance policy.¹⁰

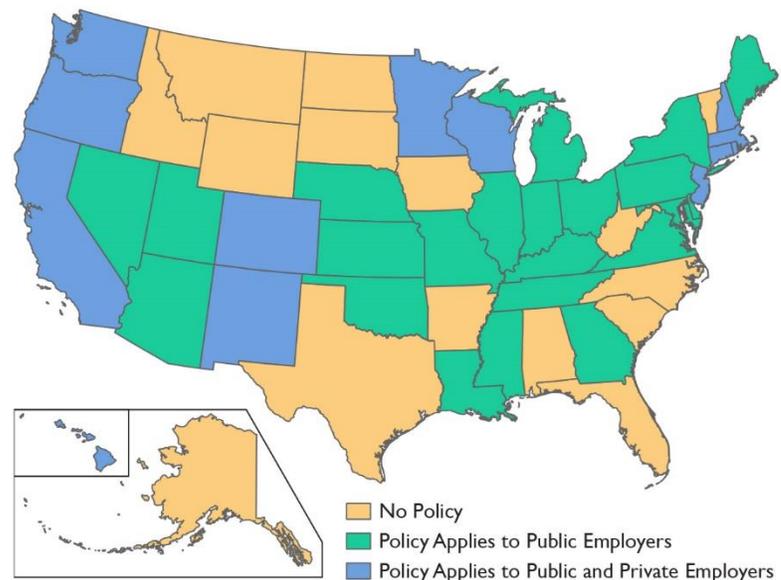
The policies across the country vary in who they cover and when a criminal record has to be disclosed. All 35 states and 150 cities apply their Ban the Box policy to certain state and local government agencies, while 13 states and 18 counties and cities have extended the policy to private employers as well. In addition, 33 cities and counties and 12 states also extend their Fair Chance hiring policies to government contractors. Many states have enacted a Ban the Box policy through executive orders when it applies only to public sector workers.

Some policies prohibit inquiring into an applicant's conviction or arrest history until after an initial interview, while others prohibit it until after an applicant is made a finalist for a position, or even until after a conditional job offer has been made. Some also have guidelines for reviewing a criminal history. For example, in

California, the law requires employers to conduct an "individualized inquiry" by considering at least the amount of time elapsed since the conviction, the nature of the conviction, and whether the conviction is directly job related.¹¹ All

Figure 1

State Ban the Box Policies



Source: National Employment Law Center, status as of July 2009

states have exemptions for positions for which the employer is prohibited by law from hiring someone with a specific conviction history or required by law to conduct a background check.

Other Ban the Box provisions found across the country include barring employers from stating in a job advertisement or on an application form that a person with a record may not apply,¹² prohibiting employers from inquiring about an applicant's credit history,¹³ and giving applicants an opportunity to dispute the accuracy and relevance of any disqualifying conviction relied upon for rejection.¹⁴

No Ban the Box policy requires an employer to hire any individual. The employer always retains the discretion to hire the most qualified candidate.

Ban the Box and other Fair Chance policies have been around since the early 2000s, and their expansion and adoption by states around the country are a testament to their effectiveness. Evaluations of programs in early adopting states have shown consistent results, with increases in the hiring of people with criminal records. For example, in Washington D.C., an audit of the program found a 33-percent increase in the number of applicants with records hired in the 18 months after the policy went into effect.¹⁵

A case study of the Ban the Box program in Durham County, North Carolina found that the number of applicants with criminal records recommended for hire tripled in the two years after its Ban the Box policy passed. On average, 96.8 percent of those with records recommended for hire ultimately get the job.¹⁶

Ban the Box policies also improve efficiency in hiring processes. After the City of Minneapolis implemented its policy, it found that removing the criminal disclosure box from initial applications and postponing background checks until a conditional offer of employment was made decreased the amount of transactional work for City staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired.¹⁷

Why Does Ban the Box Work?

Giving applicants a chance to make personal contact and put their criminal record into context increases the likelihood of finding employment. For example, a survey of California employers found that while only 23 percent are willing to hire a person with a drug-related felony, 84 percent were willing to consider applicants with a misdemeanor offense.¹⁸ But when an applicant with a criminal record of any kind is discarded before even an interview, those who employers would otherwise be willing to hire don't get a chance.

Other studies have shown the positive impact that making personal contact can have on the chances for applicants with criminal records. A study presented to the U.S. Equal Employment Opportunity Commission found that having personal contact with the potential employer reduced the negative effect of a criminal record by approximately 15 percent.¹⁹ Another study of how hiring managers consider job applicants with criminal records found that applicants can compensate for their criminal records based on their personality and ability to make in-person contact with hiring authorities.²⁰ Ban the Box policies give applicants the chance to make these impressions.

Best Practices for Ban the Box Policies

Successful Ban the Box policies all share several principles that are applicable to any state or local government considering enacting their own policy. These include:

- **Forgoing background checks.** A background check may be unnecessary because most jobs do not involve unsupervised access to sensitive populations or handling sensitive information. If the background check is not legally required, it may be cost-saving to forego. Even if a background check is legally mandated, other best practices do not interfere with a background check.
- **Avoid blanket exclusions.** Include an equal opportunity statement on job applications to indicate that a record will not automatically disqualify anyone from a job, unless there is a specific legal exclusion. If a

background check is required or if there is a specific legal barrier, inform applicants that “a background check will be conducted for this position.” However, avoid phrases such as “must pass a background check,” or “clean background only.”

- **Consider relationship of conviction to job.** If a background check is required only consider those convictions with a direct relationship to job duties and responsibilities. Follow the best practices of the 2012 U.S. Equal Employment Opportunity Commission²¹ in evaluating convictions and avoid consideration of records of arrest not followed by a valid conviction. Avoid considering sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
- **Consider length of time since conviction.** The likelihood of a formerly incarcerated individual re-committing a crime matches that of someone without a criminal record after the passage of time. A leading study found that three to seven years after offending, nearly all people convicted of a felony are no more at risk of being arrested for a new offense than anyone in the general population.²²
- **Remove inquiries into convictions from the job application.** The most effective policy is to delay all conviction inquiries, oral or written, until after a conditional offer of employment. Also avoid provisions that allow for “voluntary disclosure” of background check information from the applicant. “Voluntary disclosure” circumvents “Ban the Box” as applicants are often directed to provide background check information by job services.
- **Remove self-reporting questions about conviction history.** Discrepancies between self-disclosed information and background checks are often caused by workers’ misunderstanding of their own records, and too often are inaccurate “truth tests.” If a background check will be run, there is no benefit to this additional step, which trips up well-intentioned workers. Prior to any discussion about the applicant’s conviction history, provide the applicant with a copy of any background check.
- **Inform the applicant if they are rejected due to a conviction.** Provide the applicant with written notice of the specific item in the background check report that is considered job-related and provide the applicant with a copy of the report. Background check reports are often inaccurate, so give applicants the chance to verify or challenge the information.
- **Expand the Fair Chance policy to private employers.** To maximize the impact of the Ban the Box policy, apply the policy to government contractors and private employers.

Conclusion

Removing conviction inquiries from job applications is a simple policy change that eases hiring barriers and creates a fair chance to compete for jobs. Ban the Box policies allow applicants to be judged on their qualifications first, without a record holding them back. Ban the Box policies have spread rapidly across the country in recent years, and enacting one in West Virginia would help employers find qualified candidates they might otherwise miss, while giving a fair chance to those with criminal records who want to work, provide for their families, contribute to the economy, and stay out of the criminal justice system.

- ¹ In 2016 there were an estimated 703,900 subjects (“individual offenders”) in the state criminal history files in West Virginia. U.S. Dept. of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2016 <https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf>. To account for duplication (individuals who may have criminal records in more than one state), this report reduced the numbers cited in the survey by 30% to 492,000 subjects.
- ² Lucius Couloute and Daniel Kopf, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” The Prison Policy Initiative, July 2018
- ³ Prager, Devah, “The Mark of a Criminal Record,” American Journal of Sociology, Volume 108 Number 5 (March 2003)
- ⁴ Safer Foundation, “Three-Year Recidivism Study,” 2008 <http://saferfoundation.jellcreative.com/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>
- ⁵ Steven Raphael and Rudolf Winter-Ebmer, “Identifying the Effect of Unemployment on Crime,” The Journal of Law and Economics (University of Chicago Law School) (44), 2001 (www.jstor.org/stable/10.1086/320275)
- ⁶ Cherrie Bucknor and Alan Barber, “The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies,” Center for Economic Policy and Research, July 2016
- ⁷ Economy League Greater Philadelphia, “Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,” September 2001
- ⁸ Society for Human Resources Management, Charles Koch Institute, “Workers with Criminal Records: A Survey by the Society for Human Resources Management and the Charles Koch Institute” 2018
- ⁹ Jennifer Lundquist, Devah Pager, and Eiko Strader, “Does a Criminal Past Predict Worker Performance? Evidence from American’s Largest Employer,” Working Paper, 2016
- ¹⁰ Beth Avery, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past Convictions,” National Employment Law Project, July 2019
- ¹¹ California Assembly Bill 1008, October 14, 2017
- ¹² Colorado House Bill 19-1025, May 28, 2019
- ¹³ Delaware House Bill 167, 147th General Assembly
- ¹⁴ Georgia Executive Order, February 23, 2015
- ¹⁵ Office of the District of Columbia Auditor, “The Impact of “Ban the Box” in the District of Columbia,” June 10, 2016
- ¹⁶ The Southern Coalition for Social Justice, “The Benefits of Ban the Box: A Case Study of Durham, NC,”
- ¹⁷ Letter from City Council Member Elizabeth Glidden with Attachment of City of Minneapolis Conviction History Summary 2004-2008 YTD (March 16, 2009)
- ¹⁸ Jennifer Fahey, Cheryl Roberts, and Len Engel, “Employment of Ex-Offenders: Employer Perspectives,” Boston, Massachusetts: Crime & Justice Institute, 2006
- ¹⁹ Devah Pager, “Sequencing Disadvantage: The Effects of Race and Criminal Background for Low-Wage Job Seekers,” Statement to the U.S. Equal Employment Opportunity Commission, convened November 20, 2008. (www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm)
- ²⁰ Sarah Lageson, Mike Vuolo, and Chris Uggen, “Legal Ambiguity in Managerial Assessments of Criminal Records,” Law & Social Inquiry, 2014. (<http://onlinelibrary.wiley.com/doi/10.1111/lssi.12066/abstract>)
- ²¹ U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964
- ²² Alfred Blumstein and Kiminori Nakamura, “Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences, submitted to the National Institute of Justice, November 2012

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